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March 22, 2004

Ms. Blanca S. Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

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Re: Docket No. 040171-TP

Dear Ms. Bayo:

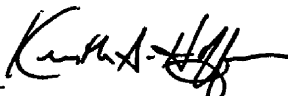
Enclosed for filing in the above-referenced docket on behalf of Northeast Florida Telephone Company ("NEFCOM") are an original and fifteen (15) copies of NEFCOM's Motion to Strike Portions of Petition for Arbitration filed by Southeastern Services, Inc. and Answer to Petition.

Please acknowledge receipt of these documents by stamping the extra copy of this letter filed and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,

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Kenneth A. Hoffman

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition of Southeastern Services, Inc.)
for Arbitration of an Interconnection)
Agreement with Northeast Florida)
Telephone Company, Inc. pursuant to)
Section 252(b) of the Communications Act)
of 1934, as amended.)
_____)

Docket No. 040171-TP

Filed: March 22, 2004

**NORTHEAST FLORIDA TELEPHONE COMPANY'S
MOTION TO STRIKE PORTIONS OF
PETITION FOR ARBITRATION FILED BY
SOUTHEASTERN SERVICES, INC. AND
ANSWER TO PETITION**

Respondent Northeast Florida Telephone Company ("NEFCOM"), by and through its undersigned counsel, and pursuant to Section 252(b)(3) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), 47 U.S.C. §252(b) and Section 120.80(13)(d), Florida Statutes, hereby responds to the Petition of Southeastern Services, Inc. ("SSI") for arbitration by moving to strike portions of SSI's Petition that address or seek arbitration of alleged unresolved issues under 47 U.S.C. §251(c) and responding to the remainder of the Petition.

INTRODUCTION

NEFCOM is an "incumbent local exchange carrier" as that term is defined in 47 U.S.C. §251(h). NEFCOM is also a "rural telephone company" as that term is defined in 47 U.S.C. §153(47).

Pursuant to 47 U.S.C. §251(f)(1)(A), NEFCOM is not subject to the "[a]dditional obligations of incumbent local exchange carriers" set forth in 47 U.S.C. §251(c) until NEFCOM receives a bona fide request for interconnection, services, or network elements from SSI and this Commission determines that such request is not unduly economically burdensome, is technically feasible, and is

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consistent with 47 U.S.C. §254. NEFCOM and SSI disagree as to whether SSI has perfected a bona fide request under 47 U.S.C. §251(f)(1)(A) and (B). There is no dispute that this Commission has never made a determination that 47 U.S.C. §251(c) shall apply to NEFCOM under the criteria set forth in 47 U.S.C. §251(f)(1)(A) and (B). SSI has made it clear in its Petition that it “does not challenge (NEFCOM’s) claimed “rural exemption” and the Commission need not rule on it. Therefore this case does not involve §251(c).”¹

The additional obligations of incumbent local exchange carriers that do *not* apply to NEFCOM as set forth in Section 251(c) of the Act are: (1) the duty to negotiate; (2) the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with that carrier’s network; (3) unbundled access to network elements; and (4) the duty to offer for resale at wholesale rates telecommunications services that are provided at retail to subscribers who are not telecommunications carriers on reasonable and non-discriminatory terms.

As a rural telephone company whose exempt status is not challenged by SSI in this proceeding, NEFCOM *is* required to meet its obligations under 47 U.S.C. §251(a) and (b). §251(a) of the Act requires each telecommunications carrier to interconnect directly or indirectly with the facilities and equipment of other carriers. §251(a) also prohibits each telecommunications carrier from installing network features, functions or capabilities that do not comply with §255 or 256 of the Act. §251(b) of the Act requires NEFCOM to: (1) resell its telecommunications services on reasonable and non-discriminatory terms; (2) provide, to the extent technically feasible, number portability; (3) provide dialing parity; (4) afford access to its poles, ducts, conduits and rights-of-way

¹SSI Petition for Arbitration, at page 5, fn. 1.

on rates, terms and conditions consistent with 4 U.S.C. §224; and (5) establish reciprocal compensation arrangements for the transport and termination of telecommunications.

As an exempt rural telephone company, NEFCOM has no obligation to negotiate, in accordance with the provisions of Section 252 of the Act, the particular terms and conditions of agreements to fulfill the duties described in Section 251(b) of the Act. Nonetheless, NEFCOM has, in good faith, exchanged extensive correspondence and negotiated with SSI for the purpose of resolving, at minimum, NEFCOM's obligations under §251(a) and (b) of the Act.

The parties are currently subject to a Resale Agreement dated September 22, 1999 approved by the Commission. Recently, on March 16, 2004, NEFCOM tendered a proposed agreement to SSI in response to the proposed agreement attached to SSI's Petition as Exhibit 1. NEFCOM's proposed Local Interconnection and Resale Agreement (the "NEFCOM Agreement"), attached hereto as Exhibit A, reflects NEFCOM's position and proposed resolution for all of NEFCOM's obligations under §251(a) and (b) of the Act. Since NEFCOM is an exempt rural telephone company whose exempt status is not at issue in this proceeding, all other alleged unresolved issues beyond the obligations in §251(a) and (b) of the Act, as set forth generally in SSI's Petition and more specifically in SSI's proposed agreement, are not applicable to NEFCOM and should be stricken from this proceeding.

MOTION TO STRIKE AND ANSWER

Based on the foregoing, NEFCOM will respond to each numbered paragraph in SSI's Petition for Arbitration and will state, where applicable, if an allegation should be stricken on the ground that it presents allegations or issues that are not applicable to an exempt rural telephone company such as NEFCOM.

I. THE PARTIES AND DESIGNATED CONTACTS

1. NEFCOM admits the allegations in paragraph 1.
2. NEFCOM denies the allegations in paragraph 2. The voice number listed for Mark Woods is actually the main office number for NEFCOM.
3. NEFCOM admits the allegations in paragraph 3. NEFCOM notes that the attorneys listed in paragraph 3 who filed the Petition on behalf of SSI are not shown to be members of the Florida Bar and have not complied with the requirements of Rule 28-106.106, Florida Administrative Code, as a predicate to appearing before the Commission on behalf of SSI.
4. NEFCOM admits the allegations of the first two sentences in paragraph 4. NEFCOM is unclear as to what SSI means by its use of the phrase “at relevant times” in the third sentence of paragraph 4. NEFCOM notes that it is not a monopoly provider of telephone exchange service in its operating territory, SSI and other competitive local exchange companies provide local service within NEFCOM’s operating territory.
5. NEFCOM admits the allegations in paragraph 5 subject to correction of Ms. Nobles’ address and the addition of the following contact persons on behalf of NEFCOM for purposes of this docket:

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Vice President of Regulatory Affairs
TTSC
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Orange Park, Florida 32073
(904) 688-0029 (Telephone)
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- - and - -

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II. STATEMENT OF FACTS

6. NEFCOM admits the allegations in paragraph 6.

7. Paragraph 7 is denied to the extent it purports to represent that NEFCOM agrees that its negotiations and discussions with representatives of SSI toward a new local interconnection and resale agreement are subject to the provisions and procedures set forth in 47 U.S.C. §251(c)(1) and §252.

8. NEFCOM moves to strike the allegations in paragraph 8 on the grounds that NEFCOM is an exempt rural telephone company not subject to a duty to negotiate under 47 U.S.C. §251(c)(1) (in accordance with Section 252 of the Act) and, therefore, the allegations in paragraph 8 are not relevant and outside the lawful scope of this proceeding. Subject to its Motion to Strike, NEFCOM states that it has engaged in voluntary good faith negotiations and discussions with SSI toward a new local interconnection and resale agreement.

