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October 15, 2007

08585-004  
Ms. Patricia Van Gerpen  
Public Utilities Commission  
Capitol Building – 1st Floor  
500 E. Capitol Avenue  
Pierre, SD 57501-5070

Re: James Valley Cooperative Telephone Company Interconnect Agreements

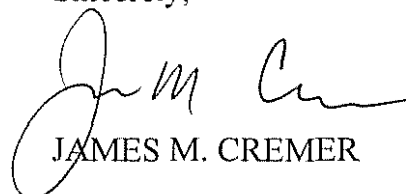
Dear Ms. Van Gerpen:

I represent James Valley Cooperative Telephone Company. Enclosed are an original and a copy of the Reciprocal Interconnection, Transport and Termination Agreement between it and James Valley Wireless.

Please return to me a file-stamped copy, along with the docket number.

If you have questions, please contact me.

Sincerely,



JAMES M. CREMER

JMC:crh

JVW/Interconnect/PUC-Van Gerpen 2007-10-15

Enclosures

cc: James Groft (*letter only via E-mail*)

## RECIPROCAL INTERCONNECTION, TRANSPORT AND TERMINATION AGREEMENT

This Reciprocal Interconnection, Transport and Termination Agreement ("Agreement") is entered into by and between James Valley Cooperative Telephone Company ("Telephone Company") and James Valley Wireless, LLC ("CMRS Provider"). The Telephone Company and the CMRS Provider are each individually a "Party" and are together the "Parties" to this Agreement.

WHEREAS, the Telephone Company is a Local Exchange Carrier in the State of South Dakota;

WHEREAS, the CMRS Provider is licensed by the Federal Communications Commission ("FCC") as a Commercial Mobile Radio Service Provider;

WHEREAS, the Telephone Company and the CMRS Provider desire to establish arrangements between one another for the exchange of telecommunications traffic between their respective networks.

WHEREAS, the Parties wish to put in place an arrangement for the mutual exchange and reciprocal compensation of telecommunications traffic in accordance with Section 251(b)(5) of the Telecommunications Act of 1996.

WHEREAS, the Parties agree that their entry into this Agreement is without prejudice to and does not waive any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters related to the same types of arrangements covered in this Agreement, and;

NOW, THEREFORE, in consideration of the foregoing and the undertakings contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Telephone Company and the CMRS Provider agree as follows:

This Agreement sets forth the terms, conditions and prices under which the Parties agree to directly interconnect the networks of the CMRS Provider and the Telephone Company for the purposes of the exchange of telecommunications traffic between the Parties' networks. **This Agreement is not intended to establish any terms, conditions or pricing applicable to the provisioning of any transiting service.** Should that type of service be provided, it will be covered under a separate Agreement.

Except as otherwise expressly provided for herein, this Agreement does not obligate either Party to provide arrangements or transport or terminate traffic not specifically provided for herein. This Agreement has no effect on the type of End User services that either Party offers to its End User Customers or the services either Party chooses to offer to its respective End User Customers.

By this Agreement, neither Party waives any rights it may have under the Federal Act or rules of the FCC, under state statute, or pursuant to rules of the Commission.

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

### 1.0 Definitions

Definitions of the terms used in this Agreement are listed below. The Parties agree that certain terms may be defined elsewhere in this Agreement, as well. Terms not defined shall be construed in accordance with their customary meaning in the telecommunications industry as of the effective date of this Agreement.

"Act" means the Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended.

"Cell Site" means the radio transmitting and receiving facilities associated with the origination and termination of wireless traffic to a wireless End User.

"Commercial Mobile Radio Service" or "CMRS" has the meaning given to the term in the Act.

"Commission" means the South Dakota Public Utilities Commission.

"Conversation Time" means the time (in full second increments) that both Parties' equipment is used for a call, measured from the receipt of answer supervision to disconnect supervision.

"End Office" means a local Telephone Company switching point where the Telephone Company customer station loops are connected for purposes of interconnection to each other and to the network.

"End User" means, whether or not capitalized, any business, residential or governmental Customer of services provided by a Party, and includes the term "Customer" and "Subscriber". More specific meanings of either of such terms are dependent upon the context in which they appear in the Agreement and the provisions of the Act.

"FCC" means the Federal Communications Commission.

"Incumbent Local Exchange Carrier" or "Incumbent LEC" has the meaning given the term in the Act.

