



Guy M. Hicks  
General Attorney - TN

AT&T Tennessee  
333 Commerce Street  
Suite 2101  
Nashville, TN 37201-1800

T: 615.214.6301  
F: 615-214-7406  
[gh1402@att.com](mailto:gh1402@att.com)

July 13, 2010

VIA HAND DELIVERY

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

filed electronically in docket office on 07/13/10

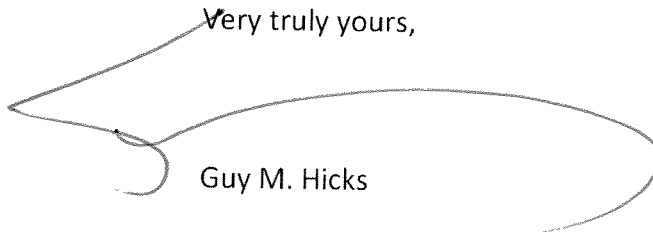
Re: *Complaint of Tennessee Telephone dba Freedom Communications Against  
AT&T Tennessee and Motion for Emergency Relief to Prevent Disruption of Service*  
Docket No. 10-00138

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

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Complaint of Tennessee Telephone dba Freedom Communications Against AT&T Tennessee*

Docket No. 10-00138

**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 Complaint and Motion for Emergency Relief ("Motion") filed by Tennessee Telephone Service, Inc. d/b/a Freedom Communications USA, LLC ("Freedom"). In this Response, AT&T Tennessee first explains why the Tennessee Regulatory Authority ("TRA" or the "Authority") should deny the Motion. AT&T Tennessee then responds to the specific allegations of the Motion.

**I. INTRODUCTION AND ARGUMENT**

On January 23, 2006, the Authority approved a negotiated interconnection agreement ("ICA") between Freedom and AT&T Tennessee.<sup>1</sup> In that Authority-approved and binding ICA, Freedom 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."<sup>2</sup> Freedom has not honored its commitments under the ICA. Instead, under the guise of various credit requests and billing "disputes," Freedom has stopped paying its bills. On June 18,

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<sup>1</sup> See *Petition for Approval of the Interconnection Agreement between BellSouth Telecommunications, Inc. and Tennessee Telephone Services, LLC d/b/a Freedom Communications USA, LLC*, Docket No. 05-00307.

<sup>2</sup> See ICA, Attachment 7, pp. 6-7, §§1.4 to 1.4.1 (emphasis added). Exhibit A to this Response is a copy of Attachment 7 to the Parties' ICA.

2010, AT&T Tennessee sent Freedom a letter and attachments that, among other things: sets forth Freedom's substantial past due balance; quotes the operative language of the Parties' ICA; notes that from December 13, 2009 to May 13, 2010, Freedom paid AT&T Tennessee ***less than three-tenths of one percent*** of the net amount owed (the billed amounts less credits AT&T Tennessee applied for promotions and other 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 Motion, Freedom acknowledges that it has breached its ICA by consistently refusing to make the payments it agreed to make.<sup>3</sup> As a result, Freedom owes AT&T Tennessee a significant past-due amount, and AT&T Tennessee is entitled to have Freedom pay those amounts immediately. AT&T Tennessee questions whether Freedom can pay its bills on a going-forward basis, much less its 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 Freedom's substantial (and growing) uncollectibles. This concern is borne out by the fact that one day prior to the meeting of the Authority panel to convene a contested case and appoint a Hearing Officer in connection with the Motion filed by EveryCall (which, like Freedom, is a prepay reseller) in Docket No. 10-00132, that reseller filed for bankruptcy.<sup>4</sup> This concern is further supported by the actions of the Florida Public Service Commission which, on the

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<sup>3</sup> Motion at p. 3, ¶10 (noting that Freedom "deducts from its bills the total amount of pending claims for promotional credits.").

<sup>4</sup> See Exhibit C to this Response.

morning of July 13, 2010, voted to require LifeConnex (another reseller that sought emergency relief under similar circumstances) to pay its bills in full on a going-forward basis and to post a \$1.4 Million bond to cover its unpaid balance.<sup>5</sup> AT&T Tennessee, therefore, respectfully asks that the Authority deny Freedom's Motion.

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

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

Payment of **all** charges will be the responsibility of Freedom.<sup>6</sup>

Freedom shall make payment to [AT&T Tennessee] for all services billed **including disputed amounts**.<sup>7</sup>

Payment for services provided by [AT&T Tennessee], **including disputed charges**, is due on or before the next bill date.<sup>8</sup>

As explained by the Supreme Court of Tennessee, "[w]hen a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used."<sup>9</sup> Moreover, "[t]he judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous."<sup>10</sup> Given the unambiguous, clear, and explicit contract language

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<sup>5</sup> *Complaint and Petition for Relief against LifeConnex Telecom, LLC f/k/a Swiftel, LLC by BellSouth Telecommunications, Inc. d/b/a AT&T Florida*, Florida Public Service Commission Docket No. 100021-TP.

<sup>6</sup> ICA, Attachment 7, p. 6, §1.4 (emphasis added).

<sup>7</sup> *Id.*, pp. 6-7, §1.4 (emphasis added).

<sup>8</sup> *Id.*, p. 7, §1.4.1 (emphasis added).

<sup>9</sup> See *Yancey v. H&H Gas and Oil Co.*, 1992 Tenn. App. LEXIS 1022, \*5 (TN Ct. App. 1992).

<sup>10</sup> *Id.* 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 (6<sup>th</sup> 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*

quoted above, Freedom clearly is required to pay all amounts billed, even if it disputes those amounts.

