Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

COMMENTS OF
INTELCOM GROUP (U.S.A.), INC.

RECEIVED
MAY 16 1996

DOCKET FILE COPY ORIGINAL

Cindy Schonhaut
Vice President, Government Affairs
INTELCOM GROUP (U.S.A.), INC.
9605 East Maroon Circle
Englewood, CO 80112
(303) 575-6533

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN, SHAPIRO & MORIN, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2226

Attorneys for IntelCom Group
(U.S.A.), Inc.

May 16, 1996

TABLE OF CONTENTS

STATEMENT OF INTEREST 1

SUMMARY 2

I. The Commission Should Adopt ALTS' Proposed Regulations Fleshing Out The Obligation To Negotiate In Good Faith 3

II. The Commission's Rules Should Prohibit An ILEC From Refusing To Negotiate Or To Interconnect With A Carrier Based On Lack Of A Required Authorization Or Other Claimed Illegalities 6

III. Bell Companies That Do Not Negotiate In Good Faith Should Not Be Rewarded By Grants Of InterLata Authority 10

CONCLUSION 13

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

COMMENTS OF
INTELCOM GROUP (U.S.A.), INC.

IntelCom Group (U.S.A.), Inc. ("ICG") submits the following comments in response to the Commission's Notice of Proposed Rulemaking in these proceedings, FCC 96-182, released April 19, 1996 ("Notice").

STATEMENT OF INTEREST

ICG is one of the largest providers of competitive local access services in the United States. Using fiber optics and advanced communications technology, ICG currently operates networks in 34 cities, including a significant presence in major metropolitan areas of California, Colorado, and the Ohio Valley. ICG provides services both to carriers and to end users, and increasingly offers switched as well as dedicated services to its customers. With the emergence of new competitive opportunities under the Telecommunications Act of 1996, ICG is seeking to expand its offerings of local exchange and exchange access services.

To this end, ICG has entered partnerships with a number of entities, including long distance carriers and utility companies. ICG recently entered into a national contract with a major long distance carrier for provision of a full range of network services. ICG currently has agreements with several utilities to use their network facilities, and is actively pursuing licensing arrangements with other utilities.

ICG is actively negotiating with several incumbent local exchange carriers ("ILECs") to reach agreements for the use of their networks, pursuant to Sections 251 and 252 of the Communications Act of 1934 ("the Act"), 47 U.S.C. §§ 251, 252 as added by the Telecommunications Act of 1996, Pub. L. No. 104-104, §§ 101, Stat. 56 (1996) ("the 1996 Act").

ICG is a member of the Association for Local Telecommunications Services ("ALTS").

SUMMARY

ICG generally supports the comments simultaneously filed by ALTS on the range of interconnection issues raised in the Notice (although there may be particulars on which ICG wishes to comment in reply comments). ICG's comments focus primarily on amplifying points made in ALTS' comments and adding to those comments based on ICG's individual experience and perspective.

Specifically, ICG urges the Commission to establish national guidelines regarding good faith negotiation under Section 251(c)(1) of the Act. 47 U.S.C. § 251(c)(1). See Notice, ¶ 47. The Commission should: (1) adopt ALTS' proposed regulations defining conduct that constitutes failure to negotiate in good faith; (2)

include provisions ensuring that an ILEC may not (a) use negotiations to gather information about a requesting carrier's business plans or (b) delay negotiations based on issues concerning a requesting carrier's legal or regulatory status, and (3) require that Bell companies that do not negotiate in good faith cannot qualify for authorizations under Section 271 to enter the interLATA market.

Proposed regulations addressing these points are appended to ICG's comments as Attachment A.

I. THE COMMISSION SHOULD ADOPT ALTS' PROPOSED REGULATIONS FLESHING OUT THE OBLIGATION TO NEGOTIATE IN GOOD FAITH

As discussed in the Notice, ¶ 47, some ILECs allegedly have refused to negotiate except under unilaterally imposed conditions such as broad nondisclosure requirements covering any or all matters discussed in interconnection negotiations. As the Notice suggests, such tactics will impede the development of local competition and are inconsistent with the Act.

