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150 South Monroe Street  
Tallahassee, Florida 32301-1556

A M Lombardo  
Regulatory Vice President

October 16, 1997

Mrs. Blanca S. Bayo  
Director, Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399

971373-TP

Re: Approval of the Collocation Agreement Negotiated by BellSouth Telecommunications, Inc. ("BellSouth") and American MetroComm Corporation pursuant to Section 252(e) of the Telecommunications Act of 1996

Dear Mrs. Bayo:

Pursuant to section 252(e) of the Telecommunications Act of 1996, BellSouth and American MetroComm Corporation are submitting to the Florida Public Service Commission their negotiated agreement for collocation.

Pursuant to section 252(e) of the Act, the Commission is charged with approving or rejecting the collocation agreement between BellSouth and American MetroComm within 90 days of its submission. The Commission may only reject such an agreement if it finds that the agreement or any portion of the agreement discriminates against a telecommunications carrier not a party to the agreement or the implementation of the agreement or any portion of the agreement is not consistent with the public interest, convenience and necessity. Both parties represent that neither of these reasons exist as to the agreement they have negotiated and therefore, are very hopeful that the Commission shall approve their agreement.

Very truly yours,

*A. M. Lombardo*  
for  
A. M. Lombardo  
Regulatory Vice President

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REGULATORY REPORTING

# Collocation Agreement

This Collocation Agreement (the "Collocation Agreement") is entered into by and among, American MetroComm Corporation, American MetroComm/Alabama, Inc., American MetroComm/Louisiana, Inc., American MetroComm/Mississippi, Inc., American Metrouilities Corporation/Florida, Mississippi Fiber Group, Inc., American MetroComm Networks Corporation, American MetroComm Regional Networks Corporation, and American MetroComm/New Orleans, Inc. (hereinafter collectively referred to as "MetroComm"), and BellSouth Telecommunications, Inc., ("BellSouth") and is effective this 28<sup>th</sup> day of August, 1997.

## WITNESSETH

WHEREAS, American MetroComm Corporation and BellSouth entered into an Interconnection Agreement dated July 9, 1996 ("Interconnection Agreement"); and

WHEREAS, Attachment C-13 of the Interconnection Agreement refers to collocation but does not address the rights and obligations of the parties with respect to collocation; and

WHEREAS, American MetroComm Corporation and BellSouth desire to enter into a new collocation agreement; to supersede Attachment C-13 of the Interconnection Agreement; and to make this collocation agreement binding on BellSouth and American MetroComm Corporation, as well as the following subsidiaries of American MetroComm Corporation: American MetroComm/Alabama, Inc., American MetroComm/Louisiana, Inc., American MetroComm/Mississippi, Inc., American Metrouilities Corporation/Florida, Mississippi Fiber Group, Inc. and American MetroComm/New Orleans, Inc.

NOW, THEREFORE, for and in consideration of the promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### I. SCOPE OF AGREEMENT

A. BellSouth hereby grants to MetroComm a right to occupy that certain enclosed area designated by BellSouth within a BellSouth Central Office, of a size and dimension which is specified by MetroComm and agreed to by BellSouth (hereinafter "Collocation Space"). BellSouth will design and construct at the expense of MetroComm, a wall or other delineation to establish a clear division between the Collocation Space and other areas of the Central Office dedicated to BellSouth's use.

B. MetroComm shall use the Collocation Space for the purposes of installing, maintaining and operating the equipment of MetroComm (to include testing and monitoring equipment) which is used to interconnect with telecommunications services and facilities provided by BellSouth. Pursuant to Article III, following, MetroComm may place MetroComm-owned fiber entrance facilities to the Collocation Space, in which case the arrangement is designated "Expanded Interconnection." Placement of equipment in the Collocation Space without the use of MetroComm-owned entrance facilities is designated "Service Interconnection." In addition to, and not in lieu of, interconnection to BellSouth services and facilities, MetroComm may connect to other interconnectors within the designated Central Office. The Collocation Space may be used for no other purposes except as specifically described herein or authorized in writing by BellSouth.

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C. MetroComm may not provide or make available space within the Collocation Space to any third party. Any violation of this provision shall be deemed a material breach of this Agreement.

D. MetroComm agrees to pay the rates and charges identified at Exhibit A hereto.

E. A Collocation Space will be provided to MetroComm at each Central Office identified at Exhibit B hereto, which Exhibit shall be updated from time to time as additional Central Offices are made subject to the terms of this Agreement.

F. Prior Collocation Arrangements. This Collocation Agreement supersedes the provisions of Attachment C-13 of the Interconnection Agreement as well as any other provisions of the Interconnection Agreement relating to collocation. All other provisions of the Interconnection Agreement, and any amendments thereto, shall remain in full force and effect.

## II. TERM OF AGREEMENT

A. Term. The term of this Collocation Agreement shall be coterminous with the Interconnection Agreement; to wit: the term shall expire on July 9, 1998. The parties agree that any renegotiation of this Collocation Agreement upon expiration of the term shall be pursuant to 47 U.S.C. §252. Until the revised agreement becomes effective, the parties shall continue to abide by the terms and conditions of this Collocation Agreement.

B. Upon expiration of the initial term, those service arrangements made available under this Collocation Agreement and existing at the time of termination shall continue without interruption under one of the following as agreed to by the parties: (a) a new agreement executed by the parties, (b) standard Interconnection terms and conditions approved and made generally effective by the appropriate regulatory agency in each of BellSouth's nine State region, (c) Tariff terms and conditions generally available to interconnecting companies, or (d) if none of the above is available, under the terms of this Collocation Agreement on a month-to-month basis until an arbitration proceeding has been concluded by the parties.

