

BEFORE THE

STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

IDT America, Corp.)
Petition for Arbitration of)
Rates, Terms and Conditions) Docket No. DT-09-048
Of Interconnection Agreement)
With Union Telephone Co.)

COMMENTS OF IDT AMERICA, CORP.

SUMMARY

On June 15, 2009, New Hampshire Public Utilities Commission Executive Director Howland stated “[T]o the extent that Union reasserts arguments concerning 47 U.S.C. §§ 251(a) and (b), and § 252(b), the Commission disposed of those arguments when it denied the first motion[.]”¹ and “To the extent that Union’s May 29th motion questions whether IDT is requesting interconnection pursuant to 251(c) and whether IDT is a common carrier, the Commission has determined that those issues require development of a factual record.”² IDT interprets this request to mean that the Commission intends to examine whether any services IDT seeks under Section 251(a) and (b) are, in fact, only available under Section 251(c).

IDT has asserted throughout this proceeding and throughout this arbitration that it does not seek terms or services that otherwise would only be available under 251(c). However, Union appears wedded to the position that “rural carriers such as Union are exempt from interconnection demands under Section 251 unless and until the rural

¹ Secretarial Letter, IDT America Corporation [sic] Petition for Arbitration of Rates, Terms and Conditions of Interconnection Agreement with Union Telephone Co., DT 09-048 (June 15, 2009)(“Secretarial Letter”).

² *Secretarial Letter.*

carrier's exemption has been lifted."³ It is IDT's position that it is undeniable – and previously recognized by this Commission – that “47 U.S.C. § 251(a) and (b) make clear that all local exchange carriers, regardless of size, must interconnect with other carriers operating in their service territory.”⁴

In the event the Arbitrator recommends (and the Commission concludes) that part of IDT's request falls within the scope of Section 251(c), the remedy should be to deny the request in the arbitration but not to conclude that the entire interconnection request automatically falls under 251(c).

Union has also raised, via motion, a very limited issue about IDT's common carrier status (“[T]he Commission require IDT to confirm that it will operate as a common carrier in Union's territory prior to initiate [*sic*] proceedings in this docket.”⁵) IDT asserts that this issue should not be addressed further because it has already been addressed and rejected. For the sake of clarity, however, IDT hereby confirms that it will operate as a common carrier in Union's territory. Furthermore, IDT asserts that Union has no right impose, or request that the Commission impose disclosure obligations upon IDT. And yet even if the Commission decides to address the common carrier issue, it must conclude that IDT is a common carrier.

The final issue presented is the one matter that could not be resolved via the arbitration process: pricing. IDT does not invoke rights to certain rates under Section 251(c), however, we do find in RSA 374:22-g a general right to promote competition and

³ *Supplement to Record*, Docket No. 09-048 (“Union Letter”), June 22, 2009 at 2.

⁴ *Order Denying Motion to Rescind Authority and Motion for Rehearing, IDT America, Corp. Application for Certification as a Competitive Local Exchange Carrier*, Order No. 24,970, DT 09-065 (May 22, 2009).

⁵ *Motion to Dismiss*, Docket No. 09-048 (May 1, 2009) at 5.

we urge the Arbitrator and the Commission to implement rates that will promote competition in Union's incumbent, monopoly territory.

In conclusion, IDT is a common carrier. IDT has a right to interconnect with Union under Section 251(a) and (b) and the services IDT seeks fall under Section 251(a) and (b). If any services requested by IDT fall under Section 251(c), the Commission should initiate upon its own motion a proceeding to eliminate Union's rural exemption under Section 251(f). IDT's rates should be approved as they will enable IDT to provide competitively-priced, competitive local exchange service in Union's incumbent, monopoly territory.

OVERVIEW

Before the Arbitrator can review the legal issues presented in this arbitration, it is necessary to understand what exactly this proceeding is about. IDT wants to exchange telecommunications traffic with Union. Plain and simple. Union already exchanges telecommunications traffic – *including local exchange traffic* – with IDT and with other local exchange and interexchange carriers – so it would appear on its face that what IDT is seeking to do should not be exceptionally unique, difficult or, as Union would have it, unlawful.

Yet that is what Union has unequivocally stated: IDT's request to exchange telecommunications traffic with Union is unlawful. But why is IDT's request so different from IDT's and other carriers' existing exchanges of traffic with Union? Again, the answer is pretty simple. Because for the first time, the carrier that wants to exchange traffic with Union intends to serve customers physically located within Union's incumbent monopoly service territory. In other words, IDT will not just be exchanging local and toll traffic with Union, it will be competing against Union for customers.

So, what this proceeding is really about is competition. Can IDT compete with Union? Can IDT originate and terminate exchange telecommunications traffic to consumers located within the incumbent Union region without first having Union's rural exemption under Section 251(f) lifted? IDT asserts that it can, pursuant to Section 251(a) and (b) as well as in accordance with RSA § 374:22-g.

As the Arbitrator considers the issues presented, it is important for the Arbitrator and, ultimately, the Commission to be aware of how the proposed interconnection agreement between IDT and Union came to be. Upon the Commission's direction that

the parties arbitrate an agreement, IDT presented a draft interconnection agreement to Union, which Union summarily rejected. Union then presented an agreement to IDT and it is this agreement that serves as the template for the agreement before the Commission. So, with limited exceptions (which IDT will address if and/or when Union claims that certain sections of the proposed agreement fall outside of Section 251(a) and (b), the services which Union would argue it is not required to offer are actually services which Union previously proposed. It is *critical* that the Arbitrator and the Commission not let Union propose services and/or language in an agreement and then use the existence of the services and/or language in the agreement as a basis for claiming that the agreement – Union’s template agreement – “proves” that IDT is attempting to get a Section 251(c) interconnection through a request under Section 251(a) and (b).

Equally important is the fact that, because the agreement proposed by Union is a template, it is actually the basis of countless agreements, including agreements: (1) entered into under Section 251(a) and (b) and not Section 251(c); (2) entered into between CLECs and RLECs; and (3) subject to arbitration.⁶ And while the fact that the agreement is a template and not an exact copy of an agreement that was opted into means that there will be differences between the proposed agreement before the Commission and approved agreements in other jurisdictions, it is important to consider the following: if this agreement (subject to some changes) has been entered into between other carriers pursuant to Section 251(a) and (b), why would the agreement fall under Section 251(c) in New Hampshire? IDT asserts that it should not and, in fact, can not.

⁶ Based on information and belief, the template presented by Union was used in the interconnection between VTel and Comcast in Vermont. It is also the template for an agreement used by IDT and Williston Tel., an RLEC, in South Carolina.

ARGUMENT

On June 15, 2009, New Hampshire Public Utilities Commission Executive Director Howland stated “[T]o the extent that Union reasserts arguments concerning 47 U.S.C. §§ 251(a) and (b), and § 252(b), the Commission disposed of those arguments when it denied the first motion[.]”⁷ and “To the extent that Union’s May 29th motion questions whether IDT is requesting interconnection pursuant to 251(c) and whether IDT is a common carrier, the Commission has determined that those issues require development of a factual record.”⁸ During the arbitration between IDT and Union, Arbitrator DelVecchio presented both companies with certain questions for which he sought responses so that he could presumably act in accordance with Executive Director Howland’s request, *i.e.*, to “recommend an appropriate resolution of any arguments contained in Union’s May 29th motion to dismiss, not resolved by the prior secretarial letter.”⁹ On the following pages, IDT has set out responses to the questions presented by Arbitrator DelVecchio. Additionally, IDT has addresses certain issues which remain unresolved as a result of the arbitration with Union.

- 1. Discuss the IDT-cited Vermont decision in detail. What services, interconnection, etc., did the requesting carrier seek? Compare and contrast what was sought in Vermont to what is sought in New Hampshire. Discuss Vermont’s treatment of Section 251(f).**

In Vermont, Comcast, a CLEC, requested interconnection with VTel, a RLEC, for interconnection pursuant to Sections 251(a) and (b).¹⁰ Based on the information

⁷ *Secretarial Letter.*

⁸ *Secretarial Letter.*

⁹ *Id.*

¹⁰ Order, Petitions of Vermont Telephone Company, Inc. (“VTel”) and Comcast Phone of Vermont, LLC d/b/a Comcast Digital Phone (“Comcast”), for Arbitration of an Interconnection Agreement Between VTel and Comcast, Pursuant to Section 252 of the Telecommunications Act of 1996, and Applicable State Laws, (February 2, 2009) (“Vermont Order”) at 10.

presented in the *Vermont Order*,¹¹ Comcast is similar to IDT in that it provides telecommunications services to a third party which subsequently bundles the telecommunications services with its interconnected VoIP, cable television and high speed internet services to provide a bundled service offering to its end users. Consequently, the services sought by Comcast in its interconnection agreement with VTel are virtually identical to those sought by IDT. Both agreements seek interconnection between two parties for the exchange of local and interexchange traffic. Likewise, both agreements contain appendices covering Number Portability, Network Interconnection Methods, Numbering, Pricing and Reciprocal Compensation. In fact, the template agreement used in the Comcast/VTel interconnection agreement is the same template as used between IDT and Union.¹² To the best of IDT knowledge, there are no meaningful differences between the services contemplated in the Comcast/VTel agreement and the proposed IDT/Union agreement.

One difference that may be worth noting, however, is that in Vermont, Comcast sought direct interconnection and VTel sought only indirect interconnection. In the present matter, IDT has requested indirect interconnection until certain traffic thresholds are met before direct interconnection is implemented. This request is consistent with Union's initial draft of its interconnection agreement. Union subsequently altered its initial language from the pure "threshold" approach, to one which contemplates a threshold approach or one which requires direct interconnection within three months after market launch. In Vermont, the Commission ultimately concluded that "Comcast Phone is only entitled to indirect interconnection under Section 251(a)(1) *** [and that] under

¹¹ *Id.* at 9.

¹² A copy of the agreement is provided at Exhibit A.

Section 251(f) of the Act, VTel is exempt from the obligations of Section 251(c) [which would compel VTel to offer direct interconnection.]”¹³

While the *Vermont Order* concludes that Section 251(a) required direct *or* indirect but not necessarily both forms of interconnection, it provided no case law or statutory support for its position that the ILEC is the deciding party.¹⁴ It also noted that VTel was not providing direct interconnection with any other party. That is not the case with Union in New Hampshire. Presently, Union, which seeks to mandate *only* direct interconnection as a long-term solution, currently provides indirect interconnection to IDT and other providers on a long-term basis. Moreover, Union has agreed in arbitration to provide indirect interconnection to IDT until it can implement direct interconnection. Thus, it appears that Union seeks to offer only direct interconnection as a means to create additional costs and inefficiencies even though it makes indirect interconnection available to IDT and other carriers presently. IDT requests that the Commission prevent Union from imposing unnecessary inefficiencies and conclude that because Union is already offering indirect interconnection, it should continue to do and, while it may require direct interconnection of IDT, it cannot do so to the exclusion of indirect interconnection entirely. However, to the degree the Arbitrator and the Commission conclude that Union is not compelled to offer indirect *and* direct interconnection, they should compel the parties to implement language that mandates one form of interconnection or the other and

¹³ *Vermont Order* at 23.

¹⁴ In the *Vermont Order*, it was noted that “The plain language of Section 251(a)(1) provides that ‘Each telecommunications carrier has the duty – (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.’ This language indicates that so long as the carriers can connect indirectly, VTel’s obligation is met.” *Vermont Order* at 23. But Section 251(a)(1) applies to “telecommunications carriers” not “incumbent local exchange carriers” so the position that the ILECs interconnection method preference supersedes the CLECs preference is unsupported.

not conclude that because IDT seeks the option of both forms of interconnection that such a request makes the request a Section 251(c) request for interconnection.

The *Vermont Order* concluded that “Section 251(f)(1) does not exempt VTel from its duties under Sections 251(a) and (b).”¹⁵ IDT believes that this point is critical because Union has argued that no such duties exist and/or that any request under 251(a) and (b) is simply a 251(c) request in disguise and, as such, must be barred under Section 251(f)(1).¹⁶ Equally important, the *Vermont Order* concluded that, to the degree part of Comcast’s request fell within the scope of Section 251(c), the remedy was to deny the request in the arbitration but not to conclude that the entire interconnection request automatically falls under 251(c). IDT thinks this approach is wise and pro-competitive and urges the Arbitrator and this Commission to do the same (to the degree either concludes any section of the agreement falls under Section 251(c).) The remedy for IDT to subsequently receive the Section 251(c) services in New Hampshire would be, as it was for Comcast in Vermont, to petition the Commission for removal of the rural exemption.¹⁷ Until the exemption would be lifted and services would be required under Section 251(c), IDT would be able to offer service under Section 251(a) and (b).

2. Discuss the Union-cited *Maine Order*¹⁸ in detail (same as with the *Vermont Order*).

¹⁵ *Vermont Order* at 21.

¹⁶ (“[U]nion argued, based on precedent and the plain meaning of the statute, that Section 251(a) and (b) of the Communications Act, as Amended, do not provide an independent basis upon which IDT can demand interconnection.”) Union Telephone Company Reply to IDT America, Corp., Response to Motion to Dismiss, Docket No. 09-048 (June 9, 2009) at 1 (“*Union June 9 Reply*”).

¹⁷ *Vermont Order* at 23.

¹⁸ *Order, CRC Communications of Maine, Inc. Petition for Consolidated Arbitration with Independent Telephone Companies Towards an Interconnection Agreement Pursuant to 47 U.S.C. 151, 252*, Docket No. 2007-611 (May 5, 2008) (“*Maine Order*”).

Union has submitted the *Maine Order* in support of its proposition that “as with the previous authorities submitted by Union¹⁹, the *Maine Order* again demonstrates the well settled point that rural carriers such as Union are exempt from interconnection demands under Section 251 unless and until the rural carrier’s exemption has been lifted.”²⁰ However, that proposition has already been addressed and rejected by the Commission when it concluded “[T]o the extent that Union reasserts arguments concerning 47 U.S.C. §§ 251(a) and (b), and § 252(b), the Commission disposed of those arguments when it denied the first motion.”²¹ Thus, it is irrelevant whether the Maine Commission, which relied on the *Texas Order*, concluded that a CLEC cannot request interconnection with an RLEC unless and until the RLEC’s exemption has been lifted because the New Hampshire Commission has already concluded that interconnection is required under Section 251(a) and (b) (“Section 251(a)(“[Union] has a duty to provide the services required by sections 251(a) and (b).”)²² Thus, the *Maine Order* is moot and IDT does not feel compelled to discuss in great detail a case²³ which is not relevant to the questions before the Commission.

Union has also submitted the *North Dakota Order* in support of its position.

Again, IDT asserts that the *North Dakota Order* does not apply. In the *North Dakota*

¹⁹ Order Denying Sprint’s Appeal of Order No. 1, Petition of Sprint Communications Company L.P. for Compulsory Arbitration Under the FTA to Establish Terms and Conditions for Interconnection Terms with Brazos Telecommunications, Inc., PUC Docket No. 31038 (December 2, 2005) (“*Texas Order*”) and Order, Level 3 Communications, LLC Interconnection Arbitration Application, Case No. PU-2065-02-465 (May 30, 2003)(“*North Dakota Order*”).

²⁰ *Supplement to Record*, Docket No. 09-048 (“Union Letter”), June 22, 2009 at 2.

²¹ *Secretarial Letter*.

²² *Hearing Examiner’s Report, Petition of IDT America, Corp. for Arbitration with Union Telephone Co.*, DT 09-048 (May 20, 2009)(“*Hearing Examiner’s Report*”) at 3.

²³ While IDT asserts that the *Maine Order* is not relevant, it is worth noting that in that matter, the CLEC appears to have explicitly requested “network elements” and interconnection under 251(c). IDT has not sought interconnection under 251(c) and has not sought Section 251(c)(2) interconnection, unbundled network elements, resale and collocation nor has it sought Section 251(c)(5) notice of changes.

Order, the Commission concluded that “if we accept that the Level 3 offering is truly local exchange service in nature, then the provisions of section 251(c) would have to apply[.]” and “the transmission and routing of telephone exchange service and exchange access is clearly stated under 251(c)(2)(A).”²⁴ But as stated elsewhere in IDT’s comments, the simple transmission and routing of telephone exchange service and exchange access does *not* necessarily make the transmission fall under Section 251(c)(2)(A). Section 251(c)(2)(A) contemplates the transmission and routing of telephone exchange service and exchange access as being subject to specific requirements pertaining to technical feasibility, quality and rate, term and conditional non-discrimination. None of those issues are present in IDT’s request. Moreover, IDT asserts that the North Dakota’s conclusion was incorrect. Section 251(b)(5) establishes reciprocal compensation. Reciprocal compensation applies to the exchange of local traffic. Thus, it would be to incorrect to conclude that the simple request for the exchange of local traffic necessarily implicates Section 251(c)(2)(A). Indeed, Union, which presently exchanges local traffic with IDT and other carriers, has never, to the best of IDT’s knowledge, claimed that *any* request to exchange local traffic falls under Section 251(c)(2)(A)

The *only* related issue that remains open was clearly articulated by the Commission: “To the extent that Union’s May 29th motion questions whether IDT is requesting interconnection pursuant to 251(c) ... the Commission has determined that those issues require development of a factual record.”²⁵ IDT interprets this request to mean that the Commission intends to examine whether any services IDT seeks under

²⁴*North Dakota Order* at ¶ 8.

²⁵*Secretarial Letter*.

Section 251(a) and (b) are, in fact, only available under Section 251(c). Since Union seemingly refuses to limit its argument to this particular point, it is difficult to fully understand what services Union believes fall under Section 251(c) but, based on discussions with Union, it appears that, at minimum, Union believes it is not obligated to exchange telephone exchange service and exchange access and that it is not obliged to interconnect with IDT both directly *and* indirectly. IDT asserts that both arguments (if, indeed, made by Union) must fail.

As noted above in our discussion of the *Vermont Order*, it is no longer subject to debate in this proceeding whether Union has an obligation to interconnect under Section 251(a)(1) because “Each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.”²⁶ This position has been upheld by the Commission (“In fact, 47 U.S.C. § 251(a) and (b) make clear that all local exchange carriers, regardless of size, must interconnect with other carriers operating in their service territory.”)²⁷ To the degree that Union would argue that the type of interconnection IDT seeks is really Section 251(c) interconnection, IDT asserts here and throughout this filing that the *Vermont Order* asserts that the type of interconnection contemplated by IDT does not fall under Section 251(c). And to the degree that state Commissions may differ on this question, IDT urges this Commission to “interpret” Section 251 in a pro-competitive manner, which is consistent with RSA §374:22-g.

²⁶ 47 U.S.C. § 251(a).

²⁷ Order Denying Motion to Rescind Authority and Motion for Rehearing, IDT America, Corp. Application for Certification as a Competitive Local Exchange Carrier, Order No. 24,970, DT 09-065 (May 22, 2009).

In a way, IDT is confused why Union even raises this issue, particularly because Union *already* interconnects indirectly with the facilities and equipment of IDT and other carriers for the transmission and routing of telephone exchange service and exchange access. Thus, it is unclear why Union asserts it does not have an obligation to interconnect for these services. IDT and other carriers operate within the local calling areas of Union and, accordingly, exchange local and access traffic. If IDT and other carriers did not do so, then Union's end users would not be able to place calls to friends and family located within their local calling area but outside Union's incumbent territory. Most likely, the reason for Union's opposition in the present matter is that IDT is bringing the competition into Union's territory. And while RLECs like Union are granted some exceptions, the right to eternal monopoly was not one of them.²⁸

Part of Union's argument seems to be based on the issue of Union exchanging local exchange and exchange access traffic, and that such traffic can only be exchanged under Section 251(c). It is important to note that Section 251(c) does not simply control carriers rights and obligations regarding "the transmission and routing of telephone exchange service and exchange access." Section 251(c) mandates critical components of the interconnection process and these critical components must be read as *outside* or *in addition to* the obligations that exist under Section 251(a), which are less burdensome. Read in its entirety, Section 251(c) (2) states:

The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

²⁸ ("We find no indication in the 1996 Telecom Act that ILECs subject to the rural exemption are protected from competitive entry.") *Order Granting Authority, Comcast Phone of New Hampshire Application for Authority to Serve Customers in the TDS Service Territories*, DT 08-013, Order No. 24,938 (February 6, 2008) ("*Comcast CLEC Authorization Order*") at 20.

- (A) for the transmission and routing of telephone exchange service and exchange access;
- (B) at any technically feasible point within the carrier's network;
- (C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
- (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252 of this title.

IDT has not asserted that it has a right to the condition-laden interconnection set forth under Section 251(c)(2).²⁹ IDT has not asserted the right to interconnection at any technically feasible point within Union's network nor has IDT asserted the right that the interconnection be at least equal in quality to that provided by Union to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection nor has IDT asserted the right to rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and Section 252. When you examine the type of interconnection requested by IDT under Section 251(a) with the interconnection mandated under Section 251(c)(2), it becomes even more clear that IDT's request to route telephone exchange service and exchange access does not fall under Section 251(c)(2).

3. Discuss subsequent history of related Maine dockets.

²⁹ This is not to say that it would reject certain terms that might be lawfully demanded under Section 251(c) if proposed by and/or agreed to by Union. Indeed, it is certainly possible that the proposed agreement includes some terms which can only be *demanded* under a Section 251(c) agreement. But IDT does not demand such terms. Furthermore, IDT maintains that Union should not be permitted to propose and/or agree to terms and then use the existence of the terms as evidence that IDT's request falls under Section 251(c).

While the substance of the *Maine Order* is not relevant, the subsequent action taken by the Maine Commission *is* relevant. Based on information available³⁰, it appears that the Maine Commission has undertaken a proceeding to determine whether the RLEC(s) should lose the rural exemption and be required to offer Section 251(c) services and terms. As noted elsewhere in this document, while IDT does not believe Union's RLEC exemption must be waived in order to support its request for interconnection, if the New Hampshire Commission ultimately concluded that IDT's request for interconnection fell in whole or in part under Section 251(c), IDT would support an undertaking to eliminate Union's exemption. It must be noted, however, that any extraordinary efforts IDT would be compelled to undertake (such as a lengthy and costly proceeding) in order to enter the Union ILEC territory could limit IDT's ability to compete. The cost of the present arbitration has been considerable, particularly given the relatively small market to which IDT seeks entrance. If this or other Commissions require overly lengthy, time-consuming and costly proceedings to enter RLEC territories – which often contain only small numbers of potential subscribers – the cost to bring competition to these subscribers will be too great and RLEC territories will remain monopolies.

4. **Discuss how IDT provides service to Metrocast. Discuss in what ways, if any, this arrangement represents the “joint provision” of service. Include a network diagram of the contemplated arrangement with Union. Provide a copy of the NH MetroCast stipulation and related order.**

³⁰ See generally, Docket No. 2009-40.
http://mpuc.informe.org/easyfile/easyweb.php?func=easyweb_query

IDT and MetroCast “jointly” provide service to end users in New Hampshire.³¹ The agreement between the two companies ensures that numbering usage will comply with the statutory mandate to conserve New Hampshire telephone numbers. At the same time, the agreement permits the implementation of a business arrangement that offers a new competitive alternative in the local telecommunications market. The settlement agreement balances concerns over the efficient use of scarce numbering resources with the interests of end-users to have greater competitive choice. In the IDT/MetroCast business plan, IDT receives blocks of numbering resources and then assigns individual numbers from those blocks to MetroCast end-user customers. IDT administers and manages the numbering resources.

Prior to the IDT/MetroCast business arrangement, MetroCast provided only video and internet services to end-users. MetroCast had no experience, resources, capital or legal authority to deploy voice services. Additionally, Metrocast’s cable-network, personnel (operations, sales, customer care, etc), operating support systems (OSS), billing support systems (BSS), methods and procedures, and end-user interfaces (web portals, invoices, etc) were not capable of supporting voice services. Under business arrangement with IDT, MetroCast found a timely, efficient, cost-effective, competitive way to fill these “missing” portions and provide New Hampshire end-users greater choice.

IDT uses its resources as a CLEC to connect MetroCast to the Public Switched Telephone Network (PSTN), provide the cable company with local number port-in and port-out, enhanced 911 interconnection, operator/directory assistance, directory listings,

³¹ Order Approving Settlement Agreement, IDT America, Corp. and MetroCast Cablevision of New Hampshire, LLC Joint Petition for Expedited Relief in the Granting of Numbering Resources, DT 06-169; Order No. 24,727 (January 26, 2007)(“*IDT/MetroCast Settlement*”). at 2. A copy is provided at Exhibit B.

and numbering resources necessary to serve MetroCast customers in the cable company's New Hampshire service area. MetroCast uses its cable facilities to provision Internet Protocol (IP)-based telephony and would be the entity that maintains a customer-provider relationship with end-users, offering customer support and rendering bills for telephone service. Together, IDT and MetroCast provide an end-to-end solution by integrating the IP platform to deliver a fully automated digital phone and high-speed data provisioning solution including PSTN service activation and interconnection.

This arrangement leverages the core competencies and efficiencies of both MetroCast and IDT: MetroCast's ability to manage and support retail offerings (video, internet, voice) and connectivity (cable network to the home, similar to the telephony "local loop"), and IDT's expertise in wholesale telephony and ability to leverage a volume-based cost structure. Separately, neither MetroCast or IDT would be able to provide the complete end-to-end solution to New Hampshire consumers in an equally efficient or cost-effective manner.

IDT operates under this type of business arrangement with a number of other cable operators in over fifteen states providing voice services to approximately a quarter of a million end-users. In some states, IDT provides interconnection to multiple ILECs for a single cable operator territory. Presently in New Hampshire, IDT interconnects with Fairpoint only. Adding interconnection with Union in New Hampshire, would enable MetroCast to provide service in "Union territory" with little, if any, changes in processes or procedures. IDT has provided a diagram at Exhibit B that demonstrates how IDT and MetroCast interconnect.

Under this business arrangement, IDT provides the following portions of the “jointly provided service” to MetroCast³²:

- 1) IDT performs Network Evaluations for MetroCast to ensure it’s cable network meets minimum standards for supporting voice services. IDT makes recommendations to MetroCast as needed.
- 2) IDT engineers, orders, and installs all required telecom hardware (CLASS 5 softswitch, application servers, multiplexors, etc)
- 3) IDT provides full Network Integration into the MetroCast’s network and facilities, connecting the telecom hardware (CLASS 5 softswitch, application servers, multiplexors, etc) to the cable-network.
- 4) IDT provides Cable Voice Operating Support System (CVOSS), a turnkey OSS and BSS solution to Metrocast with full voice (Residential, Business, Enterprise) provisioning and management capabilities.
- 5) IDT provides full integration, from CVOSS, into MetroCast’s existing OSS, BSS, and end-user provisioning systems. This eliminates the needs for MetroCast personnel to have to “swivel-chair” between different systems. MetroCast can provision, manage, and bill end-users in their existing OSS/BSS systems using existing processes.
- 6) IDT provides full integration from CVOSS into the CLASS 5 softswitch and associated voice applications (i.e. voicemail server, etc). This enables MetroCast to provision end-users and features from their existing OSS/BSS.
- 7) IDT provides full support for CVOSS via IDT’s lab facility, teams of developers and quality assurance specialists, continually expanding and improving features and functionality for voice services.
- 8) IDT provides ongoing device and platform certification testing. This ensures network and hardware compatibility between the cable-network, the PSTN, network hardware, customer premise hardware, and the associated OSS and BSS systems.
- 9) IDT works with MetroCast to define and document business process flows and provides voice order training, as needed when new features or functionality are made available by IDT. IDT works with MetroCast to define voice offerings with little or no impact to their existing end-user provisioning processes. IDT provides MetroCast branded process Methods & Procedures, FAQ sheets, etc. IDT trains their Customer Service reps, Sales team, Operations team, etc on how to provision and manage voice offerings.
- 10) IDT provides MetroCast with a branded residential and business end-user web-portal. This portal allows subscribers to log in a view their voice account, change feature settings, view rated call usage, etc. This portal can be “inserted” inside an existing Client End-User portal to appear as if it is part of the Client web-site
- 11) IDT provides connection to the Public Switched Telephone Network (PSTN).
- 12) IDT provides Local number port-in and port-out capabilities.
- 13) IDT provides Enhanced 911 interconnection and 911-ALI database management ensuring the voice service is 911 compliant.