"Interconnection" refers to the connection of separate pieces of equipment, facilities, or platforms between or within networks for the purpose of transmission and routing of Telecommunications traffic.

"Interexchange Carrier" or "IXC" means a telecommunications carrier other than a CMRS carrier that provides toll telephone service, as the latter term is defined in the Act.

"InterLATA Service" has the meaning given the term in the Act.

"InterMTA traffic" means all wireless to wireline calls that originate in one MTA and terminate in another MTA based on the location of the connecting cell site serving the wireless End User, or roamer on the CMRS Provider's network, at the beginning of the call and the location of the End Office serving the wireline End User.

"Local Traffic," for purposes of this Agreement, means: (1) for wireless to wireline calling, traffic exchanged between the CMRS Provider and the Telephone Company that, at the beginning of the call, originates and terminates within the same MTA based on the location of the connecting cell site serving the originating wireless End User, or roamer on the CMRS Provider's network, at the beginning of the call and the location of the End Office serving the terminating wireline End User; and (2) for wireline to wireless calling, traffic exchanged between the Telephone Company and the CMRS Provider that originates in a Telephone Company exchange and terminates to a CMRS Provider NXX via a direct connection that has its rate center within the Telephone Company exchange, except that Local Traffic does not include interstate or intrastate traffic routed to an Interexchange Carrier.

"Mobile Switching Center" or "MSC" means a CMRS Provider's facilities and related equipment used to route and switch commercial mobile radio service traffic to and from and among its End Users and other telecommunications carriers.

"Major Trading Area" or "MTA" has the meaning given to the term in 47 CFR Section 24.202(a).

"NXX", "NXX Code", "Central Office Code", or "CO Code" is the 3-digit switch indicator that is defined by the D, E, and F digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 telephone numbers.

"Party" means either the CMRS Provider or the Telephone Company, and "Parties" means the CMRS Provider and the Telephone Company.

"Point of Interconnection" or "POI" means a physical location where the Telephone Company and the CMRS Provider directly interconnect their respective networks, thereby establishing the technical interface and points for operational division of responsibility.

"Telecommunications" has the meaning given in the Act.

"Telecommunications Carrier" has the meaning given in the Act.

"Termination" means the switching of Traffic at the terminating carrier's end office switch, or equivalent facilities, and delivery of such traffic to the called End User.

"Traffic" includes Local Traffic and InterMTA Traffic.

"Transport" means the transmission of traffic from the POI between the two Parties to the Party's switch that directly serves the called End User.

"Trunk Group" means a set of trunks of common routing, origin and destinations, and which serve a like purpose or function.

"Trunk Side" means a Party's connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity, for example another Telephone Company switch to CMRS Provider switch. Trunk Side connections offer those transmission and signaling features appropriate for the connections of switching entities.

## 2.0 Description of Traffic

2.1 This Agreement applies to Traffic originated by the End User of one Party and terminated to End Users of the other Party which is delivered over facilities owned or controlled by the Parties and which directly interconnect the Parties. Local Traffic is subject to local Transport and Termination charges as described in Appendix A. InterMTA Traffic is subject to Telephone Company's interstate or intrastate access charges.

## 3.0 Network Interconnection

This Section describes the network architecture with which the Parties to this Agreement may interconnect their respective networks for the Transport and Termination of traffic.

### 3.1 Direct Interconnection Facilities

- 3.1.1 Type 1 Interconnection: Facilities which provide line-side connections between a Telephone Company End Office and the CMRS Provider's POI within that end office boundary. Type 1 facilities provide the capability to exchange traffic between the CMRS Provider subscribers and Telephone Company subscribers served only by that Telephone Company end office and other end offices within the Telephone Company exchange.
- 3.1.2 The Parties shall provide each other a forecast of projected mobile to land or land to mobile usage for each POI when significant changes in traffic patterns are anticipated. The Parties agree to work cooperatively to determine the number of trunks needed to handle the estimated traffic.
- 3.1.3 Upon mutual agreement of the Parties, Type 1 facilities may be either one-way or two-way. Each Party shall bear the cost of one-way facilities. When both Parties agree to utilize and implement two-way facilities, charges for the connecting facility between the Telephone Company's switch and the CMRS Provider's POI within the Telephone Company exchange area will be shared by the Parties based on the "default Shared Facility Factor" shown in Appendix A. The Parties may review actual minutes transported on shared two-way facilities to modify the percentages specified in Appendix A. The modified percentages shall be used to true-up, on a going forward basis, the charges between the Parties.
- 3.1.4 The Parties expect that where feasible, traffic will be delivered to each involved network with CCS/SS7 protocol and the appropriate ISUP message to facilitate full interoperability and billing functions. The costs for SS7 messaging service shall be borne by each Party pursuant to a bill and keep arrangement, meaning that neither Party will bill the other Party for expenses related to SS7 messaging service. In-band signaling may be used if CCS/SS7 is not available.
- 3.1.5 If the CMRS Provider establishes a POI in the Telephone Company exchange where the Telephone Company does not provide direct interconnection (e.g., at a remote switch), the CMRS Provider shall purchase facilities from the Telephone Company to transport traffic to a point in the Telephone Company network where the Telephone Company does provide direct interconnection.
- 3.1.6 Appendix B contains the existing POIs established between the Parties.

