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January 12, 2006

Ms. Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 W. Washington Street  
PO Box 83720  
Boise, ID 83720-0074

RE: Case No. Pot-t-06-01  
Application of TDS Telecommunications Corporation for Approval of a  
Negotiated Wireless Traffic Exchange Agreement with T-Mobile.

Dear Ms. Jewell:

TDS Telecommunications Corporation (TDS) as an agent for Potlatch Telephone Company, Inc., has entered into a voluntary wireless traffic exchange agreement with T-Mobile. An original plus three (3) Copies of the agreement have been enclosed for filing with this Commission.

TDS respectfully requests approval of this agreement as filed.

If you have questions regarding this agreement, please contact Linda Lowrance of TDS at (865)671-4758 or myself at (503)656-8399. Thank you in advance for your assistance in this matter.

Sincerely,

Gail M. Long  
Manager, External Relations

Enclosure

Cc: Linda Lowrance – TDS Telecom  
Marin Fettman – T-Mobile

PO BOX 1566  
OREGON CITY, OR 97045-1566  
OFFICE: 503.656.8399  
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Pot-7-06-01

**MULTI-STATE**  
**WIRELESS TRAFFIC EXCHANGE AGREEMENT**

**Between**

**TDS TELECOMMUNICATIONS CORPORATION**

**and**

**T-Mobile USA, Inc.**

**Dated January 1, 2005**

## MULTI-STATE WIRELESS TRAFFIC EXCHANGE AGREEMENT

This Wireless Traffic Exchange Agreement (the "Agreement") is made effective on the 1st day of January, 2005 ("Effective Date"), between the TDS Telecommunications Corporation subsidiaries or affiliates identified on Appendix A (collectively "TDS TELECOM"), a Delaware corporation with offices at 525 Junction Road, Madison, WI 53717, and T-Mobile USA, Inc. and its Affiliates, a Delaware corporation, with offices at 12920 SE 38<sup>th</sup> Street, Bellevue, WA 98006 (collectively, "T-Mobile"). TDS TELECOM and T-Mobile are each individually a "Party" and are together the "Parties" to this Agreement.

For each of the states identified in Appendix A, TDS TELECOM is an authorized Local Exchange Carrier and T-Mobile is a Commercial Mobile Radio Service carrier licensed by the FCC to operate in said states. TDS TELECOM and T-Mobile desire to interconnect their networks for the purpose of exchanging traffic between the Parties' customers in a technically and economically efficient manner.

In consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

### SECTION I DEFINITIONS

1. "Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC.
2. "Commercial Mobile Radio Service: ("CMRS") is defined as a mobile service that is provided for profit (i.e., with the intent of receiving compensation or monetary gain), is an interconnected service, and is available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public, or the functional equivalent of such a mobile service.
3. "Commission" means the state administrative agency to which the United States Congress or state legislature has delegated authority to regulate the operations of Local Exchange Carriers ("LECs") as defined in the Act.
4. "FCC" is the Federal Communications Commission.
5. "Interconnection" is as described in the Act and refers to the connection of separate pieces of equipment, facilities, or platforms between networks for the purpose of transmission and routing of telephone exchange service traffic and exchange access traffic.

6. "Interconnection Facilities" are the facilities or combination of facilities, circuits, service arrangements, trunks, and trunk groups used to deliver Local Telecommunications Traffic between the TDS TELECOM switch or other POC and the T-Mobile MSC or other POC.
7. "Intermediary Traffic" is Local Telecommunications Traffic that is delivered to or from one Party, through the network of the other (intermediary) Party, for delivery to or from a third-party Local Exchange Carrier or other telecommunications carrier.
8. "Local Access and Transport Area or ("LATA") as described in the Act denotes a geographical area established for the provision and administration of communications services. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes.
9. "Local Exchange Carrier" or ("LEC") means any entity that is engaged in the provision of telephone exchange service or exchange access. Such term does not include an entity insofar as such entity is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.
10. "Local Telecommunications Traffic" for inter-carrier reciprocal compensation purposes, means Wireless to Wireline and Wireline to Wireless calls between a TDS TELECOM end user customer and a T-Mobile end user customer which, at the beginning of the call, originate and terminate within the same MTA, with origination point and the termination point based on the location of the cell site serving the wireless subscriber and the end office serving the landline end-user.
11. "Major Trading Area" or ("MTA") means the service areas based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123<sup>rd</sup> edition, at pages 38-39. 47 C.F.R. §24.202(a).
12. "Mobile Switching Center" or ("MSC") is a switching facility that performs the switching for the routing of calls among its mobile subscribers and subscribers in other mobile or landline networks. The MSC is used to connect and switch trunk circuits within the wireless network and between the wireless network and the public switched network for wireless traffic by a CMRS provider.
13. "Non-Local Traffic" or "InterMTA" for inter-carrier compensation purposes means the completion of calls originating in one MTA and terminating in another MTA based on the location of the cell site serving the wireless subscriber at the beginning of the call and the central office serving the TDS TELECOM landline end-user.

