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July 12, 2010

VIA HAND DELIVERY

filed electronically in docket office on 07/12/10

Hon. Mary Freeman, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

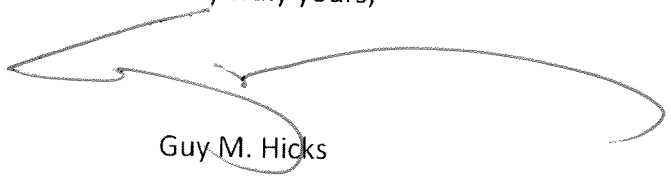
Re: *Complaint of EveryCall Communications Against AT&T Tennessee and Motion for Emergency Relief to Prevent Disruption of Service*
Docket No. 10-00132

Dear Chairman Freeman:

Enclosed for filing in the referenced docket are the original and four copies of AT&T Tennessee's *Response to Complaint and Motion for Emergency Relief.*

A copy is being provided to counsel of record.

Very truly yours,



Guy M. Hicks

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Complaint of EveryCall Communications Against AT&T Tennessee and Motion for Emergency Relief to Prevent Disruption of Service*

Docket No. 10-00132

AT&T TENNESSEE'S RESPONSE TO COMPLAINT AND MOTION FOR EMERGENCY RELIEF

BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T Tennessee") respectfully submits its Response to the unverified Complaint and Motion for Emergency Relief to Prevent Disruption of Service ("Complaint") filed by EveryCall Communications, Inc. ("EveryCall"). In this Response, AT&T Tennessee first explains why the Tennessee Regulatory Authority ("TRA" or the "Authority") should deny the Complaint. AT&T Tennessee then responds to the specific allegations of the Complaint.

I. INTRODUCTION AND ARGUMENT

In the Authority-approved, negotiated interconnection agreement ("ICA") between EveryCall and AT&T Tennessee,[1] EveryCall expressly agreed to "make payment to [AT&T Tennessee] for all services billed ***including disputed amounts***," and it agreed to make those payments "on or before the next bill date."[2] EveryCall has not honored its commitments under the ICA. Instead, under the guise of various credit requests and billing "disputes," EveryCall has stopped paying its bills. On June 21, 2010, AT&T Tennessee sent EveryCall a letter and attachments that, among other things: sets forth EveryCall's substantial past due balance; quotes the operative language of the parties' ICA; notes that from December 2009 to May 2010, EveryCall paid AT&T Tennessee ***less than two-tenths of one percent*** of the net amount owed (the billed amounts less credits AT&T Tennessee applied for promotions and other

[1] *See Petition for Approval of the Interconnection Agreement between BellSouth Telecommunications, Inc. dba AT&T Tennessee and EveryCall Communications, Inc.*, Docket No. 10-00019.

[2] See ICA, Attachment 7, p. 6, §1.4 (emphasis added). Exhibit A to this Response is a copy of Attachment 7 to the parties' ICA.

adjustments) for that same time period; and demands payment of all past due charges on or before specific dates in order to avoid suspension, discontinuance, and /or termination of service consistent with the ICA. Exhibit B to this Response is a redacted copy of that letter and its attachments, supported by the affidavit of Gert Andersen.

In its Complaint, EveryCall acknowledges that it has breached its ICA by consistently refusing to make the payments it agreed to make.[3] As a result, EveryCall owes AT&T Tennessee a significant past-due amount, and AT&T Tennessee is entitled to have EveryCall pay those amounts immediately. AT&T Tennessee questions whether EveryCall can pay its bills on a going-forward basis, much less its substantial past-due balance, and AT&T Tennessee is increasingly concerned that its paying customers across the State ultimately will have to bear the burden of EveryCall's substantial (and growing) uncollectibles. AT&T Tennessee, therefore, respectfully asks that the Authority deny EveryCall's Complaint.

A. The unambiguous language of the ICA requires EveryCall to pay all amounts billed, including disputed charges.

The parties' Authority-approved ICA requires EveryCall to pay all amounts it is billed, even if it disputes those amounts:

> Payment of ***all*** charges will be the responsibility of EveryCall.[4]
>
> EveryCall shall make payment to [AT&T Tennessee] for all services billed ***including disputed amounts.***[5]
>
> Payment for services provided by [AT&T Tennessee], ***including disputed charges,*** is due on or before the next bill date.[6]

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[3] Complaint at p. 3, ¶5 (noting that EveryCall subtracts "promotional discounts determined by [a telecommunications consulting firm] to be owed to EveryCall" from the amounts it pays AT&T Tennessee each month.

[4] ICA, Attachment 7, p. 6, §1.4 (emphasis added).

[5] *Id.*(emphasis added).

[6] *Id.*, p. 6, §1.4.1 (emphasis added).

As noted by the Tennessee Court of Appeals, "[i]f a contract is plain and unambiguous the meaning thereof is a question of law and it is the court's function to interpret the contract as written according to its plain terms."[7] Given the unambiguous, clear, and explicit contract language quoted above, EveryCall clearly is required to pay all amounts billed, even if it disputes those amounts.

EveryCall attaches a document that is nearly two years old in support of its unverified allegations that AT&T Tennessee does not timely address its requests for promotional credits and related disputes.[8] Even assuming these allegations were true (which AT&T Tennessee denies), they would do nothing to support EveryCall's argument that it can evade the plain language of its ICA. Nothing prevented EveryCall from bringing any concerns it may have had with the timeliness of this process to the Authority's attention. In sharp contrast, the plain language of the ICA that it signed and this Authority approved prevents EveryCall from taking the "self-help" approach of paying only those amounts that its "telecommunications consulting firm" determines it owes AT&T Tennessee.[9]

B. Even if EveryCall was a Party to the Joint Motion on Procedural Issues (and It is Not), that Joint Motion Would Not Relieve EveryCall of its Contractual Obligation to Pay All Amounts, Including Disputed Charges.

EveryCall correctly notes that the parties to what the Complaint refers to as the Consolidated Complaints have filed a Joint Motion on Procedural Issues ("Joint Motion"). As EveryCall further notes, the Joint Motion provides, in part, that "[o]nce the Authority has issued an order resolving the issues in the Consolidated Phase, the Parties will work in good faith to address all remaining unresolved claims

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[7] *See Yancey v. H&H Gas and Oil Co.*, 1992 Tenn. App. LEXIS 1022, *5 (TN Ct. App. 1992). The same fundamental principles apply with equal force to interconnection agreements that are approved pursuant to federal law. An interconnection agreement is "the Congressionally prescribed vehicle for implementing the substantive rights and obligations set forth in the Act," *Michigan Bell Tel. Co. v. Strand*, 305 F.3d 580, 582 (6th Cir. 2003), and once a carrier enters "into an interconnection agreement in accordance with section 252, ... it is then regulated directly by the interconnection agreement." *Law Offices of Curtis V. Trinko LLP v. Bell Atl. Corp.*, 305 F.3d 89, 104 (2d Cir. 2002), *rev'd in part on other grounds sub nom; Verizon Commc'ns, Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004). *See also, Mich. Bell Tel. Co. v. MClmetro Access Trans. Servs., Inc.*, 323 F.3d 348, 359 (6th Cir. 2003) ("[O]nce an agreement is approved, these general duties [under the 1996 Act] do not control" and parties are "governed by the interconnection agreement" instead, and "the general duties of [the 1996 Act] no longer apply").

[8] *See, e.g.,* Complaint at p. 3 ¶7, p. 4 ¶8, p. 5 ¶10.

[9] *See Id.*, p. 3, ¶5.

and counterclaims related to the Consolidated Phase and determine what, if any, dollar amounts are owed or credits due each party."[10] EveryCall, however, is not a party to the Consolidated Complaints, it is not a party to the Joint Motion, and it has no rights whatsoever under that document.

Even if that were not the case, the Joint Motion still would not support any relief requested by EveryCall. In plain language that EveryCall does not address in its Complaint, the Joint Motion goes on to provide:

> As stated below, any individual Party may also seek to pursue in its respective docket, either concurrent with or following the Consolidated Phase, any issue, claim, or counterclaim, including related discovery, that is not addressed in the Consolidated Phase.
>
> Nothing in this Joint Motion is intended, or shall be construed, as a waiver of any Party's right to amend and supplement its claims, counterclaims, or other pleadings, or to pursue any issue, claim, or counterclaim that is not addressed in the Consolidated Phase in each Party's respective docket, either concurrent with our following the Consolidated Phase, or to seek such other relief as a change in circumstances may warrant.

Clearly, the Joint Motion does not prevent AT&T Tennessee from pursuing "any issue" or "claim" that is not addressed in the Consolidated Phase of the Consolidated Complaints. And while EveryCall goes on to assert that "[t]he core issues in dispute between the parties here are pending in the Consolidated Complaints proceeding,"[11] that assertion is simply wrong.

The issues in the Consolidated Complaints proceedings are how much, if any, credit the resellers who are parties to those proceedings are entitled to receive when they resell services that are the subject of certain promotional offers. EveryCall's request for emergency relief in this Docket has nothing to do with the merits of those issues. Instead, the separate and distinct question presented by EveryCall's Complaint is: who bears the risk of non-payment while billing disputes are being resolved? That question clearly is not being addressed in the Consolidated Complaints. As explained above,

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10 *See* Complaint at p. 6, ¶13 ; Joint Motion at pp. 2-3.

11 Complaint at pp. 6, ¶15.

however, the Authority-approved ICA definitively addresses (and answers) that question by requiring EveryCall to pay all amounts AT&T bills, even if it disputes those amounts.

C. AT&T Tennessee has not Waived its Right to Demand Payment of All Amounts Billed, Including Amounts EveryCall Disputes.

EveryCall suggests that AT&T Tennessee has somehow waived its right to require EveryCall to pay all amounts billed as required by the ICA because it has not exercised that right previously.[12] Once again, EveryCall's suggestion is refuted by the unambiguous language of the Parties' Authority-approved ICA:

> A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.[13]

Even if AT&T Tennessee has not insisted that EveryCall pay all amounts (including disputed amounts) in the past, it clearly has the right "thereafter (i.e. now) to insist upon the performance of any and all provisions" of the ICA. AT&T Tennessee has exercised its lawful right to insist that EveryCall pay all amounts it has been billed, and if it does not do so, AT&T Tennessee has the right to suspend, disconnect, and terminate EveryCall's service as allowed by the ICA.[14]

D. EveryCall's Alleged (and Improper) Request to Opt-In to a Different ICA Eighteen Months Ago has No Bearing on the Outcome of EveryCall's Complaint.

EveryCall alleges that in October 2009, AT&T "refused" EveryCall's request to "opt-in to the 'Image Access' interconnection agreement, which would specifically allow EveryCall to withhold payment for disputed amounts until those disputes were ultimately resolved."[15] Assuming (without admitting) these allegations are true, they are of no benefit to EveryCall because it clearly had no right

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12 *See* Complaint at p. 3, ¶7.

13 ICA, General Terms and Conditions, Page 16, §16. Exhibit C to this Response is a copy of the General Terms and Conditions of the ICA.

14 *See* ICA, Attachment 7, pp. 7-9, §§1.5 to 1.5.5.

15 Complaint at ¶9.

to switch from one ICA to another in mid-stream. The Parties' ICA became effective in November 2006,[16] and it clearly states that "[t]he initial term of this Agreement shall be five (5) years, beginning on the Effective Date . . . ."[17] During that five-year initial term, "EveryCall may request termination of this Agreement ***only if it is no longer purchasing services pursuant to this Agreement,***"[18] which obviously is not the case. Additionally, "[n]o modification [or] amendment . . . shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties,"[19] and EveryCall does not (and cannot) allege any such modification or amendment. Finally, the ICA plainly states that negotiations for a new agreement shall commence "***no earlier than*** two hundred seventy (270) days . . . prior to the expiration of the initial term of this Agreement . . . ."[20] Both AT&T Tennessee and EveryCall clearly are obligated to comply with ICA they negotiated and signed (and the Authority approved) until at least late 2011, and EveryCall has no right to unilaterally back out of those obligations by "opting into" a different agreement in the interim.