**B. The Joint Motion Does Not Relieve Freedom of its Contractual Obligation to Pay All Amounts, Including Disputed Charges.**

Freedom correctly notes that the parties to this and other dockets consolidated with it have filed a Joint Motion on Procedural Issues (“Joint Motion”). As Freedom 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 and counterclaims related to the Consolidated Phase and determine what, if any, dollar amounts are owed or credits due each party.”<sup>11</sup> The Joint Motion, however, does not support any relief requested by Freedom. In plain language that Freedom does not address in its Motion, 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 this Docket. And while Freedom

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*Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004). See also, *Mich. Bell Tel. Co. v. MCI Metro Access Trans. Servs., Inc.*, 323 F.3d 348, 359 (6<sup>th</sup> 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”).

<sup>11</sup> See Motion at p. 4, ¶11. Joint Motion at pp. 2-3.

goes on to assert that “[t]he core issues in this docket it to determine precisely how much money Freedom owes AT&T or AT&T owes Freedom,” that assertion does nothing to support the relief Freedom seeks. In fact, it proves that Freedom is not entitled to that relief.

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. Freedom’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 Freedom’s Motion 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, however, the Authority-approved ICA definitively addresses (and answers) that question by requiring Freedom 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 Freedom Disputes.**

Freedom suggests that AT&T Tennessee has somehow waived its right to require Freedom to pay all amounts billed as required by the ICA by having good-faith discussion with Freedom regarding the amounts that are and are not in disputed. As noted above, that issue is separate and distinct from whether Freedom must pay disputed amounts while those disputes are being resolved, and Freedom acknowledges that the ICA requires it to do so. Moreover, the unambiguous language of the Parties’ Authority-approved ICA provides:

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.<sup>12</sup>

Even if AT&T Tennessee has not insisted that Freedom 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 Freedom 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 Freedom’s service as allowed by the ICA.<sup>13</sup>

**D. Freedom Has Not Demonstrated, and Cannot Demonstrate, that it is Entitled to the Extraordinary Injunctive Relief it Seeks.**

The “emergency relief” Freedom seeks is an order requiring AT&T Tennessee “to take no action to suspend or otherwise interfere with Freedom’s service to its customers...”<sup>14</sup> That relief is identical to what a court would call a preliminary or temporary injunction,<sup>15</sup> and an injunction is an extraordinary and drastic remedy.<sup>16</sup> The Authority is a regulatory forum of limited jurisdiction, and the Motion 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

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<sup>12</sup> ICA, General Terms and Conditions, Page 14, §16. Exhibit D to this Response is a copy of the General Terms and Conditions of the ICA.

<sup>13</sup> See ICA, Attachment 7, pp. 7-9, §§1.5 to 1.5.5.

<sup>14</sup> See Motion at p. 1, and p.5, ¶14.

<sup>15</sup> 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).

<sup>16</sup> *Johnson v. City of Clarksville*, 2003 Tenn. App. LEXIS 413, 10-11 (Tenn. Ct. App. June 3, 2003).

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.<sup>17</sup>

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

In light of the plain language of the ICA discussed above, Freedom 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 Freedom to pay all amounts billed, including disputed amounts. Further, if Freedom 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 Freedom 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 be paid clearly outweighs any purported “harm” to Freedom.<sup>18</sup> And while Freedom’s end users would no longer receive service from Freedom if AT&T disconnects or terminates Freedom for nonpayment, there are a number of other carriers in Tennessee, including other prepay resellers, from whom Freedom’s current end users can receive service.

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<sup>17</sup> *Id.*

<sup>18</sup> 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 Freedom if its Motion is granted.



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 Freedom 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 Freedom would not be able to pay: (1) its substantial past-due balance; and (2) the full amount AT&T Tennessee bills Freedom on a going-forward basis. AT&T Tennessee respectfully submits that Freedom is not able to post a bond in that amount. As noted above, the Florida PSC has recognized the importance of a bond to protect AT&T in the similar matter involving LifeConnex and has ordered that reseller to pay the bills, including disputed amounts in full going forward and to post a bond of \$1.4 Million to protect AT&T in the event it is unable to pay certain past-due amounts.

**E. AT&T Tennessee Will Comply With the Authority-Approved Emergency Service Continuity Plans**

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.<sup>19</sup> AT&T Tennessee will comply with this plan if Freedom's service is terminated. Freedom has not presented any basis (and there is none) on which to require more from AT&T in this case than the TRA's rules would require in any other case.

## **II. RESPONSE TO SPECIFIC ALLEGATIONS**

1. AT&T Tennessee admits that Freedom 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 denies the remainder of the allegations set forth in Paragraph 1 of the Motion.

2. The allegations set forth in Paragraph 2 of the Motion do not require a response from AT&T Tennessee.

3. AT&T Tennessee admits the allegations of Paragraph 3 of the Motion.

4. Paragraph 4 of the Motion does not require a response from AT&T Tennessee.

5. AT&T Tennessee asserts that the Joint Motion on Procedural Schedule and Joint Motion on Procedural Issues speak for themselves. AT&T denies the remainder of the allegations in Paragraph 5.

6. AT&T Tennessee admits that: it sent Freedom the letter referenced in the "Notice of Commencement of Treatment Pursuant to Current Interconnection Agreement" filed in this Docket on June 18, 2010; \$814,178 is the amount demanded in that letter; that letter and its attachments speak for themselves; and the initial date for suspension of service, July 6, 2010, was extended to July 13, 2010.

7. AT&T Tennessee denies the allegations set forth in Paragraph 7 of the Motion.

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<sup>19</sup> 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.