## 3.2 Technical Requirements and Standards

- 3.2.1 Each Party will provide the services in this Agreement to the other Party under reasonable and non-discriminatory conditions and at a standard that is at least equal in quality and performance to that which the Party provides to other connecting carriers. Either Party may request, and the other Party will provide, to the extent technically feasible, services at a higher or lesser standard, provided however, that any such requests shall be considered a special request, and will be handled on a case-by-case basis.
- 3.2.2 Nothing in this Agreement will limit either Party's ability to modify its network, including, without limitation, the incorporation of new equipment and new software. Each Party will provide the other Party reasonable written notice, of any such modifications to its

network, which will materially impact the other Party's service. Each Party will be solely responsible, at its own expense, for the overall design of its telecommunications services and for any redesigning or rearrangement of its telecommunications services which may be required as a consequence of this Agreement, including, without limitation, changes in facilities, operations or procedures, minimum network protection criteria, or operating or maintenance characteristics of facilities. These provisions shall not in any way affect the application of special construction charges of the Telephone Company, for the construction of new facilities, where such charges would otherwise be applicable in provisioning the new or additional service.

#### 4.0 Transmission and Routing of Traffic

This Section provides the terms and conditions for the exchange of traffic between the Parties' respective networks for the transmission and routing by the Parties of wireless Traffic.

##### 4.1 Mobile to Land Traffic – Directly Interconnected

4.1.1 The CMRS Provider shall be responsible for the delivery of Traffic from its Network to the appropriate POI on the Telephone Company's network, as set forth in Appendix B, for the Transport and Termination of such traffic by the Telephone Company to one of its End Users.

4.1.2 If the CMRS Provider chooses to use the Telephone Company's services or facilities, not otherwise covered under this Agreement, appropriate tariff or pricing catalog rates, or rates established under separate agreement will apply.

##### 4.2 Land to Mobile Traffic – Directly Interconnected

4.2.1 The Telephone Company with which CMRS Provider has directly interconnected shall be responsible for the delivery of traffic from its End Users in the "Local Calling Area" connected to its network to the CMRS POI in the Telephone Company exchange area for the Transport and Termination of such traffic by the CMRS Provider to the CMRS End User.

4.2.2 Telephone Company agrees that its landline customers will dial CMRS Provider's NPA-NXXs on a local basis, so long as the CMRS Provider's NPA-NXX has been assigned by the North American Numbering Plan Administrator (NANPA) to an End Office rate center in which a POI is physically located and provided such local access is consistent with the capabilities and use of the direct interconnection. When the Parties are directly connected, Telephone Company agrees to deliver all such locally dialed traffic to CMRS Provider at that POI with the CMRS Provider.

#### 5.0 Transport and Termination Compensation

5.1 Rates - The CMRS Provider and the Telephone Company shall reciprocally and symmetrically compensate one another for Local Traffic terminated on either Party's network. The rates at which the Parties shall compensate each other for the Transport and Termination of Traffic are set forth in Appendix A hereto.

5.1.1 The Telephone Company's access charges apply to the termination of InterMTA traffic.

5.1.2 The rates applicable to Local Traffic are set forth in Appendix A.

5.1.3 The Transport and Termination Services provided hereunder are intended for wireless to wireline or wireline to wireless, but not wireline to wireline communications. Such services will not be used to terminate other types of traffic on Telephone Company's network (such as wireline originated traffic) and services used in violation hereof shall constitute a breach of this Agreement. In addition to any other remedies available, the Party whose services have been improperly used shall be entitled to recover the appropriate charges for such traffic for the entire period of misuse.

