

AUSLEY & MCMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

June 25, 2001

BY HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

010902-TP

Re: Interim Traffic Termination and Billing Agreement between
Smart City Telecom and BroadRiver Communication Corporation

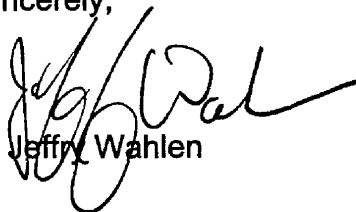
Dear Ms. Bayo:

Pursuant to Section 252 of the Telecommunications Act of 1996, enclosed for filing are the original and fifteen (15) copies of the above-referenced Interim Traffic Termination and Billing Agreement.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning the same to this writer.

Thank you for your assistance in this matter.

Sincerely,



J. Jeffrey Wahlen

Enclosures

cc: Lynn B. Hall (w/encls.)
Michael J. Huebner (w/encls.)
h:\data\jjw\smartcity\bayo interim traffic ltr.broadriver.doc

DOCUMENT NUMBER-DATE
07862 JUN 25 01
FPSC-RECORDS/REPORTING

**INTERIM TRAFFIC TERMINATION AND BILLING
AGREEMENT**

dated as of MAY 24, 2001

between

**SMART CITY TELECOMMUNICATIONS LLC
D/B/A SMART CITY TELECOM**

and

**BROADRIVER COMMUNICATION
CORPORATION**

TABLE OF CONTENTS

1. EXCHANGES INCLUDED.....8
 1.1. Exchanges Included.8
2. PROVISION OF SERVICE.....8
 2.1. Provision of Service.....8
3. TRAFFIC RECORDING AND IDENTIFICATION.....9
 3.1. Traffic Recording and Identification.....9
4. COMPENSATION ARRANGEMENT.....10
 4.1. Toll Traffic.....10
 4.2. Compensation Arrangement.10
5. ALTERNATE BILLED MESSAGES.11
 5.1. Alternate Billed Messages.11
6. OPERATOR SERVICES.....12
 6.1. Operator Services.....12
7. AUDITS.....12
 7.1. Audits.....12
8. GOVERNING LAW.....12
 8.1. Governing Law.12
9. ENTIRE AGREEMENT; NO OFFER.12
 9.1. Entire Agreement; No Offer.12
10. REPRESENTATIONS AND WARRANTIES.....13
 10.1. BROADRIVER's Representations.....13
 10.2. SCT's Representations.....14

11. LIMITATIONS OF LIABILITY AND INDEMNIFICATIONS.	14
11.1. Limitations of Liability and Indemnifications.	14
12. ASSIGNMENT AND BINDING EFFECT.	16
12.1. Assignment and Binding Effect.	16
13. RIGHTS CUMULATIVE.	17
13.1. Rights Cumulative.	17
14. FORCE MAJEURE.	17
14.1. Force Majeure.	17
15. NO WAIVER.	17
15.1. No Waiver.	17
16. CONFIDENTIALITY OF PROPRIETARY DATA.	18
16.1. Confidentiality of Proprietary Data.	18
17. AGREEMENT DOES NOT BENEFIT NON-PARTIES.	18
17.1. Agreement Does Not Benefit Non-Parties.	18
18. LAWFULNESS AND SEVERABILITY.	18
18.1. Lawfulness and Severability.	18
19. TERM.	19
19.1. Term.	19
20. NOTICES.	20
20.1. Notices Requirements.	20
20.2. Notices Addresses.	20
20.3. Different Address.	20
20.4. Refusal of Notice.	20

21. SEVERABILITY21

 21.1. Severability21

22. ACCORD AND SATISFACTION21

 22.1. Accord and Satisfaction21

23. NO REPRESENTATIONS21

 23.1. BROADRIVER’s No Representations21

 23.2. SCT’s No Representations22

24. PROMOTIONS22

 24.1. SCT’s Promotions22

 24.2. BROADRIVER's Promotions22

25. COUNTERPARTS23

 25.1. Counterparts23

26. FORUM AND VENUE FOR LEGAL PROCEEDINGS/WAIVER OF JURY TRIAL23

 26.1. Forum and Venue for Legal Proceedings/Waiver of Jury Trial23

27. RELATIONSHIP DISCLAIMER23

 27.1. Relationship Disclaimer23

 27.2. Construction of Agreement23

28. EXECUTION24

 28.1. Execution24

ATTACHMENT LIST

ATTACHMENT "A" - Exchanges

ATTACHMENT "B" - Arrangement of Facility Systems

INDEX OF DEFINED TERMS

"Act"7
"Affiliates"16
"Agreement"7
"Alternate Billed Messages"11
"ANI"9
"BCC"11
"BROADRIVER"7
"CMDS"11
"CMRSP"8
"Commission"7
"Confidential Information"18
"Control"16
"EMR"9
"FCC"8
"Governmental Authority"13
"ICS"11
"Indemnified Party"15
"Indemnifying Party"15
"LATA"10
"LEC"9
"Local Traffic"8
"Meet Point"8
"Mutual Traffic Exchange"10
"Party"7
"Systems"8
"Toll Traffic"8
"Unbillable Messages"11
"Uncollectible Messages"11
"SCT"7

