

**INTERCONNECTION AGREEMENT**

**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252  
TELECOMMUNICATIONS ACT OF 1996**

**Dated As Of August 3, 1998**

**by and between**

**BELL ATLANTIC**

**and**

**OMNIPOINT COMMUNICATIONS MB OPERATIONS, LLC**

**and**

**OMNIPOINT COMMUNICATIONS DEF OPERATIONS, LLC**

**FOR MASSACHUSETTS**

## OMNIPOINT COMMUNICATIONS

### INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996 For Massachusetts

This Interconnection Agreement under Section 251(c)(2) of the Telecommunications Act of 1996 ("Agreement"), is effective as of the 3rd day of August, 1998. (the "Effective Date"), by and among Omnipoint Communications MB Operations, LLC and Omnipoint Communications DEF Operations, LLC, and their affiliates (collectively, "OC"), with offices at 16 Wing Drive, Cedar Knolls, New Jersey 07927 and New England Telephone and Telegraph Company d/b/a, Bell Atlantic ("Bell Atlantic"), with offices at 125 High Street, Boston, Massachusetts 02110.

WHEREAS, the Parties want to interconnect their networks at mutually agreed upon points of interconnection to permit origination and termination of calls by customers of Bell Atlantic and OC on each other's network.

WHEREAS, the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will interconnect their networks and provide other services as required by the Act (as defined below) and additional services as set forth herein.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, OC and Bell Atlantic hereby agree as follows:

#### 1.0 DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below in this Section 1.0.

1.1 "Act" means the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Department within its state of jurisdiction.

1.2 "Affiliate" is As Defined in the Act.

1.3 "As Defined in the Act" means as specifically defined by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Department.

1.4 "As Described in the Act" means as described in or required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Department.

1.5 "Central Office Switch" means a switch used to provide Telecommunications services, including, but not limited to:

(a) "End Office Switches" which are used to terminate Customer stations for the purpose of interconnection to each other and to trunks; and

(b) "Tandem Office Switches" which are used to connect and switch trunk circuits between and among other Central Office Switches.

(c) "Mobile Switching Centers" which are used to connect mobile Customer stations for the purpose of interconnection to each other and to trunks.

A Central Office Switch may also be employed as a combination End Office/Tandem Office or Mobile Switching Center/Tandem Office Switch.

1.6 "Commercial Mobile Radio Service ("CMRS") is as defined in the Act.

1.7 "Department" means the Massachusetts Department of Public Utilities.

1.8 "Common Channel Signaling" or "CCS" means a method of transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data traffic of the call. "SS7" means the Signaling System 7 common channel out of band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph ("CCITT") and the American National Standards Institute ("ANSI"). "CCSA" means the common channel signaling access service, which connects one Party's signaling point of interconnection ("SPOI") to the other Party's STP for the exchange of SS7 messages.

1.9 "FCC" means the Federal Communications Department.

1.10 "Incumbent Local Exchange Carrier" or "ILEC" is As Defined in the Act.

1.11 "Interconnection" is As Described in the Act and refers to the connection of a network, equipment, or facilities, of one carrier with the network, equipment, or facilities of another carrier.

1.12 "Interconnection Point" is a demarcation point, in the LATA, where Bell Atlantic and OC will interconnect their respective services. The Interconnection Point(s) will be selected by OC and could be either on OC's premises, on Bell Atlantic premises through the use of a collocation arrangement, or at a third-party carrier's premise.

1.13 "Interexchange Carrier (IXC) Traffic" is defined as either traffic which originates on OC's network, transits Bell Atlantic's network and subsequently is passed to Interexchange Carriers, or as traffic which has entered Bell Atlantic's network from an Interexchange Carrier, transits Bell Atlantic's network and subsequently terminates to OC's network. IXC Traffic, for the purposes of this Agreement, is not considered Local or Non-Local.

1.14 "InterLATA Service" is As Defined in the Act.

1.15 "Local Access and Transport Area" or "LATA" is As Defined in the Act.

1.16 "Local Traffic" is defined as traffic that is originated by a customer of one Party on the Party's network and terminates to a customer of the other Party on the other Party's network within the same MTA. Local Traffic originated by OC will be handed off to Bell Atlantic in the LATA

for which the call is destined. Local Traffic originated by Bell Atlantic will be handed off to OC in the LATA in which the call is originated.

