

driven Permanent Number Portability arrangement as soon as practically possible, without interruption of service to their respective customers.

2. INP shall operate as follows:

a. A customer of Carrier A elects to become a customer of Carrier B. The customer elects to utilize the original telephone number(s) corresponding to the Exchange Service(s) it previously received from Carrier A, in conjunction with the Exchange Service(s) it will now receive from Carrier B. Upon receipt of a signed letter of agency or other appropriate authorization from the customer assigning the number to Carrier B, Carrier A will implement one of the following arrangements:

(1) For the initial implementation of the portability of telephone numbers, Carrier A will implement an arrangement whereby all calls to the original telephone number(s) will be forwarded to a new telephone number(s) designated by Carrier B. Carrier A will route the forwarded traffic to Carrier B via the mutual traffic exchange arrangements, as if the call had originated from the original telephone number and terminated to the new telephone number.

b. Carrier B will become the customer of record for the original Carrier A telephone numbers subject to the INP arrangements. Carrier A will provide Carrier B a single consolidated master billing statement for INP. LEC will enable collect, calling card, and 3rd-number billed calls associated with those numbers to enable CLEC to rebill its newly acquired customers for those functions. Also, to the extent technically feasible, LEC will provide sub-account detail for collect, calling card, and 3rd-number billed calls, and will have billing statements delivered in real time via an agreed-upon Electronic data transfer, or via daily or weekly magnetic tape.

c. Carrier A will update its Line Information Database ("LIDB") listings for retained numbers and cancel calling cards associated with those forwarded numbers.

d. Within two (2) business days of receiving notification from the customer of termination of service, Carrier B shall notify Carrier A of the customer's termination of service with Carrier B, and shall further notify Carrier A as to the Customer's instructions regarding its telephone number(s). Carrier A will cancel the INP arrangements for the customer's telephone number(s). If the Customer has chosen to retain its telephone number(s) for use in conjunction with Exchange Services provided by Carrier A, Carrier A will simultaneously transition the number(s) to the customer's preferred carrier.

3. Under INP, CLEC and LEC will implement a process to coordinate INP cut-overs with Unbundled Loop conversions within a reasonable time that is acceptable to customers.

4. The method utilized to provide INP may be changed, upon the mutual agreement of the parties, to reflect the best available technology (e.g., implementation of route indexing).

B. Compensation

1. CLEC and LEC shall provide INP arrangements to one another without direct charge. All costs of providing INP will be recovered through the application of an annual surcharge on customer bills, levied equally on all working telephone numbers.

2. For all traffic terminated between CLEC and LEC to the party whose customer ultimately receives the call, reciprocal compensation charges and Switched Access charges (pursuant to each carrier's respective tariffs), shall apply for POTS traffic

and non-POTS traffic. For compensation purposes, a mutually agreed surrogate will have to be developed as neither CLEC nor LEC can classify this traffic.

3. With respect to numbers subject to INP, the carrier-of-record for a given customer shall be entitled to collect and retain the Residual Interconnection Charge ("RIC").

#### **X. PROVISIONING AND SERVICE INTERVALS**

The provisioning of trunks for interconnection, as well as any and all unbundled elements, including but not limited to INP, will be made on a non-discriminatory basis. In particular, the provisioning and service intervals for such interconnection trunks and other unbundled elements, including but not limited to methods and procedures, at a minimum will be equal to the better of (a) those provided to the LEC itself (including to its affiliates and/or subsidiaries) and/or by the LEC to non-local exchange carrier customers, or (b) those accorded any other carrier providing switched local exchange services in the State of [ ].

Failure to conform to these provisioning and service intervals will make the LEC automatically subject to liquidated damages to consist of a full refund and/or crediting to the company requesting interconnection and/or unbundled elements) of all applicable installation and nonrecurring charges.

Further, and in addition, the company requesting interconnection and/or unbundled elements shall have the right to petition the Commission for the application of any and all applicable enforcement mechanisms, including but not limited to (a) mediation; (b) binding arbitration; (c) an order directing compliance and/or (d) the imposition of penalties, which petition must be resolved within sixty days of filing. Failure to act on said petition within sixty days of filing will deem the petition to be granted in its entirety. Should the Commission order binding arbitration, the provisions of Section XV, hereafter, shall apply. Alternately, the aggrieved party, at its option, may directly invoke the provisions of Section IV without in the first instance petitioning the Commission.

#### **XI. RESALE OF LOCAL SERVICES**

To the extent CLEC desires to order bundled services for resale from LEC it is entitled to do so on a non-discriminatory basis under rates, terms and conditions no less favorable than those currently extended, or which in the future may be extended, by LEC to any other carrier offering switched local exchange services, or equivalent elements to most favored customers, in [State]. The Parties acknowledge that the rates, terms and conditions under which LEC provides and/or will provide bundled services to other local exchange carriers for resale currently are the subject of proceedings before this Commission and before the FCC and that on a going-forward basis such rates, terms and conditions will reflect Commission and/or FCC determinations in this regard. In the interim, prior to such Commission and/or FCC determinations, bundled services will be provided for resale from the LEC at no less than a 35% discount from the retail price of such services, unless the parties otherwise mutually agree.

