

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for approval by Vista-United Telecommunications for interim traffic termination and billing agreement (interconnection agreement) with Time Warner AxS of Florida, L.P. d/b/a Time Warner Communications and Digital Media Partners, pursuant to Section 252 of Telecommunications Act of 1996.

DOCKET NO. 971034-TP  
ORDER NO. PSC-97-1442-FOF-TP  
ISSUED: November 17, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman  
J. TERRY DEASON  
SUSAN F. CLARK  
DIANE K. KIESLING  
JOE GARCIA

ORDER APPROVING INTERCONNECTION AGREEMENT

BY THE COMMISSION:

On August 11, 1997, Vista-United Telecommunications (Vista-United) and Time Warner AxS of Florida, L.P. d/b/a Time Warner Communications and Digital Media Partners (Time Warner) filed a request for approval of an interconnection agreement under the Telecommunications Act of 1996, 47 U.S.C. §252(e) of the Telecommunications Act of 1996 (the Act). The agreement is attached to this Order as Attachment A and incorporated by reference herein.

Both the Act and Chapter 364, Florida Statutes, encourage parties to enter into negotiated agreements to bring about local exchange competition as quickly as possible. Under the requirements of 47 U.S.C. § 252(e), negotiated agreements must be submitted to the state commission for approval. Section 252(e)(4)

DOCUMENT NUMBER-DATE

11759 NOV 17 97

FPSC-REGISTRATION-REPORTING

ORDER NO. PSC-97-1442-FOF-TP  
DOCKET NO. 971034-TP  
PAGE 2

requires the state to reject or approve the agreement within 90 days after submission or it shall be deemed approved.

This agreement covers a two-year period and governs the relationship between the companies regarding local interconnection and the exchange of traffic pursuant to 47 U.S.C. § 251. Under 47 U.S.C. § 252(a)(1), the agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement.

Upon review of the proposed agreement, we believe that it complies with the Telecommunications Act of 1996; thus, we hereby approve it. Vista-United and Time Warner are also required to file any subsequent supplements or modifications to their agreement with the Commission for review under the provisions of 47 U.S.C. § 252(e).

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the interconnection agreement between Vista-United Telecommunications and Time Warner AxS of Florida, L.P. d/b/a Time Warner Communications and Digital Media Partners, as set forth in Attachment A and incorporated by reference in this Order, is hereby approved. It is further

ORDERED that any supplements or modifications to this agreement must be filed with the Commission for review under the provisions of 47 U.S.C. § 252(e). It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 17th day of November, 1997.

  
\_\_\_\_\_  
BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

ORDER NO. PSC-97-1442-FOF-TP  
DOCKET NO. 971034-TP  
PAGE 3

KMP

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review in Federal district court pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(e)(6).

## TRAFFIC TERMINATION AND BILLING AGREEMENT

This is an AGREEMENT ("Agreement") effective the 9th day of May, 1997, by and between Time Warner AxS of Florida, L.P., d/b/a Time Warner Communications and Digital Media Partners, a Delaware limited partnership (hereinafter referred to as "TWC") and Vista-United Telecommunications, a Florida general partnership (hereinafter referred to as "VISTA.") (Collectively, VISTA and TWC shall be referred to as the "Parties" and singularly, as "Party").

A. This Agreement sets forth the provisions under which TWC and VISTA will provide for originating, terminating, and/or transporting "Toll Traffic" (as defined herein below) and "Local Traffic" (as defined herein below) between the facilities operated by the Parties. This Agreement also sets forth the terms and conditions for the handling of telecommunications services for which charges are billed and collected by one Party for the other Party.

B. This Agreement covers only traffic provided through the use of feature group type C access, feature group type D terminating access, or feature group type D originating access in those cases where either Party is the provider of services selected by an end-user, to the other Party's end offices.

C. This Agreement is intended to meet the Parties' obligations under Section 251(a) of the Act and covers only the exchange of Local Traffic and Toll Traffic which either originates or terminates outside of Vista's certificated service area, as described in its tariffs on file with the Florida Public Service Commission, and is intended only to replicate the arrangements currently existing between VISTA and its neighboring incumbent local exchange companies for the exchange of Local Traffic and Toll Traffic.

### Section 1 - Definitions

1.01 **Act** - means the Telecommunications Act of 1996, Public Law 104-104 of the 104th United States Congress effective February 8, 1996.

1.02 **Affiliate** - as to any entity, means any other entity which is controlled by, controls, or is under common control with such entity; provided, however, that Euro Disney S.A. and Euro Disney S.C.A. shall not be Affiliates of VISTA. The term "control" (including the terms "controlled," "controlled by" and "under common control with") shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity. The term "Affiliates" shall be the plural reference to "Affiliate."

1.03 **Alternate Billed Messages** - means messages originating on one Party's facilities that are billed by another company. Alternate Billed Messages include calls that are collect, third number billed and billed to a LEC calling card.

1.04 **Automatic Number Identification ("ANI")** - means the process which identifies the telephone number of the line initiating a call in order to send this information to the message accounting system.