9. NEFCOM moves to strike the allegations in paragraph 9 on the grounds that NEFCOM is an exempt rural telephone company not subject to a duty to negotiate under 47 U.S.C. §251(c)(1) (in accordance with Section 252 of the Act) and, therefore, the allegations in paragraph 9 are not relevant and outside the lawful scope of this proceeding. Subject to its Motion to Strike, NEFCOM states that it has engaged in voluntary good faith negotiations and discussions with SSI toward a new local interconnection and resale agreement.

10. NEFCOM moves to strike the allegations in paragraph 10 on the grounds that NEFCOM is an exempt rural telephone company not subject to a duty to negotiate under 47 U.S.C. §251(c)(1) (in accordance with Section 252 of the Act) and, therefore, the allegations in paragraph 10 are not relevant and outside the lawful scope of this proceeding. Subject to its Motion to Strike, NEFCOM states that it has engaged in voluntary good faith negotiations and discussions with SSI toward a new local interconnection and resale agreement. NEFCOM provided the proposed NEFCOM Agreement to SSI on March 16, 2004.

11. NEFCOM admits that SSI's proposed contract terms are contained in Exhibit 1 to SSI's Petition. NEFCOM moves to strike all contract terms in Exhibit 1 that are outside the scope of NEFCOM's legal obligations under §251(a) and (b) of the Act. NEFCOM denies that the parties have not had substantive discussions directed toward a new local interconnection and resale agreement.

III. JURISDICTION

12. NEFCOM moves to strike the allegations in paragraph 12 on the grounds that NEFCOM is an exempt rural telephone company not subject to a duty to negotiate under 47 U.S.C. §251(c)(1) and, therefore, the allegations in paragraph 12 are not relevant and outside the lawful scope of this proceeding. Subject to its Motion to Strike, NEFCOM states that it has engaged in voluntary good faith negotiations and discussions with SSI toward a new local interconnection and resale agreement.

IV. APPLICABLE LEGAL STANDARDS

13. NEFCOM denies that this proceeding is governed by standards established in §251(c) and 252 of the Act. NEFCOM admits that this proceeding is governed by the standards established

in §251(a) and (b) of the Act.

14. NEFCOM denies that portion of paragraph 14 to the extent it states or implies that NEFCOM has a duty to negotiate under §252(c)(1) of the Act. NEFCOM admits the remainder of the allegations in paragraph 14 and footnote 1 to SSI's Petition.

15. NEFCOM denies paragraph 15 to the extent it implies that NEFCOM is not a rural telephone company exempt from 47 U.S.C. §251(c). NEFCOM admits the remaining allegations in paragraph 15.

16. NEFCOM denies paragraph 16 to the extent it implies that NEFCOM is not a rural telephone company exempt from 47 U.S.C. §251(c). NEFCOM admits the remaining allegations in paragraph 16.

17. NEFCOM admits the allegations in paragraph 17.

Second paragraph 17. NEFCOM moves to strike that part of Second paragraph 17 that refers to the Section 252 procedure for negotiation and arbitration on the grounds that NEFCOM is an exempt rural telephone company not subject to Section 251(c)(1) negotiations in accordance with Section 252 of the Act and, therefore, the allegations in Second paragraph 17 are not relevant and outside the lawful scope of this proceeding. Subject to its Motion to Strike, NEFCOM states that it has engaged in voluntary good faith negotiations and discussions with SSI toward a new local interconnection and resale agreement.

NEFCOM adds that the Florida Legislature has expressly recognized the preemptive effect of the provisions of the Act over the procedures set forth in Chapter 364. See Section 120.80(13)(d) and (e), Florida Statutes. Accordingly, NEFCOM denies and moves to strike the allegations in Second paragraph 17 that purport to impose substantive and procedural obligations on NEFCOM

that are inconsistent with NEFCOM's exempt status under §251(f) of the Act and inconsistent with NEFCOM's obligations under §251(a) and (b) of the Act.

18. NEFCOM moves to strike paragraph 18 to the extent it attempts to impose obligations on NEFCOM beyond those set forth under §251(a) and (b) of the Act and to the extent it attempts to unlawfully inject the provisions of subsection 252(d)(1) of the Act into this proceeding. Subject to its Motion to Strike, NEFCOM denies that "Section 252 of the Act requires that a state commission resolving open issues through arbitration ensure that such resolution and conditions meet the requirements of section 251..."; and states that it has engaged in voluntary good faith negotiations and discussions with SSI toward a new local interconnection and resale agreement.

19. NEFCOM moves to strike the allegations of paragraph 19 to the extent they attempt to unlawfully inject the requirements of the Act and applicable FCC regulations beyond those applicable to a §251(f) exempt rural telephone company such as NEFCOM.

V. UNRESOLVED ARBITRATION ISSUES AND POSITIONS OF THE PARTIES

20. NEFCOM admits the allegations in paragraph 20.

21. NEFCOM moves to strike the allegations in paragraph 21 on the grounds that NEFCOM is an exempt rural telephone company not subject to a duty to negotiate under 47 U.S.C. §251(c)(1) (in accordance with Section 252 of the Act) and, therefore, the allegations in paragraph 21 are not relevant and outside the lawful scope of this proceeding. Subject to its Motion to Strike, NEFCOM states that it has engaged in voluntary good faith negotiations and discussions with SSI toward a new local interconnection and resale agreement; NEFCOM denies that SSI is operating under a significant disadvantage in preparing its Petition; NEFCOM denies that it has not responded in any way to SSI's proposals; NEFCOM denies that it has not indicated any difficulty with SSI's

proposed contract terms; and NEFCOM denies that it has not proposed alternative terms as set forth in the proposed NEFCOM Agreement. With respect to the second sentence in paragraph 21, the NEFCOM Agreement sets forth NEFCOM's proposed terms for interconnection and resale. NEFCOM admits the last sentence in paragraph 21.

Issue 1: What should the general terms and conditions be relating to all issues covered by the Interconnection Agreement? (Articles I, II, III and IV)

22. NEFCOM moves to strike those portions of SSI's proposed agreement that go beyond §251(a) and (b) obligations. NEFCOM denies the allegation that it has not proposed general terms and conditions as set forth under Issue 1.

23. NEFCOM denies that SSI's proposed general terms and conditions are reasonable. NEFCOM denies the allegation that it has not proposed alternative terms.

24. NEFCOM is without knowledge as to the allegations in paragraph 24.

25. NEFCOM denies that SSI's proposed terms for SSI's Issue 1 should be adopted and states that the applicable terms in the proposed NEFCOM Agreement should be adopted by the Commission.

Issue 2: What should the terms be for physical interconnection, number portability, transit and transport and termination of traffic? (Article V)

26. NEFCOM admits the first sentence in paragraph 26; denies the second sentence in paragraph 26; admits the third sentence in paragraph 26; and admits the fourth and fifth sentences in paragraph 26.

27. NEFCOM denies that SSI's proposed terms are reasonable, comport with prevailing law and industry practice and should be adopted.

28. NEFCOM denies the allegations in paragraph 28 and has proposed contract terms

addressing intercarrier compensation in the proposed NEFCOM Agreement.

29. NEFCOM denies that SSI's proposed bill and keep terms are consistent with prevailing law, including the *ISP Remand Order*, and should be adopted. NEFCOM requests that the Commission adopt applicable portions of the proposed NEFCOM Agreement addressing physical interconnection, number portability, transit and transport and termination of traffic.

ISSUE 3: What should the terms be for resale of services? (Article VI)

30. NEFCOM denies the allegation in the first sentence of paragraph 30. NEFCOM admits the allegation in the second sentence of paragraph 30. NEFCOM denies the third sentence in paragraph 30 to the extent it seeks to unlawfully inject into this proceeding obligations under Section 251 and 252 of the Act that do not apply to a rural telephone company such as NEFCOM.