1.17 "Local Exchange Carrier" or "LEC" is As Defined in the Act.

1.18 "Major Trading Area (MTA)" is defined in 47 C.F.R. paragraph 24.102.

1.19 "Non-Local Traffic" is defined as traffic that is originated by a customer of one Party on that Party's network and terminates to a customer of the other Party on the other Party's network in a different MTA. Non-Local Traffic originated by OC will be handed off to Bell Atlantic in the LATA in which the call is terminated. Non-Local Traffic originated by Bell Atlantic will be handed off to OC in the LATA in which the call is originated.

1.20 "NXX" means the three-digit code which appears as the first three digits of a seven digit telephone number.

1.21 "Party" means either Bell Atlantic or OC and "Parties" means Bell Atlantic and OC

1.22 "Reciprocal Compensation" is As Described in the Act.

1.23 "Signaling Transfer Point" or "STP" means a component of the signaling network that performs message routing functions and provides information for the routing of messages between signaling network components. An STP transmits, receives and processes CCIS messages.

1.24 "Telecommunications" is As Defined in the Act.

1.25 "Telecommunications Act" means the Telecommunications Act of 1934 as amended by the 1996 Act and any rules and regulations promulgated thereunder.

1.26 "Telecommunications Carrier" is As Defined in the Act.

## **2.0 INTERPRETATION AND CONSTRUCTION**

All references to Sections, Exhibits and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless otherwise expressly stated. The headings of the Sections and the terms 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 expressly stated otherwise, any reference to any agreement, other instrument (including Bell Atlantic 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 or 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).

## **3.0 SCOPE**

This Agreement is intended to describe and enable specific Interconnection arrangements between the Parties. This Agreement does not obligate either Party to provide arrangements not specifically provided for herein. Bell Atlantic and OC agree that this Agreement, if performed by Bell Atlantic, is satisfactory to them as an agreement under the Act for the term of this agreement with

respect to those obligations addressed hereunder. Bell Atlantic agrees to consider future requests for interconnection by OC in accordance with the Act. OC represents that it is a CMRS provider.

3.1 To the extent technically feasible, the parties may interconnect their networks using Common Channel Signaling Access ("CCSA") in accordance with the Technical Publication TR-TSV-000905, as amended from time to time. OC may establish CCS interconnections either directly or through a third party. Bell Atlantic will make available to OC access to Bell Atlantic's CCS network for the purpose of exchanging CCS messages with Bell Atlantic.

3.1.1 The following publications describe the practices, procedures and specifications generally utilized by Bell Atlantic for signaling purposes and are listed herein to assist the Parties in meeting their respective Interconnection responsibilities related to Signaling:

(a) Bellcore Special Report SR-TSV-002275, BOC Notes on the LEC Networks - Signaling; and

(b) the design requirements for CCS/SS7 STP Links are described in Technical Publication TR-TSV-000905.

3.1.2 Bell Atlantic shall charge OC for Common Channel Signaling Access (CCSA) when connectivity is provided between Bell Atlantic's network and OC's Mobile Switching Center via Signaling Transfer Point (STP) Links and ports in accordance with the Massachusetts DPU 15 tariff.

3.1.3 When the STP pairs of each Party are directly interconnected, each Party shall charge the other Party mutual and reciprocal rates for Common Channel Signaling Access as follows: Bell Atlantic shall charge OC in accordance with the Massachusetts DPU 15 tariff; OC shall charge Bell Atlantic rates equal to the rates Bell Atlantic charges OC. Where a third party provides CCS interconnection with Bell Atlantic on behalf of OC, each Party shall negotiate such interconnection with the third party directly and outside of the scope of this Agreement.

3.2 Bell Atlantic agrees to provide nondiscriminatory access via electronic interface to Bell Atlantic databases on terms and conditions that are consistent with the Act.

3.3 OC represents that it is a CMRS provider and Bell Atlantic represents that it is an Incumbent Local Exchange Carrier.

#### **4.0 SERVICE AGREEMENT**

##### **4.1 Description Of Arrangements**

This Agreement provides for the provision and maintenance of the following interconnection arrangements between the networks of OC and Bell Atlantic:

4.1.1 Description. Both Parties will interconnect their respective networks based upon Type 2A [ Feature Group 2A ( "FG2A")] interconnection services and Type 1 (Flexpath) interconnection services as specified in Bell Atlantic's intrastate tariff (Massachusetts DPU No. 10 and No. 15 tariffs). Each Party will be responsible for providing the necessary facilities from their Central Offices to the Interconnection Point and may use its own facilities, facilities of the other Party, or facilities of a third party.