14. "Point of Connection" or ("POC") is a mutually agreed upon point of demarcation between the two Parties' networks where T-Mobile is interconnected with TDS TELECOM. Each Party is individually responsible for provisioning and maintaining the Local Telecommunications Traffic.
15. "Rate Center" means the specific geographic point and corresponding geographic area that are associated with each particular NPA-NXX Code that has been assigned to a Party for its provision of telecommunications services. Such geographic point is identified by a specific V&H coordinate that is used by LEC to calculate distance-sensitive charges for end user traffic to/from the specific Rate Center.
16. "Reciprocal Compensation" means a compensation arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the Transport and Termination on each carrier's network facilities of Local Telecommunications Traffic that originates on the network facilities of the other carrier, as required by Section 251b(5) of the Act and implementing regulations.
17. "Signaling System 7" or "SS7" means the signaling protocol, Version 7, of the CCS network, based upon American National Standards Institute ("ANSI") standards.
18. "Telecommunications Carrier" means any provider of telecommunications services as defined in the Act.
19. "Termination" means the switching of Local Telecommunications Traffic at the terminating carrier's end-office switch, or functionally equivalent facility, and the delivery of such traffic to the called party.
20. "Transited Traffic" means Local Telecommunications Traffic which originates from a subscriber on the network of one Party and is delivered to a subscriber on the network of the other Party indirectly via transiting through a third party LEC tandem switch.
21. "Transport" means the transmission and any necessary tandem switching by a Party of Local Telecommunications Traffic from the POC between the Parties, which point may be via the transit services provided by another carrier, to the terminating carrier's end-office switch or functionally equivalent facility that directly services the called party.
22. "Type 2A Wireless Interconnection" is a trunk-side Interconnection between a TDS TELECOM tandem office and a T-Mobile POC. Type 2A Wireless Interconnection provides access to TDS TELECOM End Offices or to other carriers subtending the Tandem Switch. Type 2A Wireless Interconnection may

- be optioned for common channel signaling service using Signaling System 7 (CCS7) protocols.
23. "Type 2B Wireless Interconnection" is a trunk-side Interconnection between a TDS TELECOM end-office, including subtending remotes in a host/remote relationship, and a T-Mobile POC. It is used only for the exchange of Local Telecommunications Traffic between T-Mobile and TDS TELECOM. No Intermediary Traffic will be exchanged through the Type 2B Interconnection. Type 2B Wireless Interconnection may be optioned for common channel signaling service using Signaling System 7 (CCS7) protocols.
24. "Wireless" is telecommunications services provided by a CMRS carrier in accordance with its CMRS license(s).
25. "Wireline" is telecommunications services provided by TDS TELECOM or other Non-CMRS Telecommunications Carrier.

## SECTION II SCOPE OF AGREEMENT

This Agreement sets forth the terms, conditions and prices under which the Parties agree to provide Interconnection for use by the Parties and compensation for the exchange of traffic between TDS TELECOM and T-Mobile for the purpose of offering telecommunications services. The Interconnection and compensation covered by this Agreement applies only to the exchange of traffic between T-Mobile subscribers and TDS TELECOM subscribers. Other service arrangements, if any, between the Parties may be covered by separate contract or tariff.

