

AGREEMENT

by and between

BitWise Communications, Inc. d/b/a OmniLEC

and

Gallatin River Communications, LLC

FOR THE

State of Illinois

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AGREEMENT

PREFACE

This Agreement ("Agreement") shall be deemed effective upon approval by the Illinois Commerce Commission (ICC) (the "Effective Date"), between **Gallatin River Communications, LLC (GRC)**, a corporation organized under the laws of the State of Delaware with offices at 103 S. Fifth Street, Mebane, NC 27302 and **BitWise Communications, Inc. d/b/a OmniLEC (BITWISE)** a corporation organized under the laws of Illinois with offices at 682 High Point Lane, East Peoria, IL 61611, (GRC and BITWISE may be referred to hereinafter, each, individually as a "Party", and, collectively, as the "Parties"). BITWISE may also be referred herein as the "CLEC" and GRC may be referred to as the "ILEC, LEC or RLEC".

RECITALS

WHEREAS, Section 251 of the Telecommunications Act of 1996 (the "Act") imposes specific obligations upon GALLATIN to negotiate in good faith in accordance with Section 252 of the Act, an agreement embodying the terms and conditions of the provision of certain telecommunications services and facilities to CLEC and other terms and conditions that are legitimately related to, and constituting a part of, said arrangements; and

WHEREAS, pursuant to Section 252(a) of the Act, CLEC has issued a written request to GALLATIN to enter into said negotiations; and

WHEREAS, the Parties completed good faith negotiations that led to the services and facilities arrangements, including all legitimately related terms and conditions, described herein;

WHEREAS, the Parties are both a wireline Telecommunications Carrier, authorized by the Illinois Commerce Commission ("Commission" or "PSC"), and as defined by the ACT (Section 3 Definitions (47 U.S.C.153) (43), (44)), and that they are providing and wish to exchange "Telecommunications" traffic with each other as specified by Attachment 2 herein and that both Parties are authorized to provide telecommunications services in the State of Illinois; This entire agreement applies to the Parties only to the extent the Parties are engaged in providing Telecommunications as Telecommunications Carriers as defined by the ACT. 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, and without waiving any reservation of rights set forth herein, GALLATIN and CLEC hereby covenant and agree as follows.

GENERAL TERMS AND CONDITIONS

In consideration of the mutual promises contained in this Agreement, and intending to be legally bound, pursuant to Section 252 of the Act, GRC and CLEC hereby agree as follows:

1. The Agreement

- 1.1 This Agreement (interconnection Agreement (ICA)) includes: (a) the General Terms & Conditions, (b) Definitions/ Glossary, c. Services sections (Interconnection, Resale, Available Network Elements, Rights of Way, General business requirements and Pricing schedules. In addition, GRC Tariffs shall be applicable for governing the terms, conditions and rates of facilities and services which are not subject to federal or state unbundling requirements;
- 1.2 Intentionally left blank.
- 1.3 This Agreement constitutes the entire agreement between the Parties on the subject matter hereof, and supersedes any prior or contemporaneous agreement, understanding, or representation, on the subject matter hereof, provided, however, notwithstanding any other provision of this Agreement or otherwise, this Agreement is an amendment, extension and restatement of the Parties' prior interconnection and resale agreement(s), if any, and, as such, this Agreement is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to any prior interconnection or resale agreements and, accordingly, all monetary obligations of the Parties to one another under any prior interconnection or resale agreements shall remain in full force and effect and shall constitute monetary obligations of the Parties under this Agreement (provided, however, that nothing contained in this Agreement shall convert any claim or debt that would otherwise constitute a prepetition claim or debt in a bankruptcy case into a postpetition claim or debt). In connection with the foregoing, both Parties expressly reserve all of their rights under the Bankruptcy Code and Applicable Law to seek or oppose any relief in respect of the assumption, assumption and assignment, or rejection of any interconnection or resale agreements between the Parties.
- 1.4 Except as otherwise provisioned in the ICA, the ICA may not be waived or modified except by a written document that is signed by the Parties. Subject to the requirements of Applicable Law, a Party shall have the right to add, modify, or withdraw, its Tariff(s) at any time, without the consent of, or notice to, the other Party.

2. Term and Termination

- 2.1 This Agreement shall be effective as of the Effective Date and, unless cancelled or terminated earlier in accordance with the terms hereof, shall continue in full force and effect for two years (the "Initial Term"). Thereafter, this Agreement shall continue in full force and effect unless and until cancelled or terminated as provided in this Agreement.
- 2.2 Either Party may terminate this Agreement effective upon the expiration of the Initial Term or effective upon any date after expiration of the Initial Term by providing written notice of termination at least ninety (90) days in advance of the date of termination.

- 2.3 If either Party provides notice of termination pursuant to Section 2.2 and on or before the proposed date of termination, either Party has requested negotiation of a new interconnection agreement, unless this Agreement is cancelled or terminated earlier in accordance with the terms hereof (including, but not limited to, pursuant to Section 11), this Agreement shall remain in effect until the earlier of: (a) the effective date of a new interconnection agreement between the Parties; or, (b) the date one (1) year after the proposed date of termination.
- 2.4 If either Party provides notice of termination pursuant to Section 2.2 and by 11:59 PM Eastern Time on the proposed date of termination neither Party has requested negotiation of a new interconnection agreement, (a) this Agreement will terminate at 11:59 PM Eastern Time on the proposed date of termination, and (b) the Services being provided under this Agreement at the time of termination will be terminated.

3. Glossary and Attachments

The Glossary and the following Attachments are a part of this Agreement:

(a) the General Terms & Conditions, (b) Definitions/ Glossary, c. Services sections (Interconnection, Resale, Available Network Elements, Rights of Way, General Business requirements and Pricing Schedules and GRC CLEC Services Guide)

- 3.1 The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the State of Illinois, without regard to its conflicts of laws rules. All disputes relating to this Agreement shall be resolved through the application of such laws.
- 3.2 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement.
- 3.3 Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.
- 3.4 Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.
- 3.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.
- 3.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually

acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. If within thirty (30) days of the effective date of such decision, determination, action or change, the Parties are unable to agree in writing upon mutually acceptable revisions to this Agreement, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction, without first pursuing dispute resolution in accordance with Section 13 of this Agreement.

3.6.1 Either Party may submit any disputed matters in a re-negotiation of this Agreement or negotiation for a new Agreement to the Commission for arbitration in accordance with Section 252 of the Act. Should the Commission decline jurisdiction, either Party may petition the FCC under the Act.

4. Assignment

Neither Party may assign this Agreement or any right or interest under this Agreement, nor delegate any obligation under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, either Party may assign this Agreement to an affiliate without the other Party's written consent, but with written notice thereof to the other Party, upon the provision of reasonable evidence by the proposed assignee that it has the resources, ability, and authority to provide satisfactory performance under this Agreement. For purposes of this Section 5, the term "affiliate" shall mean any entity that controls, is controlled by, or is under common control with the assigning Party. Any attempted assignment or delegation in violation of this Section 4 shall be void and ineffective and constitute default of this Agreement.

5. Assurance of Payment

- 5.1 Upon request by GRC, CLEC shall, at any time and from time to time, provide to GRC adequate assurance of payment of amounts due (or to become due) to GRC hereunder.
- 5.2 Assurance of payment of charges may be requested by GRC if CLEC (a) prior to the Effective Date, has failed to timely pay a bill rendered to CLEC by GRC or its Affiliates, (b) on or after the Effective Date, fails to timely pay a bill rendered to CLEC by GRC or its Affiliates, or (c) admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 5.3 Unless otherwise agreed by the Parties, the assurance of payment shall consist of an unconditional, irrevocable standby letter of credit naming GRC as the beneficiary thereof and otherwise in form and substance satisfactory to GRC from a financial institution acceptable to GRC. The letter of credit shall be in an amount equal to two (2) months anticipated charges (including, but not limited to, both recurring and non-recurring charges), as reasonably determined by GRC, for the Services to be provided by GRC to CLEC in connection with this Agreement. If CLEC meets the condition in subsection 5.2 (c) above or has failed to timely pay two or more bills rendered by GRC or a GRC Affiliate in any twelve (12)-month period, GRC may, at its option, demand (and CLEC shall provide) additional assurance of payment, consisting of monthly advanced payments of estimated charges as reasonably determined by GRC, with appropriate true-up against actual billed charges no more frequently than once per calendar quarter.
- 5.4 [Intentionally Left Blank].
- 5.5 [Intentionally Left Blank].

- 5.6 GRC may (but is not obligated to) draw on the letter of credit upon notice to CLEC in respect of any amounts to be paid by CLEC hereunder that are not paid within thirty (30) days of the date that payment of such amounts is required by this Agreement.
- 5.7 If GRC draws on the letter of credit, upon request by GRC, CLEC shall provide a replacement or supplemental letter of credit conforming to the requirements of Section 5.3.
- 5.8 Notwithstanding anything else set forth in this Agreement, if GRC makes a request for assurance of payment in accordance with the terms of this Section, then GRC shall have no obligation thereafter to perform under this Agreement until such time as CLEC has provided GRC with such assurance of payment.
- 5.9 The fact that a letter of credit is requested by GRC hereunder shall in no way relieve CLEC from compliance with the requirements of this Agreement (including, but not limited to, any applicable Tariffs) as to advance payments and payment for Services, nor constitute a waiver or modification of the terms herein pertaining to the discontinuance of Services for nonpayment of any amounts payment of which is required by this Agreement.

6. Audits

- 6.1 Except as may be otherwise specifically provided in this Agreement, either Party ("Auditing Party") may audit the other Party's ("Audited Party") books, records, documents, facilities and systems for the purpose of evaluating the accuracy of the Audited Party's bills. Such audits may be performed once in each Calendar Year; provided, however, that audits may be conducted more frequently (but no more frequently than once in each Calendar Quarter) if the immediately preceding audit found previously uncorrected net inaccuracies in billing in favor of the Audited Party having an aggregate value of at least \$100,000.
- 6.2 The audit shall be performed by independent certified public accountants selected and paid by the Auditing Party. The accountants shall be reasonably acceptable to the Audited Party. Prior to commencing the audit, the accountants shall execute an agreement with the Audited Party in a form reasonably acceptable to the Audited Party that protects the confidentiality of the information disclosed by the Audited Party to the accountants. The audit shall take place at a time and place agreed upon by the Parties; provided, that the Auditing Party may require that the audit commence no later than sixty (60) days after the Auditing Party has given notice of the audit to the Audited Party.
- 6.3 Each Party shall cooperate fully in any such audit, providing reasonable access to any and all employees, books, records, documents, facilities and systems, reasonably necessary to assess the accuracy of the Audited Party's bills.
- 6.4 Audits shall be performed at the Auditing Party's expense, provided that there shall be no charge for reasonable access to the Audited Party's employees, books, records, documents, facilities and systems necessary to assess the accuracy of the Audited Party's bills.

