

OFFICIAL FILE
ILLINOIS COMMERCE COMMISSION
March 21, 2000



ORIGINAL
GTE Service
Corporation

1312 East Empire Street
Bloomington, IL 61701

GTE NORTH INCORPORATED,
GTE SOUTH INCORPORATED, and
01 COMMUNICATIONS OF ILLINOIS, LLC

Joint Petition of GTE North Incorporated
GTE South Incorporated, and
01 Communications of Illinois, LLC, pursuant to
47 U.S.C. § 252 (i) regarding
Adoption of an Interconnection
Agreement.

Ms. Donna **Caton**
Chief Clerk
Illinois Commerce Commission
527 East Capitol Avenue
P.O. Box 19280
Springfield, IL 62794-9280

Dear Ms. **Caton**:

As directed by the Commission's March 15, 2000 Order in Docket No. 00-0153, enclosed for filing are the original and two (2) copies of the Adoption Letter signed by GTE and the accompanying amended GTE/US Exchange **Agreement** approved by the Commission in Docket No. 98 NA-042. Per the Commission's March 15, 2000 Order, these documents are to be filed in the GTE negotiated interconnection agreement binder maintained by your office.

If you have any questions, please call **Matt** Johnson, Specialist-Regulatory and Governmental Affairs, telephone number (309) **663-3501**, fax number (309) 663-3073.

Very truly yours,

James R. Hargrave
Assistant Vice President-
Regulatory and Governmental Affairs

Enclosure

c: Mr. Rudolph J. Geist
01 Communications of Illinois, LLC
Executive Vice President
770 L Street, Suite 960
Sacramento, CA 95814

Mr. Morton J. Posner
Swidler, Berlin, Shereff, Friedman, LLP
300 K. Street N.W., Suite 300
Washington, DC 20007-5116
(w/o attachments)

ILLINOIS
COMMERCE COMMISSION
MAR 21 11 21 AM '00
CHIEF CLERK'S OFFICE

Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection



G T E Network
Services

HQE03B28
600 Hidden Ridge
P.O. Box 152092
Irving, TX 75038
972/718-4586
FAX 972/719-1523

December 21, 1999

Mr. Donald J. Manning
General Counsel
NPCR, Inc.
4500 Carillon Point
Kirkland, WA 98033

Dear Mr. Manning:

We have received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996, you wish to adopt the terms of the Interconnection Agreement between Nextel West Corp. and GTE that was approved by the Commission as an effective agreement in the State of Illinois in Docket No. 99-NA-001 (Terms).¹ I understand you have a copy of the Terms.

Please be advised that our position regarding the adoption of the Terms is as follows.

The provisions of the Terms that might be interpreted to require reciprocal compensation from GTE to the telecommunications carrier for the delivery of traffic to the Internet (ISP Traffic) are not available for adoption and are not a part of these 252(i) terms pursuant to FCC Rule 809 and paragraphs 1317 of the FCC's interconnection First Report and Order (FCC 96-325).

FCC Rule 809 gives the ILECs the ability to except 252(i) adoptions in those instances where the cost of providing the service to the requesting carrier is higher than that incurred to serve the initial carrier or there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within FCC Rule 809. GTE never intended for Internet traffic passing through a telecommunications carrier to be included within the definition of local traffic and the corresponding obligation of

¹ * These "agreements" are not agreements in the generally accepted understanding of that term. GTE was required to accept these agreements, which were required to reflect the then-effective FCC rules.

Mr. Manning
December 21, 1999
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reciprocal compensation. Despite the foregoing, some forums have interpreted the issue to require reciprocal compensation to be paid. This produces the situation where the cost of providing the service is not cost based under Rule 809 or paragraph 1318 of the First report and Order. As a result, that portion of the Terms that would provide reciprocal compensation or payment as local traffic for ISP Traffic is not available under this 252(i) adoption. In its place are provisions that exclude ISP Traffic from reciprocal compensation. Specifically, the definition of "Local Traffic" includes this provision: "Local Traffic excludes information service provider ("ISP") traffic (i.e., Internet, 900 - 976, etc)"

NPCR, Inc.' adoption of the Nextel West Corp. Terms shall become effective upon filing of this letter with the Illinois Commerce Commission and remain in effect no longer than the date the Nextel West Corp. Terms are terminated. The Nextel West Corp. agreement is currently scheduled to expire on March 4, 2000.

As these Terms are being adopted by you pursuant to your statutory rights under section 252(i), GTE does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by GTE of the Terms does not in any way constitute a waiver by GTE of the Terms does not in any way constitute a waiver by GTE of any claim it may have with respect to the 252(i) process, nor does it constitute a waiver of GTE's right to seek review of any Terms that are interpreted contrary to the law.

GTE contends that certain provisions of the Terms may be void or unenforceable as a result of the United States Eighth Circuit Court of Appeals July and October, 1997 decisions, the Supreme Court of the United States' decision of January 25, 1999 and the remand of the pricing rules to the United States Eighth Circuit Court of Appeals.

Should NPCR, Inc. attempt to apply such conflicting provisions, GTE reserves its rights to seek appropriate legal and/or equitable relief. Should any provision of the Terms be modified, such modification would likewise automatically apply to this 252(i) adoption.

Mr. Manning
December 21, 1999
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Please indicate by your countersignature on this letter your understanding of and commitment to the following three points:

- (A) NPCR, Inc. adopts the Terms of the Nextel West Corp. agreement for interconnection with GTE and in applying the Terms, agrees that NPCR, Inc., a Delaware corporation ("NPCR, Inc.") be substituted in place of Nextel West Corp. in the Terms wherever appropriate
- (B) NPCR, Inc. requests that notice to NPCR, Inc. as may be required under the Terms shall be provided as follows:

To : NPCR, Inc.
Attention: General Counsel
4500 Carillon Point
Kirkland, WA 98033
Telephone number: 425-828-8475
FAX number: 425-828-8098

- (C) NPCR, Inc. represents and warrants that it is a CMRS carrier authorized to provide service in the State of Illinois, and that its adoption of the Terms will cover services in the State of Illinois only.

Sincerely,

GTE North Incorporated
GTE South Incorporated



Connie Nicholas
Assistant Vice President
Wholesale Markets-Interconnection

Reviewed and countersigned as to points A, B, and C:

NPCR, Inc.



Donald J. Manning
General Counsel

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ILLINOIS COMMUNICATIONS
REGULATORY BOARD

INTERCONNECTION, RESALE, and UNBUNDLING AGREEMENT

BETWEEN

GTE SOUTH INCORPORATED
GTE NORTH INCORPORATED
AND

US XCHANGE OF ILLINOIS, L.L.C..