## SECTION III INTERCONNECTION

3.1 Types of Services. The traffic subject to this Agreement shall be Local Telecommunications Traffic, as defined in Section 51.701 of the FCC's Rules, which originates from a subscriber on the network of one Party or its Affiliates and Subsidiaries, and is delivered to a subscriber on the network of the other Party or its Affiliates and Subsidiaries. Such traffic includes that traffic which is delivered directly or indirectly via a third party switch ("Transited Traffic"). This Agreement also provides for Intermediary Traffic and the provision of Interconnection Facilities ("Facilities") used to deliver traffic between the Parties. In addition, TDS TELECOM will, unless notified in writing to the contrary by T-Mobile, pass Intermediary Traffic to/from T-Mobile and any third-party End Office which subtends TDS TELECOM's tandem switch; provided that TDS TELECOM shall have no obligation to pay, or right to collect termination compensation for such transited traffic. The above notwithstanding, TDS TELECOM may collect tandem switching and transport charges from the originating carrier for such transited traffic.

### 3.2 Local Telecommunications Traffic.

3.2.1 The Parties shall reciprocally terminate Local Telecommunications Traffic originating on each other's networks and shall compensate each other for the exchange of such traffic in accordance with Appendix C attached to this Agreement and made a part hereof. Such traffic is not subject to access charges.

3.2.2 The Reciprocal Compensation rate set forth on Appendix C herein is a blended rate taking into consideration the scope of the multi-state traffic between the Parties to this Agreement, and eligibility for these rates shall be limited to parties operating in all these states and shall not be severable.

3.2.3 The Parties shall adjust compensation for the transport and termination of Local Telecommunications Traffic in the event of State Commission approved rates based on a cost study (performed consistently with then applicable FCC regulations relating to Local Telecommunications) as a result of a rate decision by the State Commission or as a result of arbitration involving one of the Parties. The effective date of the new rates will be the effective date of the State Commission order. The Parties agree to true up to generally applicable rates within a forty five (45) day period.

### 3.3 Intermediary Traffic

3.3.1 Where one Party delivers Local Telecommunications Traffic to the other for transiting to a third party carrier (Intermediary Traffic), the originating Party will pay the intermediary Party an Intermediary Transit Charge as agreed in Appendix C per minute of use for tandem switching and transport. However the intermediary Party shall have no obligation to pay, or right to collect termination compensation for such Intermediary Traffic. The intermediary Party is not responsible for making arrangements with the Non-party Carrier for the transport and termination by the Non-Party Carrier of Intermediary Traffic.

### 3.4 Interconnection Facilities and Network Architecture

3.4.1 At either Party's request and where technically and economically feasible, TDS TELECOM and T-Mobile will physically interconnect their facilities at a mutually agreed upon, technically feasible POC as described in the Act, and interchange traffic between their respective customers. Such interconnection will be in accordance with the service, operating and facility arrangements set forth hereunder.

3.4.2 Depending upon business needs and the technical and economic feasibility and location of the Parties' switches, various Wireless Interconnections and services arrangements may be possible. Wireless Interconnection and service

arrangements are described in Bellcore GR-145-CORE and Telcordia Notes on the Networks, SR-2275.

3.4.3 Interconnection service is ordered using uniform order request forms. All service requests must be submitted on the TDS TELECOM Wireless Service Request ("WSR") form or other industry standard ordering document.

3.4.4 T-Mobile may provide its own facilities and transport for the delivery of traffic to and from its MSC to a mutually acceptable POC for interconnection with the TDS TELECOM network. Alternatively, T-Mobile may purchase required facilities from a third party or from TDS TELECOM for the delivery of such traffic. Rates for facilities and transport or other services purchased from TDS TELECOM are specified in TDS TELECOM's applicable Local or Access Tariff.

3.4.5 The Point(s) of Connection between TDS TELECOM and T-Mobile are defined in Appendix B, which is incorporated by reference. This Agreement shall not preclude TDS TELECOM and T-Mobile from entering into additional direct interconnection arrangements in the future if such arrangements are technically feasible and economically beneficial, in which case, Appendix B shall be amended to reflect such additional arrangements.

### 3.5 Trunking Requirements.

3.5.1 One or two-way local interconnection trunk group(s) may be established between the Parties for the exchange of the Local Telecommunications Traffic, which will be jointly provisioned and maintained. Overflow from either end of the direct local interconnection trunk group may be alternately routed to the appropriate access tandem.

3.5.2 T-Mobile and TDS TELECOM shall make available, by mutual agreement, the required one-way or two-way trunk groups to handle the termination of Local Telecommunications Traffic originating from the other Party's network.

3.5.2.1 Trunk connections shall be made at a DS1 or multiple DS1 level, or as otherwise mutually agreed upon by the Parties. All connections and facilities shall be engineered to an objective P.01 grade of service.