7. Authorization

- 7.1 The Parties represent and warrant that they are a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois and have full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- 7.2 CLEC Certification.

CLEC has obtained such FCC and Commission authorization as may be required by Applicable Law for conducting business in Illinois. CLEC shall provide proof of such authorization to GRC upon request.

8. Billing and Payment; Disputed Amounts

- 8.1 Except as otherwise provided in this Agreement, each Party shall submit to the other Party on a monthly basis in an itemized form, statement(s) of charges incurred by the other Party under this Agreement.
- 8.2 Except as otherwise provided in this Agreement, payment of amounts billed for Services provided under this Agreement, whether billed on a monthly basis or as otherwise provided in this Agreement, shall be due, in immediately available U.S. funds, on the later of the following dates (the "Due Date"): (a) the due date specified on the billing Party's statement; or (b) twenty (20) days after the date the statement is received by the billed Party, whichever is later. Except as otherwise agreed in writing, payments shall be transmitted by electronic funds transfer.
- 8.3 If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party shall give notice to the billing Party of the amounts it disputes ("Disputed Amounts"), within ninety (90) days of the billing date and include in such notice the specific details and reasons for disputing each item. A Party may also dispute prospectively with a single notice a class of charges that it disputes. Notice of a dispute may be given by a Party at any time, either before or after an amount is paid (but within 90 days), and a Party's payment of an amount shall not constitute a waiver of such Party's right to subsequently dispute its obligation to pay such amount or to seek a refund of any amount paid. The billed Party shall pay by the Due Date all undisputed amounts. Billing disputes shall be subject to the terms of Section 13, Dispute Resolution and Attach 3, Section 3.1.2. Disputed amounts for purposes of credit shall be limited to one (1) year.
- 8.4 Charges due to the billing Party that are not paid by the Due Date or by the 20th day after receipt, whichever is later, shall be subject to a late payment charge. The late payment charge shall be in an amount specified by the billing Party which shall not exceed a rate of one-and-one-half percent (1.5%) (or Gallatin's applicable Tariff) of the overdue amount (including any unpaid previously billed late payment charges) per month.
- 8.5 Although it is the intent of both Parties to submit timely statements of charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and, except for assertion of a provision of Applicable Law that limits the period in which a suit or other proceeding can be brought before a court or other governmental entity of appropriate jurisdiction to collect amounts due, the billed Party shall not be entitled to dispute the billing Party's statement(s) based on the billing Party's failure to submit them in a timely fashion. In no event, however, shall either Party be entitled to payment for charges invoiced more than two (2) years after the invoiced services have been rendered.

9. Confidentiality

- 9.1 As used in this Section 9, "Confidential Information" means the following information that is disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party") in connection with, or anticipation of, this Agreement:
- 9.1.1 Books, records, documents and other information disclosed in an audit pursuant to Section 6;

- 9.1.2 Any forecasting information provided pursuant to this Agreement;
- 9.1.3 Customer Information (except to the extent that (a) the Customer Information is published in a directory, (b) the Customer Information is disclosed through or in the course of furnishing a Telecommunications Service, such as a Directory Assistance Service, Operator Service, Caller ID or similar service, or LIDB service, or (c) the Customer to whom the Customer Information is related has authorized the Receiving Party to use and/or disclose the Customer Information);
- 9.1.4 information related to specific facilities or equipment (including, but not limited to, cable and pair information);
- 9.1.5 any information that is in written, graphic, electromagnetic, or other tangible form, and marked at the time of disclosure as "Confidential" or "Proprietary;" and
- 9.1.6 any information that is communicated orally or visually and declared to the Receiving Party at the time of disclosure, and by written notice with a statement of the information given to the Receiving Party within ten (10) days after disclosure, to be "Confidential" or "Proprietary".

Notwithstanding any other provision of this Agreement, a Party shall have the right to refuse to accept receipt of information which the other Party has identified as Confidential Information pursuant to Sections 9.1.5 or 9.1.6.

9.2 Except as otherwise provided in this Agreement, the Receiving Party shall:

- 9.2.1 use the Confidential Information received from the Disclosing Party only in performance of this Agreement; and
- 9.2.2 using the same degree of care that it uses with similar confidential information of its own (but in no case a degree of care that is less than commercially reasonable), hold Confidential Information received from the Disclosing Party in confidence and restrict disclosure of the Confidential Information solely to those of the Receiving Party's Affiliates and the directors, officers, employees, Agents and contractors of the Receiving Party and the Receiving Party's Affiliates, that have a need to receive such Confidential Information in order to perform the Receiving Party's obligations under this Agreement. The Receiving Party's Affiliates and the directors, officers, employees, Agents and contractors of the Receiving Party and the Receiving Party's Affiliates, shall be required by the Receiving Party to comply with the provisions of this Section 9 in the same manner as the Receiving Party. The Receiving Party shall be liable for any failure of the Receiving Party's Affiliates or the directors, officers, employees, Agents or contractors of the Receiving Party or the Receiving Party's Affiliates, to comply with the provisions of this Section 9.

9.3 The Receiving Party shall return or destroy all Confidential Information received from the Disclosing Party, including any copies made by the Receiving Party, within thirty (30) days after a written request by the Disclosing Party is delivered to the Receiving Party, except for (a) Confidential Information that the Receiving Party reasonably requires to perform its obligations under this Agreement, and (b) one copy for archival purposes only.

9.4 Unless otherwise agreed, the obligations of Sections 9.2 and 9.3 do not apply to information that:

- 9.4.1 was, at the time of receipt, already in the possession of or known to the Receiving Party free of any obligation of confidentiality and restriction on use;

- 9.4.2 is or becomes publicly available or known through no wrongful act of the Receiving Party, the Receiving Party's Affiliates, or the directors, officers, employees, Agents or contractors of the Receiving Party or the Receiving Party's Affiliates;
 - 9.4.3 is rightfully received from a third person having no direct or indirect obligation of confidentiality or restriction on use to the Disclosing Party with respect to such information;
 - 9.4.4 is independently developed by the Receiving Party;
 - 9.4.5 is approved for disclosure or use by written authorization of the Disclosing Party (including, but not limited to, in this Agreement); or
 - 9.4.6 is required to be disclosed by the Receiving Party pursuant to Applicable Law, provided that the Receiving Party shall have made commercially reasonable efforts to give adequate notice of the requirement to the Disclosing Party in order to enable the Disclosing Party to seek protective arrangements.
- 9.5 Notwithstanding the provisions of Sections 9.1 through 9.4, the Receiving Party may use and disclose Confidential Information received from the Disclosing Party to the extent necessary to enforce the Receiving Party's rights under this Agreement or Applicable Law. In making any such disclosure, the Receiving Party shall make reasonable efforts to preserve the confidentiality and restrict the use of the Confidential Information while it is in the possession of any person to whom it is disclosed, including, but not limited to, by requesting any governmental entity to whom the Confidential Information is disclosed to treat it as confidential and restrict its use to purposes related to the proceeding pending before it.
- 9.6 The Disclosing Party shall retain all of the Disclosing Party's right, title and interest in any Confidential Information disclosed by the Disclosing Party to the Receiving Party. Except as otherwise expressly provided in this Agreement, no license is granted by this Agreement with respect to any Confidential Information (including, but not limited to, under any patent, trademark or copyright), nor is any such license to be implied solely by virtue of the disclosure of Confidential Information.
- 9.7 The provisions of this Section 9 shall be in addition to and not in derogation of any provisions of Applicable Law, including, but not limited to, 47 U.S.C. § 222, and are not intended to constitute a waiver by a Party of any right with regard to the use, or protection of the confidentiality of, CPNI provided by Applicable Law.
- 9.8 Each Party's obligations under this Section 9 shall survive expiration, cancellation or termination of this Agreement.

10. Counterparts

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

11. Default

If either Party ("Defaulting Party") fails to make a payment required by this Agreement (including, but not limited to, any payment required by Section 8.3 of undisputed amounts to the billing Party) or materially breaches any other material provision of this Agreement, and such failure or breach continues unabated, uncured and undisputed for thirty (30) days after written notice thereof from the other Party, the other Party may, by written notice to the Defaulting Party, (a) suspend the provision of any or all Services hereunder, or (b) cancel this Agreement and terminate the provision of all Services hereunder. GRC shall notify the Commission of an impending discontinuance and will assist affected customers with finding new carriers consistent with its duties under Illinois law.

12. [Intentionally left blank]

12.1 [Intentionally left blank]

12.2 [Intentionally left blank]

12.3 [Intentionally left blank]

12.4 [Intentionally left blank]

13. Dispute Resolution

13.1 Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties. To initiate such negotiation, a Party must provide to the other Party written notice of the dispute that includes both a detailed description of the dispute or alleged nonperformance and the name of an individual who will serve as the initiating Party's representative in the negotiation. The other Party shall have ten Business Days to designate its own representative in the negotiation. The Parties' representatives shall meet at least once within 45 days after the date of the initiating Party's written notice in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties' representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations.

13.2 If the Parties have been unable to resolve the dispute within 45 days of the date of the initiating Party's written notice, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction.

14. Force Majeure

14.1 Neither Party shall be responsible for any delay or failure in performance which results from causes beyond its reasonable control ("Force Majeure Events"), whether or not foreseeable by such Party. Such Force Majeure Events include, but are not limited to, adverse weather conditions, flood, fire, explosion, earthquake, volcanic action, power failure, embargo, boycott, war, revolution, civil commotion, act of public enemies, labor unrest (including, but not limited to, strikes, work stoppages, slowdowns, picketing or boycotts), inability to obtain equipment, parts, software or repairs thereof, acts or omissions of the other Party, and acts of God.

14.2 If a Force Majeure Event occurs, the non-performing Party shall give prompt notification of its inability to perform to the other Party. During the period that the non-performing Party is unable to perform, the other Party shall also be excused from performance of its obligations to the extent such obligations are reciprocal to, or depend upon, the performance of the non-performing Party that has been prevented by the Force Majeure Event. The non-performing Party shall use commercially reasonable efforts to avoid or remove the cause(s) of its non-performance and both Parties shall proceed to perform once the cause(s) are removed or cease.

14.3 Notwithstanding the provisions of Sections 14.1 and 14.2, in no case shall a Force Majeure Event excuse either Party from an obligation to pay money as required by this Agreement.

14.4 Nothing in this Agreement shall require the non-performing Party to settle any labor dispute except as the non-performing Party, in its sole discretion, determines appropriate.

15. Forecasts

In addition to any other forecasts required by this Agreement, upon request by GRC, CLEC shall provide to GRC forecasts regarding the Services that CLEC expects to purchase from GRC, including, but not limited to, forecasts regarding the types and volumes of Services that CLEC expects to purchase and the locations where such Services will be purchased.

