

## 24.0 INDEMNIFICATION

24.1 BA agrees to indemnify, defend and hold harmless [CLEC], [CLEC]'s affiliates, and the directors, officers and employees of [CLEC] and [CLEC]'s affiliates from and against any and all Losses resulting from any claims, demands, suits, governmental proceedings, or other actions:

(a) relating to personal injury to or death of any person, or damage to, or destruction or loss of, real and/or personal property of any person, arising from transactions or activities relating to this Agreement, to the extent such injury, death, damage, destruction or loss, was proximately caused by the negligent or otherwise tortious acts or omissions of BA; BA's affiliates, or the directors, officers, employees, agents or contractors of BA or BA's affiliates; or

(b) made, instituted, or asserted by BA's own Customer(s) against [CLEC] arising out of [CLEC]'s provision of services to BA under this Agreement (except for a Loss as to which [CLEC] is obligated to indemnify BA under Section 24.2(a)).

24.2 [CLEC] agrees to indemnify, defend and hold harmless BA, BA's affiliates, and the directors, officers and employees of BA and BA's affiliates from and against any and all Losses resulting from any and all claims, demands, suits, governmental proceedings, or other actions:

(a) relating to personal injury to or death of any person, or damage to, or destruction or loss of, real and/or personal property, of any person, arising from transactions or activities relating to this Agreement, to the extent such injury, death, damage, destruction or loss, was proximately caused by the negligent or otherwise tortious acts or omissions of [CLEC], [CLEC]'s affiliates, or the directors, officers, employees, agents or contractors of [CLEC] or [CLEC]'s affiliates; or

(b) made, instituted, or asserted by [CLEC]'s own Customer(s) against BA, BA's affiliates, or the directors, officers or employees of BA or BA's affiliates arising out of BA's provision of services to [CLEC] under this Agreement (except for a Loss as to which BA is obligated to indemnify [CLEC] under Section 24.1(a)).

24.3 Nothing in Sections 24.1 and 24.2 shall affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party or other persons who are to be indemnified under Sections 24.1 and 24.2 ("Indemnified Party/Person") under this Agreement, any other contract, any applicable Tariff(s), or Applicable Law, relating to the indemnified Party's provision of services, facilities or arrangements to the indemnifying Party under this Agreement.

24.4 A Party's obligation to indemnify, defend and hold harmless an Indemnified Party/Person as provided herein shall be conditioned upon the following:

(a) The Indemnified Party/Person shall promptly notify the indemnifying Party of any action taken against the Indemnified Party/Person relating to the indemnification. However, the failure to give such notice shall release the indemnifying Party from its obligations under this Section 24.0 only to the extent the failure to give such notice has prejudiced the indemnifying Party.

(b) The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the Indemnified Party/Person may engage separate legal counsel only at the Indemnified Party/Person's sole cost and expense.

(c) In no event shall the indemnifying Party settle or consent to any judgment in an action without the prior written consent of the Indemnified Party/Person, which consent shall not be unreasonably withheld. However, in the event the settlement or judgment requires a contribution from or affects the rights of the Indemnified Party/Person, the Indemnified Party/Person shall have the right to refuse such settlement or judgment and, at its own cost and expense, take over the defense against such Loss, provided that in such event the indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the Indemnified Party/Person against, the Loss for any amount in excess of such refused settlement or judgment.

(d) The indemnified Party shall, in all cases, assert any and all provisions in its Tariffs and Customer contracts that limit liability to third parties as a bar to any recovery by the third party claimant.

(e) The Indemnified Party/Person shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.

24.5 Each Party agrees that it will not implead or bring any action against the other Party or its affiliates, or any of their respective directors, officers, agents or employees, based on any claim by any person for personal injury or death that occurs in the course or scope of employment of such person by the other Party and that arises out of performance of this Agreement.

## **25.0 LIMITATION OF LIABILITY**

25.1 The liability, if any, of either Party to the other Party or to any other person for damages, claims or other losses arising out of failure to comply with a direction to install, restore or terminate services, facilities or arrangements, or out of failures, mistakes, omissions, interruptions, delays, errors, defects or the like occurring in the course of furnishing any services, facilities or arrangements hereunder (collectively, "Errors") shall be determined in accordance with the terms of the applicable Tariff(s) of the providing Party. In the event no legally effective Tariff provision limiting or excluding the liability of the providing Party shall apply, the providing Party's liability

for such Errors shall not exceed an amount equal to the pro rata applicable monthly charge for the services, facilities or arrangements that are subject to the Errors for the period in which such Errors occur. Recovery of said amount shall be the injured Party's sole and exclusive remedy against the providing Party for such Errors.

25.2 Neither Party shall be liable to the other Party or to any other person in connection with the provision or use of services, facilities or arrangements offered under this Agreement for indirect, incidental, consequential, reliance, punitive, or like damages, including, without limitation, damages for lost revenues, profits or savings, or other commercial or economic loss (collectively, "Consequential Damages"), regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including, without limitation, negligence of a Party, even if the other Party has been advised of the possibility of such damages; provided that the foregoing shall not limit a Party's obligation under Section 24 hereof.

## **26.0 PERFORMANCE STANDARDS FOR SPECIFIED ACTIVITIES**

### **26.1 Performance Standards**

BA shall provide Interconnection and unbundled Network Elements, and make its Telecommunication Services available for resale, all as set forth herein in accordance with the performance standards set forth in Section 251(c) of the Act and the FCC Regulations.

### **26.2 Performance Reporting**

26.2.1 BA shall provide [CLEC] with the Performance Monitoring Reports described by the FCC Order in the Application of BELL ATLANTIC Corporation, Transferee, For Consent to Transfer Control of BELL ATLANTIC Corporation and its Subsidiaries, NSD-L-96-10, Memorandum Opinion and Order (August 14, 1997) ("the FCC Merger Order"), and applicable to [CLEC] in accordance with the requirements of said FCC Merger Order.