8. AT&T Tennessee denies the allegations set forth in Paragraph 8 of the Motion.
9. AT&T Tennessee denies the allegations set forth in Paragraph 9 of the Motion.
10. AT&T Tennessee asserts that the 2008 CRIS/Oracle Aging Summary attached to the Motion speaks for itself and notes that Attachment A to AT&T's letter of June 18, 2010, to Freedom provides information current through May, 2010. AT&T Tennessee denies the remainder of the allegations set forth in Paragraph 10 of the Motion.
11. 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 11 of the Motion and specifically denies that a hearing in Tennessee has been scheduled in October, 2010.
12. AT&T Tennessee denies the allegations set forth in Paragraph 12 of the Motion.
13. AT&T Tennessee asserts that the General Terms and Conditions of the Parties' ICA speak for themselves. AT&T Tennessee denies the remainder of the allegations set forth in Paragraph 13 of the Motion.
14. AT&T Tennessee denies that Freedom is entitled to any of the relief it seeks in Paragraph 14 of the Motion.
15. AT&T Tennessee denies that Freedom is entitled to any of the relief it seeks in Paragraph 15 of the Motion.

16. AT&T Tennessee denies any allegation set forth in the Motion 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**

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## 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 Freedom Communications 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 Freedom Communications, Freedom Communications 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 Freedom Communications'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 Freedom Communications 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 End User account level, including, if applicable, any charge for usage or usage allowances. BellSouth will also bill Freedom Communications, and Freedom Communications will be responsible for and remit to BellSouth, all charges applicable to said services including but not limited to 911 and E911 charges, End Users common line 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 Freedom Communications as a result of the execution of this Agreement.

- 1.2 Establishing Accounts. After submitting a credit profile and deposit, if required, and after receiving certification as a local exchange carrier from the appropriate Commission, Freedom Communications 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, Freedom Communications may not order services under a new account established in accordance with this Section until thirty (30) days after all information specified in this Section is received from Freedom Communications.

- 1.2.1 ACNAs. Freedom Communications 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 Freedom Communications to order services pursuant to this Agreement and will not be shared by Freedom Communications with another entity.
- 1.2.2 Company Identifiers. If Freedom Communications needs to change, add to, eliminate or convert its OCN(s), ACNAs and other identifying codes (collectively "Company Identifiers") under which it operates when Freedom Communications has already been conducting business utilizing those Company Identifiers, Freedom Communications shall pay all charges as a result of such change, addition, elimination or conversion to the new Company Identifiers. Such charges include, but are not limited to, all time required to make system updates to all of Freedom Communications's End User records and any other changes to BellSouth systems or Freedom Communications records, and will be handled in a separately negotiated agreement or as otherwise required by BellSouth.
- 1.2.3 Tax Exemption. It is the responsibility of Freedom Communications to provide BellSouth with a properly completed tax exemption certificate at intervals required by the appropriate taxing authorities. A tax exemption certificate must be supplied for each individual Freedom Communications entity purchasing Services under this Agreement. Upon BellSouth's receipt of a properly completed tax exemption certificate, subsequent billings to Freedom Communications will not include those taxes or fees from which Freedom Communications is exempt. Prior to receipt of a properly completed exemption certificate, BellSouth shall bill, and Freedom Communications shall pay all applicable taxes and fees. In the event that Freedom Communications 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 Freedom Communications 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 Freedom Communications and at Freedom Communications's sole expense, pursue such refund claim on behalf of Freedom Communications, provided that Freedom Communications 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 Freedom Communications. Freedom Communications shall be solely responsible for the computation, tracking, reporting and payment of all taxes and fees associated with the services provided by Freedom Communications to its End Users.

- 1.3 Deposit Policy. Prior to the inauguration of service or, thereafter, upon BellSouth's request, Freedom Communications shall complete the BellSouth Credit Profile (BellSouth form) and provide information to BellSouth regarding Freedom Communications's credit and financial condition. Based on BellSouth's analysis of the BellSouth Credit Profile and other relevant information regarding Freedom Communications's credit and financial condition, BellSouth reserves the right to require Freedom Communications to provide BellSouth with a suitable form of security deposit for Freedom Communications's account(s). If, in BellSouth's sole discretion, circumstances so warrant and/or Freedom Communications'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 Freedom Communications'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 Freedom Communications. Any such security deposit shall in no way release Freedom Communications from its obligation to make complete and timely payments of its bill(s). If BellSouth requires Freedom Communications to provide a security deposit, Freedom Communications shall provide such security deposit prior to the inauguration of service or within fifteen (15) days of BellSouth's request, as applicable. Deposit request notices will be sent to Freedom Communications 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. Estimated billings are calculated based upon the monthly average of the previous six (6) months current billings, if Freedom Communications 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 Freedom Communications 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, Freedom Communications and BellSouth shall agree on a level of estimated billings based on all relevant information.

1.3.3 In the event Freedom Communications 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 Freedom Communications 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 Freedom Communications's final bill for its account(s).

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

1.4 Payment Responsibility. Payment of all charges will be the responsibility of Freedom Communications. Freedom Communications shall pay invoices by utilizing wire transfer services or automatic clearing house services. Freedom

Communications shall make payment to BellSouth for all services billed including disputed amounts. BellSouth will not become involved in billing disputes that may arise between Freedom Communications and Freedom Communications's End User.

- 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 Freedom Communications'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, Freedom Communications 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 Freedom Communications. The procedures for discontinuing service to Freedom Communications 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 End Users or customers. Additionally, at the time of Discontinuance, BellSouth will remove any Local Service Freezes in place on the billed Party's End Users.
- 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 Freedom Communications 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 Freedom Communications 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 Freedom Communications 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 1.5.5 below.

1.5.5 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) Freedom Communications 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 Freedom Communications 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 Freedom Communications, using one of the media described in (1) above, more than thirty (30) days before notice to Discontinue service has been rendered.

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

1.5.7 Freedom Communications is solely responsible for notifying the End User of the Discontinuance of service. If, within seven (7) days after Freedom Communications's services have been Discontinued, Freedom Communications 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 Freedom Communications.