INTERIM TRAFFIC TERMINATION AND BILLING AGREEMENT

This **INTERIM TRAFFIC TERMINATION AND BILLING AGREEMENT** (“**Agreement**”) is effective as provided herein, by and between BroadRiver Communication Corporation, a _____ corporation (“**BROADRIVER**”), and Smart City Telecommunications LLC d/b/a Smart City Telecom, a Delaware limited liability company (“**SCT**”) (collectively, SCT and BROADRIVER shall be referred to as the “**Parties**”. “**Party**” shall be the singular reference to “**Parties**”).

WITNESSETH:

WHEREAS, this Agreement sets forth the provisions under which BROADRIVER and SCT will provide for originating, terminating, and/or transporting “**Toll Traffic**” (as defined hereinbelow in subsection 2.1.2) and “**Local Traffic**” (as defined hereinbelow in subsection 2.1.2) 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;

WHEREAS, 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;

WHEREAS, this Agreement is intended to fulfill SCT’s obligations under subsection 251 (a) of the Communications Act, as amended by the Telecommunications Act of 1996 (“**Act**”). This Agreement covers only the exchange of Local Traffic and Toll Traffic, which either BROADRIVER originates outside of SCT’s certificated service area and terminates inside SCT’s certificated service area; or SCT originates inside of SCT’s certificated service area and terminates on BROADRIVER’s network outside of SCT’s certificated service area, as described in each of the Party’s respective applicable tariffs on file with the Florida Public Service Commission (“**Commission**”), and is intended to replicate the arrangements currently existing by and between SCT and its neighboring incumbent local exchange companies for the exchange of Local Traffic; and

WHEREAS, it is specifically understood and agreed to by the Parties that nothing in this Agreement shall be construed as an attempt to reach agreement regarding matters contained in subsections 251 (b) and (c) of the Act; nor shall any act or omission of SCT or any provision of this Agreement be construed as a waiver of SCT’s rights under subsection 251 (f) of the Act.

NOW, THEREFORE, in consideration of the mutual obligations as set forth below the Parties hereby agree as follows:

1. EXCHANGES INCLUDED.

1.1. Exchanges Included.

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

2. PROVISION OF SERVICE.

2.1. Provision of Service.

The Parties provision of service shall be as follows:

2.1.1. 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 a commercial mobile radio service provider ("CMRSP") and terminating to the Parties' end users, and including traffic originating from the Parties' end users and terminating to customers of "CMRSPs". For purposes hereof, "CMRSP" shall mean a common carrier provider of domestic public wireless or wireless telecommunication service, as defined in Part 22, Subpart H or Part 24 of the Federal Communication Commission ("FCC") Rules and Regulations.

2.1.2. Each Party will plan, design, construct and maintain the facilities within their respective "Systems". 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", respectively, may change from time to time as a result of changes in exchange boundaries, local calling areas, NXX Codes, or implementation of new NXX codes, and the Party making such changes shall provide timely written notification and details of same to the other Party. For purposes hereof, "Systems" shall mean the exchange and interexchange switching, and transmission facilities that route, switch and transport a Party's Local Traffic and Toll Traffic as are necessary and proper for the provision of traffic covered by this Agreement. For purposes hereof, "Local Traffic" shall mean traffic which originates and terminates within the then current local service area of the Parties, including extended area service and extended calling plan calls between the Parties. Traffic to, and from customers of CMRSP's shall be considered Local Traffic for purposes of this Agreement. For purposes hereof "Toll Traffic" shall mean traffic that is originated by an end user of the other Party and is not Local Traffic. For purposes hereof, "Meet Point" shall mean that point mutually agreed upon by the Parties at which their network facilities are interconnected for the reciprocal exchange of traffic.