C. Commencement Date. The "Commencement Date" shall be the first day after the equipment of MetroComm becomes operational as described Article II.D, following

D. Occupancy. BellSouth will notify MetroComm that the Collocation Space is ready for occupancy. MetroComm must place operational telecommunications equipment in the Collocation Space and connect with BellSouth's network within one hundred eighty (180) days after receipt of such notice. BellSouth may consent to an extension beyond 180 days upon a demonstration by MetroComm that circumstances beyond its reasonable control prevented MetroComm from completing installation by the prescribed date. If MetroComm fails to place operational telecommunications equipment in the Collocation Space within 180 days and such failure continues for a period of thirty (30) days after receipt of written notice from BellSouth, then and in that event this Agreement shall terminate and BellSouth shall have no further obligations to MetroComm hereunder. Termination of the Agreement pursuant to this paragraph shall not operate to release MetroComm from its obligation to reimburse BellSouth for all costs reasonably incurred by BellSouth in preparing the Collocation Space, but rather such obligation shall survive this Agreement. For purposes of this paragraph, the telecommunications equipment of MetroComm will be operational when cross-connected to BellSouth's network for the purpose of service provision.

E. **Termination.** MetroComm may terminate this Collocation Agreement upon thirty (30) days prior written notice to BellSouth. Upon termination, MetroComm at its expense shall remove its equipment and other property from the Collocation Space. MetroComm shall have thirty (30) days from the termination date to complete such removal; provided, however, that MetroComm shall continue payment of monthly fees to BellSouth until such date as MetroComm has fully vacated the Collocation Space. Should MetroComm fail to vacate the Collocation Space within thirty (30) days from the termination date, BellSouth shall have the right to remove the equipment and other property of MetroComm at the expense of MetroComm and with no liability for damage or injury to the property of MetroComm unless caused by the negligence or intentional misconduct of BellSouth.

### III. **USE OF COLLOCATION SPACE**

A. **Nature of Use.** BellSouth shall permit MetroComm to place, maintain and operate in the Collocation Space any equipment that MetroComm is authorized by BellSouth and by Federal or State regulators to place, maintain and operate in collocation space and that is used by MetroComm to provide services which MetroComm has the legal authority to provide. The equipment must at a minimum comply with the BellCore Network Equipment Building System (NEBS) General Equipment Requirements (TR-NWT-000063) and National Electric Code standards. MetroComm may elect to enclose the Collocation Space. MetroComm shall not use the Collocation Space for marketing purposes. MetroComm shall place no signs or marking of any kind in the area surrounding the Collocation Space or on the grounds of the Central Office housing the Collocation Space.

B. **Entrance Facilities.** MetroComm may elect to place MetroComm-owned entrance facilities into the Collocation Space. BellSouth will designate the point of interconnection in proximity to the central office building housing the Collocation Space, such as an entrance manhole or a cable vault. MetroComm will provide and place cable at the point of interconnection of sufficient length to be pulled through conduit and into the splice location. No splicing will be permitted in the entrance manhole. MetroComm will provide a sufficient length of fire retardant riser cable, to which the entrance cable will be spliced, which will extend from the splice location to MetroComm's equipment in the Collocation Space. MetroComm will contact BellSouth for instructions prior to placing the entrance facility cable in the manhole. MetroComm is responsible for maintenance of the entrance facilities. Dual entrance will be permitted where capacity exists. The interconnection point for entrance facilities extending from a rooftop antenna will be designated by BellSouth on the Application/Inquiry response.

C. **Demarcation Point.** A point-of-termination bay(s) will designate the point(s) of interconnection between MetroComm's equipment and/or network and BellSouth's network. Each party will be responsible for maintenance and operation of all equipment/facilities on its side of the demarcation point.

D. **MetroComm's Equipment and Facilities.** MetroComm is solely responsible for the design, engineering, testing, performance, monitoring, maintenance, and repair of the equipment and facilities used by MetroComm in the Collocation Space. Without limitation of the foregoing provisions, MetroComm will be responsible for servicing, supplying, repairing, installing and maintaining the following: (1) cable(s); (2) equipment; (3) point-of-termination cross-connects; (4) point of termination maintenance, including replacement fuses and circuit breaker restoration, if not performed by BellSouth; and (5) connection cable(s) and associated equipment which may be required within the Collocation Space to the points of interconnection.

E. Easement Space. From time to time BellSouth may require access to the Collocation Space. BellSouth retains the right to access such space for the purpose of making equipment and building modifications (e.g., running, altering or removing racking, ducts, electrical wiring, HVAC, and cables). BellSouth will give reasonable notice to MetroComm when access to the Collocation Space is required. MetroComm may elect to be present whenever BellSouth performs work in the Collocation Space. The parties agree that MetroComm will not bear any of the expense associated with this work.

F. Access and Administration. MetroComm and/or its approved agents shall have access to the Collocation Space on a 24 hour, seven day a week basis. A security escort will be required at Central Offices where separate, secured ingress and egress are not available and access would require MetroComm to traverse restricted areas. All employees, agents and contractors of MetroComm having access to the Collocation Space shall comply with BellSouth's policies and practices pertaining to fire, safety and security, and each such employee, agent or contractor shall display an identification badge issued by MetroComm or certified vendor which contains a current photo, the individual's name and company name/logo. MetroComm agrees to comply with all laws, ordinances and regulations affecting the use of the Collocation Space. Upon expiration of this Agreement, MetroComm shall surrender the Collocation Space to BellSouth in the same condition as when first occupied by MetroComm except for ordinary wear and tear.