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This Interconnection, Resale and Unbundling Agreement (the "Agreement"), is made by and between GTE South Incorporated. GTE North Incorporated with its address for purposes of this Agreement at 600 Hidden Ridge Drive, Irving, Texas 75038 ("GTE"), and US Xchange of Illinois. L.L.C.. in its capacity as a certified provider of local dial-tone service, with its principal place of business at 20 Monroe N.W., Suite 450, Grand Rapids, Michigan 49503 ("USX") (GTE and USX being referred to collectively as the "Parties" and individually as a "Party"). This Agreement covers services in the State of Illinois (the "State").

WHEREAS, interconnection between competing Local Exchange Carriers ("**LECs**") is necessary and desirable for the mutual exchange and termination of traffic originating on each **LEC's** network: and

WHEREAS, the Parties desire to exchange such **traffic** and related signaling in a technically and economically efficient manner at defined and mutually agreed upon points of interconnection and

WHEREAS, the Parties wish to enter into an agreement to interconnect their respective telecommunications networks on terms that are fair and equitable to both Parties; and

WHEREAS, Section 251 and 252 of the Telecommunications Act of 1996 (the "Act") imposes **specific** obligations on **LECs** and incumbent **LECs with** respect to the interconnection of their networks, resale of their telecommunications services, access to their poles, ducts, conduits and rights-of-way and, in certain cases, the offering of certain unbundled network elements and physical collocation of equipment in LEC premises;

WHEREAS, GTE is entering, under protest, into certain aspects of this Agreement that incorporate adverse results from the arbitrated agreements or which may be approved by the Commission in this state and is doing so in order to avoid the expense of arbitration while at the same time preserving its legal positions, rights and remedies.

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, GTE and USX hereby covenant and agree as follows:

ARTICLE I
SCOPE AND INTENT OF AGREEMENT

Pursuant to this Agreement, the Parties **will** extend certain arrangements to one another within each area in which they both operate within the State for purposes of interconnection and the exchange of traffic between their respective end user customers, and reciprocal access to their poles, ducts, conduits and rights-of-way. This Agreement also governs the purchase by USX of certain telecommunications services provided by GTE in its franchise areas for resale by USX, the general rules supplemental to the tariff for the purchase by USX of certain unbundled network elements from GTE, and the terms and conditions of the collocation of certain equipment of USX in the premises of GTE. This Agreement is an integrated package that reflects a balancing of interests critical to the Parties. **This Agreement will** be submitted to the Illinois Commerce Commission (the "Commission"), and the Parties **will** specifically request that the Commission refrain from taking any action to modify, supplement, suspend or otherwise delay implementation of this Agreement. USX may elect terms other than those set forth in this Agreement to the extent required under 47 U.S.C. 252 (i) of the Act, **final** regulations thereunder and relevant court decisions.

Notwithstanding these commitments, the Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in the 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. If negotiation by the Parties of future interconnection agreements following this one is unsuccessful and either Party requests arbitration of any unresolved issue pursuant to Section 252(b) of the Act, nothing in this Agreement shall be given any weight in such arbitration as evidence of what rates, terms, or conditions either Party would consider to satisfy the requirements of Section 251. GTE's execution of this Agreement is not a concession or waiver in any manner concerning its position that certain of the rates, terms and conditions contained herein are unlawful, illegal and improper. **USX's** execution of this Agreement is not a concession or waiver in any manner concerning its position that certain of the rates, terms and conditions contained herein are unlawful, illegal and improper.

The services and facilities to be provided to USX by GTE in satisfaction of this Agreement may be provided pursuant to GTE tariffs and then current practices. Should such services and facilities be modified by tariff or by Order, including any modifications resulting from other Commission proceedings, federal court review or other judicial action, such modifications **will** be deemed to automatically supersede any rates and terms and conditions of this Agreement. GTE **will** provide notification to USX before such a tariff becomes effective, and USX may provide input on such proposed tariff. The Parties shall cooperate with one another for the purpose of incorporating required modifications into this agreement.

The Parties execution of this Agreement is not a concession or waiver in any manner concerning either Parties position that certain of the rates, terms and conditions contained herein are unlawful, illegal and improper.

ARTICLE II
DEFINITIONS

1 General Definitions. Except as otherwise specified herein, the following definitions shall apply to all Articles contained in this Agreement. Additional definitions that are specific to the matters covered in a particular Article may appear in that Article.

- 1.1 "Access Service Request" (**ASR**) means an industry standard form used by the Parties to add, establish, change or disconnect services or facilities as provided elsewhere in this Agreement for the purposes of Interconnection.
- 1.2 "Act" means the Telecommunications Act of 1996, Public Law 104-104 of the 104th United States Congress effective February 8, 1996.
- 1.3 An "Affiliate" of a Party means a person, corporation or other legal entity that, directly or indirectly, owns or controls a Party, or is owned or controlled by, or is under common ownership or control with a Party. For purposes of this definition, the term "own" means to have a majority ownership interest in, or have voting control of a majority of the ownership interests in, such corporation or other legal entity
- 1.4 "AMA" means the Automated Message Accounting structure inherent in switch technology that initially records telecommunication **message** information. AMA format is contained in the Automated Message Accounting document, published by **Bellcore** as GR-1 IOO-CORE which defines the industry standard for message recording.
- 1.5 "Applicable Law" shall mean all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, and approvals of any Governmental Authority, which apply or relate to the subject matter of this Agreement.
- 1.6 "Automatic Location Identification/Data Management System (ALI/DMS)" means the emergency services (**E911/911**) database containing customer location information (including name, address, telephone number, and sometimes special information from the local service provider) used to process subscriber access records into Automatic Location Identification (**ALI**) records. From this database, records are forwarded to GTE's **ALI** Gateway for downloading by local **ALI** database systems to be available for retrieval in response to **ANI** from a 9-1-1 call. Also, from this database, GTE will upload to its selective routers the selective router **ALI** (SWALI) which is used to determine to which Public Safety Answering Point ("**PSAP**") to route the call."
- 1.7 "Automatic Number Identification" or "**ANI**" refers to the number transmitted through the network identifying the calling party.
- 1.8 "Bellcore" means Bell Communications Research, Inc., or its successor or assign.
- 1.9 "Bill-and-Keep Arrangement" means a compensation arrangement whereby the Parties do not render bills to each other for the termination of traffic specified in this Agreement and whereby **LECs** and **CLECs** terminate local exchange traffic originating from end-users served by the networks of other **LECs** or **CLECs** without explicit charging among or between said carriers for such traffic exchange.
- 1.10 "Business Day" shall mean Monday through Friday, except for holidays on which the U.S. mail is not delivered.
- 1.11 "Central Office Switch" means a switch used to provide telecommunications services including (i) "End Office Switches" which are Class 5 switches from which end user Exchange Services are directly connected and offered, and (ii) "Tandem Office Switches" which are Class 4 switches which are used to connect and switch trunk circuits

between and among central office switches. Central office switches may be employed as combination end office/tandem office switches (combination Class 5/Class 4).

