

APPENDIX C

CONTACT CENTERS FOR TEST CALLS

Center Location: (city, state)

Voice Number:

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Center Location: (city, state)

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North Carolina Information Technology Procurement Office General Terms and Conditions for Goods and Related Services

Definitions: As used herein;

State shall mean the State of North Carolina, the Office of Information Technology Services as an Agency or in its capacity as the Award Authority.

Purchasing State Agency or Agency shall mean the Agency purchasing the goods or services.

1) **Standards:** Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the State only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required:

- by State or federal Regulation,
- by Information Resource Management Commission (IRMC) policy or regulation, or
- acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.

a) **Site Preparation:** Vendors shall provide the Purchasing State Agency complete site requirement specifications for the Deliverables, if any. These specifications shall ensure that the Deliverables to be installed shall operate properly and efficiently within the site environment. The Vendor shall advise the State of any site requirements for any Deliverables required by the State's specifications. Any alterations or modification in site preparation which are directly attributable to incomplete or erroneous specifications provided by the Vendor and which would involve additional expenses to the State, shall be made at the expense of the Vendor.

b) **Goods Return:** Deliverables and any other goods or materials furnished by the Vendor to fulfill technical requirements shall be in good working order and be maintained in good working order by Vendor for the duration of the Contract; unless otherwise provided in a separate maintenance agreement or in the Solicitation Documents. Deliverables failing to meet the State's technical

requirements shall be considered non-conforming goods and subject to return to the Vendor for replacement at the State's option, and at the Vendor's expense. The State is responsible for the return costs related to the termination of a Contract, including deinstallation, and freight to destinations within the Continental United States; except in the case of default by the Vendor or delivery of non-conforming goods by Vendor. Shipping or freight charges, if any, paid by the State for non-conforming goods will be reimbursed to the State.

c) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, Vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes must be accompanied by Vendor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.

2) **Warranties:** Vendor shall assign all applicable third party warranties for Deliverables to the Purchasing State Agency.

3) **Personnel:** Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Agency Contract Administrator. Any desired substitution shall be noticed to the Agency's Contract Administrator accompanied by the names and references of Vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the Agency may request acceptable substitute personnel or terminate the contract services provided by such personnel.

4) **Subcontracting:** The Vendor may subcontract the performance of required services with other vendors or third parties, or change subcontractors,

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only with the prior written consent of the contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

and may

5) **Vendor's Representation:** Vendor warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under this Contract. Vendor will serve as the prime Vendor under this Contract. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

6) **Software License *[for internal embedded software, firmware and unless otherwise provided in the State's solicitation document, or in an attachment hereto]*** Deliverables comprising goods, equipment or products (hardware) may contain software for internal operation, or as embedded software or firmware that is generally not sold or licensed as a severable software product. Software may be provided on separate media, such as floppy diskettes or CD-ROM, or may be included within the hardware at or prior to delivery. Such software is proprietary, copyrighted,

also contain valuable trade secrets and may be protected by patents. Vendor grants the State a license to use the Code (*for any replacement provided*) on, or in conjunction with, only the Deliverables purchased, or with any system identified in the solicitation documents. The State shall have a worldwide, nonexclusive, nonsublicensable license to use such software and/or documentation for its internal use. The State may make and install copies of the software to support the authorized level of use. Provided, however that if the hardware is inoperable, the software may be copied for temporary use on other hardware. The State shall promptly affix to any such copy the same proprietary and copyright notices affixed to the original. The State may make one copy of the software for archival, back-up or disaster recovery purposes. The license set forth in this Paragraph shall terminate immediately upon the State's discontinuance of the use of the equipment on which the software is installed. The software may be transferred to another party only with the transfer of the hardware. If the hardware is transferred, the State shall i) destroy all software copies made by the State, ii) deliver the original or any replacement copies of the software to the transferee, and iii) notify the transferee that title and ownership of the software and the applicable patent, trademark, copyright, and other intellectual property rights shall remain with Vendor, or Vendor's licensors. The State shall not disassemble, decompile, reverse engineer, modify, or prepare derivative works of the embedded software, unless permitted under the solicitation documents.

7) **Maintenance/Support Services:** *Unless otherwise provided in the State's solicitation document⁴ or in an attachment hereto,* for the first year and all subsequent Contract years, Vendor agrees to provide the following services for the current version and one previous version of any Software provided with the Deliverables, commencing upon installation of the Deliverables or delivery of the Software:

a) **Error Correction.** Upon notice by State of a problem with the Software (which problem can be verified), Vendor shall use reasonable efforts to correct or provide a working solution for the problem. The State shall comply with all reasonable instructions or requests of Vendor in attempts to correct an error or defect in the Program. Vendor and the State shall act promptly and in a reasonably timely manner in

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communicating error or problem logs, other related information, proposed solutions or workarounds, and any action as may be necessary or proper to obtain or effect maintenance services under this Paragraph.

b) Vendor shall notify the State of any material errors or defects in the Deliverables known, or made known to Vendor from any source during the Contract term that could cause the production of inaccurate, or otherwise materially incorrect, results. Vendor shall initiate actions as may be commercially necessary or proper to effect corrections of any such errors or defects.

c) Updates. Vendor shall provide to the State, at no additional charge, all new releases and bug fixes (collectively referred to as "Changes") for any Software Deliverable developed or published by Vendor and made generally available to its other customers at no additional charge. All such Updates shall be a part of the Program and Documentation and, as such, be governed by the provisions of this Contract.

d) Telephone Assistance. Vendor shall provide the State with telephone access to technical support engineers for assistance in the proper installation and use of the Software, and to report and resolve Software problems, during normal business hours, 6:00 AM - 6:00 PM Eastern Time, Monday-Friday. Vendor shall respond to the telephone requests for Program maintenance service, within four hours, for calls made at any time.

8) **Travel Expenses:** Vendor may be reimbursed for travel expenses arising under the performance of this Contract at the out-of-state rates set forth in GS §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing services under this Contract.

9) **Governmental Restrictions:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof,

the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate this Contract and compensate Vendor for sums due under the Contract.

10) **Prohibition Against Contingent Fees And Gratuities:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the bidder(s) or Vendor(s) as permitted by 9 NCAC 06B.1009(f), 06B.1030, or other provision of law.

11) **Availability of Funds:** Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and

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contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to the Agency under this Contract, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

12) Payment Terms: Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Contract. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 et. seq. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than 30 days and approval by the State or Agency, the Agency may:

a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or

b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however

c) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.

13) Acceptance Criteria: In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify Vendor, in writing ten calendar days following installation of any Deliverable described in the Contract if it is not acceptable. The

notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the State Agency within seven (7) calendar days of notification, unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by Vendor as provided herein.

14) Equal Employment Opportunity: Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.

15) Inspection at Vendor's Site: The State reserves the right to inspect, during Vendor's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Contract.

16) Advertising/Press Release: The Vendor absolutely shall not publicly disseminate any information concerning the Contract without prior

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written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.

17) **Confidentiality:** In accordance with 9 NCAC 06B.0207 and 06B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N. C. Gen. Stat. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "CONFIDENTIAL". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. *However, under no circumstances shall price information be designated as confidential.* The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

a) **Care of Information:** Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure.

b) Vendor warrants that all its employees and any approved third party vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Information Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

c) **Nondisclosure:** Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

18) **Deliverables:** Deliverables, as used herein, shall comprise all project materials, including goods, software, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of the State of North Carolina and must be kept confidential or returned to the Agency, to ITS procurement, or destroyed as required by the State. Proprietary Vendor materials licensed to the State shall be identified to the State by

Vendor prior to

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use or provision of services hereunder and shall remain the property of the Vendor. Embedded software or firmware shall not be a severable Deliverable. The State's solicitation document may supplement or substitute this definition and the requirements set forth in this Paragraph. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to the State, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.

19) **Late Delivery, Back Order:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure substitute Deliverables or services.