1.05 **Centralized Message Distribution System ("CMDS")** - a generic term that refers to all applications using the centralized nationwide system for the interexchange of data through a network of private line transmission facilities. The CMDS transport system is used by the Bellcore Client Companies ("BCCs") and other LECs (through a sponsor relationship with a BCC) for the efficient transmission and exchange of in-collect and out-collect (Intercompany Settlement ("ICS") and non-ICS messages) billable records, Access Usage Records ("AURs"), and Summary Usage Records ("SUR's").

1.06 **Commercial Mobile Radio Service Provider ("CMRSP")** - means a radio common carrier provider of domestic public wireless or wireless telecommunication service, as defined in Part 22, Subpart H or Part 24 of the FCC Rules and Regulations.

1.07 **Commission** - means the Florida Public Service Commission.

1.08 **Expanded Message Record ("EMR")** - means industry-accepted formatted records to be exchanged between LECs for billing purposes.

1.09 **FCC** - means the Federal Communications Commission.

1.10 **Law** - shall have the meaning ascribed to it in Section 9, hereof.

1.11 **Local Exchange Carrier ("LEC")** - is as defined in the Act.

1.12 **Local Traffic** - means traffic which originates and terminates within the local service area of the Parties shown in Attachment "A" hereto, including Extended Area Service and Extended Calling Plan calls between the Parties. Traffic to, and from customers of CMRSPs shall be considered Local Traffic for purposes of this Agreement.

1.13 **Meet Point** - means that point mutually agreed upon in writing by the parties at which their network facilities are interconnected for the reciprocal exchange of traffic.

1.14 **Mutual Traffic Exchange** - means a form of compensation in which one Party is compensated for transporting and terminating the other Party's Local Traffic solely through the reciprocal transport and termination of its traffic by the other Party.

1.15 **System** - means the exchange and interexchange switching, and transmission facilities that route, switch and transport a Party's Local and Toll Traffic.

1.16 **Toll Traffic** - means traffic that is originated by an end user of one Party and terminates to an end user of the other Party and is not Local Traffic. Toll Traffic may be either intraLATA or interLATA traffic depending on whether the originating or terminating points are within the same LATA.

1.17 **Unbillable** - means messages with respect to which the end user customer account cannot be identified.

1.18 **Uncollectible** - means messages that are billed to a customer account, however, revenues cannot be collected, including messages with respect to which the end user denies all knowledge.

## Section 2 - Exchanges Included

The exchanges of VISTA covered by this Agreement are shown in Attachment "A", attached hereto and incorporated herein by reference.

The NXX's of TWC covered by this Agreement are shown in Attachment "A", attached hereto and incorporated herein by reference.

## Section 3 - Provision of Service

- A. The Parties agree, pursuant to the terms set out herein, to exchange traffic for the purpose of allowing origination and termination of telephone calls between the Parties' end users, including traffic originating from customers of CMRSPs and terminating to the Parties' end users, and including traffic originating from the Parties' end users and terminating to customers of CMRSPs.
- B. Each Party will plan, design, construct and maintain the facilities within their respective Systems as are necessary and proper for the provision of traffic covered by this Agreement. These facilities include but are not limited to, a sufficient number of trunks to the point of connection, and sufficient interoffice and interexchange trunks between its own central offices to adequately handle traffic between all central offices within the service areas. The arrangement of the facility systems, including, but not limited to, routing and the Meet Point are shown in Attachment "B", attached hereto and incorporated herein by reference. Attachments A and B may be amended from time to time by mutual agreement in writing by the Parties as a result of changes in exchange boundaries, local calling areas or implementation of new NXX codes.
- C. The provisioning and engineering of such services and facilities will comply with generally accepted industry methods and practices and will observe the rules and regulations of the lawfully established tariffs applicable to the services provided. To the extent that either Party requests a design which exceeds the other Party's reasonable industry cost, the requesting Party shall bear the additional reasonable cost.

The traffic covered by this Agreement will be routed as indicated in Attachment B. Changes in routing shall be agreed upon in writing by the Parties before becoming effective.

#### **Section 4 - Traffic Recording and Identification**

- A. The traffic recording and identification functions required to provide the services specified hereunder shall be performed by the Parties. Each Party will calculate terminating minutes of use based on standard automatic message accounting recording made within each Party's network. The record shall contain the appropriate ANI information or service provider information to identify the originating company. The Party originating traffic shall generate and provide the appropriate EMR standard record or other agreed upon record format, to the terminating Party. These records will be provided at no charge to the other Party within 60 days of the usage date.
- B. TWC and VISTA agree they will, to the extent feasible, make every attempt to accurately capture and report the actual usage interchanged between them for use in calculating the necessary compensation under this Agreement.
- C. Should actual traffic information (measured in minutes of use) not be available, the Parties will mutually agree on a suitable alternative basis for calculating compensation which most closely approximates the actual interchanged usage.
- D. Each Party shall deliver monthly statements for terminating the other's traffic.

Measurement of minutes of use shall be in actual call conversation seconds. The total call conversation seconds will be totaled for the entire monthly billing cycle and then rounded to the next whole minute.