In enacting the 1996 Act, Congress recognized that, in the absence of enforceable statutory obligations, incumbent LECs would have every incentive to use their control of local facilities to delay the entry of local exchange service competitors.[1]

---

[1] Interconnection under Sections 251 and 252 should be required to be conducted by ILECs with at least the same level of openness and fair dealing that was required of the Bell companies in their implementation of the equal access provisions of the AT&T consent decree. Indeed, vigilance by regulators to ensure such openness and fair dealing by ILECs is even more important in the context of Section 251 and 252 interconnection than it was in the analogous processes under the AT&T decree. In 1984 the Bell companies were not allowed to compete with other carriers in the interLATA markets for which interconnection was mandated. Today, under Section 251 and 252, (Footnote continued)

To expedite the emergence of competition, therefore, Congress enacted a structure to guide the negotiating process and to overcome the inertia resulting from ILECs' ability and incentive to delay interconnection of competitors. Under these circumstances, tactics that effectively stall the negotiating process are clearly contrary to Congressional intent and should be prohibited as bad faith negotiations.

Therefore, ICG urges the Commission to adopt ALTS' proposed guidelines fleshing out the obligation to negotiate in good faith. While the regulations proposed by ALTS do not exhaust the varieties of abusive conduct that may constitute bad-faith negotiation, identifying examples of such conduct in the Commission's rules will help remove ambiguity and promote ILEC compliance.

It is particularly inappropriate for ILECs to require that all matters discussed in negotiations remain confidential without regard to the proprietary nature of the particular information disclosed. To wrap negotiations in a blanket of secrecy is clearly contrary to Section 251 because it would prevent a requesting carrier from bringing instances of bad faith negotiation to the attention of regulators. As the Commission noted, many ILECs have asked competitors to sign nondisclosure agreements regarding negotiations undertaken pursuant to Section 251. While ICG acknowledges that some information presented by either side in negotiations may reasonably be subject to confidential treatment, many ILECs would go much further. Various ILECs have

---

(Footnote continued)
the ILECs are the dominant competitors in the local exchange markets for which interconnection is mandated. In these circumstances, the Bell companies have every incentive not to negotiate in good faith unless the Commission makes clear it will strictly enforce Section 251 obligations of fair dealing.

proposed, among other things, that: (1) competitors be prohibited from discussing any matters raised during the negotiations with anyone; (2) competitors be prohibited from discussing the content of negotiations with other competitors who also are negotiating with that ILEC, even though the ILEC uses the same personnel to negotiate with all competitors; (3) competitors be prevented from using the content of negotiations to show, if appropriate, an ILEC's failure to bargain in good faith in proceedings before state and federal regulators; and (4) competitors be prevented from informing regulators, during arbitration of any unresolved interconnection issues, about offers placed on the table by the ILEC that were not agreed to, even when that specific issue is subject to arbitration.

The chilling effect of such requirements on competitors' ability to seek appropriate recourse under the 1996 Act should not be underestimated. One ILEC proposed that, if arbitration by a state regulatory agency takes place, the competitor be prohibited from telling the regulators what offers were proposed (or rejected) by the ILEC. The ILEC in this case wanted a binding contractual agreement that, as to unresolved issues subject to arbitration, nothing be revealed to the regulators about the negotiations, but instead that the ILEC be able to present its policy position (whether consistent or inconsistent with the position it took during negotiations) de novo. Such a requirement has the clear intent and effect of preventing the regulators from reviewing arbitrated issues in a clear light. Even worse, in such cases the competitor will be totally banned from raising and supporting allegations of failure to negotiate in good faith. Attached is the very draft agreement proposed by an ILEC to that effect.[2]

---

[2] See Attachment B. The attached copy is redacted to avoid further complicating ICG's negotiations with the LEC in question.

