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August 16, 2004

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

RECEIVED
RECORDS SECTION
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Re: Traffic Exchange Agreement Between Mashell Telecom, Inc. and AT&T
Wireless Services, Inc.

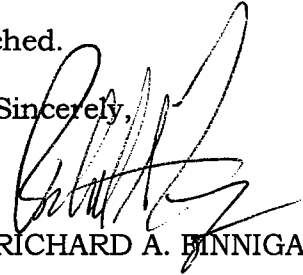
Dear Ms. Washburn:

Enclosed you will find the original and three copies of the above-referenced Traffic Exchange Agreement. Mashell Telecom, Inc. views the agreement as negotiated pursuant to Section 332 of the Telecommunications Act of 1996. Mashell Telecom, Inc. did not negotiate this Agreement pursuant to Section 251(c) of the Act and expressly preserves its exemption from Section 251(c) obligations.

However, in light of the generic language in Section 252(e) and the Federal Communications Commission Order FCC 02-276 (WC Docket No. 02-89), pending further clarification from this Commission as to what agreements must be filed for Commission approval (see, e.g., pending Docket UT-033011), this Agreement is filed for approval by the Commission.

Thank you for your attention to the attached.

Sincerely,



RICHARD A. FINNIGAN

RAF/km
Enclosures

cc: Eric Pue
Arne L. Haynes

TRAFFIC EXCHANGE AGREEMENT

By and Between

Mashell Telecom, Inc.

And

AT&T Wireless Services, Inc.

Table of Contents

1.	DEFINITIONS.....	3
2.	RURAL TELEPHONE COMPANY.....	5
3.	TRAFFIC INTERCHANGED.....	5
4.	FACILITIES.....	5
5.	RATES AND CHARGES.....	6
6.	BILLING AND PAYMENT OF CHARGES.....	7
7.	NON-LOCAL (INTERMTA) TELECOMMUNICATIONS TRAFFIC.....	7
8.	IMPAIRMENT OF SERVICE.....	8
9.	RESOLUTION.....	8
10.	TROUBLE REPORTING.....	8
11.	TERM AND TERMINATION.....	8
12.	LIABILITY UPON TERMINATION.....	10
13.	AMENDMENTS.....	10
14.	ASSIGNMENT.....	10
15.	AUTHORITY.....	10
16.	BINDING AFFECT.....	10
17.	COMPLIANCE WITH LAWS AND REGULATIONS.....	11
18.	ENTIRE AGREEMENT.....	11
19.	EXPENSES.....	11
20.	FORCE MAJEURE.....	11
21.	GOVERNING LAW.....	11
22.	INDEPENDENT CONTRACTOR RELATIONSHIP.....	12
23.	LIABILITY AND INDEMNITY.....	12
	23.1 <i>Indemnification</i>	12
	23.2 <i>End User and Content-Related Claims</i>	12
	23.3 <i>Disclaimer</i>	12
	23.4 <i>Limitation of Liability</i>	13
	23.5 <i>Relationship to Prices</i>	13
	23.6 <i>Survival</i>	13
	23.7 <i>Equipment</i>	13
	23.8 <i>Notice and Procedure</i>	13
24.	DISPUTE RESOLUTION.....	14
	24.1 <i>Alternative to Litigation</i>	14
	24.2 <i>Negotiations</i>	14
	24.3 <i>Savings Clause</i>	14
	24.4 <i>Continuous Service</i>	14
25.	CONFIDENTIAL INFORMATION.....	15
	25.1 <i>Identification</i>	15
	25.2 <i>Handling</i>	15
	25.3 <i>Exceptions</i>	16
	25.4 <i>Survival</i>	16
26.	NOTICES.....	16
27.	REGULATORY AGENCY CONTROL.....	17
28.	SEVERABILITY.....	17
29.	PATENTS.....	18
30.	COUNTERPARTS.....	18
31.	CONSTRUCTION.....	18
	ATTACHMENT 1 RATES.....	19

This Traffic Exchange (“Agreement”), is entered into by and between Mashell Telecom, Inc., a Washington corporation (“Company”) and AT&T Wireless Services, Inc., a Delaware Corporation, having its principal place of business at 7277 164th Avenue NE Redmond, WA 98052, and all of its subsidiaries that are (i) consolidated with AT&T Wireless Services, Inc. for financial reporting purposes, (ii) licensed by the Federal Communications Commission to provide wireless radio and other services associated with subscriber accounts, and (iii) doing business as AT&T Wireless and/or AT&T Wireless Services (hereinafter “AWS”); (Company and AWS are each referred to as a “Party” and collectively as “Parties”).