26.2.2 [CLEC] agrees that the information included in the Performance Monitoring Reports is confidential and proprietary to BA, and shall be used by [CLEC] solely for internal performance assessment purposes, for purposes of joint [CLEC] and BA assessments of service performance, and for reporting to the Commission, the FCC, or courts of competent jurisdiction, under cover of an agreed-upon protective order, for the sole purpose of enforcing BA's obligations hereunder. [CLEC] shall not otherwise disclose this information to third parties.

## **27.0 COMPLIANCE WITH LAWS; REGULATORY APPROVAL**

27.1 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement. Each Party shall promptly notify the other Party in writing of any governmental action that suspends, cancels, withdraws, limits, or otherwise materially affects its ability to perform its obligations hereunder.

27.2 The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC as an integral part of BA's application pursuant to Section 271(d) of the Act. In the event that any one or more of the provisions contained herein in BA's reasonable determination is likely to adversely affect BA's application pursuant to Section 271(d) of the Act, the Parties agree to make only the minimum revisions necessary to eliminate the inconsistency or amend the application-affecting provision(s).

27.3 In the event of a change in Applicable Law (including, without limitation, any legislative, regulatory, judicial or other legal action) that materially affects any material term of this Agreement, the rights or obligations of either Party hereunder, or the ability of either Party to perform any material provision hereof, the Parties shall renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required or permitted as a result of such legislative, regulatory, judicial or other legal action.

27.4 Notwithstanding anything herein to the contrary, if, as a result of any decision, order or determination of any judicial regulatory or other governmental authority with jurisdiction over the subject matter hereof, it is determined that BA is not required to furnish any service, facility or arrangement, or to provide any benefit required to be furnished or provided to [CLEC] hereunder, then BA may discontinue the provision of any such service, facility, arrangement or benefit to the extent permitted by any such decision, order or determination by providing thirty (30) days prior written notice to [CLEC], unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff or Applicable Law) for termination of such service, facility, arrangement or benefit, in which event such specified period and/or conditions shall apply.

## **28.0 MISCELLANEOUS**

### **28.1 Authorization**

28.1.1 BA represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the State [or Commonwealth] of [STATE] and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder.

28.1.2 [CLEC] represents and warrants that it is a [CORPORATION] duly organized, validly existing and in good standing under the laws of the State [or Commonwealth]

of [STATE], and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

28.1.3 [CLEC] represents that it is, or intends to become, a provider of Telephone Exchange Service to residential and business subscribers offered exclusively over its own Telephone Exchange Service facilities or predominantly over its own Telephone Exchange Service facilities in combination with the use of unbundled Network Elements purchased from another entity and the resale of the Telecommunications Services of other carriers.

## **28.2 Independent Contractor; Disclaimer of Agency**

Each Party shall perform services hereunder as an independent contractor and nothing herein shall be construed as creating any other relationship between the Parties. Each Party and each Party's contractor shall be solely responsible for the withholding or payment of all applicable Federal, state and local income taxes, social security taxes and other payroll taxes with respect to their employees, as well as any taxes, contributions or other obligations imposed by applicable unemployment or workers' compensation acts. Each Party shall have sole authority and responsibility to hire, fire and otherwise control its employees. Except for provisions herein expressly authorizing a Party to act for another Party, 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. 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.

## **28.3 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, including, without limitation: adverse weather conditions, 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 governmental or legal body; 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 acts or occurrences beyond the Party's reasonable control, in each case regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement (any of the foregoing, a "Force Majeure Event"). In such event, the non-performing Party 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-to-day basis to the extent such Party's obligations relate to the performance so interfered with). The non-performing Party shall use commercially reasonable efforts to avoid or remove the cause(s) of non-performance and both Parties shall proceed to perform with dispatch once the cause(s) are removed or cease.

Notwithstanding the above, in no case shall a Force Majeure Event excuse either Party from the obligation to pay money when due under this Agreement, nor require the non-performing Party to settle any labor dispute except as the non-performing Party, in its sole discretion, determines appropriate.

#### **28.4 Confidentiality**

28.4.1 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, that is furnished by one Party to the other Party and that:

- (a) contains Customer specific, facility specific, or usage specific information, other than customer information communicated for the purpose of publication or directory database inclusion, or
- (b) is in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary," or
- (c) is communicated orally and declared to the receiving Party at the time of delivery, and 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.

28.4.2 Each Party shall keep all of the other Party's Proprietary Information confidential in the same manner it holds its own Proprietary Information confidential (which in all cases shall be no less than in a commercially reasonable manner) and shall use the other Party's Proprietary Information only for performing the covenants contained in this 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 or to enforce its rights hereunder (provided that the Party wishing to disclose the other Party's Proprietary Information submits the same to the Commission or courts of competent jurisdiction, as applicable, under a request for a protective order).

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

- (a) was, at the time of receipt, already known to the receiving Party free of any obligation to keep it confidential as evidenced by written records prepared prior to delivery by the disclosing Party; or
- (b) is or becomes publicly known through no wrongful act of the receiving Party; or

(c) 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

(d) is independently developed by an employee, agent, or contractor of the receiving Party that does not have any direct or indirect access to the Proprietary Information; or

(e) is approved for release by written authorization of the disclosing Party; or

(f) is required to be made public by the receiving Party pursuant to Applicable Law, provided that the receiving Party shall have made commercially reasonable efforts to give adequate notice of the requirement to the disclosing Party in order to enable the disclosing Party to seek protective orders.

28.4.4 Following termination or expiration of this Agreement, and upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic, electromagnetic or otherwise, except that the receiving Party may retain one copy for archival purposes only.

28.4.5 Notwithstanding any other provision of this Agreement, the provisions of this Section 28.4 shall apply to all Proprietary Information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the Effective Date.

## **28.5 Choice of Law**

The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the state in which this Agreement is to be performed, except for its conflicts of laws provisions. In addition, insofar as and to the extent Federal law may apply, Federal law will control.