3.5.2.2 Where one-way trunk groups are utilized, TDS TELECOM will provide facilities for all one-way trunk groups used for the delivery of traffic from TDS TELECOM to the T-Mobile POC (land to mobile) and T-Mobile will provide facilities for all one-way trunk groups used to deliver traffic from T-Mobile to the TDS TELECOM POC. Unless otherwise agreed, where one-way trunks are utilized, the POC for T-Mobile-originated traffic shall be at the TDS TELECOM tandem or end-



office and the POC for delivery of TDS TELECOM originated traffic shall be T-Mobile's MSC or other prescribed point within the LATA. T-Mobile shall not be required to accept delivery of TDS TELECOM originated traffic at more than one POC per LATA.

3.5.3 In the event the Parties agree to share connecting facilities for the delivery of traffic originating and terminating on each of their networks, the POC will be at a mutually agreed location, and costs will be apportioned as determined under Section 3.5.4 below.

3.5.4 Shared Facilities Factor. Where Interconnection Facilities provided by one of the Parties are used for two-way traffic, the applicable recurring and non-recurring charges (if any) will be apportioned by an agreed upon percentage representing either the estimated percentage or the actual percentage of traffic originating on the network of each Party. This percentage is referred to as the Shared Facilities Factor as agreed in Appendix C of this Agreement. The Parties will review this factor on a periodic basis and, if warranted by the actual usage, revise the factor appropriately, not to be revised more than quarterly.

### 3.6 Network Management and Maintenance

3.6.1 Each Party shall construct, equip, maintain and operate its network in accordance with generally accepted engineering practices for telephone systems and in compliance with all applicable rules and regulations, as amended from time to time, of any regulatory body empowered to regulate any aspect of the facilities contemplated herein.

3.6.2 Nothing in this Agreement shall limit either Party's ability to upgrade its network through the incorporation of new equipment, new software or otherwise. Each Party agrees to provide reasonable notice of material changes that may affect the interoperability of the facilities or networks that are the subject of this Agreement.

3.6.3 The Parties will work cooperatively to install and maintain reliable networks. The Parties will exchange appropriate information (e.g., maintenance contact numbers and network information, etc.) to achieve this desired reliability, subject to the confidentiality provisions herein.

3.6.4 Network Management. Each Party shall provide a 24-hour contact number for network traffic management issues to the other's surveillance management center. A FAX number must also be provided to facilitate notifications for planned mass calling events.

T-Mobile  
24 Hr.: (888) 662-4662

TDS TELECOM  
24 Hr.: See Appendix A

3.6.5 Before either Party reports a trouble condition, it must first use its reasonable efforts to identify the trouble as originating at the other Party's facilities, service, and arrangements. Each Party will advise the other of any critical nature of the inoperative facilities, service, and arrangements and any need for expedited clearance of trouble. In cases where a Party has indicated the essential or critical need for restoration of the facilities, services or arrangements, the other Party shall use its best efforts to expedite the clearance of trouble.

### 3.7 Indirect Interconnection

3.7.1 The Parties agree that all traffic not exchanged via direct interconnection shall be exchanged by transiting such traffic through third-party LEC tandems. Each Party shall be financially and operationally responsible for the entire costs of providing facilities from its network to the POC.

3.7.2 Either Party shall be allowed to establish a different POC for the calls which that Party originates, provided that the new point of interconnection does not increase the cost of transporting or terminating calls for the other Party.

### 3.8 Number Resources

3.8.1 Number Assignment. Nothing in this Agreement shall be construed in any manner, to limit, or otherwise adversely to impact either Party's right to employ or to request and be assigned any NANP number resources, including, but not limited to, Central Office (NXX) Codes pursuant to the Central Office Code Assignment Guidelines.

3.8.2 Local Calling Area. TDS TELECOM agrees that T-Mobile's NPA-NXX codes within the MTA will be local calls for TDS TELECOM's subscribers wherever the assigned rate center is within the local calling area (or EAS area) of the calling party.

3.8.3 Code Administration. The Parties will comply with code administration requirements as prescribed by the FCC, the State Commission and accepted industry guidelines.