16. Fraud

- 16.1 The Parties agree to cooperate with one another to investigate, minimize, and take corrective action in cases of fraud. The Parties' fraud minimization procedures are to be cost-effective and implemented so as not to unduly burden or harm either Party.
- 16.2 In cases of suspected fraudulent activity by an end user, at a minimum, the cooperation required in Section 16.1 will include providing to the other Party, upon request, information concerning end users who terminate services to that Party without paying all outstanding charges. The Party seeking such information is responsible for securing the end user's permission to obtain such information.
- 16.3 Neither Party assumes responsibility for fraud associated with its Customers and accounts. Neither Party shall bear responsibility for, and neither Party shall have an obligation to investigate or make adjustments to the other Party's account in cases of fraud by the other Party's Customers or other third parties.

17. Good Faith Performance

The Parties shall act in good faith and in compliance with all Applicable Laws in their performance of this Agreement. Except as otherwise expressly stated in this Agreement (including, but not limited to, where consent, approval, agreement or a similar action is stated to be within a Party's sole discretion), where consent, approval, mutual agreement or a similar action is required by any provision of this Agreement, such action shall not be unreasonably withheld, conditioned or delayed. If and, to the extent that, GRC, prior to the Effective Date of this Agreement, has not provided a service or arrangement offered under this Agreement, GRC reserves the right to negotiate in good faith with CLEC reasonable terms and conditions (including, without limitation, rates and implementation timeframes) for such service or arrangement; and, if the Parties cannot agree to such terms and conditions (including, without limitation, rates and implementation timeframes), either Party may utilize the Agreement's dispute resolution procedures.

18. **Governing Law:** This Agreement shall be governed by and construed in accordance with the Telecommunications Act of 1996, applicable federal and (to the extent not inconsistent therewith) domestic laws of the state of Illinois, where the services are provided or the facilities reside and shall be subject to the exclusive jurisdiction of the courts therein.

19. Headings

The headings used in the Principal Document are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of the Principal Document.

20. Indemnification

- 20.1 Each Party ("Indemnifying Party") shall indemnify, defend and hold harmless the other Party ("Indemnified Party"), the Indemnified Party's Affiliates, and the directors, officers and employees of the Indemnified Party and the Indemnified Party's Affiliates, from and against any and all Claims that arise out of bodily injury to or death of any person, or damage to, or destruction or loss of, tangible real and/or personal property of any person, to the extent such injury, death, damage, destruction or loss, was proximately caused by the grossly negligent or intentionally wrongful acts or omissions of the Indemnifying Party, the Indemnifying Party's Affiliates, or the directors, officers,

employees, Agents or contractors (excluding the Indemnified Party) of the Indemnifying Party or the Indemnifying Party's Affiliates, in connection with this Agreement.

20.2 Indemnification Process.

- 20.2.1 As used in this Section 20, "Indemnified Person" means a person whom an Indemnifying Party is obligated to indemnify, defend and/or hold harmless under Section 20.1.
- 20.2.2 An Indemnifying Party's obligations under Section 20.1 shall be conditioned upon the following:
- 20.2.3 The Indemnified Person: (a) shall give the Indemnifying Party notice of the Claim promptly after becoming aware thereof (including a statement of facts known to the Indemnified Person related to the Claim and an estimate of the amount thereof); (b) prior to taking any material action with respect to a Third Party Claim, shall consult with the Indemnifying Party as to the procedure to be followed in defending, settling, or compromising the Claim; (c) shall not consent to any settlement or compromise of a Third Party Claim without the written consent of the Indemnifying Party; (d) shall permit the Indemnifying Party to assume the defense of a Third Party Claim (including, except as provided below, the compromise or settlement thereof) at the Indemnifying Party's own cost and expense, provided, however, that the Indemnified Person shall have the right to approve the Indemnifying Party's choice of legal counsel.
- 20.2.4 If the Indemnified Person fails to comply with Section 20.2.3 with respect to a Claim, to the extent such failure shall have a material adverse effect upon the Indemnifying Party, the Indemnifying Party shall be relieved of its obligation to indemnify, defend and hold harmless the Indemnified Person with respect to such Claim under this Agreement.
- 20.2.5 Subject to 20.2.6 and 20.2.7, below, the Indemnifying Party shall have the authority to defend and settle any Third Party Claim.
- 20.2.6 With respect to any Third Party Claim, the Indemnified Person shall be entitled to participate with the Indemnifying Party in the defense of the Claim if the Claim requests equitable relief or other relief that could affect the rights of the Indemnified Person. In so participating, the Indemnified Person shall be entitled to employ separate counsel for the defense at the Indemnified Person's expense. The Indemnified Person shall also be entitled to participate, at its own expense, in the defense of any Claim, as to any portion of the Claim as to which it is not entitled to be indemnified, defended and held harmless by the Indemnifying Party.
- 20.2.7 In no event shall the Indemnifying Party settle a Third Party Claim or consent to any judgment with regard to a Third Party Claim without the prior written consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed. In the event the settlement or judgment requires a contribution from or affects the rights of an Indemnified Person, the Indemnified Person shall have the right to refuse such settlement or judgment with respect to itself and, at its own cost and expense, take over the defense against the Third Party Claim, provided that in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify or hold harmless the Indemnified Person against, the Third Party Claim for any amount in excess of such refused settlement or judgment.

- 20.2.8 The Indemnified Person shall, in all cases, assert any and all provisions in applicable Tariffs and Customer contracts that limit liability to third persons as a bar to, or limitation on, any recovery by a third-person claimant.
- 20.2.9 The Indemnifying Party and the Indemnified Person shall offer each other all reasonable cooperation and assistance in the defense of any Third Party Claim.
- 20.3 Each Party agrees that it will not implead or bring any action against the other Party, the other Party's Affiliates, or any of the directors, officers or employees of the other Party or the other Party's Affiliates, based on any claim by any person for personal injury or death that occurs in the course or scope of employment of such person by the other Party or the other Party's Affiliate and that arises out of performance of this Agreement.
- 20.4 Each Party's obligations under this Section 20 shall survive expiration, cancellation or termination of this Agreement.

21. Insurance

- 21.1 CLEC shall maintain during the term of this Agreement and for a period of two years thereafter all insurance and/or bonds required to satisfy its obligations under this Agreement (including, but not limited to, its obligations set forth in Section 20 hereof) and all insurance and/or bonds required by Applicable Law. The insurance and/or bonds shall be obtained from an insurer having an A.M. Best insurance rating of at least A-, financial size category VII or greater. At a minimum and without limiting the foregoing undertaking, CLEC shall maintain the following insurance:
 - 21.1.1 Commercial General Liability Insurance, on an occurrence basis, including but not limited to, premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, and personal injury, with limits of at least \$2,000,000 combined single limit for each occurrence.
 - 21.1.2 Commercial Motor Vehicle Liability Insurance covering all owned, hired and non-owned vehicles, with limits of at least \$1,000,000 combined single limit for each occurrence.
 - 21.1.3 Excess Liability Insurance, in the umbrella form, with limits of at least \$1,000,000 combined single limit for each occurrence.
 - 21.1.4 Worker's Compensation Insurance as required by Applicable Law and Employer's Liability Insurance with limits of not less than \$1,000,000 per occurrence.
 - 21.1.5 All risk property insurance on a full replacement cost basis for all of CLEC's real and personal property located at any Collocation site or otherwise located on or in any GRC premises (whether owned, leased or otherwise occupied by GRC), facility, equipment or right-of-way.
- 21.2 Any deductibles, self-insured retentions or loss limits ("Retentions") for the foregoing insurance must be disclosed on the certificates of insurance to be provided to GRC pursuant to Sections 21.4 and 21.4, and GRC reserves the right to reject any such Retentions in its reasonable discretion. All Retentions shall be the responsibility of CLEC.
- 21.3 CLEC shall name GRC and GRC's Affiliates as additional insured's on the foregoing liability insurance.
- 21.4 CLEC shall, within two (2) weeks of the Effective Date hereof at the time of each renewal of, or material change in, CLEC's insurance policies, and at such other times as GRC may reasonably specify, furnish certificates or other proof of the foregoing insurance

reasonably acceptable to GRC. The certificates or other proof of the foregoing insurance shall be sent to: Director - Regulatory Affairs Gallatin River Communications, LLC 103 South 5th Street, PO Box 430 Mebane, NC 27302

- 21.5 CLEC shall require its contractors, if any, that may enter upon the premises or access the facilities or equipment of GRC or GRC's affiliates to maintain insurance in accordance with Sections 21.1 through 21.3 and, if requested, to furnish GRC certificates or other adequate proof of such insurance acceptable to GRC in accordance with Section 21.4
- 21.6 If CLEC or CLEC's contractors fail to maintain insurance as required in Sections 21.1 through 21.4, above, GRC may (but shall not be obligated to) purchase such insurance and CLEC shall reimburse GRC for the cost of the insurance.
- 21.7 Certificates furnished by CLEC or CLEC's contractors shall contain a clause stating: "GRC shall be notified in writing at least thirty (30) days prior to cancellation of, or any material change in, the insurance."

22. Intellectual Property

- 22.1 Except as expressly stated in this Agreement, this Agreement shall not be construed as granting a license with respect to any patent, copyright, trade name, trademark, service mark, trade secret or any other intellectual property, now or hereafter owned, controlled or licensable by either Party. Except as expressly stated in this Agreement, neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right, of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.
- 22.2 Except as stated in Section 22.4, 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 Party or its Affiliates or Customers based on or arising from any Third Party Claim alleging or asserting that the provision or use of any service, facility, arrangement, or software by either Party under this Agreement, or the performance of any service or method, either alone or in combination with the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third person. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim.
- 22.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY EACH PARTY OF THE OTHER'S SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT.
- 22.4 CLEC agrees that the Services provided by GRC hereunder shall be subject to the terms, conditions and restrictions contained in any applicable agreements (including, but not limited to software or other intellectual property license agreements) between GRC and GRC's vendors. GRC agrees to advise CLEC, directly or through a third party, of any such terms, conditions or restrictions that may limit any CLEC use of a Service provided by GRC that is otherwise permitted by this Agreement. At CLEC's written request, to the extent required by Applicable Law, GRC will use GRC's best efforts, as commercially practicable, to obtain intellectual property rights from GRC's vendor to allow CLEC to use the Service in the same manner as GRC that are coextensive with GRC's intellectual property rights, on terms and conditions that are equal in quality to the terms and conditions under which GRC has obtained GRC's intellectual property rights. CLEC shall reimburse GRC for the cost of obtaining such rights.

