

Commercial Mobile Radio Service Interconnection Agreement

Between City of Ketchikan dba

Ketchikan Public Utilities

And

Dobson Cellular Systems, Inc.

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AGREEMENT

THIS AGREEMENT is made by and between City of Ketchikan dba Ketchikan Public Utilities ("KPU"), with offices at 2930 Tongass Avenue, Ketchikan, AK 99901, and Dobson Cellular Systems, Inc. ("DCS"), with offices at 14201 Wireless Way, Oklahoma City, OK 73134. This Agreement may refer to either KPU or DCS as a "Party" or both as "Parties."

RECITALS

WHEREAS, KPU is a local exchange telecommunications company authorized to provide telecommunications services in the State of Alaska;

WHEREAS, DCS is a Commercial Mobile Radio Service ("CMRS") provider licensed by the Federal Communications Commission ("FCC") to provide CMRS;

WHEREAS, KPU terminates telecommunications traffic originated by DCS's subscribers, and DCS terminates telecommunications traffic originated by KPU's local exchange service subscribers;

WHEREAS, the Parties wish to set forth the terms and conditions under which they will interconnect their networks and provide other services as set forth herein;

NOW, THEREFORE, in consideration of the mutual provisions contained herein, KPU and DCS hereby agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below in this Section 1. Any term used in this Agreement that is not specifically defined shall have the meaning ascribed to such term in the Communications Act of 1934, as amended. If no specific meaning exists for a specific term used in this Agreement, then normal usage in the telecommunications industry shall apply.

- 1.1. **"Commercial Mobile Radio Service" or "CMRS"** means Commercial Mobile Radio Service as defined in Title 47, Part 20 of the Code of Federal Regulations.
- 1.2. **"Commission"** means the Regulatory Commission of Alaska.
- 1.3. **"DS1"** is a digital signal rate of 1.544 Mbps (megabits per second).
- 1.4. **"FCC"** means the Federal Communications Commission.
- 1.5. **"End Office"** means the last central office of a Party before the subscriber's phone equipment.

- 1.6. **"End Office Switching"** means switching performed by a switch used to terminate lines from individual stations for the purpose of interconnection to other individual stations and to trunks;
- 1.7. **"Interexchange Carrier" or "IXC"** means a carrier that provides interLATA or intraLATA telephone toll services.
- 1.8. **"IntraMTA"** means traffic that originates and terminates within the Alaska MTA. Traffic originates and terminates within the Alaska MTA if the location of the End Office of the landline end user and the location of the cell site that serves the mobile end user at the beginning of the call are both in the State of Alaska.
- 1.9. **"KPU's Local Tariff"** means Chapter 11.12 of the Ketchikan Municipal Code, as amended from time to time during the term of this Agreement.
- 1.10. **"Local Exchange Carrier" or "LEC"** is as defined in the Act, and can include either a competitive local exchange carrier ("CLEC") or an incumbent local exchange carrier ("ILEC").
- 1.11. **"Local Exchange Service Area"** means the service area covered by KPU's certificate of public convenience and necessity, and includes most of Revillagiedo Island and all of Gravina and Pennock Islands.
- 1.12. **"Interconnection"** means the linking of the CMRS network of DCS and the LEC network of KPU to transport and terminate certain voice traffic, namely Telecommunications Traffic, in a manner which is non-discriminatory and otherwise consistent with the Act.
- 1.13. **"Telecommunications Traffic"** means telecommunications traffic exchanged between KPU and DCS by means of the Interconnection that originates on the network of one Party and terminates on the network of the other and that originates and terminates within the Alaska MTA at the time the call begins as defined in C.F.R. § 51.701(b)(2).
- 1.14. **"Major Trading Area" or "MTA"** means the State of Alaska, as defined by 47 CFR § 24.202(a).
- 1.15. **"Mobile Switching Center" or "MSC"** means the location of the Digital Access Switch and Cross-connect System (DACS) in a cellular telephone network.
- 1.16. **"NXX"** means a three-digit code valid within an area code (i.e., numbering plan area or "NPA") that appears as the first three digits of a seven-digit telephone number and identifies the specific central office code that serves that number.
- 1.17. **"Point of Presence"** shall mean each Party's switching facility in the Local Exchange Service Area between which the Interconnection will be established.