³² A diagram of IDT and MetroCast’s interconnection is included at Exhibit C.

- 14) IDT provides directory/operator assistance.
- 15) IDT provides Directory listing management.
- 16) IDT provides Numbering resources and numbering resource management.
- 17) IDT provides TRS and CALEA management and compliance,
- 18) IDT provides Telecom database management (CNAM, LiDB, etc)
- 19) Telecom facility installation, monitoring and management (CLASS 5 softswitch, multiplexers, etc)
- 20) IDT provides full CLASS 5 features and applications (i.e. voicemail, etc).
- 21) IDT maintains and manages Carrier Interface (GUI, API, etc) change management with other carriers such as Fairpoint, Verizon, Level 3, etc. This ensures MetroCast will not have to worry about any provisioning or ordering process changes another carrier implements (i.e. Fairpoint changing is ordering interface)
- 22) IDT manages full end-user order provisioning for “new” or ported number orders. IDT will order and manage all voice order types (move, add, change, disconnect, port orders, etc). IDT provides address validation, directory listing, caller ID, 911-ALI, LNP
- 23) IDT provides telecom circuit installation, monitoring and management (trunks, SS7-Links, etc)
- 24) IDT provides guidance on regulatory filings and compliance (USF, TRS, 911, etc)
- 25) IDT provides carrier management (interconnect agreements, etc)
- 26) IDT provides network integration into MetroCast’s network and facilities (i.e. connection into the cable-network).
- 27) IDT provides it’s Cable Voice Operating Support System (CVOSS), which provides a turnkey solution to Metrocast with full voice (Residential, Business, Enterprise) management capabilities.
- 28) IDT performs telecom Network Operations Center (NOC) management, staffing, and monitoring responsibilities for voice services.
- 29) IDT manages all carrier and vendor invoice reconsolidation and incurs charges associated to voice network and usage services (i.e. circuits, trunks, usage charges, LNP charges, etc).
- 30) IDT provides call rating which enables MetroCast to invoice End-Users for any metered calls (i.e. international calls).

5. Discuss the application of prior PUC decisions (including Secretarial Letters) in this proceeding and the related MetroCast and Comcast dockets. If you contend they are or are not controlling, at least in part, please explain. Please explain, also, the PUC’s treatment or application of RSA 374:22-g in the relevant orders.

The application of prior PUC decisions (including Secretarial Letters) in this proceeding is controlling. In the *Secretarial Letter*, the Commission stated “[T]o the extent that Union reasserts arguments concerning 47 U.S.C. §§ 251(a) and (b), and §

252(b), the Commission disposed of those arguments when it denied the first motion.”³³ Accordingly, it is IDT’s position that any previously-raised arguments concerning 47 U.S.C. §§ 251(a) and (b), and § 252(b) cannot be addressed in this arbitration and that it would be impermissible to raise any new arguments concerning 47 U.S.C. §§ 251(a) and (b), and § 252(b) in this arbitration. In the *Secretarial Letter*, the Commission also stated “To the extent that Union’s May 29th motion questions whether IDT is requesting interconnection pursuant to 251(c) and whether IDT is a common carrier, the Commission has determined that those issues require development of a factual record.”³⁴ Therefore, any issues addressed in this arbitration (other than disputed language in the draft agreement) should be limited to whether IDT is requesting interconnection pursuant to Section 251(c) and whether IDT is a common carrier. For reasons stated herein, IDT is not requesting interconnection pursuant to Section 251(c) and IDT is a common carrier.

The prior Comcast and MetroCast dockets are controlling and relevant for various principals set forth in them. Both set forth pro-competitive policies and parameters for entry *and* operation within the rural marketplace which IDT seeks: IDT is not requesting that the Commission expand beyond the principals set forth when the Commission granted (and reconfirmed the grant of) Comcast³⁵ and MetroCast’s³⁶ CLEC certificates. For example, in those dockets, the Commission stated and reiterated that “At the federal level, the essential distinction between small and large ILECs is that small ILECs are generally exempt from the obligation to unbundled portions of their networks to CLECs

³³ *Secretarial Letter*.

³⁴ *Id.*

³⁵ *See generally, Comcast CLEC Authorization Order.*

³⁶ *Order Denying Motion to Rescind Authority and Motion for Rehearing, MetroCast Cablevision of New Hampshire Application for Certification as a Competitive Local Exchange Carrier, DTD 08-130, Order No. 24,939 (February 6, 2009)(“MetroCast Certification Confirmation Order”).*

until they have received a bona fide request and the state regulator has considered any economic burdens associated with unbundling.”³⁷ This, combined with the statement that “Union ... [is] not currently required to unbundled [its] network[]”³⁸ would indicate that the Commission has never viewed the Section 251(c) exemption as expansively as Union does, *i.e.*, to prohibit any interconnection until Union’s rural exemption is lifted but rather, that the rural exemption exempts RLECs from offering the types of services which are not within the scope of IDT’s request, such as unbundling and collocation and resale.

At the same time, the Commission has affirmed IDT’s right to obtain the services it seeks: “Local exchange carriers including ILECs ... [RLECs] and CLECs..., also have duties to allow resale of services, to port telephone numbers to other carriers, to provide dialing parity, to afford access to rights of ways and to establish reciprocal compensation arrangements for the transport and termination of telecommunications.”³⁹ Additionally, the Commission held that “[I]LECs have additional duties, including, among others, providing competitors with access to certain unbundled network elements (UNEs) and allowing competitors to collocate within ILEC facilities for the purpose of interconnection. *** Certain [RLECs] ... are exempt from 251(c) obligations, including UNEs and collocation, until their exemption from these requirements is terminated as a result of a bona fide request from a carrier.”⁴⁰ Indeed it is significant to note that the Commission concluded that *under Sections 251(a) and (b)* “Union [is] required by federal law to open [its] networks to competitive providers.”⁴¹ Again, the Commission is

³⁷ *MetroCast Certification Confirmation Order* at 6 (footnotes omitted).

³⁸ *Id.*

³⁹ *Comcast CLEC Authorization Order* at 16.

⁴⁰ *Id.* (footnotes omitted.)

⁴¹ *MetroCast Certification Confirmation Order* at 6.

indicating that there are distinct limits to the services RLECs are required to offer – but those limits do not extend as far as Union would have them.

Indeed, it is quite clear that the Commission has viewed state law similarly: “We read RSA 374:22-g to grant us the discretion to permit competitive local exchange carriers to do business within the service territory of Union Telephone.”⁴² The Commission has also held that “47 U.S.C. § 251(a) and (b) make clear that all local exchange carriers, regardless of size, must interconnect with other carriers operating in their territory. The recent amendments to ... RSA 374:22-g make New Hampshire law consistent with federal law on this point.”⁴³ Clearly, the Commission reads RSA 374:22-g *and federal law* to authorize competition without the lifting of a RLECs rural exemption. Indeed, nowhere does the Commission state that an RLEC can only be required to interconnect with CLECs upon the lifting of the RLECs rural exemption - a point which is at the heart of Union’s argument.

6. If IDT is making a Section 251(a) and (b) request, what more (other than unbundling, collocation and discounted resale), could IDT have sought under 251(c)?

The arbitrator has asked IDT to state what facilities and/or services IDT could have requested under Section 251(c) which it did not request. While IDT respects the Arbitrator’s presumed goal – to determine what, if any facilities and/or services IDT requested may only be requested under Section 251(c) – IDT objects to the inclusion of this question. Section 251(c) speaks for itself and it is not IDT’s obligation to define what facilities and/or services can be requested under it. The Commission has already concluded that IDT has a right to seek interconnection under Section 251(a) and (b) and

⁴² *Id.*

⁴³ *Id.* at 7 and *Comcast CLEC Authorization Order* at 20.

IDT has repeatedly claimed that it does not seek facilities and/or services that may be requested only under Section 251(c). Furthermore, the proposed interconnection agreement was provided by Union and, aside from the changes proposed by IDT, does not contain any services which were not initially proposed by Union itself. Union has repeatedly claimed that IDT's request falls under Section 251(c). Accordingly, it is Union's obligation to demonstrate what IDT has requested that falls under Section 251(c): it is not IDT's obligation to theorize what it could request under Section 251(c).

7. To what degree, if any, does RSA 374:22-g address the protections afforded by Section 251(f), given 374:22-g's delineation of factors?

Section 251(f) requires that a state commission not lift a rural exemption unless it has first found that a request to do so is "not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title..."⁴⁴ RSA 374:22-g lists numerous factors, including fairness; economic efficiency; universal service; carrier of last resort obligations; the incumbent utility's opportunity to realize a reasonable return on its investment; and the recovery from competitive providers of expenses incurred by the incumbent utility to benefit competitive providers, taking into account the proportionate benefit or savings, if any, derived by the incumbent as a result of incurring such expenses." IDT interprets these factors to more than "cover" the factors laid out in Section 251(f). Moreover, since the very language of RSA 374:22-g indicates that the statute is meant to harmonize state law to federal law, IDT does not believe that actions taken under RSA 374:22-g would somehow afford a service provider less rights than it would have under federal law (nor would it give a service provider additional rights.)

⁴⁴ 47 U.S.C. § 251(f)(1)(A)(ii).

8. Does the PUC have authority in this proceeding (pursuant to state or federal law), on its own motion, to make findings relevant to Section 251(f)?

As explained more thoroughly below, if the Commission concludes that IDT has, in part or in whole, requested interconnection under Section 251(c), then it can and should treat IDT's request as a request to terminate the rural exemption under Section 251(f). Because IDT first notified the Commission of its interconnection request on March 12, 2009, the Commission could not determine whether to eliminate the exemption within the 120 days contemplated in Section 251(f)(1)(B). However, IDT would not oppose a reasonable modification to this schedule. It is less clear whether the Commission may eliminate the rural exemption in the course of this proceeding pursuant to Section 251(f)(1)(B).

9 If IDT is in fact claiming services or interconnection under Section 251(c), what bars the PUC from treating IDT's notice of its request to arbitrate as a request to terminate the exemption under Section 251(f), as the Maine PUC apparently choose to do?

It is the position of IDT that no services it has requested fall under Section 251(c). That being stated, if the Commission were to conclude that IDT seeks services that fall under Section 251(c) and therefore deny IDT such services, then IDT would aggressively undertake efforts to terminate Union's "rural exemption" under Section 251(f) so that IDT could seek such services. As noted in the *Maine Order*, the Maine PUC concluded that because the CLEC made a *bona fide* request for interconnection and the RLEC raised the rural exemption issue, the Commission should, on its own initiative, "schedule evidentiary hearings and such additional proceedings as will enable us to determine whether the rural exemption should be terminated as to each rural ILEC within 120 days

of this Order.”⁴⁵ Here, IDT has submitted a *bona fide* request for interconnection. So, if the New Hampshire Commission were to (erroneously) come to the same factual conclusions as the Maine Commission, IDT believes that similar subsequent action would be appropriate in New Hampshire as well. As the Maine Commission has noted, the FCC has stated that “[s]tates are primarily responsible for interpreting the provisions of section 251(f) through rulemaking and adjudicative proceedings and determining whether a rural ILEC in a particular instance is entitled to exemption, suspension, or modification of Section 251 requirements.”⁴⁶ To the degree (if any) necessary, IDT urges the Commission to emulate the Maine Commission’s approach.

10. Why are (or are not) wholesale providers of communications services “telecommunications carriers” for Section 251(a) and (b) purposes, making specific reference (among other things you may choose to discuss) to the March 2007 Time Warner Wireline Competition Bureau decision?

Wholesale providers of communications services “telecommunications carriers” for Section 251(a) and (b) purposes. In the 2007 *Time Warner Order*, the Wireline Competition Bureau of the FCC issued a declaratory ruling that wholesale providers of telecommunications services are telecommunications carriers for the purposes of Section 251(a) and (b) and that they “are entitled to interconnect and exchange traffic with incumbent LECs pursuant to Section 251(a) and (b) of the Act for the purpose of providing wholesale telecommunications services.”⁴⁷ Wholesale telecommunications carriers are entitled to interconnect with incumbent local exchange carriers under Sections 251(a) and (b) of the Act when providing services to voice-over-internet-

⁴⁵ *Maine Order* at 14.

⁴⁶ *Maine Order* at 6.

⁴⁷ *Petition of Time Warner Cable for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, 22 FCC Rcd 3513 ¶ 8 (2007) (“*Time Warner Order*”).

protocol service providers.⁴⁸ This principal was further supported in the Vermont decision.⁴⁹ Quite simply, there is no legal basis for a position to the contrary.

11. Is IDT a Common Carrier?

In the *Secretarial Letter*, the Commission stated, “To the extent that Union’s May 29th motion questions ... whether IDT is a common carrier, the Commission has determined that [that issue] require development of a factual record.”⁵⁰ It should be noted that Union’s May 29th motion does not raise the common carrier issue. Accordingly, neither the Arbitrator nor the Commission should address this issue.

Union did raise the issue of whether IDT is a common carrier in its May 1 *Motion to Dismiss*, however, the issue Union presented to the Commission was rather limited: a request “that the Commission require IDT to confirm that it will operate as a common carrier in Union’s territory prior to initiate [*sic*] proceedings in this docket.”⁵¹ Yet even this limited request was denied by the Commission (“[T]he Commission ... denies Union’s May 1, 2009 Motion to Dismiss or Stay the Proceeding.”).⁵² While IDT asserts that this issue should not be addressed further because it has already been addressed and rejected, for the sake of clarity, IDT hereby confirms that it will operate as a common carrier in Union’s territory.

But even if the Arbitrator and the Commission consider the common carrier issue, both should conclude that IDT is a common carrier. Significantly, other than questioning IDT’s business plans, Union has not actually asserted *any* legal basis upon which it is

⁴⁸ *Id.* at ¶¶ 1, 8, 9 and 15.

⁴⁹ *Vermont Order* at 19.

⁵⁰ *Secretarial Letter* at 1.

⁵¹ *Motion to Dismiss*, Docket No. 09-048 (May 1, 2009) at 5.

⁵² *Secretarial Letter, IDT America Corporation [*sic*] Petition for Arbitration of Rates, Terms and Conditions of Interconnection Agreement with Union Telephone Co., DT 09-048 (June 1, 2009) at 1.*

afforded the right to challenge IDT's regulatory status. Most certainly this is because no such independent right exists. Additionally, if ILECs – particularly those which have demonstrated an unwillingness to interconnect with CLECs - are permitted to delay the introduction of competition by instituting lengthy and costly proceedings to determine whether or not a CLEC is, in fact, a common carrier, competition will be considerably delayed in some of the areas where it is most greatly needed. The Commission has already considered and rejected an ILEC challenge to a CLEC's common carrier status within the context of a CLEC application: it should take the same approach in this proceeding.⁵³ The Commission has the opportunity, on its own motion, to investigate such a question if and when it feels compelled to do so. The Commission has long known of IDT and MetroCast's commercial relationship⁵⁴ and has never been expressed concern that it raised non-common carrier concerns. The Arbitrator should recommend that the Commission decline to investigate the matter simply because Union has raised it in an attempt to prevent competition in its incumbent monopoly territory.

In the event that the Arbitration decides to opine on the matter, it is worth noting that, to the degree that the Commission seeks a factual record, it is the obligation of Union to establish that IDT is a private carrier; it is not IDT's obligation to establish that it is *not*. To that end, Union has failed to establish any factual record, other than to assert that which has long been known to the Commission: that IDT has a client, MetroCast, to

⁵³ (“The current absence of identified customers for Comcast’s proposed services is not a disqualifying factor.” *** The ... suggestion to evaluate the feasibility of CLEC business plans as an entry criterion for CLEC certification is beyond the scope of existing CLEC registration requirements and inconsistent with our prior grants of CLEC registration.”) *Order Denying Motion for Rehearing, Comcast Phone of New Hampshire Application for Authority to Serve Customers in the TDS Service Territories*, DT 08-013, Order No. 24,958 (April 21, 2009) at 7-8.

⁵⁴ See generally, *IDT/MetroCast Settlement*.

whom it intends to provide service.⁵⁵ Union has not presented any case suggesting IDT's relationship with MetroCast makes IDT a private carrier. Oddly, Union refers⁵⁶ to the *Vermont Order*, wherein the Vermont Board held that Comcast *was* a common carrier even though its only client was its subsidiary. If Comcast is a common carrier when its only client is its subsidiary, how is IDT not a common carrier when its first (but not necessarily only) client is a third party? Union provides no answer and no support for its argument.

Union's goal, for reasons which are not entirely apparent to IDT, appears to be the imposition of certain requirements such as the disclosure of the terms and conditions of IDT's commercial relationship with MetroCast.⁵⁷ But this request was made far outside the scope of the initial request and should be denied accordingly. But if the Arbitrator and the Commission were to consider the request, IDT asserts that Union has no right impose, or request that the Commission impose disclosure obligations upon IDT, just as IDT does not seek to impose disclosure obligations between Union (or any other carrier) and its customers. IDT has made it clear that its commercial relationship with Metrocast is not contractually exclusive and that, if presented with a feasible commercial opportunity, IDT will serve additional customers.⁵⁸ Moreover, IDT has testified that it has virtually identical commercial relationships in fourteen additional states and not one

⁵⁵ ("CLECs in New Hampshire are not required to serve all customers in the service territories in which they operate.") *Comcast CLEC Authorization Order* at 21.

⁵⁶ *Union June 9 Reply* at 2.

⁵⁷ ("Union therefore respectfully submits that similar disclosure [to those required in the Comcast/VTel arbitration] should be required of IDT and that the Commission should require IDT to disclose the terms and conditions of its relationship with MetroCast.") *Id.*

⁵⁸ *See generally*, Testimony of Carl Billek, [Petition for Arbitration of Interconnection Agreement with Union Telephone Company](#), DT 09-048 (May 7, 2009) at 25.

PUC has ever concluded that IDT is a private carrier.⁵⁹ “The key factor in finding common carriage is the offering of ‘indiscriminate service to whatever public [the carrier’s] service may legally and practically be of use”⁶⁰ and Union has never presented any facts to suggest that IDT fails to meet this factor.

A recent Appeals Court decision is instructive in concluding that IDT is a common carrier. In Iowa Telecom v. Iowa Utilities Board,⁶¹ the court found that Sprint, which markets its telecommunications services to cable companies with last-mile facilities, was a common carrier. The similarities between IDT and Sprint are considerable (“Sprint provides the facility to interconnect calls to and from other carriers, the switch that gathers and distributes the telephone traffic, and various back-office functions. The local cable company provides the system of wires and cables which takes a phone call from the user’s premises to the connection point. *** Sprint has no direct relationship with the customers and does not provide any retail services. *** The terms, conditions, and prices of Sprint’s contract with [its partner] are considered confidential, and its rates are not available to the public.”⁶²) Moreover, the court noted that Sprint markets its services to cable companies (or similarly situated providers) and that it attends industry trade shows.⁶³ The above characteristics apply equally to IDT.

The court rejected claims that Sprint didn’t offer services indiscriminately because the rates and terms of its contracts were individually negotiated and confidential. In doing so, the court stated “a carrier’s confidential contracts and rates do not

⁵⁹ *Id.*

⁶⁰ Nat’l Ass’n of Regulatory Comm’rs v. F.C.C., 525 F.2d 630, 642 (D.C. Cir. 1976).

⁶¹ Iowa Telecommunications Services, Inc. v. Iowa Utilities Board, 563 F.3d 743 (Eighth Cir. 2009)

⁶² *Id.* at 747.

⁶³ *Id.* at 749.

automatically result in the carrier being classified as a private or non-common carrier”⁶⁴ and “recognize[d] that Sprint’s contracts with last-mile providers will vary depending on the services the last-mile provider chooses and that the terms and rates included in those contracts will be confidential.”⁶⁵ This supports IDT’s opposition to Union’s requests for public disclosure of IDT’s commercial terms with MetroCast. It is undeniable that IDT’s commercial terms with Metrocast are unique and no other customer is going to have an identical (or possibly even similar) structure. Making IDT’s terms with MetroCast public serve no meaningful purpose and are, practically, unnecessary.

Similarly, in Verizon California, Inc.,⁶⁶ the District of Columbia Circuit upheld the FCC’s finding of common carriage in light of the fact that: (1) the carriers self-certified that they operated as common carriers, (2) the carriers gave public notice of their intent to act as common carriers, and (3) the carriers entered into publicly available interconnection agreements with the local exchange carrier. The FCC gave significant weight to the carriers’ self-certification ‘because being deemed a “common carrier” (*i.e.*, being deemed to be providing “telecommunications services”) confers substantial responsibilities as well as privilege.”⁶⁷ The DC Circuit concluded that ‘[w]hile none of the three facts by itself seems compelling, in the aggregate they appear enough to render the Commission’s conclusion reasonable.”⁶⁸ IDT has asserted each of the three aforementioned principals and does so again in this filing. In conclusion, Union has presented no credible argument that IDT is a private carrier. Union’s allegations that IDT

⁶⁴ *Id.* at 748.

⁶⁵ *Id.* at 750.

⁶⁶ Verizon California, Inc. v. F.C.C., 555 F3d 270, 275-76 (D.C. Cir. 2009)(“Verizon California, Inc.”).

⁶⁷ Bright House Networks, LLC v. Verizon California, Inc. 23 F.C.C.R. 10704, 10718 ¶ 39.

⁶⁸ Verizon California, Inc. at 275.

is not a common carrier are baseless and should be rejected. Furthermore, Union's request that IDT be subject to disclosure requirements to support its common carrier status is unnecessary and should be rejected.

12. Does the PUC have the authority to enforce the requirements set forth in Section 251(a) and (b) by virtue of RSA 374:22-g and the PUC's findings in the relevant MetroCast case that the standards of 374:22-g have been met (and that no hearings are necessary to make findings under RSA 374:22-g)?

The Commission has the authority to enforce Section 251(a) and (b). It is IDT's understanding that the purpose of RSA 374:22-g is to harmonize state law with applicable federal law, including Section 251(a) and (b). In the *MetroCast Certification Confirmation Order*, the Commission "read RSA 274:22-g to grant [it] the discretion to permit competitive local exchange carriers to do business within the service territory of Union Telephone."⁶⁹ The Commission further stated that "We further conclude that RSA 374:22-g does not require a hearing in order to grant a CLEC application and, correspondingly, the necessary requirements of our process are satisfied by the procedures set forth in our rules."⁷⁰ There does not appear to be any basis upon which the Commission's authority, heretofore exercised without being rejected by any higher authority, should cease to be diminished or otherwise constrained in this proceeding.

13. IDT's proposed rates should be approved by the Commission

The one substantive issue in the Agreement to which the parties could not agree is pricing. Based on the parties' discussions, it appears that Union has based its prices on certain NECA tariffed rates as well as certain cherry-picked rates from IDT interconnection agreements. This approach should be rejected by the Arbitrator and the

⁶⁹ *MetroCast Certification Confirmation Order* at 6.

⁷⁰ *Id.*

Commission. Union has not – at least in our discussions – presented any cost basis for its proposed rates.

To the (seemingly considerable) extent Union relies on NECA tariff rates, this reliance should be rejected. Most notably, rates in an interconnection agreement are part of the give and take of the negotiation process, whereas the rates in the NECA tariff are the product of no negotiation whatsoever and tariffed rates have long been the province of a “charge as much as possible” approach. Moreover, rates available via the NECA tariff exist within the context of the tariffed services: paying the rates in the tariff contemplates access to all the services available under the tariff, which is not the present case.

Likewise, to the extent Union relies on rates to which IDT has previously agreed with other carriers, this reliance should be rejected. Rates from other IDT agreements exist within the context of the agreements in which they are within. For example, if Union proposes a rate based on an IDT agreement whereunder IDT receives indirect interconnection, it is unreasonable to take the position that the rate for a particular service should be included because IDT is receiving a service of critical importance (indirect interconnection) in that agreement which it is not receiving from Union. Negotiated rates are part of a *quid pro quo* and Union should not be allowed to take advantage of the concessions IDT has made in other agreements when it refuses to provide the benefits we received in those agreements in return.

IDT does not take the position that it has the right to rates that are just, reasonable and non-discriminatory, as such a right falls under Section 251(c)(2)(d), and IDT does not assert the right to Section 251 rights. However, this Commission does have the

authority under RSA § 374:22-g to authorize competition when it is in the public good. But this authority, which the Commission has effectively exercised by granting IDT's certificate in the Union incumbent territory, is meaningless if the Commission approves Union's rates. Union's rates, if implemented, could have a chilling effect on the introduction of competition in Union's incumbent territory. When costs simply to switch a customer from one carrier to another are as high as those proposed by Union, it becomes prohibitively difficult to acquire customers because the time to recover the costs associated with the mechanics of the customer transfer – let alone the carrier-specific costs for advertising, etc. are so great. The Commission has the authority under RSA § 374:22-g to implement rates that promote competition and we strongly recommend that the Commission do so.

Unlike Union, IDT has proposed rates that better reflect the “real world.” IDT's rates are based on rates taken from IDT agreements or comparable documents and are consistent with the rates IDT pays (and receives) from other carriers. And it is these rates which IDT finds are consistent with a pro-competitive approach. Furthermore, it is noteworthy that these rates, to the degree they are from IDT agreements are not necessarily from agreements that cover services under Section 251(c). Explained further, IDT interconnects with carriers based on one of two business models: IDT's UNE-based model, whereunder the company directly serves end users and IDT's wholesale model, whereunder the company partners with wholesale providers, such as cable operators, to jointly serve end users. These models have radically different business models and, by extension, radically different price points. Thus, the Arbitrator and the Commission cannot simply conclude that because IDT has entered into an agreement such as the

IDT/Verizon or IDT/Fairpoint agreement, each of which contemplated IDT's UNE business and conclude that such an agreement is consistent with the services and overall business model IDT is attempting to implement in Union's incumbent territory.

There is one final point to stress as the Arbitrator and Commission review the proposed rates: the rates in the Pricing Annex are *reciprocal*. IDT will be charging Union for the same services Union provides to IDT. Therefore, we do not seek rates that will under compensate IDT in providing service to Union. IDT seeks to be fairly compensated for the services it provides to Union: so if our rates are below those proposed by Union that speaks more to IDT's efficiencies and its desire for a marketplace where competition is based on a level playing field rather than the hidden costs of customer acquisition and maintenance which can unfairly impede competition. And the Commission should not forget that this proceeding is not about IDT and it is not about Union: it is about implementing the pro-competitive policies of The Communications Act and RSA § 374:22-g. If the Arbitrator and the Commission use the tools they have been given and approve IDT's proposed rates, IDT will bring competition to the monopoly Union territory.

Below, IDT has listed the rates proposed by IDT and Union and IDT's arguments in support of its proposed rates.