5.2 De Minimus Traffic - In the event the Traffic terminated on the Telephone Company's network is de minimus (the total minutes for compensation is less than 1,000 minutes of use for a one month period) the Parties agree that the Telephone Company shall not render a billing until 1,000 minutes or more is reached.

5.3 Conversation Time - For purposes of billing compensation, billed minutes will be based upon Conversation Time. Conversation Time will be determined from actual usage recordings by the Parties.

5.4 Measuring traffic – In order to determine whether traffic exchanged between the Parties' networks is Local or InterMTA Traffic for purposes of determining compensation, the Parties agree to define the customer location as follows: For Telephone Company, the origination or termination point of a call shall be the Telephone Company's End Office which serves, respectively, the calling or called End User. For CMRS Provider, the origination or termination point of a call shall be the connecting cell site, which serves, respectively, the calling or called party at the time the call begins.

## 6.0 Transmission and Routing of Other Types of Traffic

The Parties agree that this Agreement does not provide for the exchange of 911/E911 traffic and that if such service is requested by the CMRS Provider that the Parties will negotiate a separate Agreement for such traffic.

Other ancillary traffic including wireless traffic destined for ancillary services including, but not limited to, directory assistance, operator call termination (busy line interrupt and verify), 800/888, LIDB, and information services requiring special billing will be exchanged and charged in accordance with the appropriate tariffs, local or switched access.

## 7.0 Responsibilities of the Parties:

### 7.1 Verification Reviews

7.1.1 The Parties will be responsible for the accuracy and quality of the data as submitted to the other Party. Upon reasonable written notice, either Party or its authorized representative shall have the right to conduct a review and verification of the other Party's data to give assurances of compliance with the provisions of this Agreement. The review will consist of an examination and verification of data involving records, systems, procedures and other information related to the services performed by the Party as related to settlement charges or payments made in connection with this Agreement. Each Party, whether or not in connection with an on-site verification review, shall maintain reasonable records for a minimum of twelve (12) months and

provide the other Party with reasonable access to such information as is necessary to determine amounts receivable or payable under this Agreement.

7.1.2 Either Party's right to access information for verification review purposes is limited to data not in excess of twelve (12) months in age. Once specific data has been reviewed and verified, it is unavailable for future reviews. Any items not reconciled at the end of a review will, however, be subject to a follow-up review effort. Any retroactive adjustments required subsequent to previously reviewed and verified data will also be subject to follow-up review. Information of the Party involved with a verification review shall be subject to the confidentiality provisions of this Agreement.

7.1.3 The Party requesting a verification review shall fully bear its costs associated with conducting a review. The Party being reviewed will provide access to required information, as outlined in this section, at no charge to the reviewing Party. Should the reviewing Party request information or assistance beyond that reasonably required to conduct such a review, the Party being reviewed may, at its option, decline to comply with such request or may bill actual costs incurred in complying subsequent to the concurrence of the reviewing Party.

## 7.2 Billing

7.2.1 For directly connected arrangements between the Parties, the Telephone Company shall issue its bill to CMRS Provider based on actual usage recordings.

7.2.2 For billing purposes, if either Party is unable to classify on an automated basis the traffic delivered by CMRS as local traffic or interMTA traffic, a Percent InterMTA Use factor will be used, which represents the estimated portion of interMTA traffic delivered by CMRS provider. The interMTA factor will further be defined for estimated interstate and intrastate usage based on a stated Percent Interstate Usage (PIU).

The initial InterMTA factor to be applied to total minutes of use delivered by the CMRS Provider shall be 10.0%. Half of this initial InterMTA factor shall be considered to be Intrastate traffic and the other half to be Interstate. These factors may be adjusted beginning six months after the effective date of the Agreement and every six months thereafter during the term of this Agreement, based on a mutually agreed to traffic study analysis. Each of the Parties to this Agreement is obligated to proceed in good faith toward the development of a method of traffic study that will provide a reasonable measurement of terminated InterMTA traffic.

