



# **TRAFFIC EXCHANGE AGREEMENT**

By and Between

Stayton Cooperative Telephone Company

And

T-Mobile USA, Inc.

## Table of Contents

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

This Traffic Exchange (“Agreement”), is entered into by and between Stayton Cooperative Telephone Company, an Oregon corporation (“Company”) and T-Mobile USA, Inc. (“Carrier”), (each referred to as a “Party” and collectively as “Parties”) and effective on January 1, 2004 (the “Effective Date”).

WHEREAS, Carrier and its Affiliates are authorized by the Federal Communications Commission (“FCC”) to provide commercial mobile radio service (“CMRS”) and provides such service to its end user customers, operating wireless affiliates and switch share/managed markets; and

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

WHEREAS, Carrier terminates telecommunications traffic that originates from Company’s subscribers, and Company terminates telecommunications traffic that originates from Carrier’s subscribers; and

WHEREAS, Carrier 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 user subscribers.
- 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 27.
- 1.6 “Commission” refers to the state regulatory commission within a state.
- 1.7 “End User” means, with respect to Carrier, any subscriber to wireless service furnished by Carrier or by another entity reselling Carrier’s wireless service, and further means any roamer using Carrier’s 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. Carrier 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 “Interconnection Facilities” are those facilities or combination of facilities, circuits, service arrangements, trunks, and trunk groups used to deliver traffic (as defined herein) between the LEC switch or other POI and the Carrier MSC or other POI.
- 1.9 “Interexchange Carrier” or “IXC” is a telecommunications company that provides, directly or indirectly, intraLATA or interLATA telecommunications services.
- 1.10 “Local Exchange Carrier” is as defined in the Act at 47 U.S.C. § 153 (26).
- 1.11 “Local Exchange Routing Guide” or “LERG” means the Telcordia reference customarily used to identify NPA-NXX routing and homing information.
- 1.12 “Local Traffic” for purposes of compensation between the Parties under this Agreement is that telecommunications traffic which, at the beginning of the call, originates and terminates within the same major trading area (“MTA”), as defined in 47 C.F.R. § 24.202(a). The origination point and the termination point on Company’s network shall be the End Office serving the calling or called party. The origination point and the termination point on Carrier’s network shall be the cell site that serves the calling or called party at the beginning of the call.
- 1.13 “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).
- 1.14 “POI” means Point of Interconnection.

- 1.15 “PSTN” means the Public Switched Telephone Network.
- 1.16 “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 the recipient carrier’s network facilities for Local Traffic. 47 C.F.R. § 51.701(E).
- 1.17 “Tandem Switching” is when Company provides tandem switching at the Company switch for traffic between Carrier and a Company end office subtending the Company switch.
- 1.18 “Telecommunication Services” shall have the meaning set forth in 47 § U.S.C. 153(46).
- 1.19 “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.
- 1.20 “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 not an interconnection agreement under 47 U.S.C. 251(c), but rather a reciprocal compensation agreement under 47 U.S.C. 251(b)(5). The Parties acknowledge that Company is a rural telephone company as defined in 47 U.S.C. 153(47) and may be entitled to a rural exemption as provided by 47 U.S.C.251(f), and Company has not waived, and does not waive such exemption by entering into this Agreement.

3. TRAFFIC INTERCHANGED.

- 3.1 The traffic subject to this Agreement shall be that Local Traffic which originates from a subscriber on the network of one Party and is delivered to a subscriber 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 Carrier that is associated with a Company rate center shall be included in an EAS optional calling scope, or similar program 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 subscriber tariff.
- 3.3 For purposes of appropriately applying Company’s local and/or toll tariff to its End

Users, Company will utilize rate centers specified in the Terminating Point Master for Carrier's NPA-NXX codes. Calls to such NPA-NXXs will be rated no less favorably than calls by Company End Users to other NPA-NXXs with the same rate center. To the extent Carrier imposes distance-sensitive charges on its End Users for calls to Company's NPA-NXXs, Carrier will similarly recognize Company's rate centers and will rate calls to them in a way that is no less favorable than calls by Carrier's End Users to other NPA-NXXs with the same rate centers. All Local Traffic originated by either Party and addressed to End Users of the other will be subject to the reciprocal termination compensation rates set forth herein rather than to access charges. In the event that the Company implements a wireline calling party pays for wireless usage system, then the Parties shall negotiate the obligations of this Section.