## **28.6 Taxes**

28.6.1 In General. With respect to any purchase hereunder of services, facilities or arrangements, if any federal, state or local tax, fee, surcharge or other tax-like charge (a "Tax") is required or permitted by Applicable Law to be collected from the purchasing Party by the providing Party, then (i) the providing Party shall properly bill the purchasing Party for such Tax, (ii) the purchasing Party shall timely remit such Tax to the providing Party and (iii) the providing Party shall timely remit such collected Tax to the applicable taxing authority.

28.6.2 Taxes Imposed on the Providing Party With respect to any purchase hereunder of services, facilities or arrangements, if any federal, state or local Tax is imposed by Applicable Law on the receipts of the providing Party, and such Applicable Law permits the providing Party to exclude certain receipts received from sales for resale to a public utility,

distributor, telephone company, local exchange carrier, telecommunications company or other communications company ("Telecommunications Company"), such exclusion being based solely on the fact that the purchasing Party is also subject to a tax based upon receipts ("Receipts Tax"), then the purchasing Party (i) shall provide the providing Party with notice in writing in accordance with Section 28.6.6 of this Agreement of its intent to pay the Receipts Tax and (ii) shall timely pay the Receipts Tax to the applicable tax authority.

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

28.6.4 Liability for Uncollected Tax, Interest and Penalty If the providing Party has not received an exemption certificate and fails to collect any Tax as required by Section 28.6.1, then, as between the providing Party and the purchasing Party, (i) the purchasing Party shall remain liable for such uncollected Tax and (ii) the providing Party shall be liable for any interest assessed thereon and any penalty assessed with respect to such uncollected Tax by such authority. If the providing Party properly bills the purchasing Party for any Tax but the purchasing Party fails to remit such Tax to the providing Party as required by Section 28.6.1, then, as between the providing Party and the purchasing Party, the purchasing Party shall be liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority. If the providing Party does not collect any Tax as required by Section 28.6.1 because the purchasing Party has provided such providing Party with an exemption certificate that is later found to be inadequate by a taxing authority, then, as between the providing Party and the purchasing Party, the purchasing Party shall be liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority. If the purchasing Party fails to pay the Receipts Tax as required by Section 28.6.2, then, as between the providing Party and the purchasing Party, (x) the providing Party shall be liable for any Tax imposed on its receipts and (y) the purchasing Party shall be liable for any interest assessed thereon and any penalty assessed upon the providing Party with respect to such Tax by such authority. If the purchasing Party fails to impose and/or collect any Tax from Subscribers as required by Section 28.6.3, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay, or is required to impose on and/or collect from Subscribers, the purchasing Party agrees to indemnify and hold the providing Party harmless on an after-tax basis for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to recover the Tax from the providing Party due to the failure of the purchasing Party to timely pay, or collect and timely

remit, such Tax to such authority. In the event either Party is audited by a taxing authority, the other Party agrees to cooperate fully with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.

**28.6.5 Tax Exemptions and Exemption Certificates** If Applicable Law clearly exempts a purchase hereunder from a Tax, and if such Applicable Law also provides an exemption procedure, such as an exemption-certificate requirement, then, if the purchasing Party complies with such procedure, the providing Party shall not collect such Tax during the effective period of such exemption. Such exemption shall be effective upon receipt of the exemption certificate or affidavit in accordance with the terms set forth in Section 28.6.6. If Applicable Law clearly exempts a purchase hereunder from a Tax, but does not also provide an exemption procedure, then the providing Party shall not collect such Tax if the purchasing Party (i) furnishes the providing Party with a letter signed by an officer requesting such an exemption and citing the provision in the Applicable Law which clearly allows such exemption and (ii) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party (*e.g.*, an agreement commonly used in the industry), which holds the providing Party harmless on an after-tax basis with respect to its forbearing to collect such Tax.

**28.6.6** If any discount or portion of a discount in price provided to [CLEC] under this Agreement (including, but not limited to, a wholesale discount provided for in Exhibit A) is based on anticipated Tax savings to BA because it was anticipated that receipts from sales of BA services that would otherwise be subject to a Tax on such receipts could be excluded from such Tax under Applicable Law because the BA services would be sold to [CLEC] for resale, and BA is, in fact, required by Applicable Law to pay such Tax on receipts from sales of BA services to [CLEC], then, as between BA and [CLEC], [CLEC] shall be liable for, and shall indemnify and hold harmless BA against (on an after-tax basis), any such Tax and any interest and/or penalty assessed by the applicable taxing authority on either [CLEC] or BA with respect to the Tax on BA's receipts.

**28.6.7** All notices, affidavits, exemption-certificates or other communications required or permitted to be given by either Party to the other, for purposes of this Section 28.6, shall be made in writing and shall be delivered in person or sent by certified mail, return receipt requested, or registered mail, or a courier service providing proof of service, and sent to the addressees set forth in Section 28.10 as well as to the following:

To Bell Atlantic:	Tax Administration Bell Atlantic Corporation 1095 Avenue of the Americas Room 3109 New York, NY 10036
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To [CLEC]:

Either Party may from time to time designate another address or other addressees by giving notice in accordance with the terms of this Section 28.6. Any notice or other communication shall be deemed to be given when received.

### **28.7 Assignment**

Neither Party may assign this Agreement or any of its rights or obligations hereunder to a third party without the written consent of the other Party; provided, however, that either Party may assign this Agreement to an affiliate, with the other Party's prior written consent, upon the provision of reasonable evidence by the proposed assignee that it has the resources, ability, and authority to provide satisfactory performance under this Agreement and that the proposed assignee is in good standing with the other Party. Any assignment or delegation in violation of this Section 28.7 shall be void and ineffective and constitute a default of this Agreement. For the purposes of this Section, the term "affiliate" shall mean any entity that controls, is controlled by, or is under common control with the assigning Party.

### **28.8 Billing and Payment; Disputed Amounts**

28.8.1 Except as may otherwise be provided in this Agreement, each Party shall submit on a monthly basis an itemized statement of charges incurred by the other Party during the preceding month(s) for services, facilities or arrangements provided hereunder. Payment of amounts billed under this Agreement, whether billed on a monthly basis or as otherwise provided herein, shall be due, in immediately available U.S. funds, on the later of (a) thirty (30) days following the date of such statement, or (b) twenty (20) days from the date of receipt of such statement.