#### **Section 5 - Compensation Arrangement**

The Parties agree to compensate each other for the termination of Local Traffic and intraLATA Toll Traffic pursuant to this Agreement in accordance with the following:

- A. Each Party will generate a monthly bill for intraLATA toll, as applicable, to the other Party for traffic terminating to its end offices.
- B. Compensation for transport and termination of Local Traffic will be Mutual Traffic Exchange.
- C. Charges for termination of traffic originating from CMRSPs and terminating to end users of the Parties will be Mutual Traffic Exchange.

Charges for termination of traffic originating from the end users of the Parties and terminating to CMRSPs will be Mutual Traffic Exchange.

D. Compensation for termination of Toll Traffic will be calculated by applying the access rates set forth in VISTA's tariff or price list filed by or on behalf of VISTA with the appropriate Commission and as timely set forth by TWC to VISTA in provided information. The latest rates will become effective when received by VISTA. Switched access service is intended to compensate the Parties, per this Agreement, when the Parties provide:

- (1) Loop, drop and associated equipment from the end office to the end user (carrier common line).
- (2) End office switching functions (which is traffic sensitive): - local switching, including, without limitation:
  - line termination
  - intercept (applicable only if the element is included in the Intrastate access tariff or price list)
- (3) Local transport facilities - the Parties agree that the following billing percentages apply for the calculation of common transport charges from intraLATA toll:

For Toll Traffic originating from TWC and terminating to VISTA, the percentage of transport billed by TWC will be 92% based upon the location of the Meet Point shown in Attachment "B".

For Toll Traffic originating from VISTA and terminating to TWC, the percentage of transport billed by VISTA will be 8% based upon the location of the Meet Point shown in Attachment "B".

E. All compensation payable pursuant to this Agreement for termination of traffic shall be payable within 30 days of the bill date.

#### **Section 6 -Alternate Billed Messages**

- A. Each Party agrees to provide the other Party billing, collecting and remitting services on Alternate Billed Messages. Each Party will provide to the other Party the EMR standard formatted record for billing of messages to their end users. These records may be exchanged over CMDS or a tape generated and mailed to the billing company. These records must be exchanged at least monthly.
- B. Each Party agrees to remit to the other Party the revenue value of each Alternate Billed Message less a billing and collection fee of \$0.0666 per message.
- C. Unbillable messages will be the liability of the originating company. The billing company must appropriately account for and return the Unbillable messages to the originating company pursuant to EMR standard guidelines.



- D. Uncollectible messages will be the liability of the billing company.
- E. Each Party will promptly furnish to the other such information as may be required for monthly compensation purposes. Compensation statements for Alternate Billed Messages will be rendered monthly and remittance in full will be made by the debtor company thirty (30) days thereafter. The Parties hereby agree that if any monthly statement reflects a total amount payable less than \$100, the amount of \$100 or less will be considered de minimus and will not be included in the calculation of the following month(s) amount, nor will it be included in the calculation of the following month(s) amount payable.

#### **Section 7 - Operator Services**

Each Party will be responsible for maintaining its own customer information in currently available databases used in the provision of miscellaneous intercompany operator services (i.e. local assistance, directory assistance, directory assistance call completion, busy line verification/interrupt). If it is determined that intercompany operator services are desirable in the future, the Parties will cooperate and establish interoperability for the provision of those services.

#### **Section 8 - Audits**

Each Party will keep adequate records of all collections, payments and other transactions hereunder. Upon 30 days written notice, any Party may request an audit of the usage reports or billing data supplied by the other Party hereunder and any such audit shall be accomplished during normal business hours at the office designated by the Party being audited. Audit requests shall not be submitted more frequently than one time per calendar year, Audits may be performed by a mutually acceptable independent auditor paid for by the Party requesting the audit. A request for an audit must be received within one year of receipt of the records or usage reports from the audited Party. Auditors hereunder shall not be compensated on a contingent fee basis.

#### **Section 9 - Governing Law**

This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the Laws of the State of Florida, and, where applicable, the Laws of the United States of America.

#### **Section 10 - Entire Agreement; No Offer**

This Agreement contains the entire Agreement of VISTA and TWC with respect to the subject matter hereof, and no representations, warranties, inducements, promises or agreements, oral or otherwise, between the Parties not embodied in this Agreement shall be of any force or effect. This Agreement shall be modified only by a written agreement executed by both Parties with the same formalities as this Agreement. All prior agreements or communications, if any, that are the subject matter of this Agreement are and shall be merged into this Agreement. Neither any submission of this Agreement by one Party to the other, nor any correspondence or other communications between the Parties in connection therewith, is intended or shall be deemed to constitute an offer of any kind or to create any

obligations between the Parties unless and until one or more duplicates of this Agreement has been fully executed and delivered between the Parties. Accordingly, any such submission, communications or correspondence between the Parties or their respective agents or attorneys is intended only as non-binding discussions prior to such execution, and either Party shall have the absolute right to withdraw from such discussions without any liability whatsoever to the other Party prior to such execution.