In erroneously suggesting otherwise, EveryCall relies on Section 11 of the General Terms and Conditions of the ICA.[21] But that section merely incorporates the "adoption" provisions of 47 U.S.C. §252(i) of the federal Act,[22] and it is well-settled that §252(i) does not allow EveryCall to opt into another ICA any time it pleases. In *Global Naps, Inc. v. Verizon*, 396 F.3d 16 (1st Cir. 2005), for instance, a CLEC filed a petition for arbitration pursuant to §252 and the state commission entered its order in that arbitration proceeding. Displeased with that order, the CLEC purported to opt into a preexisting interconnection agreement (with terms more to its liking) pursuant to §252(i). The state commission, however, ruled that once it had concluded the arbitration and issued its order, the CLEC was not free to

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16 *See* ICA, General Terms and Conditions, at p. 2 ("Effective Date" is thirty days after last signature); at "Signature Page" (last signature is October 30, 2006).

17 *Id.*, p. 3, §2.1.

18 *Id.*, §2.3.1.

19 *Id.*, p. 15, §12.2.

20 *Id.*, p. 3, §2.2.

21 *See* Complaint at p. 4, ¶9.

22 *See* ICA, General Terms and Conditions at p. 14, §11.

"opt into" another agreement pursuant to §252(i) in lieu of accepting the arbitrated terms and incorporating them into its agreement. The First Circuit Court of Appeals affirmed that ruling, concluding that section 251(i) does not grant a CLEC like EveryCall an unconditional right to opt out of one agreement and into another.

More recently, the New York Commission logically extended the First Circuit's ruling to interconnection agreements that are negotiated instead of arbitrated.[23] Specifically, a CLEC executed an interconnection agreement with Verizon that did not expire until November 2007. Twenty months before that expiration date, the CLEC attempted to opt into a different interconnection agreement, claiming that "unilateral termination is authorized whenever a §252(i) option is exercised."[24] The New York Commission disagreed, explaining that the First Circuit's decision "not only refutes [the CLEC's] contention that it has an unconditional right to opt-in to another agreement but also that §252(i) authorizes voiding a contract."[25] It further held that "§251(i) does not confer an unconditional right to opt-in to an existing agreement or authorize unilateral termination of an existing interconnection agreement," and it ruled that the CLEC "is not authorized to terminate its current . . . interconnection agreement with Verizon."[26] Similarly, EveryCall was not (and is not) authorized to evade its contractual obligations by terminating its Authority-approved ICA and opting into another one.

E. EveryCall Has Not Demonstrated, and Cannot Demonstrate, that it is Entitled to the Extraordinary Injunctive Relief it Seeks.

The "emergency relief" EveryCall seeks is an order requiring AT&T Tennessee "to take no action to suspend or otherwise interfere with EveryCall's service to its customers . . . ."[27] EveryCall's Complaint requests that the Authority enjoin AT&T Tennessee from enforcing its ICA. That relief is identical to

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23 *See* Declaratory Ruling, *Petition of Pac-West Telecomm, Inc. for a Declaratory Ruling Respecting Its Rights to Interconnection with Verizon New York, Inc.*, Case No. 06-C-1042 (February 27, 2007). Exhibit D to this Response is a copy of this Ruling.

24 *Id.* at p. 8.

25 *Id.* at p. 10.

26 *Id.* at pp. 11-12.

27 *See* Complaint at p. 7, ¶17.

what a court would call a preliminary or temporary injunction, and an injunction is an extraordinary and drastic remedy.[28] The Authority is a regulatory forum of limited jurisdiction and the complaint cites no statutory basis on which the Authority could issue such an injunction.

Even if the Authority were a proper forum in which to seek injunctive relief (which it is not), the law in Tennessee is clear that a party must meet a high burden before a court will consider issuing an injunction. As the Tennessee Court of Appeals has explained:

> A temporary injunction may be granted during the pendency of an action if it is clearly shown by verified complaint, [*11] affidavit or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual. Tenn. R. Civ. P. 65.04(2).
>
> Generally, in determining whether to award a preliminary injunction, the trial court must consider: 1) the threat of irreparable harm to the movant absent the injunction; 2) the balance between the benefit to the movant and the harm inflicted on the non-moving party; 3) the likelihood that the movant will succeed on the merits of the case; and 4) the public interest.[29]

Accordingly, it is clear that EveryCall is not entitled to the injunctive relief it seeks.

In light of the plain language of the ICA discussed above, EveryCall cannot show that it is likely to succeed on the merits of its claims that it has a right to pay AT&T Tennessee less than the amounts on its bills –the plain language of the Parties' Authority-approved ICA requires EveryCall to pay all amounts billed, including disputed amounts. Further, if EveryCall has the money to pay its bills as it committed to do in the ICA, it will suffer no harm whatsoever – if its disputes are invalid, it merely will have paid amounts it was obligated to pay (and there is no "harm" in that), and if its disputes are valid, there is nothing to suggest that AT&T Tennessee cannot provide it any resulting bill credits or payments. In contrast, if EveryCall does not have the money to pay its bills (which AT&T Tennessee believes may be the case), then the harm of requiring AT&T Tennessee to provide even more services for which it will not

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[28] *See, Galyon v. First Tennessee Bank Nat'l Ass'n,* 1991 Tenn. App. LEXIS 946, Wright & Miller §2948, *Butts v. City of South Fulton,* 565 S.W.2d 879 (Tenn. Ct. App. 1977).

[29] *Johnson v. City of Clarksville, 2003 Tenn. App. LEXIS 413, 10-11 (Tenn. Ct. App. June 3, 2003).*

be paid clearly outweighs any purported "harm" to EveryCall.[30] And while EveryCall's end users would no longer receive service from EveryCall if AT&T disconnects or terminates EveryCall for nonpayment, there are a number of other carriers in Tennessee, including other prepay resellers, from whom EveryCall's current end users can receive service.

Finally, in order to obtain injunctive relief, a party typically must post a bond in an amount sufficient to afford the opposing party adequate protection. Rule 65.05 of the Tennessee Rules of Civil Procedure provides that

> Injunction Bond. (1)_Except in such actions as may be brought on pauper's oath, no restraining order or temporary injunction shall be granted except upon the giving of a bond by the applicant, with surety in such sum as the court to whom the application is made deems proper, for the payment of such costs and damages as may be incurred or suffered by any person who is found to have been wrongfully restrained or enjoined. The address of the surety shall be shown on the bond.

Accordingly, even if EveryCall were otherwise entitled to the drastic injunctive relief it seeks (and it is not), it could not obtain that relief without posting a bond sufficient to protect AT&T Tennessee against the risk that EveryCall would not be able to pay: (1) its substantial past-due balance; and (2) the full amount AT&T Tennessee bills EveryCall on a going-forward basis. AT&T Tennessee respectfully submits that EveryCall is not able to post a bond in that amount.

F. AT&T Tennessee Will Comply With the Authority-Approved Emergency Service Continuity Plan

The Authority has approved an emergency service continuity plan for customers who have lost service due to a service provider's abandonment of service. The plan provides that ILECs like AT&T Tennessee will provide basic local exchange service to the end users of resellers for at least seven days after the service termination date or until the end user selects a new service provider, whichever is less.[31]twenty (20) days before the disconnection of service. AT&T Tennessee will comply with this plan if

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[30] This harm extends beyond AT&T Tennessee to its paying wholesale and retail customers, who effectively will be left to shoulder the burden of non-paying wholesale customers like EveryCall if its Complaint in granted.

[31] *See* G.S.S.T Tariff A5.8.3, now found in AT&T Tennessee's publicly available General Exchange Guidebook at A5.8.3.

EveryCall's service is terminated.

II. RESPONSE TO SPECIFIC ALLEGATIONS

1. AT&T Tennessee admits the allegations set forth in Paragraph 1 of the Complaint.

2. AT&T Tennessee admits the allegations set forth in Paragraph 2 of the Complaint.

3. AT&T Tennessee admits the allegations set forth in Paragraph 3 of the Complaint.

4. AT&T Tennessee admits that EveryCall offers prepaid local telephone service to residential customers in Tennessee and that it purchases certain services from AT&T Tennessee for resale pursuant to the parties' ICA. AT&T Tennessee lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations set forth in Paragraph 4 of the Complaint and, therefore, denies those allegations.

5. AT&T Tennessee admits that it has the duty to offer for resale at wholesale rates any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers as required by 47 U.S.C. §251(c)(4). AT&T Tennessee admits that EveryCall has hired a telecommunications consulting firm for certain purposes. AT&T denies the remainder of the allegations set forth in Paragraph 5 of the Complaint.

6. AT&T Tennessee admits the allegations set forth in the first sentence of Paragraph 6 of the Complaint, and the Notice referenced therein speaks for itself. AT&T Tennessee admits that EveryCall "opposes AT&T's proposed actions" for the reasons set forth in its Complaint, but AT&T Tennessee denies that any of those reasons are valid.

7. AT&T Tennessee admits that on occasion, representatives of EveryCall and representatives of AT&T Tennessee have had certain discussions regarding promotional credits requested by EveryCall and associated disputes. AT&T Tennessee denies the remainder of the allegations set forth in Paragraph 7 of the Complaint.

8. AT&T Tennessee admits that the Notice referenced in Paragraph 6 of this Response and the attachments to that Notice speak for themselves. AT&T Tennessee denies the remainder of the allegations set forth in Paragraph 8 of the Complaint.

9. AT&T Tennessee admits that Paragraph 9 of the Complaint accurately quotes Section 11 of the General Terms and Conditions of the Parties' ICA. In light of the time constraints inherent in the emergency nature of the relief requested by EveryCall, AT&T Tennessee lacks knowledge or information sufficient to form a belief about the truth of the remaining factual allegations set forth in Paragraph 9 of the Complaint and, therefore, denies those allegations. AT&T Tennessee denies that EveryCall had any right to opt-in to the "Image Access" interconnection agreement as alleged in Paragraph 9 of the Complaint.

10. AT&T Tennessee denies the allegations of Paragraph 10 of the Complaint.

11. AT&T Tennessee denies the allegations set forth in Paragraph 11 of the Complaint.

12. AT&T Tennessee asserts that its pleadings and other filings in what the Complaint refers to as the "Consolidated Complaints" speak for themselves. AT&T Tennessee denies the remainder of the allegations set forth in Paragraph 12 of the Complaint.

13. AT&T Tennessee asserts that the Joint Motion on Procedural Issues speaks for itself. AT&T Tennessee denies the remainder of the allegations set forth in Paragraph 13 of the Complaint.

14. AT&T Tennessee asserts that the Joint Motion on Procedural Schedule speaks for itself. AT&T Tennessee denies the remainder of the allegations set forth in Paragraph 14 of the Complaint.

15. AT&T Tennessee denies the allegations set forth in Paragraph 15 of the Complaint.

16. AT&T Tennessee asserts that Section 8 of the General Terms and Conditions of the Parties' ICA speaks for itself. AT&T Tennessee denies the remainder of the allegations set forth in Paragraph 16 of the Complaint.

17. AT&T Tennessee denies the allegations set forth in Paragraph 17 of the Complaint, and it denies that EveryCall is entitled to any of the relief it seeks.