23. Joint Work Product

The Principal Document is the joint work product of the Parties, has been negotiated by the Parties, and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

24. Law Enforcement

- 24.1 Each Party may cooperate with law enforcement authorities and national security authorities to the full extent required or permitted by Applicable Law in matters related to Services provided by it under this Agreement, including, but not limited to, the production of records, the establishment of new lines or the installation of new services on an existing line in order to support law enforcement and/or national security operations, and, the installation of wiretaps, trap-and-trace facilities and equipment, and dialed number recording facilities and equipment.
- 24.2 A Party shall not have the obligation to inform the other Party or the Customers of the other Party of actions taken in cooperating with law enforcement or national security authorities, except to the extent required by Applicable Law.
- 24.3 Where a law enforcement or national security request relates to the establishment of lines (including, but not limited to, lines established to support interception of communications on other lines), or the installation of other services, facilities or arrangements, a Party may act to prevent the other Party from obtaining access to information concerning such lines, services, facilities and arrangements, through operations support system interfaces.

25. Liability

- 25.1 As used in this Section 25, "Service Failure" means a failure to comply with a direction to install, restore or terminate Services under this Agreement, a failure to provide Services under this Agreement, and failures, mistakes, omissions, interruptions, delays, errors, defects or the like, occurring in the course of the provision of any Services under this Agreement.
- 25.2 Except as otherwise stated in Section 25.5, the liability, if any, of a Party, a Party's Affiliates, and the directors, officers and employees of a Party and a Party's Affiliates, to the other Party, the other Party's Customers, and to any other person, for Claims arising out of a Service Failure shall not exceed an amount equal to the pro rata applicable monthly charge for the Services that are subject to the Service Failure for the period in which such Service Failure occurs.
- 25.3 Except as otherwise stated in Section 25.5, a Party, a Party's Affiliates, and the directors, officers and employees of a Party and a Party's Affiliates, shall not be liable to the other Party, the other Party's Customers, or to any other person, in connection with this Agreement (including, but not limited to, in connection with a Service Failure or any breach, delay or failure in performance, of this Agreement) for special, indirect, incidental, consequential, reliance, exemplary, punitive, or like damages, including, but not limited to, damages for lost revenues, profits or savings, or other commercial or economic loss, even if the person whose liability is excluded by this Section has been advised of the possibility of such damages.
- 25.4 The limitations and exclusions of liability stated in Sections 25.1 through 25.3 shall apply regardless of the form of a claim or action, whether statutory, in contract, warranty, strict liability, tort (including, but not limited to, negligence of a Party), or otherwise.
- 25.5 Nothing contained in Sections 25.1 through 25.4 shall exclude or limit liability:

- 25.5.1 under Sections 20, Indemnification, or 41, Taxes.
 - 25.5.2 for any obligation to indemnify, defend and/or hold harmless that a Party may have under this Agreement
 - 25.5.3 for damages arising out of or resulting from bodily injury to or death of any person, or damage to, or destruction or loss of, tangible real and/or personal property of any person, or Toxic or Hazardous Substances, to the extent such damages are otherwise recoverable under Applicable Law;
 - 25.5.4 for a claim for infringement of any patent, copyright, trade name, trade mark, service mark, or other intellectual property interest;
 - 25.5.5 under Section 258 of the Act or any order of FCC or the Commission implementing Section 258; or
 - 25.5.6 under the financial incentive or remedy provisions of any service quality plan required by the FCC or the Commission.
- 25.6 In the event that the liability of a Party, a Party's Affiliate, or a director, officer or employee of a Party or a Party's Affiliate, is limited and/or excluded under both this Section 25 and a provision of an applicable Tariff, the liability of the Party or other person shall be limited to the smaller of the amounts for which such Party or other person would be liable under this Section or the Tariff provision.
- 25.7 Each Party shall, in its tariffs and other contracts with its Customers, provide that in no case shall the other Party, the other Party's Affiliates, or the directors, officers or employees of the other Party or the other Party's Affiliates, be liable to such Customers or other third-persons for any special, indirect, incidental, consequential, reliance, exemplary, punitive or other damages, arising out of a Service Failure.

26. Network Management

- 26.1 Cooperation. The Parties will work cooperatively in a commercially reasonable manner to install and maintain a reliable network. CLEC and GRC will exchange appropriate information (e.g., network information, maintenance contact numbers, escalation procedures, and information required to comply with requirements of law enforcement and national security agencies) to achieve this desired reliability. In addition, the Parties will work cooperatively in a commercially reasonable manner to apply sound network management principles to alleviate or to prevent traffic congestion and subject to Section 16, to minimize fraud associated with third number billed calls, calling card calls, and other services related to this Agreement. Also, from time to time BITWISE, in order to properly plan network build-outs and customer connections in specific areas, may require network data from GRC. To the extent possible or as required by Applicable Law, GRC will provide non-proprietary network information as requested by BITWISE.
- 26.2 Responsibility for Following Standards. Each Party recognizes a responsibility to follow the standards that may be agreed to between the Parties and to employ characteristics and methods of operation that will not interfere with or impair the service, network or facilities of the other Party or any third parties connected with or involved directly in the network or facilities of the other.
- 26.3 Interference or Impairment. If a Party ("Impaired Party") reasonably determines that the services, network, facilities, or methods of operation, of the other Party ("Interfering Party") will or are likely to interfere with or impair the Impaired Party's provision of services or the operation of the Impaired Party's network or facilities, the Impaired Party may interrupt or suspend any Service provided to the Interfering Party to the extent necessary to prevent such interference or impairment, subject to the following:

26.3.1 Except in emergency situations (e.g., situations involving a risk of bodily injury to persons or damage to tangible property, or an interruption in Customer service) or as otherwise provided in this Agreement, the Impaired Party shall have given the Interfering Party at least ten (10) days' prior written notice of the interference or impairment or potential interference or impairment and the need to correct the condition within said time period; and taken other actions, if any, required by Applicable Law; and,

26.3.2 Upon correction of the interference or impairment, the Impaired Party will promptly restore the interrupted or suspended Service. The Impaired Party shall not be obligated to provide an out-of-service credit allowance or other compensation to the Interfering Party in connection with the suspended Service.

26.4 **Outage Repair Standard.** In the event of an outage or trouble in any Service being provided by a Party hereunder, the Providing Party will follow GRC's standard procedures for isolating and clearing the outage or trouble.

27. **Non-Exclusive Remedies:** Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any other remedies that may be available under this Agreement or at law or in equity.

28. **Notice of Network Changes:** If a Party makes a change in the information necessary for the transmission and routing of services using that Party's facilities or network, or any other change in its facilities or network that will materially affect the interoperability of its facilities or network with the other Party's facilities or network, the Party making the change shall publish notice of the change at least ninety (90) days in advance of such change, and shall use reasonable efforts, as commercially practicable, to publish such notice at least one hundred eighty (180) days in advance of the change; provided, however, that if an earlier publication of notice of a change is required by Applicable Law (including, but not limited to, 47 CFR 51.325 through 51.335) notice shall be given at the time required by Applicable Law.

29. **Notices**

29.1 Except as otherwise provided in this Agreement, notices given by one Party to the other Party under this Agreement:

29.1.1 shall be in writing;

29.1.2 shall be delivered (a) personally, (b) by express delivery service with next Business Day delivery, (c) by First Class, certified or registered U.S. mail, postage prepaid, or (d) by facsimile telecopy, with a copy delivered in accordance with (a), (b) or (c), preceding; and

29.1.3 shall be delivered to the following addresses of the Parties:

To GRC; Vice President – Revenues Gallatin River Communications. PO Box 430 103 S. Fifth Street Mebane, NC 27302 Telephone Number: 919-563-1500 Facsimile Number: 919-563-4993 Internet Address: skrivanm@madisonriver.net	with a copy to: Vice President and General Counsel Gallatin River Communications PO Box 430 103 S. Fifth Street Mebane, NC 27302 Telephone Number: 919-563-1500 Facsimile Number: 919-563-4993 Internet: springem@madisonriver.net
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To CLEC: Michael Shuler, President BitWise Communications, Inc. d/b/e OmniLEC 682 High Point Lane	with a copy to: Jonathan S. Marashlian, Esq. The Helein Law Group, P.C. 8180 Greensboro Drive, Suite 775
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East Peoria, IL 61611
(217) 585-0357 Office
(309) 667-6365 Cell
(309) 213-3500 Fax
mike@omnilec.com

McLean, VA 22102
(703) 714-1300 Office
(703) 714-1330 Fax
ism@thlglaw.com

or to such other address as either Party shall designate by proper notice.

Notices will be deemed given as of the earlier of (a) where there is personal delivery of the notice, the date of actual receipt, (b) where the notice is sent via express delivery service for next Business Day delivery, the next Business Day after the notice is sent, (c) where the notice is sent via First Class U.S. Mail, three (3) Business Days after mailing, (d) where notice is sent via certified or registered U.S. mail, the date of receipt shown on the Postal Service receipt, and (e) where the notice is sent via facsimile telecopy, if the notice is sent on a Business Day and before 5 PM. in the time zone where it is received, on the date set forth on the telecopy confirmation, or if the notice is sent on a non-Business Day or if the notice is sent after 5 PM in the time zone where it is received, the next Business Day after the date set forth on the telecopy confirmation. As a courtesy and to the extent practical each Party shall also provide Notice via electronic mail (e-mail).

30. Ordering and Maintenance

CLEC shall use such processes and procedures as GRC has made available for performing such transaction(s) as submission of Orders by telephonic facsimile transmission (Fax) or E-mail placing trouble reports by voice telephone transmission to perform such functions as pre-ordering, ordering, provisioning, maintenance or repair.

31. Performance Standards

31.1 The Parties agree to provide Services under this Agreement in accordance with the performance standards required by Applicable Law, including, but not limited to, Section 251(c) of the Act.

32. Point of Contact for CLEC Customers

32.1 CLEC shall establish telephone numbers and mailing addresses at which CLEC Customers may communicate with CLEC and shall advise CLEC Customers of these telephone numbers and mailing addresses.

32.2 Except as otherwise agreed to by the Parties, neither Party shall have an obligation, and may decline, to accept a communication from a Customer of the other Party, including, but not limited to, a Customer's request for repair or maintenance of a Service provided by one Party to the other Party.

33. Predecessor Agreements

33.1 Except as stated herein or as otherwise agreed in writing by the Parties:

33.1.1 Further to the provisions of Section 1 of the General Terms and Conditions of this Agreement, any prior interconnection or resale agreement or services provided between the Parties for the State of Illinois pursuant to Section 252 of the Act and in effect prior to the Effective Date is hereby amended, extended and restated herein.

34. Publicity and Use of Trademarks or Service Marks

- 34.1 A Party, its Affiliates, and their respective contractors and Agents, shall not use the other Party's trademarks, service marks, logos or other proprietary trade dress, in connection with the sale of products or services, or in any advertising, press releases, publicity matters or other promotional materials, unless the other Party has given its written consent for such use, which consent the other Party may grant or withhold in its sole discretion.
- 34.2 Neither Party may imply any direct or indirect affiliation with or sponsorship or endorsement of it or its services or products by the other Party.
- 34.3 Any violation of this Section 34 shall be considered a material breach of this Agreement.