28.8.2 Although it is the intent of both Parties to submit timely and accurate statements of charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and the billed Party shall not be entitled to dispute the billing Party's statement(s) based on such Party's failure to submit them in a timely fashion.

28.8.3 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within thirty (30) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item.. The Non-Paying Party shall pay when due (a) all undisputed amounts to the Billing Party and (b) all

Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties.

28.8.4 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however all reasonable requests for relevant information made by one Party to the other Party shall be honored.

28.8.5 If the Parties are unable to resolve issues related to the Disputed Amounts within forty-five (45) days after the Parties' appointment of designated representatives pursuant to Section 28.8.4, or if either Party fails to appoint a designated representative within thirty (30) days of the end of the sixty (60) day period referred to Section 28.8.4, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to this Agreement or law or equity.

28.8.6 The Parties agree that all negotiations pursuant to this Section 28.8 shall remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

28.8.7 Charges which are not paid by the due date stated on BA's bill shall be subject to a late payment charge. The late payment charge shall be an amount specified by BA which shall not exceed a rate of one and one half percent (1 1/2%) of the overdue amount (including any unpaid previously billed late payment charges) per month.

## **28.9 Dispute Resolution**

Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties, in the first instance. Should such negotiations fail to resolve the dispute in a reasonable time, either Party may initiate an appropriate action in any regulatory or judicial forum of competent jurisdiction.

## **28.10 Notices**

Except as otherwise provided in this Agreement, notices given by one Party to the other Party under this Agreement shall be in writing and shall be (a) delivered personally, (b) delivered

[CLEC] - BELL ATLANTIC Interconnection Agreement for [STATE]

by express delivery service, (c) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested, or (d) delivered by telecopy to the following addresses of the Parties:

To [CLEC]:

Facsimile:

with a copy to:

Facsimile:

To BA:

Director - Interconnection Services  
Bell Atlantic Wholesale Markets  
1095 Avenue of the Americas  
Room 1423  
New York, NY 10036  
Facsimile: 212/395-7600

with copies to:

General Counsel  
Bell Atlantic - [STATE], Inc.  
[ADDRESS]

Associate General Counsel – Telecom  
1320 N. Court House Road  
8<sup>th</sup> Floor  
Arlington, VA 22201  
Facsimile: 703/974-0744

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is

sent via express mail or personal delivery, (iii) three (3) days after mailing in the case of first class or certified U.S. mail, or (iv) on the date set forth on the confirmation in the case of telecopy.

#### **28.11 Section 252(i) Obligations**

28.11.1 the extent required under Applicable Law, each Party shall comply with the requirements of Section 252(i) of the Act.

28.11.2 To the extent that the exercise by [CLEC] of any rights it may have under such Section 252(i) results in the rearrangement of facilities by BA, [CLEC] shall be solely liable for all costs associated therewith.

28.11.3 If [CLEC] wishes to exercise any rights it may have under Section 252(i), [CLEC] shall provide written notice thereof to BA. Upon BA's receipt of said notice, the Parties shall amend this Agreement so that it provides for the same rates, terms and conditions for the Interconnection, service, or Network Element that [CLEC] has elected to adopt as are set forth in the interconnection agreement under which [CLEC] has made such election (the "Other Agreement"), as well as all of the rates, terms and conditions from the Other Agreement that are legitimately related to such Interconnection, service, or Network Element that has been adopted by [CLEC], in each case for the remainder of the term of the Other Agreement and in accordance with Applicable Law.

#### **28.12 Joint Work Product**

This Agreement is the joint work product of the Parties, has been negotiated by the Parties, 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.

#### **28.13 No Third Party Beneficiaries**

Except as expressly set forth in this Agreement, this Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder.

#### **28.14 No Licenses**

28.14.1 Nothing in this Agreement shall be construed as the grant of a license with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.

28.14.2 Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its Customers based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision of any service, facility or arrangement by either Party under this Agreement, alone or in combination with that of the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third party. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim.

28.14.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY EACH PARTY OF THE OTHER'S FACILITIES, ARRANGEMENTS, OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT.

28.14.4 [CLEC] agrees that the rights granted by BA hereunder shall, where applicable, be subject to the restrictions, if any, contained in any current software license agreements between BA and BA's software vendors. [CLEC] acknowledges that functions and features made available to it hereunder through the use of third party proprietary products may involve additional terms and conditions and/or separate licensing to [CLEC].

#### **28.15 Technology Upgrades**

Notwithstanding any other provision of this Agreement, BA shall have the right to deploy, upgrade, migrate and maintain its network at its discretion. The Parties acknowledge that BA, at its election, may deploy fiber throughout its network and that such fiber deployment may inhibit or facilitate [CLEC]'s ability to provide service using certain technologies. Nothing in this Agreement shall limit BA's ability to modify its network through the incorporation of new equipment, new software or otherwise. [CLEC] shall be solely responsible for the cost and effort of accommodating such changes in its own network.

#### **28.16 Survival**

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement (including, without limitation, the obligation to pay amounts owed hereunder (to include indemnification obligations) and the obligation to protect the other Party's Proprietary Information) shall survive the termination or expiration of this Agreement.

#### **28.17 Entire Agreement**

The terms contained in this Agreement and any Schedules, Exhibits, Tariffs and other documents or instruments referred to herein that are incorporated into this Agreement by reference constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede any and all prior understandings, proposals and other communications, oral or written regarding such subject matter. 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.

#### **28.18 Counterparts**

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

#### **28.19 Modification, Amendment, Supplement, or Waiver**

No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties. Notwithstanding the preceding sentence, either Party may add or delete Tariffs, or change its Tariffs, at any time without the consent of the other Party. A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options.

#### **28.20 Successors and Assigns**

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

#### **28.21 Publicity and Use of Trademarks or Service Marks**

Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in connection with the sale of products and services, or in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

Neither Party may imply any direct or indirect affiliation with or sponsorship or endorsement of its company, products and services by the other Party.