WHEREAS, AWS is authorized by the Federal Communications Commission (“FCC”) to provide commercial mobile radio service (“CMRS”); and

WHEREAS, Company is a provider of local exchange service; and

WHEREAS, AWS terminates telecommunications traffic that originates from Company’s End Users, and Company terminates telecommunications traffic that originates from AWS’ End Users; and

WHEREAS, AWS provides a point of interconnection in the Company’s service areas, or interconnects with Company's network via a third party tandem switch; and

WHEREAS, the Parties wish to establish a compensation arrangement that compensates each other for terminating telecommunications traffic that originates on the other Party’s network.

NOW, THEREFORE, IN CONSIDERATION of the covenants contained herein, the Parties hereby agree as follows:

1. DEFINITIONS.

- 1.1 “Act” means the Communications Act of 1934, as amended.
- 1.2 An “Affiliate” of a Party means a person, corporation or other legal entity that, directly or indirectly, owns or controls a Party, or is owned or controlled by, or is under common ownership or control with a Party. For purposes of this definition, the term “own” means to have a majority ownership interest in, or have voting control of a majority of the ownership interests in, such corporation or other legal entity.
- 1.3 “Central Office” means a switching facility from which Telecommunications Services are provided, including, but not limited to:
 - a. An “End Office Switch” or “End Office” is used to, among other things, terminate telecommunications traffic to End Users.
 - b. A “Tandem Switch” or “Tandem Office” is a switching facility that is used to interconnect trunk circuits between and among End Office Switches, aggregation points, points of termination, or points of presence. A switch may be both an End Office Switch and a Tandem Switch.
 - c. A “Mobile Switch Center” or “MSC” is a switching facility that provides tandem and end office switching capability.
- 1.4 “CMRS” means Commercial Mobile Radio Service as defined in the Act.

- 1.5 “Confidential Information” shall have the meaning ascribed in Section 25.
- 1.6 “Commission” refers to the state regulatory commission within a state.
- 1.7 “End User” means, with respect to AWS, any subscriber to wireless service furnished by AWS or by another entity reselling AWS’ wireless service, and further means any roamer using AWS’ wireless network. With respect to Company, “End User” means any subscriber to wireline local exchange service furnished to the End User by Company or by another entity reselling Company’s wireline local exchange service, and further means any casual user of Company’s wireline local exchange service. AWS and Company are each deemed to be subscribers to their own wireless service or wireline local exchange service, respectively, for purposes of this definition.
- 1.8 “Information Service Provider” or “ISP” means any person or entity, including but not limited to, an Internet service provider that provides information services.
- 1.9 “ISP traffic” means traffic originated by one Party’s End Users and delivered to the other Party for transport and/or termination to an ISP.
- 1.10 “Interconnection,” as defined in 47 C.F.R. § 51.5, is the physical linking of two networks for the mutual exchange of traffic.
- 1.11 “Interconnection Facilities” are those Company facilities between the Company’s central office switch and the POI.
- 1.12 “Interexchange Carrier” or “IXC” is a telecommunications company that provides, directly or indirectly, intraLATA or interLATA telecommunications services.
- 1.13 “InterMTA Traffic” -- is wireless to wireline and wireline to wireless calls which do not originate and terminate within the same MTA based on the location of the cell site serving the wireless End User at the beginning of the call and the central office for the landline End User.
- 1.14 “Local Exchange Carrier” is as defined in the Act at 47 U.S.C. § 153 (26).
- 1.15 “Local Exchange Routing Guide” or “LERG” means the Telcordia reference customarily used to identify NPA-NXX routing and homing information.
- 1.16 “Local Traffic” for purposes of compensation under this Agreement is that telecommunications traffic which originates and terminates within the same major trading area (“MTA”), as defined in 47 C.F.R. § 24.202(a). For purposes of determining whether traffic originates and terminates within the same MTA, and therefore whether the traffic is local, the location of the landline End User and the location of the cell site that serves the mobile End User at the beginning of the call shall be used.
- 1.17 “Major Trading Area” or “MTA” means the service areas based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd edition, at pages 38-39. 47 C.F.R. § 24.202(a).
- 1.18 “POI” means Point of Interconnection.