#### 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 Applicable to indirect connection using third-party tandems: Each Party shall be solely responsible for any charges the third-party tandem provider may assess to it for transiting traffic, if any, that originates on said Party's network. If traffic exchanged between Company and Carrier reaches 100,000 minutes per month for three consecutive months, then Company and Carrier may discuss direct interconnection.
- 4.3 It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to the 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. The Parties shall adjust compensation for the transport and termination of Local Traffic in the event of Commission approved rates based on a cost study (performed

consistently with then applicable FCC and Commission regulations) as a result of a rate decision by the State Commission or as a result of arbitration involving Company. The effective date of the new rate will be the effective date of the Commission order. The Parties agree to true up to generally applicable rates within a forty five (45) day period.

Facilities

Rates

- a. Local Network Usage      The Parties agree to compensate each other for Local Traffic that originates on the other Party's network. The rates for this compensation arrangement are identified in Attachment 1, which is incorporated as though fully set forth.
  
- b. Access Services              For the Carrier's interMTA traffic terminated by Company, access rates shall apply as defined on Attachment 1.

5.2 The Traffic Factors provided on Attachment 1 Rates, Section 1 and Usage Factors provided on Attachment 1 Usage Factors, Section 2 are specifically negotiated between the Parties and are not subject to change or adjustment during the Initial Term of this Agreement.

5.3 Company will prepare its bill in accordance with its existing CABS billing systems. Notwithstanding anything to the contrary in this Agreement, until a more accurate measurement system is in place, Company will prepare a net bill that is calculated using the Usage Factors set out in Attachment 1, based on Company's originating minutes destined to Carrier's NPA/NXX combinations within the MTA as set forth in the LERG. The Parties shall renegotiate this section in the event that local number portability results in a significant inaccuracy. Carrier shall not prepare a separate bill, but shall pay Company based on the net bill rendered by Company, subject to rights to dispute such bill as set out in this Agreement. At the time either Party believes it has a more accurate measurement capability, it may propose an amendment to this Section and the Parties agree to negotiate in good faith concerning such amendment.

Each net bill shall be prepared as follows:

First, using the Traffic Factors set forth on Attachment 1, the Company will establish the Mobile-to-Land minutes based upon the originating Land-to-Mobile minutes. To this total amount of Mobile-to-Land minutes, the Company will then apply the InterMTA Factor set forth on Attachment 1 and will bill the resultant number of minutes produced by the application of that factor by applying to said number of minutes the rates set forth in Company's access services tariffs. Of the number of interMTA minutes resulting from application of the InterMTA factor, ten percent (10%) will be billed according to the Company's intrastate access services tariff and



ninety percent (90%) will be billed according to the Company's interstate access services tariff.

The remaining Mobile-to-Land minutes calculated according to the Mobile-to-Land Factor will be multiplied by the Local Traffic rate set forth on Attachment 1 and the result, when added to the bill for interMTA minutes, shall be Carrier's gross obligation to Company. The Land-to-Mobile minutes will be multiplied by the Local Traffic rate set forth on Attachment 1, with the result being the Company's gross obligation to Carrier. The Company then will subtract the Company's gross obligation to Carrier from the Carrier's gross obligation to the Company, with the resulting difference being the amount of the net bill to be rendered by the Company to Carrier and to be paid by Carrier to the Company.

5.4 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 Usage will be billed in arrears. All bills will be due when received and will be considered past due thirty (30) calendar days after the bill date. All bills shall be deemed received at the time demonstrated in the receive receipt or three (3) business days after the date of mailing as indicated by postmark. 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 percent (1%) per month or the maximum nonusurious rate of interest under applicable law for Local Traffic and the provisions of the Company's access tariff for interMTA traffic. 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 ninety (90) 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 Amounts 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, (f) protected by the Confidentiality obligations of this Agreement, and (g) in compliance with the audited Party's security rules.

6.6 De Minimis Traffic. Where the wireless to wireline Local Traffic exchanged between the Parties is less than five thousand (5,000) minutes per month, the Parties agree to bill each other on a quarterly, rather than monthly, basis.