G. Interference or Impairment. Notwithstanding any other provisions of this Agreement, equipment and facilities placed in the Collocation Space shall not interfere with or impair service provided by BellSouth or by any other collocator located in the Central Office; shall not endanger or damage the facilities of BellSouth or of any other collocator, the Collocation Space, or the Central Office; shall not compromise the privacy of any communications carried in, from, or through the Central Office; and shall not create an unreasonable risk of injury or death to any individual or to the public. If BellSouth reasonably determines that any equipment or facilities of MetroComm violate the provisions of this paragraph, BellSouth shall give written notice to MetroComm, which notice shall direct MetroComm to cure the violation within twenty-four (24) hours or, at a minimum, to commence curative measures within 24 hours and to exercise reasonable diligence to complete such measures as soon as possible thereafter. If MetroComm fails to take curative action within 24 hours or if the violation is of a character which poses an immediate and substantial threat of damage to property, injury or death to any person, or interference/impairment of the services provided by BellSouth, then and in that event BellSouth may take such action as it deems appropriate to correct the violation, including without limitation the interruption of electrical power to MetroComm's equipment. BellSouth will endeavor, but is not required, to provide notice to MetroComm prior to taking such action and shall have no liability to MetroComm for any damages arising from such action, except to the extent that such action by BellSouth constitutes willful misconduct.

H. Personalty and its Removal. Subject to requirements of this Agreement, MetroComm may place or install in or on the Collocation Space such facilities and equipment as it deems desirable for the conduct of business. Personal property, facilities and equipment placed by MetroComm in the Collocation Space shall not become a part of the Collocation Space, even if nailed, screwed or otherwise fastened to the Collocation Space, but shall retain their status as personalty and may be removed by MetroComm at any time. Any damage caused to the Collocation Space by the removal of such property shall be promptly repaired by MetroComm at its expense.

I. **Alterations.** In no case shall MetroComm or any person acting on behalf of MetroComm make any rearrangement, modification, improvement, addition, repair, or other alteration to the Collocation Space or the BellSouth Central Office without the written consent of BellSouth, which consent shall not be unreasonably withheld. The cost of any such specialized alterations shall be paid by MetroComm.

#### IV. ORDERING AND PREPARATION OF COLLOCATION SPACE

A. **Application for Space.** MetroComm shall submit to BellSouth a complete and accurate Application and Inquiry document, together with payment of the Application Fee as stated in Exhibit A. The Application shall contain a detailed description and schematic drawing of the equipment to be placed in MetroComm's Collocation Space(s) and an estimate of the amount of square footage required. BellSouth will respond to MetroComm's Application in writing, following the completion of review, planning and design activities, within 30 business days of receipt of the Application. Such response will include estimates on space availability, space preparation costs and space availability dates.

B. **Bona Fide Firm Order.** MetroComm shall indicate its intent to proceed with equipment installation in a BellSouth Central Office by submitting a Bona Fide Firm Order to BellSouth. A Bona Fide Firm Order requires MetroComm to complete the Application/Inquiry process described in Article IV. A, preceding, submit an updated Application document based on the outcome of the Application/Inquiry process, and pay all applicable fees referenced in Article V, following. The Bona Fide Firm Order must be received by BellSouth no later than 30 days after BellSouth's response to MetroComm's Application/Inquiry. Space preparation for the Collocation Space will not begin until BellSouth receives the Bona Fide Firm Order and all applicable fees.

C. **Use of Certified Vendor.** MetroComm shall select an equipment installation vendor which has been approved as a BellSouth Certified Vendor to perform all engineering and installation work required in the Collocation Space. BellSouth shall provide MetroComm with a list of Certified Vendors upon request. The Certified Vendor shall be responsible for installing MetroComm's equipment and components, extending power cabling to the BellSouth power distribution frame, performing operational tests after installation is complete, and notifying BellSouth's equipment engineers and MetroComm upon successful completion of installation. Certified Vendor shall bill MetroComm directly for all work performed for MetroComm pursuant to this Agreement and BellSouth shall have no liability for nor responsibility to pay such charges imposed by the Certified Vendor.

D. **Alarm and monitoring.** BellSouth shall place environmental alarms in the Central Office for the protection of BellSouth equipment and facilities. MetroComm shall be responsible for placement, monitoring and removal of environmental and equipment alarms used to service the Collocation Space. Upon request, BellSouth will provide MetroComm with applicable tariffed service(s) to facilitate remote monitoring of collocated equipment by MetroComm.

E. **Basic Telephone Service.** Upon request of MetroComm, BellSouth will provide basic telephone service to the Collocated Space under the rates, terms and conditions of the current tariff offering for the service requested.

F. **Space Preparation.** BellSouth shall pro rate the costs of any renovation or upgrade to Central Office space or support mechanisms which is required to accommodate MetroComm's request for space. MetroComm's pro rated share will be calculated by applying to total costs a percentage equivalent to the amount of square footage occupied by MetroComm divided by the total Central Office square footage receiving renovation or upgrade. For this section, support mechanisms may include, but not be limited to heating/ventilation/air conditioning (HVAC) equipment, HVAC duct work, cable support structure, fire wall(s), mechanical upgrade, asbestos abatement, ground plane addition, or separate ingress/egress construction. Such renovation or upgrade will be evaluated and the charges assessed on a per Central Office basis. BellSouth will make reasonable efforts to provide for occupancy of the Collocation Space on the negotiated date and will advise MetroComm of delays. MetroComm agrees BellSouth shall not be liable to MetroComm for delays in providing possession of the Collocated Space.

G. **Space Enclosure.** Upon request of MetroComm, BellSouth shall construct an equipment arrangement enclosure of a size and dimension jointly agreed upon by the parties. MetroComm may, at its option, directly arrange with a certified contractor to construct the space enclosure following BellSouth's guidelines and specifications. The certified contractor shall directly bill MetroComm for activities associated with the space enclosure construction.