### **Section 11 - Representations and Warranties**

(1) TWC represents and warrants to VISTA the following:

TWC is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware and is authorized to transact business in the State of Florida;

TWC, and the undersigned signatories executing this Agreement on behalf of TWC, are duly authorized and empowered to enter into this Agreement with VISTA;

To the best of the undersigned for TWC's actual knowledge, neither the entering into this Agreement nor the performance or satisfaction by TWC of its obligations and liabilities hereunder nor the exercise by TWC of any of its rights or options hereunder will constitute or result in a violation or breach by TWC of any judgment, order, writ, injunction or decree issued against or imposed upon it, or to the best of the undersigned's actual knowledge will result in a violation of any applicable Law;

To the best of the undersigned for TWC's actual knowledge and belief after reasonable inquiry, there is no action, suit, proceeding or investigation pending or threatened, which would prevent, impair or which questions the validity or enforceability of this Agreement or any action taken pursuant hereto in any court or before or by an federal, district, county, or municipal department, Commission, board, bureau, agency or other governmental instrumentality; and

(2) VISTA represents and warrants to TWC the following:

VISTA is a partnership duly organized, validly existing and in good standing under the laws of the State of Florida and is authorized to transact business in the State of Florida;

VISTA, and the undersigned signatories executing this Agreement on behalf of VISTA are duly authorized and empowered to enter into this Agreement with TWC;

To the best of the undersigned for VISTA's actual knowledge, neither the entering into of this Agreement nor the performance or satisfaction by VISTA of its obligations and liabilities hereunder nor the exercise by VISTA of any of its rights or options hereunder will constitute or result in a violation or breach by VISTA of any judgment, order, writ, injunction or decree issued against or imposed upon it, or to the best of the undersigned for VISTA's actual knowledge will result in a violation of any applicable Law;

To the best of the undersigned for VISTA's actual knowledge and belief after reasonable inquiry, there is no action, suit, proceeding or investigation pending or threatened, which would prevent, impair or

which questions the validity or enforceability of this Agreement or any action taken pursuant hereto in any court or before or by an federal, district, county, or municipal department, Commission, board, bureau, agency or other governmental instrumentality, and

(3) Both Parties agree to comply with all applicable federal, state and local Laws, including but not limited to the Act.

#### **Section 12 - Limitations of Liability and Indemnifications**

- A. Neither TWC nor VISTA will be liable to the other for either Party's indirect, incidental, special or consequential damages (including but not limited to lost profits) arising, in whole or in part, from either Party's actions, omissions, mistakes, or negligence relating to performance under this Agreement (including but not limited to breaches of this Agreement).
- B. No Party shall be liable for any act or omission of another telecommunications company providing a portion of the services provided under this Agreement.
- C. The Parties assume no liability for the accuracy of data provided by another Party and each Party agrees to indemnify and hold harmless the others for any claim, action, cause of action, damage, or injury that might result from the supply of inaccurate data in conjunction with the provision of any service provided pursuant to this Agreement.
- D. TWC and VISTA shall each indemnify and hold harmless the other, the others' Affiliate companies and their respective officers, directors, employees and agents of each from all liabilities, damages, costs and expenses (including reasonable counsel fees) incurred in connection with any claim arising out of such Party's breach of any representation, warranty or obligation hereunder.
- E. Either Party seeking indemnification under this Agreement (the "Indemnified Party") shall give notice to the Party required to provide indemnification hereunder (the "Indemnifying Party") promptly after the Indemnified Party has actual knowledge of any claim as to which indemnity may be sought hereunder, and the Indemnified Party shall permit the Indemnifying Party (at the expense of the Indemnifying Party) to assume the defense of any claim or litigation resulting therefrom; provided, that: (i) counsel for the Indemnifying Party who shall conduct the defense of such claim or litigation shall be reasonably satisfactory to the Indemnified Party; (ii) the Indemnified Party may participate in such defense, but only at the Indemnified Party's own cost and expense; and (iii) the omission by the Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent that such omission results in a failure of actual notice to the Indemnifying Party and the Indemnifying Party is damaged as a result of such failure to give notice.

- F. The Indemnifying Party shall not, except with the consent of the Indemnified Party, consent to entry of any judgment or administrative order or enter into any settlement that (i) could affect the intellectual property rights or other business interests of the Indemnified Party or (ii) does not include as an unconditional term thereof the giving by the claimant or plaintiff to the Indemnified Party of a release from all liability with respect to such claim or litigation.
- G. In the event that the Indemnified Party shall reasonably and in good faith determine that the conduct of the defense of any claim subject to the indemnification hereunder or any proposed settlement of any such claim by the Indemnifying Party might be expected to affect adversely the Indemnified Party's intellectual property rights or ability to conduct future business, the Indemnified Party shall have the right at all times to take over and assume control over the defense, settlement negotiations or lawsuit relating to any such claim at the sole cost and expense of the Indemnifying Party; provided that if the Indemnified Party does so take over and assume control, the amount of the indemnity required to be paid by the Indemnifying Party shall be limited to the amount which the Indemnifying Party is able to demonstrate that it could have settled the matter for immediately prior to the time of such assumption.
- H. In the event that the Indemnifying Party does not accept the defense of any matter as above provided, the Indemnified Party shall have the full right to defend against any such claim or demand, and shall be entitled to settle or agree to pay in full such claim or demand, in its sole discretion.
- I. The provisions of this Section shall survive the expiration or sooner termination of this Agreement.