### 3.9 Common Channel Signaling ("CCS").

3.9.1 Service Description. The Parties will provide CCS to one another via SS7 network interconnection, where and as available, in the manner specified in FCC Order 95-187, in conjunction with all traffic exchange trunk groups. The Parties will cooperate on the exchange of all appropriate SS7 messages for local and

*MS*

intraLATA call set-up signaling, including ISUP and Transaction Capabilities Application Part ("TCAP") messages to facilitate interoperability of CLASS Features and functions between their respective networks. Any other SS7 message services to be provided using TCAP messages (such as data base queries) will be jointly negotiated and agreed upon.

3.9.2 Signaling Parameters. All SS7 signaling parameters will be provided in conjunction with traffic exchange trunk groups, where and as available. These parameters include ANI, Calling Party Number ("CPN"), Privacy Indicator, originating line information, charge number, etc. Also included are all parameters relating to network signaling information, such as Carrier Information Parameter ("CIP"), wherever such information is needed for call routing or billing.

3.9.3 Privacy. Each Party will honor all rules and statutes concerning privacy indicators as required under applicable law.

3.9.4 Connection Through STP. T-Mobile and TDS TELECOM will connect SS7 networks indirectly via route sets through third-party STP provider(s). Each Party will bear responsibility for the costs associated with connecting its own SS7 network to the third party signaling provider, as well as for any per unit charges assessed by the third party signaling provider for traffic originated by the Party. The Parties agree that they will periodically evaluate the financial and technical feasibility of directly connecting the T-Mobile STP(s) with the TDS TELECOM STP(s) and upon mutual agreement of the Parties may change to such a direct arrangement at any time during the term of this Agreement.

3.9.5 Multi-Frequency Signaling. In the case where CCS is not available, in-band Multi-Frequency ("MF"), wink start, E & M channel associated signaling with ANI will be provided by the Parties. Network signaling information, such as CIC/OZZ, will be provided wherever such information is needed for call routing or billing.

#### SECTION IV BILLING

4.1 Each Party shall bill the other for Local Telecommunications Traffic which the Billing Party terminates to its own customers and which were originated by the billed Party, using the applicable Reciprocal Compensation rates set forth on the attached Appendix C. Local Telecommunications Traffic is not subject to access charges. For originating and terminating Non-Local Traffic, each Party shall pay the other intrastate or interstate, as appropriate, switched network access service rate elements on a per minute of use basis, which are set out in each Party's applicable Access Services Tariff as those tariffs may be amended from time to time during the term of this Agreement. Unless otherwise agreed to by the Parties, charges shall be billed by each Party monthly. For purposes of this Section IV, the Party sending a bill to the other Party is referred to as the

“Billing Party” and the Party receiving a bill from the other Party is referred to as the “Invoiced Party.” Neither Party shall bill the other for traffic that is more than one (1) year old or that predates the effective date of this Agreement.

4.2 Actual traffic measurements in each of the appropriate categories are the preferred method of classifying and billing traffic. However, recognizing that the Parties may not currently measure incidental Non-Local (InterMTA) traffic delivered over local interconnection trunk group(s), the Parties agree to use the InterMTA percentage set forth in Appendix C as a surrogate method of classifying and billing traffic. The Parties explicitly recognize that the InterMTA percentage provided in this Agreement is based on the specific network configuration of the two Parties, taking into consideration territory served (e.g., MTA boundaries) and traffic routing of the Parties. Notwithstanding the foregoing, if either Party provides to the other a valid InterMTA traffic study or otherwise requests a reexamination of the network configuration of either Party’s network, the Parties will use such InterMTA traffic study or reexamination to negotiate in good faith a mutually acceptable revised InterMTA percentage. The Parties agree to cooperate in good faith to amend this Agreement to reflect this revised InterMTA percentage and such revised percentage will be effective upon amendment of this Agreement. Such studies or reexaminations will be conducted no more frequently than once annually. Except for traffic specifically covered by the incidental InterMTA percentage described above, in no event will either Party seek to terminate Non-Local Traffic, directly or indirectly, in such a fashion as to make the calls appear as Local Telecommunications Traffic for compensation purposes.

4.3 Where Local Telecommunications Traffic is exchanged between the Parties indirectly via a third party tandem, TDS TELECOM shall obtain usage records or a monthly traffic distribution report either from the tandem operator summarizing traffic terminating to TDS TELECOM. TDS TELECOM shall bill for 100% of the traffic originated by T-Mobile and terminated to TDS TELECOM. T-Mobile may bill TDS TELECOM for Local Telecommunications Traffic originated by TDS TELECOM and terminating to T-Mobile estimated by the following formula: Total Local Telecommunications Traffic billed by TDS TELECOM, divided by 0.80 (eighty percent) and then multiplied by 0.20 (twenty percent).