20) Patent, Copyright, and Trade Secret Protection:

a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes.

b) Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or

derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.

c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the services or Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a United States patent, or copyright or violates a trade secret. The Vendor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:

i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,

ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.

d) Should any services or software supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a United States patent, copyright, or a trade secret, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the State shall be prevented by injunction, the Vendor agrees to take back such goods/hardware or software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage; and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this Contract impractical, the State shall then have the option of terminating the Contract, or applicable portions

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thereof, without penalty or termination charge. The Vendor agrees to take back such Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.

e) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.

f) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

21) Access to Persons and Records: Pursuant to N. C. General Statute 147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

22) Assignment: Vendor may not assign this Contract or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Contract. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

23) Insurance Coverage: During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a

minimum, the Vendor shall provide and maintain the following coverage and limits:

a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$150,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract ; and

b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and

c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$25,000.00 medical payment; and

d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

24) Dispute Resolution: The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable

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efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

25) **Default:** In the event any Deliverable furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the State and the failure is not cured within ten (10) days, or Vendor fails to meet the requirements of Paragraph 13) herein, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28) and 29) and the obligation to informally resolve disputes as provided in Paragraph 24) of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1030. The State reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1031 from the Vendor without expense to the State. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

a) If Vendor fails to deliver Deliverables within the time required by this Contract, the State may provide written notice of said failure to Vendor, and by such notice require payment of a penalty.

b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

c) Vendor shall provide a plan to cure any default if requested by the State. The plan shall

state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Vendor may deem necessary or proper to provide.

26) **Waiver of Default:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver or any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in a writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 30)b) hereinbelow.

27) **Termination:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

a) The parties may mutually terminate this Contract by written agreement at any time.

b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 25), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following

i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28) and 29) herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.

ii) Termination For Convenience Without Cause: The State may terminate service and

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indefinite quantity contracts, in whole or in part by giving 30 days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

28) Limitation of Vendor's Liability:

a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables.

b) The Vendor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract. Provided, however, that the State's Solicitation Documents or the Supplemental Terms and Conditions for Software or Services, if any, may increase Vendor's maximum liability for damages, but in no event shall the liability for damages be less than the total value of the Contract.

c) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Vendor's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

29) Vendor's Liability for Injury to Persons or Damage to Property:

a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State

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for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.

b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.

c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Vendor's goods.

30) General Indemnity: The Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract. The foregoing indemnification and defense by the Vendor shall be conditioned upon the following:

a) The Agency shall give Vendor written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and

b) The Vendor shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Agency or State shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.

31) Changes: This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or proposal on which it

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is based. Any changes made to this Contract or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Deliverables or services delivered without a purchase order from the Agency or State Award Authority.

32) Stop Work Order: The State may issue a written Stop Work Order to Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under this Contract for a period up to 90 days after the Stop Work Order is delivered to the Vendor. The 90-day period may be extended for any further period for which the parties may agree.

a) The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of 90 days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either

- i) Cancel the Stop Work Order, or
- ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.

b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

- i) The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of this Contract, and
- ii) The Vendor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.

c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.

d) The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

33) Price Adjustments For Term Contracts: Changes in prices or costs quoted by Vendor may be permitted during the term of the Contract, but shall be subject to the requirements of this Paragraph, and any additional terms of the solicitation document. Permitted changes during the Contract period must be general, either by reason of market change, change in manufacturer's list price or price adjustments authorized by Contract.

a) **Notification:** Vendor must provide written notification of any proposed pricing change to the Office of Information Technology Services not less than sixty (60) days prior to the desired effective date of any proposed price adjustment. If Vendor is a reseller, MCL, VAR, or other party having a similar relationship with the manufacturer, the notification shall be accompanied by copy of manufacturer's official notice or other acceptable evidence that the price change is general in nature.

b) **Decreases:** The State shall receive full proportionate benefit of any decrease immediately upon the effective date at any time during the Contract period.

c) **Increases:** All prices and costs shall be firm against any increase for 180 days from the effective date of the Contract. After this period, a request for increase may be submitted with the State reserving the right to accept or reject the increase, or cancel the Contract. The State shall exercise this right not later than 30 days after the receipt by of a properly documented request for price increase. Any increases accepted shall become effective not earlier than 30 days after the expiration of the original 30 days reserved to evaluate the request for increase.

34) Time is of the Essence. Time is of the essence in the performance of this Contract.

35) Date and Time Warranty: The Vendor warrants that any Deliverable, whether hardware,

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firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

36) **Independent Contractors:** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

37) **Transportation:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.

38) **Notices:** Any notices required under this Contract should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.

39) **Titles and Headings:** Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.

40) **Amendment:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 31) herein.

41) **Taxes:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes.

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Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item.

42) Governing Laws, Jurisdiction, and Venue:

a) This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order; its situs and forum; shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort; relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.

b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Contract. To the extent the Contract entails both the supply of "goods" and "services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such services as "goods" would result in a clearly unreasonable interpretation.

43) **Force Majeure:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

44) **Compliance with Laws:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

45) **Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall

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remain in full force and effect. All promises, requirements, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

46) Federal Intellectual Property Bankruptcy Protection Act: The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

47) Electronic Procurement (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document): Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The contractor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

The successful bidder(s) shall pay a transaction fee of 1.75% (.0175) on the total dollar amount (excluding sales taxes) of each purchase order issued through the Statewide E-Procurement Service. This applies to all purchase orders, regardless of the quantity or dollar amount of the purchase order. This transaction fee shall neither be charged to nor paid by the State, or by any State approved users of the contract. The transaction fee shall not be stated or included as a separate item in the proposed contract or invoice. There are no additional fees or charges to the contractor for the services rendered by the Supplier Manager under this contract. Contractor will receive a credit for transaction fees they paid for the purchase of any item(s) if an item(s) is returned through no fault of the contractor. Transaction fees are non-refundable when an item is rejected and returned, or declined, due to the contractor's failure to perform or comply with specifications or requirements of the contract.

Contractor or its Authorized Reseller, as applicable, will be invoiced monthly for the State's transaction fee by the Supplier Manager. The transaction fee shall be based on purchase orders issued for the prior month. Unless Supplier Manager receives

written notice from the Contractor identifying with specificity any errors in an invoice within thirty (30) days of the receipt of invoice, such invoice shall be deemed to be correct and Contractor shall have waived its right to later dispute the accuracy and completeness of the invoice. Payment of the transaction fee by the Contractor is due to the account designated by the State within thirty (30) days after receipt of the correct invoice for the transaction fee, which includes payment of all portions of an invoice not in dispute. Within thirty (30) days of the receipt of invoice, contractor may request in writing an extension of the invoice payment due date for that portion of the transaction fee: invoice for which payment of the related goods by the governmental purchasing entity has not been received by the Contractor. If payment of the transaction fee is not received by the State within this payment period, it shall be considered a material breach of contract. The Supplier Manager shall provide, whenever reasonably requested by the contractor in writing (including electronic documents), supporting documentation from the E-Procurement Service that accounts for the amount of the invoice.

The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate contractor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

Contractor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a contractor is a corporation, partnership or other legal entity, then the contractor may authorize its employees to use its password. Contractor shall be responsible for all activity and all charges by such employees. Contractor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the contractor's account, contractor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Contractor shall cooperate with the State and the Supplier Manager to mitigate and correct any security breach.

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48) Electronic Procurement (Applies only to Statewide Term Contracts): Within fifteen (15) calendar days of notice, the contractor shall provide supplier information, contract pricing and other product-related information requested by the State or the Supplier Manager. This information shall include such information as contractor name, SKU, brand/manufacturer, product name and a brief description, unit of measure, price, and other similar information or properly requested by the State or the Supplier Manager to facilitate purchasing from the contract. This information shall be posted by the contractor in the format provided by the Supplier Manager, or as otherwise provided in a template or format required by the State. No costs or expenses associated with providing this information shall be charged to the State, its agents (including Supplier Manager) or State approved users of the contract. For the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to use, reproduce, transmit, distribute and publicly display this information. In addition, for the purposes of this contract, the contractor warrants that it is authorized and empowered to and hereby grants the State and the Supplier Manager the right and license to reproduce and display contractor's trademarks, service marks, logos, trade dress or other branding designation that identifies the goods available under the contract. The Supplier Manager shall create and maintain, with contractor's timely assistance, web-based placement of contract information, where appropriate, that includes the contract items distributed by the contractor within the appropriate contract categories. The State shall provide any price adjustment/product modification information that it has approved during the course of the contract, to the Supplier Manager immediately upon such change.