35. References

- 35.1 All references to Sections, Appendices and Exhibits shall be deemed to be references to Sections, Appendices and Exhibits of this Agreement unless the context shall otherwise require.
- 35.2 Unless the context shall otherwise require, any reference to a Tariff, agreement, technical or other document (including GRC or third party guides, practices or handbooks), or provision of Applicable Law, is to such Tariff, agreement, document, or provision of Applicable Law, as amended and supplemented from time to time (and, in the case of a Tariff or provision of Applicable Law, to any successor Tariff or provision).

36. Relationship of the Parties

- 36.1 The relationship of the Parties under this Agreement shall be that of independent contractors and nothing herein shall be construed as creating any other relationship between the Parties.
- 36.2 The relationship of the Parties under this Agreement is a non-exclusive relationship.

37. Reservation of Rights

- 37.1 Notwithstanding anything to the contrary in this Agreement, neither Party waives, and each Party hereby expressly reserves, its rights: (a) to appeal or otherwise seek the reversal of and changes in any arbitration decision associated with this Agreement; (b) to challenge the lawfulness of this Agreement and any provision of this Agreement; (c) to seek changes in this Agreement (including, but not limited to, changes in rates, charges and the Services that must be offered) through changes in Applicable Law; (d) to challenge the lawfulness and propriety of, and to seek to change, any Applicable Law, including, but not limited to any rule, regulation, order or decision of the Commission, the FCC, or a court of applicable jurisdiction; and (e) to collect debts owed to it under any prior interconnection or resale agreements. Nothing in this Agreement shall be deemed to limit or prejudice any position a Party has taken or may take before the Commission, the FCC, any other state or federal regulatory or legislative bodies, courts of applicable jurisdiction, or industry fora. The provisions of this Section shall survive the expiration, cancellation or termination of this Agreement.
- 37.2 CLEC acknowledges CLEC has been advised by GRC that it is GRC's position that this Agreement contains certain provisions which are intended to reflect Applicable Law and Commission and/or FCC arbitration decisions.

- 38. **Subcontractors:** A Party may use a contractor of the Party (including, but not limited to, an Affiliate of the Party) to perform the Party's obligations under this Agreement; provided, that a Party's use of a contractor shall not release the Party from any duty or liability to fulfill the Party's obligations under this Agreement.

39. **Successors and Assigns:** This Agreement shall be binding on and inure to the benefit of the Parties and their respective legal successors and permitted assigns.

40. **Survival:** The rights, liabilities and obligations of a Party for acts or omissions occurring prior to the expiration, cancellation or termination of this Agreement, the rights, liabilities and obligations of a Party under any provision of this Agreement regarding confidential information (including but not limited to, Section 9), indemnification or defense (including, but not limited to, Section 20), or limitation or exclusion of liability (including, but not limited to, Section 25), and the rights, liabilities and obligations of a Party under any provision of this Agreement which by its terms or nature is intended to continue beyond or to be performed after the expiration, cancellation or termination of this Agreement, shall survive the expiration, cancellation or termination of this Agreement.

41. **Taxes**

41.1 **In General.** With respect to any purchase hereunder of Services, if any federal, state or local tax, fee, surcharge or other tax-like charge (a "Tax") is required or permitted by Applicable Law or a Tariff to be collected from the Purchasing Party by the Providing Party, then (a) the Providing Party shall properly bill the Purchasing Party for such Tax, (b) the Purchasing Party shall timely remit such Tax to the Providing Party and (c) the Providing Party shall timely remit such collected Tax to the applicable taxing authority.

41.2 **Taxes Imposed on the Providing Party.** With respect to any purchase hereunder of Services, if any federal, state or local Tax is imposed by Applicable Law on the receipts of the Providing Party, and such Applicable Law permits the Providing Party to exclude certain receipts received from sales for resale to a public utility, distributor, telephone company, local exchange carrier, telecommunications company or other communications company ("Telecommunications Company"), such exclusion being based solely on the fact that the Purchasing Party is also subject to a tax based upon receipts ("Receipts Tax"), then the Purchasing Party (a) shall provide the Providing Party with notice in writing in accordance with Section 41.5 of this Agreement of its intent to pay the Receipts Tax and (b) shall timely pay the Receipts Tax to the applicable tax authority.

41.3 **Taxes Imposed on Customers.** With respect to any purchase hereunder of Services that are resold to a third party, if any federal, state or local Tax is imposed by Applicable Law on the subscriber, end-user, Customer or ultimate consumer ("Subscriber") in connection with any such purchase, which a Telecommunications Company is required to impose and/or collect from a Subscriber, then the Purchasing Party (a) shall be required to impose and/or collect such Tax from the Subscriber and (b) shall timely remit such Tax to the applicable taxing authority.

Liability for Uncollected Tax, Interest and Penalty. If the Providing Party has not received an exemption certificate from the Purchasing Party and the Providing Party fails to bill the Purchasing Party for any Tax as required by Section 41.1, then, as between the Providing Party and the Purchasing Party, (a) the Purchasing Party shall remain liable for such unbilled Tax and (b) the Providing Party shall be liable for any interest assessed thereon and any penalty assessed with respect to such unbilled Tax by such authority. If the Providing Party properly bills the Purchasing Party for any Tax but the Purchasing Party fails to remit such Tax to the Providing Party as required by Section 41.1, then, as between the Providing Party and the Purchasing Party, the Purchasing Party shall be liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority. If the

Providing Party does not collect any Tax as required by Section 41.1 because the Purchasing Party has provided such Providing Party with an exemption certificate that is later found to be inadequate by a taxing authority, then, as between the Providing Party and the Purchasing Party, the Purchasing Party shall be liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority. If the Purchasing Party fails to pay the Receipts Tax as required by Section 41.2, then, as between the Providing Party and the Purchasing Party, (x) the Providing Party shall be liable for any Tax imposed on its receipts and (y) the Purchasing Party shall be liable for any interest assessed thereon and any penalty assessed upon the Providing Party with respect to such Tax by such authority. If the Purchasing Party fails to impose and/or collect any Tax from Subscribers as required by Section 41.3, then, as between the Providing Party and the Purchasing Party, the Purchasing Party shall remain liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority. With respect to any Tax that the Purchasing Party has agreed to pay, or is required to impose on and/or collect from Subscribers, the Purchasing Party agrees to indemnify and hold the Providing Party harmless on an after-tax basis for any costs incurred by the Providing Party as a result of actions taken by the applicable taxing authority to recover the Tax from the Providing Party due to the failure of the Purchasing Party to timely pay, or collect and timely remit, such Tax to such authority. In the event either Party is audited by a taxing authority, the other Party agrees to cooperate fully with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.

- 41.4 Tax Exemptions and Exemption Certificates. If Applicable Law clearly exempts a purchase hereunder from a Tax, and if such Applicable Law also provides an exemption procedure, such as an exemption-certificate requirement, then, if the Purchasing Party complies with such procedure, the Providing Party shall not collect such Tax during the effective period of such exemption. Such exemption shall be effective upon receipt of the exemption certificate or affidavit in accordance with the terms set forth in Section 41.5. If Applicable Law clearly exempts a purchase hereunder from a Tax, but does not also provide an exemption procedure, then the Providing Party shall not collect such Tax if the Purchasing Party (a) furnishes the Providing Party with a letter signed by an officer requesting such an exemption and citing the provision in the Applicable Law which clearly allows such exemption and (b) supplies the Providing Party with an indemnification agreement, reasonably acceptable to the Providing Party (e.g., an agreement commonly used in the industry), which holds the Providing Party harmless on an after-tax basis with respect to its forbearing to collect such Tax.
- 41.5 All notices, affidavits, exemption-certificates or other communications required or permitted to be given by either Party to the other, for purposes of this Section 41, shall be made in writing and shall be delivered in person or sent by certified mail, return receipt requested, or registered mail, or a courier service providing proof of service, and sent to the addressees set forth in Section 29 as well as to the following:

To GRC: Tax Administration/Finance
Madison River Communications
PO Box 430
103 South 5th Street
Mebane, NC 27302
Telephone Number: 919-563-1500
Facsimile Number: 919-563-1096

To CLEC: Michael Shuler, President
BitWise Communications, Inc. d/b/a OmniLEC
682 High Point Lane
East Peoria, IL 61611
(217) 585-0357 Office

(309) 657-6365 Cell
(309) 213-3500 Fax
mike@omnilec.com

Either Party may from time to time designate another address or other addressees by giving notice in accordance with the terms of this Section. Any notice or other communication shall be deemed to be given when received.

42. Technology Upgrades

Notwithstanding any other provision of this Agreement, GRC shall have the right to deploy, upgrade, migrate and maintain its network at its discretion, as permitted by and consistent with Applicable Law. The Parties acknowledge that GRC, at its election, may deploy fiber throughout its network and that such fiber deployment may inhibit or facilitate CLEC's ability to provide service using certain technologies. Nothing in this Agreement shall limit GRC's ability to modify its network through the incorporation of new equipment or software or otherwise, provided such modifications are permitted by and consistent with Applicable Law. CLEC shall be solely responsible for the cost and activities associated with accommodating such changes in its own network.

43. Territory: Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement as to a specific operating territory or portion thereof if it sells or otherwise transfers its operations in such territory or portion thereof to a third-person. The Parties shall provide each other with at least 90 calendar days prior written notice of such termination, which shall be effective upon the date specified in the notice.

44. Third Party Beneficiaries: Except as expressly set forth in this Agreement, this Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein shall create or be construed to provide any third-persons (including, but not limited to, Customers or contractors of a Party) with any rights (including, but not limited to, any third-party beneficiary rights) hereunder. Except as expressly set forth in this Agreement, a Party shall have no liability under this Agreement to the Customers of the other Party or to any other third person.

45. 251 Requirements: The Parties agree that the performance of the terms of this Agreement will satisfy GRC's obligations under Section 251 of the Act.

46. [Intentionally left blank]

47. Use of Service: Each Party shall make commercially reasonable efforts to ensure that its Customers comply with the provisions of this Agreement (including, but not limited to the provisions of applicable Tariffs) applicable to the use of Services purchased by it under this Agreement.

48. Waiver: A failure or delay of either Party to enforce any of the provisions of this Agreement, or any right or remedy available under this Agreement or at law or in equity, or to require performance of any of the provisions of this Agreement, or to exercise any option which is provided under this Agreement, shall in no way be construed to be a waiver of such provisions, rights, remedies or options.

49. Warranties: EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED, OR TO BE PROVIDED, UNDER THIS AGREEMENT AND THE PARTIES DISCLAIM ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE WARRANTIES AGAINST INFRINGEMENT, AND WARRANTIES ARISING BY

copy

TRADE CUSTOM, TRADE USAGE, COURSE OF DEALING OR PERFORMANCE, OR OTHERWISE.