2.1.3. The provisioning and engineering of such services and facilities will comply with generally accepted industry methods and practices and the Parties shall observe the rules and regulations of their respective lawfully established tariffs applicable to the services provided. To the extent that BROADRIVER requests a design which exceeds SCT's standard cost, SCT will provide BROADRIVER with such actual cost of such BROADRIVER requested design and BROADRIVER shall within thirty (30) days of the date of such notification by SCT of such actual cost: (i) elect to promptly pay all such costs; or (ii) direct SCT to proceed with the design planned by SCT immediately prior to SCT's receipt of such request by BROADRIVER. In the event BROADRIVER does not so notify SCT of its election on or before such thirty (30) day election period, it shall be deemed that BROADRIVER elected option (ii) in this subsection 2.1.3.

2.1.4. The traffic covered by this Agreement shall be routed as indicated in Attachment "B". Any changes in routing shall be coordinated between and agreed upon by the Parties before becoming effective.

3. TRAFFIC RECORDING AND IDENTIFICATION.

3.1. Traffic Recording and Identification.

The Parties traffic recording and identification is as follows:

3.1.1. The traffic recording and identification functions required to provide the services specified hereunder shall be performed by the Parties. Each Party shall calculate terminating minutes of use based on standard automatic message accounting recording made within each Party's network. The record shall contain the appropriate automatic number identification ("ANI") information or service provider information to identify the originating company. The Party originating traffic shall generate and provide the appropriate expanded message record ("EMR") or other agreed upon record format, to the terminating Party. The Parties shall each use commercially reasonable efforts to provide these records monthly, but in no event later than sixty (60) days after generation of the usage data. For purposes herein, "ANI" shall mean the process which identifies the telephone number of the line initiating a call in order to send this information to the automatic message accounting system. For purposes hereof, "EMR" shall mean industry accepted formatted records to be exchanged between local exchange carriers ("LEC") for billing purposes. For purposes hereof, "LEC" shall have the meaning ascribed to it in the Act.

3.1.2. BROADRIVER and SCT 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.

3.1.3. 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.

3.1.4. Each Party shall deliver monthly statements for terminating the other's traffic.

4. COMPENSATION ARRANGEMENT.

4.1. Toll Traffic.

Toll Traffic will be intra local access and transport area ("LATA") traffic where originating or terminating points are within the same LATA. For purposes hereof, "LATA" shall mean local access and transport area as defined in subsection 3(a)(43) of the Act.

4.2. 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:

4.2.1. Each Party shall generate a monthly bill for intraLATA Toll Traffic, as applicable, to the other Party for traffic terminating to its end offices.

4.2.2. Compensation for termination of Local Traffic will be by "Mutual Traffic Exchange". For purposes hereof, "**Mutual Traffic Exchange**" shall mean a form of compensation in which one Party is compensated for terminating the other Party's Local Traffic through the reciprocal termination of its traffic by the other Party.

4.2.3. Compensation for termination of Toll Traffic shall be calculated by applying the access rates set forth in the tariff or price list, filed by or on behalf of each Party with the Commission. As rates change, the latest effective rates will be used. Switched access service is intended to compensate the Parties pursuant to this Agreement, when the Parties provide: (i) loop, drop and associated equipment from the end office to the end user (carrier common line); (ii) end office switching functions (traffic sensitive), local switching including, line termination and intercept (applicable only if the element is included in such Party's intrastate access tariff or price list); and (iii) local transport facilities.

4.2.4. The Parties agree that the following billing percentages apply for the calculation of common transport charges from intraLATA Toll Traffic: For Toll Traffic originating from BROADRIVER and terminating to SCT, the percentage of transport billed by SCT will be ninety eight percent (98%) based upon the location of the Meet Point shown in Attachment "B" attached hereto. For Toll Traffic originating from SCT and terminating to BROADRIVER, the percentage of transport billed by BROADRIVER will be two percent (2%) based upon the location of the Meet Point shown in Attachment "B" attached hereto.

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

5. ALTERNATE BILLED MESSAGES.

5.1. Alternate Billed Messages.

5.1.1. 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 centralized message distribution systems ("CMDS"). The CMDS transport system is used by the Bellcore Client Companies ("BCC") and other LEC's (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, and summary usage records or a tape generated and mailed to the billing company. These records must be exchanged at least monthly. For purposes herein, "**Alternate Billed Messages**" shall mean messages originating on one Party's facilities that are billed by another company. Alternate Billed Messages include, without limitation, calls that are collect, third number billed and billed to a LEC calling card. For purposes hereof, "CMDS" shall mean 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.

5.1.2. 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.