31. NEFCOM admits that the proposed resale discount percentage is reasonable and denies the remainder of paragraph 31.

32. NEFCOM's position is set forth in the proposed NEFCOM Agreement.

33. NEFCOM denies paragraph 33 with the exception of SSI's proposed resale discount percentage. The Commission should approve all terms and conditions of resale as set forth in the proposed NEFCOM Agreement.

Issue 4: What should the terms be for additional services and coordinated service arrangements? (Article VII)

34. NEFCOM is without knowledge and therefore denies that the proposed terms described in paragraph 34 of the Petition "track those generally used in the industry." The proposed terms and matters raised in paragraph 34 are addressed in the proposed NEFCOM Agreement and should be approved consistent therewith.

35. NEFCOM adopts and incorporates its response to paragraph 34.

36. The proposed terms and matters raised in paragraph 34 are addressed in the proposed NEFCOM Agreement and should be approved consistent therewith.

37. Paragraph 37 is denied. The Commission should approve NEFCOM's proposed treatment of the matters addressed in paragraph 34 of the Petition as set forth in the proposed NEFCOM Agreement.

Issue 5: What rates and charges, if any, should apply for the compensable activities or services contemplated by the agreement? (Appendices A, B and C)

38. NEFCOM responds to paragraph 28 as follows:

(a) NEFCOM moves to strike the request in paragraph 38 to establish prices for "transit" traffic on the grounds that the arbitration of compensation for such traffic is beyond the obligations imposed on NEFCOM under §251(a) and (b) of the Act and is therefore outside the lawful scope of this proceeding.

(b) NEFCOM moves to strike the request in paragraph 38 to establish prices for interim number portability on the grounds that no bona fide request for interim number portability was ever made by SSI to NEFCOM and number portability is not necessary or appropriate for a non-facilities based reseller of local traffic such as SSI.

(c) NEFCOM moves to strike SSI's request that the Commission develop a Percent Interstate Usage as such a factor is outside the scope of an agreement for the exchange of local traffic under §251(a) and (b) of the Act.

(d) NEFCOM also moves to strike SSI's request that the Commission "determine a facilities cost sharing factor based on proportionate originating use" to implement FCC Rule

51.709(b). Such an arrangement is not applicable to the interconnection arrangement that SSI has in fact requested for the exchange of local traffic. Specifically, by letter dated November 20, 2003, SSI proposed to NEFCOM “that there be no facility charges on either side of the POI; each party will bear the relevant costs from the POI to each party’s switch.”

(e) With respect to SSI’s request that the Commission address “information access traffic,” NEFCOM has proposed to exchange ISP-bound traffic on a bill-and-keep basis.

39. NEFCOM adopts and incorporates by reference its response to paragraph 38. SSI’s request should be denied as the requests for arbitration of the items referenced in paragraph 39 are either beyond the scope of NEFCOM’s legal obligations as an exempt rural telephone company, not appropriate for a non-facilities based reseller such as SSI, and/or not properly subject to an agreement for the exchange of local traffic subject to §251(a) and (b) of the Act.

40. NEFCOM requests that the Commission approve the prices set forth in the proposed NEFCOM Agreement.

41. NEFCOM adopts and incorporates by reference its responses to paragraphs 38 and 39.

PROCEDURAL MATTERS

42. NEFCOM moves to strike the first sentence of paragraph 42 on the grounds that Section 252(b)(4)(C) of the Act does not apply to an exempt rural telephone company such as NEFCOM and, therefore, is not relevant and is outside the lawful scope of this proceeding. With respect to the second sentence in paragraph 42, NEFCOM will comply with all procedural orders issued by the Commission.

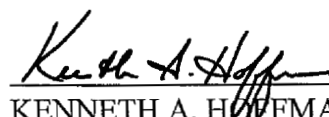
VII. CONCLUSION AND PRAYER

43. NEFCOM denies the allegations in paragraph 43 and request that the Commission approve the proposed NEFCOM Agreement.

44. NEFCOM denies each and every allegation in the Petition not expressly admitted herein and demands strict proof thereof.

WHEREFORE, NEFCOM respectfully requests that the Commission strike the portions of SSI's Petition as requested above, and approve NEFCOM's proposed Local Interconnection and Resale Agreement attached hereto as Exhibit A.

Respectfully submitted,



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Attorneys for Northeast Florida Telephone Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished to the following by United States Mail, this 22nd day of March, 2004:

David Bolduc, Esq.
W. Scott McCollough
Stumpf, Craddock, Massey & Pulman, P.C.
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Building One, Suite 420
Austin, TX 78746



KENNETH A. HOFFMAN, ESQ.

NFTC\answertossi

LOCAL INTERCONNECTION AND RESALE AGREEMENT

BETWEEN

NORTHEAST FLORIDA TELEPHONE COMPANY

AND

SOUTHEASTERN SERVICES, INC.



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I. ARTICLE I:

1. INTRODUCTION

This Interconnection and Reciprocal Compensation Agreement (“Agreement”) is effective as of the ____ day of _____ 2004 (the “Effective Date”), by and between Northeast Florida Telephone Company, Inc., a Florida corporation (“NEFCOM”) with offices at 130 North Fourth Street, Macclenny, FL 32063 and Southeastern Services, Inc., a Florida corporation (“SSI”), with its address for purposes of this Agreement at P.O. Box 365, Macclenny, FL 32063-0365.

2. RECITALS

WHEREAS, NEFCOM is an incumbent Local Exchange Carrier authorized to provide telecommunications services in the State of Florida;

WHEREAS, SSI is a CLEC certificated to provide competitive local exchange telecommunications services and provides such service to its end user customers within the State of Florida;

WHEREAS, NEFCOM and SSI exchange calls between their networks and wish to establish Interconnection and Reciprocal Compensation arrangements for exchanging traffic as specified below;

WHEREAS, this Agreement is intended to fulfill each Party’s obligations under subsection 251(a) and 251(b) of the Communications Act, as amended by the Telecommunications Act of 1996;

WHEREAS, NEFCOM certifies that it is a rural telephone company and is exempt from Section 251(c) pursuant to Section 251(f) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Act”);

WHEREAS, Sections 251 and 252 of the “Act”, have specific requirements for Interconnection, and the Parties intend that this Agreement meets these requirements; and,

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, NEFCOM and SSI hereby agree as follows:

II. ARTICLE II

1. DEFINITIONS

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the

industry. Words used in this contract are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below:

- 1.1 **“Act”** means the Communications Act of 1934, as amended.
- 1.2 **“Affiliate”** means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term “own” means to own an equity interest (or the equivalent thereof) of more than 10 percent.
- 1.3 **“Central Office Switch”** means a switch used to provide Telecommunications Services, including, but not limited to:
 - (a) **“End Office Switch”** is a switch in which the subscriber station loops are terminated for connection to either lines or trunks. The subscriber receives terminating, switching, signaling, transmission, and related functions for a defined geographic area by means of an end office switch.
 - (b) **“Remote End Office Switch”** is a switch in which the subscriber station loops are terminated. The control equipment providing terminating, switching, signaling, transmission, and related functions would reside in a host office. Local switching capabilities may be resident in a remote end office switch.
 - (c) **“Host Office Switch”** is a switch with centralized control over the functions of one or more remote end office switches. A host office switch can serve as an end office as well as providing services to other remote end offices requiring terminating, signaling, transmission, and related functions including local switching.
- 1.4 **“Competitive Local Exchange Company (CLEC)”** is any company or person authorized to provide Local Exchange Telecommunications Service in competition with an ILEC.
- 1.5 **“Commission”** refers to the Florida Public Service Commission which is the governing regulatory agency in the state of Florida.
- 1.6 **“Effective Date”** means the date first above written.
- 1.7 **“Interconnection”** for purposes of this Agreement is the linking of NEFCOM’s and SSI’s networks for the exchange of Telecommunications Traffic described in this Agreement.