Service Order Charges:

Union's proposed rates for service order charges are as follows:

	Non Recurring
<u>Service Order Charges</u>	
Local Service Order (LSR) (limited to one physical location per order)	
Per Initial Order:	\$ 60.00
Per Supplemental Order	\$ 30.00
Expedited Order	\$ 100.00
Per cancelled order	\$ 30.00
<u>Other Service Charges</u>	
Customer Service Record Order (CSR)- per Order (one customer per order)	\$ 30.00

1. Local Service Order (LSR): These rates, according to Union, are based on NECA tariffs and not on actual cost for providing these services. Union has been unwilling to negotiate these, or any, of the pricing in The Agreement. When researching the “Local Service Order” charges found in other agreements, one will discover a vast range, from \$0.00 to \$5.00, \$12.00, \$15.00, \$30.00, and greater. IDT itself, has entered into agreements where, as part of the negotiation, it has agreed to charges for Local Service Orders. But *all the terms* of each agreement *must* be taken into account or else a comparison *between* agreements on price elements is meaningless and misleading. For example, the VTEL-Comcast agreement LSR charge is \$30.00, but this agreement allows indirect interconnection, has a 2 year term. Allowing indirect trunking is less costly for the CLEC, which could “offset” an inflated LSR cost. Similarly, the LSR cost with FairPoint-NH is \$0.00, which also allows indirect interconnection. Under the proposed IDT-Union agreement, direct interconnection is required within 3 months and the LSR charge is \$60.00. Comparing LSR charges with similar charges found in other agreements as a separate item should be rejected for this reason: it is not accurately comparing “apples-to-apples.”

The Commission should view LSR charges, not as a “barrier to entry” for an ILEC place on CLECs entering their market, but as a free or nominal cost of allowing a New Hampshire end-user to freely port his or her telephone number between carriers. These fees are passed onto the end users, either directly or indirectly and a carrier should not be able to enjoy a “windfall profit” because another carrier, providing a more competitive offering, is attempting to provide the end-user with their product. It is IDT’s view that a carrier should not “make money” on a customer who ports away. Using the pricing from Union, each port request from an end-user could **cost \$90.00 (\$30.00 for the Customer Service Record and \$60.00 for the LSR)**. For this reason, IDT does not levy LSR charges on carriers the vast majority of the time. IDT does have reciprocal rights to charge LSR fees in a small number of agreements where the ILEC has insisted on having LSR charges. IDT, to date, has not charged these fees.

IDT processes approximately 300+ port-outs each month (i.e. IDT is the “losing carrier”). This function is handled by one person and it is not her full-time job responsibility. IDT processed these orders manually, validating the LSR for accuracy, providing a FOC date or reject back to the “winning carrier”, setting up the port in NPAC, and after the port is completed verifying the switch and customer records are updated. Under the same *manual* model, IDT feels Union can also operate and charge a nominal fee and has initially proposed \$7.00.

IDT’s position is that absent any cost evidence provided by Union in the record, the Fairpoint proxy for LSR charges should apply, as follows:

Local Service Order (LSR) (limited to one physical location per order)

Initial Order: \$0.00

Should the Commission determine that a nominal fee should apply, IDT proposes the initial proposal should apply, as following:

Local Service Order (LSR) (limited to one physical location per order)

Initial Order: \$7.00

Should the Commission determine that a “more manual” rate should apply, IDT would respectfully disagree and urge the Commission to reconsider this as an anti-competitive barrier and not in the public good and re-evaluate this charge *in total* with the entire terms of the agreement. If the Commission still determined that a “more manual” rate should apply, IDT’s position is that the absolute cap should be as follows.

Local Service Order (LSR) (limited to one physical location per order)

Initial Order: \$14.00

2. Per Supplemental Order “Definition”: Union’s position is a charge for each Supplemental order should be incurred, regardless of the timing of the supplement. IDT disagrees with this. IDT’s position is the “line definition” in the pricing attachment should read as follows:

Per Supplemental Order on Pending LSR already FOC'd

If the line definition as only, “Per Supplemental Order”, this would allow Union to charge IDT for every reject or error on initial LSRs. At face value, this may seem reasonable, as resources are expended by a carrier in processing and rejecting an initial order. The Commission should not accept this. There is no motivation for IDT, or any carrier, to submit orders with errors. It is in IDT’s best interest to ensure order rates are at a minimum acceptable level. IDT does not begin to enjoy the additional revenue of a ported end-user until after they are ported over. There is no reason why IDT would

want, or allow, initial orders to be submitted with errors on them which would ultimately be rejected by Union. There is compelling reason why Union would.

Union, given the ability to charge a fee for each sup prior to providing a FOC date, could reject in order to charge additional sup fees. IDT has experienced this with another ILEC in other states and can provide over a few hundred examples where the orders were submitted “correct” but were ultimately rejected by the ILEC for frivolous due to minor typographical errors such as “missing middle initial of customer’s name”, “street directional missing”, “first name “Kenneth” not spelled according to ILEC records”, or the customer name does not match ILEC records exactly because the spouses name was used or included on the order. Additionally, IDT uses information (name, address, etc) provided by the end-user on the service order, where the end-user often provides the information listed on their monthly ILEC bill and rejections are still encountered. As a last resort, IDT will request a Customer Service Record (CSR) for a problematic end-user order to EXACTLY determine how ILEC wants the name and address fields filled out so no frivolous rejections are encountered.

For this reason, a charge for a sup should only be incurred if the sup order is submitted *after* a FOC date is provided.

3. Per Supplemental Order Rate: Union’s position is a charge for each Supplemental order should be half of the charge for the initial LSR. IDT agrees with this position, with the following modifications:

IDT’s position is, if the Initial LSR charge is determined to be \$0.00, then the following should apply:

Per Supplemental Order on Pending LSR already FOC’d \$0.00

IDT's position is, if the Initial LSR charge is determined to be \$7.00, then the following should apply:

Per Supplemental Order on Pending LSR already FOC'd \$3.50

IDT's position is, if the Initial LSR charge is determined to be \$14.00, then the following should apply:

Per Supplemental Order on Pending LSR already FOC'd \$7.00

IDT's position is, if the Initial LSR charge is determined to be something other than those listed above, then the following should apply:

Per Supplemental Order on Pending LSR already FOC'd

Should be capped at 50% of the Initial Order charge

3. Per Expedited Order Rate: Union's position is a charge for each Expedited Order should be \$100.00. IDT's position is this is unreasonable but agrees this fee should be at a "premium" above the Initial Order fee. IDT's position is this fee should be 167% of the Initial Order fee. For example, if the Initial order fee is \$7.00, the Expedited Order fee should be \$11.67 ($=\7.00×1.67).

4. Customer Service Record Order (CSR)- per Order (one customer per order): Union's position is a charge for each Customer Service Order should be \$30.00. IDT's position is this is unreasonable but agrees this fee should be a "discount" below the Initial Order fee. IDT's position is this fee should be 50% of the Initial Order fee. For example, if the Initial order fee is \$7.00, the Customer Service Record Order fee should be \$3.50 ($=\7.00×0.50).

5. Labor Charges:

Union's proposed rates for other service charges are as follows:

<u>Other Service Charges</u>	
Miscellaneous Testing and other Additional Labor- charged in 1/2 hour increments and only in "No Trouble Found" instances for Trouble ticket events	Rate per 30 minutes
Standard time (Normally scheduled hours)	\$ 32.50
Overtime (outside normally sched hrs on schld work day)	\$ 47.50
Premium Time -(outside of scheduled work day)	\$ 62.50

IDT had counter-proposed the following:

<u>Other Service Charges</u>	
Miscellaneous Testing and other Additional Labor- charged in 1/2 hour increments and only in "No Trouble Found" instances for Trouble ticket events	Rate per 30 minutes
Standard time (Normally scheduled hours)*	\$ 21.93
Overtime (outside normally sched hrs on schld work day)*	\$ 32.89
Premium Time -(outside of scheduled work day)*	\$ 43.86
* only chargeable upon prior pre-approval by the charged Party	

Union was not willing to counter-offer (i.e. adjust downward) their initial labor pricing after IDT had modified it's pricing and attempted to "meet in the middle". The final proposal by IDT is reflected above.

6. Pre-Approval of Labor Charges:

IDT also added the statement, "*** only chargeable upon prior pre-approval by the charged Party**" at the bottom of this section and added an asterix "*" next to each Labor Type. IDT's position is this is needed to remove the moral hazard for both Parties to invoice labor charges where the charged Party was unaware they were to be charged. It also removes the hazard where one Party could effectively have carte blanche in determining the duration (i.e. IDT "worked on that trouble all week-end so the Labor charge is \$2,105.28). This language will enable both Parties to be aware of, and approve, then the "meter starts", what labor rate(s) would be incurred, and when the "meter stops."

7. N-1 Routing Service: Union's position is:

N-1 routing service	TBD (per tariff)
---------------------	------------------

IDT's position is, since both Parties commit to perform N-1 LNP dipping before sends calls to the other, this line item on the Pricing list is moot. IDT's position is this should not be on the Pricing list at all and feels only items with actual pricing should be on this list.

Direct Interconnect Facilities:

Union's proposed rates for direct interconnection charges are as follows:

	Monthly Recurring	Non Recurring
Service Order Charges		
Direct Interconnection Facilities		
1) Direct Trunk Transport Termination (per circuit termination / per month)		
a) DS1	\$ 121.37	\$ 330.00
b) DS3	\$ 779.39	\$ 445.00
2) Direct Trunk Transport Facility (per mile / per month)		
a) DS1	\$ 23.38	
b) DS3	\$ 203.77	
3) Multiplexing, Per Arrangement		
a) DS3 to DS1	\$ 708.99	
Note: these facility charges are only applicable from Union's meetpoint with FairPoint to Union's switches.		

8. Direct Trunk Transport Termination “definition”: Union insists this charge be on a “per circuit termination / per month” This language would allow Union to charge twice the amount listed above since circuits have two “terminations”, one at each end. IDT position is these charges should be on a “per circuit / per

month” basis to eliminate this. If the Commission adopts Union’s language for this section the actual “revised per circuit” pricing for a circuit would be shown below.

	Union Proposed		Union Revised for "per circuit"	
	Monthly Recurring	Non Recurring	Monthly Recurring	Non Recurring
Direct Interconnection Facilities				
1) Direct Trunk Transport Termination (per circuit termination / per month)				
a) DS1	\$ 121.37	\$ 330.00	\$ 242.74	\$ 660.00
b) DS3	\$ 779.39	\$ 445.00	\$ 1,558.78	\$ 890.00

9. Direct Trunk Transport Termination Rates: IDT’s position is that Union’s rates are excessive, taking into account the “per circuit” conversion discussed above. As a reference, the FairPoint-NH Direct Trunk Transport Facility charges are shown below.

	Union Revised for "per circuit"		Verizon NH	
	Monthly Recurring	Non Recurring	Monthly Recurring	Non Recurring
Direct Interconnection Facilities				
1) Direct Trunk Transport Termination (per circuit / per month)				
a) DS1	\$ 242.74	\$ 660.00	\$ 66.00	\$ 125.00
b) DS3	\$ 1,558.78	\$ 890.00	\$ 702.00	\$ 125.00

FairPoint-NH Rates are taken from NHPUC N0.85, Section 30 and are listed as “FIXED” meaning “per circuit” and not “per termination.”

Union’s adjusted “per circuit” rates, relative to Fairpoint’s, are quite excessive at a premium of between 222% to 712%.

IDT’s position is that absent any cost evidence provided by Union in the record, the Fairpoint proxy for Direct Trunk Transport Termination should apply, as follows (this pricing also assumes the fee is “per circuit / per month” not “per circuit termination / per

month”. If the Commission includes “per circuit termination / per month” the rates below should be reduced by 50%):

	Using FairPoint NH	
	Monthly Recurring	Non Recurring
<u>Direct Interconnection Facilities</u>		
1) Direct Trunk Transport Termination (per circuit / per month)		
a) DS1	\$ 66.00	\$ 125.00
b) DS3	\$ 702.00	\$ 125.00

Should the Commission determine that a Union should enjoy a Direct Trunk Transport Termination rates at a premium to FairPoint’s rates, IDT proposes a 25% premium with the following (this pricing also assumes the fee is “per circuit / per month” not “per circuit termination / per month”. If the Commission includes “per circuit termination / per month” the rates below should be reduced by 50%):

	Using FairPoint NH "premium"	
	Monthly Recurring	Non Recurring
<u>Direct Interconnection Facilities</u>		
1) Direct Trunk Transport Termination (per circuit / per month)		
a) DS1	\$ 82.50	\$ 156.25
b) DS3	\$ 877.50	\$ 156.25

Should the Commission determine that a Union should enjoy a Direct Trunk Transport Termination rates at a high premium to FairPoint’s rates, IDT would respectfully disagree and urge the Commission to reconsider this as an anti-competitive

barrier and not in the public good and re-evaluate this charge *in total* with the entire terms of the agreement. If the Commission still determined that a “high premium” rate above Fairpoint-NH should apply, IDT’s position is that a 50% premium should be the caps as shown in the following (this pricing also assumes the fee is “per circuit / per month” not “per circuit termination / per month”. If the Commission includes “per circuit termination / per month” the rates below should be reduced by 50%):

	Using FairPoint NH "high premium"	
	Monthly Recurring	Non Recurring
Direct Interconnection Facilities		
1) Direct Trunk Transport Termination (per circuit / per month)		
a) DS1	\$ 99.00	\$ 187.50
b) DS3	\$ 1,053.00	\$ 187.50

10. DS1 Direct Trunk Transport Facility Rates: IDT’s position is, since the transport facility will be Leased Interconnection Facilities via Fairpoint (i.e. a circuit ordered by IDT from Fairpoint to connect into a Union End Office, per NECA Tariff FCC No. 4 Section 92 Page 1 through Page 11) the rate per mile charged by Union should be the same as the rate per mile charged by Fairpoint since both Fairpoint and Union will be charging IDT for their respective mileage portions of the *same circuit*. IDT’s position is the monthly recurring rate should be the same as Fairpoint’s per mile rate as shown below:

2) Direct Trunk Transport Facility (per mile / per month)	
a) DS1	\$ 21.25

11. DS3 Direct Trunk Transport Facility Rates: IDT's position is, since the transport facility will be Leased Interconnection Facilities via Fairpoint (i.e. a circuit ordered by IDT from Fairpoint to connect into a Union End Office, per NECA Tariff FCC No. 4 Section 92 Page 1 through Page 11) the rate per mile charged by Union should be the same as the rate per mile charged by Fairpoint since both Fairpoint and Union will be charging IDT for their respective mileage portions of the *same circuit*. IDT's position is the monthly recurring rate should be the same as Fairpoint's per mile rate as shown below:

2) Direct Trunk Transport Facility (per mile / per month)	
b) DS3	\$ 120.00

11. Direct Interconnection Facility Note: IDT agrees with Union's note in this section as shown below:

Note: these facility charges are only applicable from Union's meet point with FairPoint to Union's switches.

12. Reciprocal Compensation: IDT agrees with Union's version in this section as shown below:

RECIPROCAL COMPENSATION (see Appendix Recip Comp)	
Transit Traffic	
Per minute of use (to be determined if service offered in future)	N/A
Tandem Record Production (to be determined if needed)	
Local Traffic Termination**	Bill and Keep**
Should Local Traffic become out of balance (>60/40) a reciprocal Local Traffic Termination rate shall be developed and this Attachment shall be updated to incorporate such rate.	

13. Percent Local Usage Factor: IDT agrees with Union's version in this section as shown below:

PERCENT LOCAL USAGE FACTOR (PLU) (See Appendix Recip Comp)		
Union Telephone Company Originated- IDT Terminated Traffic (PLU)		Use actuals or TBD
IDT Originated- Union Telephone Company Terminated Traffic (PLU)		Use actuals or TBD

14 Pertaining to previously closed items Union has recently attempted to re-open.

1. NIM Section 1.3

On May 22, 2009, Union provided to IDT the first draft of the Appendix Network Interconnection Methods (NIM). With the first redline send back to Union by IDT and all subsequent redlines and discussions, section 1.3 or the NIM as accepted by both Parties as written in the original draft as shown below:

1.3 UNION shall provide Interconnection for CLEC’s facilities and equipment for the transmission and routing of telephone exchange service and exchange access, at a level of quality equal to that which UNION provides itself, a subsidiary, an affiliate, or any other party to which UNION provides Interconnection and on rates, terms and conditions that are just, reasonable and non-discriminatory.

On July 1, 2009 (which was after the initial timeline for briefs), Union emailed IDT demanding this section be removed from the agreement. IDT refused to agree to this nor did IDT accept this as an item to, at this late date, add to the “open items” list. This section, as an issue was *never* included in an issues list or email sent to the Arbitrator. Specifically, it was not included in the June 26, 2009 status email to the Arbitrator since it was not brought up by Union until July 1, 2009, a week later. For these reasons, IDT’s position is this item, the inclusion or deletion of NIM section 1.3, should not be recognized as an “open issue” nor addressed by the Arbitrator or the Commission. Including this item at this “late stage” in the negotiations/arbitration is, in IDT’s view, bargaining in bad faith by Union, something both Parties agreed not to do during the hearing. In IDT’s view, neither Party should be allowed to re-open or introduce items

unless there is a compelling reason justifying such action during the negotiation of a related item, and only with agreement from both Parties. For example, "...if you agree to lower the charge for item "XXX", which we already agreed on, we will accept your proposed charge for item "YYY"..."

Additionally, since this language was *initially proposed* by Union, in their draft, and subsequently reviewed and accepted by *both* Parties, this item should not be re-opened. However, if the Arbitrator or the Commission determines Union does have the right to re-open this item, IDT's position on this item is the language should be:

- 1.3 UNION shall provide Interconnection for CLEC's facilities and equipment for the transmission and routing of telephone exchange service and exchange access, at a level of quality equal to that which UNION provides itself, a subsidiary, an affiliate, or any other party to which UNION provides Interconnection and on rates, terms and conditions that allow free and open competition consistent with NH RSA 374:22-g.

2. Appendix RC Section 2.1

On May 22, 2009, Union provided to IDT the first draft of the Appendix Reciprocal Compensation (RC). During the negotiations between June 18, 2009 and June 23, 2009, both Parties agreed to the following sections with the "June 23, 2009" redline as shown below:

- 2.1 The traffic exchanged between CLEC and UNION will be classified as Local Traffic, intraLATA Toll Traffic, or interLATA Toll Traffic.
 - 2.1.1 "Local Traffic," is traffic originated in an exchange and terminated within the same exchange or other non-optional extended local calling area associated with the originating exchange as defined by UNION's applicable local exchange tariff. Local Traffic does not include ISP-Bound Traffic where the call is not terminating to another non-dialup end user. Local Traffic is determined to be local under this definition regardless of protocol or transmission method.

2.1.2 “ISP Bound Traffic” means traffic that originates from or is directed, either directly or indirectly, to an information or internet service provider (ISP) who is physically located in an exchange within the local calling area of the originating end user. Traffic originated from, directed to an ISP physically located outside the originating End User’s local calling area will be considered toll traffic and subject to access charges. ISP Bound Traffic does not include traffic that terminates to a non-dialup end-user.

This section was heavily negotiated, with IDT providing concessions in other areas of the Agreement to attain joint agreement between the Parties on the language shown above.

On June 29, 2009, Union emailed IDT demanding this section be re-opened and modified to include language IDT had previously negotiated out of the agreement. IDT refused to agree to this nor did IDT accept this as an item to, at this late date, add to the “open items” list. This section was not listed as an open issue in the June 26, 2009 status email to the Arbitrator since it closed before that time and was not brought up by Union until July 1, 2009, a week later.

For these reasons, IDT’s position is this item, the re-opening of this section, should not be recognized as an “open issue” nor addressed by the Arbitrator or the Commission. Including this item at this “late stage” in the negotiations/arbitration is, in IDT’s view, bargaining in bad faith by Union, something both Parties agreed not to do during the hearing. In IDT’s view, neither Party should be allowed to re-open or introduce items unless there is a compelling reason justifying such action during the negotiation of a related item, and only with agreement from both Parties. For example, “...if you agree to lower the charge for item “XXX”, which we already agreed on, we will accept your proposed charge for item “YYY”....”

Additionally, since this language previously agreed to by Union, and subsequently reviewed and accepted by *both* Parties, this item should not be re-opened.

However, if the Arbitrator or the Commission determines Union does have the right to re-open this item, IDT's position on this item is that the Commission accepts the language IDT had proposed to Union when Union attempted to re-open it:

Appendix RC section 2.1, and sub-sections, would remain as shown above.

The following sections would be added to Appendix RC:

2.1.7 For further clarity, traffic exchanged between the Parties will be considered either Local Traffic, ISP-Bound Traffic, intraLATA Toll Traffic, or interLATA Toll Traffic only, and not Voice Over Internet Protocol (VoIP) or IP-Enabled Traffic is when the End-User or Retail Provider either originating or terminating the traffic is provided service jointly by the CLEC and a CLEC partner similar to the joint partnership defined in Order No. 24,727, DT 06-169, issued January 6, 2007, where:

The CLEC:

- 1) connects to the Public Switched Telephone Network (PSTN),
- 2) provides local number port-in and port-out,
- 3) provides enhanced 911 interconnection,
- 4) provides directory/operator assistance,
- 5) provides directory listings,
- 6) provides numbering resources,
- 7) only assigns numbering resources to End-Users physically located in the New Hampshire exchange associated with the telephone number,
- 8) follows all published requirements for the conservation of numbers, including the reclamation of unused numbers, consistent with the requirements imposed on CLEC when its CLEC authority was granted
- 9) files with Staff copies of all number utilization forms submitted to NeuStar, or its successor, in a timely manner as determined by Staff with regard to numbers obtained under the agreement, and
- 10) follows all published requirements for the obtaining of numbering resources.

The CLEC-partner:

- 1) provides the cable- or network-facilities to provision Internet Protocol (IP)-based telephony to the End-User,
- 2) maintains the customer-provider relationship with the End-User,
- 3) offers customer support to the End-User,
- 4) renders bills for telephone service to the End-User,
- 5) Registered for , and was approved for, CLEC status in New Hampshire,

- 6) Filed a telephony rate schedule with the Commission,
- 7) Comply with certain numbering resource obligations, and
- 8) Obtain Commission approval in the event it seeks to request numbering resources independently of CLEC

2.18 For further clarity, UNION recognizes a CLEC, providing services jointly with a CLEC-partner as described in section 2.17, as a Common Carrier and CLEC's authority to operate in Union territory if granted by NHPUC.

CONCLUSION

IDT is a common carrier. IDT has a right to interconnect with Union under Section 251(a) and (b) and the services IDT seeks fall under Section 251(a) and (b). If any services requested by IDT fall under Section 251(c), the Commission should initiate upon its own motion a proceeding to eliminate Union's rural exemption under Section 251(f). IDT's rates should be approved as they will enable IDT to provide competitively-priced, competitive local exchange service in Union's incumbent, monopoly territory.

Respectfully submitted,

IDT America, Corp.

July 14, 2009

/s/ Carl Wolf Billek

Carl Wolf Billek

IDT America, Corp.

550 Broad Street

Newark, NJ 07102

Phone: (973) 438-4854

Fax: (973) 438-1456

Email: Carl.Billek@corp.idt.net

LIST OF EXHIBITS

EXHIBIT A – Interconnection Agreement between Comcast and VTel

EXHIBIT B – IDT/MetroCast Interconnection Diagram

EXHIBIT C – IDT/MetroCast Settlement Order

INTERCONNECTION AGREEMENT- UNDER SECTIONS 251 AND
252 OF THE TELECOMMUNICATIONS ACT OF 1996

Between

VERMONT TELEPHONE COMPANY, INC.

and

COMCAST Phone of Vermont, LLC
d/b/a Comcast Digital Phone

TABLE OF CONTENTS

1.	INTRODUCTION AND SCOPE OF AGREEMENT	1
2.	DEFINITIONS	2
3.	EFFECTIVE DATE	11
4.	INTERVENING LAW	11
5.	TERM OF AGREEMENT	12
6.	ASSIGNMENT	13
7.	DELEGATION TO AFFILIATE	14
8.	CONFIDENTIALITY AND PROPRIETARY INFORMATION	14
9.	LIABILITY AND INDEMNIFICATION	19
10.	REMEDIES	20
11.	INTELLECTUAL PROPERTY	20
12.	INDEMNITY	20
13.	OSHA STATEMENT	23
14.	DEPOSITS	23
15.	BILLING AND PAYMENT OF RATES AND CHARGES	24
16.	DISPUTE RESOLUTION	25
17.	TERMINATION OF SERVICE FOR NON-PAYMENT	28
18.	NOTICES	30
19.	TAXES	31
20.	FORCE MAJEURE	32
21.	PUBLICITY	32
22.	NETWORK MAINTENANCE AND MANAGEMENT	33
23.	LAW ENFORCEMENT AND CIVIL PROCESS	35
24.	CHANGES IN SUBSCRIBER CARRIER SELECTION	36
25.	AMENDMENTS OR WAIVERS	37
26.	GENERAL RESPONSIBILITIES OF THE PARTIES	37
27.	AUTHORITY	40
28.	BINDING EFFECT	40
29.	CONSENT	41
30.	EXPENSES	41
31.	HEADINGS	41
32.	RELATIONSHIP OF PARTIES/INDEPENDENT CONTRACTOR	41
33.	MULTIPLE COUNTERPARTS	42
34.	THIRD PARTY BENEFICIARIES	42
35.	REGULATORY APPROVAL	42
36.	REGULATORY AUTHORITY	42
37.	COMPLIANCE AND CERTIFICATION	43
38.	AUDITS	43
39.	COMPLETE TERMS	45
40.	COOPERATION ON PREVENTING END USER FRAUD	45
41.	NOTICE OF NETWORK CHANGES	46
42.	GOOD FAITH PERFORMANCE	46
43.	GOVERNMENTAL COMPLIANCE	46
44.	RESPONSIBILITY FOR ENVIRONMENTAL CONTAMINATION	46
45.	SUBCONTRACTING	47
46.	REFERENCED DOCUMENTS	48
47.	SEVERABILITY	49
48.	SURVIVAL OF OBLIGATIONS	49
49.	GOVERNING LAW	50
50.	OTHER REQUIREMENTS	50
51.	APPENDICES INCORPORATED BY REFERENCE	50

52. CUSTOMER INQUIRIES51
53. DISCLAIMER OF WARRANTIES.....52

INTERCONNECTION AGREEMENT

This Interconnection Agreement - under Sections 251 and 252 of the Telecommunications Act of 1996 (“Agreement”) is dated as of the Effective Date as of the date it is approved by the Vermont Public Service Board, by and between Vermont Telephone Company, Inc, a Delaware corporation, (“VTEL”) and, Comcast Phone of Vermont, LLC, d/b/a Comcast Digital Phone, (“COMCAST”), a Delaware Limited Liability Company, with its principal place of business at One Comcast Center, 50th Floor, Philadelphia, PA 19103.

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will interconnect their networks and facilities and provide to each other services as required by Sections 251(a) and (b) of the Telecommunications Act of 1996 as specifically set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of this Agreement COMCAST and VTEL hereby agree as follows:

This Agreement is composed of General Terms and Conditions, which are set forth below, together with certain Appendices, Schedules, Exhibits and Addenda which immediately follow this Agreement, all of which are hereby incorporated in this Agreement by this reference and constitute a part of this Agreement.

GENERAL TERMS AND CONDITIONS

1. INTRODUCTION AND SCOPE OF AGREEMENT

- 1.1 Pursuant to Sections 251(a) and (b) of the Telecommunications Act of 1996 (“Act”), this Agreement sets forth the terms and conditions for the indirect interconnection of COMCAST's network to VTEL's network, compensation for the transport and termination of telecommunications traffic between VTEL and COMCAST, and the provision of ancillary functions by VTEL and COMCAST.
- 1.2 The Parties acknowledge and agree that by entering into and performing in accordance with this Agreement, the Parties have not waived any applicable exemptions that are provided by or available under the Act, including but not limited to those described in 47 USC 251(f), or under state law, if any.
- 1.3 Either Party may fulfill the requirements imposed upon it by this Agreement by itself or may cause its Affiliates to take such actions to fulfill the responsibilities.

2. DEFINITIONS

2.1 Capitalized Terms used in this Agreement shall have the respective meanings specified below, in Section 2.2.x of each Appendix attached hereto, and/or as defined elsewhere in this Agreement.