#### **XII. ACCESS TO RIGHTS OF WAY**

Each Party shall provide the other Party access to its roofs, poles, ducts, rights-of-way and conduits they own and/or control on non-discriminatory terms, conditions and prices similar to those offered to other telecommunications carriers, including affiliates and/or subsidiaries, and/or most favored customers, pursuant to each Party's tariffs and/or standard agreements.

#### **XIII. RESPONSIBILITIES OF THE PARTIES**

- A. LEC and CLEC agree to treat each other fairly, non-discriminatorily, and equally for all items included in this agreement, or related to the support of items included in this agreement.
- B. CLEC and LEC will work cooperatively to minimize fraud associated with 3rd-number billed calls, calling card calls, or any other services related to this agreement.
- C. CLEC and LEC agree to promptly exchange electronically all necessary records for the proper billing of all traffic.

- D. For network expansion, CLEC and LEC will jointly review engineering requirements on no less than a semi-annual basis and will establish forecasts for trunk utilization. New trunk groups will be implemented as dictated by engineering requirements for both LEC and CLEC, respectively. LEC and CLEC are required to provide each other the proper call information (e.g., originated call party number and destination call party number, CIC, OZZ, etc.) to enable each company to bill in a complete and timely fashion.
- E. There will be no re-arrangement, reconfiguration, disconnect, or other non-recurring fees for any mutually beneficial network interconnections associated with the initial reconfiguration for traffic exchange, 911/E911, Interim Number Portability, Meet-point Billing, Directory Assistance, Information Services, Common Channel Signalling, and BLV/BLVI connectivity.
- F. The Parties further agree that as between themselves, full nonrecurring installation charges only will be applied in the case of physical work or rearrangements or rewiring involved in installing new service or transferring services, however, administrative changes that involve no such work, e.g., a change in billing name, will incur only a record order charge or other appropriate charges for that work.
- G. With respect to any outstanding issues set forth in this agreement requiring an additional agreement within 60 (sixty) days, each party will use its best efforts to address all such outstanding items within that time period. Failure to reach agreement on these additional issues will not affect the enforceability of this agreement.

#### **XXIV. DEFAULT**

If either Party believes the other is in breach of the Agreement or otherwise in violation of law, it shall first give the other Party written notice of such breach in writing and allow the other Party sixty (60) day's to cure the alleged default. Thereafter, the Parties shall employ the procedures set forth in Sections X and/or XV of this Agreement, as applicable.

#### **XV. BINDING ARBITRATION**

- A. Any controversy or claims arising out of or relating to this Agreement or any breach hereof, upon written notification of the aggrieved Party, shall be settled by arbitration in accord with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Written notice of intent to arbitrate shall be served on the opposing party at least twenty (20) business days prior to the filing of such notice.
- B. The parties agree to request an expedited hearing before the AAA and, if the AAA can arrange such, the hearing shall commence within sixty (60) days of the filing of the arbitration claim. If the AAA is not able to arrange for the hearing to be held within sixty (60) days of such filing, then the hearing shall commence on the AAA's first available date thereafter, but within ninety (90) days of the original filing of the arbitration claim.
- C. The AAA panel shall award costs, including reasonable attorneys' fees to the successful party at the conclusion of the hearing based on their determination as to which party was most at fault for any such claim or controversy. Should any party refuse to arbitrate controversies or claims as required by this Agreement, or delays the course of arbitration proceedings beyond the times set, or permitted by the AAA panel, then such party shall pay all costs, including reasonable attorneys' fees of the other party, incurred with respect to the entire arbitration and/or litigation process, even though such refusing or delaying party may ultimately be the successful party in the arbitration and/or litigation.
- D. The judgment upon the award rendered may be entered in the highest Court of the forum capable of rendering such judgment, either State or Federal, having jurisdiction and shall be deemed final and binding on both of the parties.

#### **XVI. TERM**

CLEC and LEC agree to provide service to each other on the terms defined in this agreement until superseded by amended or additional mutually agreeable arrangements approved by the

Commission, whichever occurs first. By mutual agreement, CLEC and LEC may amend this agreement to extend the term of this agreement. Also by mutual agreement, LEC and CLEC may jointly petition the appropriate regulatory bodies for permission to have this agreement supersede any future standardized agreements or rules such regulators might adopt or approve.

**XVII. INSTALLATION**

LEC and CLEC shall effectuate all the terms of this agreement within 90 days upon execution of this agreement, pursuant to the Implementation Schedule attached hereto as Exhibit A.

**XVIII. NETWORK MAINTENANCE AND MANAGEMENT**

CLEC and LEC will work cooperatively to install and maintain a reliable network. CLEC and LEC will exchange appropriate information (*e.g.*, maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the Government, etc.) to achieve this desired reliability.