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

- 1.6 Notices. Notwithstanding anything to the contrary in this Agreement, all bills and notices regarding billing matters, disconnection of services for nonpayment of charges, and rejection of additional orders from Freedom Communications, shall be forwarded to the individual and/or address provided by Freedom Communications in establishment of its billing account(s) with BellSouth, or to the individual and/or address subsequently provided by Freedom Communications as the contact for billing. All monthly bills and notices described in this Section shall be forwarded to the same individual and/or address; provided, however, upon written request from Freedom Communications to BellSouth's billing organization, the notice of discontinuance of services purchased by Freedom Communications under this Agreement provided for in Section 1.5.4 above shall be sent via certified mail to the individual(s) listed in the Notices provision of the General Terms and Conditions.

## **2. Billing Disputes**

- 2.1 Freedom Communications 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 Freedom Communications is not satisfied with BellSouth's resolution of the billing dispute or if no response to the billing dispute has been received by Freedom Communications by such sixtieth (60<sup>th</sup>) day, Freedom Communications 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. The billing dispute must be clearly explained by Freedom Communications 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 Freedom Communications 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 Freedom Communications, any credits and interest due to Freedom Communications as a result thereof shall be applied to Freedom Communications's account by BellSouth upon resolution of the billing dispute.

## **3. RAO Hosting**

- 3.1 Centralized Message Distribution System (CMDS) is a national message exchange system administered by Telcordia Technologies (Telcordia) used to transmit alternately billed calls (e.g., credit card, third number and collect) from the Earning Company, as defined herein, to the Billing Company, as defined herein, to permit the Earning Company and the Billing Company to receive appropriate compensation. It is also used to transmit access records from one company to another.
- 3.2 Direct Participants are Telecommunications carriers that exchange data directly with other Direct Participants via the CMDS Data Center and may act as host companies (Host) for those Telecommunications carriers that do not exchange data directly via the CMDS Data Center (Indirect Participants).
- 3.3 RAO Hosting is a hosting relationship where an Indirect Participant sends and receives CMDS eligible messages to and from its Host, who then interfaces, on behalf of the Indirect Participant, with other Direct Participants for distribution and collection of these messages. RAO Hosting also includes the Direct Participant's provision of revenue settlements functions (compensation) for alternately billed calls based upon reports generated by Credit Card and Third Number Settlement (CATS) and Non-InterCompany Settlement (NICS) as described herein. CATS and NICS are collectively referred to as Intercompany Settlements.
- 3.4 The CATS System is a national system administered by Telcordia, used to settle revenues for calls that are sent from one CMDS Direct Participant to another for billing. CATS applies to calls that originate within one Regional Bell Operating Company's (RBOC) territory, as defined at Divestiture, and bill in another RBOC's territory. CATS calculates the amounts due to Earning Companies (i.e., billed revenue less the billing and collection fee). For alternately billed calls, the originating company, whose facilities are used to place the call, is the Earning Company and the company that puts the charges on the End User's bill is the Billing Company
- 3.5 The 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.
- 3.6 RAO Hosting, CATS and NICS services provided to Freedom Communications by BellSouth will be in accordance with the methods and practices regularly applied by BellSouth to its own operations during the term of this Agreement, including such revisions as may be made from time to time by BellSouth.
- 3.7 Freedom Communications shall furnish all relevant information required by BellSouth for the provision of RAO Hosting, CATS and NICS.



- 3.8 Charges or credits, as applicable, will be applied by BellSouth to Freedom Communications on a monthly basis in arrears. Amounts due (excluding adjustments) are due on or before the next bill date.
- 3.9 Freedom Communications must have its own unique hosted RAO code. Where BellSouth is the selected CMDS interfacing host, Freedom Communications must request that BellSouth establish a unique hosted RAO code for Freedom Communications. Such request shall be in writing to the BellSouth RAO Hosting coordinator and must be submitted at least eight (8) weeks prior to provision of services pursuant to this Section. Services shall commence on a date mutually agreed by the Parties.
- 3.10 BellSouth will receive messages from Freedom Communications that are to be processed by BellSouth, another Local Exchange Carrier (LEC) in the BellSouth region or a LEC outside the BellSouth region. Freedom Communications shall send all messages to BellSouth no later than sixty (60) days after the message date.
- 3.11 BellSouth will perform invoice sequence checking, standard EMI format editing, and balancing of message data with the EMI trailer record counts on all data received from Freedom Communications.
- 3.12 All data received from Freedom Communications that is to be processed or billed by another LEC within the BellSouth region will be distributed to that LEC in accordance with the Agreement(s) in effect between BellSouth and the involved LEC.
- 3.13 All data received from Freedom Communications that is to be placed on the CMDS network for distribution outside the BellSouth region will be handled in accordance with the agreement(s) in effect between BellSouth and its connecting contractor.
- 3.14 BellSouth will receive messages from the CMDS network that are destined to be processed by Freedom Communications and will forward them to Freedom Communications on a daily basis for processing.
- 3.15 Transmission of message data between BellSouth and Freedom Communications will be distributed via FTP mailbox. It will be created on a daily basis Monday through Friday, except holidays. Details such as dataset name and delivery schedule will be addressed during negotiations of the distribution medium. If BellSouth determines the Secure FTP Mailbox is nearing capacity levels, BellSouth may move Freedom Communications to CONNECT:Direct file delivery.
- 3.15.1 If Freedom Communications is moved to CONNECT:Direct, data circuits (private line or dial-up) may be required between BellSouth and Freedom Communications for the purpose of data transmission. Where a dedicated line is required, Freedom Communications will be responsible for ordering the circuit, overseeing its

installation and coordinating the installation with BellSouth. Freedom Communications will also be responsible for any charges associated with this line. Equipment required on the BellSouth end to attach the line to the mainframe computer and to transmit successfully ongoing will be negotiated on an individual case basis. Where a dial-up facility is required, dial circuits will be installed in the BellSouth data center by BellSouth and the associated charges assessed to Freedom Communications. Additionally, all message toll charges associated with the use of the dial circuit by Freedom Communications will be the responsibility of Freedom Communications. Associated equipment on the BellSouth end, including a modem, will be negotiated on an individual case basis between the Parties. All equipment, including modems and software, that is required on the Freedom Communications end for the purpose of data transmission will be the responsibility of Freedom Communications.