- 1.12 "CLLI Codes" means Common Language Location Identifier Codes
- 1.13 "Commission" means the Illinois Commerce Commission.
- 1.14 "Common Channel Signaling" or "CCS" means a high-speed specialized packet-switched communications network that is separate (out-of-band) from the public packet-switched and message networks. CCS carries addressed signaling messages for individual trunk circuits and/or database-related services between Signaling Points in the CCS network using SS7 signaling protocol.
- 1.15 "Competitive Local Exchange Carrier" (CLEC) means USX, as a company authorized to provide local exchange services in competition with an ILEC.
- 1.16 "Compliance with respect to environmental provisions" Environmental and safety laws and regulations are based upon a federal regulatory framework, with certain responsibilities delegated to the States. An environmental/safety compliance program may include review of applicable laws/regulations, **development** of written procedures, training of employees and auditing.
- 1.17 "Conduit" means a tube or protection device that may be used to house communication or electrical cables. Conduit may be used underground or above ground and may contain one or more inner ducts.
- 1.18 "DS-1" is a digital signal rate of 1.544 Mbps.
- 1.19 "DS-3" is a digital signal rate of 44.736 Mbps.
- 1.20 "Electronic File Transfer" refers to a system or process which utilizes an electronic format and protocol to send/receive data files.
- 1.21 "E-911 Service" is a method of routing 911 calls to a PSAP that uses customer location data in the **ALI/DMS** to determine the PSAP to which a call should be routed. E-9-1-1 service includes the forwarding of the caller's Automatic Number Identification (**ANI**) to the PSAP where the **ANI** is used to retrieve and display the Automatic Location Identification (**ALI**) on a terminal Screen at the answering Attendant's position. It usually includes selective routing.
- 1.22 "Exchange Message Record" or "EMR" means the standard used for exchange of telecommunications message information among **LECs** for billable, **unbillable**, sample, settlement and study data. EMR format is contained in **BR-010-200-010 CRIS** Exchange Message Record, a **Bellcore** document that defines industry standards for exchange message records.
- 1.23 "Exchange Service" refers to all basic access line services, or any other services offered to end users which provide end users with a telephonic connection to, and a unique telephone number address on, the public switched telecommunications network ("**PSTN**"), and which enable such end users to place or receive calls to all other stations on the PSTN.
- 1.24 "EIS" or "Expanded Interconnection Service" means a service that provides interconnecting carriers with the capability to terminate basic **fiber** optic transmission facilities, including optical terminating equipment and **multiplexers**, at GTE's wire centers and access tandems and interconnect those facilities with the facilities of GTE. Microwave is available on a case-by-case basis where feasible.

- 1.25 "Facility" All buildings, equipment, structures and other items located on a single site or contiguous or adjacent sites owned or operated by the same persons or person.
- 1.26 "FCC" means the Federal Communications Commission.
- 1.27 "Guide" means the GTE Customer Guide for CLEC Establishment of Services - Resale and Unbundling, which contains GTE's operating procedures for **ordering**, provisioning, trouble reporting and repair for resold services and unbundled elements. A copy of the Guide has been provided to USX.
- 1.28 "Interconnection" means the physical connection of separate pieces of equipment, transmission facilities, etc., within, between and among networks, for the transmission and routing of Exchange Service and Exchange Access. The architecture of interconnection may include collocation **and/or** mid-span meet arrangements.
- 1.29 "Interconnection Point" ("IP") means the physical point on the network where the two parties interconnect. The "IP" is the demarcation point between ownership of the transmission facility.
- 1.30 "Interim Number Portability (INP)" means, pending the availability on an industry-wide basis of long-term number portability, the delivery of LNP capabilities, with **as little** impairment **of** functioning, quality, reliability, and convenience as possible, through the use of (1) RCF, or (2) DID, or (3) such capabilities other than RCI or DID as may be provided in applicable tariffs.
- 1.31 "IXC" or "Interexchange Carrier" means a telecommunications service provider authorized by the FCC to provide interstate long distance communications services between **LATAs** and are authorized by the State to provide long distance communications services.
- 1.32 "ISDN" or "Integrated Services Digital Network" means a switched network service providing end-to-end digital connectivity for the **simultaneous** transmission of voice and data.
- 1.33 "ISUP" means a part of the SS7 protocol that defines call setup messages and call **takedown** messages.
- 1.34 "Line Information Data Base (LIDB)" means one or all, as the context **may require**, of the Line Information databases owned individually by GTE and other entities which provide, among other things, calling card validation functionality for telephone line **number** cards issued by GTE and other entities. A LIDS also contains validation data for collect and third number-billed calls, which include billed number screening.
- 1.35 "Line Side" refers to an end office switch connection that has been programmed to treat the circuit as a local line connected to an **ordinary** telephone station set. Line side connections offer only those transmission and signaling features appropriate for a connection between an end office and an ordinary telephone set.
- 1.36 "Local Exchange Carrier" or "LEC" means any company certified by the Commission **to** provide local exchange telecommunications service. This includes the Parties to this Agreement.
- 1.37 "Local Exchange Routine Guide" or "LERG" means the **Bellcore** reference customarily used to identify NPA-NXX routing and homing information.
- 1.38 "Local Traffic" means traffic that is originated by an end user of one Party and terminates to the end user of the **other Party** within GTE's then current local **servicing**

- 1.49 "911 Service" means a universal telephone number which gives the public direct access to the PSAP. Basic 911 service collects 911 calls from one or more local **exchange** switches that serve a geographic area. The calls are then sent to the correct authority designated to receive such calls.
- 1.50 "Numberina Plan Area" or "**NPA**" is also sometimes referred to as an area code. This is the three digit indicator which is defined by the "A", "B", and "C" digits of each IO-digit telephone number within the NANP. Each NPA contains 800 possible NXX Codes. There are two general categories of NPA. "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized telecommunications service which may be provided across multiple geographic NPA areas. 800, 900, 700, and 888 are examples of Non-Geographic NPAs.
- 1.51 "NXX", "NXX Code", "Central Office Code" or "CO Code" is the three digit switch entity indicator which is defined by the "D", "E", and "F" digits of a **10-digit** telephone number within the NANP. Each NXX Code contains 10,000 station numbers. Historically, entire NXX code blocks have been assigned to specific individual local exchange end office switches.
- 1.52 "Owner and Operator" As used in OSHA regulations, owner is the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building or facility. As used in the Resource Conservation and Recovery Act (RCRA), operator means the person responsible for the overall (or part of the) operations of a facility.
- 1.53 "POI" means Point of Interconnection.
- 1.54 "Provider" means GTE and "Customer" means USX with respect to those services performed by GTE pursuant to Article IV and any services for resale or unbundled network elements provided by GTE pursuant to Articles V and VI. USX shall be referred to as Provider and GTE shall be referred to as Customer with respect to those services performed by USX pursuant to Article IV.
- 1.55 "PSAP" means Public Safety Answering Points.
- 1.56 "Rate Center" means the specific geographic point and corresponding geographic area that are associated with one or more particular NPA-NXX Codes that have been assigned to a LEC for its provision of Exchange Services. The geographic point is identified by a specific **V&H** coordinate that is used to calculate distance-sensitive end user traffic to/from the particular **NPA-NXXs** associated with the specific Rate Center.
- 1.57 "Real Time" means interactive system-to-system communications and response (note: the speed of interaction of the systems will necessarily depend upon accuracy of input and network capabilities), with the reporting on, or the recording of, the event as simultaneous with the occurrence of the event as the actual system permits.
- 1.58 "Routing Point" denotes a location that a LEC has designated on its network as the homing (routing) point for **traffic** that terminates to Exchange Services provided by the LEC that bear a certain NPA-NXX designation. The Routing Point is used to calculate airline mileage for the distance-sensitive transport element charges of Switched Access Services, Pursuant to **Bellcore** Practice **BR795-100-100**, the Routing Point may be an end office location, or a "LEC Consortium Point of Interconnection." The Routing Point must be in the same LATA as the associated NPA-NXX.