Any violation of this section 28.21 shall be considered a material breach of this Agreement.

#### **28.22 Cooperation With Law Enforcement**

BA may cooperate with law enforcement authorities to the full extent required or permitted by Applicable Law in matters related to services provided by BA hereunder, including, but not limited to, the production of records; the establishment of new lines or the installation of new services on an existing line in order to support law enforcement operations; and the installation of wiretaps, trap-or-trace devices and pen registers. BA shall not have the obligation to inform the Customers of [CLEC] of such law enforcement requests, except to the extent required by Applicable Law. Where a law enforcement request relates to the establishment of new lines (including, but not limited to, lines established to support interception of communications on other lines), or the installation of services on existing lines, BA may take measures to prevent CLECs from obtaining access to information concerning such lines or services through operations support system interfaces, whenever an appropriate governmental authority so requests. A request that the existence of the lines or services not be disclosed shall be interpreted as including a request to block access to information concerning the lines or services through operations support system interfaces. BA will not be liable to any person for any economic harm, personal injury, invasion of any right of privacy, or any other harm, loss or injury, caused or claimed to be caused, directly or indirectly, by actions taken by BA to block, or by its failure to block, access to information concerning particular lines or services through operations support systems interfaces or otherwise.

#### **28.23 CLEC Certification**

Notwithstanding any other provision of this Agreement, BA shall have no obligation to perform under this Agreement until such time as [CLEC] has obtained a Certificate of Public Convenience and Necessity (CPCN) or such other Commission authorization as may be required by law as a condition for conducting business in [STATE] as a local exchange carrier.

#### **28.24 Severability**

In the event that any provision of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of

this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision.

[CLEC] - BELL ATLANTIC Interconnection Agreement for [STATE]

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

[CLEC FULL NAME]

BELL ATLANTIC - [STATE], INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 4.1**

**NETWORK INTERCONNECTION SCHEDULE**

[STATE] RESIDENTIAL SERVICES

BA-IP**	[CLEC]-IP	[CLEC] Intended Implementation Date
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\*\* BA-IP(s) shall be either the BA Tandem or the BA End Office.

[STATE] BUSINESS SERVICES

BA-IP***	[CLEC]-IP	[CLEC] Intended Implementation Date
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\*\*\* BA-IP(s) shall be either the BA Tandem or the BA End Office.

## **SCHEDULE 4.2**

### **INTERCONNECTION POINTS FOR DIFFERENT TYPES OF TRAFFIC**

Each Party shall provide the other Party with Interconnection to its network at the following points for transmission, routing and termination subject to the availability of facilities. Compensation for such facilities will be as set forth in Exhibit A or as provided elsewhere herein.

1. For the termination of Local Traffic or Toll Traffic originated by one Party's Customer and terminated to the other Party's Customer, at the points set forth in Section 4 of the main body of the Agreement.

2. For the termination of Meet Point Billing Traffic from an IXC to:

(a) [CLEC], at the [CLEC]-IP in LATA in which the Traffic is to terminate.

(b) BA, at the BA-IP in LATA in which the Traffic is to terminate.

3. For the termination of Transit Traffic from an ITC, wireless carrier, or other CLEC to:

(a) [CLEC], at the [CLEC]-IP in which the Traffic is to terminate.

(b) BA, at the BA-IP in LATA in which the Traffic is to terminate.

4. For 911/E911 traffic originated on [CLEC]'s network, at the PSAP in areas where only Basic 911 service is available, or at the BA 911/E911 Tandem Office serving the area in which the [CLEC] Customer is located, in accordance with applicable state laws and regulations and PSAP requirements.

5. For Directory Assistance (411 or NPA-555-1212) traffic, at the applicable BA operator services Tandem Office.

6. For Operator Services (call completion) traffic, at the applicable BA operator services Tandem Office.

7. For BLV/BLVI traffic, at the terminating Party's operator services Tandem Office.

8. For SS7 signaling originated by:

(a) [CLEC], at mutually agreed-upon Signaling Point of Interconnection(s) ("SPOI") in the LATA in which the Local or Toll Traffic originates, over CCSAC links

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provisioned in accordance with Bellcore GR-905 and Bell Atlantic Supplement Common Channel Signaling Network Interface Specification (BA 905).

(b) BA, at mutually agreed-upon SPOIs in the LATA in which the Local or Toll Traffic originates, over a CCSAC links provisioned in accordance with Bellcore GR-905 and BA-905.

Alternatively, either Party may elect to interconnect for SS7 signaling through a commercial SS7 hub provider.

9. For toll free service access code (e.g., 800/888/877) database inquiry traffic, at any BA Signaling Transfer Point in the LATA in which the originating [CLEC]Wire Center is located, over a CCSAC link. Alternatively, [CLEC] may elect to interconnect through a commercial SS7 hub provider.

10. For Line Information Database ("LIDB") inquiry traffic, at any BA Signaling Transfer Point in the LATA in which the LIDB is located, over a CCSAC link. Alternatively, [CLEC] may elect to interconnect through a commercial SS7 hub provider.

11. For any other type of traffic, at reasonable points to be agreed upon by the Parties, based on the network architecture of the terminating Party's network.

**SCHEDULE 5.6**

**APPLICABLE FACTORS**

PIU and PLU factors may be reported at the state or LATA level.