- 3.15.2 If Freedom Communications utilizes FTP for data file transmission, purchase of the FTP software will be the responsibility of Freedom Communications.
- 3.16 All messages and related data exchanged between BellSouth and Freedom Communications will be EMI formatted records and packed between appropriate EMI header and trailer records in accordance with accepted industry standards.
- 3.17 Freedom Communications will maintain recorded message detail necessary to recreate files provided to BellSouth for a period of three (3) calendar months beyond the related message dates.
- 3.18 Should it become necessary for Freedom Communications to send data to BellSouth more than sixty (60) days past the message date(s), Freedom Communications will notify BellSouth in advance of the transmission of the data. BellSouth will work with its connecting contractor and/or Freedom Communications, where necessary, to notify all affected LECs.
- 3.19 In the event that data to be exchanged between the two (2) Parties should become lost or destroyed, the Party responsible for creating the data will make every effort to restore and retransmit such data.
- 3.20 Should an error be detected by the EMI format edits performed by BellSouth on data received from Freedom Communications, the entire pack containing the affected data will not be processed by BellSouth. BellSouth will notify Freedom Communications of the error. Freedom Communications will correct the error(s) and will resend the entire pack to BellSouth for processing. In the event that an out-of-sequence condition occurs on subsequent packs, Freedom Communications will resend these packs to BellSouth after the pack containing the error has been successfully reprocessed by BellSouth.

- 3.21 In association with message distribution service, BellSouth will provide Freedom Communications with associated intercompany settlements reports (CATS and NICS) as appropriate.
- 3.22 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.
- 3.23 Intercompany Settlements Messages
- 3.23.1 Intercompany Settlements Messages facilitate the settlement of revenues associated with traffic originated from or billed by Freedom Communications as a facilities based provider of local exchange telecommunications services.
- 3.23.2 BellSouth will receive the monthly NICS and CATS reports from Telcordia on behalf of Freedom Communications and will distribute copies of these reports to Freedom Communications on a monthly basis.
- 3.23.3 Through CATS, BellSouth will collect the revenue earned by Freedom Communications from the RBOC in whose territory the messages are billed, less a per message billing and collection fee of five cents (\$0.05), or such other amount as may be approved by the Direct Participants and Telcordia, on behalf of Freedom Communications. BellSouth will remit the revenue billed by Freedom Communications to the RBOC in whose territory the messages originated, less a per message billing and collection fee of five cents (\$0.05), or such other amount as may be approved by the Direct Participants and Telcordia, on behalf of Freedom Communications. These two (2) amounts will be netted together by BellSouth and the resulting charge or credit issued to Freedom Communications via a CABS miscellaneous bill on a monthly basis in arrears.
- 3.23.4 Through NICS, BellSouth will collect the revenue earned by Freedom Communications 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 Freedom Communications. BellSouth will remit the revenue billed by Freedom Communications 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 Freedom Communications via a CABS miscellaneous bill on a monthly basis in arrears.
- 3.23.5 BellSouth and Freedom Communications agree that monthly netted amounts of less than fifty dollars (\$50.00) will not be settled.
- 3.24 Rates. Rates for CMDS are as set forth in Exhibit A. If no rate is identified in this Attachment, the rate for the specific service or function will be as set forth in the

applicable BellSouth tariff or as negotiated by the Parties upon request by either Party.

## Exhibit B

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Complaint of Tennessee Telephone d/b/a Freedom Communications Against AT&T Tennessee*

Docket No. \_\_\_\_\_

**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 and my review of the business records of AT&T Tennessee.

2. On Friday, June 18, 2010, AT&T Tennessee sent a collection letter to Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC (“Freedom”), demanding payment of the past due amounts owed by Freedom 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 Freedom’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 Freedom’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 Freedom 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 Freedom 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 Freedom 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 Freedom as Attachment B to the collection letter that was sent on June 18, 2010.

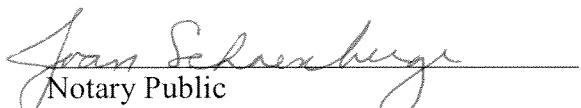
5. AT&T Tennessee stands ready to provide unredacted versions of Exhibits 1, 2, and 3 once appropriate protections are in place in this proceeding to protect the confidential nature of the proprietary information contained therein.

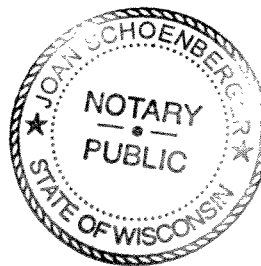
FURTHER AFFIANT SAYETH NOT.

  
Gert Andersen

Sworn to and subscribed before me

this 12 of July, 2010.