FG2A interconnection arrangements provide trunk side connections to Tandem Offices. Under a FG2A arrangement OC's, Mobile Switching Center or Tandem Office functions like any Central Office Switch and the FG2A interconnection facility acts like an interoffice trunk. FG2A interconnection will be used to access valid NXX codes within the LATA. FG2A is provisioned through either an analog or digital interface at the Interconnection Point. FG2A trunks may be provisioned as one-way, in either direction, or as two-way service for originating and terminating traffic between the Parties respective networks.

On an interim basis, until such time as Bell Atlantic offers FG2A interconnection for the following call types, OC must utilize Type 1 interconnection service to reach local operator service (0- & 0+), Directory Assistance, N11 codes (411,911,etc.), and Service Access Codes (800, 900, etc. ). Type 1 is specified in Bell Atlantic's intrastate exchange tariff (Massachusetts DPU No.10) as Flexpath Service. Type 1 is provided from suitably equipped electronic end offices and consists of a analog or digital facility arranged for one way or two way service operation and an associated end office connection which switches messages to and from the facility. A group of seven digit numbers, assigned by Bell Atlantic, are associated with the end office providing the service. Type 1 is normally provisioned with blocks of either 100 or 1000 numbers. As soon as feasible OC and Bell Atlantic will use best efforts to reconfigure their networks to utilize Signaling System Seven ("SS7") facilities to reach local operator services (0- & 0+), Directory Assistance, N11 codes (411,911,etc.) , and Service Access codes (800, 900, etc.).

4.1.2 In accordance with the DPU No. 79 tariff, FG2A may have access to a Feature Group D trunk group or groups at access tandem switches designated by Bell Atlantic where InterLATA Feature Group D ("FGD") switching is provided. OC as the FG2A customer, must secure a letter of agreement with the InterLATA FGD provider prior to originating an OC customer's call to an InterLATA FGD provider through the Bell Atlantic FG2A connection. Bell Atlantic will deliver all calls terminating to OC customers from InterLATA FGD providers. All charges for InterLATA transport are billed to the FGD customer in accordance with the appropriate access tariff.

4.1.3 FG2A interconnection service is provided as trunk side switching through the use of Tandem Office trunk equipment with Multifrequency ("MF") and/or Signaling System Seven ("SS7") address signaling in both the originating and terminating directions. Type 1 interconnection service is provided as trunk side switching with line side features through the use of end office switch trunk equipment with Multifrequency ("MF") address signaling in both the originating and terminating directions.

## **5.0 COMPENSATION ARRANGEMENTS**

5.1 Description. For purposes of this Agreement, the term "Traffic" shall refer to all Local and Non-Local Traffic. The Parties agree to jointly determine a methodology, independent of this agreement, to identify Local Traffic. Based on this methodology, OC shall provide Bell Atlantic with a Percent Local Usage (PLU) factor on a quarterly basis. This initial PLU factor will be used for the first three (3) months after the effective date of this Agreement, and may be used beyond the first three (3) months if both Parties agree. OC will also provide Bell Atlantic with a Percent Interstate Usage (PIU) factor on a quarterly basis. The factors will be applied as follows :

First, the PLU factor is applied to total minutes of use (excluding IXC Traffic) to obtain the split of Local and Non-Local minutes of use. Then, the PIU will be applied to the Non-Local minutes of use for application and billing of interstate and intrastate access charges, as appropriate.

5.2 Bell Atlantic shall not charge OC for LEC originated traffic delivered to OC pursuant to the Act except for discretionary reverse billing options, such as FG2A, Calling Plan 2, which OC may request in lieu of Bell Atlantic charging its end users for the origination of calls to OC's end users. Even in cases of reverse billing, Bell Atlantic will pay OC the corresponding reciprocal compensation charge which is due OC for the termination of such LEC-originated call. Nothing herein shall be construed to limit the ability of either party to terminate traffic with one another via terminating access arrangements other than FG2A, providing such arrangements are mutually agreed-to. The FG2A arrangements shall be engineered to be objective P.01 grade of service.

5.2.1 The Parties agree to the following schedule of rates and charges. All rates reflected below are per Minute of Use (MOU).

	<u>Reciprocal Rates</u>	<u>Zone 1**</u>	<u>Zone 2**</u>
Type 1 (End Office)	\$0.0070	\$0.0070	\$0.0070

\*\* Toll charges will apply on Type 1 for call completion beyond the end office.

	<u>Reciprocal Rates</u>	<u>Day</u>	<u>Evening</u>	<u>Night</u>
Type 2A (Tandem)	\$0.0087	\$0.0090	\$0.0080	\$0.0075

OC will pay nonrecurring charges to establish required Type 1 and FG2A interconnection facilities.

5.3 Reciprocal Compensation. Reciprocal Compensation only applies to the transport and termination of Local Traffic. Bell Atlantic will not compensate for calls that do not originate on Bell Atlantic's network, i.e., calls originating on the network of an interexchange carrier ("IXC"), independent telephone company, competing local exchange carrier, or another cellular or wireless carrier. Bell Atlantic will pay OC for Local calls originated by Bell Atlantic customers which terminate to a wireless service provided by OC. OC will pay Bell Atlantic for calls originated by OC customers which terminate on the Bell Atlantic network. The Reciprocal Compensation rate for Type 2A will be as described above. Upon notice as provided, herein, either Party may choose to use the "Reciprocal" rate for all calls or the Time of Day rate structure.

5.3.1 Payment of Compensation by Bell Atlantic. Within (15) fifteen days after the close of the month (excluding weekends and holidays) Bell Atlantic will send a usage report for the preceding month to OC. The usage report will identify all calls originated by customers of Bell Atlantic terminating to OC. OC will determine the reciprocal compensation payment for the preceding month's traffic following the process described in Section 5.1 and will submit a bill to Bell Atlantic identifying the amount of reciprocal compensation payable to OC. Bell Atlantic will pay OC all undisputed amounts billed by OC within thirty (30) days after receipt of the bill from OC.

5.4 OC agrees to pay all nonrecurring and service establishment charges associated with trunks required for future OC growth as required under the terms of Section 8 and at rates and charges described in Massachusetts DPU No. and tariffs. Additions in trunking capacity in excess of the trunking level necessary to provide the grade of service specified herein, consistent with current

and forecasted demand, will be charged to OC on both a recurring and nonrecurring basis and at full monthly charges pursuant to the Massachusetts DPU Tariffs for such facilities.

5.5 Each Party will bill the other for terminating intra-LATA Non-Local Traffic at the appropriate Bell Atlantic intrastate access tariff rate in effect at the time. Both Parties agree that the percentage of traffic to be considered Non-Local will be the same in both directions.

5.6 Where OC Interconnects with Bell Atlantic by purchasing facilities from Bell Atlantic and these facilities are used for two-way traffic, the applicable recurring charges (if any) for such facilities to OC will be reduced by a percentage equal to the percentage of traffic on such facilities which originates on Bell Atlantic's network and terminates on OC's network. The Parties agree to review the percentage rate every six months.

## **6.0 NOTICE OF CHANGES**

6.1 Unless longer notification is Required by the Act, if a Party makes a change in its network which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party, or such longer notice as may be Required by the Act.

## **7.0 NUMBER RESOURCES ASSIGNMENTS**

Bell Atlantic, while it has number administration responsibilities, shall continue to assign to OC NXX codes in accordance with national guidelines as established in the Act and at no cost to OC. Bell Atlantic shall assign blocks of numbers to OC for Type 1 service at no cost to OC. If OC obtains number administration responsibilities, OC shall assign to Bell Atlantic NXX codes in accordance with national guidelines as established in the Act and at no cost to Bell Atlantic.

## **8.0 GENERAL RESPONSIBILITIES OF THE PARTIES**

8.1 The Parties shall exchange technical descriptions and estimates of their Interconnection and traffic requirements in sufficient detail necessary to establish the Interconnections required to assure traffic completion.

8.2 Thirty (30) days after the Effective Date and each quarter during the term of this Agreement, OC shall provide Bell Atlantic with a rolling, six (6) calendar month, non-binding forecast of its traffic and volume requirements for the services provided under this Agreement in the form and in such detail as agreed by the Parties. The Parties agree that each forecast provided under this Section shall be deemed "Proprietary Information".