2.2 GENERAL DEFINITIONS

2.2.1 **“Access Service Request” (ASR)** is an industry standard form used by the Parties to add, establish, change or disconnect trunks for the purposes of Interconnection.

2.2.2 **“Act”** means the Communications Act of 1934 [47 U.S.C. 153(R)], as amended by the Telecommunications Act of 1996, Public Law 104-104, 110 Stat. 56 (1996) codified throughout 47 U.S.C.

2.2.3 **“Advanced Services”** means intrastate or Interstate wireline Telecommunications Services, such as ADSL, xDSL that rely on packetized technology and have the capability of supporting transmissions speeds of at least 56 kilobits per second in both directions. This definition of Advanced Services does not include:

2.2.3.1 Data services that are not primarily based on packetized technology, such as ISDN,

2.2.3.2 x.25-based and x.75-based packet technologies, or

2.2.3.3 Circuit switched services (such as circuit switched voice grade service) regardless of the technology, protocols or speeds used for the transmission of such services.

2.2.4 **“Affiliate”** is As Defined in the Act.

2.2.5 **“Alternate Billing Service (ABS)”** means a service that allows End Users to bill calls to accounts that may not be associated with the originating line. There are three types of ABS calls: calling card, collect and third number billed calls.

2.2.6 **“Applicable Law”** means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, tariffs and approvals, including those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of this Agreement.

2.2.7 **“As Defined in the Act”** means as specifically defined by the Act.

- 2.2.8 **“As Described in the Act”** means as described in or required by the Act.
- 2.2.9 **“Automatic Message Accounting” (AMA)** is a structure inherent in switch technology that initially records Telecommunication message information. AMA format is contained in the Automated Message Accounting document published by Telcordia (formerly known as Bellcore) as GR-1100-CORE, which defines and amends the industry standard for message recording.
- 2.2.10 **“Business Day”** means Monday through Friday, excluding holidays observed by either Party. A list of recognized holidays will be exchanged between the Parties. Either Party will provide notice of any changes to the recognized holidays.
- 2.2.11 **“Calling Party Number” (CPN)** means a Signaling System 7 “SS7” parameter whereby the seven (7) or ten (10) digit number of the calling Party is forwarded from the End Office.
- 2.2.12 **“Central Office switch” (Central Office)** is a switching entity within the public switched telecommunications network, including but not limited to:
- 2.2.12.1 **“End Office Switch” or “End Office”** is a switching machine that directly terminates traffic to and receives traffic from purchasers of local exchange services. An End Office Switch does not include a PBX.
- 2.2.12.2 **“Tandem Office Switch” or “Tandem(s)”** are used to connect and switch trunk circuits between and among other Central Office Switches. A Tandem Switch does not include a PBX.
- 2.2.13 **“Commission”** means the Vermont Public Service Board.
- 2.2.14 **“Common Channel Signaling” (CCS)** means an out-of-band, packet-switched, signaling network used to transport supervision signals, control signals, and data messages. It is a special network, fully separate from the transmission path of the public switched network. Unless otherwise agreed by the Parties, the CCS protocol used by the Parties shall be SS7.
- 2.2.15 **“Common Language Location Identifier” (CLLI)** codes provide a unique 11-character representation of a network interconnection point. The first 8 characters identify the city, state and building location, while the last 3 characters identify the network component.
- 2.2.16 **“Consequential Damages”** means Losses claimed to have resulted from any indirect, incidental, reliance, special, consequential, punitive,

exemplary, multiple or any other Loss, including damages claimed to have resulted from harm to business, loss of anticipated revenues, savings, or profits, or other economic Loss claimed to have been suffered not measured by the prevailing Party's actual damages, and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions.

2.2.17 **“Custom Local Area Signaling Service Features” (CLASS Features)** means certain Common Channel Signaling based features available to End Users, including: Automatic Call Back; Call Trace; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection.

2.2.18 **“Customer” or “End Users”** means a third-party residence or business that subscribes to Telecommunications Services provided by any of the Parties. As used herein, the term "End Users" does not include any of the Parties to this Agreement with respect to any item or service obtained under this Agreement.

2.2.19 **“Delaying Event”** means (a) any failure of a Party to perform any of its obligations set forth in this Agreement, caused in whole or in part by:

2.2.19.1 the failure of the other Party to perform any of its obligations set forth in this Agreement, including but not limited to a Party's failure to provide the other Party with accurate and complete Service Orders;

2.2.19.2 any delay, act or failure to act by the other Party or its End User, agent or subcontractor; or

2.2.19.3 any Force Majeure Event.

2.2.20 **“Dialing Parity”** is As Defined in the Act. As used in this Agreement, Dialing Parity refers to both Local Dialing Parity and Toll Dialing Parity.

2.2.21 **“Digital Signal Level”** is one of several transmission rates in the time-division multiplex hierarchy.

2.2.21.1 **“Digital Signal Level 0” (DS-0)** is the 64 Kbps zero-level signal in the time-division multiplex hierarchy.

2.2.21.2 **“Digital Signal Level 1” (DS-1)** is the 1.544 Mbps first-level signal in the time-division multiplex hierarchy.

- 2.2.21.3 **“Digital Signal Level 3” (DS-3)** is the 44.736 Mbps third-level signal in the time-division multiplex hierarchy.
- 2.2.22 **“Exchange Access”** is As Defined in the Act.
- 2.2.23 **“Exchange Area”** means an area, defined by the Commission, for which a distinct local rate schedule is in effect.
- 2.2.24 **“Exchange Service”** means Telephone Exchange Service, As Defined in the Act.
- 2.2.25 **“FCC”** means the Federal Communications Commission.
- 2.2.26 **“Feature Group D” (FG-D)** is access available to all customers, providing trunk side access to a Party’s End Office Switches with an associated uniform 101XXXX access code for customer’s use in originating and terminating communications.
- 2.2.27 **Intentionally left blank.**
- 2.2.28 **“Governmental Authority”** means any federal, state, local, foreign, or international court, government, department, commission, board, bureau, agency, official, or other regulatory, administrative, legislative, or judicial authority with jurisdiction over the subject matter at issue.
- 2.2.29 **“Incumbent Local Exchange Carrier” (ILEC)** is As Defined in the Act.
- 2.2.30 **“Indirect Interconnection”** provides for network interconnection between the Parties through a third party tandem provider performing a transit function.
- 2.2.31 **“Integrated Services Digital Network” (ISDN)** means a switched network service that provides end-to-end digital connectivity for the simultaneous transmission of voice and data.
- 2.2.32 **“Intellectual Property”** means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.
- 2.2.33 **“Interconnection”** is As Defined in the Act.
- 2.2.34 **Intentionally left blank.**
- 2.2.35 **“Interexchange Carrier” (IXC)** means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.

- 2.2.36 **“InterLATA”** is As Defined in the Act.
- 2.2.37 **“Internet Service Provider” (ISP)** is an Enhanced Service Provider that provides Internet Services, and is defined in paragraph 341 of the FCC’s First Report and Order in CC Docket No. 97-158.
- 2.2.38 **“Inter-wire Center Transport”** means the transmission facilities between serving wire centers.
- 2.2.39 **“IntraLATA Toll Traffic”** means the IntraLATA traffic between two locations within one LATA where one of the locations lies outside of the normal local calling area as defined by the applicable Commission. Optional extended local calling area service within a LATA is IntraLATA Toll Traffic, with the exception of Optional Local Measured Calling Service in effect in VTEL’s tariffs as of the Effective date of this Agreement.
- 2.2.40 **“Line Information Data Base” (LIDB)** means a transaction-oriented database system that functions as a centralized repository for data storage and retrieval. LIDB is accessible through CCS networks. LIDB contains records associated with End User line numbers and special billing numbers. LIDB accepts queries from other network elements and provides return result, return error, and return reject responses as appropriate. Examples of information that Data Owners might store in LIDB and in their Line Records are: ABS Validation Data, Originating Line Number Screening (OLNS) data, ZIP Code data, and Calling Name Information.
- 2.2.41 **“Line Record”** means information in LIDB and/or the LIDB administrative system that is specific to a single telephone number or Special Billing Number.
- 2.2.42 **“Local Access Transport Area” (LATA)** is As Defined in the Act.
- 2.2.43 **“Local Traffic”**, for purposes of intercarrier compensation, is Telecommunications traffic originated by a End User Customer of one Party in an exchange on that Party’s network and terminated to a End User Customer of the other Party on that other Party’s network located within the same exchange or other non-optional extended local calling area associated with the originating customer’s exchange as defined by VTEL’s applicable local exchange tariff. Such traffic shall be considered Local Traffic for the purposes of intercarrier compensation, whether or not the traffic is VoIP-originated or VoIP-terminated. Local Traffic does not

include: (1) any ISP-Bound Traffic; (2) traffic that does not originate and terminate within the same VTEL local calling area as such local calling area is defined by VTEL's applicable local exchange tariff; (3) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (4) optional extended local calling area traffic; (5) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; (6) Tandem Transit Traffic, or (7) Exchange Access or Switched Exchange Access Service traffic. The parties shall pay access charges set forth in their respective Tariffs to the terminating Party for all traffic that does not qualify as Local Traffic.

- 2.2.44 **“Local Exchange Carrier” (LEC)** is As Defined in the Act.
- 2.2.45 **“Local Exchange Routing Guide” (LERG)** is a Telcordia Reference document used by Telecommunications Carriers to identify NPA-NXX routing and homing information as well as equipment designations.
- 2.2.46 **“Local Number Portability” (LNP)** means the ability of users of Telecommunications Services to retain, at the same location, the presence of a previously existing telephone number(s).
- 2.2.47 **“Location Routing Number” (LRN)** is a ten (10) digit number that is assigned to the network switching elements (Central Office – Host and Remotes as required) for the routing of calls in the network. The first six (6) digits of the LRN will be one of the assigned NPA NXX of the switching element. The purpose and functionality of the last four (4) digits of the LRN have not yet been defined but are passed across the network to the terminating switch.
- 2.2.48 **“Loss” or “Losses”** means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including attorneys' fees).
- 2.2.49 **“MECAB”** refers to the Multiple Exchange Carrier Access Billing document prepared by the Billing Committee of the Ordering and Billing Forum “OBF”, which functions under the auspices of the Carrier Liaison Committee “CLC of the Alliance for Telecommunications Industry Solutions “ATIS”. The MECAB document, published by ATIS as ATIS/OBF- MECAB- Issue 6, February 1998, contains the recommended guidelines for the billing of access services provided to an IXC by two or more LECs, or by one LEC in two or more states within a single LATA.

- 2.2.50 **“Meet-Point Billing” (MPB)** refers to the billing associated with interconnection of facilities between two or more LECs for the routing of traffic to and from an IXC with which one of the LECs does not have a direct connection. In a multi-bill environment, each Party bills the appropriate tariffed rate for its portion of a jointly provided Switched Exchange Access Service.
- 2.2.51 **“Multiple Bill/Single Tariff”** is the meet-point billing method where each LEC prepares and renders its own meet point bill to the IXC in accordance with its own tariff for that portion of the jointly provided Switched Access Service which that LEC provides. The MECAB documents refer to this method as Multiple Bill/reflecting a single tariff (MM).
- 2.2.52 **“Mutual Compensation”** is the compensation agreed upon by the Parties for “Local Calls” that originate on one network and terminate on the other network.
- 2.2.53 **“North American Numbering Plan” (NANP)** A numbering architecture in which every station in the NANP Area is identified by a unique ten-digit address consisting of a three-digit NPA code, a three digit central office code of the form NXX, and a four-digit line number of the form XXXX.
- 2.2.54 **“Number Portability”** is As Defined in the Act.
- 2.2.55 **“Numbering Plan Area” (NPA)** also called area code. An NPA is the 3-digit code that occupies the A, B, C positions in the 10-digit NANP format that applies throughout the NANP Area. NPAs are of the form NXX, where N represents the digits 2-9 and X represents any digit 0-9. In the NANP, NPAs are classified as either geographic or non-geographic. a) Geographic NPAs are NPAs that correspond to discrete geographic areas within the NANP Area. b) Non-geographic NPAs are NPAs that do not correspond to discrete geographic areas, but which are instead assigned for services with attributes, functionalities, or requirements that transcend specific geographic boundaries. The common examples are NPAs in the N00 or 8xx format, e.g., 800, 866, 877 or 888.
- 2.2.56 **“NXX” or “Central Office Code”** is the three-digit switch entity indicator that is defined by the fourth through sixth digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers.
- 2.2.57 **“Ordering and Billing Forum” (OBF)** is a forum comprised of local telephone companies and interexchange carriers whose responsibility is to

create and document Telecommunication industry guidelines and standards.

- 2.2.58 **“Party”** means either COMCAST or VTEL that is a party to this Agreement. **“Parties”** means both COMCAST and VTEL.
- 2.2.59 **“Permanent Number Portability” (PNP)** is a long-term method of providing LNP using LRN.
- 2.2.60 **Intentionally left blank.**
- 2.2.61 **“Rate Center”** means the specific geographic point that has been designated by a given LEC as being associated with a particular NPA-NXX code that has been assigned to the LEC for its provision of Telephone Exchange Service. The Rate Center is the finite geographic point identified by a specific V&H coordinate, which is used by that LEC to measure, for billing purposes, distance sensitive transmission services associated with the specific Rate Center.
- 2.2.62 **“Rating Point”** means the V&H coordinates associated with a particular telephone number for rating purposes.
- 2.2.63 **“Referral Announcement”** refers to a process by which calls are routed to an announcement that states the new telephone number of an End User.
- 2.2.64 **“Routing Point”** is a location which a LEC has designated on its own network as the homing or routing point for traffic inbound to Exchange Service provided by the LEC which bears a certain NPA-NXX designation. The Routing Point is employed to calculate mileage measurements for the distance-sensitive transport element charges of Switched Access services. The Routing Point need not be the same as the Rating Point, nor must it be located within the Rate Center area, but must be in the same LATA as the NPA-NXX.
- 2.2.65 **“Signal Transfer Point” (STP)** performs a packet switching function that routes signaling messages among Service Switching Points (SSP), Service Control Points (SCP), Signaling Points (SP), and other STPs in order to set up calls and to query databases for Advanced Services.
- 2.2.66 **Signaling Transport Signal level (STS-n)** is an electrical signal that is converted to or from SONET’s optically based signal. Level 1 is 51.84 Mb/s or the electrical equivalent to OC-1 optical signal, level 2 is 155.52 Mb/s or the electrical equivalent to OC-3.

- 2.2.67 **“Signaling System 7” (SS7)** means a signaling protocol used by the CCS Network.
- 2.2.68 **“Switched Exchange Access Service”** means the offering of transmission or switching services to Telecommunications Carriers for the purpose of the origination or termination of telephone toll service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 800/8xx access, and 900 access and their successors or similar Switched Exchange Access Services.
- 2.2.69 **“Synchronous Optical Network” (SONET)** is an optical interface standard that allows inter-networking of transmission products from multiple vendors. The base rate is 51.84 Mbps (“OC-1/STS-1”) and higher rates are direct multiples of the base rate, up to 13.22 Gbps.
- 2.2.70 **“Tandem Transit Traffic”** is defined as local traffic or ISP-bound traffic originated on one Party's network, transited through the other Party's network, and terminated to a third party telecommunications carrier's network or that is originated on a third party telecommunications carrier's network, transited through a Party's network and terminated to the other Party's network. For purposes of this Agreement, Tandem Transit Traffic does not include overflow traffic between the Parties that is routed through a third party tandem provider.
- 2.2.71 **“Tariff”** as used throughout this Agreement refers to a Party's interstate access service tariff filed with the FCC and its intrastate access service tariff filed with the Commission or, in the case of Comcast, the intrastate access service guide located at <http://www.comcast.com/corporate/about/phonetermsofservice/circuit-switched/statetariffs/vermont.html>; provided however, that the terminating access rates that COMCAST charges VTEL shall be no higher than the access rates of the largest incumbent LEC in the state, currently FairPoint.
- 2.2.72 **“Telecommunications”** is As Defined in the Act.
- 2.2.73 **“Telecommunications Carrier”** is As Defined in the Act.
- 2.2.74 **“Telecommunications Service”** is As Defined in the Act.
- 2.2.75 **“Telephone Exchange Service”** is As Defined in the Act.
- 2.2.76 **“Telephone Toll Service”** is As Defined in the Act.

2.2.77 **“Trunk”** means a communication line between two switching systems.

2.2.78 **“Voice Over Internet Protocol”** or **“VoIP”** is as defined in 47 C.F.R. Section 9.

2.2.79 **“Wire Center”** is the location of one or more local switching systems. A point at which End User’s loops within a defined geographic area converge. Such local loops may be served by one (1) or more Central Office Switches within such premises.

2.3 For purposes of this Agreement, certain terms have been defined in this Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular will include the plural. The words “include,” “includes,” and “including” shall be deemed to be followed by the phrase “without limitation” and/or “but not limited to.” The words “will” and “shall” are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other will not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized and not defined in this Agreement will have the meaning in the Act, or in the absence of their inclusion in the Act, their customary usage in the Telecommunications industry as of the Effective Date.

3. **EFFECTIVE DATE**

3.1 This Agreement becomes effective (“Effective Date”) (1) when executed by each Party and after the approval by the Commission under Section 252(e) of the Act; or (2) absent such Commission approval, by operation of law pursuant to Section 252(e)(4) of the Act.

4. **INTERVENING LAW**

4.1 The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based upon 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 of the Act, any effective legislative action or any effective regulatory or judicial order, rule, regulation, arbitration award, Commission or court decision pursuant to dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Act to the Parties or in which the court, FCC or the Commission makes a generic determination that is generally applicable which revises, modifies or reverses the Applicable Rules (individually, “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. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such decisions and any remand thereof, including its right to seek legal review or a stay pending appeal of such decisions or its rights under this Intervening Law paragraph.

5. TERM OF AGREEMENT

- 5.1 This Agreement will become effective as of the Effective Date stated above, and unless terminated earlier in accordance with the terms hereof, shall continue in effect for two years after the Effective Date (the “Initial Term”), and thereafter the Agreement shall continue in force and effect unless and until terminated as provided herein.
- 5.2 Notwithstanding any other provision of this Agreement, either Party (the “Terminating Party”) may terminate this Agreement and the provision of any Interconnection, functions, facilities, products or services provided pursuant to this Agreement in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party (i) fails to cure such nonperformance or breach within forty-five (45) calendar days after receiving written notice thereof pursuant to this Section 5.2; and (ii) has not commenced a dispute regarding the subject of the breach pursuant to Section 16.2.1 within the same forty-five (45) calendar days; and (iii) fails to obtain and provide to the Terminating Party within that same forty-five (45) calendar days an Order by the Commission prohibiting or delaying such termination. Any termination pursuant to this Section 5.2 shall take effect on or after the forty-fifth (45th) calendar day where conditions (i), (ii), and (iii) above pertain.
- 5.3 Upon the expiration of the Initial Term or any time thereafter, either Party may terminate this Agreement by providing written notice to the other Party of its intention to terminate, such written notice to be received at least ninety (90) days in advance of the date of termination. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 5.3 other than its obligations under Sections 5.4, 5.5, 5.6 and 5.7.
- 5.4 Upon termination or expiration of this Agreement in accordance with Section 5.2:
- 5.4.1 Each Party shall continue to comply with its obligations set forth in Section 44; and

- 5.4.2 Each Party shall promptly pay all amounts owed under this Agreement, or follow the procedures for billing disputes as set forth herein.
- 5.4.3 Each Party's confidentiality obligations shall survive; and
- 5.4.4 Each Party 's indemnification obligations shall survive.
- 5.5 In the event of termination of this Agreement pursuant to Section 5.3, where neither Party has requested renegotiation under Section 5.6, VTEL and COMCAST shall cooperate in good faith to effect an orderly transition of service under this Agreement; provided that each Party shall be solely responsible (from a financial, operational and administrative standpoint) to ensure that its End Users have been transitioned to a new LEC by the expiration date or termination date of this Agreement.
- 5.6 If either Party terminates this Agreement pursuant to Section 5.3, the other Party may request renegotiation of the Agreement by providing written notice thereof to the terminating Party within thirty (30) days of the other Party's receipt of the termination notice. Any such request shall be deemed by both Parties to be a good faith request for negotiation of an interconnection agreement, regardless of which Party made such request. If the Parties do not execute a new agreement within 135 days after the request for negotiation, either Party may seek arbitration by the Commission pursuant to Section 252 of the Act before the expiration of 160 days from the date of the request for negotiation.
- 5.7 If either Party requests renegotiation of this Agreement pursuant to Sections 4.1 or 5.6 above, the rates, terms and conditions of this Agreement shall continue in full force and effect until the effective date of its successor agreement, whether such successor agreement is established via negotiation, arbitration or pursuant to Section 252(i) of the Act; provided, however, when a successor agreement becomes effective and the Parties agree that the terms, rates and charges of such successor Agreement shall apply retroactively back to the date this Agreement is terminated or expires, whichever is later, and that the retro-active true-up shall be completed within ninety (90) calendar days following the effective date of such successor Agreement. Notwithstanding the forgoing, no retroactive true-up shall be made for any charges that were incurred more than twelve (12) months prior to the true-up date.

6. ASSIGNMENT

- 6.1 Neither Party hereto may assign or otherwise transfer its rights or obligations under this Agreement, except with the prior written consent of the other Party hereto, which consent will not be unreasonably withheld; provided, that either

Party may assign its rights and delegate its benefits, duties and obligations under this Agreement without the consent of the other Party to any Affiliate, provided the obligations and duties of either Party under this Agreement shall be binding on all successors in interest and assigns of such Party. Nothing in this Section is intended to impair the right of either Party to utilize subcontractors.

- 6.2 Each Party will notify the other in writing not less than thirty (30) days in advance of anticipated assignment.

7. DELEGATION TO AFFILIATE

- 7.1 Each Party may, without the consent of the other Party, fulfill its obligations under this Agreement by itself or may cause its Affiliate(s) to take some or all of such actions to fulfill such obligations. Upon such delegation, the Affiliate shall become a primary obligor hereunder with respect to the delegated matter, but such delegation shall not relieve the delegating Party of its obligations as co-obligor hereunder. Any Party which elects to perform its obligations through an Affiliate shall cause its Affiliate to take all action necessary for the performance of such Party's obligations hereunder. Each Party represents and warrants that if an obligation under this Agreement is to be performed by an Affiliate, such Party has the authority to cause such Affiliate to perform such obligation and such Affiliate will have the resources required to accomplish the delegated performance.

8. CONFIDENTIALITY AND PROPRIETARY INFORMATION

- 8.1 For the purposes of this Agreement, "Proprietary Information" means confidential or proprietary technical or business information given by one Party ("the Disclosing Party") or its agent, employee, representative or Affiliate to the other Party ("the Receiving Party") in connection with this Agreement, during negotiations and the term of this Agreement:

8.1.1 In written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary" however, regardless of whether so marked, any non-public information which, because of legends or other markings, the circumstances of disclosure or the information itself, is otherwise reasonably understood by the Receiving Party to be proprietary and confidential to the Disclosing Party, shall be deemed to be Proprietary Information; or

8.1.2 Any portion of any notes, analyses, data, compilations, studies, interpretations or other documents prepared by any Receiving Party to the extent the same contain, reflect, are derived from, or are based upon, any of the information described in this Section 8, unless such information contained or reflected in such notes, analyses, etc. is so commingled with

the Receiving Party's information that disclosure could not possibly disclose the underlying proprietary or confidential information (such portions of such notes, analyses, etc. referred to herein as "**Derivative Information**").

8.2 Proprietary Information Shall be Held in Confidence

8.2.1 Each Receiving Party agrees that:

8.2.1.1 all Proprietary Information communicated to it or any of its agents, attorneys, employees, representatives and Affiliates in connection with this Agreement shall be held in confidence to the same extent as such Receiving Party holds its own confidential information of like importance; provided that such Receiving Party and its agents, attorneys, employees, representatives and Affiliates shall not use less than a reasonable standard of care in maintaining the confidentiality of such information;

8.2.1.2 it will not, and it will not permit any of its agents, attorneys, employees, representatives and Affiliates to disclose such Proprietary Information to any non-party to this Agreement ("Third Party");

8.2.1.3 it will disclose Proprietary Information only to those of its agents, attorneys, employees, representatives and Affiliates who have a need for it in connection with the use or provision of any services required to fulfill this Agreement; and

8.2.1.4 it will, and will cause each of its agents, attorneys, employees, representatives and Affiliates, to use such Proprietary Information only to perform its obligations under this Agreement or to use services provided by the Disclosing Party hereunder and for no other purpose, including its own marketing purposes.

8.2.2 A Receiving Party may disclose Proprietary Information of a Disclosing Party to the Receiving Party's agents, attorneys, employees, representatives and Affiliates who need to know such information to perform their obligations under this Agreement; provided that before disclosing any Proprietary Information to any agent, employee, representative or Affiliate, the Receiving Party shall notify such agent, employee, representative or Affiliate of such Party's obligation to comply with this Agreement. Each Receiving Party making such disclosure shall notify the Disclosing Party as soon as possible if it has knowledge of a breach of this Agreement in any material respect.

- 8.2.3 Proprietary Information shall not be reproduced by any Receiving Party in any form except to the extent (i) necessary to comply with the provisions of Section 8.5 and (ii) reasonably necessary to perform its obligations under this Agreement.
- 8.3 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information that:
- 8.3.1 Was at the time of receipt, already known to the Receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Disclosing Party; or
- 8.3.2 Is, or becomes publicly known through no wrongful act of the Receiving Party; or
- 8.3.3 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or
- 8.3.4 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or
- 8.3.5 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or
- 8.3.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or
- 8.3.7 Is required to be made public by the Receiving Party pursuant to Applicable Law or regulation, provided that such production or disclosure shall have been made in accordance with Section 8.5.
- 8.4 Proposed Disclosure of Proprietary Information to a Governmental Authority
- 8.4.1 If a Receiving Party desires to disclose or provide to a Commission, the FCC or any other governmental authority any Proprietary Information of the Disclosing Party, such Receiving Party shall, prior to and as a condition of such disclosure, (i) provide the Disclosing Party with written notice and the form of such proposed disclosure as soon as possible but in any event early enough to allow the Disclosing Party to protect its interests in the Proprietary Information to be disclosed and (ii) attempt to

obtain in accordance with the applicable procedures of the intended recipient of such Proprietary Information an appropriate order for protective relief or other reliable assurance that confidential treatment shall be accorded to such Proprietary Information.

8.4.2 If a Receiving Party is required by any Governmental Authority or by Applicable Law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible, and in no event later than five (5) calendar days after receipt of such requirement, and prior to such disclosure. Upon receipt of written notice of the requirement to disclose Proprietary Information, the Disclosing Party at its expense, may then either seek appropriate protective relief in advance of such requirement to prevent all or part of such disclosure or waive the Receiving Party's compliance with this Section 8.4 with respect to all or part of such requirement.

8.4.3 The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to seek pursuant to this Section 8.4. In the absence of such relief, if the Receiving Party is legally compelled to disclose any Proprietary Information, then the Receiving Party shall exercise all commercially reasonable efforts to preserve the confidentiality of the Proprietary information, including cooperating with the Disclosing Party to obtain an appropriate order for protective relief or other reliable assurance that confidential treatment will be accorded the Proprietary Information.

8.5 Notwithstanding any of the foregoing, each Party shall be entitled to disclose Proprietary Information on a confidential basis to regulatory agencies upon request for information as to a Disclosing Party's activities under the Act if the Party has provided reasonable prior written notice to the other Party and obtained an appropriate order for protective relief or other reliable assurance that confidential treatment shall be accorded to such Proprietary Information.