For directly connected arrangements between the Parties reciprocal compensation for land to mobile will apply. If actual land to mobile data is not available and a single bill is rendered by the Telephone Company, a Reciprocal Compensation Credit shall be calculated and applied to the billing from Telephone Company to the CMRS Provider to provide compensation for land to mobile traffic that the CMRS Provider receives from Telephone Company for termination. The amount of this credit shall be determined by applying the Reciprocal Compensation Credit formula set forth in Appendix A. The Reciprocal Compensation Credit will appear on the monthly or quarterly bill issued by Telephone Company as a credit against amounts due and payable from CMRS Provider to Telephone Company.

7.2.4 The Parties shall pay each other for all charges in accordance with the rates set forth in Appendix A of this agreement. Such payments are to be received within thirty (30) days from the receipt of the billing statement. Undisputed charges, not paid within the



thirty (30) days from the receipt of the billing statement may be subject to a late charge at the rate of 1.5% per month or the maximum amount allowed by law. The Party collecting revenues shall be responsible for reporting and remitting all applicable taxes associated therewith.

7.2.5 Each Party shall bear its portion of billing and collection fees.

7.2.6 If either Party disputes a billing statement issued by the other Party, the disputing Party shall notify the billing Party in writing regarding the nature and the basis of the dispute within thirty (30) days of the receipt of the statement. The Parties shall diligently work toward resolution of all billing issues.

### 7.3 Network Maintenance and Management for Direct Interconnection

The Parties will work cooperatively to install and maintain reliable network facilities. The Parties will exchange appropriate information to achieve this desired reliability, subject to the confidentiality provisions herein.

7.3.1 Each Party shall provide a 24-hour contact number for network traffic management issues to the other's surveillance management center.

7.3.2 Neither Party will use any service provided under this Agreement in a manner that impairs the quality of service to the other carrier's network or to either Party's End Users. Either Party will provide the other Party notice of said impairment at the earliest practicable time.

7.3.3 Use of the CMRS Providers' facilities shall not materially interfere with or impair service over any facilities of the Telephone Company, its affiliated companies or its connecting and concurring carriers involved in its services, cause damage to their plant, impair the privacy of any communications carrier over their facilities or create hazards to the employees of any of them or the public. Upon reasonable written notice and opportunity to cure, the Party whose facilities are being used may discontinue or refuse service to the other Party if the Party using the facilities violates this provision; provided, that such termination of service will be limited to the facilities being used that is subject of the violation.

7.3.4 Maintenance of Service Charge - When one Party reports trouble to the other Party for clearance and no trouble is found in the second Party's network, the reporting Party shall be responsible for payment of a Maintenance of Service Charge for the period of time when the second Party's personnel are dispatched. In the event of an intermittent service problem that is eventually found to be in the second Party's network, the reporting Party shall receive a credit for any Maintenance of Service Charges applied in conjunction with this service problem.

If a Party reports trouble to the other Party for clearance and the other Party's personnel are not allowed access to the reporting Party's premises, the Maintenance of Service Charge will apply for the time that the non-reporting Party's personnel are dispatched; provided that the Parties have arranged a specific time for the service visit.

### 8.0 Liability and Indemnification

8.1 Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the Interconnection, functions, products and services which are provided

by that Party, its authorized agents, subcontractors, or others retained by such parties, and neither Party shall bear any responsibility for the Interconnection, functions, products and services provided by the other Party, its agents, subcontractors, or others retained by such parties.