- 1.8 **“Interexchange Carrier” or “IXC”** denotes any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in intrastate, interstate or foreign communications by wire or radio, between two or more exchanges.
- 1.9 **“ISP-bound Traffic”** has the same meaning as in the FCC’s Order on Remand and Report and Order in the matter of Intercarrier Compensation for ISP-bound Traffic. 16 F.C.C.R.9151 (2201) (“FCC ISP Order”). “ISP-bound Traffic” does not include traditional phone-to-phone calling that incidentally may use the IP backbone as part of the transport function.
- 1.10 **“Local Calling Area”**, for purposes of this Agreement, is defined as the local certificated serving territory of NEFCOM set forth in Section A3.3 of NEFCOM’s General Subscriber Services Tariff (GSST) on file with the Florida Commission.
- 1.11 **“Local Exchange Carrier (LEC)”** is as defined in the Act.
- 1.12 **“Local Telecommunications Traffic”**, for purposes of this Agreement, is defined as calls between a LEC and a CLEC that, at the beginning of the call, originates and terminates within the Local Calling Area as defined in Section 1.7.
- 1.13 **“Local Exchange Telecommunications Service”**, for purposes of this Agreement, is defined as basic local telecommunications service provided to end user customers for the purpose of originating and terminating calls within a local calling area.
- 1.14 **“NPA” or the “Number Plan Area”** also referred to as an “area code” refers to the three-digit code which precedes the NXX in a dialing sequence and identifies the general calling area within the North American Numbering Plan scope to which a call is routed to (i.e., NPA/NXX-XXXX).
- 1.15 **“NXX”** means the three-digit code, which appears as the first three digits of a seven-digit telephone number within a valid NPA or area code.
- 1.16 **“Party”** means either NEFCOM or SSI, and **“Parties”** means NEFCOM and SSI.
- 1.17 **“Point of Interconnection” (“POI”)** means, for direct interconnection, the technically feasible point of demarcation where the exchange of Telecommunications Traffic takes place.
- 1.18 **“Rate Center”** means the specific geographic point and corresponding geographic area that is associated with one or more NPA-NXX codes that have been assigned to an incumbent LEC for its provision of telecommunications services.

- 1.19 **“Reciprocal Compensation”** means an arrangement between two carriers in which each receives compensation from the other carrier for the transport and termination on each carrier’s network of Telecommunications Traffic, as defined in Section 1.22 below, that originates on the network facilities of the other carrier.
- 1.20 **“Telecommunications”** means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.
- 1.21 **“Telecommunications Carrier”** means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. Section 226(a)(2)). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services, except that the Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.
- 1.22 **“Telecommunications Traffic”** is defined for purposes of compensation under this Agreement as traffic that (a) is originated by a customer of one Party on that Party’s network, (b) terminates to a customer of the other Party on the other Party’s network within the same Local Calling Area as defined in Section 1.7 of this agreement.

2. INTERPRETATION AND CONSTRUCTION

All references to Sections, Exhibits, Attachments and Schedules shall be deemed to be references to Sections of, and Exhibits, Attachments and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument or other third party offering, guide or practice, statute, regulation, rule or tariff is for convenience of reference only and is not intended to be a part of or to affect the meaning of a rule or tariff as amended and supplemented from time-to-time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

3. SCOPE

3.1 This Agreement is intended, *inter alia*, to describe and enable specific Interconnection and Reciprocal Compensation arrangements between the Parties. This Agreement does not obligate either Party to provide arrangements not specifically provided for herein.

3.2 This Agreement sets forth the terms, conditions, and rates under which the Parties agree to interconnect the network of SSI and the LEC network of NEFCOM for purposes of exchanging Telecommunications Traffic, provided that the service provided by SSI to its customer is a Local Exchange Telecommunications Service as defined in Section 1.13.

3.3 The Parties agree and understand that the per minute reciprocal transport and termination rates set forth in Appendix B to this Agreement are not based on a specific costing methodology or company specific cost study.

3.4 SSI is a Competitive Local Exchange Carrier providing service to customers within the local calling area of NEFCOM. SSI's NPA/NXXs are listed in Telcordia's Local Exchange Routing Guide ("LERG") for Operating Company Number ("OCN") 0335 for the State of Florida. This Agreement does not cover toll traffic.

3.5 Nothing in this Agreement shall permit, or be construed to permit, an interconnecting party to construct, design or utilize facilities for the purpose of originating or terminating long distance telecommunications traffic for which compensation is due pursuant to an access tariff or separate inter-toll agreement.

3.6 This Agreement is limited to NEFCOM and SSI end user customers' traffic for which NEFCOM and SSI have tariff authority to carry. NEFCOM's and SSI's NPA/NXX(s) are listed in the LERG under OCNs 0335 and 2808, respectively in the State of Florida.

3.7 The Parties agree and understand that this Agreement does not affect NEFCOM's status as a "rural telephone company" for purposes of Section 251(f)(1) of the Communications Act of 1934, as amended.

3.8 The traffic that is exchanged through an Interexchange Carrier ("IXC") is not covered under this Agreement.

4. SERVICE AGREEMENT

Description of Arrangements. This Agreement provides for the following interconnection and arrangements between the networks of NEFCOM and SSI. Additional arrangements that may be agreed to in the future will be delineated in Attachment B to this Agreement. Routing of Telecommunications Traffic shall be as described in this section, except that, alternatives may be employed in the event of emergency or temporary equipment failure.

4.1 Facility Interconnection: Upon request of either Party, a two-way trunk group will be provided and provisioned between NEFCOM and SSI, with the POI located at any mutually agreeable point on NEFCOM's network. The Parties will exchange traffic via this two-way trunk group. Appendix C identifies the agreed-upon POI between the Parties.

Calls between NEFCOM customers and SSI customers rate centered within NEFCOM's local calling area shall be routed between NEFCOM's network and SSI via the two-way direct trunk group.

5. COMPENSATION

5.1 Traffic Subject to Reciprocal Compensation.

5.1.1 Reciprocal compensation is applicable for Transport and Termination of Telecommunications Traffic as defined in Section 1.22 and is related to the exchange of traffic described in Section 4.1.

5.1.2 The types of traffic to be exchanged under this Agreement are limited to Local Traffic and ISP-bound Traffic as defined in Section 1.9.

5.1.2.1 The Parties agree that compensation for call termination for Local Traffic (i.e., the completion of a local call by a Party to the called customer on the side of the POI of the Party completing the call) shall be based upon rates set forth in Appendix B, and upon the reciprocal compensation methodology set forth therein.

5.1.2.2 The Parties agree that ISP-bound Traffic is governed by the FCC ISP Order. The Parties agree to exchange ISP-bound traffic utilizing the bill and keep compensation mechanism.

5.1.3 The traffic not covered by this Agreement includes all other traffic, and certain ancillary traffic such as:

- a. Directory Assistance
- b. Operator Call Termination
- c. 800/888 Database Dip
- d. LIDB
- e. Information Services Requiring Special Billing
- f. Wireless traffic terminating on either Party's network from a Commercial Mobile Radio Service Provider.
- g. 911
- h. Transit Traffic

5.2 Facilities Subject to Compensation.

Where dedicated interconnection facilities are used for two-way traffic exchange between the Parties, the charges for such facilities, provided and billed by NEFCOM shall be at rates set forth in BellSouth's Intrastate Special Access Tariff, in which NEFCOM concurs.