FOR TRAFFIC ORIGINATING FROM:	AND TERMINATING TO:	LATA	PIU (%)	PLU (%)
BA	[CLEC]	ALL	[Determined prior to signing]	[Determined prior to signing]
[CLEC]	BA	ALL	[Determined prior to signing]	[Determined prior to signing]

**CUSTOMER:** [CLEC]

**STATE:** [STATE]

**BILLING CONTACT NAME:** \_\_\_\_\_

**BILLING CONTACT NUMBER:** \_\_\_\_\_

**BILLING CONTACT ADDRESS:** \_\_\_\_\_

**[CLEC] ACNA to be used when ordering Interconnections Trunks:** \_\_\_\_\_

**[CLEC] CIC to be used when ordering Interconnection Trunks:** \_\_\_\_\_

**SCHEDULE 6.3**

**RATE ELEMENTS UNDER MEET POINT BILLING**

**Interstate Access - Terminating to or originating from [CLEC] Customers**

<b><u>Rate Element</u></b>	<b><u>Billing Company</u></b>
Carrier Common Line	[CLEC]
Local Switching	[CLEC]
Interconnection Charge	[CLEC]
Local Transport Facility/ Tandem Switched Transport Per Mile	Based on negotiated billing percentage (BIP)
Tandem Switching	BA
Local Transport Termination/ Tandem Switched Transport Fixed	BA
Entrance Facility	BA
800 Database Query	Party that performs query

**Intrastate Access - Terminating to or originating from [CLEC] Customers**

<b><u>Rate Element</u></b>	<b><u>Billing Company</u></b>
Carrier Common Line	[CLEC]
Local Switching	[CLEC]
Interconnection Charge	[CLEC]
Local Transport Facility/ Tandem Switched Transport Per Mile	Based on negotiated billing percentage (BIP)
Tandem Switching	BA
Local Transport Termination/ Tandem Switched Transport Fixed	BA
Entrance Facility	BA
800 Database Query	Party that performs query

## SCHEDULE 11.4

### UNBUNDLED SWITCHING ELEMENTS

#### Local Switching

The unbundled local Switching Elements include Line Side and Trunk Side facilities (*e.g.* line and Trunk Side Ports such as analog and ISDN Line Side Ports and DS1 Trunk Side Ports) plus the features, functions, and capabilities of the switch. It consists of the line-side Port (including connection between a loop termination and a switch line card, telephone number assignment, basic intercept, one primary directory listing, presubscription, and access to 911, operator services, and directory assistance), line and line group features (including all vertical features and line blocking options that the switch and its associated deployed switch software is capable of providing and are currently offered to BA's local exchange Customers), usage (including the connection of lines to lines, lines to trunks, trunks to lines, and trunks to trunks), and trunk features (including the connection between the trunk termination and a trunk card).

BA shall offer, as an optional chargeable feature, daily usage tapes. [CLEC] may request activation or deactivation of features on a per-port basis at any time, and shall compensate BA for the non-recurring charges associated with processing the order. [CLEC] may submit a Bona Fide Request for other switch features and functions that the switch is capable of providing, but which BA does not currently provide, or for customized routing of traffic other than operator services and/or directory assistance traffic. BA shall develop and provide these requested services where technically feasible with the agreement of [CLEC] to pay the recurring and non-recurring costs of developing, installing, updating, providing and maintaining these services.

#### Tandem Switching

The unbundled Tandem Switching Element includes trunk-connect facilities, the basic switching function of connecting trunks to trunks, and the functions that are centralized in Tandem Switches. Unbundled Tandem switching creates a temporary transmission path between interoffice trunks that are interconnected at a BA Access Tandem for the purpose of routing a call or calls.

## SCHEDULE 12.3

### SUPPORT SERVICES FOR RESALE

#### I. BA OSS SERVICES

##### 1.1 Definitions

As used in the Schedule 12.3, the following terms shall have the meanings stated below:

1.1.1 "BA Operations Support Systems" means BA systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing.

1.1.2 "BA OSS Services" means access to BA Operations Support Systems functions. The term "BA OSS Services" includes, but is not limited to: (a) BA's provision of [CLEC] Usage Information to [CLEC] pursuant to Section 1.3 below; and, (b) "BA OSS Information", as defined in Section 1.1.4 below.

1.1.3 "BA OSS Facilities" means any gateways, interfaces, databases, facilities, equipment, software, or systems, used by BA to provide BA OSS Services to [CLEC].

1.1.4 "BA OSS Information" means any information accessed by, or disclosed or provided to, [CLEC] through or as a part of BA OSS Services. The term "BA OSS Information" includes, but is not limited to: (a) any Customer Information related to a BA Customer or a [CLEC] Customer accessed by, or disclosed or provided to, [CLEC] through or as a part of BA OSS Services; and, (b) any [CLEC] Usage Information (as defined in Section 1.1.6 below) accessed by, or disclosed or provided to, [CLEC].

1.1.5 "BA Retail Telecommunications Service" means any Telecommunications Service that Bell Atlantic provides at retail to subscribers that are not Telecommunications Carriers. The term "BA Retail Telecommunications Service" does not include any Exchange Access service (as defined in Section 3(16) of the Act, 47 U.S.C. § 153(16)) provided by BA.

1.1.6 "[CLEC] Usage Information" means the usage information for a BA Retail Telecommunications Service purchased by [CLEC] under this Agreement that BA would record if BA was furnishing such BA Retail Telecommunications Service to a BA end-user retail Customer.

1.1.7 "Customer Information" means CPNI of a Customer and any other non-public, individually identifiable information about a Customer or the purchase by a Customer of the services or products of a Party.

1.2 BA OSS Services

1.2.1 Upon request by [CLEC], BA shall provide to [CLEC], pursuant to Section 251(c)(3) of the Act, 47 U.S.C. § 251(c)(3), BA OSS Services.

1.2.2 Subject to the requirements of Applicable Law, BA Operations Support Systems, BA Operations Support Systems functions, BA OSS Facilities, BA OSS Information, and the BA OSS Services that will be offered by BA, shall be as determined by BA. Subject to the requirements of Applicable Law, BA shall have the right to change BA Operations Support Systems, BA Operations Support Systems functions, BA OSS Facilities, BA OSS Information, and the BA OSS Services, from time-to-time, without the consent of [CLEC].

1.3 [CLEC] Usage Information

1.3.1 Upon request by [CLEC], BA shall provide to [CLEC], pursuant to Section 251(c)(3) of the Act, 47 U.S.C. § 251(c)(3), [CLEC] Usage Information.