8.6 Return of Proprietary Information

8.6.1 All Proprietary Information, other than Derivative Information, shall remain the property of the Disclosing Party, and all documents or other tangible media delivered to the Receiving Party that embody such Proprietary Information shall be, at the option of the Disclosing Party, either promptly returned to Disclosing Party or destroyed, except as otherwise may be required from time to time by Applicable Law (in which case the use and disclosure of such Proprietary Information will continue to be subject to this Agreement), upon the earlier of (i) the date on which

the Receiving Party's need for it has expired and (ii) the expiration or termination of this Agreement.

8.6.2 At the request of the Disclosing Party, any Derivative Information shall be, at the option of the Receiving Party, either promptly returned to the Disclosing Party or destroyed, except as otherwise may be required from time to time by Applicable Law (in which case the use and disclosure of such Derivative Information will continue to be subject to this Agreement), upon the earlier of (i) the date on which the Receiving Party's need for it has expired and (ii) the expiration or termination of this Agreement.

8.6.3 The Receiving Party may at any time either return the Proprietary Information to the Disclosing Party or destroy such Proprietary Information. If the Receiving Party elects to destroy Proprietary Information, all copies of such information shall be destroyed and upon the written request of the Disclosing Party, the Receiving Party shall provide to the Disclosing Party written certification of such destruction. The destruction or return of Proprietary information shall not relieve any Receiving Party of its obligation to continue to treat such Proprietary Information in the manner required by this Agreement.

8.7 Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement and each Party's obligation to safeguard Proprietary Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.

8.8 Pursuant to Section 222(b) of the Act, both Parties agree to limit their use of Proprietary Information received from the other to the permitted purposes identified in the Act.

8.9 Each Party has the right to refuse to accept any Confidential Information under this Agreement, and nothing in this Section 8 shall obligate either Party to disclose to the other Party any particular information.

8.10 The Parties agree that an impending or existing violation of any provision of this Section 8 would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and agree that Disclosing Party shall be entitled to obtain immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it at law or in equity, including both specific performance and monetary damages. In the event of any breach of this Section 8 for which legal or equitable relief is sought, all reasonable attorney's

fees and other reasonable costs associated therewith shall be recoverable by the prevailing Party.

9. LIABILITY AND INDEMNIFICATION

9.1 Limitation of Liabilities

9.1.1 Except for indemnity obligations expressly set forth herein, each Party's liability to the other Party for any Loss relating to or arising out of such Party's performance under this Agreement, including any negligent act or omission (whether willful or inadvertent), whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act, shall not exceed in total the amount VTEL or COMCAST has charged or would have charged to the other Party for the affected Interconnection, functions, facilities, products and service(s) that were not performed or were improperly performed.

9.1.2 Except for losses alleged or made by an end user of either Party, in the case of any loss alleged or made by a third party arising under the negligence or willful misconduct of both Parties, each Party shall bear, and its obligation under this section shall be limited to, that portion (as mutually agreed to by the Parties) of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.

9.2 NO CONSEQUENTIAL DAMAGES

9.2.1 NEITHER COMCAST NOR VTEL WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTIES (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTIES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL

LIMIT VTEL's OR COMCAST's LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE); AND (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY VTEL's OR COMCAST's NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES INDEMNIFICATION OBLIGATIONS, AS SPECIFIED BELOW.

10. REMEDIES

10.1 Except as otherwise provided in this Agreement, no remedy set forth herein is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under Applicable Law or otherwise.

11. INTELLECTUAL PROPERTY

11.1 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.

12. INDEMNITY

12.1 Except as otherwise expressly provided herein, and to the extent not prohibited by Applicable Law, each Party (the "Indemnifying Party") shall release, defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any Loss to a Third Party arising out of the negligence or willful misconduct ("Fault") of such Indemnifying Party, its agents, its End Users, contractors, or others retained by such Parties, in connection with the Indemnifying Party's provision of Interconnection, functions, facilities, products and services under this Agreement; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.

12.2 A Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party ("**Indemnified Party**") against any claim or Loss arising from the

Indemnifying Party's use of Interconnection, functions, facilities, products and services provided under this Agreement involving:

12.2.1 Any claim or Loss arising from such Indemnifying Party's use of Interconnection, functions, facilities, products and services offered under this Agreement, involving any claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its End User's use.

12.2.2 The foregoing includes any claims or Losses arising from disclosure of any End User-specific information associated with either the originating or terminating numbers used to provision Interconnection, functions, facilities, products or services provided hereunder and all other claims arising out of any act or omission of the End User in the course of using any Interconnection, functions, facilities, products or services provided pursuant to this Agreement.

12.2.3 The foregoing includes any Losses arising from claims for actual or alleged infringement of any Intellectual Property right of a Third Party to the extent that such Loss arises from an Indemnifying Party's or an Indemnifying Party's End User's use of Interconnection, functions, facilities, products or services provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply:

12.2.3.1 where an Indemnified Party or its End User modifies Interconnection, functions, facilities, products or services; provided under this Agreement without authorization of the Indemnifying Party; and

12.2.3.2 no infringement would have occurred without such modification.

12.3 Consistent with and subject to the waiver of subrogation set forth under Section 26.6.2, COMCAST shall reimburse VTEL for damages to VTEL's facilities utilized to provide Interconnection hereunder caused by the negligence or willful act of COMCAST, its agents or subcontractors or COMCAST's End User or resulting from COMCAST's improper use of VTEL's facilities, or due to malfunction of any facilities, functions, products, services or equipment provided by COMCAST, its agents or subcontractors or COMCAST's End User. Upon reimbursement for damages, VTEL will cooperate with COMCAST in prosecuting a claim against the person causing such damage. COMCAST shall be subrogated to the right of recovery by VTEL for the damages to the extent of such payment.

- 12.4 Consistent with and subject to the waiver of subrogation set forth under Section 26.6.2, VTEL shall reimburse COMCAST for damages to COMCAST's facilities utilized to provide or access Interconnection hereunder caused by the negligence or willful act of VTEL, its agents or subcontractors or End User or resulting from VTEL's improper use of COMCAST's facilities, or due to malfunction of any facilities, functions, products, services or equipment provided by VTEL, its agents or subcontractors or VTEL's End User. Upon reimbursement for damages, COMCAST will cooperate with VTEL in prosecuting a claim against the person causing such damage. VTEL shall be subrogated to the right of recovery by COMCAST for the damages to the extent of such payment.
- 12.5 Obligation to Defend; Notice; Cooperation
- 12.5.1 Should a claim arise for indemnification under this Section, the relevant Indemnified Party, as appropriate, will promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party will not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim. The Indemnifying Party will have the right to defend against such liability or assertion in which event the Indemnifying Party will give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.
- 12.5.2 Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.
- 12.5.3 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.
- 12.6 At any time, an Indemnified Party will have the right to refuse such compromise or settlement and, at the refusing Party's cost, to take over such defense, provided that in such event the Indemnifying Party will not be responsible for, nor will it be

obligated to indemnify the refusing Party against any cost or liability in excess of such refused compromise or settlement.

- 12.7 In the event the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party will have the right to employ counsel for such defense at the expense of the Indemnifying Party unless it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.
- 12.8 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 8.

13. OSHA STATEMENT

- 13.1 Each Party, in recognition of the other Party's status as an employer, agrees to abide by and to undertake the duty of compliance with all federal, state and local laws, safety and health regulations relating to the space which Party has assumed the duty to maintain pursuant to this Agreement, and to indemnify and hold the other Party harmless for any judgments, citations, fines, or other penalties which are assessed against the indemnified Party as the result of the indemnifying Party's failure to comply with any of the foregoing.

14. DEPOSITS

- 14.1 The Parties will, in order to safeguard their interests, only require the billed Party which has a proven history of late payments, defined as two consecutive late payments within a twelve (12) month period, or does not have established credit to make a deposit, prior to or at any time after the provision of service, to be held by the billing Party as a guarantee of the payment of rates and charges. No such deposit will be required of the billed Party which is a successor of a company which has established credit and has no history of late payments to the billing Party. Such deposit may not exceed the actual or estimated rates and charges for the service for a two-month period. The fact that a deposit has been made in no way relieves the billed Party from complying with the billing Party's regulations as to the prompt payment of bills. At such time as the provision of the service to the billed Party is terminated, the amount of the deposit, plus any interest accrued on a cash deposit pursuant to Section 14.2 below, will be credited to the billed Party's account and any credit balance which may remain will be refunded.
- 14.2 Such a deposit will be refunded or credited to the billed Party's account when the billed Party has established credit or, in any event, after the billed Party has

established a one-year prompt payment record at any time prior to the termination of the provision of the service to the billed Party. In the case of a cash deposit, for the period the deposit is held by the billing Party, the billed Party will receive simple interest at the lower of: the rate of 1% per month (12% annually) or the highest rate allowed by applicable law. The rate will be calculated from the date the billed Party's deposit is received by the billing Party up to and including the date such deposit is credited to the billed Party's account or the date the deposit is refunded by the billing Party. Should a deposit be credited to the billed Party's account, as indicated above, no interest will accrue on the deposit from the date such deposit is credited to the customer's account.

15. BILLING AND PAYMENT OF RATES AND CHARGES

15.1 Unless otherwise stated, each Party will render monthly bill(s) to the other for Interconnection, functions, facilities, products and services provided hereunder at the rates set forth in the applicable Appendix Pricing, as set forth in applicable Tariffs or other documents specifically referenced herein and, as applicable, as agreed upon by the Parties or authorized by a Party. Any known unbilled usage charges for prior periods and any known unbilled adjustments may be included in such bills. Notwithstanding, neither Party may bill for charges incurred more than 12 months prior to the bill date.

15.1.1 Remittance in full of all bills rendered by VTEL is due within thirty (30) calendar days of each bill date (the "**Bill Due Date**").

15.1.2 Remittance in full of all bills rendered by COMCAST is due within thirty (30) calendar days of each bill date (the "**Bill Due Date**").

15.1.3 If either Party fails to remit payment for any undisputed charges for services by the Bill Due Date, or if a payment or any portion of a payment is received after the Bill Due Date, or if a payment or any portion of a payment is received in funds which are not immediately available as of the Bill Due Date (individually and collectively, "**Past Due**"), then a late payment charge shall be assessed as provided in Section 15.1.3.1 as applicable.

15.1.3.1 If any charge incurred under this Agreement is Past Due by fifteen days or more, the unpaid amounts shall accrue interest from the Bill Due Date at the lesser of (i) one and one-half percent (1 ½%) per month and (ii) the highest rate of interest that may be charged under Applicable Law, to and including the date that the payment is actually made and available.

15.2 If any portion of an amount due to a Party (the "**Billing Party**") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed

(the “**Non-Paying Party**”) shall give written notice to the Billing Party of the amounts it disputes (“**Disputed Amounts**”) and include in such written notice the specific details and reasons for disputing each item listed in Section 16.3.1.1. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party.

- 15.3 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provisions set forth in Section 16.
- 15.4 If the Non-Paying Party disputes any charges and any portion of the dispute is resolved in favor of such Non-Paying Party, the Parties shall cooperate to ensure that all of the following actions are taken:
- 15.4.1 the Billing Party shall credit the invoice of the Non-Paying Party for that portion of the Disputed Amounts resolved in favor of the Non-Paying Party, together with any Late Payment Charges assessed with respect thereto no later than the second Bill Due Date after the resolution of the Dispute; and
- 15.4.2 no later than the third Bill Due Date after the resolution of the dispute regarding the Disputed Amounts, the Non-Paying Party shall pay the Billing Party for that portion of the Disputed Amounts resolved in favor of the Billing Party, together with any Late Payment Charges such Billing Party is entitled to receive pursuant to this Section.
- 15.5 Failure by the Non-Paying Party to pay any charges determined by final non-appealable order resulting from the dispute resolution process to be owed to the Billing Party within the time specified in the order or if no time is specified, then within the time set forth in Section 15.4.2 shall be grounds for termination of this Agreement.
- 15.6 If either Party request one or more additional copies of a bill, the requesting Party will pay the Billing Party a reasonable fee for each additional copy, unless such copy was requested due to failure in delivery of the original bill or correction(s) to the original bill.

16. DISPUTE RESOLUTION

16.1 Finality of Disputes

16.1.1 Except as otherwise specifically provided in this Agreement, no claims will be brought for disputes arising from this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

16.1.2 Either Party may seek relief from the Commission, the FCC or in a court of law having jurisdiction if the Dispute Resolution procedures outlined in this Section 16 are not successful in resolving the dispute after sixty (60) calendar days of notice of the dispute from the disputing Party, unless the Parties have agreed to binding arbitration or other formal dispute resolution mechanisms that require additional time. Moreover, either Party may seek immediate recourse to the Commission, without regard to the dispute notice period, in the event of an emergency that threatens harm to the network and requires immediate response. The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this Dispute Resolution process, the Parties agree to use the following Dispute Resolution procedure with respect to any controversy or claim arising out of or relating to this Agreement or its breach. Services as provided under this Agreement shall continue during the pendency of a dispute pursuant to this Section 16.

16.2 Commencing Dispute Resolution

16.2.1 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written notice has first been given to the other Party. There are three (3) separate Dispute Resolution methods each of which is described below:

16.2.1.1 Service Center;

16.2.1.2 Informal Dispute Resolution; and

16.2.1.3 Formal Dispute Resolution.

16.3 Service Center Dispute Resolution

16.3.1 The following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement.

16.3.1.1 If the written notice given pursuant to Section 15.2 discloses that a dispute relates to billing, then the procedures set forth in this Section 16.3.1 shall be used and the dispute shall first be referred to the appropriate service center for resolution. In order to resolve a billing dispute, one Party shall furnish the other Party written notice of (i) the date of the bill in question, (ii) BAN number of the bill in question, (iii) telephone number, circuit ID

number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed, (vi) amount in question, and (vii) the reason that the Party disputes the billed amount.

16.3.1.2 The Parties shall attempt to resolve Disputed Amounts appearing on current billing statements thirty (30) to sixty (60) calendar days from the Bill Due Date (provided the disputing Party furnishes all requisite information and evidence under Section 16.3.1.1 by the Bill Due Date). If not resolved within thirty (30) calendar days, upon request, the Parties will notify each other of the status of the dispute and the expected resolution date.

16.3.1.3 The Parties shall attempt to resolve Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. Either Party may initiate Informal Resolution of Disputes identified in Section 16.4 prior to initiating Formal Resolution of Disputes identified in Section 16.5 if the Parties are unable to resolve the Disputed Amounts.

16.4 Informal Resolution of Disputes

16.4.1 Upon receipt by one Party of notice of a dispute by the other Party pursuant to Section 16.2 or Section 16.3, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative Dispute Resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

16.5 Formal Resolution of Disputes

16.5.1 Except as otherwise specifically set forth in this Agreement, for all disputes arising out of or pertaining to this Agreement, including but not limited to matters not specifically addressed elsewhere in this Agreement

which require clarification, re-negotiation, modifications or additions to this Agreement, either Party may invoke dispute resolution procedures available pursuant to the dispute resolution rules, as amended from time to time, of the Commission. Also, upon mutual agreement, the Parties may seek commercial binding arbitration as specified in Section 16.6.1.

16.5.2 The Parties agree that the Dispute Resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or the Commission with regard to procedures for the resolution of disputes arising out of this Agreement.

16.6 Arbitration

16.6.1 When both Parties agree to binding arbitration, disputes will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be a person knowledgeable in the area of telecommunications. The place where each separate arbitration will be held will be Philadelphia, PA, unless the Parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures. The Parties will equally split the fees of the arbitration and the arbitrator. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

17. **TERMINATION OF SERVICE FOR NON-PAYMENT**

- 17.1 Unless otherwise specified therein, Sections 17.1, 17.2, 17.3, and 17.4 shall apply to all charges billed for all products and services furnished under this Agreement.
- 17.2 Failure of a Party to pay charges or, by the due date, provide reasonably specific notice of any disputed charges, may be grounds for disconnection of Interconnection, functions, facilities, products and services furnished under this Agreement. If a Party fails to pay by the Bill Due Date, any and all undisputed charges billed to them under this Agreement, including any Late Payment Charges as provided for in Section 15.1.3 or miscellaneous charges (“**Unpaid**

Charges”), and any portion of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party shall notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the applicable Interconnection, functions, facilities, products and services furnished under this Agreement, the Non-Paying Party must remit all undisputed Unpaid Charges to the Billing Party.

- 17.3 Disputes hereunder will be resolved in accordance with the Dispute Resolution Procedures set out in Section 16 of this Agreement.
- 17.4 If any the Non-Paying Party’s undisputed charges remain unpaid at the conclusion of the time period as set forth in Section 15.1.1 above (thirty (30) calendar days from the due date of such unpaid charges), the Billing Party will notify the Non-paying Party and the appropriate commission(s) in writing, that unless all charges are paid within thirty (30) calendar days from the date of such notice, all services rendered to may be disconnected in accordance with the appropriate commission(s) rules for discontinuance.
- 17.5 In the event the Billing Party discontinues service to the Non-Paying Party upon failure to pay undisputed charges only as provided in this section, the Billing Party will have no liability to the Non-Paying Party in the event of such disconnection.
- 17.6 After disconnect procedures have begun, the Billing Party will not accept service orders from the Non-Paying Party until all unpaid, undisputed charges are paid. The Non-Paying Party will have the right to require a deposit equal to one month’s charges (based on the highest previous month of service from the Billing Party) prior to resuming service after disconnect for nonpayment.
- 17.7 Beyond the specifically set out limitations in this section and the appropriate commission(s) rules, nothing herein will be interpreted to obligate the Billing Party to continue to provide service to any such end users or to limit any and all disconnection rights the Billing Party may have with regard to such end users.
- 17.8 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, such Party shall take all of the following actions not later than fourteen (14) calendar days following receipt of notice of Unpaid Charges:
 - 17.8.1 The Non-Paying Party shall notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed (“**Disputed Amounts**”) and the specific details listed in Section 16.3.1 of this Agreement, together with the reasons for its dispute; and
 - 17.8.2 The Non-Paying Party shall immediately pay all undisputed Unpaid Charges.

18. NOTICES

18.1 In the event any notices are required to be sent under the terms of this Agreement, they may be sent by mail and are deemed to have been given on the date received. Notice may also be effected by personal delivery or by overnight courier, and will be effective upon receipt. Notice may also be provided by facsimile, which will be effective on the next business day following the date of transmission; provided, however, notices to a Party's 24-hour maintenance contact number will be by telephone and/or facsimile and will be deemed to have been received on the date transmitted. The Parties will provide the appropriate telephone and facsimile numbers to each other. Unless otherwise specifically provided in this Agreement, notice will be directed as follows:

18.2 If to COMCAST:

ATTN: Mr. Brian Rankin
Assistant General Counsel
One Comcast Center
Philadelphia, PA 19103

with a copy to:

Ms. Beth Choroser
Senior Director of Regulatory Compliance
One Comcast Center
Philadelphia, PA 19103

18.3 If to VTEL:

John Choi
Manager, Regulatory Affairs
354 River Street
Springfield, VT

18.4 Either Party may unilaterally change its designated representative and/or address, telephone contact number or facsimile number for the receipt of notices by giving written notice to the other Party in compliance with this Section. Any notice to change the designated contact, address, telephone and/or facsimile number for receipt of notices will be deemed effective ten (10) calendar days following receipt by the other Party.

19. TAXES

- 19.1 With respect to any purchase of service under this Agreement, if any Federal, state or local government tax, fee, surcharge, or other tax-like charge (a "Tax") is required or permitted by applicable law, ordinance or tariff to be collected from a purchasing Party by the providing Party, then (i) the providing Party will bill, as a separately stated item, the purchasing Party for such Tax, (ii) the purchasing Party will timely remit such Tax to the providing Party, and (iii) the providing Party will remit such collected Tax to the applicable taxing authority.
- 19.2 If the providing Party does not collect a Tax because the purchasing Party asserts that it is not responsible for the tax, or is otherwise excepted from the obligation which is later determined by formal action to be wrong then, as between the providing Party and the purchasing Party, the purchasing Party will be liable for such uncollected Tax and any interest due and/or penalty assessed on the uncollected Tax by the applicable taxing authority or governmental entity.
- 19.3 If either Party is audited by a taxing authority or other governmental entity, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 19.4 If applicable law excludes or exempts a purchase of services under this Agreement from a Tax, and if such applicable law also provides an exemption procedure, such as an exemption certificate requirement, then, if the purchasing Party complies with such procedure, the providing Party, subject to Section 19.2, will not collect such Tax during the effective period of the exemption. Such exemption will be effective upon receipt of the exemption certificate or affidavit in accordance with Section 19.6.
- 19.5 If applicable law excludes or exempts a purchase of services under this Agreement from a Tax, including but not limited to Taxes levied on the providing Party's gross revenue or Taxes that do not apply to carrier's carrier revenue, then the providing Party will not collect such Tax. Where a Tax is required to be levied on the purchasing Party if the purchasing Party meets a *de minimis* threshold (e.g., the federal Universal Service Fund surcharge), the purchasing Party may be asked to supply the providing Party with a letter or form signed by an officer of the purchasing Party claiming an exemption.
- 19.6 To the extent a sale is claimed to be for resale and thus subject to tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party

presents a valid certificate. If Applicable Law excludes or exempts a purchase of Interconnection, functions, facilities, products and services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax. Where a Tax is required to be levied on the purchasing Party if the purchasing Party meets a *de minimis* threshold (e.g., the federal Universal Service Fund surcharge), the purchasing Party may be asked to supply the providing Party with a letter or form signed by an officer of the purchasing Party claiming an exemption.

- 19.7 With respect to any Tax or Tax controversy covered by this Section 19, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to Applicable Law and at its own expense, any Tax that it is ultimately obligated to pay or collect. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.
- 19.8 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section shall be sent in accordance with Section 18 hereof.

20. FORCE MAJEURE

- 20.1 Except as otherwise specifically provided in this Agreement, neither Party will be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory, or political subdivision thereof, acts of God or a public enemy, fires, floods, labor disputes such as strikes and lockouts, freight embargoes, earthquakes, volcanic actions, wars, acts of terrorism, civil disturbances, cable cuts, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform. Provided, Force Majeure will not include acts of any Governmental Authority relating to environmental, health, or safety conditions at work locations. If any Force Majeure condition occurs the Party whose performance fails or is delayed because of such Force Majeure conditions will give prompt notice to the other Party, and upon cessation of such Force Majeure condition, will give like notice and commence performance hereunder as promptly as reasonably practicable.

21. PUBLICITY

- 21.1 The Parties agree not to use in any advertising or sales promotion, press releases or other publicity matters, any endorsements, direct or indirect quotes or pictures

implying endorsement by the other Party or any of its employees without such Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all such publicity endorsement matters that mention or display the other's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly. Nothing herein, however, shall be construed as preventing either Party from publicly stating the fact that it has executed this Agreement with the other Party. This does not prohibit the use of valid comparison advertising.

- 21.2 Nothing in this Agreement shall grant, suggest, or imply any authority for either Party to use the name, trademarks, service marks, trade names, brand names, logos, proprietary trade dress or trade names, insignia, symbols or decorative designs of the other Party or its affiliates without the other Party's prior written authorization.

22. NETWORK MAINTENANCE AND MANAGEMENT

- 22.1 The Parties agree that this Agreement involves the provision of services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties will work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, provisioning and billing, in reasonably resolving issues which result from such implementation on a timely basis, and to implement this Agreement. Within two weeks of Board approval of this Agreement, VTEL shall submit to COMCAST and to the Commission specific tests and timeframes for conducting such tests regarding operational issues that are unique or are sufficiently unique to COMCAST to warrant such tests; provided however, timeframes for such tests shall be consistent with the obligation that testing requested by VTEL after the Effective Date of the Agreement shall not exceed ninety (90) days from the date of the request for testing. 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 federal and state governments, etc.) to achieve this desired result.
- 22.2 Each Party will provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center. Each Party will administer its network to ensure acceptable service levels to all users of its network services. Service levels are generally considered acceptable only when End Users are able to establish connections with little or no delay encountered in the network. A facsimile (FAX) number must also be provided to facilitate event notifications for planned mass calling events. Each Party will maintain the right to implement protective network traffic management controls such as "cancel to"

or "call gapping" or 7-digit and 10-digit code gaps, to selectively cancel the completion of traffic over its network, including traffic destined for the other Party's network, when required to protect the public-switched network from congestion as a result of occurrences such as facility failures, switch congestion or failure or focused overload. Each Party shall immediately notify the other Party of any protective control action planned or executed.

- 22.3 Where the capability exists, originating or terminating traffic reroutes may be implemented by either Party to temporarily relieve network congestion due to facility failures or abnormal calling patterns. Reroutes shall not be used to circumvent normal trunk servicing. Expansive controls shall be used only when mutually agreed to by the Parties. The Parties may offer Information Services consistent with 47 C.F.R. 51.100(b). COMCAST shall not transit traffic for third parties for termination on VTEL's network ("Terminating Transiting Traffic"). Specifically, COMCAST shall not send to VTEL any traffic that does not originate on COMCAST's network, including but not limited to any traffic that is sent to Comcast's network using VoIP, through other transiting carriers, or through any entity or end user that sends traffic indirectly to VTEL through COMCAST's connection with VTEL. Notwithstanding, COMCAST may provide wholesale services to VoIP providers, and such traffic may be transported by COMCAST to VTEL. The Parties agree to pay each other applicable Tariff rates for Non-Local Traffic, whether such traffic originates or terminates with a wholesale VoIP customer of the other Party.
- 22.4 The Parties shall cooperate and share pre-planning information regarding cross-network call-ins expected to generate large or focused temporary increases in call volumes to prevent or mitigate the impact of these events on the public-switched network, including any disruption or loss of service to the other Party's End Users.
- 22.5 Comcast agrees that it is requesting and will use VTel's facilities provided under this Agreement for the primary purpose of indirectly exchanging Telecommunications traffic.
- 22.6 In the event of interference or impairment of the quality of service between services or facilities of COMCAST and VTEL the Parties agree to the following:
- 22.6.1** The Party that first becomes aware of the interference will provide notice to the other Party as soon as possible.
- 22.6.2** The Parties will work cooperatively to determine the source of the interference and to implement mutually agreeable solutions that provide for the minimum negative impact to either Party's products and services. However, COMCAST acknowledges that multiple carriers connect to VTEL's network and in some instances the solution that minimizes the

impact to the greatest number of carriers and end users may require that a facility, product, or service of COMCAST be temporarily disconnected until the interference can be corrected.

- 22.6.3** If the Parties are unable to agree upon a solution, either Party may invoke the dispute resolution provisions of the Agreement, provided that a Party may apply for injunctive relief immediately if such is required to prevent irreparable harm.
- 22.7 SS7 Out of Band Signaling (CCS/SS7) shall be the signaling used to exchange traffic under this Agreement. Both Parties shall populate the Jurisdictional Identification Parameter (JIP) field with the first six (6) digits (NPA NXX format) of the appropriate local routing number (LRN) of the originating switch for any ported telephone number. In the event that a Party does not provide sufficient information for the other Party to determine if traffic is Local Traffic, the originating Party shall pay the terminating Party the rates set forth in their respective Tariffs for such traffic.
- 22.8 Neither Party will provision any of its services or the services of a third party in a manner that permits circumventing the payment of applicable switched access charges to the other Party (“Rate Arbitrage”) and/or utilization of the physical connecting arrangements described in this Agreement to permit the delivery to a Party of traffic not covered under this Agreement. Rate Arbitrage includes, but is not limited to, re-origination of traffic, bypass of a Party’s network, and the routing of traffic from or to third party carriers, traffic aggregators, resellers, conference call companies, international gateway providers, and other high-volume traffic arrangements with third parties that result in a significant increase or decrease in the amount of traffic exchanged between COMCAST's facilities and VTEL’s network pursuant to this Agreement.
- 22.9 If any Rate Arbitrage and/or delivery of traffic not covered under this Agreement is identified, the Parties agree to take all reasonable steps to terminate and/or reroute any service that is permitting a Party’s end user customers or any entity to conduct Rate Arbitrage, or that permits end user customers or any entity to utilize a Party’s network for the delivery or receipt of excluded traffic. Notwithstanding the foregoing, if either Party is found to be in violation of this Section, until such time as the Rate Arbitrage or incorrect routing of traffic is resolved, the Party engaging in Rate Arbitrage shall pay applicable Tariff charges to the other Party for traffic subject to Rate Arbitrage or traffic that is incorrectly routed.