H. **Cancellation.** If MetroComm cancels its order for the Collocation Space(s), MetroComm will reimburse BellSouth for any expenses incurred up to the date that written notice of the cancellation is received. In no event will the level of reimbursement under this paragraph exceed the maximum amount MetroComm would have otherwise paid for work undertaken by BellSouth if no cancellation of the order had occurred.

## V. **RATES AND CHARGES**

MetroComm shall pay for Collocation Space(s) according to the rates contained in Exhibit A and pursuant to the following:

A. **Non-recurring Fees.** In addition to the Application Fee referenced in Article IV preceding, MetroComm shall remit payment of a cable installation fee, space construction fee, as applicable, and one-half (1/2) of the estimated space preparation fee coincident with submission of a Bona Fide Firm Order. The outstanding balance of the actual space preparation fee shall be due 30 days following MetroComm's acceptance of the space. Cable installation fee(s) are assessed per entrance fiber placed. No cable installation fee is required for Service Interconnection. The space preparation fee will be pro rated as prescribed in Article IV. F preceding. MetroComm's pro rated share will be calculated by applying to total estimated costs a percentage equivalent to the amount of square footage occupied by MetroComm divided by the total Central Office square footage receiving renovation or upgrade. The space enclosure construction fee is assessed for the materials and installation cost of the equipment enclosure. BellSouth's engineering and other labor time associated with establishing the Physical Collocation Arrangement will be billed as Additional Engineering charges, under provisions in BellSouth's F.C.C. Number 1 Tariff, Sections 13.1 and 13.2. An estimate of the Additional Engineering charges will be provided by BellSouth to MetroComm in the Application Response.

B. **Floor Space.** The floor space charge includes charges for lighting, heat, air conditioning, ventilation and other allocated expenses associated with maintenance of the Central Office but does not include amperage necessary to power MetroComm's equipment. When the Collocation Space is enclosed

by walls or other divider, MetroComm shall pay floor space charges based upon the number of square feet so enclosed. When the Collocation Space is not enclosed, MetroComm shall pay floor space charges based upon the number of square feet contained in a shadow print of MetroComm's equipment racks and POT bay, plus a factor of 2.50, representing the collocator's share of wiring and provisioning aisle space for provisioning and maintenance activities. Floor space charges are due beginning with the date on which BellSouth releases the Collocation Space for occupancy or on the date MetroComm first occupies the Collocation Space, whichever is sooner.

C. Power. Charges for -48V DC power will be assessed per ampere per month based upon the certified vendor engineered and installed power feed fused ampere capacity. Rates include redundant feeder fuse positions (A&B) and cable rack to MetroComm's equipment or equipment cage. Fuses and power feed cables (A&B) must be engineered (sized), furnished and installed by MetroComm's certified vendor. MetroComm's certified vendor must also provide a copy of the engineering power specification prior to the Commencement Date.

D. Security Escort. A security escort will be required whenever a collocator or approved agent desires access to the entrance manhole or must traverse a restricted area within BellSouth's central office. Rates for a BellSouth security escort are assessed in one-half (1/2) hour increments according to the schedule appended hereto as Exhibit A.

E. Rate "True-Up". The parties agree that the interim prices reflected herein shall be "trued-up" (up or down) based on final prices either determined by further agreement or by final order (including any appeals) of the applicable State Public Service Commission or any other body having jurisdiction over this agreement which final order meets the criteria contained in Article V.F following. The parties shall implement the true up by comparing the actual volumes and demand for each item, together with interim prices for each item, with the final prices determined for each item. Each party shall keep its own records upon which a "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 disagreement as between the records or the parties regarding the amount of such "true-up," the parties agree that the body having jurisdiction over the matter shall be called upon to resolve such differences or that they will submit the matter for resolution in accordance with the terms contained in Article XXIII of the Partial Interconnection Agreement executed between the parties and dated July 9, 1996. The parties may continue to negotiate toward final prices, but in the event that no such agreement is reached within six (6) months, either party may petition the Commission to resolve such disputes to determine final rates for each item.

F. Any final order that forms the basis of a "true-up" under this Collocation Agreement shall meet the following criteria:

(a) It shall be in a proceeding to which MetroComm and BellSouth are entitled to be full parties to the proceeding.

(b) It shall apply the provisions of the Telecommunications Act of 1996, including, but not limited to, Section 251 (d) (1) (which contains pricing standards) and all then-effective implementing rules and regulations; and

(c) It shall include as an issue the geographic deaveraging of unbundled elements rates, which deaveraged rates, if any are required by said final order, shall form the basis of any true up.



G. **Other.** Payment of all other charges under this Agreement shall be due thirty (30) days after receipt of the bill (payment due date). MetroComm will pay a late payment charge of one and one-half percent (1-1/2%) assessed monthly on any balance which remains unpaid after the payment due date.

**VI. INSURANCE**

A. MetroComm shall, at its sole cost and expense, procure, maintain, and keep in force insurance as specified in this Article VI and underwritten by insurance companies licensed to do business in the states contained in Exhibit B attached hereto and having a BEST Insurance Rating of B ++ X (B ++ ten).

B. MetroComm shall maintain the following specific coverages:

1. Commercial General Liability coverage in the amount of ten million dollars (\$10,000,000.00) or a combination of Commercial General Liability and Excess/Umbrella coverage totaling not less than ten million dollars (\$10,000,000.00). BellSouth shall be named as an ADDITIONAL INSURED on ALL applicable policies as specified herein.

2. Statutory Workers Compensation coverage and Employers Liability coverage in the amount of one hundred thousand dollars (\$100,000.00) each accident, one hundred thousand dollars (\$100,000.00) each employee by disease, and five hundred thousand dollars (\$500,000.00) policy limit by disease.