18. The allegations set forth in Paragraph 18 of the Complaint require no response from AT&T Tennessee.

19. AT&T Tennessee denies that EveryCall is entitled to any of the relief it seeks in Paragraph 19 of the Complaint.

20. AT&T Tennessee denies any allegation set forth in the Complaint to the extent it is not specifically admitted herein.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.
dba AT&T Tennessee

By:_____

Guy M. Hicks
Joelle Phillips
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
615 214-6301
Attorneys for AT&T

Exhibit A

Attachment 7

Billing

TABLE OF CONTENTS

BILLING

1. Payment and Billing Arrangements

The terms and conditions set forth in this Attachment shall apply to all services ordered and provisioned pursuant to this Agreement.

1.1 BellSouth will bill through the Carrier Access Billing System (CABS), Integrated Billing System (IBS) and/or the Customer Records Information Systems (CRIS) depending on the particular service(s) provided to EveryCall under this Agreement. BellSouth will format all bills in CABS Billing Output Specification (CBOS) Standard or CLUB/EDI format, depending on the type of service provided. For those services where standards have not yet been developed, BellSouth's billing format may change in accordance with applicable industry standards.

1.1.1 For any service(s) BellSouth receives from EveryCall, EveryCall shall bill BellSouth in CBOS format.

1.1.2 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to BellSouth.

1.1.3 BellSouth will render bills each month on established bill days for each of EveryCall's accounts. If either Party requests multiple billing media or additional copies of the bills, the billing Party will provide these at the rates set forth in BellSouth's FCC No. 1 Tariff, Section 13.3.6.3, except for resold services which shall be at the rates set forth in BellSouth's Non-Regulated Services Pricing List N6.

1.1.4 BellSouth will bill EveryCall in advance for all services to be provided during the ensuing billing period except charges associated with service usage and nonrecurring charges, which will be billed in arrears.

1.1.4.1 For resold services, charges for services will be calculated on an individual customer account level, including, if applicable, any charge for usage or usage allowances. BellSouth will also bill EveryCall, and EveryCall will be responsible for and remit to BellSouth, all charges applicable to said services including but not limited to 911 and E911 charges, EUCL charges, federal subscriber line charges, telecommunications relay charges, and franchise fees, unless otherwise ordered by a Commission.

1.1.5 BellSouth will not perform billing and collection services for EveryCall as a result of the execution of this Agreement.

1.2 Establishing Accounts and Subsequent State Certifications. After submitting a credit profile and deposit, if required, and after receiving certification as a local exchange carrier from the appropriate Commission, EveryCall will provide the appropriate BellSouth Local Contract Manager responsible for new CLEC

activation, the necessary documentation to enable BellSouth to establish accounts for Local Interconnection, Network Elements and Other Services and/or resold services. Such documentation shall include the Application for Master Account, if applicable, proof of authority to provide Telecommunications Services, the appropriate OCN for each state as assigned by the NECA, CIC, if applicable, ACNA, if applicable, BellSouth's blanket form LOA, Misdirected Number form, and a tax exemption certificate, if applicable. Notwithstanding anything to the contrary in this Agreement, EveryCall may not order services under a new account and/or subsequent state certification, established in accordance with this Section until thirty (30) days after all information specified in this Section is received from EveryCall.

1.2.1 ACNAs. EveryCall shall provide BellSouth with documentation from Telcordia identifying the ACNA assigned to it by Telcordia (as applicable) in the same legal name as reflected in the preamble to this Agreement. Such ACNA will be used by EveryCall to order services pursuant to this Agreement and will not be shared by EveryCall with another entity.

1.2.2 Company Identifiers. If EveryCall needs to change, add to, eliminate or convert its OCN(s), ACNAs and other identifying codes (collectively "Company Identifiers") under which it operates when EveryCall has already been conducting business utilizing those Company Identifiers, EveryCall shall follow the Mergers and Acquisitions Process as described on BellSouth's Interconnection Web site, and shall be subject to separately negotiated rates, terms and conditions.

1.2.3 Tax Exemption. It is the responsibility of EveryCall to provide BellSouth with a properly completed tax exemption certificate in the current version of the form customarily used by BellSouth and at intervals required by the appropriate taxing authorities or reasonably requested by BellSouth. A tax exemption certificate must be supplied for each individual EveryCall entity purchasing Services under this Agreement. Upon BellSouth's receipt of a properly completed tax exemption certificate, subsequent billings to EveryCall will not include those taxes or fees from which EveryCall is exempt. Prior to receipt of a properly completed exemption certificate, BellSouth shall bill, and EveryCall shall pay all applicable taxes and fees. In the event that EveryCall believes that it is entitled to an exemption from and refund of taxes with respect to the amount billed prior to BellSouth's receipt of a properly completed exemption certificate, BellSouth shall assign to EveryCall its rights to claim a refund of such taxes. If applicable law prohibits the assignment of tax refund rights or requires the claim for refund of such taxes to be filed by BellSouth, BellSouth shall, after receiving a written request from EveryCall and at EveryCall's sole expense, pursue such refund claim on behalf of EveryCall, provided that EveryCall promptly reimburses BellSouth for any costs and expenses incurred by BellSouth in pursuing such refund claim; and, provided further, that BellSouth shall have the right to deduct any such outstanding costs and expenses from the amount of any refund obtained prior to remitting such refund to EveryCall or to deduct any such outstanding costs and

expenses from any amounts owed by BellSouth to EveryCall if no refund is obtained. EveryCall shall be solely responsible for the computation, tracking, reporting and payment of all taxes and fees associated with the services provided by EveryCall to its customers.

1.3 Deposit Policy. Prior to the inauguration of service or, thereafter, upon BellSouth's request, EveryCall shall complete the BellSouth Credit Profile (BellSouth form) and provide information to BellSouth regarding EveryCall's credit and financial condition. Based on BellSouth's analysis of the BellSouth Credit Profile and other relevant information regarding EveryCall's credit and financial condition, BellSouth reserves the right to require EveryCall to provide BellSouth with a suitable form of security deposit for EveryCall's account(s). If, in BellSouth's sole discretion, circumstances so warrant and/or EveryCall's gross monthly billing has increased, BellSouth reserves the right to request additional security (or to require a security deposit if none was previously requested) and/or file a Uniform Commercial Code (UCC-1) security interest in EveryCall's "accounts receivables and proceeds".

1.3.1 Security deposit shall take the form of cash, an irrevocable letter of credit (BellSouth form), surety bond (BellSouth form) or, in BellSouth's sole discretion, some other form of security proposed by EveryCall and accepted by BellSouth. Any such security deposit shall in no way release EveryCall from its obligation to make complete and timely payments of its bill(s). If BellSouth requires EveryCall to provide a security deposit, EveryCall shall provide such security deposit prior to the inauguration of service or within fifteen (15) days of BellSouth's request, as applicable. Security deposit request notices will be sent to EveryCall via certified mail or overnight delivery. Such notice period will start the day after the deposit request notice is rendered by certified mail or overnight delivery. Interest on a cash security deposit shall accrue and be applied or refunded in accordance with the terms in BellSouth's GSST.

1.3.2 Security deposits collected under this Section shall not exceed two (2) months' estimated billing for services pursuant to this Agreement. Estimated billings are calculated based upon the monthly average of the previous six (6) months current billings, if EveryCall has received service from BellSouth during such period at a level comparable to that anticipated to occur over the next six (6) months. If either EveryCall or BellSouth has reason to believe that the level of service to be received during the next six (6) months will be materially higher or lower than received in the previous six (6) months, EveryCall and BellSouth shall agree on a level of estimated billings based on all relevant information.

1.3.3 In the event EveryCall fails to provide BellSouth with a suitable form of security deposit or additional security deposit as required herein, defaults on its account(s), or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time required, service to EveryCall may be Suspended, Discontinued or Terminated in accordance with the terms of

Section 1.5 below. Upon Termination of services, BellSouth shall apply any security deposit to EveryCall's final bill for its account(s). If no bill is rendered to EveryCall, BellSouth shall, nevertheless, apply any security deposit to EveryCall's outstanding balance.

1.3.3.1 At least seven (7) days prior to the expiration of any letter of credit provided by EveryCall as security under this Agreement, EveryCall shall renew such letter of credit or provide BellSouth with evidence that EveryCall has obtained a suitable replacement for the letter of credit. If EveryCall fails to comply with the foregoing, BellSouth shall thereafter be authorized, in its sole discretion, to draw down the full amount of such letter of credit and utilize the cash proceeds as security for EveryCall accounts(s). If EveryCall provides a security deposit or additional security deposit in the form of a surety bond as required herein, EveryCall shall renew the surety bond or provide BellSouth with evidence that EveryCall has obtained a suitable replacement for the surety bond at least seven (7) days prior to the cancellation date of the surety bond. If EveryCall fails to comply with the foregoing, BellSouth shall thereafter be authorized, in its sole discretion, to take action on the surety bond and utilize the cash proceeds as security for EveryCall's account(s). If the credit rating of any bonding company that has provided EveryCall with a surety bond provided as security hereunder has fallen below B, BellSouth will provide written notice to EveryCall that EveryCall must provide a replacement bond or other suitable security within fifteen (15) days of BellSouth's written notice. If EveryCall fails to comply with the foregoing, BellSouth shall thereafter be authorized, in its sole discretion, to take action on the surety bond and utilize the cash proceeds as security for EveryCall's account(s). Notwithstanding anything contained in this Agreement to the contrary, BellSouth shall be authorized, in its sole discretion, to draw down the full amount of any letter of credit or take action on any surety bond provided by EveryCall as security hereunder if EveryCall defaults on its account(s) or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time, as required herein and apply the cash proceeds to any outstanding balance on EveryCall's accounts and utilize any remaining cash proceeds as security for EveryCall's account(s).

1.4 Payment Responsibility. Payment of all charges will be the responsibility of EveryCall. EveryCall shall pay invoices by utilizing wire transfer services or automatic clearing house services. EveryCall shall make payment to BellSouth for all services billed including disputed amounts. BellSouth will not become involved in billing disputes that may arise between EveryCall and EveryCall's customer.

1.4.1 Payment Due. Payment for services provided by BellSouth, including disputed charges, is due on or before the next bill date. Information required to apply payments must accompany the payment. The information must notify BellSouth of Billing Account Numbers (BAN) paid; invoices paid and the amount to be applied to each BAN and invoice (Remittance Information). Payment is considered to have been made when the payment and Remittance Information are received by

BellSouth. If the Remittance Information is not received with payment, BellSouth will be unable to apply amounts paid to EveryCall's accounts. In such event, BellSouth shall hold such funds until the Remittance Information is received. If BellSouth does not receive the Remittance Information by the payment due date for any account(s), late payment charges shall apply.

1.4.1.1 Due Dates. If the payment due date falls on a Sunday or on a holiday that is observed on a Monday, the payment due date shall be the first non-holiday day following such Sunday or holiday. If the payment due date falls on a Saturday or on a holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-holiday day preceding such Saturday or holiday. If payment is not received by the payment due date, a late payment charge, as set forth in Section 1.4.1.2, below, shall apply.

1.4.1.2 Late Payment. If any portion of the payment is not received by BellSouth on or before the payment due date as set forth above, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment and/or interest charge shall be due to BellSouth. The late payment and/or interest charge shall apply to the portion of the payment not received and shall be assessed as set forth in Section A2 of BellSouth's GSST, Section B2 of the Private Line Service Tariff or Section E2 of the BellSouth intrastate Access Services Tariff, or pursuant to the applicable state law as determined by BellSouth. In addition to any applicable late payment and/or interest charges, EveryCall may be charged a fee for all returned checks at the rate set forth in Section A2 of BellSouth's GSST or pursuant to the applicable state law.