23. LAW ENFORCEMENT AND CIVIL PROCESS

- 23.1 VTEL and COMCAST shall reasonably cooperate with the other Party in handling law enforcement requests as follows:

23.1.1 Intercept Devices

Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with a customer of the other Party, the receiving Party will refer such request to the appropriate Party, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's own facilities, in which case that Party will comply with any valid request, to the extent the receiving Party is able to do so; if such compliance requires the assistance of the other Party such assistance will be provided.

23.1.2 Subpoenas

If a Party receives a subpoena for information concerning an end user the Party knows to be an end user of the other Party, the receiving Party will refer the subpoena to the requesting entity with an indication that the other Party is the responsible company. Provided, however, if the subpoena requests records for a period of time during which the receiving Party was the end user's service provider, the receiving Party will respond to any valid request to the extent the receiving Party is able to do so; if response requires the assistance of the other Party such assistance will be provided.

23.1.3 Law Enforcement Emergencies

If a Party receives a request from a law enforcement agency to implement at its switch a temporary number change, temporary disconnect, or one-way denial of outbound calls for an end user of the other Party, the receiving Party will comply so long as it is a valid emergency request. Neither Party will be held liable for any claims or damages arising from compliance with such requests, and the Party serving the end user agrees to indemnify and hold the other Party harmless against any and all such claims.

24. CHANGES IN SUBSCRIBER CARRIER SELECTION

- 24.1 Each Party will abide by applicable federal and state laws and regulations in obtaining End User authorization prior to changing an End User's Local Exchange Carrier to itself and in assuming responsibility for any applicable charges as specified in Section 258(b) of the Telecommunications Act of 1996 and as implemented by the relevant orders of the FCC. Each Party shall deliver to the other Party a blanket letter of authorization that applies to all orders submitted by a Party under this Agreement requiring a LEC change. A Party's

representation of authorization shall be delivered to the other Party prior to the first order submitted to the other Party. Each Party shall retain on file all applicable letters and other documentation of authorization relating to its End User's selection of such Party as its LEC, which documentation shall be available for inspection by the other Party at its request during normal business hours and at no charge. Pursuant to 47 C.F.R. Section 64.1120, neither Party may request to view an individual End-User authorization before releasing a customer service record (CSR) to the other Party, nor may such authorization be requested before processing a local service request (LSR).

24.2 Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

25. AMENDMENTS OR WAIVERS

25.1 Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement and no consent to any default under this Agreement will be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement will be construed as a waiver of such term, right, or condition. Waiver by either Party of any default by the other Party shall not be deemed a waiver of any other default. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege. By entering into this Agreement, the Parties do not waive any right granted to them pursuant to the Act; however, the Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory or other public forum addressing any matters, including matters related to the types of arrangements prescribed by this Agreement.

25.2 At anytime during the effective term of this Agreement and upon request by COMCAST, COMCAST shall be entitled to obtain from VTEL any interconnection agreement in its entirety provided by VTEL to any other Telecommunications Service provider that has been filed and approved by the Commission on the same terms and conditions. The Parties agree that such terms and conditions shall be effective immediately upon request by the COMCAST.

26. GENERAL RESPONSIBILITIES OF THE PARTIES

26.1 This Agreement does not require the activation of any new points of interconnection, as COMCAST and VTEL intend to continue to exchange traffic using the indirect interconnection with a third party tandem provider that has been

active and operational prior to this Agreement. VTEL and COMCAST shall each use commercially reasonable efforts to meet their responsibilities under this Agreement.

- 26.2 Each Party is individually responsible to provide facilities within its network that are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic through the existing Indirect Interconnection with a third party tandem provider to the other Party's network in the standard format and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP).
- 26.3 The Parties shall exchange technical descriptions and forecasts of their Interconnection and traffic requirements in sufficient detail necessary to establish the facilities required to assure traffic completion to and from all End Users in their respective designated service areas.
- 26.4 Each Party is solely responsible for all products and services it provides to its End Users and to other Telecommunications Carriers.
- 26.5 Facilities-based carriers are responsible for administering their End User records in a LIDB.
- 26.6 At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense the following minimum insurance coverage and limits and any additional insurance and/or bonds required by Applicable Law:
 - 26.6.1** Workers' Compensation insurance with benefits afforded under the laws of each state covered by this Agreement and Employers Liability insurance with minimum limits of \$1,000,000 for Bodily Injury-each accident, \$1,000,000 for Bodily Injury by disease-policy limits and \$1,000,000 for Bodily Injury by disease-each employee.
 - 26.6.2** Commercial General Liability insurance with minimum limits of: \$5,000,000 General Aggregate limit; \$1,000,000 each occurrence sub-limit for all bodily injury or property damage incurred in any one occurrence; \$1,000,000 each occurrence sub-limit for Personal Injury and Advertising; \$5,000,000 Products/Completed Operations Aggregate limit, with a \$1,000,000 each occurrence sub-limit for Products/Completed Operations. The other Party must be named as an Additional Insured on the Commercial General Liability policy. Each Party agrees to waive its respective rights of subrogation in favor of the other Party on the Commercial General Liability policy.

- 26.6.3** If use of an automobile is required, Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits per occurrence for bodily injury and property damage, which coverage shall extend to all owned, hired and non-owned vehicles.
- 26.6.4** Each Party shall require subcontractors providing services under this Agreement to maintain in force the insurance coverage and limits required in Sections 26.6 through 26.6.3 of this Agreement provided that a Party may, with consent of the other Party, utilize a subcontractor with different limits of insurance if appropriate to the scope of work to be performed, consent not to be unreasonably withheld.
- 26.6.5** The Parties agree that companies affording the insurance coverage required under Section 26.6 shall have a rating of A- or better and a Financial Size Category rating of VII or better, as rated in the A.M. Best Key Rating Guide for Property and Casualty Insurance Companies. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance coverage.
- 26.6.6** Each Party agrees to provide the other Party with at least thirty (30) calendar days advance written notice of cancellation, material reduction or non-renewal of any of the insurance policies required herein.
- 26.6.7** This Section 26.6 is a general statement of insurance requirements and shall be in addition to any specific requirement of insurance referenced elsewhere in this Agreement or a Referenced Instrument.
- 26.7** Upon the Parties' signature of this Agreement, the Parties shall exchange state-specific authorized and nationally recognized OCN/AOCNs for facilities-based Interconnection.
- 26.8** In the event that either Party makes any corporate name change (including addition or deletion of a d/b/a), change in OCN/AOCN, or makes or accepts a transfer or assignment of interconnection trunks or facilities (including leased facilities), or a change in any other identifier (collectively, a "**Party Change**"), changing Party shall submit written notice to the other Party within thirty (30) calendar days of the first action taken to implement such Party Change. Within thirty (30) calendar days following receipt of that notice, the Parties shall negotiate rates to compensate the non-changed Party for the costs to be incurred to make the change to the applicable non-changed Party's databases, systems, records and/or recording announcement(s). In addition, the Party requesting the change shall compensate the other Party for any service order charges and/or service request charges associated with such Party Change. The Party's

agreement to implement a Party Change is conditioned upon the requesting Party's agreement to pay all reasonable charges billed for such Party Change.

26.9 When an End User changes its service provider from VTEL to COMCAST or from COMCAST to VTEL and does not retain its original telephone number, the Party formerly providing service to such End User shall furnish, upon request, a referral announcement (“**Referral Announcement**”) on the original telephone number that specifies the End User’s new telephone number.

26.9.1 Referral Announcements shall be provided by a Party to the other Party for the period of time and at the rates set forth in the referring Party’s tariff(s); provided, however, if either Party provides Referral Announcements for a period different (either shorter or longer) than the period(s) stated in its tariff(s) when its End Users change their telephone numbers, such Party shall provide the same level of service to End Users of the other Party.

26.10 Each Party shall be responsible for labor relations with its own employees. Each Party agrees to notify the other Party as soon as practicable whenever such Party has knowledge that a labor dispute concerning its employees is delaying or threatens to delay such Party’s timely performance of its obligations under this Agreement and shall endeavor to minimize impairment of service to the other Party.

27. **AUTHORITY**

27.1 Each person whose signature appears below represents that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

27.2 Each of the VTEL operating companies , for which this Agreement is executed represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Vermont.

27.3 COMCAST represents that it is a corporation duly organized, validly existing and in good standing under the laws of the State of Vermont and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. COMCAST represents that it has been certified to provide intrastate telecommunications in Vermont, including local exchange service, by the Commission prior to submitting any orders hereunder and is or will be authorized to provide the Telecommunications Services contemplated hereunder in the territory contemplated hereunder prior to submission of orders for such Service.

28. **BINDING EFFECT**

28.1 This Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

29. CONSENT

29.1 Where consent, approval, or mutual agreement is required of a Party, it will not be unreasonably withheld, conditioned or delayed.

30. EXPENSES

30.1 Except as specifically set out in this Agreement, each Party will be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

30.2 VTEL and COMCAST shall each be responsible for one-half (1/2) of any applicable expenses payable to a Third Party for Commission fees or other charges (including regulatory fees and any costs of notice or publication, but not including attorney's fees) associated with the filing of this agreement.

31. HEADINGS

31.1 The headings and number of Sections, Parts, Appendices, Schedules and Exhibits to this Agreement are inserted for convenience and identification only and will not be considered to define or limit any of the terms herein or affect the meaning or interpretation of this Agreement.

32. RELATIONSHIP OF PARTIES/INDEPENDENT CONTRACTOR

32.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

32.2 Nothing contained herein 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. Nothing herein will be construed as making

either Party responsible or liable for the obligations and undertakings of the other Party. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

33. MULTIPLE COUNTERPARTS

33.1 This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which will together constitute but one, and the same document.

34. THIRD PARTY BENEFICIARIES

34.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any Third Party beneficiary rights hereunder. This Agreement shall not provide and will not be construed to provide any Person not a party hereto with any remedy, claim, liability, reimbursement, cause of action, or other right in excess of those existing without reference hereto.

35. REGULATORY APPROVAL

35.1 The Parties understand and agree that this Agreement and any amendment or modification hereto will be filed with the Commission for approval in accordance with Section 252 of the Act and may thereafter be filed with the FCC. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification provided, however, that neither Party is deemed to waive its right to appeal the order of the Vermont Public Service Board in Docket No. 7469

36. REGULATORY AUTHORITY

36.1 VTEL will be responsible for obtaining and keeping in effect all FCC, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. COMCAST will be responsible for obtaining and keeping in effect all FCC, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with its obligations under this

Agreement. COMCAST will reasonably cooperate with VTEL in obtaining and maintaining any required approvals for which VTEL is responsible, and VTEL will reasonably cooperate with COMCAST in obtaining and maintaining any required approvals for which COMCAST is responsible.

37. COMPLIANCE AND CERTIFICATION

- 37.1 Each Party shall comply at its own expense with all Applicable Laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of Applicable Law.
- 37.2 Each Party represents that it has obtained all necessary state certification prior to ordering any Interconnection, functions, facilities, products and services from the other Party pursuant to this Agreement. Upon request, each Party shall provide proof of certification.
- 37.3 Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, Governmental Authorities, building and property owners, other carriers, and any other Third Parties that may be required in connection with the performance of its obligations under this Agreement.

38. AUDITS

- 38.1 Subject to the restrictions set forth in Section 8 and except as may be otherwise expressly provided in this Agreement, a Party (the "Auditing Party") may audit the other Party's (the "Audited Party") books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the date on which services were first supplied under this Agreement ("service start date") for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least ten percent (10%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least ten percent (10%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.

- 38.1.1** The scope of the audit shall be limited to the period which is the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if no audit has been performed, the service start date) and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not prior to the service start date. Such audit shall begin no fewer than thirty (30) calendar days after Audited Party receives a written notice requesting an audit and shall be completed no later than thirty (30) calendar days after the start of such audit.
- 38.1.2** Such audit shall be conducted either by the Auditing Party's employee(s) or an independent auditor acceptable to both Parties. If an independent auditor is to be engaged, the Parties shall select an auditor by the thirtieth (30th) day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties. Audits shall be performed at Auditing Party's expense.
- 38.1.3** Each audit shall be conducted on the premises of the Audited Party during normal business hours. Audited Party shall cooperate fully in any such audit and shall provide the auditor reasonable access to any and all appropriate Audited Party employees and any books, records and other documents reasonably necessary to assess (i) the accuracy of Audited Party's bills and (ii) Audited Party's compliance with the provisions of this Agreement that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Audited Party may redact from the books, records and other documents provided to the auditor any Audited Party Proprietary Information that reveals the identity of End Users of Audited Party.
- 38.1.4** Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.
- 38.1.5** If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 15.1.3.1 for the number of calendar days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available.

38.1.6 Any disputes concerning audit results shall be referred to the Parties' respective personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) calendar days of the referral, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in this section. Any additional audit shall be at the requesting Party's expense.

38.1.7 The scope of the audit may include a Party's ability to audit the validity of the billing record CPN, called party number, JIP, and point codes on the billing records. This includes validating that called party number and CPN are physically located in the geographic area associated with the telephone number. The Parties agree to make available all reasonable information requested by the other Party in order to verify call data. Comcast will ensure that all reasonable information will be available by (1) obtaining assurances of audit access-on-request to its affiliates or other upstream provider customer's records; or (2) routinely obtaining, as a condition of providing wholesale service to its affiliate, the signaling information and call records necessary to determine that the associated billing is accurate.

39. COMPLETE TERMS

39.1 The terms contained in this Agreement and any Appendices, Attachments, Exhibits, Schedules, and Addenda constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written.

40. COOPERATION ON PREVENTING END USER FRAUD

40.1 Neither Party shall be liable for any fraud associated with the other Party's End User's account, including 1+ IntraLATA toll, ported numbers, and Alternate Billing Service (ABS). ABS is a service that allows End Users to bill calls to account(s) that might not be associated with the originating line. There are three (3) types of ABS calls: calling card, collect, and third number billed calls.

40.2 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm one Party as compared to the other.

40.3 Neither Party shall use any services related to this agreement or provided in this Agreement in any manner that interferes with other persons in the use of their

service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's end users. The Parties shall pay applicable Tariff rates to the other Party for traffic that is not identified as Local Traffic.

41. NOTICE OF NETWORK CHANGES

41.1 Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise. Each Party agrees to provide reasonable notice of changes in the information necessary for the transmission and routing of services using facilities or networks, as well as other changes that affect the interoperability of those respective facilities and networks.

42. GOOD FAITH PERFORMANCE

42.1 In the performance of their obligations under this Agreement the Parties will act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action will not be unreasonably delayed, withheld or conditioned.

43. GOVERNMENTAL COMPLIANCE

43.1 COMCAST and VTEL each will comply at its own expense with all applicable law related to (i) its obligations under or activities in connection with this Agreement; of (ii) its activities undertaken at, in connection with or relating to work locations. COMCAST and VTEL each agree to indemnify, defend, (at the other Party's request) and save harmless the other, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties, and expenses (including reasonable attorneys' fees) that arise out of or result from its failure or the failure of its contractors or agents to so comply. Except as expressly specified in this Agreement, VTEL, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges (including, but not limited to, space and power), which are necessary for VTEL to provide services pursuant to this Agreement.

44. RESPONSIBILITY FOR ENVIRONMENTAL CONTAMINATION

44.1 Each Party will be solely responsible at its own expense for the proper handling, storage, transport, treatment, disposal and use of all Hazardous Substances by

such Party and its contractors and agents. "Hazardous Substances" includes those substances:

44.1.1 included within the definition of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste or pollutant or contaminant under any Applicable Law, and

44.1.2 listed by any governmental agency as a hazardous substance.

44.2 COMCAST will in no event be liable to VTEL for any costs whatsoever resulting from the presence or Release of any Environmental Hazard, including Hazardous Substances, that COMCAST did not introduce to the affected work location. VTEL will indemnify, defend (at COMCAST's request) and hold harmless COMCAST, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arises out of or result from (i) any Environmental Hazard that VTEL, its contractors or agents introduce to the work locations or (ii) the presence or Release of any Environmental Hazard for which VTEL is responsible under Applicable Law.

44.3 VTEL will in no event be liable to COMCAST for any costs whatsoever resulting from the presence or Release of any Environmental Hazard that VTEL did not introduce to the affected work location. COMCAST will indemnify, defend (at VTEL's request) and hold harmless VTEL, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from i) any Environmental Hazard that COMCAST, its contractors or agents introduce to the work locations or ii) the presence or Release of any Environmental Hazard for which COMCAST is responsible under Applicable Law.

45. SUBCONTRACTING

45.1 If any obligation is performed through a subcontractor, each Party will remain fully responsible for the performance of this Agreement in accordance with its terms, including any obligations either Party performs through subcontractors, and each Party will be solely responsible for payments due the Party's subcontractors. No subcontractor will be deemed a third party beneficiary for any purposes under this Agreement. Any subcontractor who gains access to CPNI or Confidential Information covered by this Agreement will be required by the subcontracting Party to protect such CPNI or Confidential Information to the same extent the subcontracting Party is required to protect the same under the terms of this Agreement.

46. REFERENCED DOCUMENTS

46.1 Unless the context shall otherwise specifically require, and subject to Section 21, whenever any provision of this Agreement refers to a technical reference, technical publication, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, or publication of industry standards.

46.2 References

References herein to Sections, Paragraphs, Exhibits, Parts, Schedules, and Appendices shall be deemed to be references to Sections, Paragraphs and Parts of, and Exhibits, Schedules and Appendices to, this Agreement unless the context shall otherwise require.

46.3 Tariff References

46.3.1 Wherever any Commission ordered tariff provision or rate is cited or quoted herein, it is understood that said cite encompasses any revisions or modifications to said tariff.

46.3.2 Wherever any Commission ordered tariff provision or rate is incorporated, cited or quoted herein, it is understood that said incorporation or reference applies only to the entity within the state whose Commission ordered that tariff.

46.4 Conflict in Provisions

46.4.1 In the event of a conflict between the provisions of this Agreement and the Act, the provisions of the Act shall govern.

46.4.2 If any definitions, terms or conditions in any given Appendix, Attachment, Exhibit, Schedule or Addenda differ from those contained in the main body of this Agreement, the definitions, terms or conditions in the main body of this Agreement will supersede those contained in any given Appendix, Attachment, Exhibit, Schedule or Addenda; provided, however unless the Appendix, Attachment, Exhibit, Schedule or Addenda explicitly calls for its definition, terms or conditions to control, which effect shall be limited to that particular Appendix, Attachment, Exhibit, Schedule or Addenda and such Appendix, Attachment, Exhibit, Schedule or Addenda

is executed by an officer (at the vice president level or higher) of both parties). If an Appendix contains a Term length that differs from the Term length in the main body of this Agreement, the Term length of that Appendix will control the length of time that services or activities are to occur under that Appendix, but will not affect the Term length of the remainder of this Agreement. Notwithstanding the foregoing provisions in this subsection 46.4.2, the provisions of Section 5 (Liability and Indemnification) and Section 6 (Breach of Contract) of Appendix WP (White Pages Directory) shall supersede the liability, indemnification and breach provisions contained in the main body of this Agreement with respect to services or activities that are to occur under Appendix WP.

46.5 Joint Work Product

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

47. SEVERABILITY

47.1 Subject to the provisions set forth in Section 4 of the General Terms and Conditions, if any term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be impaired or affected thereby. If necessary to effectuate the intent of the Parties, the Parties will promptly negotiate in good faith to amend this Agreement with a replacement provision or provisions for the unenforceable language that reflects such intent as closely as possible. If impasse is reached, the Parties will resolve said impasse under the dispute resolution procedures set forth in Section 16.

47.2 Incorporation by Reference

The General Terms and Conditions of this Agreement, and every Interconnection, function, facility, product or service provided hereunder, shall be subject to all rates, terms and conditions contained in the Appendices to this Agreement which are legitimately related to such Interconnection, function, facility, product or service.

48. SURVIVAL OF OBLIGATIONS

48.1 Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, will survive cancellation or termination thereof.

49. GOVERNING LAW

49.1 Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law, as well as the laws of the State of Vermont, and the rules and regulations of the Commission. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the Interconnection, functions, facilities, products and services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles. The Parties submit to personal jurisdiction in Vermont, and waive any and all objection to any such venue.

50. OTHER REQUIREMENTS

50.1 DIALING PARITY – SECTION 251(b)(3)

50.1.1 The Parties shall provide Dialing Parity to each other as required under Section 251(b)(3) of the Act.

51. APPENDICES INCORPORATED BY REFERENCE

51.1 This Agreement incorporates the following listed Appendices. These appendices along with their associated Attachments, Exhibits and Addenda constitute the entire Agreement between the Parties.

NIM- Network Interconnection Methods
Number Portability
Numbering
Pricing
Reciprocal Compensation
WP- White Pages
911

51.2 LOCAL NUMBER PORTABILITY- SECTION 251(b)(2)

51.2.1 The Parties shall provide to each other Local Number Portability (LNP) on a reciprocal basis as outlined in the applicable Appendix Number

Portability, which is/are attached hereto and incorporated herein by reference.

51.3 INTERCONNECTION TRUNKING REQUIREMENTS- SECTION 251(a)

51.3.1 The Parties shall provide to each other Indirect Interconnection of the Parties' facilities and equipment for the transmission and routing of Telephone Exchange Service traffic. Methods for Indirect Interconnection and Physical Architecture shall be as defined in the Appendix NIM, which is attached hereto and incorporated herein by reference. VTEL shall provide Exchange Access to COMCAST in accordance with the rates and regulations set forth in VTEL's Tariffs.

51.4 TRANSMISSION AND ROUTING OF TELEPHONE EXCHANGE SERVICE TRAFFIC

51.4.1 The Appendix Reciprocal Compensation, which is attached hereto and incorporated herein by reference, prescribe traffic routing parameters for trunks subtending the third party tandem provider the Parties shall establish over the Indirect Interconnection, which is attached hereto and incorporated herein by reference.

51.5 COMPENSATION FOR DELIVERY OF TRAFFIC- SECTION 251(b)(5)

51.5.1 The Parties agree to compensate each other for the transport and termination of traffic as provided in Appendix Reciprocal Compensation.

52. CUSTOMER INQUIRIES

52.1 Each Party will refer all questions regarding the other Party's services or products directly to the other Party at a telephone number specified by that Party.

52.2 Each Party will ensure that all of their representatives who receive inquiries regarding the other Party's services: (i) provide the numbers described in Section 52.1 to callers who inquire about the other Party's services or products; and (ii) do not in any way disparage or discriminate against the other Party or its products or services.

53. DISCLAIMER OF WARRANTIES

53.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTERCONNECTION, FUNCTIONS, FACILITIES, PRODUCTS AND SERVICES IT PROVIDES UNDER OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NO PARTY TO THIS AGREEMENT ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY ANY OTHER PARTY TO THIS AGREEMENT WHEN SUCH DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

**Comcast Phone of Vermont, LLC
d/b/a Comcast Digital Phone**

Signature Date

Susan Jin-Davis

Printed Name

Vice President, Corp. Development

Position/Title

Vermont Telephone Company, Inc.

 03/03/09

Signature Date

John Choi

Printed Name

Manager, Regulatory Affairs

Position/Title

**APPENDIX NIM
(NETWORK INTERCONNECTION METHODS)**

TABLE OF CONTENTS

1. INTRODUCTION3
2. PHYSICAL ARCHITECTURE.....3
3. METHODS OF INTERCONNECTION4
4. RESPONSIBILITIES OF THE PARTIES4
5. JOINT FACILITY GROWTH PLANNING5
6. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS .5

**APPENDIX NIM
(NETWORK INTERCONNECTION METHODS)**

1. INTRODUCTION

- 1.1 This Appendix sets forth the terms and conditions that Network Interconnection Methods (NIM) are provided by VTEL and COMCAST. This Appendix describes the physical architecture for Indirect Interconnection of the Parties' facilities and equipment for the transmission and routing of Telephone Exchange Service traffic between the respective Customers of the Parties; provided, however, Interconnection may not be used solely for the purpose of originating a Party's own interexchange traffic.
- 1.2 Network Interconnection Methods (NIMs) include Indirect Interconnection and other methods as mutually agreed to by the Parties.
- 1.3 VTEL shall provide Indirect Interconnection for COMCAST's facilities and equipment for the transmission and routing of telephone exchange service at a level of quality equal to that which VTEL provides itself, a subsidiary, an affiliate, or any other party to which VTEL provides Indirect Interconnection and on rates, terms and conditions that are just, reasonable and non-discriminatory.
- 1.4 The Parties shall effect an Interconnection that is efficient, fair and in a manner that is mutually agreeable to the Parties.

2. PHYSICAL ARCHITECTURE

- 2.1 VTEL's network is partly comprised of End Office switches that serve IntraLATA, InterLATA, Local, and EAS traffic. VTEL's network architecture in any given local exchange area and/or LATA can vary markedly from another local exchange area/LATA. Using one or more of the NIMs herein, the Parties will agree to a physical architecture plan for the Vermont LATA 124. For the Indirect Interconnection, the physical architecture plan will be completed within thirty (30) days from COMCAST's written request for interconnection contingent upon the Parties' mutual agreement on the architecture.
- 2.2 Points of Interconnection (POIs): A Point of Interconnection (POI) is a point in the network where the Parties deliver Interconnection traffic to each other, and also serves as a demarcation point between the facilities that each Party is responsible to provide.
- 2.3 Intentionally Left Blank.
- 2.4 Intentionally Left Blank.

- 2.5 Each Party is responsible for the appropriate sizing, operation and maintenance of its network facilities to its side of the POI(s) and, pursuant to the terms of this Agreement, may utilize a method of Interconnection described in this Appendix.
- 2.6 Either Party, must provide thirty (30) days written notice of any changes to the physical architecture plan.
- 2.7 Each Party is solely responsible for the facilities that carry OS/DA, 911 or mass calling for their respective End Users.
 - 2.7.1 Intentionally Left Blank.

3. METHODS OF INTERCONNECTION

- 3.1 Intentionally Left Blank.
- 3.2 Intentionally Left Blank.
- 3.3 Indirect Interconnection
 - 3.3.1 Traffic shall be exchanged indirectly by transiting through third party LEC tandems (in this case FairPoint, or its successor). Each Party shall be financially and operationally responsible for the costs incurred with providing facilities from its network to the third party tandem for the exchange of such traffic, including financial responsibility for delivering of such traffic to the third party tandem.
 - 3.3.2 For the purpose of this Attachment, 'Interconnection' only refers to Indirect Interconnection between the parties.

4. RESPONSIBILITIES OF THE PARTIES

- 4.1 If COMCAST offers local exchange service within a VTEL area, COMCAST shall provide written notice to VTEL of the need to establish Interconnection. The terms and conditions of this Agreement shall apply to such Interconnection. Such request shall include (i) COMCAST's Switch address, type, and CLLI; (ii) COMCAST's requested Interconnection activation date; and (iii) a non-binding forecast of COMCAST's traffic.
- 4.2 Upon receipt of COMCAST's notice to interconnect, the Parties shall schedule a meeting to negotiate and mutually agree on the network architecture (including trunking) to be documented as discussed above in Section 2.1. The Interconnection activation date for an Interconnection shall be established based on then-existing work force and load, the scope and complexity of the requested Interconnection and other relevant factors.