- 1.18. **"Rural Exemption"** is as defined in section 251(f) of the Act.
- 1.19. **"Telecommunications Act of 1996" or "Act"** means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.).
- 1.20. **"Telecommunications"** is as defined in the Act.
- 1.21. **"Telecommunications Carrier"** is as defined in the Act.
- 1.22. **"Transit Traffic"** means intermediate transport and switching of traffic between two parties, one of which is not a Party to this Agreement, carried by a Party that neither originates nor terminates that traffic on its network while acting as an intermediary.

2. INTERPRETATION AND CONSTRUCTION

- 2.1. The headings of the Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including DCS's, KPU's or other third party offerings, guides or practices), statute, regulation, rule or tariff is for convenience of reference only and is not intended to be a part of or to affect the meaning of the rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).
- 2.2. The Parties acknowledge that some of the services, facilities, or arrangements described herein may reference the terms of the federal (NECA) or local tariffs of the Parties. Each Party hereby incorporates by reference those provisions of any tariff that governs any terms specified in this Agreement. If any provision contained in this main body of the Agreement and any Attachment hereto cannot be reasonably construed or interpreted to avoid conflict, the provision contained in the Attachment shall prevail. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this Agreement shall prevail.

3. PURPOSE AND SCOPE OF AGREEMENT

- 3.1. The Parties agree to establish the Interconnection, as more specifically described in Attachment 2, in accordance with the terms and conditions set forth in this Agreement. This Agreement only applies to the traffic delivered over the interconnection facilities established pursuant to this Agreement, and such interconnection facilities shall not be used by either Party to deliver any traffic not expressly permitted under this Agreement.
- 3.2. The Interconnection is only for the exchange of Telecommunications Traffic between KPU and DCS. This Agreement is not applicable to, and does not otherwise provide for the exchange of (a) interMTA traffic, (b) with the exception

of Transit Traffic, traffic which either does not originate on one Party's network or does not terminate on the other Party's network, (c) traffic that is exchange access, information access or exchange services in nature, or (d) E911 traffic.

- 3.3. Traffic received by KPU by means of Metlakatala's one-way, Extended Area Service (EAS) is not Telecommunications Traffic for purposes of this Agreement.
- 3.4. Notwithstanding any other provision of this Agreement, KPU agrees to continue to send land-originated traffic to DCS NXXs 907-723, 907-209 and 907-738 until January 3, 2005 (the "Transition Date") in the same manner as it currently providing that traffic, although all such traffic will be subject to reciprocal compensation. As of the Transition Date, any land-originated traffic sent to these NXXs by KPU shall be routed to an interexchange carrier selected by KPU's customer through the normal PIC process, provided, however, that, if DCS rates any of those NXXs to KPU's Local Exchange Service Area, any traffic sent to or received from those NXXs shall qualify as Telecommunications Traffic under this Agreement.
- 3.5. Notwithstanding any other provision of this Agreement, as an accommodation of DCS, KPU agrees to continue to carry Transit Traffic from DCS to ACS Wireless until the Transition Date in the same manner as it is currently carrying such traffic. As of the Transition Date, DCS shall have made other arrangements to interconnect its network with ACS Wireless in the Local Exchange Service Area, and KPU will be entitled to terminate carrying the Transit Traffic without further notice to DCS.
- 3.6. KPU asserts that it is a "rural telephone company" as that term is defined in the Act, 47 U.S.C. 153. KPU further asserts that, pursuant to Section 251(f) of the Act, KPU is exempt from Section 251(c) of the Act. Notwithstanding such exemption, KPU has entered into and accepted this Agreement for purposes of exchanging certain specified telecommunications traffic, as defined herein, with DCS. KPU's execution of this Agreement is not intended to constitute a waiver or limitation of any of its rights under Section 251(f)(1) or 251(f)(2) of the Act and KPU expressly reserves its right to assert those rights in response to other requests pursuant to 47 U.S.C. 251(c) by DCS or any other carrier.
- 3.7. This Agreement does not obligate either Party to provide arrangements not specifically provided for herein, or to deliver any particular quantity of traffic to the other Party.
- 3.8. Compensation for the transport and termination of Telecommunications Traffic under this Agreement applies only to two-way traffic associated with the provision of local exchange carrier services by KPU and to traffic associated with the provision of two-way CMRS by DCS.