  
Notary Public  
commission expires 3/3/13



at&t

VIA FED EX, Tracking No. 8726 2365 8401  
June 18, 2010

Pearl Lombardo  
Tennessee Telephone Service, L.L.C.  
d/b/a Freedom Communications USA, LLC  
220 Creekside Drive  
Dickson, Tennessee 37055

Dear Ms. Lombardo:

**RE: NOTICE OF SUSPENSION AND TERMINATION**

AT&T Tennessee's records indicate that the Tennessee Telephone Service, L.L.C. d/b/a Freedom Communications USA, LLC ("Freedom Communications") 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 Freedom Communications covering services purchased in the State of Tennessee, which has an Effective Date of November 17, 2005 ("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:

**Freedom Communications 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 Freedom Communications for [REDACTED] services purchased in the State of Tennessee, credit adjustments AT&T Tennessee applied and payments AT&T Tennessee received from Freedom Communications since April 2008. Significantly, during the period from December 13, 2009 through May 13, 2010, inclusive, AT&T Tennessee billed Freedom Communications \$[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, Freedom Communications paid AT&T Tennessee only \$[REDACTED] (less [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 a 26% increase in [REDACTED]



at&t

lines provisioned from AT&T Tennessee). Details of the [REDACTED] lines provisioned by Freedom Communications are included on Attachment B to this letter.

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

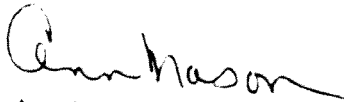
AT&T ROC-CABS  
600 North Point Parkway  
Alpharetta, Georgia 30005

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  
Manager  
AT&T Credit & Collections

cc: Mr. Matthew T. Davis (FedEx #: 8726 2365 8397)

Attachments (2)

Attachment A

Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC

State	Balance Forward (Bill account number)	Payments	Adjustments with 13th bill date	Balance Forward minus (Payments + Adjustments) Col B - (Col C + Col D)	Current Charges	Late Payment Charges (not included in Col F)	Amount Due
Tennessee							
Apr-08	\$	\$	\$	\$	\$	\$	\$
May-08	\$	\$	\$	\$	\$	\$	\$
Jun-08	\$	\$	\$	\$	\$	\$	\$
Jul-08	\$	\$	\$	\$	\$	\$	\$
Aug-08	\$	\$	\$	\$	\$	\$	\$
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	4/08 - 5/10	\$	\$	\$	\$	\$	\$
6 Month Totals	12/09 - 5/10	\$	\$	\$	\$	\$	\$

## ATTACHMENT B

Tennessee Telephone Service, LLC, d/b/a Freedom Communications USA, LLC

State: Tennessee

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

AT&T Proprietary (Restricted) – Authorized Individuals Only

Customer Proprietary Information

## Exhibit C

**STEWART ROBBINS & BROWN**  
Attorneys at Law

**Facsimile Cover Sheet**

Date	July 12, 2010
To	Meredith E. Mays, Esq.: 404-927-3618; Tanya O'Neal: 205-321-4756; Patrick W. Turner, Esq.: 803-254-1731; Larry W. Thaxton: 678-966-2863; Guy M. Hicks, Esq.: 615-214-7406; Debbie V. Canale: 504-528-7556; Walter Thomas: 334-242-0509; Timothy J. Devlin: 1-800-511-0809; Reece McAllister: 404-656-2341; Jeff R. Derouen: 502-564-3460; Eve K. Gonzalez: 225-342-2831; Brian U. Ray: 601-961-5469; Renne Vance: 919-733-7300; Honorable Jocelun Boyd: 803-869-5199; Honorable Mary W. Freeman: 615-532-4698; Jan Sanders: 501-682-1717; W. Lane Lanford: 512-936-7036
From	Brandon A. Brown
Matter Number	947-001 "In re: EveryCall Communications, Inc." No. 10-11054, U.S.B.C., M.D.La.
Number of Pages (including cover)	6
Comments	Please see attached.
Original to Follow by Mail?	Yes _____ No <u>x</u>

**CONFIDENTIALITY STATEMENT**

This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for return of the documents.

IF YOU EXPERIENCE ANY PROBLEMS RECEIVING THIS FACSIMILE,  
PLEASE CONTACT CHRISTIAN AT (225) 231-9998

**STEWART ROBBINS & BROWN**  
Attorneys at Law

Brandon A. Brown, APLC  
Member

bbrown@stewartrobbins.com

July 12, 2010

Via e-mail to [meredith.mays@att.com](mailto:meredith.mays@att.com)

Via facsimile to (404) 927-3618

Meredith E. Mays, Esq.  
General Counsel  
AT&T Georgia  
675 West Peachtree St., NW  
Atlanta, GA 30375

Via e-mail to [to0682@att.com](mailto:to0682@att.com)

Via facsimile to (205) 321-4756

Ms. Tanya O'Neal  
Account Manager  
AT&T Southeast  
600 N. 19<sup>th</sup> St., 22<sup>nd</sup> Floor  
Birmingham, AL 35203

Via e-mail to [pt1285@att.com](mailto:pt1285@att.com)

Via facsimile to (803) 254-1731

Patrick W. Turner, Esq.  
General Attorney – South Carolina  
AT&T South Carolina  
1600 Williams St., Ste. 5200  
Columbia, SC 29201

Via e-mail to [lt7991@att.com](mailto:lt7991@att.com)

Via facsimile to (678) 966-2863

Mr. Larry W. Thaxton  
Sr. Credit Analyst  
AT&T Credit and Collections  
675 W. Peachtree St., NW  
Atlanta, GA 30308

Via e-mail to [gh1402@att.com](mailto:gh1402@att.com)

Via facsimile to (615) 214-7406

Guy M. Hicks, Esq.  
General Attorney – Tennessee  
AT&T Tennessee  
333 Commerce St. Ste. 2101  
Nashville, TN 37201

Via e-mail to [debbie.canale@att.com](mailto:debbie.canale@att.com)

Via facsimile to (504) 528-7556

Ms. Debbie V. Canale  
Regional Vice President  
AT&T Louisiana  
365 Canal Street, Ste. 3000  
New Orleans, LA 70130

Re: *"In re EveryCall Communications, Inc.,"* No. 10-11054, U.S.B.C., M.D.La.