5.1.3. For purposes hereof, "**Unbillable Messages**" shall mean messages with respect to which the end user customer account cannot be identified. Unbillable Messages will be the responsibility and liability of the originating company. The billing company shall appropriately account for and return the Unbillable Messages to the originating company pursuant to EMR standard guidelines.

5.1.4. For purposes hereof, "**Uncollectible Messages**" shall mean messages that are billed to a customer account, however, revenues cannot be collected including, without limitation, messages with respect to which the end user denies all knowledge. Uncollectible Messages shall be the responsibility and liability of the billing company.

5.1.5. Each Party shall promptly furnish to the other Party 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 Ten and NO/100 Dollars (\$10.00), no payment shall be due with respect to such statement.

6. OPERATOR SERVICES.

6.1. 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).

7. AUDITS.

7.1. Audits.

Each Party will keep adequate records of all collection, payments and other transactions hereunder. Upon thirty (30) days prior written notice, either 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.

8. GOVERNING LAW.

8.1. Governing Law.

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

9. ENTIRE AGREEMENT; NO OFFER.

9.1. Entire Agreement; No Offer.

This Agreement contains the entire Agreement of SCT and BROADRIVER 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, except as otherwise provided herein. All prior agreements or communications that are the subject matter of this Agreement are and shall be merged into this Agreement and shall have no force or effect. 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.

10. REPRESENTATIONS AND WARRANTIES.

10.1. BROADRIVER's Representations.

BROADRIVER represents and warrants to SCT the following:

10.1.1. BROADRIVER is a Delaware corporation 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;

10.1.2. BROADRIVER, and the undersigned signatory executing this Agreement on behalf of BROADRIVER, are duly authorized and empowered to enter into this Agreement with SCT;

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

10.1.4. To the best of the undersigned's actual knowledge on behalf of BROADRIVER, 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 any federal, district, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality; and

10.1.5. Except as provided in subsection 19.1.1 of this Agreement, no further approval, consent, order or authorization of, or designation, registration or filing with, the United States and any state, county, city or political subdivision thereof, and any board, bureau, council, commission, department, agency, court, legislative body or other instrumentality of the United States or any state, county, city or political subdivision thereof including, without limitation, the Reedy Creek Improvement District, a political subdivision of the State of Florida (collectively, "**Governmental Authority**"), is required in connection with the due and valid execution and delivery of this Agreement and compliance with the provisions hereof by BROADRIVER.

10.1.6. BROADRIVER shall perform its obligations hereunder using reasonable care.

10.2. SCT's Representations.

SCT represents and warrants to BROADRIVER the following:

10.2.1. SCT is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida and is authorized to transact business and holds a certain Certificate of Public Convenience and Necessity in the State of Florida;

10.2.2. SCT, and the undersigned signatory executing this Agreement on behalf of SCT are duly authorized and empowered to enter into this Agreement with BROADRIVER;

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

10.2.4. To the best of the undersigned's actual knowledge on behalf of SCT, 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 any federal, district, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality; and

10.2.5. Except as provided in subsection 19.1.1 of this Agreement, no further approval, consent, order or authorization of, or designation, registration or filing with, any Governmental Authority is required in connection with the due and valid execution and delivery of this Agreement and compliance with the provisions hereof by SCT.

10.2.6. SCT shall perform its obligations hereunder using reasonable care.

11. LIMITATIONS OF LIABILITY AND INDEMNIFICATIONS.

11.1. Limitations of Liability and Indemnifications.

The Parties agree that the following limitations of liability and indemnifications shall apply:

11.1.1. Except for the willful misconduct or gross negligence of either Party hereto, neither BROADRIVER nor SCT 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).

11.1.2. Neither Party shall be liable for any act or omission of another telecommunications company providing a portion of the services provided under this Agreement.

11.1.3. Each Party assumes no liability for the accuracy of data provided by a third party and each Party agrees to indemnify and hold harmless the other Party for any third party 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.

11.1.4. SCT shall indemnify and hold harmless BROADRIVER, its' "Affiliates" (as defined in subsection 11.1.10 hereof) and the 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 SCT's breach of any representation, warranty or obligation hereunder.

11.1.5. BROADRIVER shall indemnify and hold harmless SCT, its' partners, the "Affiliates" (as defined in subsection 11.1.10 hereof) of its partners, and the 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 BROADRIVER's breach of any representation, warranty or obligation hereunder.

11.1.6. The 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. The Indemnified Party shall permit the Indemnifying Party (at the Indemnifying Party's expense) 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.

11.1.7. 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 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.

11.1.8. 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.

11.1.9. 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 without waiving its right to indemnification hereunder.