4.4 The Parties agree to accept the usage data or traffic distribution report from the tandem operator and the foregoing calculation as an accurate statement of traffic exchanged between the Parties. Alternatively, either Party may elect to measure actual terminating traffic through its own recording equipment and utilize these measurements in place of the traffic data from the tandem operator.

4.5 In the event of unrecoverable data loss or errors in usage recording, the Parties agree to pay bills rendered based on estimated usage calculated as an average of the preceding three (3) month’s bills where actual billing data was available.

4.6 The Invoiced Party shall pay the Billing Party for all undisputed charges properly listed on the bill. Such payments are to be received within thirty (30) days from receipt of the statement. The Invoiced Party may be assessed a late charge on any undisputed charges that have been billed that are greater than thirty (30) days old. The rate of the late charge shall be the lesser of one percent (1%) per month or the maximum amount allowed by law. Late payment charges shall be included on the next statement..

4.7 Billing Disputes. If either Party disputes a billing statement received from the other Party, the Invoiced Party shall notify the Billing Party in writing regarding the nature and the basis of the dispute within one (1) year of the statement date. The Parties shall work diligently and in good faith toward resolution of all billing issues in accordance with Section XIII of this Agreement.

4.8 Form of Payment. Payments made to TDS TELECOM by T-Mobile will be issued through T-Mobile's electronic payment system, currently provided by the Xign Payment Services Network. TDS TELECOM shall provide a point of contact and follow reasonable enrollment instructions provided by T-Mobile to enroll TDS TELECOM in the electronic payment system and thereby receive payment due under this Agreement electronically.

4.9 Taxes. The Billing Party shall charge and collect from the Invoiced Party, and the Invoiced Party agrees to pay to the Billing Party, appropriate federal, state, and local taxes, excluding a Party's franchise, license, gross receipts, net income or property taxes, except to the extent the Invoiced Party notifies the Billing Party and provides to the Billing Party appropriate documentation that the Invoiced Party qualifies for a full or partial exemption.

## SECTION V OFFICE CODE TRANSLATIONS

5.1 It shall be the responsibility of each Party to program and update its own switches and network systems in accordance with the Local Exchange Routing Guide ("LERG") guidelines in order to recognize and route traffic to the other Party's assigned NXX codes at all times. Neither Party shall impose any fees or charges whatsoever on the other Party for such activities.

5.2 If T-Mobile decides to obtain additional NPA-NXX(s) associated with a TDS TELECOM Rate Center, T-Mobile shall notify TDS TELECOM and the Parties shall amend this Agreement as needed to address such traffic.

5.3 Rate Centers. The Parties agree not to discriminate against each other in the rating or routing of their customer's calls to the other's NPA-NXX codes and will rate and route such calls in the same manner as they rate and route calls to other NPA-NXXs homed in the same rate center.

SECTION VI  
INDEPENDENT CONTRACTORS

The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have the right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability of, or to otherwise bind the other Party. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. The persons provided by each Party shall be solely that Party's employees and shall be under the sole and exclusive direction and control of that Party. Each Party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all applicable laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each Party shall also be responsible for payment of taxes, including federal, state and municipal taxes, chargeable or assessed with respect to its employees, such as Social Security, unemployment, workers' compensation, disability insurance, and federal and state withholding.

SECTION VII  
LIABILITY

A.

EXCEPT TO THE EXTENT THAT THE SAME ARISE OUT OF ANY BREACH OF AN INDEMNIFICATION OR CONFIDENTIALITY AGREEMENT OR OBLIGATION BETWEEN THE PARTIES, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING FROM THE OTHER PARTY'S USE OF SERVICE PROVIDED UNDER THIS AGREEMENT. IN CONNECTION WITH THIS LIMITATION OF LIABILITY, THE PARTIES RECOGNIZE THAT EITHER PARTY MAY, FROM TIME TO TIME, PROVIDE ADVICE, MAKE RECOMMENDATIONS, OR SUPPLY OTHER ANALYSIS RELATED TO THE SERVICES DESCRIBED IN THIS AGREEMENT, AND, EACH PARTY ACKNOWLEDGES AND AGREES THAT THIS LIMITATION OF LIABILITY SHALL APPLY TO PROVISION OF SUCH ADVICE, RECOMMENDATIONS, AND ANALYSIS.