1.3.2 [CLEC] Usage Information will be available to [CLEC] through the following:

- (a) Daily Usage File on Data Tape.
- (b) Daily Usage File through Network Data Mover ("NDM").
- (c) Daily Usage File through Centralized Message Distribution System ("CMDS").

1.3.3.1 [CLEC] Usage Information will be provided in a Bellcore Exchange Message Records ("EMI") format.

1.3.3.2 Daily Usage File Data Tapes provided pursuant to Section 1.3.2(a) above will be issued each day, Monday through Friday, except holidays observed by BA.

1.3.4 Except as stated in this Section 1.3, subject to the requirements of Applicable Law, the manner in which, and the frequency with which, [CLEC] Usage Information will be provided to [CLEC] shall be determined by BA.

1.4 Access to and Use of BA OSS Facilities

1.4.1 BA OSS Facilities may be accessed and used by [CLEC] only to the extent necessary for [CLEC]'s access to and use of BA OSS Services pursuant to the Agreement.

1.4.2 BA OSS Facilities may be accessed and used by [CLEC] only to provide Telecommunications Services to [CLEC] Customers.

1.4.3 [CLEC] shall restrict access to and use of BA OSS Facilities to [CLEC]. This Schedule 12.3 does not grant to [CLEC] any right or license to grant sublicenses to other persons, or permission to other persons (except [CLEC]'s employees, agents and contractors, in accordance with Section 1.4.7 below), to access or use BA OSS Facilities.

1.4.4 [CLEC] shall not (a) alter, modify or damage the BA OSS Facilities (including, but not limited to, BA software), (b) copy, remove, derive, reverse engineer, or decompile, software from the BA OSS Facilities, or (c) obtain access through BA OSS Facilities to BA databases, facilities, equipment, software, or systems, which are not offered for [CLEC]'s use under this Schedule 12.3.

1.4.5 [CLEC] shall comply with all practices and procedures established by BA for access to and use of BA OSS Facilities (including, but not limited to, BA practices and procedures with regard to security and use of access and user identification codes).

1.4.6 All practices and procedures for access to and use of BA OSS Facilities, and all access and user identification codes for BA OSS Facilities: (a) shall remain the property of BA; (b) shall be used by [CLEC] only in connection with [CLEC]'s use of BA OSS Facilities permitted by this Schedule 12.3; (c) shall be treated by [CLEC] as Confidential Information of BA pursuant to Section 28.4 of the Agreement; and, (d) shall be destroyed or returned by [CLEC] to BA upon the earlier of request by BA or the expiration or termination of the Agreement.

1.4.7 [CLEC]'s employees, agents and contractors may access and use BA OSS Facilities only to the extent necessary for [CLEC]'s access to and use of the BA OSS Facilities permitted by this Agreement. Any access to or use of BA OSS Facilities by [CLEC]'s employees, agents, or contractors, shall be subject to the provisions of the Agreement, including, but not limited to, Section 28.4 thereof and Sections 1.5.6 and 1.5.3.3 of this Schedule 12.3.

## 1.5 BA OSS Information

1.5.1 Subject to the provisions of this Schedule 12.3 and Applicable Law, BA grants to [CLEC] a non-exclusive license to use BA OSS Information.

1.5.2 All BA OSS Information shall at all times remain the property of BA. Except as expressly stated in this Schedule 12.3, [CLEC] shall acquire no rights in or to any BA OSS Information.

1.5.3.1 The provisions of this Section 1.5.3 shall apply to all BA OSS Information, except (a) [CLEC] Usage Information, (b) CPNI of [CLEC], and (c) CPNI of a BA Customer or a [CLEC] Customer, to the extent the Customer has authorized [CLEC] to use the Customer Information.

1.5.3.2 BA OSS Information may be accessed and used by [CLEC] only to provide Telecommunications Services to [CLEC] Customers.

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1.5.3.3 [CLEC] shall treat BA OSS Information that is designated by BA, through written or electronic notice (including, but not limited to, through the BA OSS Services), as "Confidential" or "Proprietary" as Confidential Information of BA pursuant to Section 28.4 of the Agreement.

1.5.3.4 Except as expressly stated in this Schedule 12.3, this Agreement does not grant to [CLEC] any right or license to grant sublicenses to other persons, or permission to other persons (except [CLEC]'s employees, agents or contractors, in accordance with Section 1.5.3.5 below, to access, use or disclose BA OSS Information.

1.5.3.5 [CLEC]'s employees, agents and contractors may access, use and disclose BA OSS Information only to the extent necessary for [CLEC]'s access to, and use and disclosure of, BA OSS Information permitted by this Schedule 12.3. Any access to, or use or disclosure of, BA OSS Information by [CLEC]'s employees, agents or contractors, shall be subject to the provisions of this Agreement, including, but not limited to, Section 28.4 of the Agreement and Section 1.5.3.3 above.

1.5.3.6 [CLEC]'s license to use BA OSS Information shall expire upon the earliest of: (a) the time when the BA OSS Information is no longer needed by [CLEC] to provide Telecommunications Services to [CLEC] Customers; (b) termination of the license in accordance with this Schedule 12.3; or (c) expiration or termination of the Agreement.

1.5.3.7 All BA OSS Information received by [CLEC] shall be destroyed or returned by [CLEC] to BA, upon expiration, suspension or termination of the license to use such BA OSS Information.

1.5.4 Unless sooner terminated or suspended in accordance with the Agreement or this Schedule 12.3 (including, but not limited to, Section 22.3 of the Agreement and Section 1.6.1 below), [CLEC]'s access to BA OSS Information through BA OSS Services shall terminate upon the expiration or termination of the Agreement.

1.5.5.1 Without in any way limiting Section 18.3 of the Agreement, BA shall have the right (but not the obligation) to audit [CLEC] to ascertain whether [CLEC] is complying with the requirements of Applicable Law and this Agreement with regard to [CLEC]'s access to, and use and disclosure of, BA OSS Information.