## 7. NON-LOCAL TELECOMMUNICATIONS TRAFFIC.

7.1 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.

7.2 When the Parties provide an access service connection between an IXC and each other, each Party will provide its own access services to the IXC. Each Party will bill its own access service rates to the IXC pursuant to the procedures described in Multiple Exchange Carrier Access Billing ("MECAB") document SR-BDS-000983, issued 5, June 1994. The Parties shall provide to each other the Switched Access Detail Usage Data and the Switched Access Summary Usage Data to bill for jointly provided switched access service, such as switched access Feature Groups B and D. The Parties agree to provide this data to each other at no charge.

7.3 If the procedures in the MECAB document are amended or modified, the Parties shall implement such amended or modified procedures within a reasonable period of time. Each Party shall provide the other Party the billing name, billing address, and carrier identification code ("CIC") of the IXCs that may utilize any portion of either Party's network in a Carrier/Company MPB arrangement in order to comply with the MPB Notification process as outlined in the MECAB document.

## 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 Affiliates, 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 Each Party shall call the other at the following telephone numbers, subject to later change pursuant to the notice section of this Agreement, 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.

T-Mobile USA NOC                      888/662-4662                      Company \_\_\_\_\_

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 two (2) years ("Initial Term"), unless earlier terminated as provided for in this Agreement, and shall continue in force and effect thereafter for successive month-to-month terms, until replaced by another agreement or terminated by either Party upon sixty (60) days written notice to the other.

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

- a. the FCC revokes, cancels, does not renew or otherwise terminates Carrier's 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.

11.3 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 sixty (60) 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.

## 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" includes Attachment 1 hereto and 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, liabilities, and duties of the assigning Party.

14.2 Nothing in this Agreement shall prohibit Carrier from enlarging its CMRS network through management contracts with third-parties for the construction and operation of a CMRS system under the Carrier's brand name and license. Traffic originating on such extended networks shall be treated as Carrier's 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 "Carrier 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, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, 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. Performance shall be excused only for the duration of the Force Majeure event, up to a maximum of ninety (90) days after which either Party may terminate the agreement.

21. GOVERNING LAW.

21.1 This Agreement shall be governed by and construed in accordance with the domestic laws of the state of Oregon as well as the Act 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 Act 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. 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.

### 23.2 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 or provisioning of services hereunder.

### 23.3 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.

### 23.4 Survival.

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

### 23.5 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.

## 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 customer, 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.

## 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 deemed to have been received on the date of service if served personally, on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Any notice shall be delivered using one of the alternatives mentioned in above 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: Stayton Cooperative Telephone Company  
Attention: Don Lawrence  
502 North Second Avenue, PO Box 477  
Stayton, OR 97383  
Telephone #: 503-769-2121  
Facsimile #: 503-769-1682

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

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

If to Carrier: T-Mobile USA, Inc.  
Attention: General Counsel  
CC: Director – Carrier Management  
12920 SE 38<sup>th</sup> St.  
Bellevue, WA 98006  
Telephone #: 425-378-4000  
Facsimile #: 425-378-4040

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.

No license under patents is granted by Carrier to Company, or by Company to Carrier, 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.

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.

T-Mobile USA, Inc.

Stayton Cooperative Telephone Company

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Attachment 1 Rates

1. Traffic Factor

A. Traffic Factor from Effective Date through December 31, 2004

Land-to-Mobile .32

Mobile-to-Land .68

B. Traffic Factor from January 1, 2005 through December 31, 2005

Land-to-Mobile .33

Mobile-to-Land .67

2. Usage Factors

Inter MTA Factor 2%

Percent Interstate Usage (PIU) 1.00

Intrastate Usage Percentage 0.0

3. Local Network Usage

3.1 Compensation Arrangement Rates

Each Party agrees to compensate the other for Local Traffic originated by the paying Party and completed on end user units subscribing to the paid Party's service.

Local Traffic           \$.02 per minute of use

3.2 Tandem Switching and Transport

Each Party agrees to compensate the other an additional \$.001 per minute of use for Local Traffic originated by the paying Party and completed on end user units subscribing to the paid Party's service to account for Tandem Switching and Transport.