3. MetroComm may elect to purchase business interruption and contingent business interruption insurance, having been advised that BellSouth assumes no liability for loss of profit or revenues should an interruption of service occur.

C. The limits set forth in VI.B above may be increased by BellSouth from time to time during the term of this Agreement upon 30 days notice to MetroComm to at least such minimum limits as shall then be customary with respect to comparable occupancy of BellSouth structures.

D. All policies purchased by MetroComm shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by BellSouth. All insurance must be in effect on or before the date equipment is delivered to BellSouth's Central Office and shall remain in effect for the term of this Agreement or until all MetroComm's property has been removed from BellSouth's Central Office, whichever period is longer. If MetroComm fails to maintain required coverages, BellSouth may pay the premiums thereon and seek reimbursement of same from MetroComm.

E. Neither Party shall make a claim for recovery, one against the other, and each Party expressly waives any right of recovery, one against the other for damage to or loss of which damage or loss may arise by fire or any other peril covered by any first party policy of insurance in which said policy or policies is or may be the assured and when said loss is caused by or results from any acts of carelessness or negligence of either Party, their officers, agents, employees or other persons under their respective control.

F. MetroComm shall submit certificates of insurance reflecting the coverages required pursuant to this Section a minimum of ten (10) days prior to the commencement of any work in the Collocation Space. MetroComm shall arrange for BellSouth to receive thirty (30) days advance notice of cancellation from MetroComm's insurance company. MetroComm shall forward certificates of insurance and notice of cancellation to BellSouth at the following address:

BellSouth Telecommunications, Inc.  
Attn.: Risk Management Coordinator  
3535 Colonnade Parkway, S9A1  
Birmingham, Alabama 35243

G. MetroComm must conform to recommendations made by BellSouth's fire insurance company to the extent BellSouth has agreed to, or shall hereafter agree to, such recommendations.

H. Failure to comply with the provisions of this Section will be deemed a material breach of this Agreement.

#### **VII. MECHANICS LIENS**

If any Mechanics Lien or other lien shall be filed against property of either party (BellSouth or MetroComm), or any improvement thereon by reason of or arising out of any labor or materials furnished, alleged to have been furnished, or to be furnished to or for the other Party, or by reason of any changes or additions to said property at the request or under the direction of the other Party, the other Party directing or requesting those changes or additions or to or for whom the labor or materials were furnished shall, within thirty (30) days after written notice from the Party against whose property said lien has been filed, either pay such lien or cause the same to be bonded off the affected property in the manner provided by law. The Party causing said lien to be placed against the property of the other also shall defend, at its sole cost and expense, on behalf of the other, any action, suit, or proceeding which may be brought for the enforcement of such liens and shall pay any damage and discharge any judgment entered.

#### **VIII. INSPECTIONS**

BellSouth shall conduct an inspection of MetroComm's equipment and facilities in the Collocation Space(s) prior to the activation of facilities between MetroComm's equipment and equipment of BellSouth. BellSouth may conduct an inspection if MetroComm adds equipment and may otherwise conduct routine inspections at reasonable intervals mutually agreed upon by the parties. BellSouth shall provide MetroComm with a minimum of forty-eight (48) hours or two (2) business days, whichever is greater, advance notice of all such inspections.

**IX. SECURITY**

Only BellSouth employees, BellSouth certified vendors and authorized employees or agents of MetroComm will be permitted in the BellSouth Central Office. MetroComm shall provide its employees and agents with picture identification which must be worn and visible at all times while in the Collocation Space or other areas in or around the Central Office. BellSouth may refuse entry to any person who fails to display the identification required by this section.

**X. INDEMNITY / LIMITATION OF LIABILITY**

**A. Liability Cap.**

1. With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by MetroComm, any MetroComm customer or by any other person or entity, for damages associated with any of the services provided by BellSouth pursuant to or in connection with this Collocation Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Article, BellSouth's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Collocation Agreement, for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by interconnector, by any interconnector customer or by any other persons or entity resulting from the gross negligence or willful misconduct of BellSouth and claims for damages by MetroComm resulting from the failure of BellSouth to honor in one or more material respects any one or more of the material provisions of this Collocation Agreement shall not be subject to such limitation of liability.

2. With respect to any claim or suit, whether based in contract, tort or any other theory of legal liability, by BellSouth, any BellSouth customer or by any other person or entity, for damages associated with any of the services provided by MetroComm pursuant to or in connection with this Collocation Agreement, including but not limited to the installation, provision, preemption, termination, maintenance, repair or restoration of service, and subject to the provisions of the remainder of this Article, MetroComm's liability shall be limited to an amount equal to the proportionate charge for the service provided pursuant to this Collocation Agreement for the period during which the service was affected. Notwithstanding the foregoing, claims for damages by BellSouth, any BellSouth customer or any other person or entity resulting from the gross negligence or willful misconduct of MetroComm and claims for damages by BellSouth resulting from the failure of MetroComm to honor in one or more material respects any one or more of the material provisions of this Collocation Agreement shall not be subject to such limitation of liability.

B. Neither Party shall be liable for any act or omission of any other telecommunications company to the extent such other telecommunications company provides a portion of a service provided by MetroComm to its customers.

C. Neither Party shall be liable for damages to the other Party's terminal location, point of interconnection, or the other Party's customers' premises resulting from the furnishing of a service, including but not limited to the installation and removal of equipment and associated wiring, except to the extent the damage is caused by such Party's gross negligence or willful misconduct.