B.

EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, FOR ANY SERVICES PROVIDED UNDER THIS AGREEMENT. ALL WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED AND WAIVED, WITHOUT LIMITATION.

C.

EXCEPT TO THE EXTENT THE SAME ARISE OUT OF ANY BREACH OF AN INDEMNIFICATION OR CONFIDENTIALITY AGREEMENT OR OBLIGATION

BETWEEN THE PARTIES, OR ARISE OUT OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S LIABILITY FOR ALL CLAIMS ARISING UNDER THIS AGREEMENT, OR UNDER THE USE OF THE SERVICE PROVIDED UNDER THIS AGREEMENT, SHALL BE LIMITED TO THE AMOUNT OF THE CHARGES ACTUALLY PAID BY A PARTY UNDER THIS AGREEMENT.

SECTION VIII  
INDEMNIFICATION

EACH PARTY (THE "INDEMNIFYING PARTY") SHALL INDEMNIFY, DEFEND, RELEASE AND HOLD HARMLESS THE OTHER PARTY ("INDEMNIFIED PARTY") ITS SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS AND AFFILIATES (AND THE SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS OF SUCH AFFILIATES) FROM AND AGAINST ANY LOSS, COST, CLAIM, LIABILITY, DAMAGE, EXPENSE, SUIT OR OTHER ACTION (INCLUDING REASONABLE ATTORNEY'S FEES) SUFFERED BY INDEMNIFIED PARTY, RELATING TO OR ARISING OUT OF I) ANY ACTUAL OR ALLEGED DEFAMATION, LIBEL, SLANDER, INVASION OF PRIVACY, INFRINGEMENT, WRONGFUL USE, OR MISAPPROPRIATION OF AN INTELLECTUAL PROPERTY RIGHT OR ANY OTHER INJURY TO ANY PERSON OR PROPERTY ARISING OUT OF CONTENT TRANSMITTED BY THE THE INDEMNIFYING PARTY, ITS EMPLOYEES, AGENTS, CONTRACTORS OR END USERS; II) ANY INJURY TO OR DEATH OF ANY PERSON OR PERSONS CAUSED, DIRECTLY OR INDIRECTLY, BY THE ACTS OR OMISSIONS OF THE INDEMNIFYING PARTY, RESULTING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (III) OR ANY LOSS, DAMAGE, OR DESTRUCTION OF PROPERTY, WHETHER OR NOT OWNED BY THE INDEMNIFIED PARTY CAUSED, DIRECTLY OR INDIRECTLY, BY THE INDEMNIFYING PARTY;

THE INDEMNIFIED PARTY SHALL (I) NOTIFY THE INDEMNIFYING PARTY PROMPTLY IN WRITING OF ANY WRITTEN CLAIMS, LAWSUITS, OR DEMAND BY THIRD PARTIES FOR WHICH THE INDEMNIFIED PARTY ALLEGES THAT THE INDEMNIFYING PARTY IS RESPONSIBLE UNDER THIS SECTION AND (II) TENDER THE PRIMARY DEFENSE OF SUCH CLAIM, LAWSUIT OR DEMAND TO THE INDEMNIFYING PARTY. THE INDEMNIFIED PARTY ALSO SHALL COOPERATE IN EVERY REASONABLE MANNER WITH THE DEFENSE OR SETTLEMENT OF SUCH CLAIM, DEMAND, OR LAWSUIT UPON REQUEST OF THE INDEMNIFYING PARTY. THE INDEMNIFYING PARTY SHALL KEEP THE INDEMNIFIED PARTY REASONABLY AND TIMELY APPRISED OF THE STATUS OF THE CLAIM, DEMAND OR LAWSUIT. THE INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO RETAIN ITS OWN COUNSEL, AT ITS EXPENSE, AND PARTICIPATE IN THE DEFENSE. THE INDEMNIFYING PARTY WILL ASSUME THE COST OF THE DEFENSE THEREOF ON BEHALF OF THE INDEMNIFIED PARTY AND ITS AFFILIATES AND WILL PAY ALL EXPENSES AND SATISFY ALL JUDGMENTS WHICH MAY BE INCURRED BY OR RENDERED AGAINST THE INDEMNIFIED PARTY OR ITS

