

WHOLESALE ADVANTAGE SERVICES AGREEMENT

THIS WHOLESALE ADVANTAGE SERVICES AGREEMENT (this “Agreement”) is effective as of June 1, 2005 (“Effective Date”) by and among Verizon Services Corp., with offices at 1310 North Court House Rd., Arlington, VA 22201, on behalf of each of the affiliated Incumbent Local Exchange Carriers listed in Attachment 1 hereto (individually and collectively, “Verizon”), and Eschelon Telecom of Washington, Inc., Eschelon Telecom of Oregon, Inc. and Advanced Telecom, Inc. a/k/a ATGI (collectively “Eschelon”), with offices at 730 2nd Ave. South, Suite 900, Minneapolis, MN 55402 (each individually, a “Party,” and collectively, the “Parties”).

WHEREAS, prior to the Effective Date of this Agreement, Verizon provided Eschelon with platforms of unbundled network elements (“UNE-P”) pursuant to interconnection agreements governed by, inter alia, Sections 251 and 252 of the Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended (the “Act”), which Eschelon has used to provide dialtone services to its end users; and

WHEREAS, the Parties seek to replace Verizon’s provision of UNE-P to Eschelon with a long term commercial alternative;

WHEREAS, as part of such long term commercial alternative to UNE-P, Verizon is prepared to offer wholesale dialtone services to Eschelon for a period of three years in the form of what is known as Verizon’s Wholesale Advantage service offering on terms that preserve, to the extent practicable, the features, functionality and ordering processes previously available to Eschelon under Verizon’s UNE-P service offerings, but at commercially reasonable rates and charges;

NOW, THEREFORE,

1. Services Description

2. Scope of Agreement

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2.2

3. Rates and Charges

3.1

3.2

4. Definitions Generally

5. No Severability

6. Entire Agreement

7. Term and Termination

7.1

7.2

8. Applicable Law

8.1

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9. Assignment

10. Assurance of Payment

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11. Authorization

12. Ordering and Repair Processes

13. Invoices and Payment; Disputed Amounts

13.1

13.2

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14. Confidentiality

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14.1.4

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14.2.1

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14.4.1

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15. Counterparts

16. Default

17. Discontinuance of Services by Eschelon

17.1

17.2

17.3

17.4

18. Dispute Resolution

Force Majeure

19.1

19.2

19.3

19.4

20. Fraud

21. Good Faith Performance

22. Headings

23. Indemnification

23.1

23.2

23.2.1

23.2.2

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23.2.5

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23.2.7

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23.4

24. Intellectual Property

24.1

24.2

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24.4

25. Joint Work Product

26. Law Enforcement

26.1

26.2

26.3

27. Liability

27.1

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27.6.1

27.6.2

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28. Network Management

28.1

28.2

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28.3.1

28.3.2

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29. Non-Exclusive Remedies

30. Notice of Network Changes

31. Notices

31.1 Except as otherwise provided in this Agreement, notices given by one Party to the other Party under this Agreement:

31.1.1 shall be in writing;

31.1.2 shall be delivered (a) personally, (b) by express delivery Services with next Business Day delivery, (c) by First Class, certified or registered U.S. mail, postage prepaid, or (d) by facsimile telecopy, with a copy delivered in accordance with (a), (b) or (c), preceding; and

31.1.3 shall be delivered to the following addresses of the Parties:

To Eschelon:

J. Jeffrey Oxley
Executive Vice President – Law and Policy
Eschelon Telecom, Inc.
730 2nd Ave. South, Suite 900
Minneapolis, MN 55402
Telephone Number:
Facsimile Number:

To Verizon:

Director-Contract Performance & Administration
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, TX 75038
Telephone Number: 972-718-5988
Facsimile Number: 972-719-1519
Internet Address: wmnotices@verizon.com

with copies to:

Vice President and Associate General Counsel
Verizon Wholesale Markets
1515 North Court House Road
Suite 500
Arlington, VA 22201
Facsimile: 703-351-3664

or to such other address as either Party shall designate by proper notice.