D. **No Consequential Damages** - Except as otherwise provided in this Article X, neither Party shall be liable to the other Party for any indirect, incidental, consequential, reliance, or special damages suffered by such other Party (including without limitation damages for harm to business, lost revenues, lost savings, or lost profits suffered by such other Party), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including without limitation negligence of any kind whether active or passive, and regardless of whether the parties knew of the possibility that such damages could result. Each Party hereby agrees to hold harmless the other Party and such other Party's affiliates, and their respective officers, directors, employees and agents from all such damages. Provided, however, nothing contained in this Article X shall limit a Party's liability to the other for (i) willful or intentional misconduct, gross negligence, or failure to honor one or more of the material provisions of this Collocation Agreement in one or more material respects; (ii) bodily injury, death or damage to tangible real or tangible personal property proximately caused by a Party's negligent act or omission or that of its agents, subcontractors or employees, nor shall anything contained in this Article X limit the parties' indemnification obligations as specified herein.

E. **Obligation to Indemnify.**

1. Each Party (the "Indemnifying Party") shall, and hereby agrees to, defend at the other Party's request, indemnify and hold harmless the other Party and each of its officers, directors, employees and agents (each, an "Indemnitee") against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated, including without limitation all reasonable costs and expenses incurred (legal, accounting or otherwise) (collectively, "Damages") arising out of, resulting from or based upon any pending or threatened claim, action, proceeding or suit by any third party (a "Claim") (i) arising from any breach of any representation, warranty or covenant made by such indemnifying party in this Collocation Agreement, (ii) based upon injuries or damage to any person or property or the environment arising out of or in connection with this Collocation Agreement that are the result of the Indemnifying Party's actions, breach of Applicable Law, or the actions of the Indemnifying Party employees, agents and subcontractors.

2. Promptly after receipt of notice of any Claim or the commencement of any action for which a Party may seek indemnification pursuant to this Article X, the Indemnitee shall promptly give written notice clearly referencing this Article X to the Indemnifying Party of such Claim or action; provided, however, the Indemnitee's failure to so notify the Indemnifying Party will not relieve the latter from any liability it may have to the Indemnitee except to the extent the Indemnifying Party is actually prejudiced by such failure. The Indemnitee shall cooperate, at the indemnifying Party's expense, with all reasonable requests made by the Indemnifying Party for assistance or information relating to such Claim or action. The Indemnitee will have the right to participate in the investigation, defense and settlement of such Claim or action, with separate counsel chosen and paid for by the Indemnitee. However, the Indemnifying Party will have the right to control the defense and settlement of such Claim or action.

F. Each Party's failure to perform under this Collocation Agreement shall be excused by labor strikes, civil commotion, criminal actions taken against them, acts of God, and other circumstances beyond their reasonable control.

G. The obligations of the parties contained within this Article X shall survive the expiration of this Collocation Agreement.

**XI. PUBLICITY**

Neither Party shall publish or use any advertising, sales promotions or other publicity materials that use the other Party's logo, trademarks or service marks without the prior written approval of the other Party.

**XII. DESTRUCTION OF COLLOCATION SPACE**

In the event a Collocation Space is wholly or partially damaged by fire, windstorm, tornado, flood or by similar causes to such an extent as to be rendered wholly unsuitable for MetroComm's permitted use hereunder, then either party may elect within ten (10) days after such damage, to terminate this Agreement, and if either party shall so elect, by giving the other written notice of termination, both parties shall stand released of and from further liability under the terms hereof. If the Collocation Space shall suffer only minor damage and shall not be rendered wholly unsuitable for MetroComm's permitted use, or is damaged and the option to terminate is not exercised by either party, BellSouth covenants and agrees to proceed promptly without expense to MetroComm, except for improvements not the property of BellSouth, to repair the damage. BellSouth shall have a reasonable time within which to rebuild or make any repairs, and such rebuilding and repairing shall be subject to delays caused by storms, shortages of labor and materials, government regulations, strikes, walkouts, and causes beyond the control of BellSouth, which causes shall not be construed as limiting factors, but as exemplary only. Where allowed and where practical in the sole judgment of BellSouth, MetroComm may erect a temporary facility while BellSouth rebuilds or makes repairs. In all cases where the Collocation Space shall be rebuilt or repaired, MetroComm shall be entitled to an equitable abatement of rent and other charges, depending upon the unsuitability of the Collocation Space for MetroComm's permitted use, until such Collocation Space is fully repaired and restored and MetroComm's equipment installed therein (but in no event later than thirty (30) days after the Collocation Space is fully repaired and restored).

**XIII. EMINENT DOMAIN**

If the whole of a Collocation Space shall be taken by any public authority under the power of eminent domain, then this Agreement shall terminate as of the day possession shall be taken by such public authority and rent and other charges for the Collocation Space shall be paid up to that day with proportionate refund by BellSouth of such rent and charges as may have been paid in advance for a period subsequent to the date of the taking. If any part of the Collocation Space shall be taken under eminent domain, BellSouth and MetroComm shall each have the right to terminate this Agreement and declare the same null and void, by written notice of such intention to the other party within ten (10) days after such taking.

**XIV. FORCE MAJEURE**

Neither party shall be in default by reason of any failure in performance of this Agreement, in accordance with its terms and conditions, if such failure arises out of causes beyond the control of the nonperforming party including, but not restricted to, acts of God, acts of government, insurrections, fires, floods, accidents, epidemics, quarantines, restrictions, strikes, freight embargoes, inability to secure raw

materials or transportation facilities, acts or omissions of carriers or any and all other causes beyond the party's control.

**XV. ASSIGNMENT**

MetroComm acknowledges that this Agreement does not convey any right, title or interest in the Central Office to MetroComm. MetroComm may not sublet its rights under this Agreement, nor shall it allow a third party to use or occupy the Collocation Space at any time or from time to time without the prior written consent, and at the sole discretion, of BellSouth. This Agreement is not assignable by either party without the prior written consent of the other party, and any attempt to assign any of the rights, duties or obligations of this Agreement without such consent is void. Notwithstanding the foregoing, either party may assign any rights, duties or obligations of this Agreement to a parent, subsidiary or affiliate without the consent of the other party.