50. Withdrawal of Services

50.1 To the extent permitted by Applicable Law, either Party may terminate its offering and/or provision of any Service under this Agreement upon thirty (90) days prior written notice to the other Party.

50.2 [Intentionally left blank]

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

Gallatin River Communications, LLC

BitWise Communications, Inc. d/b/a OmniLEC

By: Michael Skrivan

By: Michael Shuler

Printed: Michael Skrivan

Printed: Michael Shuler

Title: Vice President - Revenues

Title: President

Date: 10/6/2006

Date: 10/3/2006

GLOSSARY

1. General Rule

- 1.1 The provisions of Sections 1.2 through 1.4 and Section 2 apply with regard to this ICA. Terms used in a Tariff shall have the meanings stated in the Tariff.
- 1.2 Unless the context clearly indicates otherwise, when a term listed in this Glossary is used in this ICA, the term shall have the meaning stated in this Glossary. A defined term intended to convey the meaning stated in this Glossary is capitalized when used. Other terms that are capitalized, and not defined in this Glossary or elsewhere in the Principal Document, shall have the meaning stated in the Act. Additional definitions that are specific to the matters covered in a particular provision of the ICA may appear in that provision. To the extent that there may be any conflict between a definition set forth in this Glossary and any definition in a specific provision, the definition set forth in the specific provision shall control with respect to that provision.
- 1.3 Unless the context clearly indicates otherwise, any term defined in this Glossary which is defined or used in the singular shall include the plural, and any term defined in this Glossary which is defined or used in the plural shall include the singular.
- 1.4 The words "shall" and "will" are used interchangeably throughout the Principal Document and the use of either indicates a mandatory requirement. The use of one or the other shall not confer a different degree of right or obligation for either Party.

2. Definitions

- 2.1 Act: The Communications Act of 1934 (47 U.S.C. §151 et seq.), as from time to time amended (including, but not limited to, by the Telecommunications Act of 1996).
- 2.2 Affiliate: Shall have the meaning set forth in the Act.
- 2.3 Agent: An agent or servant.
- 2.4 Agreement/ICA: This Agreement, as defined in Section 1 of the General Terms and Conditions.
- 2.5 Ancillary Traffic (Miscellaneous Services): All traffic that is destined for ancillary services, or that may have special billing requirements, including but not limited to the following: Directory Assistance, 911/E911, Operator Services (IntraLATA call completion), IntraLATA third party, collect and calling card, 800/888 database query, LIDB, and Voice Information Services Traffic as described in the Interconnection Attachment – 2, herein, and within the Additional Services Attachment – A, herein.
- 2.6 ANI (Automatic Number Identification): The signaling parameter that refers to the number transmitted through the network identifying the billing number of the calling party.
- 2.7 Applicable Law: All effective laws, government regulations and government orders, applicable to each Party's performance of its obligations under this Agreement.
- 2.8 ATIS/OBF-EMI: Alliance for Telecommunication Industry Solutions Ordering and Billing Forum, formerly known as Telcordia Industries, Inc.
- 2.9 Business Day: Monday through Friday, except for holidays observed by GRC.
- 2.10 Calendar Quarter: January through March, April through June, July through September, or October through December.

- 2.11 Calendar Year: January through December.
- 2.12 CCS (Common Channel Signaling): A method of transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data content of the call.
- 2.13 Central Office (End Office): A local switching system for connecting lines to lines, lines to trunks, or trunks to trunks for the purpose of originating/terminating calls over the public switched telephone network. A single Central Office may handle several Central Office codes ("NXX"). Sometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed.
- 2.14 Central Office Switch (End Office Switch): A switch used to provide Telecommunications Services, including, but not limited to, an End Office Switch or a Tandem Switch. A Central Office Switch may also be employed as a combination End Office/Tandem Office Switch. Also, A switching entity that is used to terminate Customer station Loops for the purpose of interconnection to each other and to trunks.
- 2.15 Claims: Any and all claims, demands, suits, actions, settlements, judgments, fines, penalties, liabilities, injuries, damages, losses, costs (including, but not limited to, court costs), and expenses (including, but not limited to, reasonable attorney's fees).
- 2.16 CLEC (Competitive Local Exchange Carrier): Any Local Exchange Carrier other than GRC that is operating as a Local Exchange Carrier in the territory in which GRC operates as an ILEC in the State of Illinois.
- 2.17 CLLI Codes: Common Language Location Identifier Codes.
- 2.18 CMDS (Centralized Message Distribution System): The billing record and clearing house transport system that LECs use to exchange out collects and in collects as well as Carrier Access Billing System (CABS) records.
- 2.19 Commission: For Services and arrangements provided by a Party in Illinois, the term "Commission" shall mean the Illinois Commerce Commission (ICC).
- 2.20 CPN (Calling Party Number). A CCS parameter that identifies the calling party's telephone number.
- 2.21 CPNI (Customer Proprietary Network Information): Shall have the meaning set forth in Section 222 of the Act, 47 U.S.C. § 222.
- 2.22 Customer: A third party residence or business end-user subscriber to Telephone Exchange Services provided by either of the Parties.
- 2.23 EMI (Exchange Message Interface). Standard used for the interexchange of telecommunications message information between local exchange carriers and interexchange carriers for billable, non-billable, sample, settlement and study data. Data is provided between companies via a unique record layout that contains Customer billing information, account summary and tracking analysis. EMI format is contained in document SR-320 published by the Alliance for Telecom Industry Solutions.
- 2.24 Digital Signal Level: One of several transmission rates in the Time Division Multiplex hierarchy. E.G. DS0 (Digital Signal Level 0 is the 64 Kb/s (24 DS0's per DS-1) rate. DS-1 (Digital Signal Level 1) is the 1.544 Mb/s rate. DS-3 (Digital Signal Level 3) is the 44.736 Mb/s rate.
- 2.25 Exchange Access: Shall have the meaning set forth in the Act.
- 2.26 FCC: The Federal Communications Commission.

- 2.27 FCC Internet Order: Order on Remand and Report and Order, In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic, FCC 01-131, CC Docket Nos. 96-98 and 99-68, (adopted April 18, 2001).
- 2.28 ILEC (Incumbent Local Exchange Carrier): Shall have the meaning stated in the Act.
- 2.29 Internet Traffic: Any traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission.
- 2.30 InterLATA Service: Shall have the meaning set forth in the Act.
- 2.31 IntraLATA: Telecommunications that originate and terminate within the same LATA.
- 2.32 ISP or Internet Service Provider Traffic: ISP or Internet bound traffic is defined as calls to an information service provider or internet service provider (ISP) that are dialed by using a local dialing pattern (7 or 10 digits) by a calling party in Gallatin's service area to telephone number(s) or an ISP server or modem either in the CLEC service area or via the CLEC switching or transport equipment. The parties agree periodically to inform each other of all ISP numbers in the respective calling areas, to the best of their knowledge. Both parties will adhere to Core Forbearance Order. Neither party shall compensate the other for ISP Traffic in excess of 3:1 ratio as set forth in Core Forbearance Order.
- 2.33 IXC (Interexchange Carrier): A Telecommunications Carrier that provides, directly or indirectly, InterLATA or IntraLATA Telephone Toll Services.
- 2.34 LATA (Local Access and Transport Area): Shall have the meaning set forth in the Act.
- 2.35 LEC (Local Exchange Carrier): Shall have the meaning set forth in the Act.
- 2.36 LERG (Local Exchange Routing Guide): A Telcordia Technologies reference containing NPA/NXX routing and homing information.
- 2.37 LIDB (Line Information Data Base): Line Information databases which provide, among other things, calling card validation functionality for telephone line number cards issued by GRC and other entities and validation data for collect and third number-billed calls(e.g., data for billed number screening).
- 2.38 MECAB (Multiple Exchange Carrier Access Billing): A document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Telcordia Technologies as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an Exchange Access Service provided by two or more LECs, or by one LEC in two or more states, within a single LATA.
- 2.39 MECOD (Multiple Exchange Carriers Ordering and Design Guidelines for Access Services - Industry Support Interface): A document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Telcordia Technologies as Special Report SR-SITS-002643, establishes methods for processing orders for Exchange Access Service that is to be provided by two or more LECs.
- 2.40 [Intentionally Left Blank].

- 2.41 NANP (North American Numbering Plan): The system of telephone numbering employed in the United States, Canada, Bermuda, Puerto Rico and certain Caribbean islands. The NANP format is a 10-digit number that consist of a 3-digit NPA Code (commonly referred to as the area code), followed by a 3-digit NXX code and 4 digit line number.
- 2.42 NPA (Numbering Plan Area). Also sometimes referred to as an area code, is the first three-digit indicator of each 10-digit telephone number within the NANP. 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 that may be provided across multiple geographic NPA areas. 500, 700, 800, 888 and 900 are examples of Non-Geographic NPAs.
- 2.43 NXX, NXX Code, Central Office Code or CO Code: The three-digit switch entity indicator (i.e. the first three digits of a seven-digit telephone number).
- 2.44 Order: An order or application to provide, change or terminate a Service (including, but not limited to, a commitment to purchase a stated number or minimum number of lines or other Services for a stated period or minimum period of time).
- 2.45 Originating Switched Access Detail Usage Data: A category 1101XX record as defined in the ATIS/OBF-EMI Practice BR-010-200-010.
- 2.46 ICA: This document, including, but not limited to, the Title Page, the Table of Contents, the Preface, the General Terms and Conditions, the signature page, this Glossary, the Attachments, and the Appendices to the Attachments.
- 2.47 Rate Center Area: The geographic area that has been identified by a given LEC as being associated with a particular NPA-NXX code assigned to the LEC for its provision of Telephone Exchange Services. The Rate Center Area is the exclusive geographic area that the LEC has identified as the area within which it will provide Telephone Exchange Services bearing the particular NPA-NXX designation associated with the specific Rate Center Area.
- 2.48 Reciprocal Compensation: The arrangement for recovering, in accordance with Section 251(b)(5) of the Act, the FCC Internet Order, and other applicable FCC orders and FCC Regulations, costs incurred for the transport and termination of Local Traffic originating on one Party's network and terminating on the other Party's network (as set forth in Attach 1, Section 5 of the Interconnection Attachment).
- 2.49 Reciprocal Compensation (Local) Traffic: Local telecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access. The determination of whether Telecommunications traffic is Exchange Access or Information Access shall be based upon the local calling areas set forth in Gallatin's Tariff and Telephone Directory. Local traffic, eligible for Reciprocal Compensation does not include the following traffic (it being understood that certain traffic types will fall into more than one (1) of the categories below that do not constitute Reciprocal Compensation eligible Traffic): (1) any Internet Traffic (ISP), above the 3:1 ratio as established in Core Forbearance Order; (2) traffic that does not originate and terminate within the same local calling area as set forth in Gallatin's Tariff and Telephone Directory and based on the actual originating and

terminating points of the complete end-to-end communication (provided however, the exclusion of the traffic described in this item 2 shall not be construed to limit the Parties' rights under Section 5.3 of the Interconnection Attachment with respect to Virtual Foreign Exchange Traffic); (3) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (4) Optional Extended Local Calling Scope Arrangement Traffic; (5) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; (6) Tandem Transit Traffic; (7) Voice Information Service Traffic (as defined in Section 5 of the Additional Services Attachment); or, (8) Virtual Foreign Exchange Traffic (or V/FX Traffic) (as defined in the Interconnection Attachment) (provide however, the exclusion of Virtual Foreign Exchange Traffic as described in this item 8 shall not be construed to limit the Parties' rights under Section 5.3 of the Interconnection Attachment). For the purposes of this definition, a local calling area includes a non-optional Extended Local Calling Scope Arrangement set forth in Gallatin's Tariff and Telephone Directory, but does not include an optional Extended Local Calling Scope Arrangement.