11.1.10. For purposes of this Agreement, "**Affiliates**" shall mean as to any entity, any other entity which is controlled by, controls, or is under common control with such entity. The term "**control**" in this definition (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".

11.1.11. The provisions of this Article 11 shall survive the expiration or sooner termination of this Agreement.

12. ASSIGNMENT AND BINDING EFFECT.

12.1. 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 (including, a partner, corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its operations, assets or equity in Florida) without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, SCT shall be allowed to assign, transfer, or sublease this Agreement to an Affiliate or an entity under its common control or an entity acquiring all or substantially all of its operations, assets or equity. 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.

13. RIGHTS CUMULATIVE.

13.1. 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.

14. FORCE MAJEURE.

14.1. 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, general unavailability of certain materials, strikes, boycotts, lockouts, labor disputes or work stoppage beyond the control of either Party hereto, 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.

15. NO WAIVER.

15.1. 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 SCT or BROADRIVER may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants and conditions.

16. CONFIDENTIALITY OF PROPRIETARY DATA.

16.1. Confidentiality of Proprietary Data.

The Parties agree that it may be necessary to exchange certain confidential information during the term of this Agreement including, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data and similar information (collectively, “**Confidential Information**”). The Confidential Information shall either be in writing or other tangible forms and clearly marked with a confidential, private or proprietary legend (except for all information reviewed pursuant to Article 7 which shall be protected hereunder, whether or not so marked) or when the Confidential Information is communicated orally, it shall also be communicated that the Information is confidential, private or proprietary. The Confidential Information shall be returned to the owner within seven (7) days from such Party’s receipt of owner’s request for same. Except as otherwise required by Law or the rules of the Commission, SCT and BROADRIVER agree not to disclose Confidential Information to any third party other than to their respective directors, officers, employees and agents and advisors (including, legal, financial and accounting advisors) as needed to effectuate this Agreement. If Confidential Information must be produced to the Commission, it shall be provided pursuant to the Commission’s rule regarding confidential information.

17. AGREEMENT DOES NOT BENEFIT NON-PARTIES.

17.1. 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 non-parties which would exist if this Agreement did not exist.

18. LAWFULNESS AND SEVERABILITY.

18.1. Lawfulness and Severability.

In the event that a court with proper jurisdiction or another governmental agency with proper jurisdiction issues an order finding that a provision of this Agreement is unlawful or may not be enforced, all other provisions of this Agreement will continue in force and effect.

In the event that a court with proper jurisdiction or another governmental agency with proper jurisdiction issues an order finding that this Agreement, as a whole, is unlawful or may not be enforced, this Agreement will terminate and both parties will be excused from all further performance under this Agreement.

19. TERM.

19.1. Term.

19.1.1. The Parties shall file this Agreement with the Commission as soon as practicable following its execution in accordance with the Act and unless rejected by the Commission, it shall become effective when approved by the Commission or when deemed approved under the Act. Pending approval of this Agreement by the Commission, the Parties agree to exchange traffic in accordance with applicable Law and pursuant to the terms of this Agreement as soon as reasonably practicable after this Agreement has been executed by both Parties.

19.1.2. 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 until replaced by an agreement pursuant to subsection 19.1.3 hereof. The effective date of this Agreement shall be the date of its approval by the Commission. In the event one Party is terminating twenty percent (20%) or more traffic than the other Party hereto, for a period of at least three (3) consecutive months or in the event SCT renegotiates the compensation mechanism for the exchange of Local Traffic with its neighboring incumbent LEC's, either Party hereto may, at its option, request renegotiation of Article 4 hereof and the Parties agree to negotiate in good faith to reach an equitable compensation arrangement.

19.1.3. 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 one hundred thirty-five (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.

19.1.4. 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.

19.1.5. This Agreement shall have no precedential effect in the event the Parties negotiate or arbitrate a definitive agreement pursuant to subsections 251(b) and (c) of the Act as applicable.

20. NOTICES.

20.1. Notices Requirements.

Any notice, demand, request, offer, consent, approval or communication to be provided under this Agreement shall be in writing and shall be deemed received: (i) two 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 SCT at SCT's address shown herein, or to BROADRIVER at BROADRIVER's address shown herein; (ii) the next day after it is deposited with a nationally recognized and reputable air courier addressed (as the case may be) to SCT at SCT's address shown herein, or to BROADRIVER at BROADRIVER's address shown herein; or (iii) the same day it is personally delivered (as the case may be) to SCT at SCT's address shown herein, or to BROADRIVER at BROADRIVER's address shown herein.