- 1.59 "Service Control Point" or "SCP" is the node in the signaling network to which informational requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from the SSP, performs subscriber or application-specific service logic, and then sends instructions back to the SSP on how to continue call processing.
- 1.60 "Service Switching Point" or "SSP" means a Signaling Point that can launch queries to databases and receive/interpret responses used to provide specific customer services.
- 1.61 "Signalina Point" or "SP" means a node in the CCS network that originates and/or receives signaling messages, or transfers signaling messages from one signaling link to another, or both.
- 1.62 "Signaling System 7" or "SS7" means the signaling protocol, Version 7, of the CCS network, based upon American National Standards Institute ("ANSI") standards.
- 1.63 "Signal Transfer Point" or "STP" means a packet switch in the CCS network that is used to route signaling messages among **SSPs**, **SPs**, **SCPs** and other **STPs** in order to set up calls and to query databases for advanced services. GTE's network includes mated pairs of local and regional **STPs**. **STPs** are provided in pairs for redundancy.
- 1.64 "Subsidiary" of a Party means a corporation or other **legal** entity that is majority owned by such Party.
- 1.65 "Synchronous Optical Network" or "SONET" means synchronous electrical ("STS") or optical channel ("OC") connections between **LECs**.
- 1.66 "Switched Access Service" means the offering of facilities for the purpose of the origination or termination of traffic to or from Exchange Service customers in a given area pursuant to a switched access tariff. Switched Access Services include: Feature Group A, Feature Group **B**, Feature Group 0,800 access and 900 access services.
- 1.67 "Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- 1.68 "Trunk Side" refers to a central office switch connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity, for example, to a private branch exchange ("PBX") or another central office switch. Trunk side connections offer those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone station sets.
- 1.69 Undefined Terms The Parties acknowledge that terms may appear in this Agreement which are not defined and agree that any such terms shall be construed in accordance **with their customary** usage in the telecommunications industry as of the effective date of this Agreement.
- 1.70 "Vertical Features" (including "CLASS Features") means vertical services and switch functionalities provided by GTE, including: Automatic Call Back; Automatic Recall; Call Forwarding Busy Line/Don't Answer; Call Forwarding Don't Answer; Call Forwarding Variable; Call Forwarding-Busy Line; Call Trace; Call Waiting; Call Number Delivery Blocking Per Call; Calling Number Blocking Per Line; Cancel Call Waiting; Distinctive Ringing/Call Waiting; Incoming Call Line Identification Delivery; Selective Call Forward; Selective Call Rejection; Speed Calling; and Three Way Calling/Call Transfer.

- 1.71 "Wire Center" means a **building or** space within a building that serves as an aggregation point on a **LEC's** network, where transmission facilities and circuits are connected or switched.

ARTICLE III
GENERAL PROVISIONS

1 Scope of General Provisions. 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 take precedence, these General Provisions apply to all Articles and Appendices of this Agreement.

2 Term and Termination.

2.1 Term. Subject to the termination provisions contained in this Agreement, the term of this Agreement shall be two (2) years from the effective date referenced Article III, Section 37 of this Agreement and shall continue in force and in effect until the earlier of the following: (i) a new Agreement addressing all of the terms of this Agreement becomes effective between the Parties or (ii) six months after the expiration of the initial period of the Agreement. The Parties agree to commence negotiations on USX's request, to be conducted pursuant to Section 252 of the Act, on a new Agreement no less than six (6) months before ~~the end~~ of the initial two (2) year period after this Agreement becomes effective.

2.2 Post-Termination Arranaements. Except in the case of termination as a result of either Party's default, for service arrangements made available under this Agreement and existing at the time of termination, those arrangements may continue without interruption under (a) a new arrangement voluntarily executed by the Parties; (b) standard terms and conditions approved and made generally effective by the Commission, if any; or (c) tariff terms and conditions made generally available to all competitive local exchange carriers.

2.3 Termination Upon Default. Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party: provided however, that the non-defaulting Party notifies the defaulting party in writing of the alleged default and that the defaulting Party does not cure the alleged default within sixty (60) calendar days of receipt of written notice thereof. Default is **defined** to include:

(a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or

(b) A Party's refusal or failure in any material respect properly to perform its obligations under this Agreement, or the violation any of the material terms or conditions of this Agreement..

2.4 Liability upon Termination. Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.

2.5 Termination Uoon Sale. Notwithstanding anything to the contrary contained herein, if a Party proposes to sell or otherwise transfer telephone exchanges or a portion thereof to which this Agreement applies, the following shall apply. The Party shall provide the other Party with at least one hundred and **fifty** (150) calendar days prior written notice of such transaction. The other Party may thereafter submit a Bona Fide Request to the purchasing entity to begin negotiations under the terms and conditions of the Telecommunications Act of 1996 with the intent of entering into a new agreement covering the sold or transferred telephone exchanges. This Agreement shall remain in effect for the sold or transferred telephone exchanges until completion of the sale or transfer and shall remain in full force and effect in the remaining operating areas that are unaffected by such sale or transfer.