**XVI. NONEXCLUSIVITY**

MetroComm understands that this Agreement is not exclusive and that BellSouth may enter into similar agreements with other parties. Assignment of space pursuant to all such agreements shall be determined by space availability and made on a first come, first served basis.

**XVII. NOTICES**

Except as otherwise provided herein, any notices or demands that are required by law or under the terms of this Agreement shall be given or made by MetroComm or BellSouth in writing and shall be given by hand delivery, or by certified or registered mail, and addressed to the parties as follows:

To BellSouth:

BellSouth Telecommunications, Inc.  
3535 Colonnade Parkway, South E4E1  
Birmingham, Alabama 35243  
Attn.: Nancy Nelson

To MetroComm:

American MetroComm Corporation  
P. O. Box 53427  
New Orleans, Louisiana 70153-3427  
Attn.: General Counsel

Such notices shall be deemed to have been given in the case of certified or registered mail when deposited in the United States mail with postage prepaid.

**XVIII. SECTION HEADINGS**

The section headings used herein are for convenience only, and shall not be deemed to constitute integral provisions of this Agreement.

**XIX. AUTHORITY**

Each of the parties hereto warrants to the other that the person or persons executing this Agreement on behalf of such party has the full right, power and authority to enter into and execute this Agreement on such party's behalf and that no consent from any other person or entity is required as a condition precedent to the legal effect of this Agreement.

**XX. REVIEW OF AGREEMENT**

The parties acknowledge that each has had an opportunity to review and negotiate this Agreement and has executed this Agreement only after such review and negotiation. The parties further agree that this Agreement shall be deemed to have been drafted by both Licensor and Licensee and the terms and conditions contained herein shall not be construed any more strictly against one party or the other.

IN WITNESS WHEREOF, the parties have executed this Collocation Agreement by their duly authorized representatives in one or more counterparts, each of which shall constitute an original, on the day and year written below.

BELLSOUTH TELECOMMUNICATIONS,  
INC.


  
Authorized Signature

Jerry D. Hendrix  
Print or Type Name

Director  
Title

09/09/97  
Date

AMERICAN METROCOMM  
CORPORATION

  
Authorized Signature

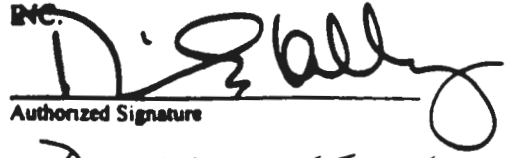
DENNIS E. KELLY  
E. VICE PRESIDENT  
Print or Type Name

"  
Title

8/28/97  
Date

(Signature Page continued on next page.)

AMERICAN METROCOMM/ALABAMA,  
INC.

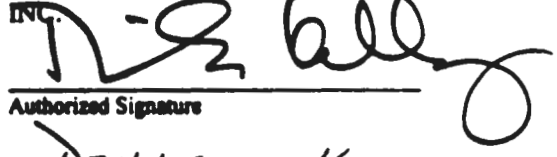
  
Authorized Signature

DENNIS E. KELLY  
Print or Type Name

V.P.  
Title

8/28/97  
Date

AMERICAN METROCOMM/LOUISIANA,  
INC.

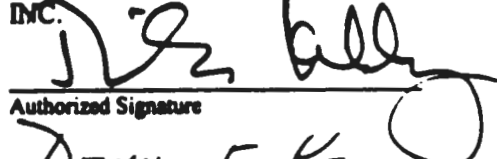
  
Authorized Signature

DENNIS E. KELLY  
Print or Type Name

V.P.  
Title

8/28/97  
Date

AMERICAN METROCOMM/MISSISSIPPI,  
INC.

  
Authorized Signature

DENNIS E. KELLY  
Print or Type Name

V.P.  
Title

8/28/97  
Date

(Signature Page continued on next page.)



Collocation Agreement

UTILITIES  
AMERICAN METROCOMM  
CORPORATION/FLORIDA

D. E. Kelly  
Authorized Signature

DENNIS E. KELLY  
Print or Type Name

V.P.  
Title

8/24/97  
Date

MISSISSIPPI FIBER GROUP, INC

D. E. Kelly  
Authorized Signature

DENNIS E. KELLY  
Print or Type Name

V.P.  
Title

8/28/97  
Date

AMERICAN METROCOMM NETWORKS  
CORPORATION

D. E. Kelly  
Authorized Signature

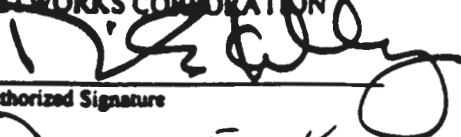
DENNIS E. KELLY  
Print or Type Name

V.P.  
Title

8/28/97  
Date

(Signature Page continued on next page.)