- 1.19 “PSTN” means the Public Switched Telephone Network.
- 1.20 “Reciprocal Compensation” means a compensation arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and Termination on each carrier’s network facilities for Local Traffic. 47 C.F.R. § 51.701(E).
- 1.21 “Tandem Switching” is when Company provides tandem switching at the Company switch for traffic between AWS and a Company end office subtending the Company switch.
- 1.22 “Telecommunication Services” shall have the meaning set forth in 47 § U.S.C. 153(46).
- 1.23 “Termination” means the switching of Local Traffic at the terminating Party’s End Office Switch, or equivalent facility, and delivery of such traffic to the called Party’s premises.
- 1.24 “Usage Factors” are those factors set out in Attachment 1.

2. RURAL TELEPHONE COMPANY.

Company is a "rural telephone company" as defined in the Act, 47 U.S.C. § 153. This Agreement is entered into as a compensation arrangement under 47 U.S.C. § 332. It is not intended to constitute an interconnection agreement for purposes of Company’s exemption from certain interconnection duties as set forth in the Act.

3. TRAFFIC INTERCHANGED.

- 3.1 The traffic subject to this Agreement shall be that Local Traffic which originates from an End User on the network of one Party and is delivered to an End User on the network of the other Party. Such traffic includes that traffic which is routed via a third party tandem switch.
- 3.2 The Parties agree that the exchange of traffic of Company’s extended area calling service (“EAS”) routes shall be considered Local Traffic and compensation for Termination of such traffic shall be paid pursuant to the terms of this Agreement. An NXX assigned to AWS that is associated with a Company rate center shall be included in an EAS optional calling scope to the same extent as any other NXX in the same rate center. EAS routes are those exchanges within a telephone exchange’s local calling area, as defined in Company’s general End User tariff.

4. FACILITIES.

- 4.1 Each Party shall construct, equip, maintain and operate its network in accordance with good engineering practices for telecommunications systems and in compliance with all applicable rules and regulations, as amended from time-to-time, of any regulatory body empowered to regulate any aspect of the facilities contemplated herein.
- 4.2 Each Party shall be solely responsible for any charges the third-party tandem provider may assess for transiting traffic, if any, that originates on said Party’s network. If traffic

delivered by either Company or AWS reaches 100,000 minutes per month for three consecutive months, either Party may request negotiations to establish direct interconnection facilities between the Parties. Upon the delivery of such a request, the parties shall engage in good faith negotiations to establish direct interconnection arrangements.

- 4.3 It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to the Local Exchange Routing Guide ("LERG") guidelines to recognize and route traffic to the other Party's assigned NXX codes, provided routes are established. Neither Party shall impose any fees or charges whatsoever on the other Party for programming and updating its own switches.
- 4.4 The Parties expect that where feasible, traffic will be delivered to each involved network with CCS/SS7 protocol and the appropriate ISUP/TCAP message to facilitate full interoperability and billing functions. In-band signaling may be used if CCS/SS7 is not available.

5. RATES AND CHARGES.

- 5.1 The Parties hereby agree to the following rates for the facilities and services to be provided pursuant to this Agreement. The Parties hereby agree the rates set forth herein shall become effective when this Agreement is signed by both Parties.

Facilities

Rates

- | | |
|------------------------|--|
| a. Local Network Usage | The Parties agree to compensate each other for terminating traffic that originates on the other Party's network. The rates for this compensation arrangement are identified in Attachment 1. |
| b. Access Services | For the AWS' interMTA traffic terminated by Company, access rates shall apply as defined on Attachment 1. |
- 5.2 Until such time as Company is capable of measuring terminating traffic, Company shall bill AWS based upon a terminating to originating ratio. See the description on Attachment 1.
- 5.3 Until measurement of Mobile-to-Land traffic becomes reasonably available to Company, Local Network Usage shall be based on the Land-to-Mobile traffic data generated by the AWS. Such data will be assembled by AWS on a monthly basis and provided to the Washington Exchange Carrier Association (WECA) on an Excel spreadsheet document or other mutually agreed upon format. WECA shall in turn provide to Company the Company-specific Land-to-Mobile traffic data for the applicable month. That data shall include a calculation of the Local Traffic exchanged between Company and AWS for that month, applying the Traffic Factor set out on Attachment 1 to the Land-to-Mobile Traffic measured by AWS for that month.
- 5.4 When measurement of traffic is reasonably available, for purposes of billing compensation for the interchange of Local Traffic, billed minutes will be based upon conversation time for those minutes of use actually measured. When measurement is

available, conversation time will be determined from actual usage recordings. Conversation time begins when the originating Party's network receives answer supervision and ends when the originating Party's network receives disconnect supervision.

6. BILLING AND PAYMENT OF CHARGES.

- 6.1 Nonrecurring charges will be billed upon completion of the work activity for which the charge applies; monthly recurring charges will be billed in advance; and usage will be billed in arrears. All bills will be due when rendered and will be considered past due thirty (30) calendar days after the bill date. The Parties agree that they will each make a good faith effort to resolve any billing dispute.
- 6.2 If any undisputed amount due on the billing is not received by the billing Party by the payment due date, the billing Party may charge, and the billed Party agrees to pay, interest on the past due balance at a rate equal to the lesser of one and one-half percent (1-1/2%) per month or the maximum non-usurious rate of interest under applicable law. Late payment charges shall be included on a subsequent invoice.
- 6.3 If any portion of an amount due to a billing Party under this Agreement is subject to a bona fide 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 amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The billed Party shall pay when due all undisputed amounts to the billing Party. The balance of the Disputed Amount shall thereafter be paid with appropriate late charges, if appropriate, upon final determination of such dispute.
- 6.4 The billing Party shall charge and collect from the billed Party, and the billed Party agrees to pay to the billing Party, appropriate federal, state, and local taxes and surcharges where applicable, except to the extent the billed Party notifies the billing Party and provides appropriate documentation that the billed Party qualifies for a full or partial exemption.
- 6.5 Either Party may conduct an audit of the other Party's books and records pertaining to the services provided under this Agreement no more than once per twelve (12) month period to evaluate the other Party's accuracy of billing, data and invoicing in accordance with this Agreement. Any audit shall be performed as follows: (a) following at least thirty (30) days prior written notice to the audited Party, (b) subject to reasonable scheduling requirements and limitations of the audited Party, (c) at the auditing Party's sole expense, (d) of a reasonable scope and duration, (e) in a manner so as not to interfere with the audited Party's business operations, and (f) in compliance with the audited Party's security rules.

7. NON-LOCAL (INTERMTA) TELECOMMUNICATIONS TRAFFIC.

The Parties contemplate that they may exchange non-local telecommunications traffic over the interconnection facilities provided for under this Agreement. Compensation for non-local traffic shall be subject to the appropriate access rates. Compensation shall be charged according to the Usage Factors set out on Attachment 1. Nothing in this Agreement shall be construed to prevent Company from treating a land-to-mobile call which is interexchange in nature but which

terminates in the same MTA as the location of the landline End User as a toll call for purposes of assessing an interexchange carrier (other than AWS) that carries the call access rates or from charging the landline End User toll rates; provided, however, that such calls still are included as Local Traffic for purposes of the determination of charges payable under this Agreement.

8. IMPAIRMENT OF SERVICE.

The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to their plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities or create hazards to the employees of either Party or to the public (each hereinafter referred to as an "Impairment of Service").

9. RESOLUTION.

If either Party causes an Impairment of Service, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem and that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, then the Impaired Party may at its option temporarily discontinue the use of the affected circuit, facility or equipment.

10. TROUBLE REPORTING.

10.1 In order to facilitate trouble reporting, each Party has established a single point of contact available 24 hours per day, seven days per week, at telephone numbers to be provided by the Parties. Each Party shall call the other at these respective telephone numbers to report trouble with connection facilities, trunks, and other interconnection arrangements, to inquire as to the status of trouble ticket numbers in progress, and to escalate trouble resolution.

10.2 Before either Party reports a trouble condition, it must first use its reasonable efforts to isolate the trouble to the other Party's facilities, service, and arrangements. Each Party will advise the other of any critical nature of the inoperative facilities, service, and arrangements and any need for expedited clearance of trouble. In cases where a Party has indicated the essential or critical need for restoration of the facilities, services or arrangements, the other Party shall use its best efforts to expedite the clearance of trouble.

11. TERM AND TERMINATION.

11.1 This Agreement shall take effect as of the date it is signed by both Parties and have an initial term of one year, unless earlier terminated as provided for in this Agreement, and shall continue in force and effect thereafter for successive one-year terms, until replaced by another agreement or terminated by either Party upon thirty (30) days written notice to the other.

11.2 Notwithstanding a notice of termination, unless the Party receiving such notice agrees to an earlier termination, this Agreement shall remain in effect until replaced by another agreement negotiated or arbitrated between the Parties pursuant to applicable law within one hundred and eighty (180) calendar days from the date that the notice of termination was received. This Agreement shall terminate on the one hundred and eighty first (181st) day after the date that the notice of termination was received if the Agreement has not been superseded by another agreement.

11.3 If this Agreement is terminated and has not been superceded by another agreement and the Parties are not engaged in good faith negotiations or other proceedings to establish an agreement or other terms and conditions governing the exchange of Local Traffic between the Parties, neither Party shall be obligated to exchange Local Traffic with the other Party.

If this Agreement is terminated upon the expiration of one hundred eighty (180) days after notice of termination, pursuant to Section 11.1 above, neither Party shall thereafter be obligated to exchange Local Traffic with the other Party unless and until a new agreement is entered between them; provided, however, that if, notwithstanding the foregoing, either Party shall be legally required to accept Local Traffic of the other Party, both Parties shall be so obligated to the same extent, in which event such exchange of Local Traffic shall continue pursuant to terms and conditions that are the same as those set forth in this Agreement until such legal requirement shall cease, a new agreement shall be entered by and between the Parties establishing new terms and conditions applicable to such exchange of Local Traffic, or a court or regulatory agency having jurisdiction shall, by final order, require otherwise.

11.4 Notwithstanding Section 11.1, this Agreement shall be terminated in the event that:

- a. the FCC revokes, cancels, does not renew or otherwise terminates AWS' authorization to provide CMRS in the area served by Company, or the Commission revokes, cancels, or otherwise terminates Company's certification or authority to provide local service; or
- b. either Party becomes bankrupt or insolvent, makes a general assignment for the benefit of, or enters into any arrangement with creditors, files a voluntary petition under any bankruptcy, insolvency or similar laws, or proceedings are instituted under any such laws seeking the appointment of a receiver, trustee or liquidator instituted against it which are not terminated within sixty (60) days of such commencement.

11.5 Either Party shall have the right to terminate this Agreement upon written notice to the other Party in the event:

- a. 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 receipt by it of the other Party's written demand for payment; or
- b. 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 receipt by it of the other Party's written notification of such breach, including a reasonably detailed

statement of the nature of the breach, and neither Party has initiated dispute resolution under Section 24.

12. LIABILITY UPON TERMINATION.

Termination of this Agreement, or any part hereof, for any cause shall not release either Party from (1) any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination, or (2) from any obligation which is expressly stated in this Agreement to survive termination.

13. AMENDMENTS.

Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.

14. ASSIGNMENT.

14.1 Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party, which consent shall not be unreasonably withheld, shall be void, except that either Party may assign all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a wholly owned subsidiary or Affiliate of that Party without consent, but with written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party.

14.2 Nothing in this Agreement shall prohibit AWS from enlarging its CMRS network through management contracts with third-parties for the construction and operation of a CMRS system under the AWS' brand name and license. Traffic originating on such extended networks shall be treated as AWS' traffic subject to the terms, conditions, and rates of this Agreement. Traffic traversing such extended networks shall be deemed to be and treated under this Agreement as "AWS telecommunications traffic" when it originates on such extended network and terminates on Company's network, and as "Company telecommunications traffic" when it originates upon Company's network and terminates upon such extended network. Telecommunications traffic traversing on such extended networks shall be subject to the terms, conditions, and rates of this Agreement.

14.3 Either Party may enter into subcontracts with third-parties or affiliates for the performance of any of its duties or obligations under this Agreement.

15. AUTHORITY.

Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.

16. BINDING AFFECT.

This Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.

17. COMPLIANCE WITH LAWS AND REGULATIONS.

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.

18. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.

19. EXPENSES.

Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

20. FORCE MAJEURE.

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, unavailability of equipment from vendor, changes requested by the other Party, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided however, that the Party so affected shall use diligent efforts to avoid or remove such causes of nonperformance and both Parties shall proceed whenever such causes are removed or cease.

21. GOVERNING LAW.

21.1 This Agreement shall be governed by and construed in accordance with the domestic laws of the state of Washington as well as the Telecommunications Act of 1996 and other federal laws, and shall be subject to exclusive jurisdiction of the courts and/or regulatory commission of such state, except to the extent that the Telecommunications Act of 1996 and other federal laws provide for federal jurisdiction.

21.2 The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules or regulations that subsequently may be adopted by any federal, state or local governmental authority. Any modifications to this Agreement occasioned by such changes shall be effected through good faith negotiations concerning modifications to this Agreement.

22. INDEPENDENT CONTRACTOR RELATIONSHIP.

The persons implementing this Agreement on behalf of each Party shall be solely that Party's employees or contractors and shall be under the sole and exclusive direction and control of that Party. They shall not be considered employees of the other Party for any purpose. Each Party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each Party shall also be responsible for payment of taxes, including federal, state and municipal taxes, chargeable or assessed with respect to its employees, such as Social Security, unemployment, workers' compensation, disability insurance and federal and state withholding. Each Party shall indemnify the other for any loss, damage, liability, claim, demand, or penalty that may be sustained by reason of its failure to comply with this provision.

23. LIABILITY AND INDEMNITY.

23.1 Indemnification.

Each Party agrees to indemnify, defend, and hold harmless the other Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, whether suffered, made, instituted, or asserted by any other Party or person, for invasion of privacy, personal injury to or death of any person or persons, or for losses, damages, or destruction of property, whether or not owned by others, proximately caused by the indemnifying Party's negligence or willful misconduct, regardless of form of action.

23.2 End User and Content-Related Claims.

Customer (that Party receiving service from the other Party, i.e., Provider) agrees to release, indemnify, defend, and hold harmless Provider, its affiliates, and any third-party provider or operator of facilities involved in the provision of services or facilities under this Agreement (collectively, the "Indemnified Parties") from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by Customer's End Users against an Indemnified Party arising from provision of the services or facilities under this Agreement. Customer further agrees to release, indemnify, defend, and hold harmless the Indemnified Parties from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by Customer or Customer's End Users, or any other willful or negligent act or omission of Customer or Customer's End Users.

23.3. Disclaimer.

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.

EACH PARTY DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

23.4 Limitation of Liability.

A Party's liability, whether in tort or otherwise, shall be limited to direct damages, which shall not exceed the pro rata portion of the monthly charges for the services or facilities for the time period during which the services or facilities provided pursuant to this Agreement are inoperative, not to exceed in total the monthly charge payable by the liable Party to the other Party. Under no circumstance shall a Party be responsible or liable to the other Party for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use provisioning of services hereunder.

23.5 Relationship to Prices.

The prices for services provided under this Agreement are set in express reliance upon the enforceability of this Section 23 and this Section 23 constitutes an essential element of the bargain.

23.6 Survival.

The provisions of this Section 23 shall survive any termination of this Agreement.

23.7 Equipment.

Except as otherwise provided in this Section 23, no Party shall be liable to the other Party for any loss, defect, or equipment failure caused by the conduct of the first Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.

23.8 Notice and Procedure.

- a. The Indemnified Party will notify the Indemnifying Party promptly and in writing of any claims, lawsuits, or demands by End Users or other 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 defense of such claim, lawsuit or demand.
- b. If 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. Further, the Indemnifying Party shall bear all costs and expenses, including reasonable attorneys' fees, the Indemnified Party incurs in defending and/or settling the action.

- c. In the event the Party otherwise entitled to indemnification from the other elects to decline such indemnification, then the Party making such an election may, at its own expense, assume defense and settlement of the claim, lawsuit or demand.
- d. The Parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit subject to indemnification pursuant to this Section 23.
- e. Neither Party shall accept the terms of a settlement that involves or references the other Party in any manner without the other Party's prior written approval.

24. DISPUTE RESOLUTION.

24.1 Alternative to Litigation.

The Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

24.2 Negotiations.

At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by business representatives. 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 may, if otherwise discoverable, be discovered and, if otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

24.3 Savings Clause.

Either Party may determine, in its own judgment, that negotiations are not producing measurable results and may then avail themselves of any remedy they may have under law, including, but not limited to, resort to complaint to the appropriate administrative agency or court action. The Parties may agree to submit the matter to arbitration on such terms and conditions as may be mutually agreed upon by the Parties.

24.4 Continuous Service.

The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their obligations

(including making payments in accordance with Section 6) in accordance with this Agreement.

25. CONFIDENTIAL INFORMATION.

25.1 Identification.

Either Party may disclose to the other proprietary or confidential End User, technical, or business information in written, graphic, electronic, oral or other tangible or intangible forms ("Confidential Information"). In order for information to be considered Confidential Information under this Agreement, it must be marked "Confidential" or "Proprietary," or bear a marking of similar import. Orally or visually disclosed information shall be deemed Confidential Information only if contemporaneously identified as such and reduced to writing and delivered to the other Party with a statement or marking of confidentiality within thirty (30) calendar days after oral or visual disclosure. The following information shall be deemed Confidential Information, whether or not marked as such: orders for services, usage information in any form, and Customer Proprietary Network Information ("CPNI") as that term is defined by the Act and the rules and regulations of the FCC and Commission ("Confidential and/or Proprietary Information").

25.2 Handling.

In order to protect such Confidential Information from improper disclosure, each Party agrees:

- a. That all Confidential Information shall be and shall remain the exclusive property of the Party from whom or from whose representative(s), the Confidential Information is obtained ("Source");
- b. To limit access to such Confidential Information to authorized employees and representatives who have a need to know the Confidential Information for performance of this Agreement;
- c. To keep such Confidential Information confidential and to use the same level of care to prevent disclosure or unauthorized use of the received Confidential Information as it exercises in protecting its own Confidential Information of a similar nature;
- d. Except as permitted by b., above, not to copy, publish, or disclose such Confidential Information to others or authorize anyone else to copy, publish, or disclose such Confidential Information to others without the prior written approval of the Source;
- e. To return promptly any copies of such Confidential Information to the Source at its request; and
- f. To use such Confidential Information only for purposes of fulfilling work or services performed hereunder and for other purposes only upon such terms as may be agreed upon between the Parties in writing.

25.3 Exceptions.

These obligations shall not apply to any Confidential Information that was legally in the recipient's possession prior to receipt from the Source, was received in good faith from a Third Party not subject to a confidential obligation to the Source, now is or later becomes publicly known through no breach of confidential obligation by the recipient, was developed by the recipient without the developing persons having access to any of the Confidential Information received in confidence from the Source, or that is required to be disclosed pursuant to subpoena or other process issued by a court or administrative agency having appropriate jurisdiction, provided, however, that, with respect to disclosure pursuant to subpoena or other process, the recipient shall give as much prior notice as possible to the Source and shall reasonably cooperate if the Source deems it necessary to seek protective arrangements.

25.4 Survival.

The obligation of confidentiality and use with respect to Confidential Information disclosed by one Party to the other shall survive any termination of this Agreement for a period of three (3) years from the date of the initial disclosure of the Confidential Information.

26. NOTICES.

Any notice to a Party required or permitted under this Agreement shall be in writing and shall be given by personal delivery, United States Postal Service express mail, commercial courier service (e.g., Federal Express), or United States Postal Service certified mail, return receipt requested, or facsimile transmission. Written notice shall be effective upon receipt, as evidenced by a receipt signed by or on behalf of the recipient, or by courier service or express mail proof of delivery, or, if delivered by facsimile transmission, as evidenced by a printed transaction record showing successful completion of transmission; provided, however, that any notice delivered on any day after 3:00 p.m. at the place of delivery shall not be effective until the next business day.

Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address indicated below or such address as the Party to be notified has designated by giving notice in compliance with this section.

If to Company: Mashell Telecom, Inc.
Attention: President
104 Washington Avenue North
Eatonville, WA 98328
Telephone #: 360-832-6161
Facsimile #: 360-832-8817

With copy to (which shall not alone constitute notice):

Richard A. Finnigan
2405 Evergreen Park Drive SW, Suite B-1
Olympia, WA 98502

If to AWS: Jill Mounsey
Director – Enterprise Support
AT&T Wireless Services, Inc
7277-164th Ave NE
Redmond, WA 98052
Telephone #: (425) 580-8677
Facsimile #: (425) 580-8609

With copy to (which shall not alone constitute notice):

Davis Wright Tremaine
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101
Attn: Michael van Eckhardt
Telephone #: (206) 628-7632
Facsimile #: (206) 903-3732

27. REGULATORY AGENCY CONTROL

This Agreement shall at all times be subject to changes, modifications, orders, and rulings by the FCC and/or the Commission to the extent the substance of this Agreement is or becomes subject to the jurisdiction of such agency.

28. SEVERABILITY.

If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal of that provision results in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon within a reasonable period, either Party may terminate this Agreement without penalty or liability for such termination upon written notice to the other Party.

29. PATENTS.

29.1 With respect to claims of patent infringement made by third persons, each Party shall defend, indemnify, protect, and save harmless the other from and against all claims arising out of the combining with or use in connection with, the facilities, service, or arrangements furnished under this Agreement, of any circuit, apparatus, system, or method provided by such Party in the interchange of traffic hereunder. The Parties individually warrant to each other that its provision of services shall not infringe upon any patent in connection with the facilities, service, or arrangements furnished under this Agreement, of any circuit, apparatus, system, or method provided by such Party in the interchange of traffic hereunder.

29.2 No license under patents is granted by AWS to Company, or by Company to AWS, or shall be implied or arise by estoppel with respect to any circuit, apparatus, system, or method used by either of them in connection with any facilities, service or arrangements furnished under this Agreement.

29.3 Each Party warrants that it has the requisite authority to utilize all necessary patents for the provisioning of its service.

30. COUNTERPARTS.

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

31. CONSTRUCTION.

It is agreed and understood that both Parties negotiated the terms and conditions of this Agreement. This Agreement shall not be construed more favorably for one Party or the other.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date signed by both Parties.

AWS:
AT&T Wireless Services, Inc.

By: *J. R. Mounsey*
Name: J. R. Mounsey
Title: Director - Industry Rel
Date: 0730-04

Company:
Mashell Telecom, Inc.

By: *Arve L. Hayne*
Name: ARVE L. HAYNE
Title: President
Date: 8/12/04

**Attachment 1
Rates**

1. Traffic Factor

Land-to-Mobile	.33
Mobile-to-Land	.67

2. Usage Factors

Percent Local Usage (PLU)	.97
Inter MTA Factor	.03

3. Local Network Usage

3.1 Local Compensation Arrangement Rates

Each Party agrees to compensate the other for terminating local service area calls originated on its network.

End Office Local Call Termination	\$0.02 per minute of use
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3.2 InterMTA Traffic

InterMTA Traffic shall be charged the appropriate rate out of the terminating carrier's access tariff or the comparable non-tariff rate, split evenly between the interstate and intrastate jurisdictions.

4. De Minimus

In an effort to minimize accounting and paperwork, the Parties agree that Company shall only bill AWS when the total minutes for which Company is entitled to compensation is more than 15,000 minutes of use for a three (3) month period (or 5,000 minutes of use for a one (1) month period); provided, however, that Company may submit a single bill for total annual usage under this Agreement regardless of the amount of such usage. Such annual bill shall be submitted within sixty (60) days after the delivery by AWS of final billing numbers for the year in question.