8.3 Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with Bell Atlantic's network and to terminate the traffic it receives in that standard format to the proper address on its network. Such facility shall be designed based upon the description and forecasts provided under Sections 8 above. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Security Emergency Preparedness



Telecommunications Service Priority System as described in 47 C.F.R. Part 64, Appendix A, to the extent that any such participation and/or compliance may be required by regulation or law.

8.3a All FG2A trunk groups shall be engineered to maintain an objective grade of service of P.01, equal to 1% blocking using the Poisson distribution tables commonly used to engineer trunk group quantities in the telecommunications industry. OC shall attempt to limit trunk provisioning activity by providing sufficient capacity to meet the next six months of demand while maintaining the objective grade of service. The Parties agree to cooperatively establish the size of two-way trunk groups.

8.4 Neither Party shall use any service related to or using any of the Services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's Customers, and either Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, either Party shall provide the other Party notice, if practicable, at the earliest practicable time.

8.5 Each Party is solely responsible for the services it provides to its Customers and to other Telecommunications Carriers, except as otherwise provided in Sections 13 and 14 of this Agreement.

8.6 The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

8.7 Each Party is responsible for administering NXX codes assigned to it.

8.8 Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of CLLI codes assigned to its switches.

8.9 Each Party shall use the LERG published by Bellcore, or its successor, for obtaining routing information and shall provide all required information to Bellcore, or its successor, for maintaining the LERG in a timely manner.

8.10 Each Party shall program and update their respective Central Office Switches and network systems to recognize and route traffic to NXX codes 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.

8.11 At all times during the term of this Agreement, each Party shall keep and maintain in force at each Party's expense all insurance required by law (e.g., workers' compensation insurance) as well as general liability insurance for personal injury or death to any one person, property damage resulting from any one incident, automobile liability with coverage for bodily injury for property damage. 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).

8.12 Within ten days of the date on which a fully tested, electronic order entry system developed by Bell Atlantic which is suitable for efficient electronic delivery of orders by OC to Bell Atlantic has been completely installed on OC'S premises, and fully accepted by OC which acceptance shall not be unreasonably withheld, all orders placed by OC with Bell Atlantic shall be

electronically transmitted in a format and sufficient detail to be accommodated by Bell Atlantic's electronic order entry systems. Orders not placed electronically after that date shall be subject to a service charge of \$100 per order, except for those orders not electronically placed because of problems at Bell Atlantic in receiving the order or because of a power outage or other circumstances outside of OC'S control.

## **9.0 TERM AND TERMINATION**

9.1 The initial term of this Agreement shall be one year (the "Term") which shall commence on the Effective Date. At the end of the Term (end each Term thereafter) the Agreement shall automatically renew for one year periods, absent the receipt by one Party of written notice from the other Party at least sixty (60) days prior to the expiration of the Term to the effect that such Party intends to terminate this Agreement (with or without cause).

9.2 Except as provided in Section 17.10, payment of all amounts owed under this Agreement and handling of disputed amounts will be governed by the Massachusetts DPU No. 10 and 15 tariff including but not limited to all remedies for non-payment, without prejudice to any other remedies available at law or equity.

9.3 Upon termination or expiration of this Agreement in accordance with this Section each Party shall comply immediately with the following obligations:

- (a) each Party shall promptly pay all undisputed amounts (including any late payment charges) owed under this Agreement;
- (b) each Party's indemnification obligations shall survive termination or expiration of this Agreement.

9.4 Except as provided herein, no remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under applicable law or otherwise.

## **10.0 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

## **11.0 CANCELLATION CHARGES**

Except as provided herein, or as otherwise provided in any applicable tariff or contract referenced herein, no cancellation charges shall apply.

## **12.0 NON-SEVERABILITY**

The services, arrangements, Interconnection, terms, conditions, and prices of this Agreement were mutually negotiated by the Parties as a total arrangement and are intended to be non-severable.

Each Party shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement.