6. BILLING AND PAYMENT.

- 6.1.1 Each Party shall bill on a monthly basis for services provided pursuant to this Agreement.
- 6.1.2 The Parties shall pay invoices within forty-five (45) days of receipt of the invoice.
- 6.1.3 A Party must give written notice to the other party identifying any dispute of an invoiced amount. A Party may withhold payment of the properly disputed portion of an invoice, but must timely pay the undisputed portion.
- 6.1.4 A Party must give written notice to the other party identifying any dispute of an invoiced amount. A Party may withhold payment of the properly disputed portion of an invoice, but must timely pay the undisputed portion.
- 6.1.5 If the dispute is resolved in favor of the invoicing Party, then the disputed amount plus the late payment charge shall be paid to the invoicing Party within twenty (20) days of the resolution of the dispute.
- 6.1.6 Any amounts owed under the terms of this Agreement if not paid when due, shall be subject to a late payment fee equal to the greater of (a) one and one-half percent per month or (b) the highest rate of interest that may be charged under applicable law, compounded daily from the date on which payment was due until the date on which payment is made.

7. NOTICE OF CHANGES

If a Party contemplates a change in its network, which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party.

8. GENERAL RESPONSIBILITIES OF THE PARTIES

8.1 The Parties are each solely responsible for participation in and compliance with national network plans, including The National Network Security Plan and The

Emergency Preparedness Plan. Neither Party shall use any service related to or use any of the Services provided in this Agreement in any manner that prevents other persons from using their service or destroys the normal quality of service to other carriers or to either Party's customers, and subject to notice and a reasonable opportunity of the offending Party to cure any violation, either Party may discontinue or refuse service if the other Party violates this provision.

8.2 Each Party is individually responsible to provide facilities within its network necessary for routing, carrying, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with the other Party's network and to terminate the traffic it receives in that standard format to the proper address on its network. Such facility shall be designed based upon the description and forecasts provided under this Agreement.

8.3 Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of the Common Language Location Identifier ("CLLI") assigned to its switches.

8.4 911/E911 Each Party shall be responsible for its own independent connections to the 911/E911 network.

III. ARTICLE III: GENERAL PROVISIONS

1. Except as may otherwise be set forth in a particular Article or Appendix of this Agreement, in which case the provisions of such Article or Appendix shall control, these General Provisions apply to all Articles and Appendices of this Agreement.

2. TERMS AND TERMINATION

2.1 Subject to the provisions of Sections 13, the initial term of this Agreement shall be a one-year term ("Term"), which shall commence on the Effective Date. This Agreement shall automatically renew for successive six-month periods, unless, not less than sixty (60) days prior to the end of the Term or any renewal term, either party notifies the other party of its intent to renegotiate a new agreement. In the event of such renegotiation, this Agreement shall remain in effect until such time that a new agreement becomes effective, either through negotiations or arbitration under 252.

2.2 Either Party may terminate this Agreement in whole or in part in the event of a default of the other Party, provided, however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and the defaulting Party does not implement mutually acceptable steps to remedy such alleged default within thirty (30) days after receipt of written notice thereof.

3. CANCELLATION CHARGES

Except as provided herein, no cancellation charges shall apply.

4. NON-SEVERABILITY

4.1 The services, arrangements, terms and conditions of this Agreement were mutually negotiated by the Parties as a total arrangement and are intended to be non-severable.

4.2 Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of federal or state law, or any regulations or orders adopted pursuant to such law.

5. INDEMNIFICATION

5.1 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against loss, cost, claim liability, damage, and expense (including reasonable attorney's fees) to customers and other third parties for:

(1) damage to tangible personal property or for personal injury proximately caused by the negligence or willful misconduct of the Indemnifying Party, its employees, agents or contractors;

(2) claims for libel, slander, or infringement of copyright arising from the material transmitted over the Indemnified Party's facilities arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's customers; and

(3) claims for infringement of patents arising from combining the Indemnified Party's facilities or services with, or the using of the Indemnified Party's services or facilities in connection with, facilities of the Indemnifying Party.

Neither Party shall accept terms of a settlement that involves or references the other Party in any matter without the other Party's approval.

Notwithstanding this indemnification provision or any other provision in the Agreement, neither Party, nor its parent, subsidiaries, affiliates, agents, servants, or employees, shall be liable to the other for Consequential Damages (as defined in Section 6.3).

5.2 The Indemnified Party will notify the Indemnifying Party promptly in writing of any claims, lawsuits, or demands by customers or other third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section, and, if requested by the Indemnifying Party, will tender the defense of such claim, lawsuit or demand.

(1) In the event the Indemnifying Party does not promptly assume or diligently pursue the defense of the tendered action, then the Indemnified Party may proceed to defend or settle said action and the Indemnifying Party shall hold harmless the Indemnified Party from any loss, cost liability, damage and expense.

(2) In the event the Party otherwise entitled to indemnification from the other elects to decline such indemnification, then the Party making such an election may, at its own expense, assume defense and settlement of the claim, lawsuit or demand.

(3) The Parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit.

(4) Neither Party shall accept the terms of a settlement that involves or references the other Party in any matter without the other Party's approval.

6. LIMITATION OF LIABILITY

6.1 No liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

6.2 Except as otherwise provided in Section 11.0, no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct of the first Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.

6.3 Except as otherwise provided in Section 11.0, no Party has any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages.

7. DISCLAIMER

EXCEPT AS OTHERWISE PROVIDED HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES PROVIDED HEREUNDER.

ADDITIONALLY, NEITHER PARTY ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD-PARTY.

8. REGULATORY APPROVAL

The Parties understand and agree that this Agreement will be filed with the Commission. Each Party covenants and agrees to fully support approval of this Agreement by the Commission under Section 252(e) of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Further, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction.

The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement.

9. PENDING JUDICIAL APPEALS AND REGULATORY RECONSIDERATION

The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date ("Applicable Rules"). In the event of any amendment to the Act, any effective legislative action or any effective regulatory or judicial order, rule, regulation, arbitration award, dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Act to the Parties or in which the FCC or the Commission makes a generic determination that is generally applicable which revises, modifies or reverses the Applicable Rules (individually and collectively, Amended Rules), either Party may, by providing written notice to the other party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions of each such Amended Rules relating to any of the provisions in this Agreement.

10. MISCELLANEOUS

10.1 Authorization

10.1.1 NEFCOM is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and has full power and authority to

execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

10.1.2 SSI is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

10.2 Compliance. Each Party shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement.

10.3 Independent Contractors. Neither this Agreement, nor any actions taken by SSI or NEFCOM in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between SSI and NEFCOM, or any relationship other than that of purchaser and seller of services. Neither this Agreement, nor any actions taken by SSI or NEFCOM in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between SSI and NEFCOM end users or others.

10.4 Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected. (collectively, a "Force Majeure Event"). If any Force Majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all reasonable steps to correct the force majeure condition. During the pendency of the Force Majeure, the duties of the Parties under this Agreement affected by the Force Majeure condition shall be abated and shall resume without liability thereafter.

10.5 Confidentiality.

10.5.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its "Representatives" and with a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be clearly and conspicuously marked "Confidential" or "Proprietary" or other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free

of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with Section 10.5.2 of this Agreement.

10.5.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.

10.5.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

10.6 Governing Law. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction and remedy for all such claims shall be as provided for by the Commission and state law. In all other respects, this Agreement shall be governed by the domestic laws of the State of Florida without reference to conflict of law provisions.

The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be adopted by any federal, state, or local government authority. Any modifications to this Agreement occasioned by such change shall be effected through good faith negotiations.