1.5 Discontinuing Service to EveryCall. The procedures for discontinuing service to EveryCall are as follows:

1.5.1 In order of severity, Suspend/Suspension, Discontinue/Discontinuance and Terminate/Termination are defined as follows for the purposes of this Attachment:

1.5.1.1 Suspend/Suspension is the temporary restriction of the billed Party's access to the ordering systems and/or access to the billed Party's ability to initiate PIC-related changes. In addition, during Suspension, pending orders may not be completed and orders for new service or changes to existing services may not be accepted.

1.5.1.2 Discontinue/Discontinuance is the denial of service by the billing Party to the billed Party that will result in the disruption and discontinuation of service to the billed Party's customers. Additionally, at the time of Discontinuance, BellSouth will remove any Local Service Freezes in place on the billed Party's customers.

1.5.1.3 Terminate/Termination is the disconnection of service by the billing Party to the billed Party.

1.5.2 BellSouth reserves the right to Suspend, Discontinue or Terminate service in the event of prohibited, unlawful or improper use of BellSouth facilities or service,

abuse of BellSouth facilities, or any other violation or noncompliance by EveryCall of the rules and regulations of BellSouth's tariffs.

1.5.3 Suspension. If payment of amounts due as described herein is not received by the bill date in the month after the original bill date, or fifteen (15) days from the date of a deposit request in the case of security deposits, BellSouth will provide written notice to EveryCall that services will be Suspended if payment of such amounts, and all other amounts that become past due before Suspension, is not received by wire transfer, automatic clearing house or cashier's check in the manner set forth in Section 1.4.1 above, or in the case of a security deposit request, in the manner set forth in Section 1.3.1 above: (1) within seven (7) days following such notice for CABS billed services; (2) within fifteen (15) days following such notice for CRIS and IBS billed services; and (3) within seven (7) days following such notice for security deposit requests.

1.5.3.1 The Suspension notice shall also provide that all past due charges for CRIS and IBS billed services, and all other amounts that become past due for such services before Discontinuance, must be paid within thirty (30) days from the date of the Suspension notice to avoid Discontinuance of CRIS and IBS billed services.

1.5.3.2 For CABS billed services, BellSouth will provide a Discontinuance notice that is separate from the Suspension notice, that all past due charges for CABS billed Services, and all other amounts that become past due for such services before Discontinuance, must be paid within thirty (30) days from the date of the Suspension notice to avoid Discontinuance of CABS billed services. This Discontinuance notice may be provided at the same time that BellSouth provides the Suspension notice.

1.5.4 Discontinuance. If payment of amounts due as described herein is not received by the bill date in the month after the original bill date, BellSouth will provide written notice that BellSouth may Discontinue the provision of existing services to EveryCall if payment of such amounts, and all other amounts that become past due before Discontinuance, including requested security deposits, is not received by wire transfer, automatic clearing house or cashier's check in the manner set forth in Section 1.4.1 above or in the case of a deposit in accordance with Section 1.3.1 above, within thirty (30) days following such written notice; provided, however, that BellSouth may provide written notice that such existing services may be Discontinued within fifteen (15) days following such notice, subject to the criteria described in Section 1.5.4.1 below.

1.5.4.1 BellSouth may take the action to Discontinue the provision of existing service upon fifteen (15) days from the day after BellSouth provides written notice of such Discontinuance if (a) such notice is sent by certified mail or overnight delivery; (b) EveryCall has not paid all amounts due pursuant to a subject bill(s), or has not provided adequate security pursuant to a deposit request; and (c) either:

(1) BellSouth has sent the subject bill(s) to EveryCall within seven (7) business days of the bill date(s), verifiable by records maintained by BellSouth:

i. in paper or CDROM form via the United States Postal Service (USPS), or
ii. in magnetic tape form via overnight delivery, or
iii. via electronic transmission; or

(2) BellSouth has sent the subject bill(s) to EveryCall, using one of the media described in (1) above, more than thirty (30) days before notice to Discontinue service has been rendered.

1.5.4.2 In the case of Discontinuance of services, all billed charges, as well as applicable disconnect charges, shall become due.

1.5.4.3 EveryCall is solely responsible for notifying the customer of the Discontinuance of service. If, within seven (7) days after EveryCall's services have been Discontinued, EveryCall pays, by wire transfer, automatic clearing house or cashier's check, all past due charges, including late payment charges, outstanding security deposit request amounts if applicable and any applicable restoral charges as set forth in Section A4 of BellSouth's GSST, then BellSouth will reestablish service for EveryCall.

1.5.5 Termination. If within seven (7) days after EveryCall's service has been Discontinued and EveryCall has failed to pay all past due charges as described above, then EveryCall's service will be Terminated.

2. Billing Disputes

2.1 EveryCall shall electronically submit all billing disputes to BellSouth using the form specified by BellSouth. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) days of the notification date. Within five (5) business days of BellSouth's denial, or partial denial, of the billing dispute, if EveryCall is not satisfied with BellSouth's resolution of the billing dispute or if no response to the billing dispute has been received by EveryCall by such sixtieth (60^{th}) day, EveryCall must pursue the escalation process as outlined in the Billing Dispute Escalation Matrix, set forth on BellSouth's Interconnection Services Web site, or the billing dispute shall be considered denied and closed. If, after escalation, the Parties are unable to reach resolution, then the aggrieved Party, if it elects to pursue the dispute shall pursue dispute resolution in accordance with General Terms and Conditions.

2.2 For purposes of this Section 2, a billing dispute means a reported dispute submitted pursuant to Section 2.1 above of a specific amount of money actually billed by BellSouth within twelve (12) months of the submission of such dispute. EveryCall agrees to not submit billing disputes for amounts billed more than

twelve (12) months prior to submission of a billing dispute filed for amounts billed. The billing dispute must be clearly explained by EveryCall and supported by written documentation, which clearly shows the basis for disputing charges. The determination as to whether the billing dispute is clearly explained or clearly shows the basis for disputing charges shall be within BellSouth's sole reasonable discretion. Disputes that are not clearly explained or those that do not provide complete information may be rejected by BellSouth. Claims by EveryCall for damages of any kind will not be considered a billing dispute for purposes of this Section. If BellSouth resolves the billing dispute, in whole or in part, in favor of EveryCall, any credits and interest due to EveryCall as a result therof shall be applied to EveryCall's account by BellSouth upon resolution of the billing dispute.

3. Non-InterCompany Settlements

3.1 Direct Participants are Telecommunications carriers that exchange data directly with other Direct Participants via the Centralized Message Distribution System (CMDS) Data Center (Direct Participant) and may act as host companies (Host) for those Telecommunications carriers that do not exchange data directly via the CMDS Data Center.

3.2 The Non-InterCompany Settlements (NICS) is the national system administered by Telcordia that is used in the settlement of revenues for calls that are originated and billed by two (2) different local exchange carriers (LEC) within a single Direct Participant's territory to another for billing. NICS applies to calls involving another LEC where the Earning Company and the Billing Company are located within BellSouth's territory.

3.3 In association with message distribution service, BellSouth will provide EveryCall with associated intercompany settlements reports as appropriate.

3.4 Notwithstanding anything in this Agreement to the contrary, in no case shall either Party be liable to the other for any direct or consequential damages incurred as a result of the obligations set out in this Section 3.

3.5 Intercompany Settlements Messages

3.5.1 Intercompany Settlements Messages facilitate the settlement of revenues associated with traffic originated from or billed by EveryCall as a facilities based provider of local exchange Telecommunications Services.

3.5.2 BellSouth will receive the monthly NICS reports from Telcordia on behalf of EveryCall and will distribute copies of these reports to EveryCall on a monthly basis.

3.5.3 Through NICS, BellSouth will collect the revenue earned by EveryCall within the BellSouth territory from another LEC also within the BellSouth territory where the messages are billed, less a per message billing and collection fee of five cents

($0.05), on behalf of EveryCall. BellSouth will remit the revenue billed by EveryCall within the BellSouth region to the LEC also within the BellSouth region, where the messages originated, less a per message billing and collection fee of five cents ($0.05). These two (2) amounts will be netted together by BellSouth and the resulting charge or credit issued to EveryCall via a CABS miscellaneous bill on a monthly basis in arrears.

3.5.4 BellSouth and EveryCall agree that monthly netted amounts of less than fifty dollars ($50.00) will not be settled.

Exhibit B

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Complaint of EveryCall Communications Against AT&T Tennessee and Motion for Emergency Relief to Prevent Disruption of Service*

Docket No. 10-00132

AFFIDAVIT OF GERT ANDERSEN

I, Gert Andersen, of lawful age and being sworn upon my oath, do state as follows:

1. I am a Director – Credit & Collections of AT&T Services, Inc., and have been employed by AT&T Services, Inc. or an affiliated company for 29 years. Among other things, AT&T Services, Inc. provides billing and collection services for its affiliated companies, including BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T Tennessee"). I am authorized to make this Affidavit on behalf of AT&T Tennessee. This Affidavit is based on my personal knowledge an d my review of the business records of AT&T Tennessee.

2. On Friday, June 18, 2010, AT&T Tennessee sent a collection letter to EveryCall Communications, Inc. ("EveryCall"), demanding payment of the past due amounts owed by EveryCall to AT&T Tennessee on its Tennessee accounts. The document attached hereto as Exhibit 1 is a true and correct copy of the redacted version of the June 18 collection letter. Exhibit 1 was created and maintained by AT&T Tennessee in the normal course of business and is based on the business records of AT&T Tennessee.

3. The document attached hereto as Exhibit 2 is a true and correct copy of the redacted version of a chart, which was prepared at my direction and under my supervision, detailing EveryCall's billing and payment account history with AT&T Tennessee for the period August 2008 through May 2010. The unredacted version of Exhibit 2 is a true and accurate summary regarding EveryCall's billing and payment account history with AT&T Tennessee, and was created from the business records of AT&T

Tennessee. The unredacted version of Exhibit 2 was sent to EveryCall as Attachment A to the collection letter that was sent on June 18, 2010.

4. The document attached hereto as Exhibit 3 is a true and correct copy of a redacted version of a chart that I am familiar with which details the number of resale lines that EveryCall has received by AT&T Tennessee on a month-by-month basis for the period January 2009 through May 2010. The unredacted version of Exhibit 3 is a true and accurate summary of the number of resale lines EveryCall has purchased from AT&T Tennessee, and was created from the business records of AT&T Tennessee. The unredacted version of Exhibit 3 was sent to EveryCall as Attachment B to the collection letter that was sent on June 18, 2010.

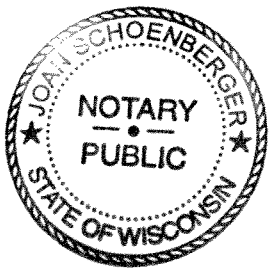
5. AT&T Tennessee stands ready to provide unredacted versions of Exhibits 1, 2, and 3 once appropriate protections are in place in this proceeding to protect the confidential nature of the proprietary information contained therein.

FURTHER AFFIANT SAYETH NOT.

Gert Andersen

Sworn to and subscribed before me

this 8 of July, 2010.



Notary Public

My Commission expires 3/3/13

at&t

VIA FED EX, Tracking Number 8726 2365 8342
June 18, 2010

Kyle Coats
EveryCall Communications, Inc.
4315 Bluebonnet Boulevard, Suite A
Baton Rouge, Louisiana 70809

Dear Mr. Coats:

RE: NOTICE OF SUSPENSION AND TERMINATION

AT&T Tennessee's records indicate that the EveryCall Communications, Inc. ("EveryCall") Tennessee [redacted] account has an outstanding **past due balance of $[redacted]** as of May 13, 2010. This [redacted] account is listed on Attachment A.

The Interconnection Agreement between AT&T Tennessee and EveryCall covering services purchased in the State of Tennessee, which has an Effective Date of November 30, 2006 ("ICA") requires you to pay AT&T Tennessee all billed charges, including disputed amounts. See ICA Attachment 7, Billing at Section 1.4, which reads, in part:

> **EveryCall shall make payment to BellSouth for all services billed including disputed amounts.**

Moreover, Section 1.4.1 of Attachment 7, Billing to the ICA requires payment for services prior to the next bill date, as follows:

> 1.4.1 Payment Due. **Payment for services provided by BellSouth, including disputed charges, is due on or before the next bill date.**

Attachment A shows the amounts AT&T Tennessee billed EveryCall for [redacted] services purchased in the State of Tennessee, credit adjustments AT&T Tennessee applied and payments AT&T Tennessee received from EveryCall since August 2008.

Significantly, during the period from December 13, 2009 though May 13, 2010, inclusive, AT&T Tennessee billed EveryCall $[redacted] and applied credit for promotions and other adjustments of $[redacted], leaving a net amount owed for that period of $[redacted]. During that same period, however, EveryCall paid AT&T Tennessee only $[redacted] (less than two-tenths of one percent of the net amount owed) while increasing its provisioning of [redacted] services from AT&T Tennessee from [redacted] lines at the end of December 2009 to [redacted] lines provisioned at the end of May, 2010 (more than an [redacted]% increase in Resale lines provisioned from AT&T Tennessee). Details of the [redacted] lines provisioned by EveryCall are included on Attachment B to this letter.

Exhibit 1

at&t

Please remit payment to AT&T Tennessee at the following address:

AT&T ROC-CABS
600 North Point Parkway
Alpharetta, Georgia 30005

Should you fail to make payment of $[redacted] by July 6, 2010, AT&T Tennessee will take further action pursuant to our ICA, including without limitation Suspension, as provided in Section 1.5, *et seq.*, of Attachment 7, Billing, to our ICA.

In addition, should you fail to make payment of all past due charges for these [redacted] services on or before July 21, 2010, including all charges for [redacted] services that become past due before that date, AT&T Tennessee will take further action, including without limitation Discontinuance and/or Termination, as provided in Section 1.5, *et seq.*, of Attachment 7, Billing, to our ICA.

If you have questions, please contact me directly at (205) 970-5337.

Sincerely,

Ann Mason

Ann Mason
Manager
AT&T Credit and Collections

Attachments (2)

Attachment A

EveryCall Communications, Inc.

State		Balance Forward	Payments	Adjustments	Balance Forward minus (Payments + Adjustments) Col B - (Col C + Col D)	Current Charges	Late Payment Charges (not included in Col F)	Amount Due
Tennessee		(Bill account number [redacted]		with 13th bill date)				
	Aug-08	$ [redacted]	$	$	$	$	$	$
	Sep-08	$	$	$	$	$	$	$
	Oct-08	$	$	$	$	$	$	$
	Nov-08	$	$	$	$	$	$	$
	Dec-08	$	$	$	$	$	$	$
	Jan-09	$	$	$	$	$	$	$
	Feb-09	$	$	$	$	$	$	$
	Mar-09	$	$	$	$	$	$	$
	Apr-09	$	$	$	$	$	$	$
	May-09	$	$	$	$	$	$	$
	Jun-09	$	$	$	$	$	$	$
	Jul-09	$	$	$	$	$	$	$
	Aug-09	$	$	$	$	$	$	$
	Sep-09	$	$	$	$	$	$	$
	Oct-09	$	$	$	$	$	$	$
	Nov-09	$	$	$	$	$	$	$
	Dec-09	$	$	$	$	$	$	$
	Jan-10	$	$	$	$	$	$	$
	Feb-10	$	$	$	$	$	$	$
	Mar-10	$	$	$	$	$	$	$
	Apr-10	$	$	$	$	$	$	$
	May-10	$	$	$	$	$	$	$
Totals	8/08 - 5/10	$	$	$		$	$	
6 Month Totals	12/09 - 5/10	$	$	$		$	$	

Exhibit 2

ATTACHMENT B

EveryCall Communications, Inc.

State: **Tennessee**

Resale services purchased in state, as of the year and month specified.

2009												2010				
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY
[redacted]																

Exhibit 3

Exhibit C

AGREEMENT
GENERAL TERMS AND CONDITIONS

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., (BellSouth), a Georgia corporation, and EveryCall Communications, Inc. (EveryCall), a Louisiana corporation, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or EveryCall or both as a "Party" or "Parties."

W I T N E S S E T H

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide Telecommunications Services (as defined below) in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, EveryCall is or seeks to become a CLEC authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, pursuant to Sections 251 and 252 of the Act; EveryCall wishes to purchase certain services from BellSouth; and

WHEREAS, the Parties wish to interconnect their facilities, exchange traffic, and perform Local Number Portability (LNP) pursuant to Sections 251 and 252 of the Act as set forth herein; and

WHEREAS, EveryCall wishes to purchase and BellSouth wishes to provide other services as described in this Agreement;

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and EveryCall agree as follows:

Definitions

Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than ten percent (10%).

Commission is defined as the appropriate regulatory agency in each state of BellSouth's nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

Competitive Local Exchange Carrier (CLEC) means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

Effective Date is defined as the date that the Agreement is effective for purposes of rates, terms and conditions and shall be thirty (30) days after the date of the last signature executing the Agreement. Future amendments for rate changes will also be effective thirty (30) days after the date of the last signature executing the amendment.

FCC means the Federal Communications Commission.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

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

Telecommunications Act of 1996 (Act) means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.).

1 CLEC Certification

1.1 EveryCall agrees to provide BellSouth in writing EveryCall's CLEC certification from the Commission for all states covered by this Agreement except Kentucky prior to BellSouth filing this Agreement with the appropriate Commission for approval. Additionally, EveryCall shall provide to BellSouth an effective certification to do business issued by the secretary of state or equivalent authority in each state covered by this Agreement.

1.2 To the extent EveryCall is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, EveryCall may not purchase services hereunder in that state. EveryCall will notify BellSouth in writing and provide CLEC certification from the Commission when it becomes certified to operate in, as well as an effective certification to do business issued by the secretary of state or equivalent authority for, any other state covered by this Agreement. Upon receipt thereof, BellSouth will file this Agreement in that state, and EveryCall may purchase services pursuant to this Agreement in that state, subject to establishing appropriate accounts in the additional state as described in Attachment 7.

1.3 Should EveryCall's certification in any state be rescinded or otherwise terminated, BellSouth may, at its election, suspend or terminate this Agreement immediately and all monies owed on all outstanding invoices for services provided in that state

shall become due, or BellSouth may refuse to provide services hereunder in that state until certification is reinstated in that state, provided such notification is made prior to expiration of the term of this Agreement. EveryCall shall provide an effective certification to do business issued by the secretary of state or equivalent authority in each state covered by this Agreement.

2 Term of the Agreement

2.1 The initial term of this Agreement shall be five (5) years, beginning on the Effective Date and shall apply to the BellSouth territory in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.

2.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred eighty (180) days prior to the expiration of the initial term of this Agreement, the Parties shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement (Subsequent Agreement). If as of the expiration of the initial term of this Agreement, a Subsequent Agreement has not been executed by the Parties, then except as set forth in Sections 2.3.1 and 2.3.2 below, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this Agreement after expiration of the initial term shall be as set forth in Section 2.3 below.

2.3 If, within one hundred thirty-five (135) days of commencing the negotiation referred to in Section 2.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate rates, terms and conditions for the Subsequent Agreement pursuant to 47 U.S.C. § 252.

2.3.1 EveryCall may request termination of this Agreement only if it is no longer purchasing services pursuant to this Agreement. Except as set forth in Section 2.3.2 below, notwithstanding the foregoing, in the event that as of the date of expiration of the initial term of this Agreement and conversion of this Agreement to a month-to-month term, the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section 2.3 above, then BellSouth may terminate this Agreement upon sixty (60) days notice to EveryCall. In the event that BellSouth terminates this Agreement as provided above, BellSouth shall continue to offer services to EveryCall pursuant to the rates, terms and conditions set forth in BellSouth's then current standard interconnection agreement. In the event that BellSouth's standard interconnection agreement becomes effective between the Parties, the Parties may continue to negotiate a Subsequent Agreement.

2.3.2 Notwithstanding Section 2.2 above, in the event that as of the expiration of the initial term of this Agreement the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section 2.3 above and BellSouth is not providing any services under this Agreement as of the date of expiration of the initial term of this Agreement, then this Agreement shall not continue on a month-to-month basis but shall be deemed terminated as of the expiration date hereof.

2.4 If, at any time during the term of this Agreement, BellSouth is unable to contact EveryCall pursuant to the Notices provision hereof or any other contact information provided by EveryCall under this Agreement, and there are no active services being provisioned under this Agreement, then BellSouth may, at its discretion, terminate this Agreement, without any liability whatsoever, upon sending of notification to EveryCall pursuant to the Notices section hereof. Furthermore, if after eighteen (18) months following the Effective Date of this Agreement EveryCall has no active services pursuant to this Agreement, BellSouth may terminate this Agreement, without any liability to BellSouth, upon notification to EveryCall pursuant to the Notices section hereof.

2.5 In addition to as otherwise set forth in this Agreement, BellSouth reserves the right to suspend access to ordering systems, refuse to process additional or pending applications for service, or terminate service in the event of prohibited, unlawful or improper use of BellSouth's facilities or service, abuse of BellSouth's facilities or any other material breach of this Agreement, and all monies owed on all outstanding invoices shall become due. In such event, EveryCall is solely responsible for notifying its customers of any discontinuance of service.

3 Nondiscriminatory Access

When EveryCall purchases Telecommunications Services from BellSouth pursuant to Attachment 1 of this Agreement for the purposes of resale to customers, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to others, including its customers. To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by BellSouth to EveryCall shall be at least equal to that which BellSouth provides to itself and shall be the same for all Telecommunications carriers requesting access to that Network Element. The quality of the interconnection between the network of BellSouth and the network of EveryCall shall be at a level that is equal to that which BellSouth provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet the same technical criteria and service standards that are used within BellSouth's network and shall extend to a consideration of service quality as perceived by BellSouth's customers and service quality as perceived by EveryCall.

4 Court Ordered Requests for Call Detail Records and Other Subscriber Information

4.1 Subpoenas Directed to BellSouth. Where BellSouth provides resold services for EveryCall, BellSouth shall respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to EveryCall customers. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request. BellSouth shall maintain such information for EveryCall customers for the same length of time it maintains such information for its own customers.

4.2 Subpoenas Directed to EveryCall. Where BellSouth is providing resold services to EveryCall, , then EveryCall agrees that in those cases where EveryCall receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to EveryCall customers, and where EveryCall does not have the requested information, EveryCall will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth for handling in accordance with Section 4.1 above.

4.3 In all other instances, where either Party receives a request for information involving the other Party's customer, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.

5 Liability and Indemnification

5.1 EveryCall Liability. In the event that EveryCall consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party places orders under this Agreement using EveryCall's company codes or identifiers, all such entities shall be jointly and severally liable for the obligations of EveryCall under this Agreement.

5.2 Liability for Acts or Omissions of Third Parties. BellSouth shall not be liable to EveryCall for any act or omission of another entity providing any services to EveryCall.

5.3 Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any cause whatsoever, whether based in contract, negligence or other tort, strict liability or otherwise, relating to the performance of this Agreement, shall not exceed a credit for the actual cost of the services or functions not performed or improperly performed. Any amounts paid to EveryCall pursuant to Attachment 9 hereof shall be credited against any damages otherwise payable to EveryCall pursuant to this Agreement.

5.3.1 Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its customers and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the customer or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall, except to the extent caused by the other Party's gross negligence or willful misconduct, indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.

5.3.2 Neither BellSouth nor EveryCall shall be liable for damages to the other Party's terminal location, equipment or customer premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.

5.3.3 Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.

5.3.4 To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on either Party different from or in conflict with the liability or limitation of liability set forth in this Section, then with respect to any facts or circumstances covered by such specific provisions, the liability or limitation of liability contained in such specific provision shall apply.

5.4 Indemnification for Certain Claims. Except as otherwise set forth in this Agreement and except to the extent caused by the indemnified Party's gross negligence or willful misconduct, the Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or

damage claimed by any third party (including, but not limited to, a customer of the Party receiving services) arising from the third party's use or reliance on and arising from the Party receiving services use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement.

5.5 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

6 Intellectual Property Rights and Indemnification

6.1 No License. Except as expressly set forth in Section 6.2 below, no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the "Marks") of the other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the other Party.

6.2 Ownership of Intellectual Property. Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited, non-assignable, non-exclusive, non-transferable license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right, now or hereafter owned, controlled or licensable by a Party, is granted to the other Party. Neither shall it be implied nor arise by estoppel. Any trademark, copyright or other proprietary notices appearing in association with the use of any facilities or equipment (including software) shall remain on the documentation, material, product, service, equipment or software. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.

6.3 Intellectual Property Remedies

6.3.1 Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 5 above.

6.3.2 Claim of Infringement

6.3.2.1 In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party, promptly and at its sole expense and sole option, but subject to the limitations of liability set forth below, shall:

6.3.2.2 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or

6.3.2.3 obtain a license sufficient to allow such use to continue.

6.3.2.4 In the event Sections 6.3.2.2 or 6.3.2.3 above are commercially unreasonable, then said Party may terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.

6.3.3 Exception to Obligations. Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or

equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

6.3.4 Exclusive Remedy. The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

6.3.5 Dispute Resolution. Any claim arising under Sections 6.1 and 6.2 above shall be excluded from the dispute resolution procedures set forth in Section 8 below and shall be brought in a court of competent jurisdiction.

7 Proprietary and Confidential Information

7.1 Proprietary and Confidential Information. It may be necessary for BellSouth and EveryCall, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.

7.2 Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees consultants, contractors and agents of Recipient or its Affiliates with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipients may make tangible or electronic copies, notes, summaries or extracts of Information only as necessary for use as authorized herein. All tangible or electronic copies, notes, summaries or extracts must be marked with the same confidential and proprietary notice as appears on the original. Information remains at all times the property of Discloser. Upon Discloser's request, all or any requested portion of the Information (including, but not limited to, tangible and electronic copies, notes, summaries or extracts of any Information)

will be promptly returned to Discloser or destroyed, and Recipient will provide Discloser with written certification stating that such information has been returned or destroyed.

7.3 Exceptions

7.3.1 Recipient will not have an obligation to protect any portion of the Information which:

7.3.2 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.

7.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. § 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.

7.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.

7.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.

7.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 7 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

8 Resolution of Disputes

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party, if it elects to pursue resolution of the dispute, shall petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

9 Taxes

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

9.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party

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

9.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.

9.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party

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

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

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

9.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery. The purchasing Party shall have the right to contest, at its own expense, any such tax or fee that it believes is not applicable or was paid by it in error. If requested in writing by the purchasing Party, the providing Party shall facilitate such contest either by assigning to the purchasing Party its right to claim a refund of such tax or fee, if such an assignment is permitted under applicable law, or, if an assignment is not permitted, by filing and pursuing a claim for refund on behalf of the purchasing Party but at the purchasing Party's expense.

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

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

9.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; provided, however, that the failure of a Party to provide notice shall not relieve the other Party of any obligations hereunder.

9.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party

9.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.

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

9.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application of or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party.

The providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided, however, that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense.

9.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery. The purchasing Party shall have the right to contest, at its own expense, any such tax or fee that it believes is not applicable or was paid by it in error. If requested in writing by the purchasing Party, the providing Party shall facilitate such contest either by assigning to the purchasing Party its right to claim a refund of such tax or fee, if such an assignment is permitted under applicable law, or, if an assignment is not permitted, by filing and pursuing a claim for refund on behalf of the purchasing Party but at the purchasing Party's expense.

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

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

9.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; provided, however, that the failure of a Party to provide notice shall not relieve the other Party of any obligations hereunder.

9.5 Additional Provisions Applicable to All Taxes and Fees

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

9.5.2 Notwithstanding any provision of this Agreement to the contrary, any administrative, judicial, or other proceeding concerning the application or amount of a tax or fee shall be maintained in accordance with the provisions of this Section and any applicable federal, state or local law governing the resolution of such disputed tax or fee; and under no circumstances shall either Party have the right to

bring a dispute related to the application or amount of a tax or fee before a regulatory authority.

10 Force Majeure

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by EveryCall, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease. The Party affected shall provide notice of the Force Majeure event within a reasonable period of time following such an event.

11 Adoption of Agreements

Pursuant to 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809, BellSouth shall make available to EveryCall any entire interconnection agreement filed and approved pursuant to 47 U.S.C. § 252. The adopted agreement shall apply to the same states as the agreement that was adopted, and the term of the adopted agreement shall expire on the same date as set forth in the agreement that was adopted.

12 Modification of Agreement

12.1 If EveryCall changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of EveryCall to notify BellSouth of said change, request that an amendment to this Agreement, if necessary, be executed to reflect said change and notify the Commission of such modification of company structure in accordance with the state rules governing such modification in company structure if applicable. Additionally, EveryCall shall provide BellSouth with any necessary supporting documentation, which may include, but is not limited to, a credit application, Application for Master Account, proof of authority to provide telecommunications services, the appropriate Operating Company Number (OCN) for each state as assigned by National Exchange Carrier Association (NECA), Carrier Identification Code (CIC), Access Customer Name and Abbreviation (ACNA), BellSouth's blanket form letter of authority (LOA), Misdirected Number form and a tax exemption certificate.

12.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

12.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of EveryCall or BellSouth to perform any material terms of this Agreement, EveryCall or BellSouth may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within forty-five (45) days after such notice, and either Party elects to pursue resolution of such amendment such Party shall pursue the dispute resolution process set forth in Section 8 above.

13 Legal Rights

Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

14 Indivisibility

Subject to Section 15 below, the Parties intend that this Agreement be indivisible and nonseverable, and each of the Parties acknowledges that it has assented to all of the covenants and promises in this Agreement as a single whole and that all of such covenants and promises, taken as a whole, constitute the essence of the contract. Without limiting the generality of the foregoing, each of the Parties acknowledges that any provision by BellSouth of collocation space under this Agreement is solely for the purpose of facilitating the provision of other services under this Agreement as set forth in Attachment 4. The Parties further acknowledge that this Agreement is intended to constitute a single transaction and that the obligations of the Parties under this Agreement are interdependent.

15 Severability

If any provision of this Agreement, or part thereof, shall be held invalid or unenforceable in any respect, the remainder of the Agreement or provision shall not be affected thereby, provided that the Parties shall negotiate in good faith to reformulate such invalid provision, or part thereof, or related provision, to reflect as closely as possible the original intent of the parties, consistent with applicable law, and to effectuate such portions thereof as may be valid without defeating the intent of such provision. In the event the Parties are unable to mutually negotiate such replacement language, either Party may elect to pursue the dispute resolution process set forth in Section 8 above.

16 Non-Waivers

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

17 Governing Law

Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles.

18 Assignments and Transfers

18.1 Any assignment by either Party to any entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. The assignee must provide evidence of a Commission approved certification to provide Telecommunications Service in each state that EveryCall is entitled to provide Telecommunications Service. After BellSouth's consent, the Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations. Notwithstanding anything to the contrary in this Section, EveryCall shall not be permitted to assign this Agreement in whole or in part to any entity unless either (1) EveryCall pays all bills, past due and current, under this Agreement, or (2) EveryCall's assignee expressly assumes liability for payment of such bills.

18.2 In the event that EveryCall desires to transfer any services hereunder to another provider of Telecommunications Service, or EveryCall desires to assume hereunder any services provisioned by BellSouth to another provider of Telecommunications Service, such transfer of services shall be subject to separately negotiated rates, terms and conditions.

19 Notices

19.1 Every notice, consent or approval of a legal nature, required or permitted by this Agreement shall be in writing and shall be delivered either by hand, by overnight courier or by US mail postage prepaid, or email if an email address is listed below, addressed to:

BellSouth Telecommunications, Inc.

BellSouth Local Contract Manager
600 North 19th Street, 10th floor
Birmingham, AL 35203

and

Business Markets Attorney
Suite 4300
675 West Peachtree Street
Atlanta, GA 30375

EveryCall Communications, Inc.

Kyle Coats
10500 Coursey Blvd. Suite 306
Baton Rouge, LA 70816

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

19.2 Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

19.3 Notwithstanding the above, BellSouth will post to BellSouth's Interconnection Web site changes to business processes and policies and shall post to BellSouth's Interconnection Web site or submit through applicable electronic systems, other service and business related notices not requiring an amendment to this Agreement.

20 Rule of Construction

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

21 Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

22 Multiple Counterparts

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

23 Filing of Agreement

This Agreement, and any amendments hereto, shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act, or as otherwise required by the state and the Parties shall share equally in any applicable fees. Notwithstanding the foregoing, this Agreement shall not be submitted for approval by the appropriate state regulatory agency unless and until such time as EveryCall is duly certified as a local exchange carrier in such state, except as otherwise required by a Commission.

24 Compliance with Law

The Parties have negotiated their respective rights and obligations pursuant to substantive Federal and State Telecommunications law and this Agreement is intended to memorialize the Parties' mutual agreement with respect to each Party's rights and obligations under the Act and applicable FCC and Commission orders, rules and regulations. Nothing contained herein, nor any reference to applicable rules and orders, is intended to expand on the Parties' rights and obligations as set forth herein. This Agreement also contains certain provisions that were negotiated without regard to the Parties' obligations as set forth Section 251 of the Act. To the extent the provisions of this Agreement differ from the provisions of any Federal or State Telecommunications statute, rule or order in effect as of the execution of this Agreement, this Agreement shall control. Each Party shall comply at its own expense with all other laws of general applicability.

25 Necessary Approvals

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 persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

26 Good Faith Performance

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

27 Rates

27.1 EveryCall shall pay the charges set forth in this Agreement. In the event that BellSouth is unable to bill the applicable rate or no rate is established or included in this Agreement for any services provided pursuant to this Agreement, BellSouth reserves the right to back bill EveryCall for such rate or for the difference between

the rate actually billed and the rate that should have been billed pursuant to this Agreement; provided, however, that subject to EveryCall's agreement to the limitation regarding billing disputes as described in Section 2.2 of Attachment 7 hereof, BellSouth shall not back bill any amounts for services rendered more than twelve (12) months prior to the date that the charges or additional charges for such services are actually billed. Notwithstanding the foregoing, both Parties recognize that situations may exist which could necessitate back billing beyond twelve (12) months. These exceptions are:

- Charges connected with jointly provided services whereby meet point billing guidelines require either Party to rely on records provided by a third party and such records have not been provided in a timely manner;
- Charges incorrectly billed due to erroneous information supplied by the non-billing Party;
- Charges for which a regulatory body has granted, or a regulatory change permits, the billing Party the authority to back bill.

27.2 To the extent a rate element is omitted or no rate is established, BellSouth has the right not to provision such service until the Agreement is amended to include such rate.

27.3 To the extent EveryCall requests services not included in this Agreement, such services shall be provisioned pursuant to the rates, terms and conditions set forth in the applicable tariffs or a separately negotiated Agreement, unless the Parties agree to amend this Agreement to include such service prospectively.

28 Rate True-Up

28.1 This section applies to rates that are expressly subject to true-up.

28.2 The rates shall be trued-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final and effective order of the Commission. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with the rates for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any discrepancy between the records or disagreement between the Parties regarding the amount of such true-up, the dispute shall be subject to the dispute resolution process set forth in this Agreement.

28.3 A final and effective order of the Commission that forms the basis of a true-up shall be based upon cost studies submitted by either or both Parties to the

Commission and shall be binding upon BellSouth and EveryCall specifically or upon all carriers generally, such as a generic cost proceeding.

29 Survival

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

30 Entire Agreement

30.1 This Agreement means the General Terms and Conditions, the Attachments hereto and all documents identified therein, as such may be amended from time to time and which are incorporated herein by reference, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement and EveryCall acknowledges and agrees that any and all amounts and obligations owed for services provisioned or orders placed under prior agreements between the Parties, related to the subject matter hereof, shall, as of the Effective Date, be due and owing under this Agreement and be governed by the terms and conditions of this Agreement as if such services or orders were provisioned or placed under this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

30.2 Any reference throughout this Agreement to a tariff, industry guideline, BellSouth's technical guideline or reference, BellSouth business rule, guide or other such document containing processes or specifications applicable to the services provided pursuant to this Agreement, shall be construed to refer to only those provisions thereof that are applicable to these services, and shall include any successor or replacement versions thereof, all as they are amended from time to time and all of which are incorporated herein by reference, and may be found at BellSouth's Interconnection Web site at: www.interconnection.bellsouth.com. References to state tariffs throughout this Agreement shall be to the tariff for the state in which the services were provisioned; provided, however, that in any state where certain BellSouth services or tariff provisions have been or become deregulated or detariffed, any reference in this Agreement to a detariffed or deregulated service or provision of such tariff shall be deemed to refer to the service description, price list or other agreement pursuant to which BellSouth provides such services as a result of detariffing or deregulation.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

BellSouth Telecommunications, Inc.	**EveryCall Communications, Inc.**
By:	By:
Name: Kristen E. Shore	Name: Kyle Coats
Title: Director	Title: President
Date:	Date: 10/17/06

Exhibit D

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

At a session of the Public Service Commission held in the City of Albany on February 27, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 06-C-1042 Petition of Pac-West Telecomm, Inc. for a Declaratory Ruling Respecting Its Rights to Interconnection with Verizon New York Inc.

DECLARATORY RULING REGARDING PAC-WEST TELECOMM, INC.'S INTERCONNECTION RIGHTS WITH VERIZON NEW YORK INC.

(Issued and Effective March 5, 2007)

BY THE COMMISSION:

BACKGROUND

In a Petition for a Declaratory Ruling (Petition) filed on August 28, 2006, Pac-West Telecomm, Inc.[1] (Pac-West) requested that the Commission rule Pac-West may:

1) terminate its existing template interconnection agreement with Verizon New York Inc. (Verizon) and 2) adopt the Verizon/Cablevision Lightpath Interconnection Agreement or 3) interconnect pursuant to a generally available Verizon tariff.[2]

On September 21, 2005, Pac-West requested that Verizon permit opt-in to the following interconnection agreements: Cablevision Lightpath (Cablevision) (New

[1] Pac-West is authorized by the Commission to operate in New York State as a facilities-based provider and reseller of telecommunications services. Case 06-C-0196, *Joint Petition for Approval of Transfer of Certificate of Public Convenience and Necessity Held by PWT of New York, Inc. to Pac-West Telecomm, Inc.* (issued April 13, 2006).

[2] Verizon submitted a Response to the Petition on September 18, 2006 and Pac-West replied October 16, 2006.

York), TelNet (Michigan), US LEC (Maryland), Broadwing (Texas), and AT&T (Verizon East and Verizon West). Verizon responded on September 22 that the US LEC, Cablevision, and Broadwing agreements were not available for adoption in the states specified and requested that Pac-West make another opt-in selection for those states. In addition, Verizon asked Pac-West "if…[it] would like to negotiate your own agreements in those states."[3] On October 25, 2005, Pac-West informed Verizon that it would opt-in to Verizon's template agreement in New York.[4] On November 22, 2005, Pac-West executed Verizon's template interconnection agreement, which provides for the agreement to continue for a 2-year term and not expire until November 21, 2007.[5] After the 2-year term, either Verizon or Pac-West can terminate the agreement upon notice.[6]

Subsequently, Pac-West informed Verizon on March 17, 2006, that it wanted to opt-in to the Cablevision agreement.[7] Verizon responded on March 29, 2006 that the Pac-West/Verizon template agreement "governs the relationship between the parties…[and] does not

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[3] Exhibit B, Verizon Response.

[4] Exhibit C, Verizon Response.

[5] The Pac-West/Verizon Interconnection Agreement was deemed approved by the Commission on March 7, 2005.

[6] 2.1 This Agreement shall be effective as of the Effective Date and, unless cancelled or terminated earlier in accordance with the terms hereof, shall continue in effect until November 21, 2007 (the "Initial Term"). Thereafter, this Agreement shall continue in force and effect unless and until cancelled or terminated as provided in this Agreement.

2.2 Either [Pac-West] or Verizon may terminate this Agreement effective upon the expiration of the Initial Term or effective upon any date after expiration of the Initial Term by providing written notice of termination at least ninety (90) days in advance of the date of termination.

Exhibit D, Verizon Response.

provide for early termination."[8] In addition, Verizon restated its position that the Cablevision agreement was not available for adoption. Pac-West replied on April 13, 2006 that §252(i) entitled it to terminate its existing agreement and adopt any other available agreement and maintained that the Cablevision agreement was available. As an alternative, Pac-West proposed an amendment to the template agreement that would incorporate terms regarding reciprocal compensation for virtual foreign exchange (VFX) traffic and optional extended local calling area traffic.[9] On May 30, 2006, Verizon informed Pac-West that it had no right to terminate its template interconnection agreement and also declined to amend the agreement as proposed by Pac-West.

PARTIES' POSITIONS

Pac-West maintains that it has the right under §252(i) to opt-in to another interconnection agreement or take telecommunications services pursuant to a Verizon tariff, "[n]otwithstanding the fact that Pac-West signed the Verizon template agreement."[10] Pac-West argues that because termination of an existing interconnection agreement is not included as one of the §252(i) restrictions set forth in 47 CFR §51.809, nothing in federal law expressly prohibits Pac-West's intended course of action. Pac-West cites *Global NAPs, Inc. v. Verizon New England, Inc.*[11] as "the...one judicially crafted exception to the right of a CLEC to opt-in to an available interconnection agreement" but states the decision is inapplicable because Pac-West and Verizon did not engage in §252(b) arbitration. Pac-West also references a provision in the template agreement that it maintains evinces intent by the parties to allow termination of the agreement in order to exercise a 252(i) option.

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[8] Exhibit F, Verizon Response.

[9] Exhibit F, Verizon Response.

[10] Petition at 6.

[11] 396 F.3d 16 (1st Cir. 2005).

CASE 06-C-1042

> 46. Section 252(i) Obligations
> To the extent required by applicable law, each party shall comply with Section 252(i) of the Act. To the extent that the exercise by [Pac-West] of any of its rights it may have under Section 252(i) results in the rearrangement of services by Verizon, [Pac-West] shall be solely liable for all costs associated therewith, as well as for any termination charges associated with the termination of existing Verizon services.

Pac-West contends that termination charges would not have been discussed in the template agreement had the parties not contemplated a right to take services pursuant to another agreement or tariff. In addition, Pac-West maintains that the "most favored nation" clause in the FCC's 1996 *Local Competition Order*,[12] confers the right to opt-in to any interconnection agreement without requiring that the requesting carrier finish out the term of an existing agreement. Pac-West cites a 10th Circuit case, *US West v. Sprint*,[13] as emphasizing a CLEC's right pursuant to §252(i) "to effectively amend its own interconnection agreement by taking advantage of more favorable provisions contained in other CLEC interconnection agreements." Based on the premise that it is permitted to adopt another interconnection agreement during the term of its template agreement, Pac-West states that its choices for adoption are the Cablevision agreement as well as Verizon interconnection tariffs.

Verizon responds that the template agreement does not expire until November 22, 2007 and cannot be unilaterally terminated before that date. Moreover, Verizon asserts that allowing Pac-West to terminate a binding interconnection agreement in order to opt-in to a replacement agreement, would undermine the §252 statutory scheme of interconnection. If Pac-West were to prevail, Verizon contends that any CLEC dissatisfied with an existing interconnection agreement could replace it by opting-in to

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[12] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499 para. 1316 (1996) (*Local Competition Order*).

[13] *US West Communications, Inc. v. Sprint Communications Company, LP*, 275 F.3d 1241 (10th Cir. 2002) (U S West).

another agreement, bypassing state commission §252 determinations, and rendering the good faith negotiation requirements of §252 a nullity.

Verizon maintains that the *Global NAPs* decision directly applies to Pac-West's proposal to terminate its template agreement and opt-in to a replacement agreement, despite Pac-West's assertion to the contrary. Verizon states the conclusion reached by the Court in *Global NAPs* that state commission §252 decisions were binding on parties to an arbitration and could not be voided by opting-in to a replacement agreement, arose from the context of a Massachusetts Department of Transportation and Energy (DTE) matter in which the DTE rejected an argument similar to Pac-West's in this proceeding, i.e., that a Verizon/Global NAPs interconnection agreement provision referencing §252(i) authorized voiding an arbitrated agreement by opting-in to an existing interconnection agreement.[14] The Massachusetts DTE rejected that argument as a basis for authorizing the unilateral termination of an existing contract.[15]

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[14] The referenced provisions in the GNAPs/ Verizon agreement, which are almost identical to those in the template agreement cited by Pac-West for the same proposition, stated:

"[t]o the extent required by Applicable Law, each Party shall comply with Section 252(i) of the Act....." Section 46.1

"To the extent that the exercise by GNAPs of any rights it may have under Section 252(i)....results in the rearrangement of Services by Verizon, GNAPs shall be solely liable for all costs associated therewith, as well as for any termination charges associated with the termination of existing Verizon Services." Section 46.2

[15] *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts, f/k/a/ New England Telephone & Telegraph Co. d/b/a Bell Atlantic-Massachusetts*, Commonwealth of Massachusetts Department of Telecommunications and Energy, D.T.E. 02-45, Order on Verizon New England, Inc. d/b/a Verizon Massachusetts' Motion for Approval of Final Arbitration Agreement or, in the Alternative, for Clarification (February 19, 2003) at 11-12.

CASE 06-C-1042

In response to Pac-West's interpretation that the "most favored nation" clause in the FCC's 1996 *Local Competition Order*,[16] confers the right to opt-in to any interconnection agreement without requiring that the requesting carrier finish out the term of an existing agreement, Verizon states that while at one time the *Local Competition Order* pick-and-choose rule allowed a CLEC to amend an interconnection agreement by adopting individual terms from another interconnection agreement, this approach was superseded in the FCC's *All-or-Nothing Order*.[17] Verizon further asserts that termination of an existing agreement and replacement with another interconnection agreement is not even addressed, let alone conferred as a right, by the *All-or-Nothing Order*. In addition, Verizon maintains that the *US West* 10th Circuit decision cited by Pac-West as confirmation of a CLEC's §252(i) right to take advantage of more favorable provisions contained in other CLEC interconnection agreements, simply clarified that under the pick-and-choose rule, a CLEC could amend an existing interconnection agreement with additional provisions. Verizon characterizes Pac-West's argument that it is entitled to terminate its current interconnection agreement by adopting another with more favorable terms as tantamount to assertion of unconditional 252(i) rights, despite regulatory and judicial interpretations that 252(i) does not confer unrestricted rights.