- 4.3 COMCAST and VTEL shall work cooperatively to install and maintain a reliable network. COMCAST and VTEL shall exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the federal and state government and such other information as the Parties shall mutually agree) to achieve this desired reliability.
- 4.4 COMCAST and VTEL will review engineering requirements as required and establish semi-annual forecasts for facilities utilization provided under this Appendix.
- 4.5 COMCAST and VTEL shall:
 - 4.5.1 Provide trained personnel with adequate and compatible test equipment to work with each other's technicians.
 - 4.5.2 Notify each other when there is any change affecting the service requested, including the due date.
 - 4.5.3 Recognize that a facility handoff point must be agreed to that establishes the demarcation for maintenance and provisioning responsibilities for each party on their side of the POI.

5. INTENTIONALLY LEFT BLANK.

6. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

- 6.1 Every interconnection and service provided hereunder shall be subject to all rates, terms and conditions contained in this Agreement or Tariffs as referenced in this Agreement which are legitimately related to such interconnection or service. Notwithstanding the foregoing, to the extent there is a conflict with the terms of the Tariff and this Agreement, the terms of the Agreement shall control.

APPENDIX NUMBER PORTABILITY

TABLE OF CONTENTS

1. INTRODUCTION..... 3

2. PERMANENT NUMBER PORTABILITY 3

3. MASS CALLING..... 6

4. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS..... 6

**APPENDIX NP
NUMBER PORTABILITY**

1. INTRODUCTION

- 1.1 This Appendix sets forth terms and conditions for Number Portability provided by VTEL and COMCAST.
- 1.2 The prices at which each Party agrees to provide the other Party with Number Portability are contained in the applicable Appendix PRICING and/or the applicable tariff where stated.

2. PERMANENT NUMBER PORTABILITY

2.1 General Terms and Conditions

- 2.2 The Parties agree to at all times adhere to all FCC orders that establish the technology and standards for Local Number Portability. Within five business days following the execution of this Agreement, COMCAST shall provide VTEL with a trading partner profile containing contact information for testing, port responses, questions, trouble shooting, billing inquiries, as well as other information requested by VTEL. Wireline-to-wireline LNP shall not be provided under this Agreement until COMCAST has provided VTEL with the trading partner profile.

2.2.1 VTEL may cancel any line-based calling cards associated with telephone numbers ported from their switch.

2.2.2 Complex ports require project management and will require negotiation of due date intervals. Complex ports include:

2.2.2.1 Port requests of 51 or more numbers;

2.2.2.2 Porting of 15 or more access lines for the same customer at the same location;

2.2.2.3 Porting associated with complex services including but not limited to Centrex and ISDN.

2.2.3 The Parties shall adhere to reserved number standards as set by the FCC.

2.2.4 The Parties shall cooperate in performing activities required to port Customer telephone number(s). The primary responsibility for the coordination of such activities will be assumed by the Party acquiring the End User Customer (porting in the Customer telephone number(s)).

2.3 Obligations of Both Parties

- 2.3.1 When a ported telephone number becomes vacant, e.g., the ported telephone number is disconnected by the original End User, the ported telephone number will be released back to the carrier owning the switch in which the telephone number's NXX is native after appropriate time has elapsed for intercept notification, which shall be not less than thirty (30) days. For a period of at least twelve (12) months following the Effective Date of the Agreement, Comcast shall provide written notice (i.e. e-mail, fax or mail) to VTel that a number has been released back to VTel. Such notice shall be provided by COMCAST to VTEL within one week of release of the number.
- 2.3.2 Each Party has the right to block default routed calls from entering a network in order to protect the public switched network from overload, congestion, or failure propagation.
- 2.3.3 Industry guidelines shall be followed regarding all aspects of porting numbers from one network to another. Parties agree to comply with all FCC number portability rules and orders, including those as stated in 47 CFR 52.11, 52.21-52.31, and the North American Numbering Council (NANC) Inter-Service Provider LNP Operations Flows.
- 2.3.4 Intercompany testing shall be performed prior to the submission of actual porting orders.
- 2.3.5 Each Party will designate a single point of contact (SPOC) to schedule and perform required testing. These tests will be performed during a mutually agreed time frame and must meet the criteria set forth by the InterIndustry LNP Regional Team for porting.
- 2.3.6 Each Party shall abide by NANC and the InterIndustry LNP Regional Team provisioning and implementation processes.
- 2.3.7 Each Party shall become responsible for the End User's other telecommunications related items, e.g. E911, Directory Listings, Operator Services, Line Information Database (LIDB), when they port the End User's telephone number to their switch. At the time the releasing Party removes translations associated with the ported telephone number from its switch, VTEL shall no longer retain responsibility for Continuous Emergency Access ("CEA") pursuant to either section 7.106(B)(1) subsection (c) or (e) of the Vermont Public Service Board rules; provided however, the scope of CEA obligations of COMCAST are subject to further review and ruling by the Commission. Once the Commission has conducted its review and provided a ruling regarding the scope of COMCAST's CEA obligations, such rules shall be incorporated herein this Agreement. When a telephone number is ported back to VTEL, at the

time COMCAST removes translations associated with the ported telephone number from its switch, VTEL shall assume responsibility for CEA pursuant to either section 7.106(B)(1) subsection (c) or (e).

- 2.3.8 The Parties will provide a 10-digit trigger on all LNP orders unless a coordinated conversion of numbers is requested on the PNP order. The 10-digit trigger will remain active on the porting-out Party's switch until the first business day following the port due date at which time the line shall be physically disconnected from the porting-out Party's switch.

2.4 Limitations of Service

- 2.4.1 Telephone numbers can be ported only within VTEL rate centers or rate districts, which ever is a smaller geographic area, as approved by the State Commission. If geographic number portability is ordered by the FCC or the Commission during the term of this Agreement, the Parties will promptly negotiate any necessary revisions to this appendix to accommodate geographic number portability. In the event the Parties are unable to negotiate such changes within thirty (30) days, either Party may invoke the dispute resolution procedures under this Agreement.

- 2.4.2 Telephone numbers with NXXs dedicated to choke/High Volume Call-In (HVCI) networks are not portable via LRN. Such numbers will be ported on an ICB basis upon request.

2.5 Service Descriptions

- 2.5.1 The N-1 carrier (N carrier is the responsible Party for terminating call to the End User) has the responsibility to determine if a query is required, to launch the query, and to route the call to the switch or network in which the telephone number resides.

- 2.5.2 If a Party chooses not to fulfill its N-1 carrier responsibility, the other Party will perform queries on calls to telephone numbers with portable NXXs received from the N-1 carrier and route the call to the switch or network in which the telephone number resides. VTEL will perform LNP Query Service for COMCAST pursuant to the terms and conditions set forth in National Exchange Carrier Association (NECA) Tariff FCC No. 5. COMCAST will perform N-1 responsibilities on the same terms as VTEL provides for in its applicable tariff.

- 2.5.3 A Party shall be responsible for payment of charges to the other Party for any queries made on the N-1 carrier's behalf when one or more telephone numbers have been ported in the called telephone number's NXX.

Charges by each Party will be at the rate set forth in VTEL's applicable tariff.

- 2.5.4 Both Parties shall populate the Jurisdictional Identification Parameter (JIP) field with the first six (6) digits (NPA NXX format) of the appropriate LRN of the originating switch for any ported telephone number.

2.6 Pricing

- 2.6.1 The price of PNP queries shall be the same as those in NECA's FCC No. 5 Access Services Tariff in which VTEL is a concurring carrier. COMCAST will perform N-1 queries at prices no higher than VTEL provides for in its applicable tariff.

- 2.6.2 Other than the standard Service Order charges for processing Local Service Requests (LSRs) as specified in Appendix Pricing, the Parties agree not to charge each other or any of the other Party's End Users for the provisioning or conversion of ported telephone numbers during regular working hours. To the extent either Party requests porting to be performed outside of other Party's regular working hours, or the work requires the porting-out Party's technicians or project managers to work outside of regular working hours, premium time and material charges shall apply.

3. **MASS CALLING**

3.1 General Terms and Conditions

- 3.1.1 Mass calling codes, i.e., choke/HVCI NXXs, are used in a network serving arrangement in special circumstances where large numbers of incoming calls are solicited by an End User and the number of calls far exceeds the switching capacity of the terminating office, the number of lines available for terminating those calls, and/or the STP's query capacity to the PNP database. Number portability for mass calling codes will be done on an Individual Case Basis.

4. **APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS**

- 4.1 Every interconnection and service provided hereunder shall be subject to all rates, terms and conditions contained in this Agreement or Tariffs as referenced in this Agreement which are legitimately related to such interconnection or service. Notwithstanding the foregoing, to the extent there is a conflict with the terms of the Tariff and this Agreement, the terms of the Agreement shall control.

APPENDIX NUMBERING

TABLE OF CONTENTS

1. INTRODUCTION	3
2. GENERAL TERMS AND CONDITIONS	4
3. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS	4

APPENDIX NUMBERING

1. INTRODUCTION

- 1.1 This Appendix sets forth the terms and conditions under which VTEL and COMCAST will coordinate with respect to NXX assignments.

2. GENERAL TERMS AND CONDITIONS

- 2.1. Nothing in this Agreement shall be construed to limit or otherwise adversely impact in any manner either Party's right to employ or to request and be assigned any North American Numbering Plan (NANP) number resources from the numbering administrator including, but not limited to, central office (NXX) codes pursuant to the Central Office Code Assignment Guidelines, or to establish, by tariff or otherwise, Exchanges and Rating Points corresponding to such NXX codes. Each Party is responsible for administering the NXX codes it is assigned.
- 2.2. Parties agree to adhere to all FCC orders, and NANC and INC Guidelines related to Central Office Code administration and Thousands-Block Number Pooling.
- 2.3. Each Party is responsible to program and update its own switches and network systems to recognize and route traffic to the other Party at all times.
- 2.4. Each Party is responsible to input required data into the Routing Data Base Systems (RDBS) and into the Telcordia Rating Administrative Data Systems (BRADS) or other appropriate system(s) necessary to update the Local Exchange Routing Guide (LERG).
- 2.5. Neither Party is responsible for notifying the other Parties' End Users of any changes in dialing arrangements, including those due to NPA exhaust.
- 2.6. Test Numbers
 - 2.6.1. Each Party is responsible for providing to the other, valid test numbers. One number terminating to a voice announcement identifying the Company and one number terminating to a milliwatt tone providing answer supervision and allowing simultaneous connection from multiple test lines. Both numbers should remain in service indefinitely for regressive testing purposes.

3. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

- 3.1 Every interconnection and service provided hereunder shall be subject to all rates, terms and conditions contained in this Agreement or Tariffs as referenced in this Agreement which are legitimately related to such interconnection or service. Notwithstanding the foregoing, to the extent there is a conflict with the terms of the Tariff and this Agreement, the terms of the Agreement shall control.

APPENDIX-PRICING

TABLE OF CONTENTS

1. INTRODUCTION..... 3

2. RECURRING CHARGES 3

3. NON-RECURRING CHARGES 3

4. BILLING 4

5. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS 4

APPENDIX PRICING

1. INTRODUCTION

- 1.1 This Appendix sets forth the pricing terms and conditions for VTEL and COMCAST.
- 1.2 If a rate element and/or charge for a product or service contained in, referenced to or otherwise provided by a Party under this Agreement (including any attached or referenced Appendices) is not listed in this Appendix PRICING, such rates and charges shall be determined in accordance with the rate regulations set forth in Tariffs. However, if a Party provides a product or service that is not subject to rate regulations contained in a Tariff, such rate(s) and/or charges shall be as negotiated by the Parties hereto.
- 1.3 Except as otherwise agreed upon by the Parties in writing or by the publication of or concurrence in tariffs or price lists filed with the FCC or the Commission, a Party shall not be required to provide the other Party a product or service under this Agreement unless and until the Parties have agreed upon a rate element or charge (whether a final rate/charge or, as agreed upon by the Parties, an interim rate/charge subject to a true-up, true-down) applicable to the requested product and/or service.
- 1.4 The pricing list is in Attachment A found in this Appendix PRICING.

2. RECURRING CHARGES

- 2.1 Unless otherwise identified in Attachment A of this Appendix PRICING, where rates are shown as monthly, a month will be defined as a 30-day calendar month. The minimum term for each monthly rated element will be one (1) month. After the initial month, billing will be on the basis of whole or fractional months used. The minimum term for non-monthly rated services, if applicable, will be specified in the rate table included in this Appendix.
- 2.2 Where rates are distance sensitive, the mileage will be calculated on the airline distance involved between the locations. To determine the rate to be billed, the Parties will first compute the mileage using the V&H coordinates method, as set forth in the National Exchange Carrier Association, Inc. Tariff FCC No 4. When the calculation results in a fraction of a mile, the fractional mileage will be rounded up to the next whole mile before determining the mileage and applying rates.

3. NON-RECURRING CHARGES

- 3.1 Where rates consist of usage sensitive charges or per occurrence charges, such rates are classified as “non-recurring charges.”
- 3.2 A party (“Submitting Party”) shall pay a service order processing/administration charge for each service order submitted by Submitting Party to the other Party.
- 3.3 Some items, which must be individually charged (e.g., extraordinary charges, COMCAST Changes, VTEL Changes, etc.), are billed as nonrecurring charges.
- 3.4 Time and Material charges (a.k.a. additional labor charges) are defined in the Pricing Attachment A.
- 3.5 All charges assume work performed during normal business hours (8:00 AM to 5:00 PM Monday through Friday). For work requested outside of normal business hours or on weekends and holidays, premium rates will apply.

4. BILLING

- 4.1 For information regarding billing, non-payment, disconnects and dispute resolution, see the General Terms and Conditions of this Agreement.

5. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

- 5.1 Every interconnection and service provided hereunder shall be subject to all rates, terms and conditions contained in this Agreement or Tariffs as referenced in this Agreement which are legitimately related to such interconnection or service. Notwithstanding the foregoing, to the extent there is a conflict with the terms of the Tariff and this Agreement, the terms of the Agreement shall control.

**VTel - Comcast
Contracted Interconnection Rates**

	VTel-Comcast	
	Vermont	
	Monthly Recurring	Non Recurring
<u>Local Service Non-Recurring Charges (see Appendix NP)</u>		
Local Service Order (LSR)		
Per Initial Order:		\$30.00
Per Supplemental Order:		\$9.75
Expedited Order		\$75.00
Directory Service Order (DSR)- per Order		\$5.00
Miscellaneous Testing and other Additional Labor- each half hour or fraction thereof		
Standard Time per Craft employee per hour		\$125.00
Overtime per Craft employee per hour		\$187.50
Premium Time per Craft employee per hour		\$250.00
Standard Time per Engineering/Management employee per hour		\$160.00
Overtime per Engineering/Management employee per hour		\$240.00
Premium Time per Engineering/Management employee per hour		\$320.00
<u>Account Establishment Fee shall be</u>		\$0.00
<u>RECIPROCAL COMPENSATION (see Appendix Recip Comp)</u>		
<u>Local Traffic Termination**</u>		Bill and Keep**
Should Local Traffic become out of balance (>60/40) a reciprocal Local Traffic Termination rate shall be developed and this Attachment shall be updated to incorporate such rate.		
<u>WHITE PAGES (see Appendix WP)</u>		
<u>Directory</u>		
Per book copy delivered to COMCAST End User		\$14.50
Per Book copy Delivered in Bulk to COMCAST		14.50*
<i>*5% discount on orders over 500</i>		
Per Single Sided Informational Page		\$100.00

**APPENDIX
RECIPROCAL COMPENSATION**

TABLE OF CONTENTS

1. INTRODUCTION3

2. TRANSMISSION AND ROUTING OF TELEPHONE EXCHANGE SERVICE TRAFFIC RELEVANT TO
COMPENSATION3

3. RESPONSIBILITIES OF THE PARTIES6

4. LOCAL TRAFFIC COMPENSATION.....7

5. BILLING FOR MUTUAL COMPENSATION7

6. APPLICABILITY OF OTHER RATES TERMS AND CONDITIONS.....8

**APPENDIX RECIPROCAL COMPENSATION
(Mutual Compensation for Transport, Termination, and Transiting)**

1. INTRODUCTION

1.1 This Appendix sets forth terms and conditions for Reciprocal Compensation provided by VTEL and COMCAST.

2. TRANSMISSION AND ROUTING OF TELEPHONE EXCHANGE SERVICE TRAFFIC RELEVANT TO COMPENSATION

2.1 The Telecommunications traffic exchanged between COMCAST and VTEL will be classified as Local Traffic, ISP-Bound Traffic, IP-Enabled Voice Traffic, intraLATA Toll Traffic, or interLATA Toll Traffic.

“Local Traffic,” for purposes of intercarrier compensation, is Telecommunications traffic originated by a End User Customer of one Party in an exchange on that Party’s network and terminated to a End User Customer of the other Party on that other Party’s network located within the same exchange or other non-optional extended local calling area associated with the originating customer’s exchange as defined by VTEL’s applicable local exchange tariff. Such traffic shall be considered Local Traffic for the purposes of intercarrier compensation, whether or not the traffic is VoIP-originated or VoIP-terminated. Local Traffic does not include: (1) any ISP-Bound Traffic; (2) traffic that does not originate and terminate within the same VTEL local calling area as such local calling area is defined by VTEL’s applicable local exchange tariff; (3) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (4) optional extended local calling area traffic; (5) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; (6) Tandem Transit Traffic or (7) Exchange Access or Switched Exchange Access Service traffic. The Parties shall pay access charges set forth in their respective Tariffs to the terminating Party for all traffic that does not qualify as Local Traffic.

2.1.1 “ISP-Bound Traffic” means traffic that originates from or is directed, either directly or indirectly, to or through an information service provider or Internet service provider (ISP) who is physically located in an exchange within the local calling area of the originating End User. Traffic originated from, directed to or through an ISP physically located outside the originating End User’s local calling area will be considered toll traffic and subject to access charges. Subject to Section 4 of the General Terms and Conditions, the Parties rights and obligations with respect to intercarrier compensation that may be due in connection with their exchange of telecommunications traffic delivered to Internet Service Providers (ISPs) (Internet Traffic) shall be governed by the Order on

Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98 and 99-68.

- 2.1.2 For purposes of this Agreement and subject to Section 4 of the General Terms and Conditions of this Agreement, "IP-Enabled Voice Traffic" means any IP-enabled, real-time, multi-directional voice call, including, but not limited to, service that mimics traditional telephony. IP-Enabled Voice Traffic includes:
- 2.1.2.1 Voice traffic originating on Internet Protocol Connection (IPC), and which terminates on the Public Switched Telephone Network (PSTN); and
 - 2.1.2.2 Voice traffic originated on the PSTN, and which terminates on IPC, and
 - 2.1.2.3 Voice traffic originating on the PSTN, which is transported through an IPC, and which ultimately, terminates on the PSTN.
- 2.2 Reciprocal compensation applies for transport and termination of Local Traffic terminated by either Party's switch. The Parties agree that the jurisdiction of a call is determined by its originating and terminating (end-to-end) points, including the physical locations of the originating and terminating points for calls that originate to or terminate from VNXX numbers. When an End User originates a call which terminates to an End User physically located in the same local calling area and served on the other Party's switch, the originating Party shall compensate the terminating Party for the transport and termination of Local Traffic in accordance with Section 4 of this Appendix.
- 2.3 Notwithstanding any other provision of the Agreement, Local Traffic does not include ISP-Bound Traffic. COMCAST and VTEL agree to terminate each other's ISP-Bound Traffic on a Bill and Keep basis of reciprocal compensation. "Bill and Keep" shall mean that the originating Party has no obligation to pay terminating charges to the terminating Party, regardless of any charges the originating Party may assess its End Users.
- 2.4 When COMCAST establishes service in a new area, the Parties' obligation for reciprocal compensation to each other shall commence on the date the Parties agree that the network is complete (*i.e.*, each Party has established its originating trunks as well as any ancillary functions (*e.g.*, 9-1-1)) and is capable of fully supporting originating and terminating End Users' (and not a Party's test) traffic. If there is no formal agreement as to the date of network completion, it shall be

considered complete no later than the date that live traffic first passes through the network.

- 2.5 The compensation arrangements set forth in this Appendix are not applicable to (i) Exchange Access traffic, (ii) traffic originated by one Party on a number ported to its network that terminates to another number ported on that same Party's network or (iii) any other type of traffic found to be exempt from reciprocal compensation by the FCC or the Commission. All Exchange Access traffic and intraLATA Toll Traffic shall continue to be governed by the terms and conditions of applicable federal and state access tariffs. Optional calling plans, where applicable, will be classified as toll traffic.
- 2.6 IP-Enabled Voice Traffic shall be assigned to the corresponding jurisdiction for compensation purposes, if all the signaling parameters are included with the traffic exchange. Calling Party Number ("CPN") and Jurisdictional Indicator Parameter ("JIP"), where applicable, of the originating IP-Enabled Voice Traffic shall indicate the geographical location of the actual IPC location, not the location where the call enters the PSTN. Where the CPN and the called party number are in the same exchange or other non-optional extended local calling area, the traffic shall be exchanged pursuant to Section 4 of this Appendix. Where the CPN and the called party are not located in the same exchange, the appropriate compensation shall be pursuant to each Party's Tariff. Notwithstanding the foregoing, the jurisdiction of the call will be based on the physical location of the customer.
- 2.7 Private Line Services include private line-like and special access services and are not subject to local reciprocal compensation. Private Line Services are defined as dedicated Telecommunications channels provided between two points or switched among multiple points and are used for voice, data, audio or video transmission. Private Line services include, but are not limited to, Wide Area Telecommunications Services (WATS). The Parties shall purchase Private Line Services out of the respective tariffs.
- 2.8 Except as provided otherwise in this Agreement, the Parties understand and agree that either Party, upon ten (10) days written notice to the other Party, may block any traffic that is improperly routed by the other Party over any trunk groups and/or which is routed outside of the mutual agreement of the Parties. Notwithstanding the foregoing, a denial by the noticed Party that traffic is being improperly routed shall invoke the dispute resolution procedures provided in Section 16 of the Agreement.
- 2.9 Neither Party shall be obligated to compensate the other Party or any Third Party for telecommunications traffic that is inappropriately routed.

3. RESPONSIBILITIES OF THE PARTIES

- 3.1 Each Party to this Appendix will be responsible for the accuracy and quality of its data as submitted to the respective Parties involved. It is the responsibility of each Party to originate and transmit complete and unaltered calling party number (CPN), as received by an originating party. Each Party is individually responsible to provide facilities within its network for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network as referenced in Telcordia Technologies BOC Notes on LEC Networks and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the Telecommunications Service Priority (TSP) System for National Security Emergency Preparedness (NSEP).
- 3.2 Each Party is responsible to input required data into Routing Data Base Systems (RDBS) and into Telcordia Technologies Rating Administrative Data Systems (example: BRADS) or other appropriate system(s) necessary to update the Local Exchange Routing Guide.
- 3.3 Neither Party shall use any Interconnection, function, facility, product, network element, or service provided under this Agreement or any other service related thereto or used in combination therewith in any manner that interferes with or impairs service over any facilities of either Party, its affiliated companies or other connecting telecommunications carriers, prevents any carrier from using its Telecommunication Service, impairs the quality or privacy of Telecommunications Service to other carriers or to either Party's End Users, causes hazards to either Party's personnel or the public, damage to either Party's or any connecting carrier's facilities or equipment, including any malfunction of ordering or billing systems or equipment. Upon such occurrence, either Party may discontinue or refuse service for so long as the other Party is violating this provision. Upon any such violation, either Party shall provide the other Party notice of the violation at the earliest practicable time.
- 3.4 Each Party is solely responsible for the services it provides to its End Users and to other Telecommunications Carriers.
- 3.5 Where SS7 connections exist, each Party will provide the other with the proper signaling information (e.g., originating Calling Party Number, JIP, where applicable, and destination called party number, etc.), to enable each Party to issue bills in a complete and timely fashion. All CCS signaling parameters will be provided including CPN, JIP, where applicable, Originating Line Information Parameter (OLIP) on calls to 8XX telephone numbers, calling party category, Charge Number, etc. All privacy indicators will be honored.

4. LOCAL TRAFFIC COMPENSATION

- 4.1 The rates, terms, conditions contained herein apply only to the termination of Local Traffic on the Parties' networks. All applicable rate elements can be found in Appendix PRICING.
- 4.2 Based on the assumption that the Local Traffic exchanged by the Parties will be roughly balanced (i.e., neither Party is terminating more than sixty percent (60%) of the Parties' total terminated minutes for Local Traffic), the Parties shall initially terminate each other's Local Traffic on a Bill and Keep basis.
- 4.3 Either Party may request that a traffic study be performed no more frequently than once a quarter. Should such traffic study indicate, in the aggregate, that the traffic is no longer in balance, based on traffic exceeding the out-of-balance percentage for three (3) consecutive months, either Party may notify the other of their intent to bill for Local Traffic termination. At such time, the Parties shall mutually agree upon and amend Appendix PRICING to incorporate rates for transport and termination of Local Traffic which shall be utilized for the duration of the Term of this Agreement unless otherwise agreed by the Parties. A minimum of ninety (90) days written notice is required prior to the first billing of mutual compensation.
- 4.4 End Office Termination Rate
- 4.4.1 If the Parties invoke billing for Local Traffic termination pursuant to Section 4.3 of this Appendix, the End Office Termination rate applies to Local Traffic that is delivered to the Parties for termination at an End Office Switch. This includes direct-routed Local Traffic that terminates to offices that have combined Tandem Office Switch and End Office Switch functions.

5. BILLING FOR MUTUAL COMPENSATION

- 5.1 Intentionally left blank.
- 5.1.1 For traffic exchanged between the Parties via third party tandems, each Party may utilize records provided by the tandem operator to invoice for traffic terminating on its network. The Parties agree to accept the billing records from the tandem operator as representative of the traffic exchanged between the Parties.
- 5.2 Intentionally left blank.
- 5.2.1 Where SS7 connections exist between VTEL and COMCAST, if either Party fails to provide CPN (valid originating information) or JIP, where

applicable, on at least ninety-five percent (95%) of total traffic, then traffic sent to the other Party without CPN or JIP (valid originating information) will be handled in the following manner.

5.2.1.1 The remaining five percent (5%) of unidentified traffic will be treated as having the same jurisdictional ratio as the ninety-five (95%) of identified traffic.

5.2.1.2 If the unidentified traffic exceeds five percent (5%) of the total traffic, fifty percent (50%) of the unidentified traffic shall be billed at a rate equal to interstate access charges and fifty percent (50%) shall be billed at a rate equal to intrastate access charges.

5.2.1.3 The Parties will coordinate and exchange data as necessary to determine the cause of the CPN or JIP failure and to assist its correction.

5.3 Audits of usage associated with Reciprocal Compensation shall be performed as specified in § 38 of the General Terms and Conditions of this Agreement.

5.4 The Parties shall be governed by applicable state and federal rules, practices and procedures regarding the provision and recording of billing records. Neither Party shall bill for records older than one hundred eighty (180) days.

6. APPLICABILITY OF OTHER RATES TERMS AND CONDITIONS

6.1 Every interconnection and service provided hereunder shall be subject to all rates, terms and conditions contained in this Agreement or Tariffs as referenced in this Agreement which are legitimately related to such interconnection or service. Notwithstanding the foregoing, to the extent there is a conflict with the terms of the Tariff and this Agreement, the terms of the Agreement shall control.