4. EFFECTIVE DATE

- 4.1. The effective date of this Agreement shall be November 1, 2004 ("Effective Date"), subject to the filing of this Agreement pursuant to Section 12.2.

5. TERM AND TERMINATION

5.1.

The initial term of this Agreement shall be two years from the Effective Date. It shall then automatically renew on a year-to-year basis unless terminated by either party at the end of the initial term (or any renewal term) by providing written notice of termination to the other Party at least sixty (60) days in advance of the expiration of the initial term or any renewal term thereof. In the event such notice of termination is provided, and either party requests in good faith to renegotiate a successor agreement under the provisions of the Act, this Agreement shall remain in effect for a period of one additional year or until replaced by a successor agreement, whichever comes earlier.

5.2. In the event that this Agreement is terminated pursuant to Section 5.1 above, and the Parties have not entered into a successor agreement within one year of the end of the corresponding term, then this Agreement shall automatically terminate and be of no further force or effect. In the event the parties are engaged in an arbitration proceeding before the RCA concerning this Agreement upon the expiration of the one-year period referred to above, this Agreement shall remain in effect pending the conclusion of such arbitration.

5.3. This Agreement shall terminate automatically in the event that:

5.3.1. the FCC revokes, cancels, does not renew or otherwise terminates DCS's authorization to provide CMRS in the area served by KPU, or the Commission revokes, cancels, or otherwise terminates KPU's certification to provide exchange services;

5.3.2. either party becomes bankrupt or insolvent, makes a general assignment for the benefit of, or enters into any similar arrangement with creditors, files a voluntary petition under any bankruptcy, insolvency or similar laws, or proceedings are commenced under any such laws seeking appointment of a receiver, trustee or liquidator, and such proceedings are not terminated within sixty (60) days of commencement.

5.4. Either Party shall have the right to terminate this Agreement at any time upon written notice to the other Party in the event that:

5.4.1. a Party is in arrears in the payment of any undisputed amount due under this Agreement for more than ninety (90) days and the Party does not pay such sums within ten (10) business days of the other Party's written demand for payment; or

5.4.2. a Party is in material breach of the provisions of this Agreement and that breach continues for a period of thirty (30) days after the other Party delivers a written notice of such breach to the breaching Party which sets out in reasonable detail the nature of the breach.

6. COMPENSATION

- 6.1 Each Party will pay the other for terminating its Telecommunications Traffic on the other's network in accordance with the rates set forth in Attachment 1. The Parties will share the recurring costs of interconnection facilities used hereunder in proportion to the default factors set forth in Attachment 2. For example, if the monthly recurring cost of a T-1 is \$776, DCS will be responsible for \$450.08 (i.e., $\$776 \times .58$) of those costs.
- 6.2 KPU shall be responsible for calculating and delivering monthly invoices reflecting the Parties' charges for terminating one another's Telecommunications Traffic. Such invoices shall reflect the net amount due from one Party to the other for the monthly billing period calculated as follows: (total monthly traffic exchanged over the facilities) x (difference between the default factors set forth in Attachment 2) x (rate set forth in Attachment 1). For example, there were a total of 1 million MOUs exchanged in a given month, the KPU invoice to DCS would be for \$2560 (i.e., $1,000,000 \times (.58-.42) \times (\$.016)$). Unless reasonably disputed, invoices shall be paid within thirty (30) days of the date of receipt.
- 6.3 Late payment fees, not to exceed 1.5% per month (or a lower percent as specified under state law), may be assessed if undisputed charges are not timely paid.

7. METHODS OF INTERCONNECTION

The Parties shall interconnect their respective networks as set forth in Attachment 2, utilizing a Type 2B interconnection facility.

8. NETWORK DESIGN AND MANAGEMENT

- 8.1. The Parties will work cooperatively to install and maintain reliable interconnected telecommunications networks, including but not limited to, maintenance contact numbers and escalation procedures. KPU will provide notice of changes in the information necessary for the transmission and routing of services using its local exchange facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks.
- 8.2. The interconnection of all networks will be based upon accepted industry/national guidelines for transmission standards and traffic blocking criteria.
- 8.3. The Parties will work cooperatively to apply sound network management principles by invoking appropriate network management controls to alleviate or prevent network congestion.
- 8.4. KPU shall charge nonrecurring fees in accordance with its tariffs for any additions to, or moves to, or added capacity to, any facility or trunk provisioned under this Agreement.

- 8.5. If mutually agreed, the Parties will provide Common Channel Signaling (CCS) information to one another, where available and technically feasible, in conjunction with all traffic in order to enable full interoperability of CLASS features and functions except for call return. Where available and mutually agreed, and technically feasible, CCS signaling parameters will be provided, including automatic number identification (ANI), originating line information (OLI), calling party category, charge number, etc. All privacy indicators will be honored.
- 8.6. For network expansion, the Parties will review engineering requirements on at least an annual basis. New trunk groups will be implemented as specified by engineering requirements for both Parties.
- 8.7. The Parties will provide each other with the proper call information, including all proper translations for routing between networks and any information necessary for billing where KPU or DCS provides recording capabilities. This exchange of information is required to enable each party to bill properly.

9. GENERAL RESPONSIBILITIES OF THE PARTIES

- 9.1. The Parties shall jointly develop a schedule for promptly implementing all requirements of this Agreement ("Implementation Schedule"). Both KPU and DCS shall use commercially reasonable efforts to comply with the Implementation Schedule.
- 9.2. The Parties shall exchange good faith, non-binding technical descriptions and forecasts of their originating traffic in sufficient detail necessary to establish the interconnections required to assure traffic termination.
- 9.3. Each Party shall provide facilities within its own network to route, transport, measure, and bill traffic from the other Party's network, to deliver such traffic to the other Party's network in a mutually acceptable format, and to terminate the traffic it receives in that mutually acceptable format to the proper address on its network. This facility shall be designed based upon the description provided under Article 7 above and as further described in Attachment 2. Each Party is solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.
- 9.4. Each Party is solely responsible for the services it provides to its customers and to other Telecommunications Carriers.
- 9.5. Each Party is responsible for administering NXX codes assigned to it.
- 9.6. Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of CLLI codes assigned to its switches.

- 9.7. Each Party shall use the LERG published by Telcordia or its successor for obtaining routing information and shall provide all required information to Telcordia or its successors for maintaining the LERG in a timely manner.
- 9.8. Each Party shall be responsible for programming and updating its network to recognize and route traffic to valid NXX codes, including those assigned to the other Party. Except as mutually agreed or as otherwise expressly defined in this Agreement, neither Party shall impose any fees or charges on the other Party for such activities.
- 9.9. At all times during the term of this Agreement, each Party shall keep and maintain in force at its own expense all insurance required by law (e.g., workers' compensation insurance) as well as general commercial liability insurance for bodily injury and property damage, and automobile liability insurance for owned, hired, and non-owner autos, in amounts sufficient to cover the risks for which it may be liable under this Agreement. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance (which may be provided through a program of self-insurance, provided the Party has sufficient net worth and liquidity).

10. AUDITING PROCEDURES

Upon thirty (30) days' written notice, KPU and DCS or their authorized representatives, shall have the right to examine and audit each other, during normal business hours and at reasonable intervals, as determined by the Party undergoing the audit. Such audit may include all such records and accounts in the possession of the other that contain information bearing upon the determination of the amounts payable to KPU or DCS. The maximum period that any audit shall encompass is twenty-four (24) months, or the period from the most recent audit, whichever is less. Not more than one (1) audit shall be conducted in any twelve (12) month period. For a period of time sufficient to allow the other Party to exercise its rights under this section, each Party shall retain records of call detail from which the percent of intraMTA traffic, and any other recorded traffic percentage, can be ascertained.

11. LIABILITY AND INDEMNIFICATION

- 11.1. EXCEPT FOR CLAIMS RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR AS OTHERWISE PROVIDED FOR IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, PUNITIVE, OR SPECIAL DAMAGES SUFFERED BY THE OTHER PARTY IN THE PERFORMANCE OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY THE 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.

11.2. Neither Party shall be liable to the other for any act or omission of any other telecommunications company providing a portion of a service under this Agreement, nor shall either Party hold liable any other telecommunications company providing a portion of a service under this Agreement for any act or omission of KPU or DCS.

11.3. Each Party (the "Indemnifying Party") agrees to release, indemnify, defend and hold harmless the other Party (the "Indemnified Party") from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever, including, but not limited to, costs and attorneys' fees (collectively, a "Loss") arising from (a) the Indemnifying Party's acts or omissions under this Agreement, including without limitation, claims for (i) personal injury to or death of any person or damage to or destruction of any real or personal property; (ii) libel, slander, invasion of privacy or infringement of copyright arising from the Indemnifying Party's communications; or (iii) patent infringement arising from combining or using services, facilities or equipment hereunder; or (b) suffered, made, instituted or asserted by the Indemnifying Party's own customers against the Indemnified Party arising out of the Indemnified Party's provision of services under this Agreement to the Indemnifying Party. This provision shall not apply to claims arising from the Indemnified Party's gross negligence or willful misconduct.

11.4. Notwithstanding the foregoing indemnification, nothing in this provision shall affect or limit any claims, remedies, or other actions the Indemnifying Party may have against the Indemnified Party under this Agreement, any other contract, or any applicable tariffs, regulations or laws for the Indemnified Party's provision of said services.

12.5 The indemnification provided herein shall be conditioned upon:

- (a) The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification.
- (b) The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense, *provided, however*, that, if the Indemnifying Party fails to defend any such action in a timely manner after receipt of notice as herein provided, the Indemnified Party shall be entitled to engage legal counsel to defend such action for the Indemnifying Party's account.
- (c) In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld.

- (d) The indemnified Party shall, in all cases, assert any and all provisions in its Tariffs or customer contracts that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation of liability.
- 11.5. Notwithstanding any other provision of this Agreement, neither Party makes any warranty, express or implied, that the use by such Party of the other Party's facilities, arrangements, or services provided under this Agreement shall not give rise to a claim by any third party of infringement, misuse, or misappropriation of any intellectual property right of such third party.
- 11.6. A Party may, in its sole discretion, provide in its tariffs and contracts with its customers and third parties that relate to any service, product or function provided or contemplated under this Agreement, that, to the maximum extent permitted by applicable law, such Party shall not be liable to customers or third parties for any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.
- 11.7. Neither KPU nor DCS shall be liable for damages to the other's terminal location, POI, or other Party's customers' premises resulting from the furnishing of a service hereunder, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's gross negligence or willful misconduct or by a Party's failure to properly ground a local loop after disconnection.
- 11.8. In connection with the limitation of liability set forth in Section 12.1, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the interconnection or the facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to such advice, recommendations, and analyses.
- 11.9. Neither Party assumes liability for the accuracy of the data provided to it by the other Party.
- 11.10. Either Party's failure to provide or maintain services under this Agreement shall be excused by labor difficulties, governmental orders, civil commotion, criminal actions taken against them, acts of God, equipment failure, inability to or delay in securing equipment, weather, and other circumstances beyond such Party's reasonable control, provided, however, that such Party's excuse from performance shall be limited to the period that such event of force majeure shall last and, provided further, that such Party shall take all commercially reasonable measures to adjust its performance hereunder to circumvent such event of force majeure.

- 11.11. Except as specifically provided to the contrary in this Agreement, neither Party makes any representations or warranties to the other Party concerning the specific quality of any services or facilities provided under this Agreement. The Parties disclaim, without limitation, any warranty or guarantee of merchantability or fitness for a particular purpose, arising from any course of performance, course of dealing, or from usages of trade.

12. COMPLIANCE WITH LAWS

- 12.1. Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement. Each Party shall promptly notify the other Party in writing of any governmental action that suspends, cancels, withdraws, limits, or otherwise materially affects its ability to perform its obligations hereunder.
- 12.2. Upon execution, the Parties shall file this Agreement with the Commission for approval under section 252 of the Act. In the event the Commission rejects this Agreement, the Parties shall meet and negotiate in good faith to arrive at a mutually acceptable modification of the Agreement. Each Party reserves the right to seek regulatory relief and otherwise seek redress from the other regarding performance and implementation of this Agreement, and the Parties acknowledge that this Agreement is entered into without prejudice to any positions either Party has taken previously, or may take in the future in any legislative, regulatory, or other public forum addressing any matters, including matters related specifically to this Agreement or other types of arrangements prescribed in this Agreement.
- 12.3. Execution of this Agreement by either Party does not confirm or infer that the executing Party agrees with any decision(s) issued pursuant to the Act and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

13. MODIFICATION OF AGREEMENT

- 13.1. No modification, amendment, supplement to, or waiver of this Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties. Notwithstanding the foregoing, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction. In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of DCS or KPU to perform any material terms of this Agreement, DCS or KPU may, on thirty (30) days' written notice to the other Party, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually

acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety days (90) after such notice, the dispute shall be referred to the dispute resolution procedure set forth in Section 16 below.

13.2. If either Party changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of that Party to notify the other Party of said change and request that an amendment to this Agreement be executed to reflect the change.

13.3. If any provision of this Agreement, or the application of such provision to either Party or circumstance, shall be held invalid, the remainder of the Agreement, or the application of any such provision to the Parties or to circumstances other than those to which it is held invalid, shall not be affected thereby, provided that the Parties shall attempt to reformulate such invalid provision to give effect to such portions thereof as may be valid without defeating the intent of such provision.

14. TAXES AND FEES

14.1. For purposes of this Section 16, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) which are imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefore.

14.2. Any federal, state, or local tax, fee or tax-like charges resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law. Any such taxes or fees shall be shown as separate items on applicable billing documents between the Parties. The Party obligated to collect and remit taxes shall do so unless the other Party provides evidence of exemption. The Party so obligated to pay any such taxes or fees may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such Party shall not permit any lien to exist on any asset of the other Party by reason of the contest. The Party obligated to collect and remit taxes shall cooperate fully in any contest by the other Party by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest.

15. CONFIDENTIAL INFORMATION

15.1. During the term of this Agreement, the Parties may receive or have access to information of the other Party marked (or otherwise identified) as confidential or described orally as confidential ("Confidential Information"). The term "Confidential Information" includes, without limitation, (i) any materials,

trade secrets, know-how, formulas, processes, algorithms, ideas, strategies, intentions, data, network configurations, system architecture, designs, flow charts, drawings, proprietary information, business and marketing plans, financial and operational information, information on or lists of customers and/or suppliers and all other non-public information, material or data relating to the current and/or future business and operations of the disclosing Party, and (ii) any information, material or data provided by third party vendors, contractors and other suppliers of the disclosing Party. Without limiting the foregoing, any information disclosed by the disclosing Party which is marked (or otherwise identified) to indicate its confidential nature, or if not so marked, is identified as confidential by the disclosing Party orally and is identified in writing by the disclosing Party as confidential within thirty (30) days of the disclosure thereof, is "Confidential Information."

- 15.2. Notwithstanding anything to the contrary herein, neither Party shall have any obligation to preserve the confidentiality of any Confidential Information which (i) prior to any disclosure was known to the receiving Party; (ii) is or becomes publicly available by other than unauthorized disclosure by the receiving Party; (iii) is developed by or on behalf of the receiving Party independent of any Confidential Information; or (iv) is received from a third party whose disclosure does not violate any confidential obligation.
- 15.3. During the term of the Agreement, and for a period of two (2) years after the term of the Agreement, the receiving Party shall not, without first receiving the disclosing Party's written consent, disclose to any third party, or use for any purpose other than the performance of its obligations under the Agreement, any Confidential Information. Each Party shall protect Confidential Information from being disclosed to third parties, using no less than the same means (but in any event not less than reasonable means) it uses to protect its own Confidential Information from disclosure.
- 15.4. In the event that the receiving Party becomes compelled by lawful process to disclose any Confidential Information, the receiving Party shall immediately provide the disclosing Party with written notice so that the disclosing Party may seek a protective order or other appropriate remedy, or both, or waive compliance with the provisions of this Agreement. DCS acknowledges that KPU is a public entity and as such, Confidential Information in KPU's possession may be subject to public records disclosure requirements under local, state, and federal law.
- 15.5. All Confidential Information shall remain the property of the transmitting Party and shall be returned upon written request or upon the receiving Party's determination that it no longer has a need for such Confidential Information.
- 15.6. Nothing contained in this Agreement and no services offered under this Agreement shall be construed as granting or conferring any rights by license or otherwise in (a) any disclosed Confidential Information or (b) under any trademark, patent (other than the limited license to use), copyright, mask work or any other intellectual property right of either Party.

16. RESOLUTION OF DISPUTES

- 16.1. General. Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for actions seeking a temporary restraining order or an injunction related to this Agreement, or suits to compel compliance with this dispute resolution process, the Parties agree to use the following dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach. However, each Party reserves the right to seek judicial review of any ruling made by the Commission concerning this Agreement.
- 16.2. Informal Resolution of Disputes. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, to meet and negotiate in good faith to resolve a dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by business representatives, and such representatives shall be empowered to resolve the dispute (subject to local ordinances and policies that may require final approval of any resolution by the KPU General Manager or the Ketchikan City Council). The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise discoverable, may be discovered or otherwise admissible in the arbitration or lawsuit.
- 16.3. Formal Dispute Resolution. If negotiations fail to produce an agreeable resolution within sixty (60) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, however, that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration. In the case of an arbitration, each Party shall bear its own costs. The Parties shall equally split the fees of any mutually agreed upon arbitration procedure and the associated arbitrator.
- 16.4. Continuous Service. During the pendency of any dispute resolution procedure under this Section 16, the Parties shall continue to provide services to each other and continue to perform their payment obligations in accordance with this Agreement.
- 16.5. Billing Disputes. If any portion of an amount due to a billing Party under this Agreement is subject to a dispute between the Parties, the billed Party shall, within thirty (30) days of its receipt of the invoice containing such disputed

amount, give notice to the billing Party of the amount it disputes ("Disputed Amount") and include in such notice the specific details and reasons for disputing each item. If the Parties are unable to resolve the dispute within ninety (90) days, either party may elect to proceed with the appropriate Formal Dispute Resolution procedures set forth in Section 16.3 above. The Parties further agree that all undisputed billed amounts are to be paid when due, and that interest shall apply to all overdue undisputed invoices at a rate not to exceed 1.5% per month (or a lower percent as specified under state law). The parties further agree interest shall apply to all overdue disputed amounts resolved in favor of the non-disputing party.

17. LIMITATION OF USE

This Agreement shall not be proffered by either Party in another jurisdiction as evidence of any concession or as a waiver of any position taken by the other Party in that jurisdiction or for any other purpose.

18. WAIVERS

Any failure by either Party to insist upon the strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver of any provision of this Agreement, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance, within the limits of commercial reasonableness, of any and all provisions of this Agreement.

19. ASSIGNMENT

No Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld.

20. SURVIVAL

Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, and any obligation of a Party under the provisions regarding indemnification, confidential information, limitations of liability and any other provisions of this Agreement which, by their terms, are contemplated to survive (or be performed after) expiration or termination of this Agreement, shall survive expiration or termination of this Agreement.

21. GOVERNING LAW

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Alaska, without regard to its conflict of law principles, and with relevant federal telecommunications law.

22. PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS.

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

23. COUNTERPARTS

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

24. FILING OF AGREEMENT

If the Commission imposes any filing or public interest notice fees in connection with the filing or approval of this Agreement, KPU shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne equally by DCS and KPU.

25. JOINT WORK PRODUCT

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

26. NOTICES

Any notice required or allowed under this Agreement or by law shall be in writing, contain a clear and concise statement setting forth the subject and substance of the notice, and be personally delivered, sent by first class or certified mail, or by overnight delivery to the other Party at the addresses set forth below, or sent by facsimile to the other Party at the facsimile numbers set out below. Either Party may change such addresses and facsimile numbers by giving notice to the other Party under this section. Notices which are personally delivered shall be deemed to have been received when delivered. Notices which are sent by first class or certified mail shall be deemed to have been received four (4) business days from the date of mailing. Notices sent by overnight delivery shall be deemed to have been received on the next business day, and notices which are sent by facsimile shall be deemed to have been received when sent provided there is confirmation of the transmission and a copy is promptly forwarded by alternate means.