Further, Verizon maintains that there is no support for Pac-West's allegations of discriminatory and anti-competitive behavior: Pac-West freely chose to adopt the template agreement rather than pursue a Commission ruling regarding its right to opt-in to a specific agreement and Pac-West did not attempt to negotiate changes in the template agreement. Finally, Verizon states that the Cablevision agreement is not available for adoption.

In reply, Pac-West maintains that the template agreement is subordinate to its §252(i) rights to adopt an available interconnection agreement and that because there

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[16] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, First Report and Order, 11 FCC Rcd 15499 para. 1316 (1996) (*Local Competition Order*).

[17] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-358, Second Report and Order, FCC 04-164 (rel. July 13, 2004) (*All-or-Nothing Order*).

was no binding arbitration order issued in this matter, the *Global NAPs* decision is inapplicable. In addition, Pac-West maintains that *US West* allows amendment of its existing interconnection agreement by opting-in to other CLEC agreements. Pac-West responds to Verizon's argument that the FCC's 2004 *All-or-Nothing Order*,[18] supplanted the prior pick-and-choose process of amending an existing agreement by incorporating individual terms from interconnection agreement by stating that the only change made by the *All-or-Nothing Order* was eliminating adoption of individual provisions. Pac-West also argues Verizon's characterization of Pac-West as freely executing the template agreement is inaccurate based on Pac-West's decision that it had no other choice if it wanted to avoid delay and expense in entering the New York market.

DISCUSSION AND CONCLUSION

Pac-West has an executed interconnection agreement with Verizon which does not expire until November 21, 2007.[19] Pac-West began the process that led to this agreement by deciding to forego negotiation or arbitration and instead requesting §252(i) opt-in to a specific agreement, the Cablevision interconnection agreement. Verizon is required pursuant to §252(i) "to make available any interconnection, service, or network element provided under an agreement....to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." However, an ILEC's §252(i) obligation is limited by regulation[20] and the ILEC may challenge an opt-in request.

Verizon did challenge Pac-West's request by stating that the Cablevision agreement was not available in New York and Verizon, therefore, requested that Pac-West make another opt-in selection. Rather than seeking a determination regarding the

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[18] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-358, Second Report and Order, FCC 04-164 (rel. July 13, 2004) (*All-or-Nothing Order*)

[19] After November 21, 2007, either party may give written notice that it wishes not to continue the agreement.

[20] 47 CFR §51.809.

appropriateness of Verizon's challenge, Pac-West decided to opt-in to a different interconnection agreement, Verizon's template agreement. Ten days after the Pac-West Verizon agreement was approved by the Commission, and well before the 2-year term expired, Pac-West notified Verizon that it wanted to opt-in to the Cablevision agreement. Verizon informed Pac-West that their template agreement now governed the parties' relationship, did not provide for early termination, and in any event, the Cablevision agreement was not available for adoption. Subsequent discussions between Pac-West and Verizon did not result in a change of position by either party.

Pac-West claims that despite the clearly expressed termination provisions in the template agreement, unilateral termination is authorized whenever a §252(i) option is exercised. As support for that contention, Pac-West maintains that applicable law, as interpreted by the FCC and courts, authorizes termination as a consequence of exercising a paramount opt-in right. Verizon argues that current law does not supersede contractual obligations.

Section 252 provides three methods for a CLEC and an ILEC to reach the interconnection agreement in which ILEC telecommunication services are provided: negotiation (§252[a]); arbitration (§252[b]); and adoption (§252[i]). At issue is the §252(i) adoption process.

In August 1996, the FCC first interpreted §252(i) and decided that a pick-and-choose rule allowing a CLEC to adopt individual provisions from any state commission approved interconnection agreement to which the ILEC was a party would prevent discrimination.[21] After concluding §252(i) supported an interpretation allowing access to individual provisions in an interconnection agreement, the FCC determined that because §252(i) conferred a statutory right, "most favored nation" clauses in interconnection agreements were not required to enable a requesting carrier to avail itself of terms and conditions subsequently negotiated by another carrier.[22] The FCC then

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[21] In re Implementation of the Local Competition Provisions in the Telecommunication Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 (1996)(Local Competition Order)

[22] *Id* ¶1316

went on to restrict use of the pick-and-choose rule as to cost, technical feasibility, and time.[23] In practice, CLECs were able to bypass the negotiation or arbitration process and adopt an existing interconnection agreement *in toto* or, because individual provisions were available for selection, amend an existing agreement.

In 2003, the FCC decided to revisit the pick-and-choose rule.[24] On July 13, 2004, the FCC adopted an all-or-nothing rule which required a CLEC to adopt an existing interconnection agreement in its entirety.[25] The FCC concluded that the pick-and-choose rule had not promoted negotiated interconnection agreements and ILECs seldom made significant concessions in negotiations in order to guard against opt-in by CLECs who could obtain the same bargained for concessions without making any trade-offs.[26] Both the *All-or-Nothing Order* and pick-and-choose rule portions of the *Local Competition Order* are silent regarding a CLEC's right to terminate an existing and approved interconnection agreement pursuant to a §252(i) adoption.

However, recent judicial interpretations of §252(i) have discussed the limits of adoption. In *Global NAPs*, the Court considered whether the Massachusetts Department of Telecommunications and Energy (DTE) violated §252(i) by precluding Global NAPs, a CLEC, from nullifying its arbitrated interconnection agreement with Verizon in order to opt-in to an existing Verizon/Sprint agreement. Global NAPs argued, as does Pac-West, that the effect of §252(i) overrides any existing obligation. The Court rejected this argument, stating that "§252(i) says nothing of the sort. Rather, it is written in terms of an obligation on the part of ILECs to make agreements available to potential

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[23] 47 CFR §51.809.

[24] In re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, *Report and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd 16978 (2003).

[25] In re Review of the Section 252 Unbundling Obligations of Incumbent Local Exchange Carriers, *Second Report and Order*, 19 F.C.C.R. 13494 (2004) (All-or-Nothing Rule).

[26] *All-or-Nothing Order*, ¶ 13

CLECs, not as an unconditional right on the part of CLECs to modify their clear obligations... ."[27]

The *Global NAPs* decision[28] not only refutes Pac-West's contention that it has an unconditional right to opt-in to another agreement but also that §252(i) authorizes voiding a contract. The *Global NAPs* decision arose from the context of a Massachusetts Department of Transportation and Energy (DTE) matter in which the DTE rejected the argument that §252(i) conferred "the right to void an existing binding contract and enter into a new, and more favorable contract, at any point."[29] Global NAPs' argument was based on a provision in its agreement with Verizon that is almost identical to the "252(i) Obligations" section in Pac-West/Verizon template agreement.[30] The Massachusetts DTE determined that provision did not authorize

unilateral termination of an existing contract:

> GNAPs would have us conclude that it has the right to void an existing binding contract and enter into a new, more favorable contract, at any point. Such a conclusion is at odds with the definition of a contract. A contract binds both parties - - - a contract that permits

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[27] *Global Naps* at 25.

[28] In *Bellsouth Telecommunications, Inc. v. Southeast Telephone, Inc.*, 462 F. 3d 650, 659 (6th Circuit 2006), the Court cited the *Global NAPs* conclusion refuting that "the opt-in right conferred by the Act and the regulation was unconditional and automatic."

[29] D.T.E. 02-45, *Order on Verizon New England, Inc. d/b/a Verizon Massachusetts' Motion for Approval of Final Arbitration Agreement or, in the alternative, for Clarification*, 11 (February 19, 2003).

[30] The referenced provisions in the GNAPs/ Verizon agreement stated:
"[t]o the extent required by Applicable Law, each Party shall comply with Section 252(i) or the Act.... ." Section 46.1
"To the extent that the exercise by GNAPs of any rights it may have under Section 252(i)....results in the rearrangement of Services by Verizon, GNAPs shall be solely liable for all costs associated therewith, as well as for any termination charges associated with the termination of existing Verizon Services." Section 46.2

> one party absolute discretion to void the contract and to enter into another contract of its choosing is no contract at all. Under GNAPs interpretation of §252(i) of the Act and §46.1 of the arbitrated agreement, nothing prevents GNAPs from voiding and adopting a more favorable contract, and from doing so repeatedly as soon as it discovers a more favorable agreement to adopt.[31]

The *US West Communications* case cited by Pac-West as allowing a CLEC to amend an interconnection agreement by opting-in to another agreement concerned a tariff opt-in provision. Previously, the district court had concluded that the tariff opt-in "violated §§ 251 and 252 because…it had the potential to negatively impact the negotiation of interconnection agreements."[32] The 10th Circuit Court of Appeals determined, however, that the district court's concerns were unfounded because the parties remained bound by their interconnection agreement and the opt-in provision at issue did not eliminate the agreement. This decision is consistent with the Court's concern in *Global NAPs* about honoring the binding effect of prior agreements. Unlike the situation presented in *US West* in which the tariff opt-in did not eliminate the existing agreement, sections in the Cablevision agreement, which Pac-West seeks to adopt, would displace the existing template agreement's provisions related to VFX traffic. Currently, sections 7.2.1 and 7.2.9 of the template agreement exclude VFX traffic from reciprocal compensation. The Cablevision agreement, Pac-West's opt-in choice, does not exclude VFX traffic from reciprocal compensation.

Based on the provisions in the current interconnection agreement between Pac-West and Verizon, unilateral early termination is not authorized. In addition, §252(i)

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[31] *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Interconnection Agreement with Verizon New England Inc. d/b/a Verizon Massachusetts, f/k/a/ New England Telephone & Telegraph Co. d/b/a Bell Atlantic-Massachusetts*, Commonwealth of Massachusetts Department of Telecommunications and Energy, D.T.E. 02-45, Order on Verizon New England, Inc. d/b/a Verizon Massachusetts' Motion for Approval of Final Arbitration Agreement or, in the Alternative, for Clarification (February 19, 2003) at 11-12.

[32] *US West v. Sprint* at 1250.

does not confer an unconditional right[33] to opt-in to an existing agreement or authorize unilateral termination of an existing interconnection agreement. Moreover, there is no support for voiding Pac-West's template agreement, despite its contention that there were no feasible alternatives. It is not necessary at this time to determine if the Cablevision agreement is available for adoption because there is no basis for authorizing early termination of Pac-West's interconnection agreement with Verizon.[34]

The Commission finds and declares:

1. Pac-West is not authorized to terminate its current template interconnection agreement with Verizon.

2. This proceeding is closed.

By the Commission

(SIGNED) JACLYN A. BRILLING
Secretary

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[33] A CLEC's ability to pick and choose provisions from existing agreements was restricted from the FCC's first interpretation of §252(i) in the *Local Competition Order*, *i.e.*, ILEC's were required to make provisions available only for a reasonable period of time and could avoid the rule based on technical nonfeasibility or greater cost. *47 C.F.R. §51.809.*

[34] We do not decide the relationship between termination and opt-in provisions in the context of an opt in request involving an agreement approved subsequent to the agreement that is being terminated or superseded.

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2010, a copy of the foregoing document was served on the following, via the method indicated:

[ ] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[ ] Electronic

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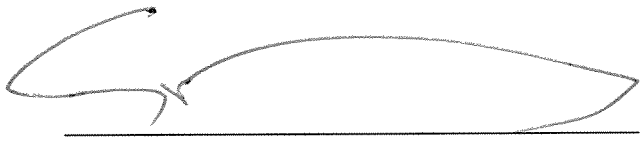

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