



at&t

WHOLESALE AGREEMENT

***Customer Name: SBC Internet Services, Inc.***

SBC Internet services, Inc.

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BST and SBCIS Lightspeed FINAL

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**By and Between**  
**BellSouth Telecommunications, Inc.**  
**And**  
**SBC Internet Services, Inc.**

**AGREEMENT  
BETWEEN BELL SOUTH  
TELECOMMUNICATIONS, INC. AND VOIP  
CUSTOMER**

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## VOIP CUSTOMER GENERAL TERMS AND CONDITIONS BETWEEN BELL SOUTH TELECOMMUNICATIONS, INC. AND SBC INTERNET SERVICES, INC.

This Agreement ("Agreement") is entered into, by and between SBC Internet Services, Inc. (hereinafter referred to as "VoIP Customer") and BellSouth Telecommunications, Inc. (as defined herein) (hereinafter referred to as "AT&T") (collectively, the "Parties"; each, a "Party").

### 1. INTRODUCTION

- 1.1 This Agreement sets forth general terms and conditions governing the Parties provision of Local Number Portability to each other. Pursuant to this Agreement, AT&T shall also provide access to certain Operational Support Systems (OSS) "functions" to facilitate the provisioning of such Services. The Appendices which are attached hereto and incorporated herein by reference are:

|                                   |
|-----------------------------------|
| <b>Appendix</b>                   |
| Operational Support Systems (OSS) |
| LNP                               |

- 1.2 The Parties understand and agree that the VoIP Customer will obtain service for White Page Listings, National Directory Assistance (NDA), Operator Service (OS), and 911 from a vendor, Affiliate, or 3<sup>rd</sup> party entity under separate agreements.
- 1.3 If any definitions, terms or conditions in any given Appendix, Attachment, Exhibit, Schedule or Addenda differ from those contained in the main body of this Agreement, those definitions, terms or conditions will supersede those contained in the main body of this Agreement, but only in regard to the services or activities listed in that particular Appendix, Attachment, Exhibit, Schedule or Addenda.
- 1.4 Any reference in this Agreement to AT&T or industry technical publications or guidelines shall be interpreted to refer to the most current edition or issue of such documents.

### 2. DESCRIPTION OF PARTIES

- 2.1 AT&T means BellSouth Telecommunications Inc, d/b/a AT&T ALABAMA, d/b/a AT&T FLORIDA, d/b/a AT&T GEORGIA, d/b/a AT&T KENTUCKY, d/b/a AT&T LOUISIANA, d/b/a AT&T MISSISSIPPI, d/b/a AT&T NORTH CAROLINA, d/b/a AT&T SOUTH CAROLINA, and d/b/a AT&T TENNESSEE.
- 2.2 VoIP Customer is an information service provider that provides IP-enabled service elements (including the functionality of a VoIP platform), as well as interconnection to the PSTN, to a retail VoIP provider. The retail VoIP provider, not VoIP Customer, will provide retail VoIP services to end-users. VoIP Customer has Federal Communications Commission authority to obtain numbering resources directly from the North American Numbering Plan Administrator (NANPA) and/or the Pooling Administrator (PA) for use in deploying Voice over Internet Protocol (VoIP) services. .

### 3. EFFECTIVE DATE, TERM, EXPIRATION AND TERMINATION

- 3.1 This Agreement shall be effective upon signature of the last Party executing this Agreement and shall expire on August 31, 2011 ("Expiration Date"). Provided however, this Agreement shall remain in full force and effect on and after the Expiration Date on a month to month basis, unless terminated by either Party pursuant to Section 3.2 or 3.3.
- 3.2 If pursuant to Section 3.1, this Agreement continues in full force and effect after the Expiration Date, either Party may terminate this Agreement after delivering written notice to the other Party of its intention to terminate this Agreement. The written notice shall include a "Termination Date" on which services under this Agreement will

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terminate. The specified Termination Date must be at least 30 calendar days from the date notice is given. Upon the Termination Date of this Agreement, neither Party shall have any further obligation under this Agreement, except as otherwise set forth herein.

- 3.3 Either Party may terminate this Agreement at the sole discretion of the terminating Party, in the event that the other Party fails to perform a material obligation or breaches a material term of this Agreement and the other Party fails to cure such nonperformance or breach within ten (10) calendar days after written notice thereof except as otherwise provided herein. Any termination of this Agreement pursuant to this Section shall take effect immediately upon delivery of written notice to the other Party that it failed to cure such nonperformance or breach within the time period specified within such notice.
- 3.4 Upon the Termination of this Agreement, neither Party shall have any further obligation under this Agreement, except:
  - 3.4.1 Each Party's confidentiality obligations shall survive; and
  - 3.4.2 Each Party shall promptly pay any and all amounts that are owed to each other under this Agreement,
  - 3.4.3 As provided in Section Survival.

#### **4. FORCE MAJEURE**

- 4.1 AT&T shall not be responsible for delays or failures in performance resulting from acts or occurrences beyond AT&T's reasonable control, regardless of whether such delays or failures in performance were foreseen or foreseeable, including, without limitation: fire, explosion, power failure, power blackouts/brownouts, cable cuts, embargoes, epidemics, nuclear accidents, acts of God, acts of nature, unusually severe weather conditions, acts of civil or military authority, war, terrorist acts, riots, insurrection, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by VoIP Customer or by other service or equipment vendors; or any other circumstances beyond AT&T's reasonable control. AT&T will give prompt notice to VoIP Customer when an event, as listed above, has occurred. When possible, the notice will identify the area(s) that is (are) affected by the event and the approximate time frame within which the event occurred and if known, the approximate date it is anticipated the event will conclude. When possible, AT&T will provide reasonable updates concerning the event and will provide notification to VoIP Customer when the event will be or has completed and all affected areas are anticipated to return to business as usual.

#### **5. BILLING AND PAYMENT OF RATES AND CHARGES AND BILLING DISPUTES**

- 5.1 This section shall govern application and disputes regarding such charges.
- 5.2 AT&T shall include all charges under this Agreement on the monthly bill(s) rendered to VoIP Customer (hereinafter "invoice").
- 5.3 VoIP Customer shall pay all charges under this Agreement within the time frame specified on the invoice date.
- 5.4 A good faith billing dispute under this Agreement requires VoIP Customer to provide a written claim to AT&T to permit AT&T to investigate the merits of the dispute. Such claim must identify the following within ten (10) Business Days from the date AT&T is notified of the dispute: (a) the account number under which the invoice has been rendered; (b) the specific charge that the customer believes was billed in error; (c) the date of the invoice; and (d) the reason or grounds for the dispute.
- 5.5 VoIP Customer billing inquiries and/or claims of overbilling by AT&T shall be referred to AT&T for investigation within six (6) months of the charge(s) first appearance on the invoice to VoIP Customer. Absent a claim and/or dispute by VoIP Customer as to a charge within six (6) months from its first appearance on an invoice to VoIP Customer, such charge shall be deemed to be correct. If the Parties

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determine that VoIP Customer was billed incorrectly for products and/or services rendered pursuant to this Agreement, a billing adjustment shall be calculated. If a refund is due, an adjustment shall be made for the overcharges. If an overcharge is adjusted within three billing cycles of the invoice in error, interest will not be applicable. If the overcharge is not adjusted within three billing cycles, interest on the amount will be credited at the lower of 1 percent per month compounded daily or the highest interest rate permitted by applicable law in the AT&T state. If the dispute is decided in favor of AT&T, then the resolution date will be the date upon which Notice is deemed to have been received by VoIP Customer under the Notice provisions in this Agreement ("Resolution Date") and VoIP Customer shall pay AT&T interest on the disputed amount at the lower of one (1) percent per month compounded daily or the highest interest rate permitted by applicable law in the AT&T state within fourteen (14) days of the Resolution Date.

## 6. GOVERNING LAW

- 6.1 This Agreement shall be governed by and construed in accordance with the laws of the AT&T State in which the product(s) and/or service(s) at issue was provided to VoIP Customer and, if agreement cannot be reached upon which state law applies or if the issues between the Parties involve the provision of product(s) and/or service(s) in multiple states, the laws of the State of Georgia shall apply, each without regard to conflict in law principles of the applicable state's law.
- 6.2 Any action under this agreement shall be brought in the state whose law applies as provided above.

## 7. LIMITATION OF LIABILITY/INDEMNITY

### 7.1 Limitation of Liability

Neither Party shall be liable to the other Party for any indirect, incidental, consequential, reliance, or special damages suffered by such other Party (including without limitation damages for harm to business, lost revenues, lost savings, or lost profits suffered by such other Party), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including without limitation negligence of any kind whether active or passive, and regardless of whether the Parties knew of the possibility that such damages could result. Each Party hereby releases the other Party (and such other Party's respective officers, directors, employees and agents) from any such claim. Nothing contained in this paragraph shall limit either Party's liability to the other for (i) willful or intentional misconduct; or (ii) bodily injury, death or damage to tangible real or tangible personal property proximately caused by a Party's negligent act or omission, nor shall anything contained in this paragraph limit the Parties' indemnification obligations.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT AND EXCEPT AS OTHERWISE PROVIDED IN ANY OTHER AGREEMENT(S) BETWEEN THE PARTIES, THE PARTIES VOLUNTARILY AGREE, AFTER CONSULTATION WITH THEIR RESPECTIVE COUNSEL, THAT THE RIGHTS AND REMEDIES AS STATED IN THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, THE DISPUTE RESOLUTION SECTION OF THIS AGREEMENT (AS TO THE SUBJECT-MATTER OF THIS AGREEMENT) ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE TO EITHER PARTY WITH RESPECT TO ANY CLAIMS, LOSS(ES) AND DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT. ANY CLAIMS, LOSS(ES) AND DISPUTES RELATING TO OR ARISING OUT OF THIS AGREEMENT ARE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES THAT A PARTY MAY POSSESS PURSUANT TO STATUTE, OR AT COMMON LAW OR IN EQUITY.

### 7.2 Indemnity

- 7.2.1 Responsibility of Each Party for its Services: Each Party shall be responsible only for the services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Party, and neither Party shall bear any responsibility for the services provided by the other Party, its agents, subcontractors, or others retained by such Parties.
- 7.2.2 Claims of Loss by Third Party(ies): Except as otherwise expressly provided herein or in specific appendices and subject to Limitation of Liability section above, and to the extent not prohibited by applicable law and not otherwise controlled by tariff, each Party (the "Indemnifying Party") shall



release, defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any Loss to a third party arising out of the gross negligence or willful misconduct ("Fault") of such Indemnifying Party, its agents, its end users, contractors, or others retained by such Parties, in connection with the Indemnifying Party's provision of services and performance under this Agreement.

- 7.2.3 Claims of Loss by an End User of a Party: Except as otherwise expressly provided herein or in specific appendices and subject to Limitation of Liability section above in the case of any Loss alleged or claimed by an end user of either Party, the Party whose end user alleged or claimed such Loss (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") against any and all such claims or Losses by its end user regardless of whether the underlying service giving rise to such claim or Loss was provided or provisioned by the Indemnified Party, unless the claim or Loss was caused by the gross negligence or willful misconduct of the Indemnified Party. Notwithstanding anything to the contrary in this Section and this Agreement, AT&T shall have no liability to the end users of VoIP Customer for claims arising from this Agreement, including but not limited to claims related to the marketing or sales of its services provided hereunder, delayed restoral or nonrestoral of service, quality of service or any resulting billing or any other type of dispute. VoIP Customer agrees to indemnify, defend, and hold AT&T harmless from and against any and all claims, demands, costs, damages, liabilities, and expenses (including reasonable attorney fees) arising from any claim or action initiated by VoIP Customer's end user for services rendered under this Agreement.
- 7.2.4 Claims of Loss by a Party Against other Party: Subject to Limitation of Liability Section above, a Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party ("Indemnified Party") against any claim or Loss arising from the Indemnifying Party's use of services provided, or performance, under this Agreement, including, without limitation, any claim(s) or Loss(es) arising from: Indemnifying Party's use of services offered under this Agreement, involving any claim for libel, slander, invasion of privacy, or infringement of intellectual property rights arising from the Indemnifying Party's or its end user's use.
- 7.2.5 Indemnification Procedures: Whenever a claim shall arise for indemnification under this Section, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim. The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party. Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim. Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement. At any time, an Indemnified Party shall have the right to refuse a compromise or settlement and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ

separate counsel for such defense at such Indemnified Party's expense. If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in the confidentiality section of this Agreement.

## 8. DISPUTE RESOLUTION

### 8.1 Finality of Disputes

8.1.1 No claim may be brought for any dispute arising from this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

### 8.2 Commencing Dispute Resolution

8.2.1 The dispute resolution processes in this section do not apply to misuse of OSS. Such issues are governed exclusively in the OSS Appendix.

8.2.2 Dispute Resolution shall commence upon one Party's receipt of written notice of a controversy or claim arising out of or relating to this Agreement for its breach. No Party may pursue any such claim unless such written notice has first been given to the other Party.

8.3.1 Upon receipt by one Party of notice by the other Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. If the Parties mutually agree to do so, the representatives may utilize other alternative Dispute Resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

## 9. NONDISCLOSURE

9.1 Each Party anticipates and recognizes that it will come into possession of technical or business information or data about the other Party and/or its customers (including without limitation its end user customers) as a result of this Agreement which will be considered confidential by such other Party. The Parties agree (1) to treat all such information and data as strictly confidential; and (2) to use such information only for purposes of performance under this Agreement. Each Party agrees not to disclose confidential information and/or data of or pertaining to the other Party or its customers (including without limitation its end user customers) to any third party without first securing the written consent of such Party. The foregoing shall not apply to information which is in the public domain.

- 9.2 If a court or governmental agency orders or a third-party requests a Party to disclose or to provide any data or information covered by this Section that Party will immediately inform the other Party of the order or request before such data or information is provided and will inform the other Party both by telephone and certified mail. Notification and consent requirements described above are not applicable in cases where a court order requires the production of billing and/or usage records of or pertaining to an individual customer (including without limitation an end user customer).
- 9.3 This Section will not preclude the disclosure by a Party of information or data subject to this Section to consultants, agents, or attorneys representing that Party, provided that such representatives are informed of the confidential nature of the information and/or date prior to disclosure and are bound by confidentiality requirements that are at least as restrictive as applicable to the Parties to this Agreement. Further, this Section will not preclude the disclosure by a Party of information or data subject to this Section, subject to an appropriate protective order, to the Office of the Public Counsel or Staff of the state Commission or FCC Staff pursuant to discovery during a pending case.
- 9.4 The provisions of this Section shall survive the expiration and/or termination of this Agreement, unless agreed to in writing by the Parties.

**10. PUBLICITY**

- 10.1 Except as may be expressly provided elsewhere in this Agreement (including without limitation the Attachments), the Parties agree not to use in any advertising or sales promotion, press releases or other publicity matters any endorsements, direct or indirect quotes, or pictures implying endorsement or business relationships by the other Party or any of its employees without such Party's prior written approval. Each Party will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain symbols, pictures, or language from which a connection to said name and/or marks may be inferred or implied.

**11. ASSIGNMENT**

- 11.1 VoIP Customer may not assign, subcontract, or otherwise transfer any of its rights or obligations under this Agreement except under such terms and conditions as are mutually acceptable to VoIP Customer and AT&T and with AT&T's prior written consent, which consent shall not be unreasonably withheld.

**12. NOTICES**

- 12.1 Notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and shall be: (a) delivered personally; or (b) delivered by express overnight delivery service; or (c) mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or (d) delivered by facsimile; provided that a paper copy is also sent by a method described above in subsections (a), (b) or (c).
- 12.2 Except as otherwise explicitly provided for in this Agreement Notices will be deemed given as of the earliest of: (a) the date of actual receipt; or (b) the next Business Day when sent via express overnight delivery service; or (c) five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service; or (d) on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone.
- 12.3 Notices will be addressed to the Parties as follows:

| NOTICE CONTACT        | VoIP Customer CONTACT                    | AT&T CONTACT  |
|-----------------------|--|---|
| NAME/TITLE            | Melinda Ramirez<br>Lead Carrier Accounts | Contract Management<br>ATTN: Notices Manager                  |
| STREET ADDRESS        | 308 S. Akard, Ste. 1530                  | 311 S. Akard Street<br>Four AT&T Plaza, 9 <sup>th</sup> Floor |
| CITY, STATE, ZIP CODE | Dallas, TX 75202                         | Dallas, TX 75202-5398   |

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|                  |              |              |
|------------------|--------------|--------------|
| FACSIMILE NUMBER | 214 858-3082 | 214-464-2006 |
|------------------|--------------|--------------|

Either Party may unilaterally change its designated contact, address, telephone number and/or facsimile number for the receipt of notices by giving written notice to the other Party in compliance with this Section. Any notice to change the designated contact, address, telephone and/or facsimile number for the receipt of notices shall be deemed effective ten (10) calendar days following receipt by the other Party.

### 13. THIRD PARTY BENEFICIARIES

- 13.1 This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein expressed or implied shall create or be construed to create any third party beneficiary rights hereunder. This Agreement shall not provide any non-party with any remedy, claim, cause of action or other right.

### 14. TAXES

- 14.1 VoIP Customer shall be responsible for all federal, state or local, sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax(es)") imposed on or with respect to the products and/or services provided under this Agreement including those Taxes the incidence of which is imposed on AT&T other than taxes imposed on the income of AT&T. VoIP Customer shall reimburse AT&T for the amount of any such Taxes that AT&T is required to pay or collect. VoIP Customer agrees to indemnify and hold harmless AT&T for any costs incurred by AT&T as a result of actions taken by the applicable taxing authority to collect the Tax from AT&T due to the failure of VoIP Customer to pay or collect and remit any Tax to such authority. Nothing shall prevent AT&T from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills VoIP Customer for such Tax, or (2) it collects the Tax from VoIP Customer. Notwithstanding anything in this Agreement to the contrary, VoIP Customer shall be liable for and AT&T may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.
- 14.2 To the extent a purchase of any products and/or services provided under this Agreement is claimed to be for resale and thus subject to tax exemption, VoIP Customer shall furnish AT&T a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the VoIP Customer for any period prior to the date that VoIP Customer presents a valid certificate. If applicable law excludes or exempts a purchase of a product and/or service provided under this Agreement from a Tax, but does not also provide an exemption procedure, then AT&T will not collect such Tax if VoIP Customer (a) furnishes AT&T with a letter signed by an officer of the VoIP Customer claiming an exemption and identifying the applicable law that both allows such exemption and does not require an exemption certificate; and (b) supplies AT&T with an indemnification agreement, reasonably acceptable to AT&T, which holds AT&T harmless from any Tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.
- 14.3 With respect to any Tax or Tax controversy covered by this Section, VoIP Customer is entitled to contest with the imposing jurisdiction, pursuant to applicable law and at its own expense, any Tax that it is ultimately obligated to pay. VoIP Customer will ensure that no lien is attached to any asset of AT&T as a result of any contest. VoIP Customer shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by AT&T shall be refunded to AT&T.
- 14.4 If a Party is assessed by a taxing authority or jurisdiction any Tax which has been paid by or been invoiced to the other Party that arises in conjunction with or directly related to this Agreement, then the Parties will work cooperatively and assist each other as necessary in resolving the matter with the taxing authority or jurisdiction.



## 15. WAIVER

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

## 16. DISCLAIMER OF WARRANTIES

16.1 AT&T MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO PRODUCTS AND/OR SERVICES PROVIDED HEREUNDER, AND AT&T DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR INTENDED OR PARTICULAR PURPOSE FOR EACH PRODUCT AND SERVICE. ADDITIONALLY, AT&T ASSUMES NO RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY VOIP PROVIDER.

## 17. NO LICENSE

17.1 Except as otherwise expressly provided in this Agreement (including without limitation any Attachment), no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

## 18. RELATIONSHIP OF THE PARTIES

18.1 This Agreement shall not establish, be interpreted as establishing, or be used by either Party to establish or to represent their relationship as any form of agency, partnership or joint venture. Neither Party shall have any authority to bind the other, nor is to act as an agent or representative for the other Party unless written authority, separate from this Agreement, provided.

## 19. FILING OF AGREEMENT; GOVERNMENTAL REQUIREMENT

19.1 If a Party is required or ordered by the FCC or a court of competent jurisdiction to file this Agreement for approval, or should a regulatory body or court of competent jurisdiction find that its provisions should be tariffed pursuant to applicable law or regulation, then the Parties, without waiving any right to contest that obligation, shall cooperate with each other in expeditiously complying with any such request, order or finding.

## 20. AMENDMENTS AND MODIFICATIONS

20.1 No provision of this Agreement shall be deemed amended or modified by either Party unless such an amendment or modification is in writing, dated, and signed by an authorized representative of both Parties. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

## 21. INTERPRETATION/JOINT WORK PRODUCT

21.1 This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective representatives and legal counsel, and shall be fairly interpreted in accordance with its provisions and, in the event of any ambiguities; no inferences shall be drawn against either Party.

## 22. INTELLECTUAL PROPERTY

22.1 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.

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or any of its subsidiaries except by written agreement

## **23. COMPLIANCE AND CERTIFICATION**

- 23.1 Each Party shall comply at its own expense with all applicable laws that relate to that Party's obligations to the other Party under this Agreement. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of applicable law.
- 23.2 VoIP Customer represents and warrants that, to the extent applicable and required, it has obtained all necessary State certification required in each State covered by this Agreement. Upon request, each Party shall provide proof of certification.

## **24. SEVERABILITY**

- 24.1 Except as otherwise provided herein, if any provision of this Agreement is rejected or held to be illegal, invalid or unenforceable, the Parties shall negotiate in good faith and diligent efforts to amend this Agreement to replace the unenforceable provision with an enforceable provision that is mutually acceptable and that reflects the intent of the unenforceable provision as closely as possible; provided, however, that failure to reach such mutually acceptable new provisions within ninety (90) days after such rejection or holding shall permit either Party to terminate this Agreement upon 90 days written notice to the other

## **25. SURVIVAL**

- 25.1 The following sections are specifically agreed by the Parties to continue beyond the termination or expiration of this Agreement: Confidentiality, Payment of Rates and Charges, Limitation of Liability/Indemnity, Nondisclosure, and Taxes.

## **26. AUTHORITY**

- 26.1 Each of the AT&T ILEC(s) for which this Agreement is executed represents and warrants that it is a corporation or limited partnership duly organized, validly existing and in good standing under the laws of its state of incorporation or formation. Each of the AT&T ILEC(s) for which this Agreement is executed represents and warrants that AT&T Operations, Inc. has full power and authority to execute and deliver this Agreement as agent for that AT&T ILEC. Each of the AT&T ILEC(s) for which this Agreement is executed represents and warrants that it has full power and authority to perform its obligations hereunder.
- 26.2 VoIP Customer represents and warrants that it is a limited partnership, limited liability company or corporation duly organized, validly existing and in good standing under the laws of the State of California and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- 26.3 Each individual whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

## **27. COUNTERPARTS**

- 27.1 This Agreement may be executed in counterparts. Each counterpart shall be considered an original and such counterparts shall together constitute one and the same instrument.

## **28. ENTIRE AGREEMENT**

- 28.1 The terms and condition contained in this Agreement and its Attachments and Appendices constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written between the Parties during the negotiations of this Agreement and through the execution and/or Effective Date of this Agreement.

**Signatures**

SBC Internet Services, Inc.

BellSouth Telecommunications Inc, d/b/a AT&T  
Alabama, d/b/a AT&T Florida, d/b/a AT&T Georgia,  
d/b/a AT&T Kentucky, d/b/a AT&T Louisiana, d/b/a  
AT&T Mississippi, d/b/a AT&T North Carolina, d/b/a  
AT&T South Carolina and d/b/a AT&T Tennessee.

By: Scott A Mair

By: Kristen E Shore

Printed: Scott Mair

Printed: Kristen Shore

Title: VP - GNO Service Operations

Title: Director-Interconnection Agreements

Date: 8/7/08

Date: 8/18/08

## OSS APPENDIX TO FACILITATE PORTING

### 1.0 Introduction

- 1.1 This Attachment sets forth terms and conditions for access to Operational Support Systems (OSS) "functions" by VoIP Customer, as described below, for the sole purpose of facilitating the ordering of Local Number Portability (LNP).
- 1.2 The interfaces described herein have certain features which are not related to LNP, but which are inherently available via the interface. Such non-LNP features shall not be accessed nor used by, through, or on behalf of VoIP pursuant to this Attachment, except as permitted for porting purposes only. VoIP hereby warrants and represents that it will not access such non-LNP features except in connection with permitted porting activities. VoIP Customer is authorized by this Appendix to use only the Pre-Order, Ordering, and Provisioning functions identified herein and only for essential number portability functions, as described herein.

### 2.0 Definitions

- 2.1 "AT&T" is as defined in the general terms and conditions provision of this Agreement

### 3.0 General Provisions

- 3.1 AT&T's OSS are comprised of systems and processes that are in some cases region-specific (hereinafter referred to as "Regional OSS"). Regional OSS is available only in the regions where such systems and processes are currently operational.
- 3.2 AT&T will provide electronic access to OSS via web-based GUIs and application-to-application interfaces.
- 3.3 AT&T will provide all relevant documentation (manuals, user guides, specifications, etc.) regarding business rules and other formatting information, as well as practices and procedures, necessary to handle OSS related requests. Documentation may be amended by AT&T in its sole discretion from time to time. All Parties agree to abide by the procedures contained in the then-current documentation.
- 3.4 VoIP Customer shall advise AT&T no less than seven (7) Business Days in advance of any anticipated ordering volumes above VoIP Customer's normal average daily volumes.
- 3.5 It is the sole responsibility of VoIP Customer to obtain the technical capability to access and utilize AT&T's OSS interfaces. All hardware and software requirements for the applicable AT&T Regional OSS are specified by AT&T.
- 3.6 VoIP Customer must access the AT&T OSS interfaces as indicated in the connectivity specifications and methods as specified by AT&T.
- 3.7 Prior to initial use of AT&T's Regional OSS, VoIP Customer shall attend and participate in implementation meetings to discuss VoIP Customer access plans in detail and schedule testing.
- 3.8 VoIP Customer will provide a single point of contact for technical issues related to VoIP Customer's use of AT&T's electronic interfaces.
- 3.9 When OSS processes are not available electronically, AT&T shall make manual processes available. Due to enhancements and on-going development of access to AT&T OSS functions, certain interfaces may be modified, may be temporarily unavailable or may be phased out after execution of this Agreement.



- 3.10 The Parties agree to provide one another with toll-free contact numbers for the purpose of addressing ordering, provisioning and maintenance of services issues. Contact numbers for maintenance/repair of services shall be staffed twenty-four (24) hours per day, seven (7) days per week.

#### 4. GENERAL CONDITIONS RELATED TO ACCESS TO OSS

- 4.1 The VoIP Customer will use electronic ordering wherever such processes are made available. Electronic processing is available via AT&T's application-to-application interface or via AT&T's Graphical User Interface (GUI).
- 4.2 **Proper Use of OSS interfaces:**
- 4.2.1 Protection of OSS and the information in those systems is of the highest importance to AT&T. Failure by VoIP Customer to follow requirements for proper use of OSS will be grounds for immediate suspension of access as described herein. VoIP Customer agrees to use AT&T electronic interfaces, as described herein, solely for the purposes of pre-order and order activity necessary for preparing LSRs for the ordering of LNP.
- 4.2.1.1 In addition, VoIP Customer agrees that such use will comply with AT&T's Data Connection Security Requirements as identified in this Agreement. Failure to comply with such security guidelines or misuse of OSS interfaces will result in forfeiture of electronic access to OSS functionality, if such misuse is not promptly cured after notice from AT&T.
- 4.2.1.2 In addition, VoIP Customer shall be responsible for and indemnifies AT&T against any cost, expense or liability relating to any unauthorized entry or access into, or use or manipulation of AT&T's OSS from VoIP Customer's systems, workstations or terminals or by VoIP Customer's employees, agents, or any third party gaining access through information and/or facilities obtained from or utilized by VoIP Customer and shall pay AT&T for any and all damages caused by such unauthorized entry.
- 4.2.1.3 VoIP Customer agrees that access to Customer Service Inquiry (CSI) which contains Customer Proprietary Network Information (CPNI) shall not be accessed for any purpose other than the ordering of LNP.
- 4.3 By using electronic interfaces to access OSS functions, VoIP Customer agrees to perform accurate and correct ordering such that no other user of AT&T's OSS or end users are harmed by the VoIP Customer's order use of AT&T's OSS. VoIP Customer is also responsible for all actions of its employees using any of AT&T's OSS systems. As such, VoIP Customer agrees to accept and pay all reasonable costs or expenses, including labor costs, incurred by AT&T caused by any and all inaccurate ordering or usage of the OSS, if such costs are not already recovered through other charges assessed by AT&T to VoIP Customer. In addition, VoIP Customer agrees to indemnify and hold AT&T harmless against any claim made by an end user of the VoIP Customer or other third parties against AT&T caused by or related to VoIP Customer's use of any AT&T OSS.
- 4.4 In the event AT&T has good cause to believe that VoIP Customer has used AT&T OSS in a way that conflicts with this Agreement or applicable law, AT&T shall give VoIP Customer written notice describing the alleged misuse ("Notice of Misuse"). Misuse of OSS may involve, but is not limited to, improper access of pre-order applications to obtain CPNI, including the CSI function, or involve a violation of the security guidelines contained herein, or negatively affect another OSS user's ability to use OSS. Upon receipt of the Notice of Misuse, VoIP Customer shall **immediately** refrain from the conduct that is described in the Notice of Misuse. If VoIP Customer fails to immediately refrain from the alleged misuse, AT&T shall be entitled to suspend VoIP Customer's access to all affected OSS interfaces until VoIP Customer demonstrates its present ability and intent to abide by the requirements of this Agreement and the Notice of Misuse.
- 4.5 If VoIP Customer does not agree that its use of AT&T OSS is inconsistent with this Agreement or applicable law, then VoIP provider shall provide a written response to the Notice of Misuse within twenty (20) calendar

days after receipt of the Notice. Thereafter the parties shall work together as necessary to address the proper use of AT&T's OSS. If the Parties are unable to determine a mutually acceptable resolution to the issue of misuse, either Party may terminate this Agreement without additional Notice.

- 4.6 AT&T shall have the right to conduct an audit of VoIP Customer's use of the AT&T OSS. Such audit shall be limited to auditing those aspects of VoIP Customer's use of the AT&T OSS that relate to AT&T's allegation of misuse as set forth in the Notice of Misuse. AT&T shall give ten (10) calendar days advance written notice of its intent to audit VoIP Customer ("Audit Notice") under this Section and shall identify the type of information needed for the audit. Within a reasonable time following the Audit Notice, but no less than fourteen (14) calendar days after the date of the Notice (unless otherwise agreed by the Parties), VoIP Customer shall provide AT&T with access to the requested information in any reasonably requested format, at the most appropriate VoIP Customer location, unless otherwise agreed to by the Parties. All information obtained through such an audit shall be deemed proprietary and/or confidential and subject to confidential treatment without necessity for marking such information confidential. AT&T agrees that it shall only use employees or outside parties to conduct the audit who do not have marketing, strategic analysis, competitive assessment or similar responsibilities within AT&T.
- 4.7 AT&T has the right to define Local Service Request (LSR) Usage requirements according to the General Section 1.0, paragraph 1.4 of the practices in the OBF Local Service Ordering Guidelines (LSOG), which states: "Options described in this practice may not be applicable to individual providers tariffs; therefore, use of either the field or valid entries within the field is based on the providers tariffs/practices."
- 4.8 Due to enhancements and on-going development of access to AT&T OSS functions, certain interfaces described in this Agreement may be modified, temporarily unavailable or may be phased out after execution of this Agreement at AT&T's sole discretion.
- 4.9 VoIP Customer is responsible for obtaining operating system software and hardware to access AT&T OSS functions as specified in: "Competitive Local Exchange Carrier Operations Support System Interconnection Procedures" or any other documents or interface requirements subsequently generated by AT&T.

## 5. PRE-ORDERING

### 5.1 Preorder Functions for Porting

#### 5.1.1 Customer Service Information - CSI Inquiry

Access to AT&T CPNI and account information for pre-ordering provides access to the Customer Service Record (CSR) containing the following information: billing name, billing address, service address, service and feature subscription, and long distance carrier identity. The CSR contains additional information, provided however, the VoIP Customer may access CSR information for the sole purpose of facilitating LNP. Additionally, VoIP Customer agrees that VoIP Customer will not access the information specified in this subsection until after the VoIP Customer has obtained authorization from the End User for release of CPNI which complies with conditions as described above and has obtained permission of the end user to port to VoIP Customer.

#### 5.1.2 Address Validation Inquiry

5.1.2.1 AT&T provides an address validation function.

### 5.2 Electronic Access to OSS Pre-Order Functions

- 5.2.1 AT&T Pre-Order Interface Availability: AT&T will provide VoIP Customer access electronic access to OSS via web-based GUIs and application-to-application interfaces. These GUIs and interfaces will allow VoIP Customer to perform pre-order and order functions.

## 6. ORDERING/PROVISIONING

- 6.1 AT&T will provide ordering functionality as specified herein.
- 6.2 AT&T will provide access to OSS interfaces for the purpose of ordering LNP. Consistent with OBF, the industry mechanism for ordering LNP is via the Local Service Request (LSR). When ordering LNP, the VoIP Customer will format the service request, in accordance with the AT&T LSOR. AT&T will provide VoIP Customer access to one or more of the following interfaces.

### 6.2.1 LNP Ordering Interface Availability:

AT&T makes available to VoIP Customer web-based GUIs and application-to-application interfaces for transmission of the Local Service Request (LSR) for the ordering of number portability as defined by the OBF and via web-based GUIs and application-to-application interfaces. In ordering of LNP, the VoIP Customer and AT&T will utilize industry guidelines developed by OBF and TCIF to transmit web-based GUIs and application-to-application interfaces data.

For AT&T, web-based GUIs and application-to-application interface that provide access to the ordering functions for LNP.

- 6.3 Charges for Ordering. VoIP Customer shall pay a electronic service order rate (SOMEK) for all LSRs submitted via electronic OSS and shall pay a manual service order rate (SOMAN) for all manually submitted LSRs

SOMEK- \$3.50  
SOMAN-\$19.99

## 7. LNP PROVISIONING

- 7.1 AT&T will provide to VoIP Customer with access to order status and provisioning order status is available via the pre-ordering and ordering GUIs, AT&T's CLEC Online website and application-to-application interfaces
- 7.2 AT&T shall provision LNP services during its regular working hours. To the extent VoIP Customer requests provisioning of service to be performed outside AT&T's regular working hours, or the work so requested requires AT&T's technicians or project managers to work outside of regular working hours, AT&T will assess overtime charges set forth in AT&T's intrastate Access Services Tariff.
- 7.3 Cancellation Charges--If VoIP Customer cancels an LSR subsequent to AT&T's generation of a service order, any costs incurred by AT&T in conjunction with provisioning of services as requested on the cancelled LSR will be recovered in accordance with the cancellation methodology set forth in the Cancellation Charge Percentage Chart found on AT&T- CLEC Online website. In addition, AT&T reserves the right to assess cancellation charges if VoIP Customer fails to respond within nine (9) Business Days to a Missed Appointment order notification.
- 7.4 Order Modification Charges---If VoIP Customer modifies an order after being sent a FOC from AT&T the Order Modification Charge (OMC) or Order Modification Charge Additional Dispatch (OMCAD) will be accessed.

OMC - \$26.21  
OMCAD – \$150.00

## 8. Data Connection Security Requirements

8.1 VoIP Customer agrees to comply with AT&T data connection security procedures, including but not limited to procedures on joint security requirements, information security, user identification and authentication, network monitoring, and software integrity. These procedures are set forth at the AT&T CLEC OnLine website.

8.2 VoIP Customer agrees that interconnection of VoIP Customer data facilities with AT&T data facilities for access to OSS will be in compliance with AT&T's "Competitive Local Exchange Carrier (CLEC) Operations Support System Interconnection Procedures" document current at the time of initial connection to AT&T and available at the AT&T CLEC Online website.

### 8.3 Joint Security Requirements

8.3.1 Both Parties will maintain accurate and auditable records that monitor user authentication and machine integrity and confidentiality (e.g., password assignment and aging, chronological logs configured, system accounting data, etc.).

8.3.2 Both Parties shall use an industry standard virus detection software program at all times. The Parties shall immediately advise each other by telephone upon actual knowledge that a virus or other malicious code has been transmitted to the other Party.

### 8.4 Additional Responsibilities of Both Parties

8.4.1 Modem/DSU Maintenance and Use Policy: To the extent the access provided hereunder involves the support and maintenance of VoIP Customer equipment on AT&T's premises, such maintenance will be provided under the terms of the "Competitive Local Exchange Carrier (CLEC) Operations Support System Interconnection Procedures" document cited above.

8.4.2 Each Party shall notify the other Party's security organization immediately upon initial discovery of actual or suspected unauthorized access to, misuse of, or other "at risk" conditions regarding the identified data facilities or information. Each Party shall provide a specified point of contact. If either Party suspects unauthorized or inappropriate access, the Parties shall work together to isolate and resolve the problem.

### 8.5 Software and Data Integrity

8.5.1 VoIP Customer shall use a comparable degree of care to protect AT&T's software and data from unauthorized access, additions, changes and deletions as it uses to protect its own similar software and data. This may be accomplished by physical security at the work location and by access control software on the workstation.

8.5.2 Untrusted software or data shall be scanned for viruses before use on a Party's corporate facilities that can be accessed through the direct connection or dial up access to OSS interfaces.

### 8.6 Monitoring And Audit

8.6.1 To deter unauthorized access events, a warning or no trespassing message will be displayed at the point of initial entry (i.e., network entry or applications with direct entry points). VoIP Customer should have several approved versions of this message. Users should expect to see a warning message similar to this one:

*"This is a AT&T or SBC Internet Services, Inc.system restricted to Company official business and subject to being monitored at any time. Anyone using this system expressly consents to such monitoring and to any evidence of unauthorized access, use, or modification being used for criminal prosecution."*

## 9.0 Miscellaneous

- 9.1 To the extent AT&T seeks to recover costs associated with OSS system access and connectivity, AT&T shall not be foreclosed from seeking recovery of such costs via negotiation during the term of this Agreement.

## LOCAL NUMBER PORTABILITY APPENDIX

This Appendix establish the terms and conditions for the provision of Local Number Portability services by and between BellSouth Telecommunications, Inc. ("AT&T") and SBC Internet Services, Inc. ("VoIP Customer"),

### 1.0 Provision of Local Number Portability

- 1.1 AT&T and VoIP Customer shall provide local number portability ("LNP") in accordance with the current and effective rules and orders of the FCC, and the guidelines of the North American Numbering Council (NANC), except to the extent other rights or obligations are expressly provided in the Agreement or this Appendix.

### 2.0 Definitions

- 2.1 "Local Number Portability (LNP)" means the ability of users of Telecommunications Services or Interconnected VoIP Services to retain the presence of a previously existing telephone number(s).

### 3.0 Requirements for LNP

- 3.1 Either party shall be permitted to block default-routed call to protect the public switched telephone network from overload, congestion, or failure propagation.
- 3.2 When a ported telephone number ("TN") becomes vacant, e.g., the telephone number is no longer in service with an end user, the ported telephone number will be released back to the provider owning the facilities in which the telephone number's NXX-X is native.
- 3.3 The service provider obtaining a telephone number via LNP shall become responsible for the end user's other telecommunications related services and features, e.g., E911, Directory Listings, Operator Services, and Line Information Database (LIDB), once that party has ported the User's telephone number to their facilities.

### 4.0 Limitations of Service

- 4.1 Telephone numbers in the following ATT NXXs shall not be ported: (i) ATT Official Communications Services (OCS) NXXs; (ii) 555, 976, 950,956, 976, 900 TNs; (iii) N11 TNs (such as 411, 911, etc.); (iv) 800, 888, 877, 866 TNs; and (v) disconnected or unassigned TNs.

### 5.0 Service Description

- 5.1 The LRN software of the switch in which an NXX is native determines if the called party is in a portable NXX. When a calling party places a telephone call, if the called party is in a portable NXX, a query will be launched to the LNP database, to determine whether or not the called number has been ported.
- 5.2 When the query does not return an LRN, the call will be completed based upon the dialed digits.



5.3 Where technically feasible, the Parties shall populate the Jurisdictional Identification Parameter (JIP) field with the first six (6) digits (NPA NXX format) of the appropriate LRN of the originating switch.

## **6.0 Ordering**

6.1 Porting of numbers marked as portable in the Local Exchange Routing Guide (LERG) will be initiated via Local Service Requests (LSR) based on Ordering and Billing Forum (OBF) recommendations.

6.2 When an LSR is sent to one Party by the other Party to initiate porting via LNP, the receiving Party shall return, at the appropriate time, a Firm Order Confirmation (FOC).

## **7.0 Provisioning**

7.1. The Parties will remove a ported number from the end office from which the number is being ported, as close to the requested time as possible. The Parties recognize that it is in the best interest of the consumer for this removal to be completed in the most expedient manner possible.

7.1.1 Unconditional ten-digit trigger. If the unconditional LNP trigger is set, calls originating from the old switch will query the database and route to the new switch without the number being disconnected. The ported number must be removed at the same time that the unconditional LNP trigger is removed.. The Parties agree to provide unconditional ten-digit trigger wherever technically feasible.

7.2 ATT and VoIP Customer shall cooperate in the process of porting numbers from one carrier to another to limit any service outage for the ported subscriber. ATT and VoIP Customer will use their best efforts to update their respective Local Service Management Systems (LSMS) from the NPAC SMS data within 15 minutes after receipt of a download from the NPAC SMS (the current North American Numbering Council goal for such updating).

7.3 At the time of porting a number via LNP, the Party from which the number is being ported shall ensure that the LIDB entry for that number is no longer provisioned.

## **8.0 Operator Services, LIDB/LVAS and Directory Assistance**

8.1 The Provisions of the Agreement pertaining to Operator Services, LIDB/LVAS and Directory Assistance shall also apply when LNP is in place.

## **9.0 Rates and Charges**

9.1 FCC mandated rates for LNP shall apply.