10.7 Assignment. This Agreement shall be binding upon the Parties and shall continue to be binding upon all such entities regardless of any subsequent change in their ownership. Each Party covenants that, if it sells or otherwise transfers to a third party, unless the Party which is not the subject of the sale or transfer reasonably determines that the legal structure of the transfer vitiates any such need, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (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 will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate Affiliate or an entity under it's common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

10.8 Non-Waiver. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

10.9 Notices.

10.9.1 Notices given by one Party to the other Party under this Agreement shall be in writing and shall either be: (i) delivered personally; (ii) delivered by express delivery service; (iii) mailed, certified mail, return receipt requested to the following addresses of the Parties:

To: SSI	To: NEFCOM
Mark Woods, President Southeastern Services, Inc. P. O. Box 365 Macclenny, FL 32063-0365 (V) 904.259.1300 (FAX) 904.259.7606	Harriet Eudy, Manager of Regulatory Affairs Townes Telecommunications Services Corporation 11791 110 th Street Live Oak, FL 32060 (V) 386.364.0700 (FAX) 386.362.1452 E-mail: heudy@townes.net
With a copy to: W. Scott McCollough Stumpf, Craddock, Massey & Pulman, PC 1250 Capital of Texas Highway South Building one, Suite 420 Austin, TX 78746 (V) 512.485.7920 (FAX) 512.485.7921 E-mail: wsmc@scmplaw.com	With a copy to: Benjamin H. Dickens Blooston, Mordkofsky, Dickens, Duffy & Prendergast 2120 L. Street, NW, Suite 300 Washington, DC 20037 (V) 202.828.5510 (FAX) 202.828.5568 E-mail: bhd@bloostonlaw.com

Or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of: (i) the date of actual receipt; (ii) the next business day when notice is sent via express mail or personal delivery; (iii) three (3) days after mailing in the case of certified U.S. mail.

10.9.2 In order to facilitate trouble reporting and to coordinate the repair of Interconnection Facilities, trunks, and other interconnection arrangements provided by the Parties under this Agreement, each Party has established contact(s) available 24 hours per day, seven days per week, at telephone numbers to be provided by the Parties. Each Party shall call the other at these respective telephone numbers to report trouble with connection facilities, trunks, and other interconnection arrangements, to inquire as to the status of trouble ticket numbers in progress, and to escalate trouble resolution.

24 Hour Network Management Contact:

For NEFCOM:

NOC Contact Number: XXX-XXX-XXXX

For SSI:

NOC Contact Number: XXX-XXX-XXXX

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

10.10 Litigation. Nothing contained in this Agreement shall be deemed, construed or interpreted to be an admission, concession, or stipulation of any position or argument raised by either party, or a waiver or estoppel of any position or argument raised by an party in any litigation between the parties pending on or after the Effective Date of this Agreement.

10.11 Publicity and Use of Trademarks or Service Marks. Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

10.12 Joint Work Product. This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

10.13 No Third Party Beneficiaries; Disclaimer of Agency. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a party as a legal representative or agent of the other Party; nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other Party, unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

10.14 No License. No license under patents, copyrights, or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party, or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

10.15 Technology Upgrades. Nothing in this Agreement shall limit either Parties' ability to upgrade its network through the incorporation of new equipment, new software or otherwise, provided it is to industry standards, and that the Party initiating the upgrade shall provide the other Party written notice at least ninety (90) days prior to the incorporation of any such upgrade in its network which will materially impact the other Party's service. Each Party shall be solely responsible for the cost and effort of accommodating such changes in its own network.

10.16 Entire Agreement. The terms contained in this Agreement and any Schedules, Exhibits, tariffs and other documents or instruments referred to herein are hereby incorporated into this Agreement by reference as if set forth fully herein, and constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement may only be modified by a writing signed by an authorized representative of each Party.

11. DISPUTE RESOLUTION

Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the State Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

11.1 Informal Resolution of Disputes. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

11.2 Formal Dispute Resolution. If negotiations fail to produce an agreeable resolution within ninety (90) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration. In the case of an arbitration, each Party shall bear its own costs. The Parties shall equally split the fees of any mutually agreed upon arbitration procedure and the associated arbitrator.

11.3 Continuous Service. The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their payment obligations.

IV. **ARTICLE IV: RESALE OF SERVICES**

1. GENERAL

1.1 General Provisions.

The following general provisions shall apply to this Agreement:

1.1.1 SSI may resell the telecommunications services of NEFCOM consistent with 47 U.S.C. Section 251(b)(1) and appropriate regulatory mandates or constraints specified by the Federal Communications Commission ("FCC") or the Florida Public Service Commission. It is specifically understood that the services subject to resale under this Agreement does not include, by way of illustration and not limitation, the following: voice mail, inside wire installation and maintenance, customer premise equipment, Lifeline services or other similar government programs (underlying Telecommunications Service will be resold but SSI must qualify its offering for these programs), promotions of less than ninety (90) days and Employee Concessions. It is also understood that this

Agreement does not cover services offered by NEFCOM's affiliates, such as, by way of illustration and not limitation, internet access, paging, interstate and interLATA long distance, and commercial mobile radio services (i.e., cellular and PCS).

- 1.1.2 Neither Party shall interfere with the right of any person or entity to obtain service directly from the other Party.
- 1.1.3 Current telephone numbers may normally be retained by the End User. However, telephone numbers are the responsibility of NEFCOM and are assigned to the service furnished. If an End User is delinquent or defaults on his or her account, and where such End User attempts to switch local exchange service providers, SSI shall not undertake any action on such End User's behalf to maintain his or her then-current telephone number. SSI has no right to the continuance of service through any particular central office. Consistent with Federal and State law, NEFCOM reserves the right to change telephone numbers, or the central office designation associated with such numbers, or both, whenever NEFCOM deems it necessary in its sole discretion to do so in the conduct of its business.
- 1.1.4 Service is furnished subject to the condition that it will not be used for any unlawful purpose, or for any purpose not intended by the specific tariff application. Service can be disconnected to SSI if SSI is found to have used services in such unlawful or inconsistent manner.
- 1.1.5 Service will be disconnected if any law enforcement agency advises that the service being used is in violation of the law.
- 1.1.6 NEFCOM can refuse service when it has reasonable grounds to believe that the service will be used in violation of the law or in a manner that is inconsistent with the appropriate tariff application.
- 1.1.7 NEFCOM accepts no responsibility to any person for any unlawful act committed by SSI or its End Users as part of providing service to SSI for purposes of Resale or otherwise.
- 1.1.8 NEFCOM will cooperate fully with law enforcement agencies with subpoenas and court orders for assistance with NEFCOM's customers. Law enforcement agency subpoenas and court orders regarding End Users of SSI will be directed to SSI. NEFCOM will bill SSI and SSI will pay NEFCOM for any reasonable and customary costs incurred by NEFCOM for implementing any requests by law enforcement agencies regarding SSI End Users.
- 1.1.9 NEFCOM will provide "End User Customer Record Information" (as such term is defined below) to SSI provided SSI has the appropriate Letter(s) of

Authorization from the End User. The form of the Letter(s) of Authorization shall be in accordance with NEFCOM's Local Services Resale Guidelines ("**Resale Guidelines**"). NEFCOM will provide End User Customer Record Information via U.S. Mail or FAX. For purposes of this Agreement, "End User Customer Record Information" shall mean certain End User customer information, which may include, without limitation: (i) telephone number or other means of identification; (ii) listed name; (iii) listed address; (iv) directory listing information; (v) directory delivery information; (vi) billing names; (vii) billing address; (viii) service address; (ix) product and service information; (x) primary interexchange carrier ("PIC") and local primary interexchange carrier ("LPIC").

- 1.1.10 SSI agrees to compensate NEFCOM for all reasonable and customary costs incurred by NEFCOM associated with providing such End User Customer Record Information to SSI. SSI will adopt and adhere to NEFCOM's Resale Guidelines, as amended from time to time, for each method of providing End User Customer Record Information as set forth in NEFCOM's Resale Guidelines, as amended from time to time.