20.2. Notices Addresses.

Notices Addresses for the Parties are set forth as follows:

BroadRiver Communication Corporation
13000 Deerfield Parkway
Suite 210
Alpharetta, Georgia 30004
Attention: Michael J. Huebner
Director, Regulatory Affairs

Smart City Telecommunications
3100 Bonnet Creek Road
P.O. Box 22555
Lake Buena Vista, Florida 32830-2555
Attention: Lynn B. Hall
Director - Contracts and Tariffs

20.3. Different Address.

Either Party may designate a different representative and/or address for receiving notice hereunder by giving thirty (30) days prior written notice to the other Party in accordance with the provisions hereof.

20.4. Refusal of Notice.

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.

21. SEVERABILITY.

21.1. 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. 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 and material benefit of its bargain under this Agreement, then, in such event, such Party may, in its discretion, request good faith renegotiation with the other Party of such illegal, invalid or unenforceable provision. If the Parties do not reach agreement on such provision within thirty (30) days of the date of such request, either Party may cancel and terminate this Agreement (if allowable by applicable law) upon providing reasonable advance written notice thereof to the other Party.

22. ACCORD AND SATISFACTION.

22.1. Accord and Satisfaction.

Payment by either Party, or receipt or acceptance by a receiving Party hereto, 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.

23. NO REPRESENTATIONS.

23.1. BROADRIVER's No Representations.

BROADRIVER acknowledges that it has examined SCT's Systems and that it is not relying upon any representation or warranty, either express or implied, made by SCT or any of the Affiliates of SCT's partners, or any Affiliate of The Walt Disney Company, or any other person or entity in any way affiliated with SCT, or being or claiming to be an agent, employee or servant of SCT, with respect to: the physical condition of SCT's Systems, the ground, earth or subsoil conditions; the financial reports, data, analyses or projections that concern the proposed development, operation or projected occupancy of SCT's Systems; the proposed construction of, or any agreement not to construct, any other facilities or amenities adjacent to, or in proximity to, SCT's Systems; any zoning or other applicable legal requirements; or any other matter or thing in

respect of the subject matter of this Agreement and/or the Attachments hereto or the transaction and development contemplated hereby.

23.2. SCT's No Representations.

SCT acknowledges that it has examined BROADRIVER's Systems and that it is not relying upon any representation or warranty, either express or implied, made by BROADRIVER or any of BROADRIVER's Affiliates or any other person or entity in any way affiliated with BROADRIVER, or being or claiming to be an agent, employee or servant of BROADRIVER, with respect to: the physical condition of BROADRIVER's Systems, the ground, earth or subsoil conditions; the financial reports, data, analyses or projections that concern the proposed development, operation or projected occupancy of BROADRIVER's Systems; the proposed construction of, or any agreement not to construct, any other facilities or amenities adjacent to, or in proximity to, BROADRIVER's Systems; any zoning or other applicable legal requirements; or any other matter or thing in respect of the subject matter of this Agreement and/or the attachments hereto or the transaction and development contemplated hereby.

24. PROMOTIONS.

24.1. SCT's Promotions.

Except as specifically permitted by SCT in this Agreement, BROADRIVER, by virtue of this Agreement, shall acquire no right to use, and shall not use, the names of "Smart City Telecommunications", "Smart City Telecom" (either alone or in conjunction with or as a part of any other word, mark or name) or any fanciful characters or designs of SCT or any of its related, Affiliated or subsidiary companies, in any advertising, publicity, or promotion; nor to express or imply any endorsement of BROADRIVER's products or services; nor to use any of said names, characters, or designs in any other manner (whether or not similar to the uses hereinabove prohibited). SCT reserves the right to approve or disapprove, in its sole discretion, any advertising and promotional materials to be used on, within, in conjunction with, or in any way mentioning advertising or promoting BROADRIVER's business with respect to SCT's systems. This Section 24.1 shall survive the expiration or sooner termination of this Agreement.

24.2. BROADRIVER's Promotions.

Except as specifically permitted by BROADRIVER in this Agreement, SCT, by virtue of this Agreement, shall acquire no right to use, and shall not use, the names of "BroadRiver Communications Corporation" (either alone or in conjunction with or as a part of any other word, mark or name) or any fanciful characters or designs of BROADRIVER or any of its related, Affiliated or subsidiary companies, in any advertising, publicity, or promotion; nor to express or imply any endorsement of SCT's products or services; nor to use any of said names, characters, or designs in any other manner whatsoever (whether or not similar to the uses hereinabove prohibited). BROADRIVER reserves the right to approve or disapprove, in its sole discretion, any advertising and promotional materials to be used on, within, in conjunction with, or in any

way mentioning advertising or promoting SCT's business with respect to BROADRIVER's systems. This Section 24.2 shall survive the expiration or sooner termination of this Agreement.