### **Section 13 - Assignment and Binding Effect**

Neither Party may assign, transfer, or sublease (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer not permitted under this Agreement shall be void ab initio. Without limiting the foregoing, with respect to any approved assignment, transfer and/or sublease hereunder, the assignor, transferor, and/or sublessor, as the case may be, shall be released from the rights, duties and obligations in this Agreement and such rights, duties and obligations shall extend to, be binding upon and inure to the benefit of such assignee, transferee and/or sublessee, as the case may be.

### **Section 14 - Rights Cumulative**

All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by Law.

### **Section 15 - Force Majeure**

Except as otherwise expressly provided in this Agreement, and except with respect to any failure to pay any sum due hereunder as a result of bankruptcy, insolvency or refusal or inability to pay, if either Party shall be delayed or hindered in whole or in part, or prevented from, the performance of any non-monetary covenant or obligation hereunder as a result of acts of God, fire or other casualty, earthquake, hurricane, flood, epidemic, landslide, enemy act, war, riot, intervention by civil or military authorities of government, insurrection or other civil commotion, strikes, boycotts, lockouts or labor disputes, then the performance of such covenant or obligation, shall be excused for the period of such delay, hindrance or prevention and the period of the performance of such covenant or obligation shall be extended by the number of days equivalent to the number of days of such delay, hindrance or prevention. The affected Party shall use commercially reasonable efforts to avoid or remove the cause of non-performance and the Parties shall proceed to perform with dispatch once the causes are removed or ceased.

### **Section 16 - No Waiver**

No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either Party unless in writing and executed by the other Party as the case may be. Neither the failure of either Party to insist upon a strict performance of any of the agreements, terms, covenants and conditions hereof, nor the acceptance of any payments from either Party with knowledge of a breach of this Agreement by the other Party in the performance of its obligations hereunder, shall be deemed a waiver of any rights or remedies that VISTA or TWC may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

### **Section 17 - Confidentiality of Proprietary Data**

At the time of execution of this Agreement, no confidential information has been exchanged between the Parties. To the extent such confidential information is required to be exchanged, the Parties will negotiate and agree as to the treatment of such confidential information. If confidential information must be produced to the Commission, it shall be provided pursuant to the Commission's rule or statute regarding confidential information.

### **Section 18 - Agreement Does Not Benefit Non-Parties**

In entering into, and in performing under, this Agreement, the parties do not intend to benefit in any way, any person who is not one of the two Parties to this Agreement. This Agreement does not enlarge, add to, or change, in any way, any rights of any nonparties which would exist if this Agreement did not exist.

### Section 19 - Term

- A. The Parties shall file this Agreement with the appropriate Commission as soon as practicable following its execution in accordance with the Act and unless rejected by the Commission, it shall become effective pursuant to its terms when approved by the appropriate Commission or when deemed approved under the Act.
- B. The Parties agree to exchange traffic pursuant to the terms of this Agreement for a period of two years from the effective date of this Agreement, and thereafter the Agreement shall continue in full force and effect for additional one-year terms until replaced by an agreement pursuant to Section 19(C). The effective date of this Agreement shall be the date of its first commercial call between the Parties.
- C. Upon delivery of written notice at least one hundred and sixty (160) days prior to the expiration of this Agreement, either Party may require negotiations of the rates, terms, and conditions of the interconnection arrangements to be effective upon such expiration. Unless deemed to be inconsistent with the Act, if the Parties are unable to satisfactorily negotiate such new terms within 135 days of commencing the negotiations, either Party may petition the Commission to establish appropriate interconnection arrangements. In the event that the Commission does not issue its order prior to the scheduled expiration date in such State, the Parties agree that the rates, terms and conditions ultimately ordered by such Commission or negotiated by the Parties will be effective retroactive to the expiration date. Until the revised interconnection arrangements become effective, the Parties shall continue to exchange traffic pursuant to the terms of this Agreement.
- D. The Parties acknowledge that this Agreement does not cover all aspects of the exchange of local and intraLATA Toll Traffic under the Act. If changes in business plans, traffic volumes or network configurations warrant, other exchanges of traffic between the Parties will be negotiated on a nondiscriminatory basis. The Parties acknowledge that if the Parties fail to reach agreement upon any such matters, either Party may commence arbitration or mediation under Section 252 of the Act.

### Section 20 - Notices

Any notice, demand, request, offer, consent, approval or communication to be provided under this Agreement shall be in writing and shall be deemed received either: (i) five (5) business days after it is deposited, postage prepaid, in the United States mail, certified or registered mail with a return receipt requested, addressed (as the case may be) to VISTA at VISTA's address shown herein, or to TWC at the address of TWC shown herein; or (ii) the next day after it is deposited with a nationally recognized and reputable air courier addressed (as the case may be) to VISTA at VISTA's address shown herein, or to TWC at the address of TWC shown herein; or (iii) the same day it is personally delivered (as the case may be) to VISTA at VISTA's address shown herein, or to TWC at the address of TWC shown herein. Either Party may designate a different address or may change its representative designated for receiving notices hereunder by providing written notice to the other Party. Such written notice will be provided to the other Party within 30 days.

If any notice is tendered and is refused by the intended recipient, such notice shall, nonetheless, be considered to have been given and shall be effective as of the date provided herein.