APPENDIX WP

TABLE OF CONTENTS

1. INTRODUCTION..... 3

2. SERVICE PROVIDED 3

3. USE OF SUBSCRIBER LISTING INFORMATION 5

4. PRICING 6

5. LIABILITY 6

6. BREACH OF CONTRACT 7

7. TERM..... 7

8. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS..... 7

**APPENDIX WP
(WHITE PAGES DIRECTORY)**

1. INTRODUCTION

- 1.1 This Appendix sets forth terms and conditions that shall apply to COMCAST for inclusion of End User Listings in VTEL White Page Telephone Directory and Directory Assistance databases provided by VTEL.
- 1.2 The prices at which VTEL agrees to provide COMCAST with White Page and Directory Assistance database services are contained in the applicable Appendix PRICING.

2. SERVICE PROVIDED

- 2.1 VTEL publishes White Pages (WP) directory for the Vtel Service area in which COMCAST also provides local exchange telephone service, and COMCAST wishes to include alphabetical listings information for its End Users in the appropriate VTEL WP directory and/or Directory Assistance databases.
- 2.2 COMCAST also desires distribution to its End Users of the WP directory that includes listings of COMCAST's End Users.
- 2.3 VTEL shall provide COMCAST and its End Users access to WP and/or directory listings under the following terms:
 - 2.3.1 COMCAST shall furnish to VTEL via a Local Service Request (LSR) or Directory Service Request (DSR) all new, changed and deleted subscriber listing information pertaining to COMCAST End Users located within the local directory scope, along with such additional information as VTEL may require to prepare and print the alphabetical listings of said directory. COMCAST may provide COMCAST's subscriber listing information to VTEL for inclusion in the WP directory up to ten (10) days prior to the business office close date. Applicable service order charges as set forth in Appendix PRICING shall apply. VTEL will provide the business office close date(s) to COMCAST for the WP directory immediately following the execution of this Agreement by both Parties and, following that, once annually at least one-hundred twenty (120) days in advance of future business office close dates.
 - 2.3.2 So long as COMCAST provides listing information to VTEL as set forth above, VTEL will include in appropriate WP directory the primary alphabetical listings of all COMCAST End Users located within the local directory scope. VTEL will also include, where applicable for COMCAST business End Users, one alphabetical, non-bold yellow page listing on the same basis as provided for VTEL business End Users.

- 2.3.3 Additional, designer and foreign listings will be offered by VTEL upon request at tariffed rates as set forth in applicable VTEL General Subscriber Services Tariffs.
- 2.3.4 COMCAST's End User listings will be alphabetically interfiled with VTEL's subscriber listings of the WP directory. After the business office close date for a particular directory, VTEL shall provide COMCAST the directory publisher's interfiled proof of the subscriber listings as such listings are to appear in the directory. The verification list shall also include Directory Delivery Address information for each COMCAST End User. COMCAST shall review this verification list upon receipt and shall submit to VTEL any necessary additions, deletions or modifications within five (5) Business Days.
- 2.3.5 Each COMCAST subscriber will receive one copy per primary End User listing of VTEL's WP directory in the same manner and at the same time that they are delivered to VTEL's subscribers during the annual delivery of the newly published directory. VTEL has no obligation to provide any additional WP directories above the directories provided to COMCAST or COMCAST customers after each annual distribution of newly published WP. For WP directories and/or WP directories that are co-bound with Yellow Pages, COMCAST may provide to VTEL written specifications of the total number of directories that it will require, at least sixty (60) days prior to the business office directory close date. In that event, VTEL will deliver the remaining directories included in the COMCAST's order in bulk to an address specified by COMCAST.
- 2.3.6 VTEL will provide COMCAST with 1/8th page in each directory (where COMCAST has or plans to have local telephone exchange customers) for COMCAST to include COMCAST specific-information (i.e., business office, residence office, repair bureau, etc.) in the WP directory on an "index-type" informational page. No advertising will be permitted on such informational page. This page will also include specific information pertaining to other CLECs. At its option, COMCAST shall provide VTEL with its logo and information in the form of a camera-ready copy, sized at 1/8th of a page. The content of COMCAST's camera-ready copy shall be subject to VTEL's approval, which shall not unreasonably be withheld.
- 2.3.7 At its request, COMCAST may purchase "Informational Page(s)" in the informational section of the WP directory covering a geographic area where COMCAST provides local telecommunications exchange service. Such page(s) shall be no different in style, size, color and format than VTEL's "Informational Pages". Sixty (60) calendar days prior to the business office directory close date, COMCAST shall provide to VTEL the "Informational Page" in the form of camera-ready copy.

2.3.8 VTEL will include and maintain COMCAST End User listings in VTEL's Directory Assistance databases. To the extent that VTEL's directory assistance listings are maintained in a database administered by a third party, COMCAST shall cooperate with VTEL as needed to have COMCAST listings loaded into such database. COMCAST shall provide such Directory Assistance listings to VTEL at no charge.

2.3.8.1 The Parties acknowledge that at the time of execution of this Agreement, VTEL is unable to load CLEC End User listings into the Directory Assistance database administered by Fairpoint.

2.3.8.2 VTEL has established an electronic Directory Assistance database feed with Fairpoint and shall include CLEC listing information on the same basis as VTEL provides for its customer listings.

2.3.9 COMCAST shall provide to VTEL, pursuant to the LSR or DSR provisioning process as described in Section 2.3.1 above, the names, addresses and telephone numbers of all End Users who wish to be listed in the directory assistance database but omitted from publication in WP directories (Non-published). Non-Published listings will be subject to the rates as set forth in VTEL's applicable General Subscriber Services Tariff. Comcast is responsible to properly reflect in the LSRs or DSRs where the name, address and telephone number(s) of its End User is omitted from the directory assistance database, the WP directories, or both.

3. USE OF SUBSCRIBER LISTING INFORMATION

3.1 COMCAST authorizes VTEL to include and use the subscriber listing information provided to VTEL pursuant to this Appendix in VTEL's appropriate printed WP directory and Directory Assistance database(s). Included in this authorization is the exchange of extended area service listings VTEL provides for Independent Company directory publications and release of COMCAST listings to requesting competing carriers solely as required by Section 251(b)(3) and any applicable state regulations and orders. Also included in this authorization is VTEL's use of COMCAST's subscriber listing information in VTEL's current and future directory.

3.2 VTEL will take appropriate measures to guard against any unauthorized use of COMCAST's directory listing information using the same measures and at the same level of confidentiality that VTEL affords its own directory listing information.

4. PRICING

- 4.1 The rates for the services described herein are identified in Appendix PRICING. If COMCAST provides its subscriber listing information to VTEL's listings database, VTEL will assess a per book copy, per subscriber line, charge at the time newly published directories are distributed to COMCAST End Users listed in the directory, plus an annual, per book copy charge at the time directories are delivered in bulk to COMCAST. Included in this rate, COMCAST will receive for its End User, one primary listing in VTEL's WP directory; and, at the time of annual distribution of newly published directories, one copy of the directory provided to either COMCAST's End Users, or in bulk to the COMCAST location. VTEL has no obligation to warehouse WP directories for COMCAST or provide WP directories to COMCAST's End Users subsequent to the annual distribution of newly published directories.
- 4.2 VTEL has no obligation to provide any additional WP directories above the number of directories distributed to the COMCAST End Users or forecast by COMCAST per Section 2.3.5 above. While VTEL has no obligation to provide WP directories to COMCAST or COMCAST's End Users after the annual distribution of newly published directories, VTEL will in good faith attempt to accommodate COMCAST requests for "Subsequent" directory orders (orders placed after the initial order/forecast is provided - see Section 2.3.5 above). Orders for directories above the forecast number(s) will be filled subject to availability. In such event, VTEL will provide the directories in bulk to COMCAST and will assess a per book charge.

5. LIABILITY & INDEMNIFICATION

- 5.1 COMCAST hereby releases VTEL from any and all liability for damages due to errors or omissions in COMCAST's subscriber listing information as provided to VTEL under this Appendix, and/or COMCAST's subscriber listing information as it appears in the WP directory, including, but not limited to, special, indirect, consequential, punitive or incidental damages. The above notwithstanding, VTEL shall indemnify COMCAST for claims by third parties for errors in directory listings to the extent, and only to the extent, such claims are caused by the intentionally wrongful acts or gross negligence of VTEL or its employees.
- 5.2 This Appendix shall not establish, be interpreted as establishing, or be used by either Party to establish or to represent their relationship as any form of agency, partnership or joint venture. Neither Party shall have any authority to bind the other nor to act as an agent for the other unless written authority, separate from this Appendix, is provided. Nothing in the Appendix shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties. Nothing herein shall be construed as making either Party responsible or liable for the obligations and undertakings of the other Party.

6. BREACH OF CONTRACT

6.1 If either Party is found to have materially breached this Appendix and the breaching Party fails to cure the breach within thirty (30) calendar days after receipt of notice from the other Party, the non-breaching Party may terminate the Appendix by providing written notice to the breaching Party, whereupon this Appendix shall be null and void with respect to any issue of VTEL's WP directory published sixty (60) or more calendar days after the date of receipt of such written notice.

7. TERM

7.1 The term of this Appendix shall be coterminous with the term of the Interconnection Agreement. Upon termination, where no successor interconnection agreement is being negotiated, arbitrated or adopted, VTEL shall cease using, for any purpose whatsoever, the subscriber listing information provided hereunder by COMCAST, and shall promptly return such subscriber listing information to the COMCAST.

7.2 Upon termination of the Interconnection Agreement, where no successor interconnection agreement is being negotiated, arbitrated or adopted, this Appendix will be null and void with respect to any issue of directories published thereafter, except that the indemnification provided by Section 6 herein shall continue with respect to any directory published within one hundred and twenty (120) calendar days of termination.

8. APPLICABILITY OF OTHER RATES, TERMS AND CONDITIONS

8.1 Every interconnection and service provided hereunder shall be subject to all rates, terms and conditions contained in this Agreement or Tariffs as referenced in this Agreement which are legitimately related to such interconnection or service. Notwithstanding the foregoing, to the extent there is a conflict with the terms of the Tariff and this Agreement, the terms of the Agreement shall control.

APPENDIX 911

TABLE OF CONTENTS

1. INTRODUCTION..... 3

2. 911 SERVICE 3

APPENDIX E911

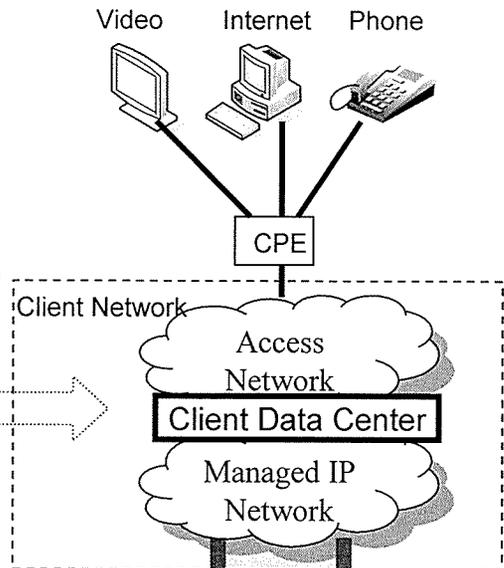
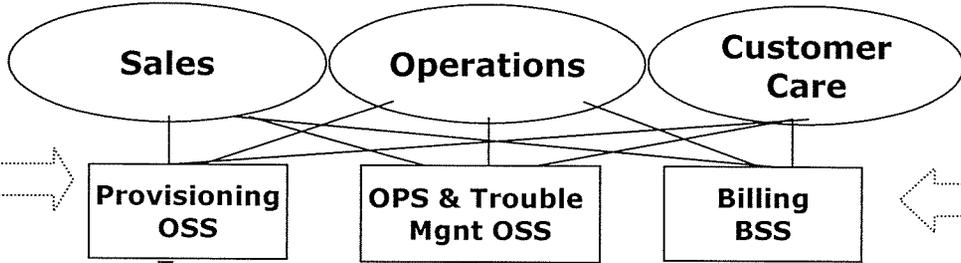
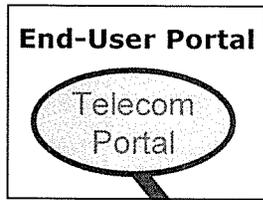
1. INTRODUCTION

- 1.1 This Appendix sets forth terms and conditions that shall apply for 911 (E911) arrangements.

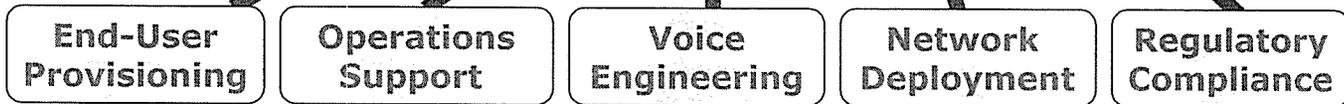
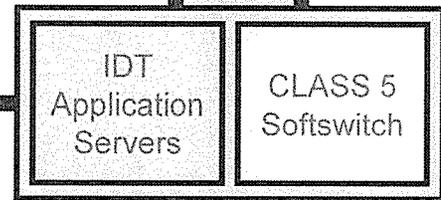
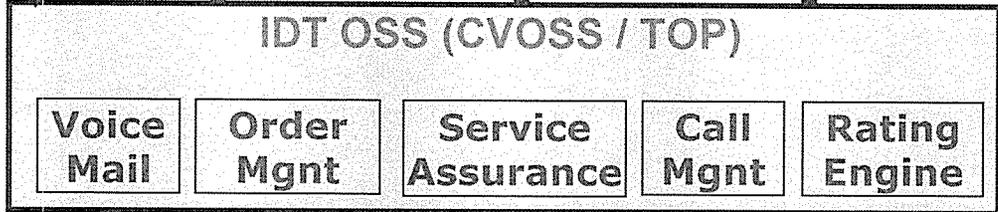
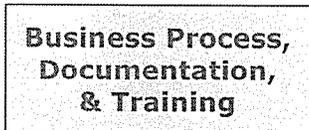
2. 911 SERVICE

- 2.1 911 Arrangements are arrangements for routing 911 calls from a Party's Customers to the appropriate Public Safety Answering Point ("PSAP"), passing certain customer information for display at the PSAP answering station based on the class of 911 service (Basic 911 or E911) deployed in the area.
- 2.2 As of the Effective Date of this Agreement, VTel is not the 911 service provider serving the PSAP and each party is solely responsible for making their own 911 Arrangements to connect to the current 911 service provider and for making updates on a timely basis to the ALI database for their respective Customers. In the event that VTel becomes the 911 service provider for any exchange where Comcast is providing service under this Agreement, VTel will provide Comcast advance notice of no less than one hundred eighty (180) days and the Parties agree to negotiate terms to amend this Agreement for the provision of 911 Arrangements by VTel to Comcast.

MetroCast



IDT-America



- Address Validation
- Directory Listing
- CallerID
- 911-ALI / PS-ALI
- Number Ordering
- Number Porting
- Error Correction

- 24X7 NOC
- SLA Compliance
- Service OPS Mgr
- Network Monitoring
- Trouble Resolution
- Reporting

- Network Design
- Capacity Planning
- Circuit Ordering
- Carrier Mgmt

- Client Network Eval
- Business Process Development
- Hardware Deployment
- Device Certification (MTA, CMTS, etc)

- 911
- CALEA
- TRS
- etc

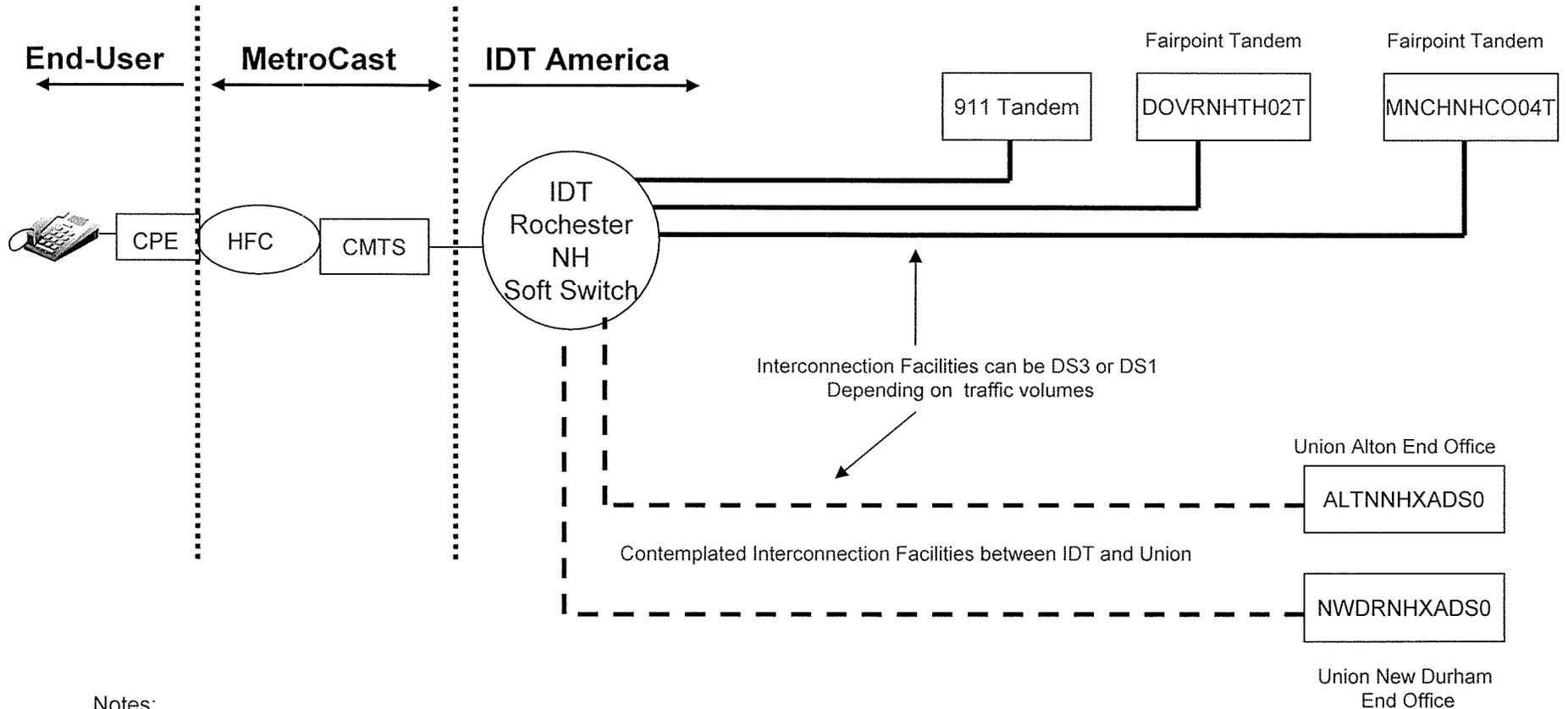
Inbound/Outbound Calling Local, LD

Directory/Operator Assistance

911 711 CALEA

Sample Network Configuration

LATA 122 (New Hampshire)



Notes:

- CMTS Cable Modem Termination System
- CPE Customer Premise Equipment (Cable Media Terminal Adaptor)
- HFC Hybrid Fiber-Coaxial (Cable Network)

DT 06-169

**IDT AMERICA, CORP. AND
METROCAST CABLEVISION OF NEW HAMPSHIRE, LLC**

Joint Petition for Expedited Relief in the Granting of Numbering Resources

Order Approving Settlement Agreement

ORDER NO. 24,727

January 26, 2007

APPEARANCES: Orr & Reno, P.A. by Douglas L. Patch, Esq. for IDT America, Corp.; Murtha Cullina, LLP by Robert J. Munnely, Jr., Esq. for MetroCast Cablevision of New Hampshire, LLC; Rich May, P.C. by Eric J. Krathwohl, Esq. for the New England Cable & Telecommunications Association; Devine Millimet & Branch, P.A. by Frederick J. Coolbroth, Esq. for New Hampshire Telephone Association; Gregory M. Kennan, Esq. for One Communications Corp.; Shawn Nestor, Esq. for Verizon New Hampshire; Darren Winslow for BayRing Communications, Inc.; Jeremy L. Katz for segTEL, Inc.; Office of the Consumer Advocate by Stephen L. Merrill on behalf of New Hampshire residential ratepayers; and Lynn Fabrizio, Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND AND PROCEDURAL HISTORY

RSA 374:59 requires the New Hampshire Public Utilities Commission (Commission) to “promote and adopt telephone number conservation measures to the maximum extent allowed by federal law” while providing telephone customers “equitable access” to unassigned numbers. Invoking this authority, IDT America, Corp. (IDT) and MetroCast Cablevision of New Hampshire, LLC (MetroCast) filed a joint petition on December 14, 2006, seeking expedited relief with regard to IDT’s request for initial numbering resources, i.e., thousands-block assignments, in nine New Hampshire exchanges. IDT is a certified competitive local exchange carrier (CLEC) and toll service provider in New Hampshire. MetroCast, the principal subsidiary of Harron Communications L.P., is a relatively small cable television company serving cable television customers in 28 communities in central and eastern New Hampshire. The two

companies have entered into an arrangement whereby they would, in effect, jointly provide local exchange service to end-users.

Specifically, IDT would use its resources as a CLEC to connect MetroCast to the Public Switched Telephone Network (PSTN), also providing the cable company with local number port-in and port-out, enhanced 911 interconnection, operator/directory assistance, directory listings, and numbering resources necessary to serve MetroCast customers in the cable company's New Hampshire service area. MetroCast would use its cable facilities to provision Internet Protocol (IP)-based telephony and would be the entity that maintains a customer-provider relationship with end-users, offering customer support and rendering bills for telephone service. Together, IDT and MetroCast would provide an end-to-end solution by integrating the IP platform to deliver a fully automated digital phone and high-speed data provisioning solution including PSTN service activation and interconnection.

Letters of support for the business plan proposed by IDT and MetroCast were filed on December 18, 2006, by the Office of the Consumer Advocate (OCA), on January 8, 2007, by Cedar Point Communications, Inc., on January 18, 2007, by Senator Kathleen Sgambati, and on January 22, 2007, by Executive Councilor Raymond S. Burton.

On January 5, 2007, the Commission issued an order of notice scheduling an expedited hearing for January 19, 2007. The commission received petitions for intervention on January 16, 2007 from One Communications Corp., the New England Cable & Telecommunications Association, Inc. (NECTA), AT&T Communications of New England, Inc., Verizon New Hampshire, BayRing Communications, segTEL, Inc., and the New Hampshire Telephone Association (NHTA). The Office of the Consumer Advocate filed a letter of intent to participate

on January 16, 2007. On January 17, 2007, IDT and MetroCast filed testimony of Thomas Jordan for IDT and Josh Barstow for MetroCast.

On January 18, 2007, Staff notified the Commission that it had reached an agreement in principle with IDT and MetroCast on a settlement that would establish certain conditions for implementation of the proposed business arrangement. On Friday, January 19, 2007, a technical session was held with IDT, MetroCast, Staff, and intervenors. Following the technical session, the Commission conducted a hearing at which IDT, MetroCast and Staff presented the agreement through a panel of witnesses, outlining the conditions under which IDT would be able to obtain numbering resources for the purpose of being able to provide service with Metrocast to end-users located in areas where MetroCast provides cable television service in New Hampshire. All petitions to intervene were granted at the hearing.

The Office of Consumer Advocate and segTEL supported the settlement agreement. None of the other intervenors present at the hearing objected to the agreement.

II. SUMMARY OF THE SETTLEMENT AGREEMENT

The settlement agreement consists of a description of the joint business arrangement proposed by IDT and MetroCast in their petition, with certain registration and reporting requirements, certain commitments regarding the use of numbering resources obtained under the agreement, and recognition of certain consequences for violation of the agreement.

A. MetroCast Commitments

Under the agreement, Metrocast agreed to register for CLEC status in New Hampshire, file a telephony rate schedule with the Commission, and comply with certain numbering resource obligations. MetroCast also agreed to obtain Commission approval in the event it seeks to request numbering resources independently of IDT.

B. IDT Commitments

IDT agreed that the numbering resources obtained under the agreement would be used only for IP-based cable telephony end-users of Metrocast and would only be assigned to end-users physically located in the New Hampshire exchange associated with the telephone number. IDT further agreed not to assign numbers obtained under the agreement to any Net2Phone customers. IDT committed to obtaining Commission approval in the event it seeks numbering resources in New Hampshire to implement a partnership other than with MetroCast. IDT committed to following all published requirements for the conservation of numbers, including the reclamation of unused numbers, consistent with the requirements imposed on IDT when its CLEC authority was granted in Commission Order No. 24,124. IDT agreed to file with Staff copies of all number utilization forms submitted to NeuStar, or its successor, in a timely manner as determined by Staff with regard to numbers obtained under the agreement. The agreement calls for any such data that is proprietary to be treated as confidential, pursuant to RSA 378:43, II. IDT further agreed to follow all published requirements for the obtaining of numbering resources.

C. Enforcement

Both IDT and MetroCast committed to honoring the terms of the agreement with respect to any numbers obtained pursuant to the settlement even if the FCC, the Commission, or a court of competent jurisdiction determines the service described in the agreement is not subject to state commission jurisdiction. In the event of such a determination, the companies agreed they would obtain any future numbering resources according to the dictates of the determination. Both companies further agreed that any violation of the commitments contained in the agreement would constitute "good cause" under N.H. Code Admin. Rules Puc 431.19 (governing sanctions

for CLEC rules violations) that would subject the party committing the violation to the provisions and consequences contained therein.

D. Implementation

Staff agreed to review MetroCast's CLEC application expeditiously and approve IDT's request for numbering resources for the purpose outlined in the agreement. IDT, MetroCast and Staff agreed to recommend that the Commission approve the agreement on an expedited basis. Finally, the signatories to the agreement conditioned the commitments made therein to the Commission's acceptance of all its provisions, without change or condition, subject to agreement of any changes or conditions proposed.

III. COMMISSION ANALYSIS

Pursuant to the FCC's delegation to the Commission of the authority to administer telephone number usage in the state of New Hampshire¹ and the Legislature's directive in RSA 374:59 to conserve telephone numbers, the Commission has previously determined that, to receive numbering resources, a local exchange carrier (LEC) must provide local exchange telephone service to customers physically located in the exchange associated with the numbers assigned. N.H. Code Admin. Rules Puc 402.28 defines a "local exchange carrier" as "the company that provides local telephone exchange service, whether directly or indirectly, and renders the telephone bill to the customer."

As explained at hearing, the petitioners have established a novel business arrangement unlike those for which numbering resources have been previously approved. The typical application for numbering resources involves a direct relationship between the official recipient

¹ *In the Matter of New Hampshire Public Utilities Commission's Petition for Additional Delegated Authority to Implement Number Conservation Measures in the 603 Area Code*, 15 F.C.C.R. 1252 (Nov. 30, 1999) (FCC Delegation Order).

of the numbering resources from the Pooling Administrator² and the ultimate end-user of the assigned numbers. Typically, an ILEC or CLEC offering basic local exchange service obtains the number blocks from the Pooling Administrator, upon Commission Staff approval, and assigns those numbers to its end-user customers. In the IDT/MetroCast proposal, IDT would receive blocks of numbering resources and then assign individual numbers from those blocks to MetroCast end-user customers. IDT, in effect, proposes to administer and manage the numbering resources on behalf of MetroCast.

By establishing certain commitments that are company- and fact-specific to the business plan proposed by IDT and MetroCast, the agreement ensures that numbering usage will comply with the statutory mandate to conserve New Hampshire telephone numbers. At the same time, the agreement permits the implementation of a business arrangement that offers a new competitive alternative in the local telecommunications market. The settlement agreement appropriately balances concerns over the efficient use of scarce numbering resources, designed to preserve the 603 area code as the single area code for New Hampshire, with the interests of end-users to have greater competitive choice. We therefore find the agreement to be reasonable and in the public interest, and we approve the agreement as submitted.

Based upon the foregoing, it is hereby

ORDERED, that the settlement agreement entered into by IDT, MetroCast and Commission Staff is APPROVED.

² NeuStar was awarded the FCC's National Pooling contract in June 2001.

By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of
January, 2007.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary