

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

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Before Commissioners:

G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Submission of a)
Negotiated Interconnection Agreement)
between Bush-Tell, Inc. and United Utilities,)
Inc. for Approval under Section 252(e) of the)
Telecommunications Act of 1996)
)

U-02-100

**SUBMISSION OF NEGOTIATED
INTERCONNECTION AGREEMENT FOR APPROVAL**

Bush-Tell, Inc. and United Utilities, Inc. hereby request approval of a voluntarily negotiated ILEC-CMRS agreement under Section 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. A copy of the agreement is attached as Exhibit A.

Dated: October 15, 2002.

DORSEY & WHITNEY LLP
Attorneys for Bush-Tell, Inc.

By: Heather H. Grahame
Heather H. Grahame
8411117

Dated: October 15, 2002.

UNITED UTILITIES, INC.

By: Mark K. Johnson
Mark K. Johnson
8106028

JOINT TRAFFIC INTERCONNECTION AGREEMENT

This Joint Traffic Interconnection Agreement ("Agreement") between Bush-Tell, Inc. ("Bush-Tell") and United Utilities, Inc. ("UUI") sets forth the terms and conditions for interconnection of UUI's cellular radio system and Bush-Tell's landline network, and supersedes all previous agreements.

The effective date of this Agreement is the earliest date on which all of the following conditions are satisfied: (1) the Agreement is executed by both parties; and (2) the Regulatory Commission of Alaska ("RCA") approves the Agreement.

I. Purpose. The purpose of this Agreement is to delineate:

- a. The method of interconnection;
- b. The terms and conditions controlling the interconnection;
- c. The rates and charges for the interconnection; and
- d. All general contractual provisions.

II. Type of Connection.

- a. Bush-Tell shall provide a cellular Type 1 Interconnection via 4-wire service that satisfies BELLCORE standards for a trunk connection between the Bush-Tell facility located at Aniak, Alaska and the UUI Chuathbaluk central office.

III. Rates and Charges.

- a. UUI will pay Bush-Tell fifty percent (50%) of the monthly recurring charges for the requested number of local trunk. A single trunk has two terminations. The charge for each termination is \$135.65. Therefore, the charge for a single trunk is \$271.30 (\$135.65 x 2). As the parties have agreed that UUI will pay Bush-Tell 50% of the monthly recurring charge, UUI agrees to pay Bush-Tell \$135.65 per month per trunk.
- b. UUI and Bush-Tell further agree to resolve a dispute over past amounts due Bush-Tell for Bush-Tell's provision of trunks to UUI since April 2001. UUI and Bush-Tell agree to use the same formula as that described above in Section III.a to resolve this dispute. UUI agrees to pay Bush-Tell \$6,511.20. The calculation underlying this payment is: $\$271.30 \times 3 \text{ trunks} \div 2 \times 16 \text{ months}$.

- c. Bush-Tell shall bill UUI monthly. Bush-Tell's monthly bill will include all flat-rate monthly charges, in advance.
- d. Bush-Tell and UUI agree that each is responsible for billing and collecting from its respective customers.
- e. This Agreement describes and depicts only those service arrangements not covered under Bush-Tell's local tariff. Bush-Tell will provide other telecommunications services in accordance with its local tariff and at those rates currently in effect.

IV. Proprietary Information.

During the term of this Agreement, the parties may, but shall not be obligated to, disclose information to each other that they consider proprietary or confidential. Without specific prior written consent, except by law or court order, neither party shall disclose to any third party, including any competitors of UUI whether affiliated or unaffiliated with Bush-Tell, any information supplied to it by the other which has been designated as confidential, and which is not otherwise generally available to the public or is not already known to the other. This confidentiality requirement shall survive for three (3) years beyond the termination of this Agreement.

V. Force Majeure.

The parties' performance under this Agreement shall be excused if such nonperformance is due to circumstances beyond the parties' reasonable control including, but not limited to, labor disputes, governmental disorders, equipment failure, inability or delay in securing equipment, civil commotion, acts of nature, weather disturbances or adverse weather conditions.

VI. Notices.

Except as otherwise provided in this Agreement, all notices required or permitted to be given shall be made by one of the following ways: (1) by mail; (2) by facsimile transmission ("fax"); or (3) by hand delivery.

- a. If notice is served by mail, the notice shall be made by registered mail, return receipt requested, postage prepaid, in any post office in the United States, addressed as follows:

Bush-Tell, Inc.
P.O. Box 109
Aniak, AK 99557

Attention: Harry F. Colliver, Jr.

United Utilities, Inc.
5450 A Street
Anchorage, AK 99518

Attention: Steve Hamlen

- b. If notice is served by fax, then the telephone numbers to be used shall be:

Bush-Tell (907) 675-~~4311~~ 4575
UUI (907) 561-1674

Notice served by fax shall be effective upon receipt if delivery is accomplished before 5:00 p.m. local time during an ordinary business day, and shall be effective at the beginning of the next following business day if made at any time after 5:00 p.m. local time of a business day. By way of illustration, notice served by fax on a business day, Tuesday at 2:00 p.m. shall be effective upon receipt. Notice served by fax on Saturday night at 7:00 p.m. shall be effective at 8:00 a.m. on the following Monday, unless that Monday is a business holiday, in which event notice shall be effective at 8:00 a.m. on the next following business day.

- c. If notice is served by hand-delivery, it shall be effective under the same ground rules as specified above with respect to notice served by fax.

VII. Term.

This Agreement shall continue in force for twelve (12) months from the Agreement's effective date as defined on page one (1), with an option to renew for a two (2) year term. The parties may renegotiate this agreement upon mutual consent at any time.

VIII. Applicable Law.

The validity, construction and performance of this Agreement shall be governed by and interpreted in accordance with laws of the State of Alaska.

IX. Termination.

- a. This Agreement may be terminated at any time as mutually agreed by the parties in writing.

- b. This Agreement may be terminated by either party for repeated or willful material violation or refusal to comply with the provisions of this Agreement. The parties agree that this Agreement may be terminated if a party has failed to cure such violation or refusal within thirty (30) days following the defaulting party's receipt of written notice of the violation or refusal.
- c. This Agreement may also be terminated for nonpayment. The parties to this Agreement agree that this Agreement may be terminated by a party's failure to pay amounts due within thirty (30) days following the defaulting party's receipt of written notice of amounts due.
- d. This Agreement shall immediately terminate upon the suspension, revocation or termination of either party's authority to provide services or upon either party's insolvency, inability to pay debts as they mature, or has a trustee or receiver or officer of the court appointed to control or supervise all or any substantial part of its assets or business.

X. Liability.

There shall be no liability of a party for indirect or consequential damages. Each party agrees to reimburse the other party for damages to premises or equipment resulting from a party's negligence in the installation, maintenance or interconnection to or removal of facilities, services or arrangements. Each party represents its system is constructed in accordance with all applicable laws, orders, rules and regulations, and in accordance with all accepted technical standards and specifications. Each party shall indemnify and hold the other party harmless from any and all claims which arise out of the interconnection provided under this Agreement, unless the claim arises out of the negligent or wrongful conduct of the other party.

XI. Patents.

- a. With respect to claims of patent infringement made by third persons, UUI shall defend, indemnify, protect and save harmless Bush-Tell from and against all claims arising out of or based on the use of equipment or arrangements furnished under this Agreement by UUI or its Customers.
- b. With respect to claims of patent infringement made by third persons, Bush-Tell will defend, indemnify, protect and save harmless UUI from and against all claims arising out of or based on the use by UUI of channels, interconnection types or arrangements furnished by Bush-Tell or its Customers under this Agreement.
- c. Neither party grants to the other any license under patents nor shall any be implied or arise by estoppel in either party's favor with respect to any circuit,

apparatus, system or method used by the parties in connection with any channels, interconnection types, or arrangements furnished under this Agreement.

- d. Notwithstanding any other provision of this Agreement, the parties agree that neither party has made any warranty, express or implied, that the use by either party of the other party's facilities or services under this Agreement gives rise to a claim by any third party of infringement, misuse, or misappropriation of any patent or other intellectual property right of such third party.

XII. Allowance for Interruptions.

Credit for interruption and restoration of non-usage sensitive service will be made in accordance with Bush-Tell's local tariff.

XIII. Miscellaneous.

- a. **Tariffs.** In the event that any of the services provided hereunder or the charges made therefore are currently subject, or at any time become subject, to any federal, state or local regulation or tariff, the terms and conditions of this Agreement shall be deemed amended to conform to any conflicting terms and conditions in effect under such regulation or tariff, provided however, that all non-conflicting terms and conditions of this Agreement shall remain valid and effective.
- b. **Nonwaiver.** The occasion may arise when one party accommodates the other and accepts less than full compliance with one or more provisions of this Agreement. No such accommodation will constitute a waiver by the party allowing that accommodation, nor will it obligate that party to grant any other accommodation in the future.
- c. **Assignment.** Any assignment by either party of any interest right, obligation or duty, in whole or in part, without the written consent of the other party shall be void, as qualified below. Such written consent shall not be unreasonably withheld or delayed. Either party may assign with written notification all or part of its rights and obligations to any legal entity that is an UUI subsidiary or affiliate of that Party without consent. Bush-Tell shall not, however, assign its interests under this Agreement to any legal entity that is a UUI subsidiary or affiliate whose business includes providing landline local or landline interexchange telephone service in direct competition with UUI. All obligations, duties and rights of any party under this Agreement shall be binding on all successors in interest and assigns of such party.
- d. **Compliance with Laws.** Nothing in this Agreement shall be deemed an admission by either party hereto that any provision of state or federal law has

been complied with, nor shall such Agreement, or any portion thereof, be deemed a waiver of any rights or remedies that either party may have under state or federal law.

- e. **Entire Agreement.** This Agreement and all attachments and amendments embody the entire agreement of the parties. There are no other promises, terms, conditions or obligations other than those contained herein, and this Agreement shall supersede all previous communications either oral or written, between the parties.
- f. **Modifications.** This Agreement shall only be amended, modified or changed in writing, executed by an authorized representative of the parties, with the same formality as this Agreement was executed and such writing shall be attached to this Agreement as an appendix.
- g. **Severance.** In the event a portion of this Agreement is held to be unenforceable or inapplicable, that portion shall be severed from the Agreement and the remainder shall continue in full force, provided, however, that if the severing of a provision makes this Agreement in its entirety impossible to perform, the Agreement shall be terminated.
- h. **Construction.** This Agreement shall not be construed either in favor or against either party, regardless of which party drafted the Agreement or specific language within the Agreement, both parties having been represented by legal counsel in the Agreement's negotiations.

IN WITNESS THEREOF, the undersigned have executed this Agreement.

Bush-Tell, Inc.

Date: 10/7/02

By: [Signature]
PRESIDENT
HARRY F. COLLIVER JR.
(print name)

United Utilities, Inc.

Date: 9/24/02

By: [Signature]
President