**TIME WARNER COMMUNICATIONS**

Senior Counsel  
**TIME WARNER COMMUNICATIONS**  
160 Inverness Drive West  
Englewood, Colorado 80112

copy to:

Director- Regulatory  
**TIME WARNER COMMUNICATIONS, L.P.**  
2773 Red Maple Ridge  
Tallahassee, FL 32301

**Vista - United Telecommunications**

3100 Bonnet Creek Road  
Lake Buena Vista, FL 32830  
Attn: Manager - Business Affairs

and:

Walt Disney World Co.  
1375 Buena Vista Drive  
Lake Buena Vista, FL 32830  
Attn: General Counsel

**Section 21 - Severability**

If any clause or provision of this Agreement is illegal, invalid or unenforceable under applicable present or future Laws effective during the term of this Agreement, the remainder of this Agreement shall not be affected. In lieu of each clause or provision of this Agreement which is illegal, invalid or unenforceable, there shall be added as a part of this Agreement a clause or provision as nearly identical as may be possible and as may be legal, valid and enforceable. Parties will use their reasonable efforts to renegotiate the affected provision of the Agreement within sixty (60) days. Notwithstanding the foregoing, in the event any clause or provision of this Agreement is illegal, invalid or unenforceable as aforesaid and the effect of such illegality, invalidity or unenforceability is that either Party no longer has the substantial benefit of its bargain under this Agreement, then, in such event, either Party may in its discretion cancel and terminate this Agreement upon providing thirty (30) days advance written notice thereof to the other Party.

### **Section 22 - Accord and Satisfaction**

Payment by any Party, or receipt or acceptance by a receiving Party, of any payment due hereunder in an amount less than the amount required to be paid hereunder shall not be deemed an accord and satisfaction, or a waiver by the receiving Party of its right to receive and recover the full amount of such payment due hereunder, notwithstanding any statement to the contrary on any check or payment or on any letter accompanying such check or payment. The receiving Party may accept such check or payment without prejudice to the receiving Party's right to recover the balance of such payment due hereunder or to pursue any other legal or equitable remedy provided in this Agreement.

### **Section 23 - Promotions**

(1) Except as specifically permitted by VISTA in this Agreement, TWC shall acquire no right under this Agreement to use, and shall not use, the name of VISTA, the name "Disney" (either alone or in conjunction with or as a part of any other word, mark or name) or any marks, fanciful characters or designs of The Walt Disney Company or any of its related, affiliated or subsidiary companies, in any of its advertising, publicity or promotion; to express or imply any endorsement by VISTA of its services; or in any other manner whatsoever (whether or not similar to the uses hereinabove specifically prohibited). This Section shall survive the expiration or sooner termination of this Agreement.

(2) Except as specifically permitted by TWC in this Agreement, VISTA shall acquire no right under this Agreement to use, and shall not use, the name of TWC, the name "Time Warner" (either alone or in conjunction with or as a part of any other word, mark or name) or any marks, fanciful characters or designs of Time Warner Corporation or any of its related, affiliated or subsidiary companies, in any of its advertising, publicity or promotion; to express or imply any endorsement by TWC of its services; or in any other manner whatsoever (whether or not similar to the uses hereinabove specifically prohibited). This Section shall survive the expiration or sooner termination of this Agreement.

### **Section 24 - Counterparts**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

### **Section 25 - Relationship Disclaimer**

The Parties hereby acknowledge that it is not their intention to create between themselves a partnership, joint venture, fiduciary, employment or agency relationship for the purposes of this Agreement, or for any other purpose whatsoever. Accordingly, notwithstanding any expressions or provisions contained herein or in any other document, nothing in this Agreement or in any documents executed or delivered or to be executed or delivered shall be construed or deemed to



create, or to express an intent to create, a partnership, joint venture, fiduciary, employment or agency relationship of any kind or nature whatsoever between the Parties hereto.

**Section 26 - Construction of Agreement**

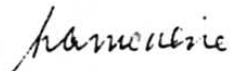
This Agreement has been fully reviewed and negotiated by the Parties hereto and their respective counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which Party hereto or its counsel drafted the provisions being interpreted.

**Section 27 - Execution**

TWC and VISTA hereby authorize and execute this Agreement.


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first above written.