While no ILEC has yet to make signing of a nondisclosure agreement an express condition of negotiating with ICG, several have requested such nondisclosure agreements and, when ICG has declined to sign them, the ILECs have engaged in dilatory tactics. For example, when one ILEC's request for a very comprehensive nondisclosure agreement was denied by ICG, that ILEC indicated that it could not discuss any significant issues without their attorney present, but appeared for three days of negotiations (on two separate occasions) without an attorney. Remarkably, this ILEC claimed to be severely understaffed to implement the 1996 Act and indicated that unless a nondisclosure agreement was signed, there would be major delays and difficulties in completing the negotiations. As "understaffed" as that ILEC may be, it sent ten people to negotiating sessions over several weeks but, without a nondisclosure agreement, did not send a representative authorized to negotiate on behalf of the ILEC until ICG's counsel so insisted.

It is this type of tactic that, while not constituting an obvious refusal to negotiate, actually is a failure to carry out a statutory obligation and should be prohibited (and sanctioned, if violated) by the Commission.

II. THE COMMISSION'S RULES SHOULD PROHIBIT AN ILEC FROM REFUSING TO NEGOTIATE OR TO INTERCONNECT WITH A CARRIER BASED ON LACK OF A REQUIRED AUTHORIZATION OR OTHER CLAIMED ILLEGALITIES

In the Notice, the Commission notes that "[t]he section 251 rules should help to give content and meaning to what state or local requirements the Commission "shall preempt" as barriers to entry pursuant to section 253." Notice, ¶ 22. ICG agrees that

there should be a relationship between the removal of preemptible entry barriers under Section 253 and the duty to interconnect under Section 251. In our view, however, the duty to interconnect goes farther. The ILEC should not be placed in the position of the "phone police," nor should the ILEC appoint itself to that role. Specifically, in addressing a request for interconnection, while the ILEC may inquire into what services, facilities, or other elements of interconnection the ILEC requires, the ILEC may not inquire into how a requesting carrier intends to use the requested services, facilities, or other elements of interconnection.

Further, the ILEC may not take upon itself the duty of determining whether the carrier requesting interconnection is certified as a LEC or otherwise eligible under state law to provide the services for which interconnection is requested. The authorization of a requesting carrier to provide services should be a matter solely between the carrier and the relevant government authorities.

In this regard, ALTS is proposing that the Commission adopt a rule specifying that it is a violation of the good-faith obligation if the ILEC refuses to negotiate based on the assertion that the requesting carrier has not yet obtained certification from a state commission. ICG urges the Commission to adopt this rule and expand it to include assertions that the requesting carrier, or any entity providing or sharing facilities with the carrier, "lacks a local franchise, or any other necessary government authorization, or that the requesting carrier or any entity providing facilities to the carrier is otherwise prohibited by law from providing any service or a particular service." See Attachment A.

As an example of the potential for abuse in this area, ICG has been hindered from entering the San Antonio market by allegations that its agreement to share facilities with City Public Service ("CPS"), a municipal utility located in San Antonio, Texas, is a violation of Texas state law.[3]

Pursuant to a five-month competitive bidding process, CPS selected ICG as the entity to help it modernize its telecommunications infrastructure by expanding its fiber optic telecommunications facilities and adding enhanced technology. As part of the agreement, CPS allowed ICG to use 50% of the network capacity to provide telecommunications services to other customers. Although Southwestern Bell Corporation ("SBC") did not make a competitive offer to meet CPS' needs for modernized facilities, after the contract was awarded SBC mounted a full-scale political assault, requesting an opportunity to bid on the contract, demanding a further hearing by the city council, and threatening to file a lawsuit against the city. Even though the agreement provided for ICG to pay the city 5% of its revenues in lieu of a right-of-way franchise fee, SBC claimed that the agreement violated the city charter because ICG did not have a franchise. (SBC also claimed that the 5% fee requested unfair and illegal

---

[3] As discussed above, ICG has sought to enter the local exchange and exchange access market in a number of areas by contracting with utilities for use of their existing or planned communications facilities. These facilities offer an important alternative for facilities-based competition with ILECs because existing facilities and the cost of constructing new facilities can be shared with a major user (the utility). The 1996 Act specifically recognizes the role that utilities can play in facilitating the development of local exchange competition. See the 1996 Act, § 103 (amending the Public Utility Holding Company Act of 1935 (15 U.S.C. §§ 79 et seq.) to enable public utility companies to provide telecommunication services). See also 47 U.S.C. § 253(a); H.R. Rep. 104-458, 104th Cong., 2d Sess. 127 ("explicit [state] prohibitions on entry by a utility into telecommunications are preempted under [Section 253]"). Moreover, use of existing utility facilities to provide commercial telecommunications services brings value and benefits to the utility's rate payers.

participation by the city in the success of ICG's telecommunications business.) SBC also claimed that the agreement violated a state law – passed in May 1995, before the passage of the 1996 Act and with SBC's strong support – that prohibits municipally owned electric utilities from "directly or indirectly" providing telecommunications service. The result was that implementation of ICG's contract with CPS was suspended. This week, the Attorney General of Texas issued an opinion stating that the contract does constitute the illegal provision of service by a municipal utility under the state law that predates passage of the 1996 Act.

ICG is petitioning the Commission to determine whether this interpretation of the Texas law violates Section 253 of the Act, which expressly forbids a state from prohibiting "any entity" from providing "any telecommunications service." 47 U.S.C. § 253. The events described above underscore the importance of resolving Section 253 petitions such as ICG's on an expedited basis. It will mean little for the FCC to conclude this proceeding within the time required by the Act, and for CLECs to successfully complete negotiations and other interconnection procedures under Sections 251 and 252, if CLECs still cannot provide service because of unresolved questions regarding entry barriers at the state level. It is particularly inappropriate if such unresolved issues result from ILEC agitation. Therefore, the Commission should resolve pending Section 253 petitions expeditiously.

In any event, the events in this case clearly illustrate the potential for an ILEC to inject itself into questions of whether a CLEC, or entities providing facilities to the CLEC, is authorized or eligible to provide local exchange service. In these types of situations the potential for abuse of a Bell company's position as the incumbent LEC

clearly is very great. Indeed, this example illustrates how the legal hurdles that CLECs must overcome are frequently generated, or aggravated by action taken by the ILECs themselves.

While ILECs generally have a right to raise legal issues and advocate political views, if these same legal issues then become a pretext for the ILEC to stall interconnection negotiations or deny interconnection, the anticompetitive effects of such legal and procedural barriers are multiplied. The Commission should make clear that ILECs may not use issues about the "legal" status of requesting carriers to obstruct interconnection negotiations and procedures under Sections 251 and 252. An ILEC has many other existing avenues in which to challenge the provision of telecommunications services by allegedly unauthorized providers. The Commission should expressly rule that, in conducting negotiations pursuant to Sections 251 and 252, an ILEC may not take upon itself the role of determining whether a requesting carrier, or an entity supplying facilities to such carrier, is eligible or authorized under state or local law, or otherwise allowed to provide services for which the carrier requests interconnection.

III. BELL COMPANIES THAT DO NOT NEGOTIATE IN GOOD FAITH SHOULD NOT BE REWARDED BY GRANTS OF INTERLATA AUTHORITY

While the Commission should adopt regulations that flesh out the obligation to negotiate in good faith, it is equally important to provide some form of sanction for ILECs who fail to negotiate in good faith. In general, Section 251 is enforced in the first instance by the state arbitration procedures of Section 252. That is, the state commission arbitrates disputed issues and ensures that their resolution results in an

agreement that complies with each interconnection obligation of Section 251. However, this arbitration process does not provide any meaningful sanction for an ILEC's violation of Section 251 in the conduct of the negotiation itself.

In the case of the Bell companies, at least, there is a statutory sanction. In order to ensure that Bell companies have an incentive to negotiate in good faith, the Commission should rule in this proceeding that a Bell company's conduct of negotiations with CLECs will be considered by the Commission in making a decision on the Bell company's application for interLATA authority under Section 271 of the Act. Consideration of whether or not the Bell company has negotiated in good faith is appropriate in the context of Section 271 proceedings for two reasons.

First, before approving an application for interLATA authority, the Commission must find that the Bell company's interLATA authorization "will be carried out in accordance with the requirements of section 272." 47 U.S.C. § 271(d)(3)(B). This requires a determination that the Bell Company, for example, will "not discriminate between [its interLATA affiliate] and any other entity in the provision . . . of goods, services, facilities, and information, or in the establishment of standards" (47 U.S.C. § 272(c)(1)), and that the Bell company will "fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates" (47 U.S.C. § 272(e)(1)). If a Bell company has failed to negotiate in good faith with carriers requesting interconnection under Section 251 <u>before</u> being granted interLATA authority, it may be expected reasonably that the Bell

company also will fail to deal fairly and in a nondiscriminatory manner with carriers requesting service after being granted interLATA authority.

Second, the Commission must find that the requested interLATA authorization "is consistent with the public interest, convenience, and necessity." 47 U.S.C. § 271(d)(3)(C). It would not be in the public interest to encourage carriers to engage in bad faith negotiations by rewarding Bell companies who engage in such conduct with a grant of interLATA authority.[4]

Therefore, the Commission's rules should provide that allegations of a Bell Company's failure to negotiate in good faith will be considered in Section 271 proceedings. A Bell Company that has been found to have failed to negotiate in good faith should not be eligible for a Section 271 authorization until it has "cured" such failure by renegotiating and reaching agreement with the injured CLEC.[5]

---

[4] While Bell Company must reach an interconnection agreement with at least one CLEC if a timely request for access is made, in order to qualify for a Section 271 authorization, reaching such an agreement does not render moot any misconduct by the Bell Company during the negotiation process.

One CLEC may reach agreement while other CLECs cannot reach agreement because of the Bell company's failure to negotiate in good faith with those CLECs. Moreover, even if the Bell company's misconduct occurred in negotiations with one or more CLECs that ultimately reached agreement, the agreement(s) may be less favorable to the CLECs and less likely to result in meaningful competition due to the Bell company's misconduct. Regulations addressing these issues are clearly within the scope of the Commission's authority under Section 251.

[5] The CLEC itself, of course, also has a duty to negotiate in good faith. 47 U.S.C. § 251(c)(1).

CONCLUSION

For the foregoing reasons, the Commission should adopt the attached proposed regulations governing ILECs' obligations to negotiate in good faith with carriers requesting interconnection under Sections 251 and 252 of the Act.

May 16, 1996

Respectfully submitted,

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN, SHAPIRO & MORIN, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2226

Attorneys for IntelCom Group (U.S.A.), Inc.

Cindy Schonhaut
Vice President, Government Affairs
INTELCOM GROUP (U.S.A.), INC.
9605 East Maroon Circle
Englewood, CO 80112
(303) 575-6533

ATTACHMENT A

ICG'S PROPOSED REGULATIONS

ATTACHMENT A

ICG'S PROPOSED REGULATIONS

(to be read in conjunction with the proposed regulations attached to ALTS' comments)

** .401 Duty to Negotiate in Good Faith

* * *

(c) An incumbent local exchange carrier is not negotiating in good faith if it takes any of the following actions:

* * *

(2) the incumbent local exchange carrier refuses to negotiate or delays negotiation based on the assertion that the requesting carrier, or any entity providing or sharing facilities with the carrier, has not yet obtained certification from a state commission, or a local franchise, or any other necessary government authorization, or that the requesting carrier or any entity providing or sharing facilities with the carrier is otherwise prohibited by law from providing any service or a particular service;

* * *

(7) the incumbent local exchange carrier requests information on how the requesting carrier intends to use the services, facilities, or forms of interconnection requested.

(d) An incumbent local exchange carrier is not relieved of its duties under this section or Section 251(c)(1) of the Act because the status of a requesting party as a "telecommunications carrier" is in question or the requesting party's legal status (or that of any entity providing or sharing facilities with the requesting party) is otherwise in dispute.

(e) A Bell operating company's conduct of negotiations under Sections 251 and 252 of the Act (47 U.S.C. §§ 251, 252) is relevant to determinations by the Commission under Section 271(d)(3), of the Act. If a requesting carrier submits information reasonably demonstrating that a Bell operating company has violated a provision of this section or Section 251(c)(1) of the Act, the Commission will not approve any application by that Bell operating company under Section 271(d) of the Act. If the Bell operating company subsequently negotiates in good faith and completes an agreement with the affected telecommunications carrier, the Bell operating company may reapply for an authorization under Section 271(d).

ATTACHMENT B

NON-DISCLOSURE AGREEMENT PRESENTED BY ONE ILEC

AGREEMENT SETTING FORTH PRINCIPLES OF NEGOTIATIONS

Whereas the Parties to this Agreement desire to enter into negotiations for local interconnection of their respective networks;

Whereas the terms of such negotiations are subject to certain provisions of the Telecommunications Act of 1996 ("Act") and various provisions of state laws and regulations ("State Law"),

Whereas the Parties want such negotiations to be open and candid;

Whereas the Parties desire to exchange confidential and proprietary information as part of such negotiations and in the event of such exchange, both Parties desire that the Party receiving the information ("Recipient") honor certain desires of the Party disclosing the information ("Owner");

Now therefore in consideration of the mutual promises exchanged and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree to the following terms governing the negotiations, the use of any offers of compromise made or confidential information exchanged.

The negotiations between the Parties shall be open and candid. They shall proceed as efficiently as possible. To ensure freedom of communication with respect to negotiations, no offers by either side shall be used in any regulatory or court proceedings as an admission by either party that the offered position is acceptable. Both Parties are free to propose and support positions different than those offered in

negotiation. If Agreement is not reached on specific proposals such proposals are considered confidential and not for disclosure by the other Party.

Confidential Information:

1. DEFINITIONS. For purposes of this Confidentiality and Nondisclosure Agreement ("Agreement"), "Confidential Information" means all information of Owner or another Party whose information Owner has in its possession under obligations of confidentiality, in whatever form transmitted, relating to business plans or operations, network design, systems and procedures and/or the sale purchase, and use of services, which is disclosed by Owner or its affiliates to Recipient or its affiliates indicating its confidential and proprietary nature and marked confidential or proprietary. The term "affiliate" shall mean any person or entity controlling, controlled by or under common control with a party. The information, if in tangible form, shall be marked prominently with a legend identifying it as confidential. If the information is oral, then it shall be presumed by the Recipient to be confidential.

Notwithstanding the foregoing, Confidential Information shall not include any information of Owner that (a) was in the public domain at the time of the disclosing party's communications thereof to the receiving party; (b) entered the public domain through no fault of the receiving party subsequent to the time of the disclosing party's communication thereof to the receiving party; (c) was in the receiving party's possession free of any obligation of confidence at the time of disclosure by the other party; or (d) was disclosed to the receiving party by a nonparty source, free of any obligation of confidence, after disclosure by the party; or (e) was developed by employees or agents of the receiving party independently or and without reference to any of the Confidential Information that the disclosing party has provided to the receiving party.