- 3 **Amendments.** Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.
- 4 **Assignment.** Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that either Party may assign all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a Subsidiary or Affiliate of that Party without consent, but with written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party.
- 5 **Authority.** Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.
- 6 **Billing and Payment.** Except as provided elsewhere in this Agreement and where applicable, in conformance with **MECAB** and **MECOD** guidelines, USX and GTE agree to exchange all information to accurately, reliably, and properly bill for features, functions and services rendered under this Agreement.
- 6.1 **Dispute.** If either Party disputes a billing statement, it shall notify the other Party in writing regarding the nature and the basis of the dispute within forty-five (45) calendar days of the statement date or the dispute shall be waived. Both Parties shall diligently work toward resolution of all billing issues.
- 6.2 **Late Payment Charge.** If any undisputed amount due on the billing statement is not received by Provider on the payment due date, Provider may charge, and Customer agrees to pay, interest on the past due balance at a rate equal to the lesser of one and one-half percent (1½%) per month or the maximum **nonusurious** rate of interest under applicable law. Late payment charges shall be included on the next statement.
- 6.3 **Taxes.** Provider shall charge and collect from Customer, and Customer agrees to pay to Provider, appropriate federal, state, and local taxes, except to the extent Customer **notifies** Provider and provides to Provider appropriate documentation that Customer qualifies for a full or partial exemption.
- 6.4 **Due Date.** Payment is due 30 calendar days from the bill date or 20 calendar days from receipt of bill whichever is later.
- 6.5 **Audit Rights.** Each Party shall have a right to audit all bills and charges rendered by the other pursuant to this Agreement, verifying the accuracy of items according to the terms agreed to by the Parties, including but not limited to, the charges for services being provided on a wholesale basis pursuant to this Agreement, usage recording and provisioning, and nonrecurring charges. Such audits shall be subject to the same terms and conditions as set forth in Article IV, section 3.2.
- 6.5.1 **Responsibility for Payment.** GTE may charge USX and USX will pay GTE a deposit before GTE is required to perform under this agreement if the CLEC has not established a good payment history **with** GTE. Such deposit will be calculated based on GTE's estimated two-month charges to USX using **USX's** forecast of resale lines and unbundled loops and ports. Interest will be paid on the deposit in accordance with state requirements for end user deposits.
- 7 **Binding Effect.** This Agreement shall be binding on and inure to the **benefit** of the respective successors and permitted assigns of the Parties.

8 Compliance with Laws and Regulations. Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement,

9 Confidential Information.

9.1 Identification. Either Party may disclose to the other proprietary or confidential customer, technical, or business information in written, graphic, oral or other tangible or intangible forms ("**Confidential** Information"). In order for information to be considered Confidential Information under this Agreement, it must be marked "Confidential" or "Proprietary," or bear a marking of similar import, Orally or visually disclosed information shall be deemed Confidential Information only if contemporaneously identified as such and reduced to writing and delivered to the other Party with a statement or marking of confidentiality within thirty (30) calendar days after oral or visual disclosure.

9.2 Handling. In order to protect such Confidential Information from improper disclosure, each Party agrees:

(a) That all Confidential Information shall be and shall remain the exclusive property of the source;

(b) To limit access to such Confidential Information to authorized employees who have a need to know the Confidential Information for performance of this Agreement;

(c) To keep such Confidential Information confidential and to use the same level of care to prevent disclosure or unauthorized use of the received Confidential information as it exercises in protecting its own Confidential Information of a similar nature;

(d) Not to copy, publish, or disclose such Confidential Information to others or authorize anyone else to copy, publish, or disclose such Confidential Information to others without the prior written approval of the source;

(e) To return promptly any copies of such Confidential Information to the source at its request: and

(f) To use such Confidential Information only for purposes of fulfilling work or services performed hereunder and for other purposes **only upon** such terms as may be agreed upon between the Parties in writing.

9.3 Exceptions. These obligations shall not apply to any **Confidential** information that was legally in the recipients possession prior to receipt from the source, was received in good faith from a third party not subject to a confidential obligation to the source, now is or later becomes publicly known through no breach of confidential obligation by the recipient, was developed by the recipient without the developing persons having access to any of the Confidential Information received in confidence from the source, or that is required to be disclosed pursuant to subpoena or other process issued by a court or administrative agency having appropriate jurisdiction, provided, however, that the recipient shall give prior notice to the source and shall reasonably cooperate if the source deems it necessary to seek protective arrangements.

9.4 Survival. The obligation of confidentiality and use with respect to Confidential Information disclosed by one Party to the other shall survive any termination of this Agreement for a period of three (3) years from the date of the initial disclosure of the Confidential Information.

- 9.5 Non-Disclosure. Any Confidential Information that was provided by either Party to the other during negotiations prior to the execution of this Agreement, and that was identified as **Confidential** at that time, shall be governed by this paragraph 9. This Agreement shall not replace any previous nondisclosure agreement between the Parties relating to such Information.
- 10 Good Faith Performance. In the performance of their obligations under this Agreement, the Parties shall act in good faith. In situations in which notice, approval, or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be unreasonably withheld, delayed, or conditioned.
- 11 Cooperation on Fraud Minimization. USX assumes responsibility for all fraud associated with its end user customers and accounts. The Parties shall cooperate with one another to investigate, minimize and take corrective action in cases of fraud. The Parties' fraud correction, minimization and corrective procedures are to be cost effective and implemented so as not to unreasonably burden or harm one Party as compared to the other. At a minimum, such cooperation shall include, when permitted by law or regulation, providing the other Party, upon reasonable request, information concerning end users who terminate services to that Party without paying all outstanding charges, when that Party is notified that such end user seeks service from the other Party.
- 12 Dispute Resolution.
- 12.1 Alternative to Litigation. Except as provided under Section 252 of the Act with respect to arbitration over or the approval of this Agreement by the Commission and appeals therefrom, the Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order, injunction or declaration related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedure as their sole remedy **with** respect to any controversy or claim arising out of or relating to this Agreement or its breach: provided, however, that either Party may elect, before filing the claim or response in arbitration (as the case may be) to submit an otherwise arbitrable dispute to a Commission or court which would have jurisdiction were it not arbitrable.
- 12.2 Neotiations. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under 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 production, which 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 admissible, be admitted in evidence in the arbitration or lawsuit.
- 12.3 Arbitration. If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party may demand such arbitration in accordance with the procedures set out in those rules, Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each Party may submit in writing to a Party, and that Party shall so respond to, a maximum of any combination of thirty-five

(35) (none of which may have subparts) of the following: interrogatories, demands to produce documents, or requests for admission, Each Party is also entitled to take the oral deposition of three individuals of another Party. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The arbitration shall be held in a mutually agreeable city. The arbitrator shall control the scheduling so as to process the matter expeditiously. The **Parties may** submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

12.4 Expedited Arbitration Procedures. If **the issue** to be resolved through the negotiations referenced in Section 12.2 **directly** and materially affects service to either Party's end user customers, then the period of resolution of the dispute through negotiations before the dispute is to be submitted to binding arbitration shall be five (5) Business Days. Once such a service-affecting dispute is submitted to arbitration, the arbitration shall be conducted **pursuant** to the expedited procedures rules of the Commercial Arbitration Rules of the American Arbitration Association (i.e., rules 53 through 57).

12.5 Costs. Each Party shall bear its own costs of these procedures. If a Party believes that a discovery request is **unreasonable** or unduly burdensome, it may seek protection from the Arbitrator, including in the form of cost reimbursement, rescheduling or limitation on same. The Parties shall equally split the fees of the arbitration and the arbitrator.