**Time Warner Communications**

By:   
Stephen A. McPhie  
President

5/9/97  
Date

**Vista-United Telecommunications**

By:   
Richard J. Wiedenbeck  
Acting General Manager

5/8/97  
Date

ATTACHMENT A

Exchanges

1. TWC Exchanges include:

|    | NPA-NXX | End Office<br>CLLI | EO<br>Vert | EO<br>Horz | Serving    | Local    | Toll     |
|----|---------|--------------------|------------|------------|------------|----------|----------|
| A. | 407-210 | MTLDFLAPDSO        | 7954       | 1031       | Orlando    | abcdefgh |          |
| B. | 407-215 | MTLDFLAPDSO        | 7954       | 1031       | WinterPark | abcdefgh |          |
| C. | 407-217 | MTLDFLAPDSO        | 7954       | 1031       | Windermere | abcdefgh |          |
| D. | 407-703 | MTLDFLAPDSO        | 7954       | 1031       | Apopka     | abcdefgh |          |
| E. | 407-705 | MTLDFLAPDSO        | 7954       | 1031       | Kissimmee  | b        | acdefgh  |
| F. | 407-707 | MTLDFLAPDSO        | 7954       | 1031       | West Kiss. | abcdefgh |          |
| G. | 407-708 | MTLDFLAPDSO        | 7954       | 1031       | San./L M   |          | abcdefgh |
| H. | 407-473 | MTLDFLAPDSO        | 7954       | 1031       | Melbourne  |          | abcdefgh |
| I. | 407-360 | MTLDFLAPDSO        | 7954       | 1031       | Titusville |          | abcdefgh |
| J. | 407-205 | MTLDFLAPDSO        | 7954       | 1031       | Cocoa      |          | abcdefgh |
| K. | 407-209 | MTLDFLAPDSO        | 7954       | 1031       | Orlando    | abcdefgh |          |

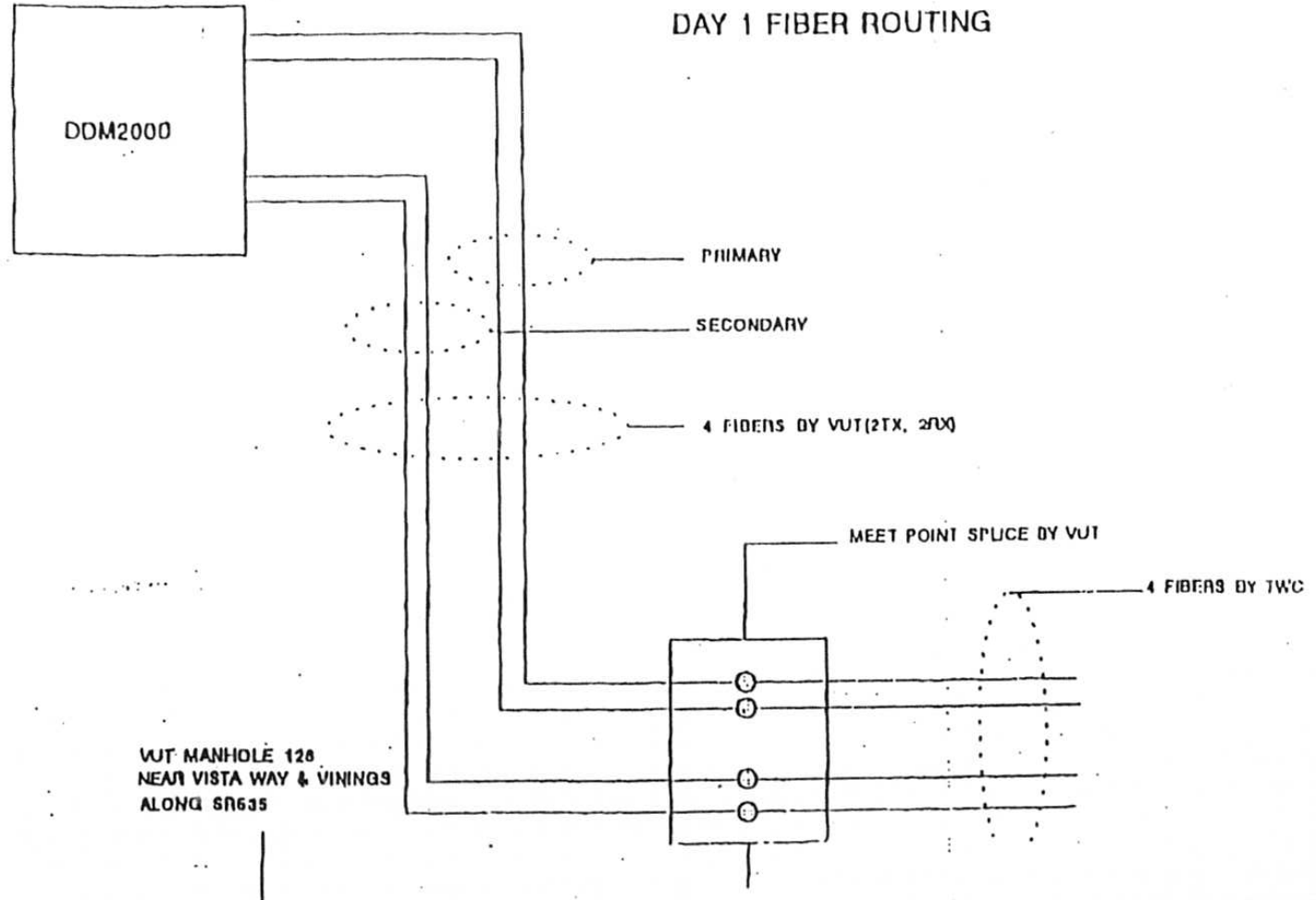
2. Vista-United Exchanges include:

|    | NPA-<br>NXX | End Office<br>CLLI | EO<br>Vert | EO<br>Horz | Serving     | Local   | Toll  |
|----|-------------|--------------------|------------|------------|-------------|---------|-------|
| a. | 407-560     | LKBNFLXBDSO        | 7998       | 1041       | LBV         | ABCDFK  | EGHIJ |
| b. | 407-566     | LKBNFLXBDSO        | 7998       | 1041       | Celebration | ABCDEFK | GHIJ  |
| c. | 407-824     | LKBNFLXBDSO        | 7998       | 1041       | LBV         | ABCDFK  | EGHIJ |
| d. | 407-827     | LKBNFLXBDSO        | 7998       | 1041       | LBV         | ABCDFK  | EGHIJ |
| e. | 407-828     | LKBNFLXBDSO        | 7998       | 1041       | LBV         | ABCDFK  | EGHIJ |
| f. | 407-934     | LKBNFLXBDSO        | 7998       | 1041       | LBV         | ABCDFK  | EGHIJ |
| g. | 407-938     | LKBNFLXBDSO        | 7998       | 1041       | LBV         | ABCDFK  | EGHIJ |
| h. | 407-939     | LKBNFLXBDSO        | 7998       | 1041       | LBV         | ABCDFK  | EGHIJ |

ATTACHMENT B

VISTA-UNITED  
TELECOMMUNICATIONS  
3100 BONNETT CREEK RD.

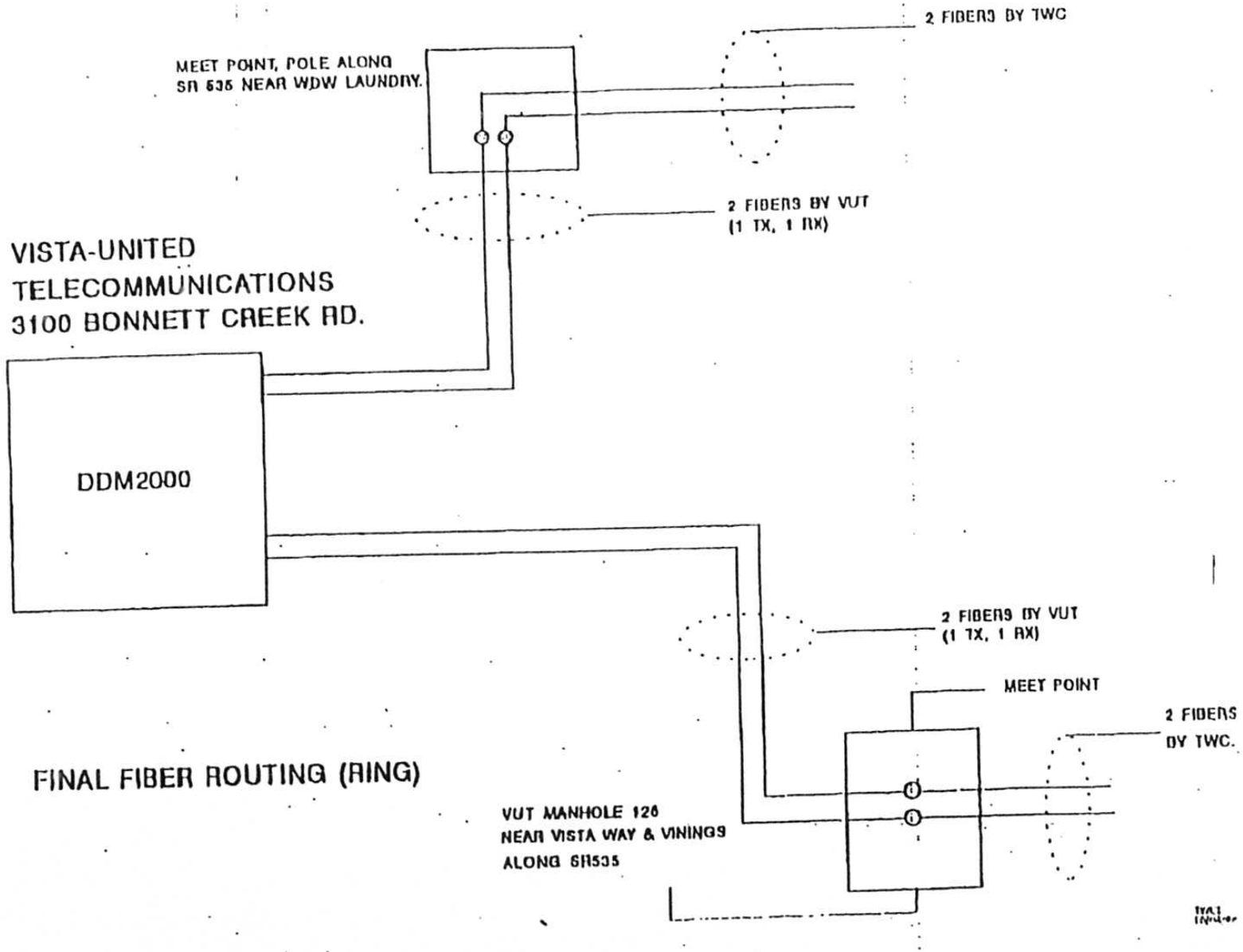
DAY 1 FIBER ROUTING



DOCKET NO. 971034-TP  
ORDER NO. PSC-97-1442-FOF-TP  
PAGE 19

MAR 26 '97 04:27PM AUSLEY McMULLEN LAW FIRM

ATTACHMENT A



FIBER