- 8.2 Each Party shall be indemnified and held harmless by the other Party against claims, losses, suits, demands, damages, costs, expenses, including reasonable attorney's fees ("Claims"), asserted, suffered, or made by third parties arising from (i) any act or omission of the indemnifying Party in connection with its performance or non-performance under this Agreement; (ii) actual or alleged infringement by the indemnifying Party of any patent, trademark, copyright, service mark, trade name, trade secret or intellectual property right (now known or later developed), and (iii) provision of the indemnifying Party's services or equipment, including but not limited to claims arising from the provision of the indemnifying Party's services to its End Users (e.g., claims for interruption of service, quality of service or billing disputes). Each Party shall also be indemnified and held harmless by the other Party against Claims of persons for services furnished by the indemnifying Party or by any of its subcontractors, under worker's compensation laws or similar statutes.
- 8.3 A Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party ("Indemnified Party") against any claim or loss arising from the Indemnifying Party's use of Interconnection, functions, products and services provided under this Agreement involving:
- 8.3.1 any Claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its Customer's use.
- 8.3.2 any claims, demands or suits that assert any claim for libel, slander, infringement or invasion of privacy or confidentiality of any person or persons caused or claimed to be caused, directly or indirectly, by the other Party's employees and equipment associated with the provision of any service herein. The foregoing includes any Claims or Losses arising from disclosure of any Customer-specific information associated with either the originating or terminating numbers used to provision Interconnection, functions, products or services provided hereunder and all other Claims arising out of any act or omission of the Customer in the course of using any Interconnection, functions, products or services provided pursuant to this Agreement.
- 8.3.3 any and all penalties imposed on either Party because of the Indemnifying Party's failure to comply with the Communications Assistance to Law Enforcement Act of 1994 (CALEA).
- 8.4 Neither Party makes any warranty, express or implied, concerning either Party's rights with respect to intellectual property (including without limitation, patent, copyright and trade secret rights) or contract rights associated with either Party's right to interconnect. Nothing in this Section will be deemed to supersede or replace any other agreements, if any, between the Parties with respect to either party's intellectual property or contract rights.
- 8.5 Each Party ("Indemnifying Party") shall reimburse the other Party ("Indemnified Party") for damages to the Indemnified Party's equipment, Interconnection trunks, and other property utilized to provide Interconnection hereunder caused by the negligence or willful act of the Indemnifying Party, its agents, subcontractors or Customer or resulting from the Indemnifying Party's improper use of the Indemnified Party's equipment, Interconnection trunks or other property, or due to malfunction of any functions, products, services or equipment of the Indemnifying Party or of any other party that have been provided to the Indemnifying Party.

Upon reimbursement for damages, the Indemnified Party will cooperate with the Indemnifying Party in prosecuting a claim against the person causing such damage. The Indemnifying Party shall be subrogated to the right of recovery by the Indemnified Party for the damages to the extent of such payment.

## 8.6 Indemnification Procedures

- 8.6.1 Whenever a claim shall arise for indemnification, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.
- 8.6.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.
- 8.6.3 Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.
- 8.6.4 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such Claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.
- 8.6.5 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.
- 8.6.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.
- 8.6.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.
- 8.6.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the

defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.

8.6.9 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 9.

8.7 Apportionment of Fault. Except for losses alleged or claimed by a Customer of either Party and except as otherwise provided in specific appendices, in the case of any loss alleged or claimed by a third party arising out of the negligence or willful misconduct of both Parties, each Party shall bear, and its obligation under this Section shall be limited to, that portion of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.

8.7.1 The Parties are not liable for any act or omission of other Providers.

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

#### 8.8 NO CONSEQUENTIAL DAMAGES

NEITHER THE TELEPHONE COMPANY NOR THE CMRS PROVIDER SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS) FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL LIMIT EITHER PARTIES LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL MISCONDUCT (INCLUDING GROSS NEGLIGENCE) OR (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY TO THE EXTENT PROXIMATELY CAUSED BY THE TELEPHONE COMPANY'S OR THE CMRS PROVIDER'S NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS, AS SPECIFIED HEREIN.

#### 8.9 RELEASES

In resolution of the Parties rights, and in further consideration of this Agreement, each Party releases, acquits and discharges the other Party of and from any claim, debt, demand,

liability, action or cause of action arising from or relating to the payment of money for the transport and termination of traffic prior to the Effective Date of this Agreement.

## 9.0 Confidentiality and Proprietary Information

- 9.1 For the purposes of this Agreement, Confidential Information ("Confidential Information") means confidential or proprietary technical or business information given by one Party (the "Discloser") to the other (the "Recipient"). All information which is disclosed by one Party to the other in connection with this Agreement, during negotiations and the term of this Agreement will not be deemed Confidential Information to the Discloser and subject to this Section 9, unless the confidentiality of the information is confirmed in writing by the Discloser prior to disclosure. The Recipient agrees (i) to use Confidential Information only for the purpose of performing under this Agreement, (ii) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (iii) to safeguard it from unauthorized use or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third-party agent or consultant, such disclosure must be agreed to in writing by the Discloser, and the agent or consultant must have executed a written agreement of nondisclosures and nonuse comparable in scope to the terms of this section.
- 9.2 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies will be subject to the same restrictions and protections as the original and will bear the same copyright and proprietary rights notices as are contained on the original.
- 9.3 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient, within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information if directed to do so by Discloser except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement; the Recipient shall certify destruction by written letter to the Discloser. If either Party loses or makes an unauthorized disclosure of the Party's Confidential Information, it will notify such other Party immediately and use its best efforts to retrieve the lost or wrongfully disclosed information.
- 9.4 The Recipient shall have no obligation to safeguard Confidential Information: (i) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser; (ii) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (iii) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; (iv) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state or federal regulatory body, or a court in the conduct of any mediation, arbitration or approval of this Agreement, as long as, in the absence of an applicable protective order, the Discloser has been previously notified by the Recipient in time sufficient for the Recipient to undertake all lawful measures to avoid disclosing such confidential information and for Discloser to have reasonable time to seek or negotiate a protective order before or with any applicable mediator, arbitrator, state or regulatory body or a court.
- 9.5 The Parties recognize that an individual End User may simultaneously seek to become or be a Customer of both Parties. Nothing in this Agreement is intended to limit the ability of either Party to use customer specific information lawfully obtained from End Users or sources other than the Discloser.
- 9.6 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.

9.7 No license is hereby granted under any patent, trademark, or copyright, nor is any such license implied solely by virtue of the disclosure of any Confidential Information.

9.8 Each Party agrees that the Discloser may be irreparably injured by a disclosure in breach of this Agreement by the Recipient or its representatives and the Discloser will be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach or threatened breach of the confidentiality provisions of this Agreement. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.

#### 10.0 Finality of Disputes

No claims shall be brought for disputes arising from this Agreement more than twenty-four (24) months from the date of occurrence which gives rise to the dispute, or beyond the applicable statute of limitations, whichever is shorter.

#### 11.0 Intervening Law

11.1 The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations, orders or guidelines that subsequently may be prescribed by any federal or state government authority with jurisdiction. To the extent required or permitted by any such subsequently prescribed law, rule, regulation, order or guideline, the Parties agree to negotiate in good faith toward an agreement to modify, in writing, any affected term or condition of this Agreement to bring them into compliance with such law, rule, regulation, order or guideline. Upon failure to reach agreement to implement a change in laws, rules, regulations, orders or guidelines, either Party may seek arbitration before any regulatory authority with jurisdiction.

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

#### 12.0 Miscellaneous Provisions

12.1 Effective Date – The effective date of this agreement is the date of the approval by the South Dakota Public Utilities Commission. The Parties shall work cooperatively and take all steps necessary and proper to expeditiously prosecute a joint application before the Commission seeking approval of this Agreement pursuant to the provisions of 47 U.S.C. §252. Each Party shall be responsible for its own costs and expenses incurred in obtaining approval of this Agreement from the Commission.

#### 12.2 Term and Termination

12.2.1 This Agreement shall remain in effect for two (2) years after the effective date. Thereafter, the Agreement shall automatically renew for additional one (1) year terms, unless either Party gives the other Party written notice of intent to terminate at least sixty (60) days prior to the expiration date of the initial or renewed term.

12.2.2 Upon termination or expiration of this agreement in accordance with this Section, above:

- (a) Each Party shall continue to comply with its obligations set forth in Section 9, Confidentiality and Proprietary Information.

- (b) Each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement; and upon termination or expiration of this Agreement, each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement or place disputed amounts into an escrow account.
- (c) Each Party's indemnification obligations shall survive.

12.2.3 Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party, provided however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and that the defaulting Party does not cure the alleged default within thirty (30) days of receipt of written notice thereof.

- 12.3 Binding Effect - This Agreement will be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.
- 12.4 Assignment - Neither Party may assign, subcontract, or otherwise transfer its rights or obligations under this Agreement except under such terms and conditions as are mutually acceptable to the other Party and with such Party's prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned; provided, that either Party may assign its rights and delegate its benefits, and delegate its duties and obligations under this Agreement without the consent of the other Party to a parent, one hundred (100) per cent owned affiliate or subsidiary of that Party for the continued provisioning of the telecommunications service under this Agreement.
- 12.5 Third Party Beneficiaries - This Agreement shall not provide any non-party with any remedy, claim, cause of action or other right.
- 12.6 Force Majeure - Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its reasonable commercial efforts to avoid or remove the cause of non-performance and both Parties shall proceed to perform with dispatch once the causes are removed or cease.
- 12.7 DISCLAIMER OF WARRANTIES - THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES OR FACILITIES PROVIDED HEREUNDER. ADDITIONALLY, NEITHER PARTY ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.
- 12.8 Survival of Obligations - Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any

other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, will survive cancellation or termination thereof.