12.6 Continuous Service. Absent temporary or permanent injunctive relief, the Parties shall continue performing their obligations under this Agreement during the **pendency** of any dispute resolution procedure.

13 Entire Agreement. This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

14 Expenses. Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

1 Force Majeure. In the event **performance** of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of **fire**, flood, earthquake or likes acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the **government** in its sovereign capacity, labor **difficulties**, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall **likewise be** excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); **provided however**, that the Party so affected shall use diligent efforts to avoid or remove such causes of nonperformance and both Parties shall proceed whenever such causes are removed or cease.

- 16 Governing Law. Except to the extent governed by Federal law, this Agreement shall be governed by and construed in accordance with the domestic laws of the state where the Services are provided or the facilities reside and shall be subject to the exclusive jurisdiction of the courts therein.
- 17 Headings. The headings in this Agreement are inserted for convenience and **identification** only and shall not be considered in the interpretation of this Agreement,
- 18 Independent Contractor Relationship. The persons provided by each Party shall be solely that Party's employees and shall be under the sole and exclusive direction and control of that Party. They shall not be considered employees of the other Party for any purpose. Each Party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each Party shall also be responsible for payment of taxes, including federal, state and municipal taxes, chargeable or assessed with respect to its employees, such as Social Security, unemployment, workers' compensation, disability insurance, and federal and state withholding. Each Party shall indemnify the other for any loss, damage, liability, claim, demand, or penalty that may be sustained by reason of its failure to comply with this provision.
- 19 Limitation of Liability and Indemnity.
- 19.1 Indemnification. Each Party agrees to release, indemnify, defend, and hold harmless the other Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, whether suffered, made, instituted, or asserted by any other party or person, for invasion of privacy, personal injury to or death of any person or persons, or for losses, damages, or destruction of property, whether or not owned by others, proximately caused by the indemnifying Party's negligence or willful misconduct, regardless of form of action. The indemnified Party agrees to notify the other Party promptly, in writing, of any written claims, lawsuits, or demands for which it is claimed that the indemnifying Party is responsible under this Section and to cooperate in every reasonable way to facilitate defense or settlement of claims. The indemnifying Party shall have complete control over defense of the case and over the terms of any proposed settlement or compromise thereof. The indemnifying Party shall not be liable under this Section for settlement by the indemnified Party or any claim, lawsuit, or demand, if the indemnifying Party has not approved the settlement in advance, unless the indemnifying Party has had the defense of the claim, lawsuit, or demand tendered to it in writing and has failed to assume such defense. In the event of such failure to assume defense, the indemnifying Party shall be liable for any reasonable settlement made by the indemnified Party without approval of the indemnifying Party.
- 191.2 End User and Content-Related Claims. Customer agrees to release, indemnify, defend, and hold harmless Provider, its affiliates, and any third-party provider or operator of facilities involved in the provision of Services, unbundled network elements or facilities under this Agreement (collectively, the "Indemnified Parties") from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by Customer's end users against an Indemnified Party arising from Services, unbundled network elements or facilities. Customer further agrees to release, indemnify, defend, and **hold harmless** the Indemnified Parties from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by any third party against an **Indemnified** Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by Customer or Customer's end users, or any other act or omission of Customer or

Customer's end users. The **provisions** of this section 19.2 shall not exculpate Provider from judgment for liability arising out of its willful misconduct.

- 19.3 **DISCLAIMER.** EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES TO CUSTOMER CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, UNBUNDLED NETWORK ELEMENTS OR FACILITIES PROVIDED UNDER THIS AGREEMENT. PROVIDER DISCLAIMS, **WITHOUT** LIMITATION, ANY WARRANTY OR **GÚARANTEE** OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.
- 19.4 **Limitation of Liability.** Each Party's liability, whether in contract, tort or otherwise, shall be limited to direct damages, which in Provider's case shall not exceed the pro rata portion of the monthly charges for the Services. Unbundled Network Elements or Facilities for the time period during **which** the Services, Unbundled Network Elements or Facilities provided pursuant to this Agreement are inoperative, not to exceed in total Providers monthly charge to Customer. Under no circumstance shall either Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits. damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, the Parties recognize that a Party may, from time to time, provide advice, make recommendations, or supply other analysis related to the Services, unbundled network elements or facilities described in this Agreement, and, while the Party shall use diligent efforts in this regard, the other Party acknowledges and agrees that this limitation of **liability** shall apply to provision of such advice, recommendations, and **analysis.**The limit that applies to direct damages quoted above will not apply in cases of injury caused by a Party's willful misconduct, provided that all other provisions of this subparagraph 19.4 (including limitation to direct damages) will apply.
- 19.5 **Intellectual Property.** Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the **benefit** of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.
- 20 **Multiple Counterparts.** This Agreement may be executed multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.
- 21 **No Offer.** Submission of this Agreement for examination or signature does not constitute an offer by Provider for the provision of the products or **services** described herein, This Agreement will be effective only upon execution and delivery by both Parties.
- 22 **No Third Party Beneficiaries.** Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other **right** or privilege.
- 23 **Notices.** Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if **served** personally, on the date receipt is acknowledged in writing by the recipient if delivered by regular U.S. mail, or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that

obtains a written receipt. Notice may also be provided by facsimile, which shall be effective on the date received if received before 5:00 p.m. (at the recipients location) on a Business Day and which otherwise shall be effective on the next Business Day following the date of receipt. "Business Day" shall mean Monday through Friday, except for holidays on which the U. S. mail is not delivered. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address indicated below or such address as the Party to be notified has designated by giving notice in compliance with this section:

If to GTE: GTE North Incorporated
GTE South Incorporated
Attention: Assistant Vice President/Associate General Counsel
Business Development & Integration
600 Hidden Ridge -HQE03J43
Irving, TX 75038
Telephone number: 972/718-6361
Facsimile number: 972/718-3403

and

GTE North Incorporated
GTE South Incorporated
Attn: Director-Wholesale Contract Compliance
Network **Services**
600 Hidden Ridge -HQE03D52
Irving, TX 75038
Telephone Number: 972/718-5988
Facsimile Number: 972/719-1519

If to usx: US **Xchange** of Illinois, L.L.C.
Attention: David J. Easter, Vice President, Development
20 Monroe N.W.
Suite 450
Grand Rapids, Michigan 49503
Facsimile number: (616) 493-7007

24 Protection.

- 24.1 Impairment of Service. The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not interfere **with** or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to their plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities or create hazards to the employees of either Party or to the public (each hereinafter referred to as an "Impairment of Service").
- 24.2 Resolution. If either Party causes an Impairment in Service, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem and that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, then the Impaired Party may at its option temporarily discontinue the use of the affected circuit, facility or equipment.