CLEC and LEC will work cooperatively to apply sound network management principles by invoking network management controls to alleviate or to prevent congestion.

**XIX. OPTION TO ELECT OTHER TERMS**

If, at any time while this agreement is in effect, either of the parties to this agreement provides arrangements similar to those described herein to a third party operating within the same LATAs (including associated Extended Area Service Zones in adjacent LATAs) as for which this agreement applies, on terms different from those available under this agreement (provided that the third party is authorized to provide local exchange services), then the other party to this agreement may opt to adopt the rates, terms, and conditions offered to the third party for its own reciprocal arrangements with the first party regardless of volume discounts and other quantity terms

In addition, if either Party enters in an agreement (the "Other Agreement") approved by the Commission pursuant to Section 251 and/or Section 252 of the Telecommunications Act, and or is subject to Order of the Commission, which provides for the provision of an interconnection, service, or unbundled element to another authorized carrier, such Party shall make available to the other Party, such interconnection, service or unbundled element upon the same terms and conditions as those provided in the Other Agreement.

This option may be exercised by delivering written notice to the first party.

**XX. CANCELLATION, CONVERSION, NON-RECURRING OR ROLL-OVER CHARGES**

Unless mutually agreed otherwise, neither CLEC nor LEC shall impose cancellation charges upon each other for any beneficial network interconnection functions.

**XXI. 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 related to the performance so interfered with). The affected party shall use its best 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.

**XXII. LIMITATION OF LIABILITY**

Except as otherwise provided herein, neither Party shall be liable to the other in connection with the provision of use of services offered under this Agreement for indirect, incidental, consequential, special damages, including (without limitation) damages for lost profits, regardless of the form of action, whether in contract, indemnity, warranty, strict liability, or tort.

**XXIII. INDEMNITY**

Each Party shall indemnify and hold the other harmless from any liabilities, claims or demands (including the costs, expenses and reasonable attorney's fees on account thereof) that may be made by third parties for: a) personal injuries, including death, or b) damage to tangible property resulting from the sole negligence and/or sole willful misconduct of that Party, its employees or agents in the performance of this Agreement. Each Party shall defend the other at the other's request against any such liability, claim or demand. Each Party shall notify the other promptly of written claims or demands against such Party of which the other party is solely responsible hereunder.

**XXIV. ASSIGNMENT**

This Agreement may not be assigned by either Party without 60 days advance written notice and the written consent of the other Party, provided neither Party shall unreasonably withhold such consent. However, no consent will be required in the event of assignment to an affiliate or subsidiary.

**XXV. NONDISCLOSURE**

A. All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other party dealing with customer specific, facility specific, or usage specific information, other than customer information communicated for the purpose of publication of directory database inclusion, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary", or (iii) communicated orally and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party.

B. Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

C. Each Party shall keep all of the other party's Proprietary Information confidential and shall use the other party's Proprietary Information only for performing the covenants contained in the Agreement. Neither Party shall use the other party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing, and shall maintain the other party's Proprietary Information in the same manner as that in which it maintains its own similar information.

D. Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:

- (i) was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or
- (ii) is or becomes publicly known through no wrongful act of the receiving Party; or
- (iii) is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or

- (iv) is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or
- (v) is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or
- (vi) is approved for release by written authorization of the disclosing Party; or
- (vii) is required to be made public by the receiving Party pursuant to applicable law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.

E. **Effective Date Of This Section.** Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.

**XXVI. EXECUTION IN DUPLICATE**

This Agreement may be executed in duplicate copies, and, upon said execution, shall be treated as an executed document.

**XXVII. NOTICES**

Any notices required by or concerning this Agreement shall be sent to the Parties at the addresses shown below:

Each Party shall inform the other of any changes in the above addresses.

**XXVIII. AMENDMENT**

The Parties may mutually agree to amend this Agreement in writing.

**XXIX. CHOICE OF LAWS**

The Parties agree that this Agreement shall be construed in accordance with and governed by the laws of the State of [ ].

**XXX. ENTIRE AGREEMENT**

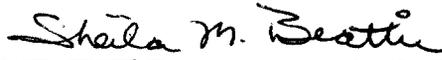
This Agreement sets forth the entire understanding of the Parties and supersedes any and all prior Agreements, arrangements, representations or understandings relating to the subject matter hereof. The Parties enter into this agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, or other public forum.

\* \* \* \* \*

If this agreement is acceptable to CLEC and LEC, both parties shall sign in the space provided below. This agreement shall not bind CLEC and LEC until executed by both parties.

**CERTIFICATE OF SERVICE**

I, Sheila M. Beattie, do hereby certify on this 30th day of May, 1996 that a copy of the foregoing Reply Comments of WinStar Communications, Inc., CC Docket No. 96-98, was served, via first-class mail, on the parties named on the attached list.



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Sheila M. Beattie

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