AMERICAN METROCOMM REGIONAL  
NETWORKS CORPORATION

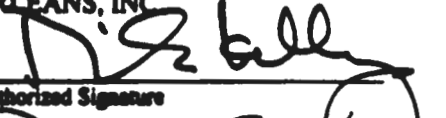
  
Authorized Signature

DENNIS E. KELLY  
Print or Type Name

V.P.  
Title

8/28/97  
Date

AMERICAN METROCOMM/NEW  
ORLEANS, INC

  
Authorized Signature

DENNIS E. KELLY  
Print or Type Name

V.P.  
Title

8/28/97  
Date

## Schedule of Rates and Charges

<u>Rate Element Description</u>	<u>Type of Charge</u>	<u>Charge</u>	
Application Fee	NRC (per Arrangement, per C.O.)	\$3,850.00	
Subsequent Application Fee (Note 1)	NRC (per Arrangement, per C.O.)	\$1,600.00	
Space Preparation Fee (Note 2)	NRC (per Arrangement, per C.O.)	ICB	
Space Enclosure Construction Fee (Note 2)	NRC (per 100 square feet)	\$4,500.00	
Additional Engineering Fee (Note 3)	NRC	ICB	
Cable Installation	NRC (per entrance cable)	\$2,750.00	
Floor Space	Zone A Zone B	RC (per square foot) RC (per square foot)	\$7.50 \$6.75
Power	RC (per amp)	\$5.00	
Cable Support structure	RC (per entrance cable)	\$13.35	
Cross-Connects (C-C)	2-wire 4-wire DS1 DS3	RC (per cross-connect) RC (per cross-connect) RC (per cross-connect) RC (per cross-connect)	\$0.30 \$0.50 \$8.00 \$72.00
	2-wire 4-wire DS1 DS3	NRC (first cross-connect) NRC (first cross-connect) NRC (first cross-connect) NRC (first cross-connect)	\$19.20 \$19.20 \$155.00 \$155.00
	2-wire 4-wire DS1 DS3	NRC (each additional C-C) NRC (each additional C-C) NRC (each additional C-C) NRC (each additional C-C)	\$19.20 \$19.20 \$27.00 \$27.00
POT Bay	2-wire 4-wire DS1 DS3	RC (per wire) RC (per wire) RC (per wire) RC (per wire)	\$0.40 \$1.20 \$1.20 \$8.00
Additional Security Access Cards	NRC-ICB (each)	\$10.00	

## Schedule of Rates and Charges (cont.)

<u>Rate Element Description</u>	<u>Type of Charge</u>	<u>Charge</u>
Direct Connection (Note 4)		
(1) Fiber Arrangement	RC (per cable, per linear foot)	\$0.06
-with Initial Application	NRC (per Arrangement)	n/a
-Subsequent to Application	NRC (per Arrangement)	\$246.00
(2) Copper or Coaxial Arrangement	RC (per cable, per linear foot)	\$0.03
-with Initial Application	NRC (per Arrangement)	n/a
-Subsequent to Application	NRC (per Arrangement)	\$246.00
Security Escort		
Basic - first half hour	NRC-ICB	\$41.00
Overtime - first half hour	NRC-ICB	\$48.00
Premium - first half hour	NRC-ICB	\$55.00
Basic - additional half hour	NRC-ICB	\$25.00
Overtime - additional half hour	NRC-ICB	\$30.00
Premium - additional half hour	NRC-ICB	\$35.00

Notes

NRC: Non-recurring Charge - one-time charge

RC: Recurring Charge - charged monthly

ICB: Individual Case Basis - one-time charge

- (1) Subsequent Application Fee. BellSouth requires the submission of an Application Fee for modifications to an existing arrangement. However, when the modifications do not require BellSouth to expend capital (e.g., additional space or power requirements, BST termination/cross-connect equipment, etc.), BellSouth will assess the Subsequent Application Fee.
- (2) Space Preparation Fee. The Space Preparation Fee is a one-time fee, assessed per arrangement, per location. It covers costs associated with the shared physical collocation area within a central office, and includes survey, engineering, design and building modification costs. BellSouth will pro rate the total shared space preparation costs among all collocators at that location based on the number of square footage requested. This charge may vary dependent on the location and the type of arrangement requested.

**Schedule of Rates and Charges (cont.)**

**Notes (cont.)**

(2) (cont.)

**Space Enclosure Construction Fee.** The Space Enclosure Construction Fee is a one-time fee, assessed per enclosure, per location. It recovers costs associated with providing an optional equipment arrangement enclosure (e.g., architectural and engineering fees, materials, and installation costs). This fee is charged per 100 square feet. This fee will not be assessed when a Collocator elects to construct its own space enclosure (a certified contractor must be used and BellSouth's construction guidelines must be followed).

(3) **Additional Engineering Fee.** BellSouth's engineering and other labor time associated with establishing the Physical Collocation Arrangement will be billed as Additional Engineering charges, under provisions in BellSouth's F.C.C. Number 1 Tariff, Sections 13.1 and 13.2. An estimate of the Additional Engineering charges will be provided by BellSouth in the Application Response.

(4) **Direct Connection.** As stated in Article LB of the Collocation Agreement, MetroComm may connect to other interconnectors within the designated Central Office in addition to, and not in lieu of, interconnection to BellSouth services and facilities. MetroComm must use its Certified Vendor to place the direct connection. The Direct Connection NRC is assessed when direct connection is the only work requested by MetroComm. If any other work in addition to the direct connection is being requested, whether for an initial installation of a Collocation Space or for an augmentation to an existing Collocation Space, an Application Fee or a Subsequent Application Fee will be assessed in lieu of the Direct Connection NRC. Construction charges may also apply; BellSouth shall provide an estimate of these charges in the Application Response.

**Bona Fide Physical Collocation Arrangements**

**Central Office Name:**  
**Central Office CLLI Code:**  
**City:**  
**State:**  
**Date of Bona Fide Firm Order:**

**Central Office Name:**  
**Central Office CLLI Code:**  
**City:**  
**State:**  
**Date of Bona Fide Firm Order:**

**Central Office Name:**  
**Central Office CLLI Code:**  
**City:**  
**State:**  
**Date of Bona Fide Firm Order:**

**Central Office Name:**  
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**State:**  
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**Central Office CLLI Code:**  
**City:**  
**State:**  
**Date of Bona Fide Firm Order:**