- 25 Publicity. Each Party shall give the other at least 48 hours prior written notice of any news release, public announcement, advertising, or any form of publicity pertaining to this Agreement, provision of services pursuant to it, or association of the Parties with respect to provision of the services described in this Agreement. Each Party shall provide the other at least 24 hours prior written notice of a news release related to the execution, filing and approval of this Agreement.
- 26 Regulatory Agency Control. This Agreement shall at all times be subject to changes, modifications, orders, and rulings by the Federal Communications Commission **and/or** the applicable state utility regulatory commission to the extent the substance of this Agreement is or becomes subject to the jurisdiction of such agency. Notwithstanding the date set forth in the first paragraph of this Agreement, if this Agreement is subject to advance approval of a regulatory agency, this Agreement shall not become effective until five business days after receipt by GTE of written notice of such approval. Such date shall become the "effective date" of this Agreement for all purposes. While awaiting Commission approval of this Agreement, each Party shall, in good faith, undertake such reasonable activities related to planning for and testing of services and facilities to be provided under this Agreement as may be appropriate to enable it to begin performing its obligations after approval is received.
- 27 Regulatory Matters. GTE shall be responsible for obtaining and keeping in effect all FCC, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. USX shall be responsible for obtaining and keeping in effect all FCC, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to USX Customers contemplated by this Agreement.
- 28 Rule of Construction. No rule of construction requiring interpretation against the drafting party hereof shall apply in the interpretation of this Agreement.
- 29 Section References. Except as otherwise specified, references within an Article of this Agreement to a Section refer to Sections within that same Article.
- 30 Service Standards.
- 30.1 The parties shall meet applicable quality of local service standards imposed by the Commission and will provide a level of services to each other under this Agreement in compliance with the nondiscrimination requirements of the Act.
- 30.2 GTE shall provide USX with notice of any new or changed feature, functionality or price pertaining to pre-ordering, ordering/provisioning, maintenance and billing for "Services" necessary to ensure that USX can provide retail local exchange services which are at least equal in quality to comparable GTE retail local exchange services.
- 30.3 The parties will alert each other to any network events that can result or have resulted in service interruption, blocked calls, **and/or** changes in network performance. GTE will treat USX in a nondiscriminatory manner equal to GTE's established business practice, e.g., GTE will advise USX of any such network event resulting in blocked calls or lost features.
- 30.4 Performance Measures set forth in Appendix J shall apply under the terms and conditions set forth in that Appendix J.
- 31 Severability. If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal of that provision results, in the opinion of either Party, in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon within a

reasonable period, either Party may terminate this Agreement without penalty or liability for such termination upon written notice to the other Party.

- 32 Standard Practices. The Parties acknowledge that GTE shall be adopting some industry standard practices and/or establishing its own standard practices to various requirements hereunder applicable to the CLEC industry which may be added in the Guide. USX agrees that GTE may implement such practices to satisfy any GTE obligations under this Agreement. A copy has been provided to USX via the Internet at <http://www.gte.com/CLECDocs/mainpage.htm> and is incorporated by reference into this Agreement. Changes which may be made to the Guide from time to time shall not limit or restrict either Party's contractual obligations as set forth herein, including obligations to provide services.
- 33 Subcontractors. Provider may enter into subcontracts with third parties or affiliates for the performance of any of Provider's duties or obligations under this Agreement.
- 34 Subsequent Law. The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such subsequently prescribed law, rule, regulation or guideline, the parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to **bring** them into compliance with such law, rule, regulation or guideline.
- 35 Taxes. Any state or local excise, sales, ad **valorem**, or use taxes (excluding any taxes levied on income) resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party. The collecting Party shall charge and collect from the obligated Party, and the obligated Party agrees to pay to the collecting Party, all applicable taxes, except to the extent that the obligated Party notifies the collecting Party and provides to the collecting Party appropriate documentation that qualifies the obligated Party for a full or partial exemption. Any such taxes shall be shown as separate items on applicable billing documents between the Parties. The obligated Party may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such Party shall not permit any lien to exist on any asset of the other Party by reason of the contest. The collecting Party shall cooperate in any such contest by the **other Party**.
- 36 Trademarks and Trade Names. Neither Party shall publish or use any advertising, sales promotions or other publicity materials that use the other Party's logo, trademarks, service marks or trade names without the **prior** written approval of the other Party, and nothing in this Agreement shall grant, suggest, or imply any license or authority for the other Party to use such logo, trademarks, service marks, or trade names for any purpose. Notwithstanding the above, a Party may refer truthfully to the name of the other party in response to customers' inquiries relating to service.
- 37 Waiver. The failure of either Party to insist upon the performance of any provision of this Agreement, or to exercise any **right** or privilege granted to it under this Agreement, shall not be construed as a waiver of such provision or any provisions of this Agreement, and the same shall continue in full force and effect.
- 38 Effective Date. If this Agreement or changes or modifications thereto are subject to approval of a regulatory agency, the "effective date" of this Agreement for such purposes will be upon approval by the regulatory agency.
- 39 Environmental Responsibility.
- 39.1 Each Party is required to provide specific notice for potential imminent danger conditions which could include, but is not limited to, a defective utility pole or significant petroleum contamination in a manhole.

In the event USX wishes to bring hazardous materials to GTE facilities, USX will notify GTE and the parties will immediately negotiate the environmental health and safety practices and procedures that USX will observe at GTE facilities. In the event the parties cannot agree on the practices and procedures to be observed, the dispute may be submitted to binding arbitration by either party within five (5) Business Days. Once such a dispute is submitted to arbitration, the arbitration shall be conducted pursuant to the expedited procedures rules of the Commercial Arbitration Rules of the American Arbitration Association (i.e., rules 53 through 57). Each Party shall bear its own costs of these procedures. The Parties shall equally split the fees of the arbitration and the arbitrator.