1.5.5.2 Without in any way limiting any other rights BA may have under the Agreement or Applicable Law, BA shall have the right (but not the obligation) to monitor [CLEC]'s access to and use of BA OSS Information which is made available by BA to [CLEC] pursuant to this Agreement, to ascertain whether [CLEC] is complying with the requirements of Applicable Law and this Agreement, with regard to [CLEC]'s access to, and use and disclosure of, such BA OSS Information. The foregoing right shall include, but not be limited to, the right (but not the obligation) to electronically monitor [CLEC]'s access to and use of BA OSS Information which

is made available by BA to [CLEC] through BA OSS Facilities.

1.5.5.3 Information obtained by BA pursuant to this Section 1.5.5 shall be treated by BA as Confidential Information of [CLEC] pursuant to Section 28.4 of the Agreement; provided that, BA shall have the right (but not the obligation) to use and disclose information obtained by BA pursuant to this Section 1.5.5 to enforce BA's rights under the Agreement or Applicable Law.

1.5.6 [CLEC] acknowledges that the BA OSS Information, by its nature, is updated and corrected on a continuous basis by BA, and therefore that BA OSS Information is subject to change from time to time.

#### 1.6 Liabilities and Remedies

1.6.1 Any breach by [CLEC], or [CLEC]'s employees, agents or contractors, of the provisions of Sections 1.4 or 1.5 above shall be deemed a material breach of the Agreement. In addition, if [CLEC] or an employee, agent or contractor of [CLEC] at any time breaches a provision of Sections 1.4 or 1.5 above and such breach continues for more than ten (10) days after written notice thereof from BA, then, except as otherwise required by Applicable Law, BA shall have the right, upon notice to [CLEC], to suspend the license to use BA OSS Information granted by Section 1.5.1 above and/or the provision of BA OSS Services, in whole or in part.

1.6.2 [CLEC] agrees that BA would be irreparably injured by a breach of Sections 1.4 or 1.5 above by [CLEC] or the employees, agents or contractors of [CLEC], and that BA shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any such breach. Such remedies shall not be deemed to be the exclusive remedies for any such breach, but shall be in addition to any other remedies available under this Agreement or at law or in equity.

#### 1.7 Relation to Applicable Law

The provisions of Sections 1.4, 1.5 and 1.6 above shall be in addition to and not in derogation of any provisions of Applicable Law, including, but not limited to, 47 U.S.C. § 222, and are not intended to constitute a waiver by BA of any right with regard to protection of the confidentiality of the information of BA or BA Customers provided by Applicable Law.

#### 1.8 Cooperation

[CLEC], at [CLEC]'s expense, shall reasonably cooperate with BA in using BA OSS Services. Such cooperation shall include, but not be limited to, the following:

1.8.1 Upon request by BA, [CLEC] shall by no later than the fifteenth (15th) day of each calendar month submit to BA reasonable, good faith estimates (by central office or other BA office or geographic area designated by BA) of the volume of each BA Retail

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Telecommunications Service for which [CLEC] anticipates submitting orders in each week of the next calendar month.

1.8.2 Upon request by BA, [CLEC] shall submit to BA reasonable, good faith estimates of other types of transactions or use of BA OSS Services that [CLEC] anticipates.

1.8.3 [CLEC] shall reasonably cooperate with BA in submitting orders for BA Retail Telecommunications Services and otherwise using the BA OSS Services, in order to avoid exceeding the capacity or capabilities of such BA OSS Services.

1.8.4 [CLEC] shall participate in cooperative testing of BA OSS Services and shall provide assistance to BA in identifying and correcting mistakes, omissions, interruptions, delays, errors, defects, faults, failures, or other deficiencies, in BA OSS Services.

1.9 BA Access to Information Related to [CLEC] Customers

1.9.1 BA shall have the right to access, use and disclose information related to [CLEC] Customers that is in BA's possession (including, but not limited to, in BA OSS Facilities) to the extent such access, use and/or disclosure has been authorized by the [CLEC] Customer in the manner required by Applicable Law.

1.9.2 Upon request by BA, [CLEC] shall negotiate in good faith and enter into a contract with BA, pursuant to which BA may obtain access to [CLEC]'s operations support systems (including, systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing) and information contained in such systems, to permit BA to obtain information related to [CLEC] Customers (as authorized by the applicable [CLEC] Customer), to permit Customers to transfer service from one Telecommunications Carrier to another, and for such other purposes as may be permitted by Applicable Law.

2. BELL ATLANTIC PRE-OSS SERVICES

2.1 As used in this Schedule 12.3, "BA Pre-OSS Service" means a service which allows the performance of an activity which is comparable to an activity to be performed through a BA OSS Service and which BA offers to provide to [CLEC] prior to, or in lieu of, BA's provision of the BA OSS Service to [CLEC]. The term "BA Pre-OSS Service" includes, but is not limited to, the activity of placing orders for BA Retail Telecommunications Services through a telephone facsimile communication.

2.2 Subject to the requirements of Applicable Law, the BA Pre-OSS Services that will be offered by BA shall be as determined by BA and BA shall have the right to change BA Pre-OSS Services, from time-to-time, without the consent of [CLEC].

2.3 Subject to the requirements of Applicable Law, the prices for BA Pre-OSS Services shall be

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as determined by BA and shall be subject to change by BA from time-to-time.

2.4 The provisions of Sections 1.4 through 1.8 above shall also apply to BA Pre-OSS Services. For the purposes of this Section 2.4: (a) references in Sections 1.4 through 1.8 above to BA OSS Services shall be deemed to include BA Pre-OSS Services; and, (b) references in Sections 1.4 through 1.8 above to BA OSS Information shall be deemed to include information made available to [CLEC] through BA Pre-OSS Services.

### 3. RATES AND CHARGES

The prices for the foregoing services shall be as set forth in BA's Tariffs or, in the absence of an applicable BA Tariff price, in Exhibit A or, if not set forth in either, as may be determined by BA from time to time. If BA at any time offers another resale support service the prices for which are not stated in BA's Tariffs or Exhibit A, BA shall have the right to revise Exhibit A to add such prices.