- 2.50 Service: Interconnection arrangement, Telecommunications Service, or other service, facility or arrangement, offered by a Party under this Agreement.
- 2.51 SS7 (Signaling System 7). The common channel out-of-band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI). GRC and CLEC currently utilize this out-of-band signaling protocol.
- 2.52 Switched Exchange Access Service: The offering of transmission and switching services for the purpose of the origination or termination of Toll Traffic. Switched Exchange Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 800 access, 888 access and 900 access.
- 2.53 Tariff: Any applicable Federal or state tariff of a Party, as amended from time-to-time; or
 - 2.53.1 Any standard agreement or other document, as amended from time-to-time, that sets forth the generally available terms, conditions and prices under which a Party offers a Service.
- 2.54 Telcordia Technologies: Telcordia Technologies, Inc., formerly known as Bell Communications Research, Inc. (Bellcore).
- 2.55 Telecommunications Carrier: Shall have the meaning set forth in the Act.
- 2.56 Telecommunications Services: Shall have the meaning set forth in the Act.
- 2.57 Telephone Exchange Service Shall have the meaning set forth in the Act.
- 2.58 Toll Traffic: Traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network and is not Reciprocal Compensation Traffic, Internet Traffic, Ancillary Traffic or Virtual NXX Traffic. Toll Traffic may be either "IntraLATA Toll Traffic" or "InterLATA Toll Traffic", depending on whether the originating and terminating points are within the same LATA.
- 2.59 Toxic or Hazardous Substance: Any substance designated or defined as toxic or hazardous under any "Environmental Law" or that poses a risk to human health or safety, or the environment, and products and materials containing such substance. "Environmental Laws" means the Comprehensive Environmental Response, Compensation, and Liability Act, the Emergency Planning and Community Right-to-Know Act, the Water Pollution Control Act, the Air Pollution Control Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, the Occupational Safety and Health Act, and all other Federal, State or local laws or governmental regulations or requirements, that are similar to the above-referenced laws or that otherwise govern releases, chemicals, products, materials or wastes that may pose risks to human health

or safety, or the environment, or that relate to the protection of wetlands or other natural resources.

- 2.60 Traffic Factor 1: For traffic exchanged via Interconnection Trunks, a percentage calculated by dividing the number of minutes of interstate traffic (excluding Internet Traffic) by the total number of minutes of interstate and intrastate traffic. $\left(\frac{\text{Interstate Traffic Total Minutes of Use (excluding Internet Traffic Total Minutes of Use)}}{\text{Interstate Traffic Total Minutes of Use} + \text{Intrastate Traffic Total Minutes of Use}} \right) \times 100$. Until the form of a Party's bills is updated to use the term "Traffic Factor 1," the term "Traffic Factor 1" may be referred to on the Party's bills and in billing related communications as "Percent Interstate Usage" or "PIU."
- 2.61 Traffic Factor 2: For traffic exchanged via Interconnection Trunks, a percentage calculated by dividing the combined total number of minutes of Reciprocal Compensation Traffic and Internet Traffic by the combined total number of minutes of intrastate traffic and Measured Internet Traffic. $\left(\frac{\text{Reciprocal Compensation Traffic Total Minutes of Use} + \text{Internet Traffic Total Minutes of Use}}{\text{Intrastate Traffic Total Minutes of Use} + \text{Internet Traffic Total Minutes of Use}} \right) \times 100$. Until the form of a Party's bills is updated to use the term "Traffic Factor 2," the term "Traffic Factor 2" may be referred to on the Party's bills and in billing related communications as "Percent Local Usage" or "PLU."
- 2.62 Wire Center: A building or portion thereof which serves as the premises for one or more Central Office (End Office) Switches and related facilities.

ATTACHMENT - A

ADDITIONAL SERVICES

1. **Alternate Billed Calls:** The Parties will engage in settlements of intraLATA intrastate alternate-billed calls (e.g., collect, calling card, and third-party billed calls) originated or authorized by their respective Customers in accordance with an arrangement mutually agreed to by the Parties.
2. **Directory Assistance (DA) and Operator Services (OS):** GRC obtains DA & OS from a third party; as such GRC does not provide DA & OS services under this agreement. The CLEC will have to make its own arrangements for these services.
3. **Directory Listings:** This Section pertains to listings published in any media, including but not limited to traditional white/yellow pages, specialty directories, CD ROM, or other printed or electronic formats.

3.1 **Listings:** CLEC will direct Customers to GRC's publisher for Directory Listings (bold print and yellow page ads) except as set forth below: CLEC agrees to supply GRC's publisher on a regularly scheduled basis, and in a mutually agreed upon format (e.g. Ordering and Billing Forum developed), all listing information for CLEC's subscribers who wish to be listed in any GRC published directory for the relevant operating area. Listing information will consist of names, addresses (including city, state and zip code) and telephone numbers. Nothing in this Agreement shall require GRC to publish a directory where it would not otherwise do so. Listing inclusion in a given directory will be in accordance with GRC's solely determined directory configuration, scope, schedules, and listings will appear in GRC's directory in the same manner as GRC's Customer listings.

3.2 **Interfiling:** Each carrier's Customer listings shall be interfiled with listings of the publishing carrier's Customers. Federal, state and local government listings must be included in the appropriate section of the directory at no charge. The listing and handling of all listed and non-listed and/or non-published telephone numbers in the printed GRC directory must be at parity with that provided by GRC to its own Customers.

3.4 **Porting:** Each CLEC Customer account or ported number must be provided, at no charge, the same white page basic listings that GRC provides to its own Customers. Each CLEC Customer business account or ported number must be provided the same yellow page basic listings that GRC provides to its own Customers, at prevailing rates.

3.5 **Other Listings:** CLEC Customers may purchase additional listings on the same terms and conditions available to GRC's Customers at the rates set forth in GRC's General Subscriber Service Tariff. Additional and foreign white page listing charges shall be billed to CLEC. GRC shall provide any other types of directory listings available to GRC Customers to CLEC Customers on the same terms and conditions available to GRC's Customers. Such listings may include, but are not limited to: a) Foreign listings; b) Reference listings; c) Information listings; d) Alternate call listings; e) Multi-line listings; f) Multi-line/Multi-owner listings.

3.6 **Enhanced listings** and yellow page advertisements will be billed by the publisher to the Customer.

4. **911 Services:** GRC owns and operates Selective Routers for access to the relevant 911 PSAPS. GRC will provide access to its Selective Routers (and 911 service) pursuant to its separate "911 Service Agreement" at the same rates and terms offered other carriers.

5. **Reciprocal Compensation:** The Parties reserve the right to apply the Reciprocal Compensation Transport and Termination Usage Rate ("Usage Rate") of \$0.015 per Minute of Use in the event that A) a Party terminates 100,000 or more minutes per month of wire-line local traffic originated by the other Party for a period of three (3) consecutive months, and B) the representative proportion of total wire-line local traffic exchanged between the Parties exceeds 60/40 ratio. When such threshold is met, either Party may provide the other Party a written request, along with verifiable traffic information supporting such request, to establish the application of the Usage Rate. Notwithstanding the language above, neither party shall compensate each other for Internet Bound traffic, and /or Internet Service Provider (ISP) traffic, except as otherwise provided for in this agreement.

Attachment 1

INTERCONNECTION ATTACHMENT

1. General

Each Party shall provide to the other Party, in accordance with this Agreement, but only to the extent required by Applicable Law, interconnection at a mutually agreed upon Point of Interconnection (POI) location at any technically feasible POI to which the Parties mutually agree under the terms of this Agreement, for the transmission and routing of wire-line Telephone Exchange Service and Exchange Access.

2. Interconnection Arrangements

2.1 Rate Center Location(s).

Each Party, at its own expense, shall implement arrangements for direct interconnection of their respective networks. Such interconnection may be achieved by any technically feasible means, including but not limited to the use of either Party's own facilities or the leasing of facilities from a third party carrier. The Parties shall negotiate in good faith and in a prompt manner to establish a mutually agreeable Point of Interconnection (POI) where their owned or leased facilities will be interconnected for the routing of all Traffic between them; provided, however, that this POI shall be located within GRC's serving area or at GRC's serving area boundary.

2.1.1 Each Party, at its own expense, shall provide transport facilities to the Points of Interconnection (POIs) for interconnection to the Relevant Rate Center Location(s). If the Parties desire alternative interconnection arrangements, such alternative arrangements shall be subject to written mutual agreement by the Parties.

2.2 Trunk Types.

2.2.1 In interconnecting their networks pursuant to this Attachment, the Parties will use, as appropriate, the following separate and distinct Two way trunk groups:

2.2.1.1 Interconnection Trunks for the transmission and routing of Local traffic, translated LEC IntraLATA toll free service access code (e.g., 800/888/877) traffic, and IntraLATA Toll Traffic, between their respective Customers, Tandem Transit Traffic, and, Measured Internet Traffic, all in accordance with Section 3 of this Attachment;

2.2.1.2 Access Toll Connecting Trunks for the transmission and routing of Exchange Access traffic, including translated InterLATA toll free service access code (e.g., 800/888/877) traffic, between CLEC Customers and purchasers of Switched Exchange Access Service; and

2.2.1.3 Miscellaneous Trunk Groups as mutually agreed to by the Parties, including, but not limited to: (a) choke trunks for traffic congestion and testing; and, (b) untranslated IntraLATA/InterLATA toll free service access code (e.g. 800/888/877) traffic.

2.2.2 Other types of trunk groups may be used by the Parties as provided in separate agreements (e.g., 911/E911 Trunks) between the Parties

11.5.8 Cooperatively plan and implement coordinated repair procedures for the meet point and Local Interconnection trunks and facilities to ensure trouble reports are resolved in a timely and appropriate manner.