- 39.2 GTE will make available additional environmental control or safety procedures for USX to review, and USX will make best efforts to follow these procedures when working at a GTE Facility. Providing these procedures, beyond government regulatory Compliance requirements, is the decision of GTE. These practices/procedures will represent the regular work practices required to be followed by the employees and contractors of GTE for safety and environmental protection.
- 39.3 Any materials brought to or stored at a GTE Facility by USX are the property of USX. USX must demonstrate adequate emergency response capabilities for its materials brought to or stored at the GTE Facility.
- 39.4 If Third Party Contamination is discovered at a GTE Facility, the Party uncovering the contamination must timely notify the proper safety or environmental authorities, to the extent that such notification is required by applicable law. If USX discovers contamination which it reasonably believes was caused by a Third Party, USX will immediately notify GTE and will consult with GTE prior to making any required notification, unless the time required for prior consultation would preclude USX from complying with an applicable reporting requirement.
- 39.5 USX shall obtain and use its own environmental permits, approvals, or identification numbers to the extent that such permits, approvals, or identification numbers are required under applicable laws. If the relevant regulatory authority refuses to issue a separate permit, approval, or identification number to USX after a complete and proper request by USX for same, then GTE's permit, approval, or identification number may be used as authorized by law and upon prior approval by GTE. In that case, USX must comply with all of GTE's environmental, health, and safety practices/procedures relating to the activity in question, including, but not limited to, use of environmental "best management practices (BMP)" and selection criteria for vendors and disposal sites. GTE will provide USX such BMP and the complete information needed to follow such practices in a timely manner prior to the need for such information occurring. The Parties acknowledge and agree that nothing in this Agreement, use of GTE's permits, approvals, or identification numbers, or compliance with GTE's practices/procedures constitutes a representation or warranty that USX's activities will be in compliance with applicable laws, and such compliance or use of GTE's permits, approvals, or identification numbers creates no right of action against GTE.
- 39.4 USX will make best efforts to ensure that its visitors to GTE facilities comply with GTE security, fire safety, safety, environmental and building practices/codes including equivalent employee training when working in GTE facilities.
- 39.5 GTE and USX shall coordinate plans or information required to be submitted to government agencies, such as emergency response plans and community reporting. If fees are associated with filing, GTE and USX must develop a cost sharing procedure.
- 39.6 Activities impacting safety or the environment of a Right of Way must be harmonized with the specific agreement and the relationship between GTE and the private land

owner. This could include limitations on equipment access due to environmental conditions (e.g., wetland area with equipment restrictions).

40 TBD Prices. Numerous provision in this Agreement and its Attachments refer to pricing principles. If a provision references GTE prices in an Attachment and there are no corresponding prices in such Attachment, such price shall be considered "To Be Determined" (TBD). With respect to all TBD prices, prior to USX ordering any such TBD item, the Parties shall meet and confer to establish a price. If the parties are unable to reach agreement on a price for such item, an interim price shall be set for such item that is equal to the price for the nearest analogous item for which a price has been established (for example, if there is not an established price for a nonrecurring charge (NRC) for a specific network element, the parties would use the NRC for the most analogous retail service for which there is an established price.) Any interim prices so set shall be subject to modification by any subsequent decision of the Commission. If an interim price is different from the rate subsequently established by the Commission, any underpayment shall be paid by USX to GTE, and any overpayment shall be refunded by GTE to USX, within 45 business days after the establishment of the price by the Commission.

41 Amendment of Certain Rates, Terms and Conditions. The Parties agree as follows with respect to modification of the rates, terms and conditions initially provided for herein:

The parties each agree and acknowledge that they have mutually agreed to incorporate into this Agreement the rates, terms and conditions that are specified in Appendix 41A in order to temporarily resolve issues regarding this Agreement without recourse to formal arbitration pursuant to § 252 of the Act. Accordingly, this Agreement has been reached as a result of compromise, and the execution of this Agreement does not constitute a representation by either party that the rates, terms and conditions set forth in Appendix 41A are either required by any applicable law or regulation or equal to the rates, terms and conditions that would be established as a result of formal arbitration pursuant to § 252 of the Act. Moreover, neither party waives any right with respect to any position it may take in the future with respect to the establishment of rates, terms and conditions related to the subject matter of this Agreement which may become effective subsequent to the termination of this Agreement.

GTE reserves all rights to challenge the lawfulness of the AT&T terms. Therefore, the AT&T Terms are used herein only because the Commission has already issued its decision approving the AT&T Terms in the AT&T Arbitration. USX has represented that it would request the same terms in an arbitration before the Commission, and the parties desire to avoid another arbitration over the same terms.

The rates, terms and conditions in this Agreement that are specified in Appendix 41A (the "AT&T Terms") were taken from the GTE/AT&T Interconnection, Resale and Unbundling arbitration decision ("AT&T Arbitration") approved by the Commission in Case No. 96-AB-005. The rates not included in this Agreement but referenced in Appendix 41 B (the "GTE Terms") were not accepted in the AT&T Arbitration by the Commission in Case No. 96-AB-005. GTE and USX agree that if the AT&T Terms are deemed to be unlawful, or are stayed, enjoined or otherwise modified, in whole or in part, by a court or commission of competent jurisdiction, then this Agreement shall be deemed to have been amended accordingly, by modification of the AT&T Terms or, as appropriate, the substitution of GTE Terms for all stayed and enjoined AT&T Terms, and such amendments shall be effective retroactive to the Effective Date of this Agreement, GTE reserves all rights to challenge the lawfulness of the AT&T Terms.

The parties further agree that the terms and conditions of this Agreement reflect certain requirements of the FCC's First Report and Order in CC Docket No. 96-98. The terms and conditions of this Agreement shall be subject to any and all actions by any court or other governmental authority that invalidate, stay, vacate or otherwise modify the FCC's First Report and Order, in whole or in part ("actions"). To the extent warranted by any such action, the parties agree that this Agreement shall be deemed to have been modified accordingly as in the first

paragraph of this Section 41. The parties agree to immediately apply any affected terms and conditions, including any in other sections and articles of this Agreement, consistent with such action, and **within** a reasonable time incorporate such modified terms and conditions in writing into the Agreement. GTE does not waive any position regarding the illegality or inappropriateness of the FCC's First Report and Order.

The rates (including rates which may be applicable under true-up) specified in both the GTE Terms and the **AT&T** Terms are further subject to amendment, retroactive to the Effective Date of the Agreement, to provide for charges or rate adjustments resulting from future Commission or other proceedings, including but not limited to any generic proceeding to determine GTE's unrecovered costs (e.g., historic costs, contribution, undepreciated reserve deficiency, or similar unrecovered GTE costs (including GTE's end user surcharge)) or other generic **proceeding**, the establishment of a competitively neutral universal service system, or any appeal or other litigation. In the event the Commission sets **generic** interim GTE rates for CLEC purchase of GTE unbundled network elements, interconnection or services, those rates shall substitute for those provided for in the agreement going forward, subject to applicable law and subject to any future amendment by the Commission.

The parties agree that, in the event that GTE decides to appeal the arbitrated AT&T rates which are applicable here only on an interim basis, the entire record (including but not limited to all evidence and **findings**) from the AT&T Arbitration is incorporated herein by reference pursuant to Section 252(e) of the Act.

If the Commission (or any other commission or federal or state court) in reviewing this Agreement pursuant to applicable state and federal laws, including Section 252(e) of the Telecommunications Act of 1996, deletes or modifies in a material way this Section 41, then the Parties agree that they **will** reopen negotiations within ten (10) days after receipt of the **final** decision making such deletion or modification in order to attempt to craft the new provision that will provide substantially the same protections to GTE and USX as this Section **41**. If the Parties cannot reach agreement on such a provision within twenty (20) calendar days thereafter, the Parties agree that this entire Agreement is void. In such event, each Party shall have 25 days following the close of the **20-day** negotiation period within which to file a petition for arbitration before the Commission under Section 252(e) of the Telecommunications Act of 1998 of the issues that remain in dispute under this paragraph.