12.9 Waiver - The failure of either Party to enforce or insist that the other Party comply with the terms or conditions of this Agreement, or the waiver by either Party in a particular instance of any of the terms or conditions of this Agreement, shall not be construed as a general waiver or relinquishment of the terms and conditions, but this Agreement shall be and remain at all times in full force and effect.

#### 12.10 Patents, Trademarks and Trade Names

12.10.1 With respect to claims of patent infringement made by third persons, the Parties shall defend, indemnify, protect and save harmless the other from and against all claims arising out of the improper combining with or use by the indemnifying Party of any circuit, apparatus, system or method provided by that Party or its End Users in connection with the Interconnection arrangements furnished under this Agreement.

12.10.2 No license under patents is granted by either Party to the other, or shall be implied or arise by estoppel with respect to any circuit, apparatus, system, or method used by either Party in connection with any Interconnection Arrangements or services furnished under this Agreement.

12.10.3 Nothing in this Agreement will grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever, absent prior written consent of the other Party.

#### 12.11 Relationship of the Parties

12.11.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder.

12.11.2 Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party.

12.11.3 Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

12.11.4 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party and each Party's contractor(s) shall be solely responsible for all matters relating to payment of such employees, including the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts and all other regulations governing such matters. Each





the remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the State of South Dakota without reference to conflict of law provisions.

- 12.17 Multiple Counterparts - This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which will together constitute but one and the same document.
- 12.18 Complete Terms - This Agreement together with its appendices and exhibits constitutes the entire agreement regarding the exchange and compensation for Local Traffic between the Parties and supersedes all prior discussions, representations or oral understandings reached between the Parties. Appendices and exhibits referred to herein are deemed attached hereto and incorporated by reference. Neither Party shall be bound by any amendment, modification or additional terms unless it is reduced to writing and signed by authorized representatives of both Parties.
- 12.19 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.
- 12.20 No provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties.
- 12.21 Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives.

James Valley Cooperative Telephone Company

BY: James Groft  
(Signature)

NAME: James Groft  
(Printed)

TITLE: General Manager

DATE: 10/12/07

James Valley Wireless

BY: James Groft  
(Signature)

NAME: James Groft  
(Printed)

TITLE: General Manager

DATE: 10/12/07

**APPENDIX A**

1.0 **LOCAL TRAFFIC - RECIPROCAL COMPENSATION FOR TRANSPORT AND TERMINATION OF TRAFFIC EXCHANGED THROUGH A DIRECT INTERCONNECTION**

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1.1 **RECIPROCAL COMPENSATION CREDIT**

The Reciprocal Compensation Credit shall be calculated by the Telephone Company pursuant to 7.2.2 and as follows:

Default Land to Mobile Factor	30%
Default Mobile to Land Factor	70%

The Reciprocal Compensation Credit will be calculated assuming a ratio of land originated Local Traffic to mobile originated Local Traffic as set forth above. To determine the net billing:

1.1.1 Determine the Mobile to Land Local Traffic by multiplying the total Mobile to Land minutes terminated to Telephone Company by the interMTA factor (interMTA factor identified in 3.0 below). Deduct the interMTA factor minutes from the total Mobile to Land minutes to determine Mobile to Land Local Traffic.

1.1.2 Divide the Mobile to Land Local Traffic amount calculated in 1.1.1 by the Mobile to Land factor in 1.1 above to determine total minutes exchanged.

1.1.3. Multiply the total minutes in 1.1.2 by the Land to Mobile Factor in 1.1 above.

1.1.4 Take the number from 1.1.3 above times the rate in 1.0 to determine the dollar amount of the credit and then deduct the dollar amount of the credit from any other charges owed by the CMRS Provider to determine the net billing.

2.0 **FACILITY RATE**

To the extent CMRS Provider requires facilities referenced in Section 3.1.3, such facilities will be made available and the price will be based upon the applicable Telephone Company interstate or intrastate rate published in the Telephone Company's tariff or pricing catalog. The **default Shared Facility Factor** shall be:

CMRS Provider	70%
Telephone Company	30%

3.0 **INTERMTA TRAFFIC**

Initial InterMTA factor	10%
Interstate	50%
Intrastate	50%

Telephone Company's Tariffed Interstate or Intrastate Access Rates Shall Apply.

**APPENDIX B**

POINT OF INTERCONNECTION

Groton, SD