If the contractor is not the manufacturer, then it shall be the contractor's responsibility to obtain authorization from the manufacturer to comply with the provisions of this contract, including any appropriate intellectual property rights of the manufacturer. If the contractor is the manufacturer, then the manufacturer shall only authorize dealers, outlets, distributors, value added resellers, etc. (together, "Authorized Resellers") within their network that can comply with the provisions of this contract.

Contractor is and shall remain responsible for paying the transaction fee on behalf of its authorized reseller in the event that the authorized reseller(s) defaults.

**NORTH CAROLINA TELECOMMUNICATIONS RELAY SERVICE
CONTRACT**

Between

**THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN
SERVICES
DIVISION OF SERVICES FOR THE DEAF AND THE HARD OF HEARING**

AND

SPRINT COMMUNICATIONS COMPANY, L.P.

AMENDMENT NO. 01

1. PURPOSE

The purpose of this Amendment is to add an additional service, CapTel, to the Sprint's contract, which provides Relay Services to the State of North Carolina. This contract became effective March 30, 2004. The Federal Communications Commission (FCC) published revised Rules and Orders on July 25, 2003 (CC Docket No. 98-67). Sprint proposed CapTel in its bid that was submitted on September 4, 2003 to upgrade Relay North Carolina to be in compliance with the new FCC requirements.

Effective March 30, 2004, the parties entered into the Relay North Carolina contract. The term of the Contract is from March 30, 2004 to June 30, 2008. This Amendment to the Relay North Carolina shall be effective on the latest date of the parties' signature and continue through the term of the Contract.

2. SERVICE SPECIFICATIONS

North Carolina CapTel Account Manager and Outreach Program

In its proposal for Relay North Carolina for an option for CapTel service, Sprint proposed a full time CapTel Account Manager and a separate outreach budget.

A. The cost of hiring a CapTel Account Manager is a firm cost of \$100,000 per year. This cost covers the salary and benefits for the Account Manager, office space, office supplies, equipment, and furnishings as well as supervisor support. The office will be located in Raleigh, North Carolina.

The CapTel Account Manager will:

1. Be assigned CapTel services and issues for the State of North Carolina.
2. Ensure that all customers are full satisfied with the quality of CapTel service.
3. Work with the NC TRS Administrator on all marketing/outreach activities, setting objectives and plans to target audiences.
4. Increase awareness of CapTel in the State of North Carolina.
5. Serve as an interface between Sprint, the State of NC, and CapTel, Inc.
6. Attend events at all levels to provide updates, trends, and statistics to captioned telephone user community.
7. Provide captioned telephone equipment training statewide.
8. Submit a monthly outreach activity report and consumer contact report by the 21st of every month.
9. Maintain consumer complaints.
10. Submit annual consumer contact reports and annual outreach reports by the 15th of February of every year.
11. Maintain the CapTel Customer Database.
12. Ensure that all printed materials and all video materials must contain, the names, Relay North Carolina, the Division of Services for the Deaf and the Hard of Hearing, the Department of Health and Human Services, and the provisions required by the Department.

- B. The cost for CapTel outreach activities is a firm cost of \$100,000 per year. The CapTel outreach Manager will maintain the annual budget.

The outreach budget will involve:

1. Relay Ambassador Program
2. Materials such as flyers, brochures, videos, powerpoint presentations and handouts
3. Purchase of a Captel exhibit booth
4. Office supplies
5. Promotional items such as pens, magnets, etc.
6. WebPage
7. Organization sponsorships
8. Other activities as agreed upon by the TRS Administrator

- C. The total firm cost for the CapTel Account Manager and the outreach program is \$200,000 per year.

3. TIME FOR PERFORMANCE

The Captel amendment will become effective upon date of the last signature and will continue through the term of the Contract.

4. COMPENSATION TO SPRINT

This Amendment includes all necessary service specifications to Relay North Carolina . The State agrees to pay for Captel Account Manager and outreach activities based on monthly invoices. The actual budget will be formulated with input and coordination with the TRS Administrator.

The billing rate for Captel services and up to 50 Captel equipment every month will be \$1.52 per session minute in separate billing invoice. The customer database for equipment requests will be handled by the TANC office. Weitbrecht Communications in California will be handling the shipping and handling of the equipment and will bill equipment orders to Sprint. The Captel invoice that will cover the Captel Account Manager and the Outreach Program will be separate.

5. ENTIRE AGREEMENT

The changes to the Contract as stated herein are the only changes made. All other terms and conditions remain unchanged and in full effect.

The signatures below indicate acceptance of this Amendment.

**NORTH CAROLINA DEPARTMENT
OF HEALTH AND HUMAN SERVICES
FOR THE DEAF AND THE HARD OF
HEARING**

Signed: 
Typed Name: Linda Harrington
Title: Division Director
Date: 3/4/04

**SPRINT COMMUNICATIONS
COMPANY, L.P.**

Signed: 
Typed Name: Karen B. King
Title: Manager
Government Contracts
Date: 4-20-04



CapTel



CapTel for North Carolina

North Carolina CapTel Account Manager and Outreach

The opportunity for Hard of Hearing people to gain telecommunication access has grown dramatically due to emerging technologies like enhanced Voice Carry Over through Captioned Telephones. While long on a dream; Captioned Telephones have now become a reality. With the new CapTel™ product and service, Hard of Hearing individuals who have speech intelligibility are able to have a conversation by phone that far surpasses regular Voice Carry Over capabilities. CapTel™, for Captioned Telephone, is a trademark of Ultratec, Inc.

In its proposal for Relay North Carolina in addition to the option for *CapTel* service, Sprint included options for a full time *CapTel* Account Manager and a separate budget for outreach specific to *CapTel*. Sprint strongly supports the *CapTel* specific Account Manager and outreach budget because the users of *CapTel* will mainly consist of people who are not users of TRS. Therefore these people most likely will not be reached through traditional outreach.

The *CapTel* Account Manager will be assigned *CapTel* services and issues for the State of North Carolina. This will provide for streamlined communications resulting in expedited responses and delivery. The *CapTel* Account Manager will ensure that all customers, from state contract administrators to *CapTel* users, are fully satisfied with the quality of the *CapTel* service. The *CapTel* Account Manager will work with the NC TRS Administrator on all marketing/outreach activities, setting objectives and formulating plans to target audiences. One such audience is the population of Hard of Hearing students in mainstream educational programs. This population has grown, and the *CapTel* Account Manager will work to increase awareness of *CapTel* and TANC in this area.

The *CapTel* Account Manager will serve as the interface between Sprint, the State of NC and *CapTel*, Inc. S/he will ensure that customers are fully satisfied with the quality of *CapTel* services and will follow up with customers, including State Contract administrators as well as *CapTel* end-users. The *CapTel* Account Manager will attend events at all levels to provide updates, trends and statistics to the captioned telephone user community



The proposed cost of hiring a full time, dedicated *CapTel* Account Manager for the State of North Carolina is a fixed cost of \$100,000 per year. This cost covers the salary and benefits for the Account Manager, office space, office supplies, equipment, and furnishings as well as supervisor support..

Roles and Responsibilities: *CapTel* Account Manager

The North Carolina *CapTel* Account Manager shall be responsible for outreach and marketing efforts in support of *CapTel*. S/he shall make sure that the service provided is in compliance with FCC and the State of North Carolina requirements. Specific duties will include such things as:

1. Ensure that captioned telephone service complies with all FCC mandatory minimum standards that apply to captioned telephone VCO service in accordance with FCC Declaratory Ruling (CC Docket No. 98-67) adopted July 25, 2003, and with any and all future rules promulgated by the FCC.
2. Ensure adherence to all terms and conditions of the North Carolina captioned telephone contract.
3. Create and implement a comprehensive statewide outreach plan for captioned telephone service.
4. Present information regarding captioned telephone service and equipment (including information on the Telecommunication Equipment Distribution Program of North Carolina) to potential captioned telephone users. The *CapTel* Account Manager will present information regarding individuals and agencies such as:
 - Deaf and Hard of Hearing Regional Service Centers
 - Hospitals
 - Nursing Homes
 - Senior Citizens Communities
 - AARP
 - Disabled American Veterans
 - Veterans Hospitals
 - Agencies serving the Deaf and Hard of Hearing
 - School districts that have special programs for the Hard of Hearing
 - North Carolina Schools for the Deaf (Morganton and Wilson)



- Audiology Programs
 - Hearing Aid Dealers
5. Present information regarding captioned telephone service and equipment (including information on the North Carolina Telecommunication Equipment Distribution Program) to the general public to create awareness of captioned telephone service.
 6. Provide captioned telephone equipment training statewide.
 7. Conduct captioned telephone demonstrations, at applicable conferences, conventions, group meetings and the North Carolina State Fair, in Real Time display whenever possible.
 8. Develop and maintain a database of all captioned telephone outreach activities. The database shall contain the outreach location (address), phone number, contact name, e-mail address, number of presentations, number of participants, number of and date of follow-up contacts, and any additional information requested by the Telecommunication Access of North Carolina Administrator.
 9. Provide the TANC Administrator with monthly outreach activity reports. All reports shall be separate from North Carolina Relay TRS reports. Reports shall contain data on date and location of outreach, number of presentations, number of participants, number of one-on-one contacts and training, copies of all outreach materials (including, but not limited to, brochures, flyers, print media and e-mails) and any additional information requested by the TANC Administrator.
 10. Receive, track, resolve and report consumer complaints and commendations regarding captioned telephone service.
 11. Provide the TANC Administrator with monthly and annual consumer contact reports. Reports shall contain information on both consumer complaints and commendations.
 12. Conduct follow-up phone calls, e-mails or in-person visits to groups or individuals following initial presentations in order to provide additional information, training and/or answer questions regarding captioned telephone service or equipment.
 13. Supervise, train and assign duties and accountability standards for captioned telephone trainers.



14. Provide annual report of all activities, including contact, number of presentations, participants, complaints, commendations and activities, all of which will be included in the Relay NC Annual Report.
15. If the state should choose, The NC *CapTel* Account Manager shall maintain the *CapTel* Customer Database. This database shall contain names, addresses, email addresses, and the location of each unit, such as work or home. Other data, such as age group or degree of hearing loss, shall be enclosed as requested.

Outreach and Marketing:

The *CapTel* Account Manager will work with the State of North Carolina on the development of all marketing activities. The Account Manager will consult the TANC Administrator on setting goals and formulating action plans that target potential *CapTel* users, and providing outreach services that are second to none

The outreach option for *CapTel* service is \$100,000 per year. The following is an example of how this outreach budget would be utilized. The actual budget will be formulated with input from and coordination with the TANC Administrator.

Outreach Expenditure Examples:

- Relay Ambassador Program - Trainers/Outreach Specialists
- Travel, hotel and meals expenses as needed
- Purchase of used *CapTel* units to be placed in service facilities where Deaf and Hard of Hearing people receive support and will be made aware of the new phone service, in an effort to encourage consumers to try the service and ultimately purchase the *CapTel* unit
- Materials such as flyers, application forms, and temporary contact cards for Trainers
- Purchase of a *CapTel* exhibit booth
- Captioned telephone brochures/flyers
- Captioned telephone PowerPoint presentation or video
- Camcorder and related supplies
- Business cards and miscellaneous office supplies
- Lap top computer and software, PowerPoint projector



- Promotional items such as pens, magnets, etc.
- Advertising through web pages, state newsletters, sponsorship of local events
- Booth sponsorships
- Organization sponsorships
- Other activities as agreed upon by the TRS Administrator.

CWP

NORTH CAROLINA TELECOMMUNICATIONS RELAY SERVICE CONTRACT
Between
THE NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF SERVICES FOR THE DEAF AND THE HARD OF HEARING
AND
SPRINT COMMUNICATIONS COMPANY, L.P.
AMENDMENT NO. 02

1. PURPOSE

The purpose of this amendment is to add an enhanced version of CapTel service, known as Two Line *CapTel* (also referred herein as "2LCT") as a feature of Sprint's contract, which provides Relay Services to the State of North Carolina. This contract became effective March 30, 2004 and was first amended effective April 20, 2004. *CapTel*, for captioned telephone, is a trademark of Ultratec, Inc.

This amendment also updates the Administrators for the Contract as provided in the basic contract.

2. SERVICE SPECIFICATIONS

Two-Line *CapTel* service allows *CapTel* users to receive captioning on incoming calls made directly to their number. With standard or one-line *CapTel*, in order for a call to a *CapTel* user to be captioned, the caller must first dial the caption call center by calling a toll-free number or 711 and then dialing the number of the *CapTel* user. Two-Line *CapTel* allows a *CapTel* user to enjoy captioning on every incoming call providing telecommunications that is one step ever closer to true functional equivalency.

Two-Line *CapTel* operates using two analog phone lines. One line is utilized for the voice portion of the call and the other line is utilized to transmit the data portion of the call (the captioning). Users need to order a second standard analog phone line from their Local Exchange Carrier in order to utilize this service. (The cost and provision of the second phone line is the responsibility of the individual user and not a part of this agreement.) Both lines are plugged into the *CapTel* phone. When an incoming call is received on the primary line (voice), the secondary line is automatically connected to the caption call center (data); captions are available shortly after the *CapTel* user answers their phone.

3. TIME FOR PERFORMANCE

Two Line *CapTel* will be made available within ten (10) working days of final execution of this Amendment. This service will be coterminous with Sprint's provision of CapTel service, through June 30, 2008, unless terminated under the terms of paragraph 5 of this Amendment.

While the service will be available on a state-wide basis within ten days of execution of this Amendment, it is not available to individual participants until they submit an application for the service and have two separate phone lines installed in their house or place of business.

4. COMPENSATION TO SPRINT

The price for 2LCT is the same as standard *CapTel*. There is no change in price for this service. However, due to technological constraints, 2LCT requires that TANC pay for all inbound call minutes. This is because with 2LCT, an incoming call goes directly to the *CapTel* user's phone

number. When the *CapTel* phone receives the call and the call is answered, the phone automatically dials the *CapTel* call center so that the conversation can be captioned. Because the phone of the call recipient places the call to the *CapTel* call center instead of the calling party, the ANI of the Calling Party is lost and not forwarded so that proper assignment of the call origination and incoming call type cannot be made. Therefore, it is not possible to discern if a call is intra or inter-state and whether the cost of the calls are attributable to TANC or NECA. NC DSDHH understands this condition for the provision of 2LCT and agrees to pay for all incoming 2LCT minutes of use.

5. TERMINATION

Sprint estimates that the total call volume attributable to incoming 2LCT will be less than 2% of the total *CapTel* call volume for the State. If the actual percentage of incoming 2LCT call volume should exceed this estimate, NC DSDHH may, at its sole option, notify Sprint in writing the 2LCT should be terminated within 60 days. In addition, NC DSDHH, through TANC, will pay for all 2LCT minutes of use through the surcharge funds maintained by the Department of Health and Human Services. If, in the opinion of NC DSDHH, the funds are becoming depleted by 2LCT, NC DSDHH will notify Sprint in writing that 2LCT should be terminated within 60 days. Sprint agrees that the provision of 2LCT is subject to the availability of funding and will terminate service within 60 days of notification in writing by NC DSDHH. Consumers using 2LCT will be notified by TANC upon receipt of the equipment for *CapTel* that the 2LCT is available but that the availability is subject to funding.

6. ADMINISTRATORS FOR THE CONTRACT

The persons named below shall be administrators for the respective parties and shall be the persons to whom notices provided for in the North Carolina Telecommunication Relay Service contract shall be given and to whom matters relating to administration or interpretation of this Contract shall be addressed.

For the Division:

Pamela Lloyd
Program Administrator
319 Chapanoke Road,
Suite 108
Raleigh, NC 27603
(919) 773-2991 Voice/TTY
(919) 773-2981

For the Contractor:

Don Rawlings
12524 Sunrise Valley Drive
Reston, VA 20196
703-689-7868 FAX 703-689-7707

7. SIGNATURES

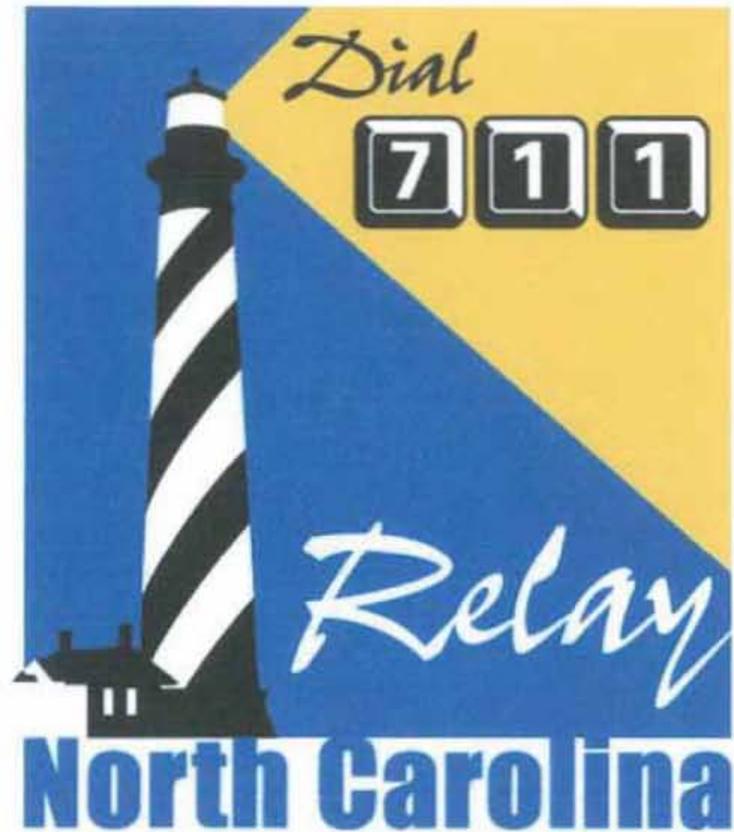
Signed as to the receipt and acceptance of the terms provided herein by the North Carolina Department of Deaf and Hard of Hearing and Sprint:

NORTH CAROLINA DEPARTMENT OF DEAF AND HARD OF HEARING

Signature: Jan Withers
Typed Name: Jan Withers
Title: Acting Division Director
Date: 4/29/05

SPRINT

Signature: _____
Typed Name: Don Rawlings
Title: Senior Contract Administrator
Date:



APPENDIX W

COPY OF TELEPHONE BILL WITH
SURCHARGE RATE AND
LEGISLATIVE ORDER



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Account Selected: [REDACTED]

Location: 1004 WESTWOOD DR, RAL, NC
Current Balance: \$0.00

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Local & Local Toll Charges



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Account Center

[My Account](#) [View Bill](#) [Pay Bill](#) [My Profile](#)

Billing

Account Selected: (919) 510-8671

Bill Statement Selected: Aug 16, 2007

Ordering

Bill Section Selected: Local & Local Toll

Page N/A of 7 selected

Customer Service

[View & Print Bill](#)

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Ask BellSouth

- What should I do if I have questions about my bill?
- What are my payment options?
- How do I dispute a charge?



[REDACTED]
Account Number
[REDACTED]

Page 3 of 7

[How to make changes to your calling features](#)

[About Federal Universal Service Charge](#)

[About FCC Local Number Portability Line Charge](#)

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BellSouth Answers® packages give you the flexibility to customize your services to fit your needs, great savings, and award winning customer service. The services included in your BellSouth Answers® package for 919 510-8671 are as follows:

- BellSouth® Long Distance Service
- BellSouth Answers®

For details about services included in your BellSouth Answers® package(s), see the following pages except for DIRECTV® which can be found on your DIRECTV monthly statement.

[About Emergency 911 Charge](#)

[About Intrastate Universal Service Charge](#)

[About Telecom Relay Service Charge](#)

AT&T Local and Local Toll Charges

	Quantity	Amount
Monthly Service		
From August 16 through September 15		
1. Community Caller Plus Service - individual line, residence		\$18.75
2. Caller ID Name and Number Delivery with Anonymous Call Rejection		9.00
Total Monthly Service		\$27.75
Usage Charges		Amount
Directory Assistance (DA) Usage		
3. 1 Call(s) to Local DA at \$.97 Each		\$.97
Local QuikComplete Usage		
4. 5 Call(s) at \$.30 Each		1.50
Total Usage Charges		\$2.47
Government Mandated and Authorized Charges	Quantity	Amount
(For Additional Information See Definitions - Page 7)		
5. Federal Excise Tax		\$1.13
6. NC - State/Local Tax		2.48
7. Telecommunications Relay Service		.11**
8. Emergency 911 Charge. This charge is billed on behalf of Wake County.		.25**
Total Government Mandated and Authorized Charges		\$3.97
Surcharges and Other Fees	Quantity	Amount
(For Additional Information See Definitions - Page 7)		
9. FCC Authorized Charge for Network Access		\$6.50
10. End User Sur Charge		.73



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- » Vision
- » Speech
- » See all Equipment and Devices

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- » Eight Touch Services
- » Ring Master Service
- » Telecommunications Relay Service

Calling Features

- » Speed Calling
- » TouchStar Call Return and Repeat Dialing
- » Large Number Plates and Magnifying Cards
- » Calling Card
- » Caller ID
- » Local Directory Assistance at no Charge
- » Local Operator Assistance at no Charge

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- Voice customers, please call 1-800-982-2891
- TTY/TTD/VCO/HCO customers, please call 1-800-251-5325
- Or email us at specialneeds@bellsouth.com
- Our mailing address is BellSouth Special Needs Center, PO Box 1947, Albany GA 31701-2533

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NO.	DESCRIPTION	AMOUNT
	Total Surcharges and Other Fees	\$7.23
	Total Local and Local Toll Charges	\$41.42

** Unregulated Charge. Local service will not be disconnected for nonpayment of unregulated charges.

[back](#)

[bill inquiry](#)

[dispute bill](#)

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SEP 23 2004

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Clerk's Office
N.C. Utilities Commission

In the Matter of)	PUBLIC STAFF'S
Telecommunications Relay Service)	REPORT ON THE
(TRS), Relay North Carolina)	RESERVE MARGIN

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Robert P. Gruber, and respectfully submits this report on the amount of funds in reserve for the Telecommunications Relay Service (TRS) in North Carolina as established in G.S. § 62-157. According to G.S. § 62-157, the Commission requires local service providers to impose a monthly surcharge on all residential and business local exchange access facilities to fund TRS. The Commission sets the surcharge based on the amount of funding necessary to implement and operate the service, including a "reasonable margin for a reserve" (reserve margin). On November 13, 2001, the Commission directed that the surcharge be eleven cents per access line, per month.¹ The Commission also approved the recommendation of the Public Staff that the reserve margin should be \$1.2 million, which was equal to approximately three months of operating expenses for TRS.

*Clerk's
AG
Tamm
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Long
TBrown
Kite
Sessions
Pascual
Kelly
Wigfall*

Since the setting of the surcharge in November 2001, there have been several changes to TRS that have had or could have an impact on the reserve amount. First, the Department of Health and Human Services (DHHS), the agency that administers TRS, awarded a new four-year contract to provide relay service to Sprint Communications in December 2003. That contract went into effect on April 1, 2004. Pursuant to the new contract, the cost of a minute of use for a "traditional" relay call increased from the previous contract's \$.89 to \$.91.² However, the new contract did not result in any increase in the TRS surcharge. Also, TRS has hired additional employees and started a new service, CapTel³, which have also increased monthly operating expenses.

In addition to awarding the new contract, representatives from DHHS, primarily from the Division of Services for the Deaf and Hard of Hearing (DSDHH), proposed legislation (Senate Bill 939) to expand the TRS program beyond the traditional relay contract and equipment distribution. In its proposal to the General Assembly, DSDHH reported that the number of people using TRS and its equipment was increasing as North Carolina's population ages. Furthermore, according to DSDHH, internet-based technology and other new technologies are expanding access and potentially driving up costs. For those reasons, DSDHH requested that the General Assembly impose a

¹ Order Authorizing Increase of Surcharge, Docket No. P-100, Sub 110 (Nov. 13, 2001).
² Traditional TRS is accomplished via text-to-voice or voice-to-text, with the text provided via a text telephone (TTY).
³ CapTel is a captioning service whereby a specially trained operator transcribes everything a speaker on a telephone call says into written text. The captions appear almost simultaneously, allowing the other party to understand everything that is said by hearing it or reading it. CapTel is used by people who are able to speak, but who are deaf or hard of hearing.

surcharge on wireless telephone accounts to ensure long-term financial viability and also to fund some expansion of TRS. Specifically, DSDHH proposed that the funds from this surcharge on wireless connections would support the following:

- an expansion in the equipment distribution program that included replacing outdated technology, hiring new staff, training staff about such technology, and providing outreach to promote the new technology to users in North Carolina;
- an increase in the use of Video Relay Services (VRS) and online relay services (IP Relay), coupled with the potential that North Carolina would have to fund such services in the future; and
- a program, including new employees and equipment, to alert deaf, hard of hearing, and deaf-blind citizens to weather, nuclear, terrorist and other emergencies using wireless technology. The costs of this program would also include outreach and education.

With regard to VRS and IP Relay, DSDHH was concerned that TRS would become responsible for reimbursing the providers of VRS and IP Relay for intrastate calls from the access line surcharge fund. VRS is a relay service "that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA [Communications Assistant] to view and interpret the party's signed conversation and relay that conversation back and forth with a voice caller."⁴ The internet can be used to transmit VRS calls using Webcams. IP Relay operates by providing text through a CA via the TRS consumer's computer or other web-enabled device.⁵ At the present time, IP Relay and VRS are provided to users "free of charge", in that the providers of these services are compensated not by the North Carolina TRS surcharge fund, but by interstate TRS fund, administered by the National Exchange Carriers Association (NECA). These types of calls are more expensive than traditional relay calls. For the period of July 2004 – June 2005, the compensation rate is \$7.293 per minute for VRS calls and \$ 1.349 per minute for IP Relay calls.⁶

Senate Bill 939 was enacted and went into effect January 1, 2004, amending G.S. § 62-157 to include a surcharge on wireless connections.⁷ Pursuant to the amendment, a wireless provider now collects the same surcharge on wireless connections as that imposed on access lines. However, the General Assembly did not

⁴ 47 C.F.R. § 64.601(17).

⁵ *In the Matter of Telecommunications Relay Services and Speech-to-Speech Service for Individuals with Hearing and Speech Disabilities*, Order, CC Docket No. 98-67, 19 FCC Rcd 12224 at ¶ 1, n. 3 (rel. June 30, 2004).

⁶ *Id.* at ¶ 53.

⁷ S.L. 2003-34.1.

authorize the Commission to directly impose this surcharge on wireless providers; instead, the General Assembly directed that the wireless surcharge amount reflect the access line surcharge amount set by the Commission. Moreover, the wireless carriers remit surcharges to the Wireless 911 Board, instead of directly to DHHS. The Wireless Board then remits the funds to DHHS. The General Assembly also allowed for the wireless provider to deduct a one percent administrative fee from the total amount of surcharge collected. This differs from the one-cent administrative fee that the Commission allows local service providers to retain from the access line surcharge.

As part of the passage of Senate Bill 939, DHHS set up a separate fund for maintaining the wireless surcharge. Thus, there are now two funds for TRS, an access line fund and a wireless fund. In January 2004, the first wireless surcharges were deposited in this separate wireless fund. As of June 30, 2004, the wireless surcharge fund had a balance of \$1,060,653. Additionally, the access line surcharge fund has continued to grow over the past year to \$3,187, 644 as of March 31, 2004.

The access line fund exceeds the \$1.2 million reserve margin that was set in 2001. However, the recent amendment to G.S. § 62-157 indicates that the General Assembly believed that TRS should be allowed to expand its services as it proposed and prepare for the increased expenses. DHHS reports that it has not yet fulfilled the mandate it believes it was given by the General Assembly to hire the new employees, investigate purchasing and updating new equipment, and expand outreach into the community. Thus, DHHS predicts that its costs will increase in the next year, thereby both increasing monthly operating expenses and depleting the amount of money in reserve.

Moreover, on June 30, 2004, the Federal Communications Commission (FCC) released a Further Notice of Proposed Rulemaking seeking comment on, *inter alia*, whether VRS and IP Relay should be mandated and to what extent the states should be responsible for cost recovery for these relay services.⁸ The FCC noted in its request for comments on this matter that "state TRS programs will need some time to plan for their assumption of the costs of the intrastate service" should the FCC decide to allocate these costs to the states.⁹ While it remains unclear how and when such cost recovery for VRS and IP Relay will occur, DHHS believes that it is prudent at this time to prepare for this potential significant increase in TRS's monthly operating costs.

In light of this uncertainty from the FCC and the General Assembly's recent amendment to G.S. § 62-157 to include wireless connections, the Public Staff will continue to closely monitor the surcharge fund and the surcharge and to advise the

⁸ *In the Matter of Telecommunications Relay Service and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket Nos. 90-571, 98-67 and CG Docket No. 03-123, ¶¶ 221, n. 642; 230-31, 234-35, 242, 244. (TRS Cost Recovery Order). Comments are due on this matter on or before October 18, 2004 and Reply Comments are due on or before November 15, 2004.

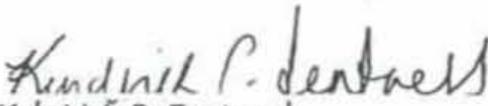
⁹ *Id.*, ¶ 230.

Commission of any changes it believes are needed. However, the Public Staff recommends that no changes be made at this time.

Respectfully submitted this the 23rd day of September, 2004.

PUBLIC STAFF
Robert P. Gruber
Executive Director

Antoinette R. Wike
Chief Counsel


Kendrick C. Fentress
Staff Attorney

430 North Salisbury Street
4326 Mail Service Center
Raleigh, North Carolina 27699-4326
Telephone: (919) 733-6110

CERTIFICATE OF SERVICE

I do hereby certify I have this day served a copy of the foregoing Report on the Reserve Margin on each of the parties of record in this proceeding or their attorneys of record by causing a copy of the same to be deposited in the United States Mail, postage prepaid, properly addressed to each.

This the 23rd day of September, 2004.


Kendrick C. Fentress

million dollars was an adequate reserve margin because that amount would cover three months of operating expenses in an emergency. That reserve margin amount is now at \$389,549.01, well below one million dollars. Moreover, one million dollars is no longer adequate to cover three months of operating expenses. Therefore, the Public Staff and representatives of DHHS agreed that a modest increase in the reserve to 1.2 million dollars was necessary. Based on its review of TRS's current operating expenses and revenues, the Public Staff concluded that an \$.11 surcharge would restore the reserve margin and increase it to the necessary 1.2 million dollars in thirteen months.

The Public Staff also noted that, at \$ 0.07, North Carolina's surcharge is one of the lowest in the country. A surcharge of \$.11 is approximately the average amount charged by the other states with similar programs.

Therefore, the Public Staff recommended that the surcharge be increased effective on January 1, 2002. This date will provide the local service providers adequate time to adjust their billing to reflect the increase in the January bills. The Public Staff recommended that customers be notified of the surcharge increase by a bill message/insert in their January bills as set forth in Appendix A. The Public Staff further recommended that the local service providers should continue to retain \$.01 of the \$.11 surcharge for collection, inquiry, and administrative expenses.

WHEREUPON, the Commission makes the following

FINDINGS OF FACT

1. TRS's monthly expenses presently exceed TRS's monthly revenue.
2. The present surcharge amount of \$.07 per month, which has remained unchanged for the last seven years, no longer provides adequate funds for the operation of TRS. Without an increase in the surcharge, TRS will exhaust its funds completely by February 2002.
3. The Public Staff and representatives of DHHS have recently agreed that the reserve margin should be 1.2 million dollars.
4. Based on its investigation of operating expenses and revenues, the Public Staff recommends that the surcharge be increased from \$.07 to \$.11 per month, effective January 1, 2002, both to operate TRS and to restore the reserve margin. With such an increase, the reserve margin may be restored and increased to the necessary 1.2 million dollars in 13 months.

CONCLUSIONS

Based on the above information, the Commission concludes that the requested surcharge increase is warranted and that the surcharge for TRS be increased to \$.11 per month. Customer bills issued on or after January 1, 2002, should reflect this increase.

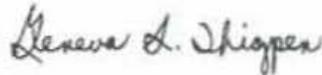
IT IS, THEREFORE, ORDERED as follows:

1. That the TRS surcharge be increased from \$.07 to \$.11 effective January 1, 2002. The increase should be reflected in customers' bills issued on or after January 1, 2002.
2. That the local service providers be authorized to continue to retain \$.01 from the \$.11 surcharge for collection, inquiry, and administrative expenses.
3. That the bill message/ insert as set forth in Appendix A shall appear in customers' January bills, issued on or after January 1, 2002.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of November, 2001.

NORTH CAROLINA UTILITIES COMMISSION



Geneva S. Thigpen, Chief Clerk

NOTICE OF TRS SURCHARGE INCREASE

Effective with telephone bills issued on or after January 1, 2002, the Telecommunications Relay Service (TRS) surcharge is \$.11. The North Carolina Utilities Commission authorized an increase in the TRS surcharge from \$.07 to \$.11 to maintain adequate funding of North Carolina's TRS program. The surcharge funds the TRS program which enables persons with hearing, speech, and/or vision impairments to communicate with others by telephone.

total access lines (excluding those of Subscriber Line Charge Waiver and Link-Up Carolina participants), and the estimated length of time required to implement the billing of surcharge and long-distance charges. The Order also requested recommendations from the State Treasurer.

All the LECs and TMCs responded with the information requested. DHR filed information on November 5, 1990, as well as a supplemental filing on January 4, 1991. The State Treasurer made filings on November 2, 1990, and December 27, 1990. The Public Staff filed comments and recommendations on December 6, 1990, and January 18, 1991.

After careful consideration of all the filings in this docket, the Commission reaches the following

CONCLUSIONS

1. The appropriate surcharge should be 11¢ per qualified access line including a 1¢ compensation level for LECs and TMCs. The Commission is adopting these figures pursuant to the recommendation of the Public Staff. The base surcharge level was determined by dividing DHR's initial year's cost by the number of qualified access lines and dividing this number by 12 months. Qualified access lines mean the total access lines minus the access lines of customers on the Subscriber Line Waiver or Link-Up Carolina programs.

Added to the base surcharge level is an amount to compensate the LECs and TMCs for surcharge "collection, inquiry, and other administrative services" pursuant to G.S. 62-157(f). Many of the TMCs and LECs stated that 1% of collected monthly surcharge revenues was inadequate. Carolina Telephone went on to provide an analysis suggesting another compensation level. The Public Staff in its January 13, 1991, filing suggested a compensation level of 1¢ per qualified access line. Figuring in the appropriate compensation level, the initial monthly surcharge should be 11¢.

In order to derive a more accurate view of appropriate compensation levels for the future, Southern Bell and Carolina Telephone should be required to file cost studies supporting an appropriate level of compensation within six months of actual implementation of the system.

2. The LECs and TMCs should be required to insert a separate line item on telephone bills to customers to show the surcharge. This is required by G.S. 62-157(c) which states in relevant part that the "surcharge shall be identified on customer bills as a special surcharge for provision of a dual party relay system."

3. The LECs and TMCs should be required to notify customers of the Dual Party Relay System by bill insert in the next billing cycle after the issuance of this Order. The content of this bill insert is set out in Appendix A.

4. The collection and disbursement of funds should be done on the following basis:

- a. Monthly surcharge

1. The LECs and TMCs will collect the surcharge from their qualified customers.
 2. The LECs and TMCs will transmit the collected surcharge revenues minus 1¢ per qualified access line for surcharge billing and collection services to DHR on a monthly basis. The first remittance should be made by May 5, 1991. The checks issued by the LECs and TMCs should be issued payable to "DHR-Relay North Carolina."
 3. DHR will deposit the surcharge revenues collected with the State Treasurer's Office or his designee on a daily basis with a prepared certification of deposit form accompanying the deposit identifying the separate budget code as assigned by the Office of State Budget and Management.
 4. The State Treasurer will maintain the funds in an interest-bearing, nonreverting account for use by DHR for the dual party relay system.
- b. Long distance relay calls
1. The LECs and TMCs will collect from end-users the long-distance relay call charges as part of the LEC or TMC monthly telephone bill.
 2. The LECs and TMCs will forward these receivables to US Sprint.
 3. US Sprint will transmit these funds to Sprint Services, which will in turn forward the revenues to DHR.
 4. DHR will deposit the revenues with the State Treasurer as described above.

The Commission believes that the procedures specified above are a workable solution to a complex problem. With respect to deposit of funds, the Commission has elected to follow the recommendations in the State Treasurer's filing of December 27, 1990.

5. The full in-service implementation date of the service should be June 1, 1991. The Public Staff and DHR have recommended that, in order to comply with the "reasonable margin for reserve" requirement in G.S. 62-157(c) and in order to establish an initial positive balance, the collection of the surcharge should begin two months prior to the implementation of the service. It is also necessary to allow adequate time for customer notification, modification of computer systems, and exchange of information among participating entities. The Commission therefore believes that the service should go into actual operation on June 1, 1991, and that the LECs and TMCs should be authorized to collect the surcharge beginning April 1, 1991.

6. There is to be a correlation between US Sprint's tariffs and those of DHR with respect to the dual party relay system. DHR has stated that it will charge US Sprint tariffed intrastate rates applicable to speech and hearing impaired users. Discount rates for North Carolina TDD users' interstate calls

will be 35% off day rates, 25% off evening rates and 10% off night/weekend rates. The interstate discount rate is subject to approval by the Federal Communications Commission, and Sprint Services will not be compensated for such calls through this intrastate relay system. Since the US Sprint tariffs are already on file with the Commission, the Commission will consider the applicable tariffs with respect to DHR to be on file by reference. Approved changes in the US Sprint tariff will automatically change the applicable DHR tariff.

7. DHR should be required to file a comprehensive financial and operational report as set out below. Sprint Services and the LECs and TMCs should be required to file reports with DHR as set out below. G.S. 62-157(g) provides that the Commission was to consult with DHR to develop a format and filing schedule for a comprehensive financial and operational report on the dual party relay system, to be prepared by DHR and filed with the Commission and the Joint Legislative Utility Review Committee. Pursuant to recommendations from the Public Staff and from DHR, the Commission believes that:

- a. DHR should be required to file a comprehensive financial and operational report every six months with the Commission, the Public Staff, and the Joint Legislative Utility Review Committee in the format as set out in Appendix B.
- b. Sprint Services should be required to file monthly reports with DHR and a compilation report with DHR every six months in the format as set out in Appendix B so that DHR may prepare the above report.
- c. The LECs and TMCs should be required to file a monthly report with DHR showing the level of surcharge revenues collected during the reporting period, number of qualified access lines for which the surcharge was collected during the reporting period, the billing and collection charges associated with the collection of the surcharge and withheld by the company during the reporting period, and the revenues mailed to DHR (collected revenues minus charges withheld) during the reporting period. The reports should be filed concurrent with the deposit made to the special fund. This information should be included by DHR in its comprehensive financial and operating report.

8. LECs and TMCs should be required to file local calling scope information within 30 days from the issuance of the Order, to be updated as changes occur. In order for calls to be properly rated, the Commission believes that the LECs and TMCs should be required to provide local calling scope information to Sprint Services in the format set out in Appendix C. Sprint Services has indicated that it will provide the format directly to all LECs and TMCs. These forms should be returned directly to Sprint Services within 30 days of the issuance of this Order. This information should be updated by the LECs and TMCs as changes occur.

9. All parties to this docket should be reminded to send copies of all their future filings in this docket to all other parties to this docket. A list of the parties to this docket is set out in Appendix D. Updated lists of LECs and TMCs can be obtained from time to time from the Commission Chief Clerk's Office.

IT IS, THEREFORE, ORDERED as follows:

1. That the surcharge level for the dual party relay system be set at 11¢ per qualified access line per month and that all LECs and TMCs be authorized to withhold as compensation for collection, inquiry, and other administrative services associated with the surcharge, the sum of 1¢ per qualified access line per month.

2. That Southern Bell and Carolina Telephone file cost studies supporting an appropriate level of compensation for billing and collection of the surcharge by no later than December 1, 1991.

3. That the in-service implementation date of the dual party relay system be set for June 1, 1991.

4. That all LECs and TMCs do the following:

- a. Begin collecting the surcharge authorized in Ordering Paragraph No. 1 above on April 1, 1991.
- b. Insert a separate line item on all customer telephone bills to identify the surcharge as follows: Special Surcharge for Dual Party Relay System.
- c. Notify all customers of the system by way of bill insert, as set out in Appendix A.
- d. File monthly reports concurrent with deposits for the special fund with DHR showing the following:
 - (1) level of surcharge revenues collected during the reporting period,
 - (2) number of qualified access lines for which the surcharge was collected during the reporting period,
 - (3) the billing and collection charges associated with the collection of the surcharge and withheld by the company during the reporting period, and
 - (4) the revenues mailed or delivered to DHR (i.e., collected revenues minus charges withheld) during the reporting period.
- e. Follow the procedure for the collection and disbursement of funds as outlined in Conclusion No. 4.
- f. File local calling scope information with Sprint Services within 30 days of this Order in the format set out in Appendix C, to be updated as changes occur.

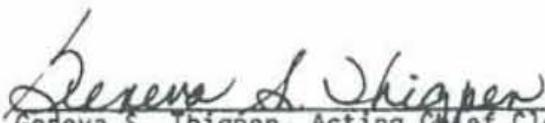
5. That Sprint Services do the following:

- a. Follow the procedures for the collection and disbursement of long-distance relay funds as set out in Conclusion No. 4.
 - b. File monthly reports with DHR and a compilation report with DHR every six months in the format set out in Appendix B.
6. That DHR do the following:
- a. Follow the procedure for the collection and disbursement of funds as set out in Conclusion No. 4.
 - b. File a comprehensive financial and operational report every six months with the Commission, the Public Staff, and the Joint Legislative Utility Review Committee in the format set out in Appendix B. The first such report covering the first six months of operation is due seven months from the initiation of the service, and all subsequent six-month reports are due every six months thereafter.
7. That the State Treasurer follow the procedure for the collection and disbursement of funds as set out in Conclusion No. 4.
8. That all parties be reminded to send copies of all their future filings in this docket to all other parties to this docket and that the monthly surcharge and long-distance relay revenues are not subject to gross receipts tax or sales tax per G.S. 62-157(b).

ISSUED BY ORDER OF THE COMMISSION.

This the 5th day of February 1991.

NORTH CAROLINA UTILITIES COMMISSION


Geneva S. Thigpen, Acting Chief Clerk

(SEAL)

NOTICE

NORTH CAROLINA DUAL-PARTY RELAY SYSTEM

In June, the State of North Carolina will launch a new service, Relay North Carolina, which will make it easier for North Carolinians who are deaf, hard of hearing, or speech-impaired to communicate over the telephone network to voice users.

Created through the efforts of the North Carolina General Assembly, the North Carolina Department of Human Resources, the North Carolina Utilities Commission, and the Public Staff - North Carolina Utilities Commission, the Relay North Carolina Service will be provided by specially trained communications assistants. Using special telecommunications equipment, these operators relay conversations between North Carolinians with hearing and/or speech impairments and callers who use standard telephone equipment.

Relay North Carolina allows persons who are deaf, hard of hearing, or speech-impaired to utilize a Telecommunications Device for the Deaf (TDD) or personal computer equipped with a modem to call the relay center and communicate over the telephone lines with voice users. A relay agent acts as an interpreter between the typed conversation from the TDD user and the voice communications of the hearing user.

Calls also can be initiated by voice users who wish to speak with a TDD user who is deaf, hard of hearing, or speech-impaired.

The service will be provided 24 hours a day, seven days a week and will facilitate communications for both local and long-distance calls. There will be no charge to users for local calls. Long-distance calls placed to destinations within the State of North Carolina will be discounted 50 percent, and long-distance calls to or from destinations outside of North Carolina will be discounted an average of 23 percent, based on the time of day the call was placed. Long-distance service for the relay center will be provided by US Sprint.

Funding for the relay service will be provided through a monthly surcharge of 11 cents which will appear on all telephone company customer bills beginning in April 1991.

Beginning June 1, 1991, callers can access the Relay North Carolina Center by calling toll-free: 1-800-RELAY-NC (1-800-735-2562).

For more information, write to Relay North Carolina, c/o Division of Services for the Deaf and the Hard of Hearing, Department of Human Resources, 695-A Palmer Drive, Raleigh, North Carolina 27603, or telephone (919) 733-5199 Voice/TDD.

TELECOMMUNICATIONS FOR THE DEAF

The General Assembly has appropriated funds to the Division of Services for the Deaf and the Hard of Hearing, North Carolina Department of Human

Resources, for the implementation of a communications program for low-income individuals who have been certified as deaf, hearing impaired, speech impaired, or deaf-blind in accordance with General Statutes 143B-216.34B. This program provides TDDs and other telephone assistive listening devices on loan to eligible applicants over nine years of age who are permanent legal residents of the State of North Carolina. Should you be interested in additional information or in applying for loaner equipment through this program, please contact the Division of Services for the Deaf and the Hard of Hearing, Department of Human Resources, 695-A Palmer Drive, Raleigh, North Carolina 27603, or telephone (919) 733-5199 Voice/TDD.

DHR/SPRINT PROPOSED FINANCIAL AND OPERATIONS REPORT

OFFICIAL COPY

DHR Proposed Financial Report

NC Division of Services for the Deaf and Hard of Hearing

RALEIGH, NORTH CAROLINA
 REPORT ON THE NC DUAL PARTY RELAY SYSTEM
 FOR THE SIX MONTHS ENDED

	JANUARY	FEBRUARY	MARCH	APRIL	MAY	JUNE	TOTAL
BEGINNING CASH BALANCE							
RECEIPTS							
SURCHARGES							
LESS: B & C							
NET SURCHARGES							
TOLLS							
INTEREST EARNED							
TOTAL							
EXPENDITURES							
PAYMENTS TO CONTRACTOR							
ADVERTISING							
ADM. PERSONAL							
OTHER ADM. COSTS							
TOTAL							
RECEIPTS OVER(UNDER)EXPEND.							
ENDING CASH BALANCE							