2. TERMS AND CONDITIONS

2.1 Restrictions on Resale.

All resold services shall be provided to SSI under applicable NEFCOM tariff terms and conditions. The following restrictions shall apply to the resale of retail services by SSI.

- 2.1.1 SSI shall not resell to one class of customers a Service that is offered by NEFCOM only to another class of customers in accordance with State requirements (e.g., R-1 to B-1, disabled services or Lifeline services to non-qualifying customers).
- 2.1.2 SSI shall not resell Lifeline services or other government program offerings unless authorized or required by State or other regulatory law. If such authorization or requirement is applicable, the following additional provisions shall apply:
- 2.1.3 SSI shall not resell Lifeline, Link Up America, or other government program service offerings, to persons not eligible to subscribe to such service offerings from NEFCOM. SSI shall take those actions required by applicable law to determine the eligibility of SSI's customers to purchase such service, including, but not limited to, obtaining any proof or certification of eligibility to purchase Lifeline, Link Up America, or other government program services, required by applicable law. SSI shall indemnify NEFCOM from any claims resulting from SSI's failure to take

such actions. Further, SSI shall, on a monthly basis, self-certify to NEFCOM the customers that are being provided any of the above services. Failure to certify such subscribers will result in the immediate billing of non-discounted rates.

2.1.4 SSI shall not resell promotional offerings of ninety (90) days or less in duration. NEFCOM will apply the Avoided Cost Discount to the ordinary rate for a retail service rather than the special promotional rate.

2.1.5 SSI may resell NEFCOM's services only within the specific "Resale Service Area" (as such term is defined below) as defined in its certificate in NEFCOM's service territory in the State of Florida. For purposes of this Agreement, "Resale Service Area" shall mean that certain area, as defined in NEFCOM's FPSC approved certificate of operation, within which a CLEC, such as SSI, may offer resold local exchange telecommunications service.

2.2 No Avoidable Cost Discount on the Resale of Some Retail Services.

2.2.1 The Avoided Cost Discount specified in Section 5.3 of Article IV herein shall not apply to the following retail services:

2.2.1.1 SSI may resell COCOT coin or coinless lines; however, no Avoided Cost Discount applies.

2.2.1.2 SSI may resell special access services, other than DSL; however, no Avoided Cost Discount applies. DSL service resale shall be subject to the Avoided Cost Discount.

2.2.2 The Avoided Cost Discount specified in Section 5.3.1 shall apply to all other services available for resale, and they are described in Sections 5.1 and 5.2 of Article IV.

2.3 Volume, Term and Other Discounts on Resold Services.

SSI may resell services that are provided at a volume, term, customer specific, individual case basis or other discount in accordance with terms and conditions of applicable tariff. SSI may aggregate customer lines and/or traffic in order to qualify for a volume, term, or other discount. The volume, term, or other discount shall be applied to the price first, followed by the Avoided Cost Discount.

2.4 Resale to Other Carriers.

Services available for resale may not be used by SSI to provide access to local network as an alternative to tariffed switched and special access by IXCs.

3. ORDERING AND BILLING

3.1 Service Ordering, Service Provisioning, and Billing.

Except as specifically provided otherwise in this Agreement, service ordering, provisioning, billing and maintenance shall be governed by use of industry standard methods, procedures and forms.

3.2 Local Service Request.

Orders for resale of services will be placed utilizing standard LSR forms. NEFCOM will continue to participate in industry forums for developing service order/disconnect order formats and will incorporate appropriate industry standards. Complete and accurate forms (containing the requisite customer information as described in the Guide) must be provided by SSI before a request can be processed.

3.2.1 NEFCOM will accept orders for As-Is Transfer (AIT) of services from NEFCOM to SSI where NEFCOM is the customer's current local exchange company. NEFCOM cannot provide an AIT of service from one reselling NEFCOM's services to another reseller. In such cases the reseller acquiring the customer must obtain the services directly from NEFCOM.

3.2.2 SSI will be the customer of record for all services purchased from NEFCOM. Except as specified herein, NEFCOM will take orders from, bill and expect payment from SSI for all Services ordered.

3.3 Certificate of Operating Authority.

When ordering, SSI must represent and warrant to NEFCOM that it is a certified provider of Telephone Exchange Service in the State. SSI will provide a copy of its Certificate of Operating Authority or other evidence of its status to NEFCOM upon request.

3.4 Nonrecurring Charges.

SSI shall be responsible for the payment of all nonrecurring charges (NRCs) applicable to resold Services. The Avoided Cost Discount applies to nonrecurring charges.

3.5 Transfers between SSI and Another Reseller of NEFCOM Services.

When SSI has obtained a customer from another reseller of NEFCOM services, SSI will inform NEFCOM of the transfer by submitting standard LSR forms to NEFCOM.

3.6 Local Calling Detail.

Except for those Services and in those areas where measured rate local service is available to customers, monthly billing to SSI does not include local calling detail. However, SSI may request and NEFCOM shall consider developing the capabilities to provide local calling detail in those areas where measured local service is not available for a mutually agreeable charge.

3.7 Originating Line Number Screening (OLNS).

Upon request and when NEFCOM is technically able to provide and bill the Service, NEFCOM will update the database to provide OLNS which indicates to an operator the acceptable billing methods for calls originating from the calling number (e.g., penal institutions, COCOTS).

4. MAINTENANCE

4.1 Maintenance, Testing and Repair.

NEFCOM will provide repair and maintenance services to SSI and its customers for resold Services in accordance with the same standards and charges used for such Services provided to NEFCOM customers. NEFCOM will not initiate a maintenance call or take action in response to a trouble report from an SSI customer until such time as trouble is reported to NEFCOM by SSI. SSI must provide to NEFCOM all customer information necessary for the installation, repair and servicing of any facilities used for resold Services.

5. SERVICES AVAILABLE FOR RESALE

5.1 Description of Local Exchange Services Available for Resale.

(a) Resold basic exchange service includes, but is not limited to, the following elements: Voice Grade Local Exchange Access Line – includes a telephone number and dial tone:

(i) Access to IXCs. SSI must have agreement directly with Interexchange Carriers for Presubscribed or Casual usage non-Local Traffic. NEFCOM has no ordering, bill or collection obligations in connection therewith, and SSI assumes full responsibility for such obligations.

(ii) E-911 Emergency Dialing,

(iii) Access to Service Access Codes –e.g., 800, 888, 900,

- (iv) Listing of telephone number in an appropriate “white pages” directory.
 - (v) Copy of “White Pages” and “Yellow Pages” directories for the appropriate NEFCOM service area, and
 - (vi) IntraLATA toll minus the Avoided Cost Discount if NEFCOM is the primary toll service provider.
- (b) Local Calling – at local usage measured rates minus the Avoided Cost Discount if applicable to the customer;
 - (c) Customer Private Line Services, minus the Avoided Cost Discount.
 - (d) ISDN BRI and ISDN PRI, minus the Avoided Cost Discount.

5.2 Other Services Available for Resale.

Any new Telecommunications services that NEFCOM offers in such tariffs to customers who are not telecommunications carriers will also be available to SSI for resale under the same terms and conditions contained in this Agreement.

- 5.2.1 Promotional Services. NEFCOM shall make available for resale those promotional offerings that are greater than ninety (90) days in duration, and the special promotional rate will be subject to the applicable Avoided Cost Discount.

5.3 Rates.

The prices charged to SSI for resold services shall be calculated as follows:

- 5.3.1 The Avoided Cost Discount as shown in Appendix A shall apply to all retail services except those services listed in Section 2.2 herein.
- 5.3.2 The Avoided Cost Discount dollar amount calculated under Section 5.3.1 above will be deducted from the retail rate.
- 5.3.3 The rate resulting from the computations in Sections 5.3.1 and 5.3.2 is the resale rate.