Ketchikan Public Utilities
Van G. Abbott, Telecommunications Manager
2930 Tongass Avenue
Ketchikan, AK 99901
Fax:(907) 225-1788

Copy to: KPU General Manager
334 Front Street
Ketchikan, AK 99901
Fax:(907) 225-5075

Dobson Cellular Systems, Inc.
Timothy J. Duffy
Sr. Vice President and CTO
14201 Wireless Way
Oklahoma City, OK 73134
Fax: 405.529.8555

Copy to: Wilson & Bloomfield, LLP
Leon M. Bloomfield
1901 Harrison St., Suite 1630
Oakland, CA 94612
Fax: 510.625.8250

27. ENTIRE AGREEMENT

This Agreement and its Attachments 1 and 2, incorporated herein by this reference, sets forth the entire understanding and supersedes all prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

28. RELEASE OF CLAIMS


The Parties agree to waive, and otherwise release, any potential claims (including but not limited to actions in the state or federal courts and/or any regulatory body including but not limited to the Commission and the FCC), whether currently known or unknown, regarding the provision of, the charges for and/or payments made for interconnection related facilities and/or the transport and termination of Telecommunications Traffic prior to the Effective Date of this Agreement.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed by its duly authorized representative:

City of Ketchikan, dba Ketchikan Public
Utilities

Dobson Cellular Systems, Inc.

By: 
Karl R. Amylon
General Manager

By: 
Timothy J. Duffy
Sr. Vice President and CTO

11/5/04
Date

October 18, 2004
Date

ATTACHMENT 1

Terminating Reciprocal Compensation Rates

For direct interconnection, KPU shall compensate DCS for the transport and termination of Telecommunications Traffic originating on KPU's network, and DCS shall compensate KPU for the transport and termination of Telecommunications Traffic originating on DCS' network.

KPU to DCS and DCS to KPU terminating reciprocal compensation rate per conversation minute of use for Telecommunications Traffic:

Type 2B Interconnection

Termination (End Office switching) \$0.0160

Facilities Charges

The recurring and non-recurring rate for a 1.544 Mbps (High Cap DS-1) connecting circuit, equivalent to 24 voice grade channels, shall be the rate for a High Capacity Data 1.544 Mbps Local Channel and applicable channel mileage termination, channel mileage, repeater and optional features under KPU's Local Tariff.

Each Party shall be responsible for 100% of the non-recurring charges for the installation of facilities connecting its Point of Presence in the Local Exchange Service Area to its network. Recurring charges for the shared interconnection facilities between the Parties' Points of Presence in the Local Exchange Service Area shall be paid by each Party based on the default percentages of traffic distribution set forth in Attachment 2.

ATTACHMENT 2

Interconnection Facilities

Except as set forth in Section 3.4 of this Agreement, interconnecting facilities will be provided between KPU's and DCS' respective Points of Presence in the Local Exchange Service Area only to DCS NXXs rated to KPU's Local Exchange Service Area. KPU shall provision the shared interconnection facilities between the Parties' Points of Presence in the Local Service Exchange Area at its tariffed rates.

As of the Effective Date of this Agreement, KPU's Point of Presence is located at 2970 Tongass Avenue, Ketchikan, AK 99901, and DCS' Point of Presence is located at 2727 Tongass Avenue, Ketchikan, AK 99901. During the term of this Agreement, either party may, at its own expense, relocate its Point of Presence in the Local Service Exchange Area, provided, however, that such relocation shall not increase the other party's cost of the shared interconnection facilities without the approval of such other party.

Call Descriptions

Incoming Calls - Mobile to landline calls are handled using trunk address signaling protocols and multifrequency or ISUP signaling to identify the called station number. Type 2B interconnection facilities cannot be used to route mobile calls to Feature Group B, C, D or G IXCs or to international carriers.

Outgoing Calls - Outgoing calls from KPU end users served by the End Office are handled by using trunk address signaling protocols and multifrequency or ISUP signaling for identification of the called mobile station. Calls are routed to DCS based on NPA NXX or 1000 group if required.

Measuring Calls as Telecommunications Traffic

In order to determine whether traffic is Telecommunications Traffic for purposes of calculating reciprocal compensation, the Parties agree as follows: For KPU, the origination or termination point of a call shall be within the Local Exchange Service Area and the call shall be exchanged with DCS by means of the Interconnection. For DCS, the origination or termination point of a call shall be within the reliable coverage area of the cell site sector to which the calling Party is connected at the beginning of the call, which point shall be within the Alaska MTA, and the call shall be exchanged with KPU by means of the Interconnection.

Traffic Factors

During the term of this Agreement, the Parties agree to apply the following default percentages of traffic distribution for purposes of applying charges pursuant to this Agreement:

Land-to-Mobile - KPU	42%
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Telecommunications Traffic	100%
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Mobile-to-Land - DCS	58%
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Telecommunications Traffic:	100%
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