25. COUNTERPARTS.

25.1. 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.

26. FORUM AND VENUE FOR LEGAL PROCEEDINGS/WAIVER OF JURY TRIAL.

26.1. Forum and Venue for Legal Proceedings/Waiver of Jury Trial.

Any legal proceeding of any nature brought by either Party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be submitted exclusively for trial without jury, before the Circuit Court for Orange County, Florida; or if such court shall not have jurisdiction, then before any other court or administrative body sitting in the State of Florida having subject matter jurisdiction. The Parties consent and submit to the exclusive jurisdiction of any such court and agree to accept service of process outside the State of Florida in any matter to be submitted to any such court pursuant hereto, and expressly waive all right to trial by jury regarding any such matter.

27. RELATIONSHIP DISCLAIMER.

27.1. 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.

27.2. Construction of Agreement.

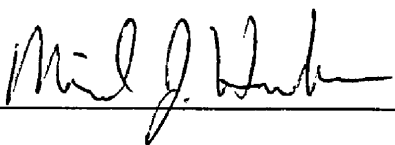
This Agreement has been fully reviewed and negotiated by the Parties hereto and their respective counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which Party hereto or its counsel drafted the provisions being interpreted.

28. EXECUTION.

28.1. Execution.

BROADRIVER and SCT hereby authorize and execute this Agreement.

**BROADRIVER COMMUNICATIONS
CORPORATION**

By: 

Name: MICHAEL J. HUEBNER

Its: DIRECTOR, REGULATORY

Date: MAY 24, 2001

**SMART CITY
TELECOMMUNICATIONS LLC D/B/A
SMART CITY
TELECOMMUNICATIONS**

By: 

Name: Martin A. Rubin

Its: President

Date: 6/18/01

ATTACHMENT "A"
Exchanges

1. BROADRIVER Exchanges include:

NPA-NXX	End Office CLLI	EO Vert	EO Horz	Serving	Local	Toll
A. 321-265	ORLDFLMA	7954	1032	Orlando	a,b,c,d,e,f,g,h	
B. 321-490	ORLDFLMA	7954	1032	West Kissimmee	a,b,c,d,e,f,g,h	
C. 321-507	ORLDFLMA	7954	1032	Apopka	a,b,c,d,e,f,g,h	
D. 321-510	ORLDFLMA	7954	1032	St. Cloud		a,b,c,d,e,f,g,h
E. 321-512	ORLDFLMA	7954	1032	Winter Garden	a,b,c,d,e,f,g,h	
F. 321-513	ORLDFLMA	7954	1032	Winter Park	a,b,c,d,e,f,g,h	
G. 321-572	ORLDFLMA	7954	1032	Sanford		a,b,c,d,e,f,g,h
H. 321-573	ORLDFLMA	7954	1032	Oviedo		a,b,c,d,e,f,g,h
I. 321-647	ORLDFLMA	7954	1032	Reedy Creek	a,b,c,d,e,f,g,h	
J. 321-738	ORLDFLMA	7954	1032	Kissimmee	b	a,c,d,e,f,g,h

2. SCT Exchanges include:

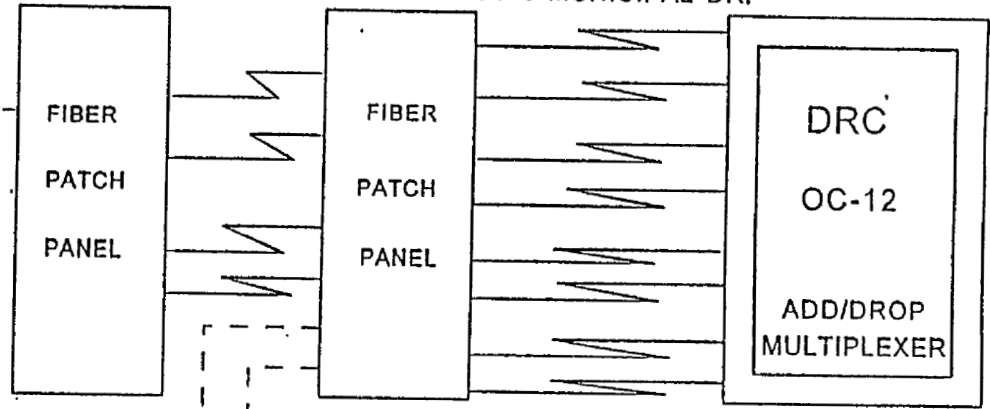
NPA-NXX	End Office CLLI	EO Vert	EO Horz	Serving	Local	Toll
a. 407-560	LKBNFLXBDSO	7998	1041	LBV	A,B,C,E,F,I	D,G,H,J
b. 407-566	LKBNFLXBDSO	7998	1041	Celebration	A,B,C,E,F,I,J	D,G,H
c. 407-824	LKBNFLXBDSO	7998	1041	LBV	A,B,C,E,F,I	D,G,H,J
d. 407-827	LKBNFLXBDSO	7998	1041	LBV	A,B,C,E,F,I	D,G,H,J
e. 407-828	LKBNFLXBDSO	7998	1041	LBV	A,B,C,E,F,I	D,G,H,J
f. 407-934	LKBNFLXBDSO	7998	1041	LBV	A,B,C,E,F,I	D,G,H,J
g. 407-938	LKBNFLXBDSO	7998	1041	LBV	A,B,C,E,F,I	D,G,H,J
h. 407-939	LKBNFLXBDSO	7998	1041	LBV	A,B,C,E,F,I	D,G,H,J