All:

Please be advised that this firm has been engaged to represent EveryCall Communications, Inc. ("*EveryCall*") with regard to the filing and prosecution of a chapter 11 bankruptcy case. Please be further advised that on July 12, 2010, EveryCall filed a voluntary petition under chapter 11 of title 11, United States Code, in the United States Bankruptcy Court for the Middle District of Louisiana. Attached herewith is a receipt of filing issued by the Bankruptcy Court indicating the date and time of filing as well as case number.

EVERYCALL COMMUNICATIONS, INC.

July 12, 2010

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We are aware that AT&T (inclusive of all divisions and subsidiaries, "**AT&T**") has issued a Notice of Suspension and Termination dated June 18, 2010 (the "**Notice**"), which Notice indicates that AT&T intends to suspend EveryCall on or before July 6, 2010<sup>1</sup> and terminate the Interconnection Agreement between AT&T and EveryCall (the "**ICA**") on or before July 21, 2010. Please be advised that upon the commencement of a case under title 11, United States Code, a stay of certain actions statutorily issues pursuant to 11 U.S.C. § 362(a). Such stay prohibits, *inter alia*:

The commencement or continuation . . . of any judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of a case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; . . .

Any act to obtain possession of property of the estate or property from the estate or to exercise control over property of the estate; . . .

Any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title. 11 U.S.C. § 362(a)(1), (3), (6).

Accordingly, the automatic stay prohibits AT&T from unilaterally Suspending, Discontinuing, or Terminating under ongoing contract, *i.e.*, the ICA, with EveryCall.

Should AT&T nonetheless violate the automatic stay by issuing a suspension of privileges pursuant to the ICA or outright terminate the ICA, EveryCall intends to proceed with requisite filings in the United States Bankruptcy Court for the Middle District of Louisiana to enforce the automatic stay, and such filings will request compensatory damages, punitive damages, and attorneys fees as may be available pursuant to 11 U.S.C. §§ 362, 105. We invite you to file whatever claim you deem appropriate with the bankruptcy court so that such claim may be resolved within these bankruptcy proceedings.

Should you have any questions, Please feel free to contact me.

Sincerely,

STEWART ROBBINS & BROWN, LLC

By: 

Brandon A. Brown, APLC

<sup>1</sup> It is our understanding that such Suspension deadline was subsequently extended until July 13, 2010 by correspondence from Patrick W. Turner, Esq. dated July 6, 2010.

EVERYCALL COMMUNICATIONS, INC.

July 12, 2010

Page 3

cc: Mr. John H. Brydels, Jr., Via Email: brydels@everycall.com  
Mr. Kyle Coates, Via Email: coates@everycall.com  
Mr. Jon Seger, Via Email: seger@everycall.com  
Mr. Walter Thomas, Via Fax: 334-242-0509  
Mr. Timothy J. Devlin, Via Fax: 1-800-511-0809  
Mr. Reece McAllister, Via Fax: 404-656-2341  
Mr. Jeff R. Derouen, Via Fax: 502-564-3460  
Ms. Eve K. Gonzalez, Via Fax: 225-342-2831  
Mr. Brian U. Ray, Via Fax: 601-961-5469  
Ms. Renne Vance, Via Fax: 919-733-7300  
The Honorable Jocelun Boyd, Via Fax: 803-896-5199  
The Honorable Mary W. Freeman, Via Fax: 615-532-4698  
Ms. Jan Sanders, Via Fax: 501-682-1717  
Mr. W. Lane Lanford, Via Fax: 512- 936-7036



LIVE! Database Area

United States Bankruptcy Court  
Middle District of Louisiana**Notice of Bankruptcy Case Filing**

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 11 of the United States Bankruptcy Code, entered on 07/12/2010 at 1:01 PM and filed on 07/12/2010.

**EveryCall Communications, Inc.**

4315 Bluebonnet Blvd., Ste. A

Baton Rouge, LA 70809

Tax ID / EIN: 72-1403495

dba

**All American Home Phone**

dba

**Local USA**

The case was filed by the debtor's attorney:

**Brandon A. Brown**

Stewart Robbins &amp; Brown, LLC

247 Florida Street

P.O. Box 66498

Baton Rouge, LA 70896

225-231-9998

The case was assigned case number 10-11054.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://ecf.lamb.uscourts.gov/> or at the Clerk's Office, 707 Florida Street Room 119 Baton Rouge, LA 70801.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

**Monica M. Menier**  
**Clerk, U.S. Bankruptcy**  
**Court**

PACER Service Center			
Transaction Receipt			
07-12-2010 13:03:29			
PACER Login:	sh3619	Client Code:	
Description:	Notice of Filing	Search Criteria:	10-11054
Billable Pages:	1	Cost:	0.08

## Exhibit D

## **AGREEMENT GENERAL TERMS AND CONDITIONS**

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., (BellSouth), a Georgia corporation, and Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC (Freedom Communications), a Limited Liability corporation, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or Freedom Communications 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**, Freedom Communications 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; Freedom Communications wishes to purchase certain services from BellSouth; and

**WHEREAS**, 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

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and Freedom Communications 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 10 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.