5.4 Grandfathered Services.

Services identified in NEFCOM tariffs as grandfathered in any manner are available for resale only to customers that already have such grandfathered services. An existing customer may not move a grandfathered service to a new

service location. Grandfathered Services are subject to the Avoided Cost Discount.

5.5 Access Charges.

NEFCOM retains all switched access revenue due from IXCs for access to NEFCOM facilities resold by SSI pursuant to this Article.

6. **RESPONSIBILITY FOR MISCELLANEOUS CHARGES BY SSI'S CUSTOMER.**

SSI shall be responsible for the payment of any and all charges incurred by SSI's customers from using the following types of services, where SSI has not requested blocking of said services or where blocking of said services is not available:

- (a) Casual use charges; and
- (b) CLASS features charges.

7. **PAYMENT AND BILLING ARRANGEMENTS**

7.1 Payment and Billing Arrangements.

Notwithstanding anything herein to the contrary, payment and billing arrangements hereunder shall be as established in accordance with NEFCOM's Resale Guidelines, as amended from time to time, and as follows:

- 7.1.1 Payment of all charges will be the responsibility of SSI. SSI shall make payment to NEFCOM for all services billed. NEFCOM is not responsible for payments not received by SSI from SSI's customer. NEFCOM will not become involved in billing disputes that may arise between SSI and its customers.
- 7.1.2 NEFCOM will bill SSI, monthly in advance, charges for all services to be provided during the ensuing billing period except charges associated with service usage, which charges will be billed in arrears. Charges will be calculated on an individual End User account level, including, if applicable, any charges for usage or usage allowances.
- 7.1.3 As the Customer of Record, NEFCOM will also bill to SSI, and SSI will be responsible for and remit to NEFCOM, all charges applicable to its resold services, including, but not limited to, franchise fees, federal, state and/or local jurisdiction taxes, as well as any other charges of a similar nature, if any, in accordance with NEFCOM's Resale Guidelines, as amended from time to time, and/or applicable law.

- 7.1.4 Upon proof of tax exempt certifications from SSI, the total amount billed to SSI will not include any taxes due from the End User. SSI will be solely responsible for the computation, tracking, reporting, and payment of all federal, state and/or local jurisdiction taxes associated with the services resold to the End User.
- 7.1.5 Payment by SSI will be due and payable in accordance with NEFCOM's Resale Guidelines, as amended from time to time, within thirty (30) days of the bill date and is payable in immediately available funds. Payment is considered to have been made when received by NEFCOM. If payment is not received by NEFCOM by the payment due date, a late payment charge, as set forth in Subsection 7.1.6 following, shall apply.
- 7.1.6 If any portion of the payment is received by NEFCOM after the payment due date as set forth preceding, or if any portion of the payment is received by NEFCOM in funds that are not immediately available to NEFCOM, then a late payment charge shall be due NEFCOM. The late payment charge shall be the portion of the payment not received by the payment due date times a late factor of one and one half percent (1.5%) per month of the balance due, or the highest interest rate allowed by law, whichever is less, until the amount due is paid in full.
- 7.1.7 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to, NEFCOM.
- 7.1.8 NEFCOM will not perform any billing and collection services for SSI as a result of the execution of this Agreement.
- 7.1.9 Pursuant to 47 CFR Section 51.617, NEFCOM will bill and SSI shall pay the then current End User Common Line Charges ("EUCL") and any functionally equivalent charges authorized or required by the FPSC or FCC from time to time.
- 7.1.10 NEFCOM will not become involved in disputes between SSI and SSI's End User customers over resold services. If a dispute does arise that cannot be settled without the involvement of NEFCOM, SSI may contact NEFCOM's business office for assistance with the resolution of the dispute and agrees in good faith to work with SSI to resolve the matter in a reasonable amount of time. SSI may be required to submit documentation to substantiate the claim.

8. DISCONTINUANCE OF SERVICE.

8.1 Discontinuance of Service.

Notwithstanding anything herein to the contrary, the procedures for discontinuing service to an End User hereunder shall be as established in accordance with NEFCOM's Resale Guidelines, as amended from time to time, and as follows:

- 8.1.1 Where possible, NEFCOM will deny service to SSI's End User on behalf of and upon receipt of a written request from SSI. Upon restoration of the End User's service, restoral charges will apply and will be the responsibility of SSI.
- 8.1.2 Upon receipt of the written request of SSI, NEFCOM will disconnect an SSI End User customer.
- 8.1.3 All requests by SSI for denial or disconnection of an End User for nonpayment must be in writing.
- 8.1.4 SSI will be made solely responsible for notifying the End User of the proposed disconnection of the service.

8.2 Procedures for Discontinuing Service.

Notwithstanding anything herein to the contrary, the procedures for discontinuing service to SSI hereunder shall be as established in accordance with NEFCOM's Resale Guidelines, as amended from time to time, and as follows:

- 8.2.1 NEFCOM reserves the right to suspend or terminate service for nonpayment or in the event of prohibited, unlawful or improper use of the facilities or service, abuse of the facilities, or any other violation or noncompliance by SSI of the rules and regulations of NEFCOM's Florida General Subscriber Services Tariff ("GSST").
- 8.2.2 If payment of account by SSI is not received by NEFCOM by the bill payment due date, NEFCOM may provide written notice to SSI that additional applications for service will be refused and that any pending orders for service will not be completed if payment is not received by the fifth day following the date of the notice. If NEFCOM does not refuse additional applications for service on the date specified in the notice, and SSI's noncompliance continues, nothing contained herein shall preclude NEFCOM's right to refuse additional applications for service without further notice.
- 8.2.3 If payment of account is not received, or arrangements made, by the bill payment due date in the second consecutive month, the account will be

considered in default and will be subject to denial or disconnection, or both.

8.2.4 If SSI fails to comply with the provisions of this Agreement, including any payments to be made by it on the dates and times herein specified, NEFCOM may, on thirty (30) days' written notice to the person designated by SSI to receive notices of noncompliance, discontinue the provision of existing services to SSI at any time thereafter. In the case of such discontinuance, all billed charges, as well as applicable termination charges, shall become due. If NEFCOM does not discontinue the provision of the services involved on the date specified in the thirty (30) days' notice, and SSI's noncompliance continues, nothing contained herein shall preclude NEFCOM's right to discontinue the provision of the services to SSI without further notice.

8.2.5 If payment of account is not received or arrangements made for payment by the date given in the written notification, SSI's services will be discontinued. Upon discontinuance of service on an SSI account, service to SSI's End Users will be denied. NEFCOM will also reestablish service at the request of the End User or Reseller upon payment of the appropriate connection fee and subject to NEFCOM's normal application procedures. SSI is solely responsible for notifying the End User of the proposed disconnection of service.

8.2.6 If within fifteen (15) days after an End User's services have been denied no contact has been made in reference to restoring service, the End User's service will be disconnected.

V. ARTICLE V: SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the dates listed below.

SSI	NEFCOM
By: _____ Name: _____ Title: _____ Date: _____	By: _____ Name: _____ Title: _____ Date: _____

APPENDIX A

SERVICES AVAILABLE FOR RESALE

General. The rates for resold services described in Article IV, Section 5.2 are based upon an avoided cost discount from NEFCOM's retail rates as provided in Article IV, Section 5.3.1 of the Agreement. The Avoided Cost Discount is subject to change resulting from future Commission or other proceedings.

The State Avoided Cost Discount is 12.68%

Non-Recurring Charges (NRCs) for Resale Services:

NRCs will be charged from the appropriate retail tariff, minus the Avoided Cost Discount.

APPENDIX B

Rates and Charges

Reciprocal Transport and Termination Rate for Local Traffic is:

\$.035 per minute

APPENDIX C

Point of Interconnection