ATTACHMENT "B"

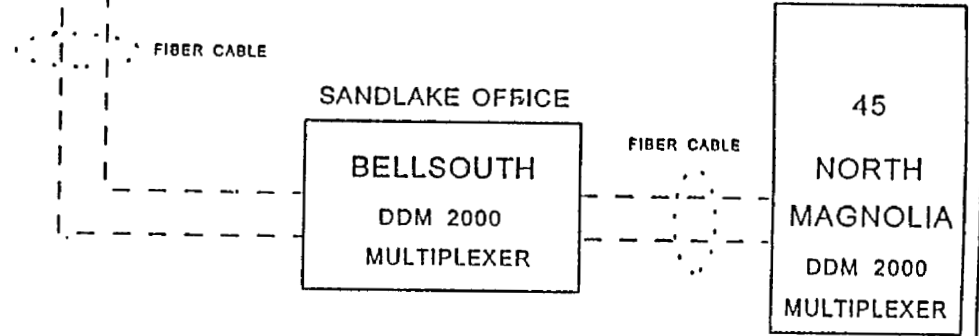
(Arrangement of the Facility Systems To Be Attached)

OC-12 SONET TO BELLSOUTH

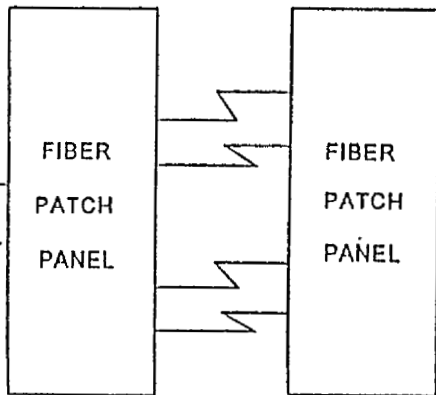
7100 MUNICIPAL DR.



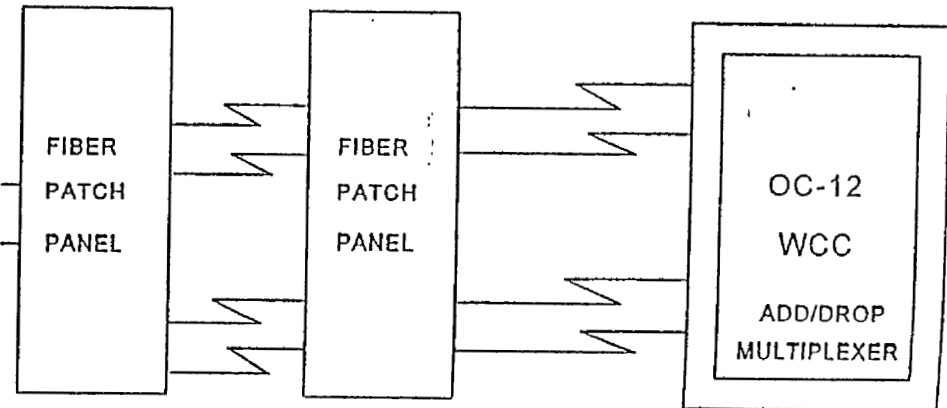
BELLSOUTH



FLORIDA POWER CORP.



VISTA-UNITED TEL.



FIBER CABLE

FIBER CABLE

FIBER CABLE

FIBER CABLE

HQ/DRCOC12

103097