**End User** means the ultimate user of the Telecommunications Service.

**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 Freedom Communications agrees to provide BellSouth in writing Freedom Communications's CLEC certification for all states covered by this Agreement except Kentucky prior to BellSouth filing this Agreement with the appropriate Commission for approval.
- 1.2 To the extent Freedom Communications is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, Freedom Communications may not purchase services hereunder in that state. Freedom Communications will notify BellSouth in writing and provide CLEC certification when it becomes certified to operate in any other state covered by this Agreement and upon receipt thereof, Freedom Communications may thereafter purchase services pursuant to this Agreement in that state. BellSouth will file this Agreement with the appropriate Commission for approval.
- 1.3 Should Freedom Communications's certification in any state be rescinded or otherwise terminated, BellSouth may, at its election, terminate this Agreement immediately and all monies owed on all outstanding invoices 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. Freedom Communications 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 three (3) 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 and eighty (180) days prior to the expiration of the initial term of this Agreement, they 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 and 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 Freedom Communications 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 Freedom Communications. In the event that BellSouth terminates this Agreement as provided above, BellSouth shall continue to offer services to Freedom Communications 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 Freedom Communications pursuant to the Notices provision hereof or any other contact information provided by Freedom Communications 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 Freedom Communications 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.

### **3. Nondiscriminatory Access**

When Freedom Communications purchases Telecommunications Services from BellSouth pursuant to Attachment 1 of this Agreement for the purposes of resale to End Users, 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 End Users. 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 Freedom Communications 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 Freedom Communications 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 End Users and service quality as perceived by Freedom Communications.

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

4.1 Subpoenas Directed to BellSouth. Where BellSouth provides resold services for Freedom Communications, 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 Freedom Communications End Users. 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 Freedom Communications End Users for the same length of time it maintains such information for its own End Users.

4.2 Subpoenas Directed to Freedom Communications. Where BellSouth is providing resold services to Freedom Communications, then Freedom Communications agrees that in those cases where Freedom Communications receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to Freedom Communications End Users, and where Freedom Communications does not have the requested information, Freedom Communications 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 End User, 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 Freedom Communications Liability. In the event that Freedom Communications 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 Freedom Communications's company codes or identifiers, all such entities shall be jointly and severally liable for the obligations of Freedom Communications under this Agreement.

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

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 Freedom Communications pursuant to Attachment 9 hereof shall be credited against any damages otherwise payable to Freedom Communications 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 End Users 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 End User 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 Freedom Communications shall be liable for damages to the other Party's terminal location, equipment or End User 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 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 the End User of the Party receiving services arising from such company's 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 Freedom Communications, 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 of Recipient 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. Recipient will not make any copies of the Information inspected by it.

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 therefore, 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 payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis 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 payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.

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.

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; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

#### 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 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.
- 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 reasonable charges or payable expenses (including reasonable attorneys' fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 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; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.
- 9.5 Mutual Cooperation. In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

**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 Freedom Communications, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, 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.

**11 Adoption of Agreements**

Pursuant to 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809, BellSouth shall make available to Freedom Communications 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 Freedom Communications 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 Freedom Communications to notify BellSouth of said change, request that an amendment to this Agreement, if necessary, be executed to reflect said change and notify the appropriate state commission of such modification of company structure in accordance with the state rules governing such modification in company structure if applicable. Additionally, Freedom Communications shall provide BellSouth with any necessary supporting documentation.
- 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 Freedom Communications or BellSouth to perform any material terms of this Agreement, Freedom Communications 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 Freedom Communications 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, Freedom Communications shall not be permitted to assign this Agreement in whole or in part to any entity unless either (1) Freedom Communications pays all bills, past due and current, under this Agreement, or (2) Freedom Communications's assignee expressly assumes liability for payment of such bills.

18.2 In the event that Freedom Communications desires to transfer any services hereunder to another provider of Telecommunications Service, or Freedom Communications 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 With the exception of billing notices, governed by Attachment 7, 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 19<sup>th</sup> Street, 10<sup>th</sup> floor  
Birmingham, AL 35203

and

ICS Attorney  
Suite 4300  
675 West Peachtree Street  
Atlanta, GA 30375

**Tennessee Telephone Service, LLC**  
**d/b/a Freedom Communications USA, LLC**

Mathew T. Davis  
CEO  
201 Skyline Drive  
Dickson, Tennessee 37055  
e-mail: [matt@tenntel.com](mailto:matt@tenntel.com)  
Telephone Number: 615-229-2123

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 Freedom Communications 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. 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 Freedom Communications 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 Freedom Communications for such rate or for the difference between the rate actually billed and the rate that should have been billed pursuant to this Agreement. 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.

- 27.2 To the extent Freedom Communications 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 Freedom Communications 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 Freedom Communications 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](http://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.

General Terms and Conditions  
Signature Page

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

**BellSouth Telecommunications, Inc.**

By: Kristen E. Shore  
Name: Kristen E. Shore  
Title: Director  
Date: 10/18/05

**Tennessee Telephone Service, LLC  
d/b/a Freedom Communications USA,  
LLC**

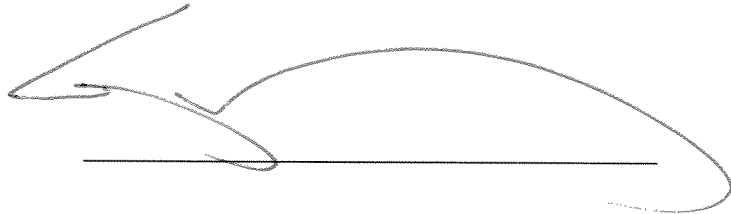
By: Matthew T. Davis  
Name: MATTHEW T. DAVIS  
Title: CEO  
Date: 10/14/05

**CERTIFICATE OF SERVICE**

I hereby certify that on July 13, 2010, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

Henry Walker, Esquire  
Bradley Arant Boult Cummings  
1600 Division St., #700  
P. O. Box 340025  
Nashville, TN 37203  
[hwalker@babco.com](mailto:hwalker@babco.com)

A handwritten signature in black ink, appearing to read "Henry Walker", is written over a horizontal line.