Notices will be deemed given as of the earlier of (a) where there is personal delivery of the notice, the date of actual receipt, (b) where the notice is sent via express delivery Services for next Business Day delivery, the next Business Day after the notice is sent, (c) where the notice is sent via First Class U.S. Mail, three (3) Business Days after mailing, (d) where notice is sent via certified or registered U.S. mail, the date of receipt shown on the Postal Services receipt, and (e) where the notice is sent via facsimile telecopy, if the notice is sent on a Business Day and before 5 p.m. in the time zone where it is received, on the date set forth on the telecopy confirmation, or if the notice is sent on a non-Business Day or if the notice is sent after 5 p.m. in the time zone where it is received, the next Business Day after the date set forth on the telecopy confirmation.

32. Point of Contact for Eschelon Customers

32.1

32.2

33. Publicity and Use of Trademarks or Services Marks

33.1

33.2

33.3

33.4

34. Relationship of the Parties

34.1

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34.5

34.6

35. Sections 251/252/271 of the Act

35.1

35.2

36. Subcontractors

37. Successors and Assigns

38. Survival

39. Taxes

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39.6 All notices, affidavits, exemption-certificates or other communications required or permitted to be given by either Party to the other, for purposes of this Section 39, shall be made in writing and shall be delivered in person or sent by certified mail, return receipt requested, or registered mail, or a courier Services providing proof of Services, and sent to the addressees set forth in Section 31 as well as to the following:

To Verizon:

Tax Administration
Verizon Communications
1095 Avenue of the Americas
Room 3109
New York, NY 10036

To Eschelon:

William Markert
VP Network Financial Management
Eschelon Telecom, Inc.
730 2nd Ave. South, Suite 900
Minneapolis, MN 55402

Either Party may from time to time designate another address or other addressees by giving notice in accordance with the terms of this Section. Any notice or other communication shall be deemed to be given when received.

40. Technology Upgrades

41. Territory

41.1

41.2

42. Third Party Beneficiaries

43. Use of Services

44. Waiver

45. Warranties

46. Performance Measures

47. High Frequency Portion of Wholesale Advantage Lines

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

Eschelon Telecom of Washington, Inc.

Verizon Services Corp.

By: _____

By: _____

Printed:

Printed:

Title:

Title:

Eschelon Telecom of Oregon, Inc.

By: _____

Printed:

Title:

Advanced Telecom, Inc. a/k/a ATGI

By: _____

Printed:

Title:

Attachment 1- Verizon ILEC Affiliates

Verizon Delaware Inc.
Verizon Maryland Inc.
Verizon New Jersey Inc.
Verizon Pennsylvania Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Virginia Inc.
Verizon New England Inc.
Verizon New York Inc.
Verizon California Inc.
Verizon Florida Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon South Inc.
GTE Southwest Incorporated, d/b/a Verizon Southwest
Contel of the South, Inc. d/b/a Verizon North Systems
GTE Midwest Incorporated d/b/a Verizon Midwest

Attachment 2 - Description of Services

1. General

2. Related Services

3. Other Services

Attachment 3- Pricing

1. Rates for the Services

Notwithstanding the foregoing:

1.1 *Intentionally left blank*

1.2

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1.4 *Intentionally left blank*

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2. Related and Other Services

Attachment 3 – Appendix A- Surcharges

Attachment 4 - Glossary

Capitalized terms not otherwise defined in the Agreement shall have the meanings set forth below:

- 1.1 “Affiliate” shall have the meaning set forth in the Act.
- 1.2 “Agent” shall mean an agent or servant.
- 1.3 “Applicable Law” shall mean all effective laws, government regulations and government orders, applicable to each Party’s performance of its obligations under this Agreement.
- 1.4 “Business Day” shall mean Monday through Friday, except for holidays observed by Verizon.
- 1.5 “Claims” shall mean any and all claims, demands, suits, actions, settlements, judgments, fines, penalties, liabilities, injuries, damages, losses, costs (including court costs), and expenses (including reasonable attorney’s fees).
- 1.6 “CPNI (Customer Proprietary Network Information)” shall have the meaning set forth in Section 222 of the Telecommunications Act of 1996, 47 U.S.C. § 222.
- 1.7 “Customer” shall mean a third party residence or business end-user subscriber to Services provided by a Party.
- 1.8 “DS0 Loop” shall mean either a 2 Wire Analog Voice Grade Loop or a 4-Wire Analog Voice Grade Loop” that is suitable for the transport of analog Voice Grade (nominal 300 to 3000Hz) signals and loop-start signaling.
- 1.9 “End Office” or “End Office Switch” shall mean a switching entity that is used to terminate Customer station Loops for the purpose of interconnection to each other and to trunks.
- 1.10 “Environmental Law” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, the Emergency Planning and Community Right-to-Know Act, the Water Pollution Control Act, the Air Pollution Control Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, the Occupational Safety and Health Act, and all other Federal, State or local laws or governmental regulations or requirements, that are similar to the above-referenced laws or that otherwise govern releases, chemicals, products, materials or wastes that may pose risks to human health or safety, or the environment, or that relate to the protection of wetlands or other natural resources.
- 1.11 “Former Bell Atlantic Territories” shall mean the service territories of the following entities: Verizon Delaware Inc., Verizon Maryland Inc., Verizon New Jersey Inc., Verizon Pennsylvania Inc., Verizon Virginia Inc., Verizon Washington, DC Inc., Verizon West Virginia Inc., Verizon New England Inc., and Verizon New York Inc.

1.12 “Former GTE Territories” shall mean the service territories of the following entities: Verizon California Inc.; Verizon Florida Inc.; Verizon North Inc.; Verizon Northwest Inc.; Verizon South Inc.; GTE Southwest Incorporated d/b/a Verizon Southwest; Contel of the South, Inc. d/b/a Verizon North Systems; and GTE Midwest Incorporated d/b/a Verizon Midwest.

1.13 “LERG” shall mean the Telcordia Technologies, Inc. (formerly known as Bell Communications Research, Inc.) reference containing NPA/NXX routing and homing information.

1.14 “Local Circuit Switching” shall mean the line-side facilities, and trunk-side facilities associated with the line-side port, on a circuit switch in Verizon’s network (as identified in the LERG), plus the features, functions, and capabilities of that switch, including: (a) the line-side Port (including the capability to connect a Loop termination and a switch line card, telephone number assignment, dial tone, one primary directory listing, pre-subscription and access to 911); (b) line and line group features (including all vertical features and line blocking options the switch and its associated deployed switch software are capable of providing that are provided to Verizon’s local exchange services customers served by that switch); (c) usage (including the connection of lines to line, lines to trunks, trunks to lines, and trunks to trunks); and (d) trunk features (including the connection between the trunk termination and a trunk card).

1.15 “Loop” shall mean a transmission path that extends from a main distribution frame or functionally comparable piece of equipment in a Customer's serving End Office, to the Rate Demarcation Point (or NID if installed at the Rate Demarcation Point) in or at the Customer's premises. The actual transmission facilities used to provide a Loop may utilize any of several technologies.

1.16 “NID” shall mean the Verizon provided interface terminating Verizon’s telecommunications network on the property to which Eschelon’s services are provided at a point determined by Verizon. The NID contains an FCC Part 68 registered jack from which Inside Wire may be connected to Verizon’s network.

1.17 “North America Numbering Plan” shall mean the system of telephone numbering employed in the United States of America, Canada, Bermuda, Puerto Rico and certain Caribbean Islands.

1.18 “NPA” shall mean the first three-digit indicator of each ten-digit telephone number within the North America Numbering Plan.

1.19 “NXX” shall mean the three-digit switch indicator, representing the first three digits of a seven-digit phone number.

1.20 “Person” shall have the meaning set forth in the Act.

1.21 “Rate Demarcation Point” shall mean the physical point in a Verizon-provided network facility at which Verizon’s responsibility for maintaining that network facility ends and the Customer’s responsibility for maintaining the remainder of the facility begins, as set forth in this Agreement, Verizon’s applicable Tariffs, if any, or as otherwise prescribed under Applicable Law.

1.22 “Telecommunications” and “Telecommunications Services” shall have the meanings set forth in the Act.

1.23 “Third Party Claim” shall mean a Claim where there is (a) a claim, demand, suit or action by a Person who is not a Party, (b) a settlement with, judgment by, or liability to, a Person who is not a Party, or (c) a fine or penalty imposed by a Person who is not a Party.

1.24 “Toxic or Hazardous Substance” shall mean substance designated or defined as toxic or hazardous under any Environmental Law or that poses a risk to human health or safety, or the environment, and products and materials containing such substance.

1.25 “Voice Grade” shall mean either an analog signal of 300 to 3000 Hz or a digital signal of 56/64 kilobits per second. When referring to digital Voice Grade Services (a 56-64 kbps channel), the term "DS0" may also be used.

1.26 “Wire Center” shall mean a building or portion thereof which serves as the premises for one or more switches used to provide Telecommunications Services and related facilities.