Attachment 2

Available Network Elements

Section 1. General

Pursuant to the following terms, Gallatin will provide, price and offer certain Network Elements such that CLEC will be able to subscribe to and interconnect to whichever of these network elements CLEC requires for the purpose of providing local telephone service to its end-users. Gallatin will provide all available Network Elements at defined points of demarcation and with industry-standard interfaces so that CLEC may combine such Elements with each other and with CLEC's own facilities.

Section 2. Available Network Elements

2.1 Availability of Elements: Gallatin shall offer Network Elements to CLEC for the purpose of offering wire-line Telecommunication Services to CLEC subscribers. Gallatin shall offer Network Elements to CLEC on rates, terms and conditions that are just, reasonable, and non-discriminatory in accordance with the terms and conditions of this Agreement. The set of Network Elements include:

- 1) Local Loop and Sub Loops (including DS-1/DS-3 Loops and Sub Loops)
- 2) Interoffice Transmission Facilities: Common, Dedicated
- 3) Network Interface Device (NID) (included w/Local loops)
- 4) Collocation
- 5) Operational Support Systems

CLEC may use one or more Network Elements to provide any feature, function, capability, or service option that such Network Element(s) is technically capable of providing.

2.2 Standards for Network Elements

2.2.1 Each Network Element provided by Gallatin to CLEC shall be at parity with the quality of design, performance, features, functions, capabilities and other characteristics, including but not limited to levels and type of redundant equipment and facilities for power, diversity and security, that Gallatin provides to itself, Gallatin's own subscribers, to a Gallatin Affiliate or to any other entity.

Section 3. Local Loops

3.1 Definition: A "Loop" is a transmission path between the main distribution frame [cross-connect], or its equivalent, in a Gallatin Central Office or wire center or remote terminal (RT), Pedestal or any other cross connect point, and up to the Network Interface Device at a customer's premises, to which CLEC is granted exclusive use. This includes, but is not limited to, two-wire and four-wire copper analog voice-grade loops, two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, xDSL and DS1-level signals. This also includes transmission facilities capable of carrying DS-3, OC-n and STS-n services (e.g., n = 1, 3, 12).

3.2 Definition, Sub Loop: The Sub Loop is defined as any portion of the Local loop that is technically feasible to access at the terminals (access terminals) in GALLATIN's outside plant, including intra-building cabling. An access terminal is any point on the loop: (i) where technicians can access the wire within the cable without removing a splice case to reach the wire within; and (ii) that contains cables and their respective wire pairs that terminate on screw posts. To the extent they qualify under the preceding sentence, such points may include, but are not limited to, the pole or drop pedestal, network interface device ("NID"), minimum point of entry, single point of interconnection, the MDF at either the remote switch or Host switch, and the feeder/distribution interface. In addition, subject to the requirements and limitations of the Collocation Attachment, BITWISE has the option of collocating a DSLAM (or its functional equivalent) in GALLATIN's remote switching offices, at the copper interface point. When BITWISE collocates its DSLAM, GALLATIN will provide BITWISE with access to Sub Loops to allow BITWISE to access the copper portion of the loop. The Sub Loop made available to BITWISE under this Attachment are:

3.2.1 Loops & Sub Loops: In certain situations, GALLATIN utilizes "Pair Gain" technology, such as Integrated Digital Loop Carrier or Digital Loop Carrier ("IDLC, DLC") or analog carrier, to provision facilities. GALLATIN will not be able to provision a loop UNE in such cases. If CLEC orders a loop UNE that would normally be provisioned over facilities using IDLC or DLC technology, GALLATIN will use alternate facilities to provision the loop UNE, if alternate facilities are available. If alternate facilities are not available, GALLATIN will advise CLEC that facilities are not available to provision. Notwithstanding the above language in 3.2.1 herein, GRC recognizes that the alternate facility may not provide the same service level as the DLC served loop. GRC will at its discretion provide access to the DLC served Sub-Loops, when and where there is adequate capacity. This access will be in the form of interconnection to the analog Sub-Loop from the DLC Cross Connection ("cross box") cabinet. It will be the CLEC's responsibility to provide the cross connecting cable(s) and any electronic and mechanical equipment required. In addition, GRC's standard rates for DS-1/DS-3 transport between the CLEC device and collocation equipment will be applicable, if required. In addition, GRC's standard UNE rates for DS-1/DS-3 transport between the CLEC device and collocation equipment will be applicable, if required.

3.2.1 "Feeder Sub-Loop" is a transmission path extending from the MDF located in GALLATIN's Switching or Wire Center to the feeder distribution interface ("FDI"), or its functional equivalent, at a GALLATIN cross-connect box. Feeder Sub-Loop may be configured as "2-Wire Feeder" or "4-Wire Feeder", both of which may include load coils, bridge taps, etc. When utilizing ADSL technology, CLEC is responsible for limiting the Power Spectral Density ("PSD") of the signal to the levels specified in Clause 6.13 of ANSI T1.413 ADSL Standard. GALLATIN will not provide the electronics required for BITWISE to provide xDSL service.

3.2.2 "Distribution Sub-Loop" is a transmission path extending from the FDI, or its functional equivalent, at a GALLATIN cross-connect box, up to and including the demarcation point at an end user's premises. Unbundled Sub-Loop Distribution Elements may be configured as "2-Wire Distribution" or "4-Wire Distribution", both of which may include carrier derived facility components (i.e., pair gain applications, loop concentrators/multiplexers). When utilizing ADSL technology, CLEC is responsible for limiting the PDS of the signal to the levels specified in Clause 6.13 of ANSI T1.413 ADSL Standard. GALLATIN will not provide the electronics required for BITWISE to provide xDSL service.

3.2.3 "Drop Sub-Loop" is a transmission path extending from a terminal, such as a pole or pedestal, to the end user premises. Drop Sub-Loop will be offered on a per pair basis.

3.2.3.1 Sub-Loops, as described in Section 3 herein, to gain access to a Sub-Loops CLEC must be collocated (subject to the terms and conditions of the Collocation Attachment and/or applicable GALLATIN tariff) within the relevant GALLATIN Central Office Switch and its subtending Remotes, if any, where the Sub-Loop UNE is being requested. Or seek access to Sub Loops in concert with Section 3.2.1, above/herein.

3.2.3.2 Loop/Sub-Loop Performance: CLEC is responsible for all engineering requirements when provisioning service to an end user via Sub-Loops UNEs. GALLATIN does not guarantee, nor is it responsible for, the end-to-end performance of the entire loop when GALLATIN provides only a portion of the loop. Furthermore, GALLATIN is responsible for maintenance on only the portion of the loop element that GALLATIN provides. GALLATIN will provide all Sub-Loop UNEs to CLEC in the same manner as GALLATIN provides such elements to itself per existing GALLATIN interface specifications, maintenance and administrative policies. CLEC shall be responsible for all costs associated with the engineering of Sub-Loops.

3.2.3.3 Loop Interference: If CLEC's deployment of service enhancing technology interferes with existing or planned service enhancing technologies deployed by GALLATIN or other CLECs in the same cable sheath, GALLATIN will so notify CLEC and CLEC will remove within two hours such interfering technology and shall reimburse GALLATIN for all costs and expenses incurred related to this interference.

Section 4 & 5. Intentionally Deleted

Section 6. Interoffice Transmission Facilities

6.1 Common Transport

6.1.1 Definition: Common Transport provides a local interoffice transmission path within the Gallatin network and a Gallatin or CLEC end office switch. Common transport is shared between multiple customers and is required to be switched at the tandem.

6.1.2 Gallatin shall offer Common Transport at DS0, DS1, DS3, or higher transmission bit rate circuits where technically feasible in appropriately equipped central offices.

6.1.3 Gallatin shall be responsible for the engineering, provisioning, and maintenance of the underlying equipment and facilities that are used to provide Common Transport.

6.2 Dedicated Transport

6.2.1 Definition: Dedicated Transport provides a local interoffice transmission path between Gallatin and/or CLEC central offices or to connect to GRC's Remote Switches, pedestals and other cross connect points or as specified

by section 3.0 thru 3.2.3.3, herein. Dedicated transport is limited to the use of a single customer

6.2.2 Technical Requirements: Where technologically feasible and available, Gallatin shall offer Dedicated Transport consistent with the underlying technology as follows:

6.2.2.1 When Gallatin provides Dedicated Transport as a circuit or a system, the entire designated transmission circuit or system (e.g., DS1, DS3, OCx) shall be dedicated to CLEC designated traffic. Access to Dark fiber shall be provided at GRC's discretion that adequate capacity exists without impairing GRC's ability to afford this access to other carriers on a non-discriminatory basis and without impairing GRC's obligation to serve its existing customers.

6.2.2.2 Where Gallatin has technology and capacity available, Gallatin shall offer Dedicated Transport using currently available technologies including, but not limited to, DS1 and DS3 transport systems, dark fiber, SONET (or SDH) Bi-directional Line Switched Rings, SONET (or SDH) Unidirectional Path Switched Rings, and SONET (or SDH) point-to-point transport systems (including linear add-drop systems), at all available transmission bit rates.

Section 7. Network Interface Device (NID)

7.1 Definition: The Network Interface Device (NID) is a single-line or two line termination device or that portion of a multiple-line termination device required to terminate a single line or circuit. The function of the NID is to establish the network demarcation point between a carrier and its subscriber. The NID features two independent chambers or divisions which separate the service provider's network from the subscriber's inside wiring. Each chamber or division contains the appropriate connection points or posts to which the service provider, and the subscriber each make their connections. The NID or protector provides a protective ground connection, provides protection against lightning and other high voltage surges and is capable of terminating cables such as twisted pair cable. By rule, a NID is included with each Loop.

7.1.1 CLEC may connect its NID to Gallatin's NID; or may connect its loop directly to Gallatin's NID where sufficient unused terminals exist;

7.1.2 Unless there is no physical space for CLEC's own NID, under no circumstances may CLEC disconnect, move, or otherwise alter the connection of Gallatin loops to Gallatin's NID; if physical space limits CLEC's ability to install its own NID, CLEC shall provide notice to GRC and reasonable opportunity for GRC to remove NID; if GRC fails to remove NID itself, CLEC shall remove NID and return to GRC in the condition it was in at time of removal.

7.1.3 Multiple-line termination devices, CLEC shall specify the quantity of NIDs it requires within such device. Multiple Line terminations (more than two Loops) generally require a device other than a NID, which shall be provided on an ICB basis and priced accordingly.

7.2 Technical Requirements

7.2.1 Either Party's NID shall provide a clean, accessible point of connection for the inside wiring and for the Distribution Media and/or cross connect to the other Party's NID and shall maintain a connection to ground that meets the requirements set forth below. Each party shall ground its NID independently of the other party's NID.

7.2.2 The NID shall be the interface to subscribers' premises wiring for all loop technologies.