2. OWNERSHIP. All Confidential Information in whatever form (including, without limitation, information in computer software or held in electronic storage media) shall be and remain property of Owner. All such Confidential Information shall be returned to Owner promptly upon written request and shall not be retained in any form by Recipient.

3. NONDISCLOSURE. Recipient shall not disclose any Confidential Information to any person or entity except employees or affiliates of Recipient who have a need to know and who have been informed of and agree to abide by Recipient's obligations under this Agreement. Neither recipient shall disclose Confidential Information to its affiliates without prior written notice to the other. Prior to any such access, the Recipient shall inform each such representative of the proprietary and confidential nature of the information and of the Recipient's obligations under this Agreement. Each such representative shall also be informed that by accepting such access, he thereby agrees to be bound by the provisions of this Agreement. Furthermore, by allowing any such access, the Recipient agrees to be and remain jointly and severally liable for any disclosure by any such representative which is not in accordance with this Agreement. Recipient shall use not less than the same degree of care to avoid disclosure of Confidential Information as Recipient uses for its own confidential information of like importance and, at a minimum shall exercise reasonable care.

This Agreement shall not preclude either Party from exercising its rights to seek mediation, arbitration or regulatory intervention in accordance with the Act or applicable State Law with respect to the negotiations including the sharing with the mediator, arbitrator or regulator the information required to be provided under the Act or State Law in connection with such mediation, arbitration or regulatory proceedings such as the positions of the Parties; however, neither Party will disclose a proposed interim

offer or position taken by the other Party to facilitate negotiations which is not the articulated position of that Party. In the event of such mediation, arbitration or regulatory proceedings, the Parties agree to seek confidential treatment of information disclosed in that process. In the event the Parties reach an interconnection agreement which is approved by the applicable State regulatory commission, the Parties agree to file that approved agreement as a public record in accordance with the Act.

The Parties further agree that this Agreement does not prohibit the disclosure of Confidential Information where applicable law requires, including but not limited to, in response to subpoenas and/or orders of a governmental agency or court of competent jurisdiction. In the event the Recipient receives any agency or court subpoena or order requiring such disclosure of Confidential Information, Recipient shall immediately, and in no event later than five (5) days after receipt, notify Owner in writing. All rights and obligations under this Agreement shall survive the expiration or termination of any contract or other agreement between Owner and Recipient. The obligations of the Parties under this Agreement shall continue and survive the completion of the aforesaid discussion and shall remain binding for a period of two (2) years from the date of execution of this Agreement. This provision shall remain binding for the above-stated period, even if the Parties abandon their efforts to undertake a possible business transaction together.

4. REMEDIES. The Parties agree that, in the event of a breach or threatened breach of the terms of this Agreement, Owner may seek any and all relief available in law or equity as a remedy for such breach, including but not limited to, monetary damages, specific performance, and injunctive relief. The Parties acknowledge that Confidential Information is valuable and unique and that disclosure will result in irreparable injury to Owner. In the event of any breach of this Agreement for which legal or equitable

relief is sought, all reasonable attorney's fees and other reasonable costs associated therewith shall be recoverable by the prevailing Party.

5. DISCLAIMER. This Agreement and the disclosure and receipt of Confidential Information do not create or imply (i) any agreement with respect to the sale, purchase, or pricing of any product or service; or (ii) any right conferred, by license or otherwise, in any Confidential Information or in any patent, trademark, service mark, copyright, or other intellectual property.

6. COMPLETE AGREEMENT. This Agreement (i) is the complete agreement of the Parties concerning this subject matter and supersedes any prior such agreements; (ii) may not be amended except in writing signed by the Parties; and (iii) is executed by authorized representatives of each party.

7. GOVERNING LAW. This Agreement is governed by the laws of the state

8. SUCCESSORS AND ASSIGNS. This Agreement shall benefit and be binding on the Parties below and their successors and assigns.

_____	_____
By _____	By _____
Address _____	Address _____
_____	_____
Date _____	Date _____