### **13.0 INDEMNIFICATION**

13.1 Each party (the "Indemnifying Party") shall indemnify and hold harmless the other party ("Indemnified Party") from and against loss, cost, claim liability, damage, and expense (including reasonable attorney's fees) to third parties for:

(1) damage to tangible personal property or for personal injury proximately caused by the negligence or willful misconduct of the Indemnifying Party, its employees, agents or contractors;

and

(2) claims for libel, slander, infringement of copyright arising from the material transmitted over the Indemnified Party's facilities arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's customers;

and

(3) claims for infringement of patents arising from combining the Indemnified Party's facilities or services with, or the using of the Indemnified Party's services or facilities in connection with, facilities of the Indemnifying Party.

13.2 The Indemnified Party will notify the Indemnifying Party promptly in writing of any claims, lawsuits, or demands by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section, and, if requested by the Indemnifying Party, will tender the defense of such claim, lawsuit or demand. The Indemnifying Party will defend the tendered action at its sole cost and expense and may only settle such action with the written consent of the Indemnified Party, which consent shall not be unreasonably withheld:

(1) In the event the Indemnifying Party does not promptly assume or diligently pursue the defense of the tendered action, then the Indemnified Party may proceed to defend or settle said action and the Indemnifying Party shall hold harmless the Indemnified Party from any loss, cost liability, damage and expense.

(2) If the Indemnified Party elects to decline such indemnification, then it may, at its own expense, assume defense and settlement of the claim, lawsuit or demand.

(3) The parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit.

### **14.0 LIMITATION OF LIABILITY**

14.1 No liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants or employees for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information

with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

14.2 Except as otherwise provided in Section 13.0, no Party shall be liable to the other Party for any Loss, defect or equipment failure caused by the conduct of the other Party, the other Party's agents, servants, contractors or others acting in aid or concert with the other Party, except for gross negligence or willful misconduct.

14.3 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages.

## **15.0 REGULATORY APPROVAL**

The Parties understand and agree that this Agreement will be filed with the Department and may thereafter be filed with the FCC. The Parties covenant and agree that this Agreement is satisfactory to them as an agreement under the Act. Each Party covenants and agrees to fully support approval of this Agreement by the Department or the FCC under Section 252(e) of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Department or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s).

## **16.0 PENDING JUDICIAL APPEALS AND REGULATORY RECONSIDERATION**

Appeals of the FCC's First Report and Order in CC Docket No. 96-98 are pending in the Eighth United States Circuit Court of Appeals. In addition, Petitions for Reconsideration of the First Report and Order have been filed with the FCC. The Parties are free to negotiate amendments to this Agreement based on the outcome of decisions of the Court of Appeals, FCC or the Department if they so desire. 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.

## **17.0 MISCELLANEOUS**

### **17.1 Authorization.**

17.1.1 New England Telephone and Telegraph Company is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to necessary regulatory approval.

17.1.2 Omnipoint Communications MB Operations, LLC and Omnipoint Communications DEF Operations, LLC each is either a corporation, a limited partnership, or a limited liability company, as the case may be, duly organized, validly existing and in good standing under the laws of the State of Delaware and each have full power and authority to execute and deliver this Agreement and to perform their obligations hereunder, subject to necessary regulatory approval.

17.2 Independent Contractors. Neither this Agreement, nor any actions taken by Bell Atlantic or OC in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between OC and Bell Atlantic, or any relationship other than that of purchaser and seller of services.

17.3 Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, (collectively, a "Force Majeure Event").

If any force majeure condition occurs, the Party delayed or unable to perform shall give immediate written notice to the other Party and shall take all reasonable steps to correct the force majeure condition. During the pendency of the Force Majeure, the duties of the Parties under this Agreement affected by the Force Majeure condition shall be abated and shall resume without liability thereafter.

#### 17.4 Confidentiality.

17.4.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a "Disclosing Party") that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, agents or Affiliates (its "Representatives" and with a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be marked "Confidential" or "Proprietary" or by other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, it (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law only in accordance with Section 17.6.2.

17.4.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then either seek appropriate protective relief from all or part of such requirement; in any event if it fails to successfully do so within the time period by which the receiving Party must respond, it shall be deemed to have waived the Receiving Party's compliance with Section 17.6.1 with respect to all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.

17.4.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

17.5 Governing Law. This Agreement shall be governed by the domestic laws of the state of Massachusetts without reference to conflict of law provisions, the Communication Act of 1934 as amended by the Telecommunications Act of 1996 and all FCC rules and Regulations thereunder.

17.6 Taxes. Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by 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 purchasing Party.

17.7 Non-Assignment. Each Party covenants that, if it sells or otherwise transfers to a third party, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this Section, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party which consent will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not hereunder is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

17.8 Non-Waiver. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

#### 17.9 Billing and Payment.

17.9.1 Except as may otherwise be provided in this Agreement, each Party shall submit on a monthly basis a statement of charges incurred by the other Party during the preceding month(s) for services rendered hereunder. Payment of billed amounts under this Agreement, whether billed on a monthly basis or as otherwise provided herein, shall be due, in immediately available U.S. funds, within thirty (30) days of the date of such statement.

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

17.9.3 Bills for Reciprocal Traffic shall be billed by total minutes of use per interconnecting trunk group for all calls terminating within the calendar month.

#### 17.10 Billing Dispute Resolution

Except as otherwise provided herein, any dispute, controversy or claim (individually and collectively, a "Billing Dispute") concerning billing or payment obligation of either party arising under this Agreement shall be resolved in accordance with this procedures set forth in this section. In the event of a Billing Dispute between the Parties relating to this Agreement and upon the written request of either Party, each of the Parties within seven (7) days of the date of such written request shall appoint a designated representative who has authority to settle the Billing Dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives shall meet as often as they reasonable deem necessary in order to discuss the Billing Dispute and negotiate in good faith in an effort to resolve such Billing Dispute. The specific format for such discussions will be left to the discretion of the designated representatives, however, all reasonable requests for relevant information made by one Party to the other Party shall be honored. If the Parties are unable to resolve the issues related to a Billing Dispute within thirty (30) days after the Parties' appointment of the designated representatives as set forth above, then either Party may file a petition with the Department for resolution of the Billing Dispute. In the case of disputed amount under an invoice to a Party under this Agreement ("Disputed Amounts"), the Disputed Amounts shall promptly be deposited in escrow in accordance with section 17.10.1(ii) of this Agreement upon a filing, by either Party, of a petition for resolution by the Department.

17.10.1 The Parties shall diligently work toward resolution of all billing issues. If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within thirty (30) days of its receipt of the invoice containing such disputed amount give written notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall (i) pay when due all undisputed amounts to the Billing Party and (ii) shall pay all Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties. The Parties agree to use their respective diligent and good faith efforts to fulfill their obligations under this agreement.

17.10.2 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law.

17.10.3 If either Party overpays the other for service provided under this Interconnection Agreement due to a billing error by the other, the Party rendering the billing error shall refund to the overpaying Party the amount of any undisputed overpayment plus any charges paid as a result of 17.10.2. Both Parties are entitled to rely on factors provided by the other in

preparing a bill and will not be liable for interest on overpayments due to erroneous information provided by such other Party.

17.11 Notices. Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (i) delivered personally, (ii) delivered by express delivery service, (iii) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested or (iv) delivered by telecopy to the following addresses of the Parties:

To :  
Omnipoint Communications Services, LLC  
16 Wing Drive  
Cedar Knolls, New Jersey 07927  
Attn: Senior Director, Legal & Regulatory  
Affairs  
Facsimile: (973) 257-2912

To:  
Bell Atlantic  
1095 Avenue of Americas 40th Floor  
New York, NY 10036  
Attn: President - Telecom Industry Services  
Facsimile: (212) 597-2585

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of (i) the date of actual receipt, (ii) the next business day when notice is sent via express mail or personal delivery, (iii) three (3) days after mailing in the case of first class or certified U.S. mail or (iv) on the date set forth on the confirmation in the case of telecopy.

17.12 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.

17.13 Joint Work Product. This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel 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.

17.14 No Third Party Beneficiaries; Disclaimer of Agency. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name of or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

17.15 No License. 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.

17.16 Entire Agreement and Amendment. This Agreement, including any Schedules and Exhibits attached hereto, and, tariffs and other documents or instruments referred to herein



are hereby incorporated into this Agreement by reference constitutes the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. If there is any conflict between the terms and conditions of the Agreement, the attached schedules and the attached Exhibits, with any tariff or other document or instruments referred to herein, then the Agreement, Schedules and Exhibits shall control. 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. This Agreement may only be modified by a writing signed by an officer of each Party.

#### **17.17 Other Terms and Arrangements.**

17.17.1 Bell Atlantic will make available to OC, at OC's request, any amendment to a provision of this Agreement which it offers pursuant to Section 16 to another CMRS provider whose agreement contains a provision substantially identical to that to which the amendment pertains.

17.17.2 If Bell Atlantic enters into an Agreement approved by the Department or the FCC pursuant to Section 252 of the Act for the provision in the State of Massachusetts of arrangements covered in this Agreement to another requesting CMRS provider in the State of Massachusetts, OC may, at its sole option, avail itself of such arrangements in their entirety upon the same rates, terms and conditions.

#### **18.0 Tandem Transit Service ("Transit Service")**

18.1 For the purposes of this section, "Other Carrier" shall mean either an Incumbent Local Exchange Carrier ("ILEC") other than Bell Atlantic, a Competitive Local Exchange Carrier ("CLEC") or a wireless carrier other than OC. "Transit Service" means the delivery by Bell Atlantic of certain traffic originated by OC for termination to an Other Carrier within the LATA in which the call is delivered by OC to Bell Atlantic. Omnipoint acknowledges that Bell Atlantic incurs costs associated with the provision of Transit Service. "Termination Service" means the acceptance of traffic by OC, delivered to OC by Bell Atlantic and originated by an Other Carrier within the LATA in which the call is delivered to OC. Bell Atlantic acknowledges that OC incurs costs associated with the provision of Termination Service. The Parties agree that final arrangements for the identification of and compensation for Transit Service or Termination Service are not addressed in this Agreement. To permit the Parties to complete the negotiation and execution of an Interconnection Agreement at this time, the Parties agree that Bell Atlantic will, at a future date, but not later than 120 days from the Effective Date of this Agreement, propose arrangements for Transit Service and Termination Service. Until the Parties are able to negotiate and agree to appropriate arrangements and compensation, OC will pay Bell Atlantic at the Reciprocal Compensation rate of the terminating Other Carrier plus the Transit Service charge in accordance with the following interim rates for all OC originated Transit Service traffic which shall apply until the Department approves actual rates in the consolidated arbitration proceeding, docket 96-73/74, et. al., when such approved rates for transit service shall apply. If the Department approves additional or different rates and/or rate structures at a later time, unless otherwise agreed to by the parties, herein, the rates and the rate structures established by the Department at a later time shall

Bell Atlantic-OC Interconnection Agreement  
Massachusetts

become the rates and/or rate structure established herein. The parties agree that those rates and/or rate structures shall be applied prospectively only.

Peak (per min. of use) \$0.008642  
Off-Peak (per min. of use) \$0.002702

Bell Atlantic will pay OC at the Reciprocal Compensation rate for all OC-terminated Termination Service traffic.

Bell Atlantic-OC Interconnection Agreement  
Massachusetts

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this 3rd day of August, 1998.

Omnipoint Communications MB Operations, LLC

By: 

Printed: C.R. Johnston

Title: Vice President and Chief Operating Officer

Bell Atlantic

By: 

Printed: Jacob J. Goldberg

Title: President - Telecom Industry Services

Omnipoint Communications DEF Operations, LLC

By: 

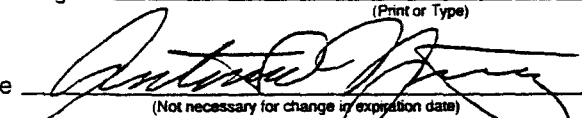
Printed: C.R. Johnston

Title: Vice President and Chief Operating Officer

## **Delegation of Authority**

Effective July 24, 19 98 Expiration Date\* August 10, 19 98


Name of delegate Antonio Yanez Title Vice President - TIS Account Management

Signature  Social Security Number 065-46-7257  
(Not necessary for change in expiration date)

Name of delegator Jacob J. Goldberg Title President - Telecom Industry Services

Subject to limitations listed below, if any, authority to act on behalf of the delegator is granted to the above listed delegate.

Limitations \_\_\_\_\_

Approved\*\*  Title President - Telecom Industry Services  
(Signature)

Social Security Number 132-36-1012 Date July 16, 19 98

\* An expiration date must always be shown. Any extension of delegation period requires a new ST40-N Form.

\*\*The President and other officers approve their own delegations. All other delegations must be approved by the superior common to both the delegator and the delegate.

**Forward To: Accounting Department Area Operations Manager  
1166 Avenue of the Americas—Room 16-1  
New York, New York 10036**

ACCOUNTING DEPARTMENT COPY

