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Idaho Public Utilities Commission  
Office of the Secretary  
RECEIVED

JUL 6 - 2007

Boise, Idaho

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

APPLICATION FOR APPROVAL OF  
NEGOTIATED AGREEMENT BETWEEN  
ALBION TELEPHONE COMPANY, INC.  
AND NTCH-IDAHO, INC. d/b/a CLEAR  
TALK

Case No.: ALB-T-07-03

**APPLICATION FOR APPROVAL OF  
NEGOTIATED AGREEMENT**

1. Albion Telephone Company, Inc. ("Albion"), through its attorneys Givens Pursley LLP, hereby files this Application for Approval of Negotiated Agreement ("Agreement") between Albion and NTCH-Idaho, Inc. d/b/a Clear Talk ("Clear Talk"). A copy of the Agreement is submitted herewith.
2. This Agreement was reached through voluntary negotiations between Albion and Clear Talk and is submitted for Commission review and approval pursuant to Section 252(e) of the Telecommunications Act of 1996.
3. Section 252(e)(2) of the Telecommunications Act of 1996 directs that a state Commission may reject an agreement reached through voluntary negotiations if the Commission finds that: the agreement discriminates against a telecommunications carrier not a party to the

agreement; or the implementation of the agreement is not consistent with the public interest, convenience and necessity.

4. Albion respectfully submits that the Agreement does not discriminate and is consistent the public interest, and, therefore requests that the Commission approve this Agreement expeditiously. Approval of this Agreement will enable the parties to implement the Agreement and provide their respective customers with increased local telecommunications services choices.

5. The designated representative of each Party, for purposes of responding to inquiries in this matter is:

For Albion Telephone Company, Inc.:  
Mike Dolezal  
Albion Telephone Company, Inc.  
P.O. Box 98  
Albion, ID 83311

With copy to:  
Conley E. Ward  
Michael C. Creamer  
Givens Pursley LLP  
601 W. Bannock Street  
P.O. Box 2720  
Boise, ID 83701-2720

For Clear Talk:  
Clear Talk  
233 N. Main  
Pocatello, ID 83204

With copy to:  
Cleartalk Wireless  
703 Pier Avenue, Suite B PMP #813  
Hermosa Beach, CA 90254

6. This Agreement does not affect the rights of non-parties and expeditious approval would further the public interest. Therefore, Albion requests that the Commission approve this Agreement without a hearing.

DATED this 6<sup>th</sup> day of July 2007.

GIVENS PURSLEY LLP

A handwritten signature in black ink, reading "Michael C. Creamer". The signature is written in a cursive style with a large, sweeping flourish at the end.

Michael C. Creamer

*Attorneys for Albion Telephone Company, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of July 2007, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

Jean Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
P.O. Box 83720  
Boise, ID 83720-0074


U.S. Mail  
 Facsimile  
 Overnight Mail  
 Hand Delivery  
 E-mail

Clear Talk  
233 N. Main  
Pocatello, ID 83204

U.S. Mail  
 Facsimile  
 Overnight Mail  
 Hand Delivery  
 E-mail

Clartalk Wireless  
703 Pier Avenue, Suite B PMP #813  
Hermosa Beach, CA 90254

U.S. Mail  
 Facsimile  
 Overnight Mail  
 Hand Delivery  
 E-mail

  
Michael C. Creamer

**RECIPROCAL COMPENSATION AGREEMENT**

**BETWEEN**

**ALBION TELEPHONE COMPANY**

**AND**

**NTCH-IDAHO, INC.  
d/b/a CLEAR TALK**

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## **ARTICLE I**

### **INTRODUCTION**

This Agreement is effective as of the 26<sup>th</sup> day of June 2007 (the "Effective Date"), by and between Albion Telephone Company, an Idaho corporation, ("Albion") and NTCH-Idaho, Inc., an Idaho corporation dba Clear Talk ("Clear Talk").

### **RECITALS**

WHEREAS, Albion is an incumbent Local Exchange Carrier in the State of Idaho and

WHEREAS, Clear Talk is a Commercial Mobile Radio Service provider of two-way mobile communications services; and

WHEREAS, the Parties acknowledge that Albion is entitled to maintain that it is a rural telephone company (as defined in 47 U.S.C. § 153) as provided by 47 U.S.C. § 251(f). By entering into this Agreement, Albion is not waiving its right to maintain that it is a rural telephone company and its right to maintain that it is exempt from Section 251(c) under 47 U.S.C. § 251(f) of the Act; and

WHEREAS, Albion and Clear Talk exchange calls between their networks and wish to establish compensation arrangements for these calls.

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

## **ARTICLE II**

### **1. DEFINITIONS**

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this contract are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below:

1.1 "Act" means the Communications Act of 1934 (47 U.S.C. §§ 151 et seq.), as amended, including the Telecommunications Act of 1996.

1.2 "As Defined in the Act", means as specifically defined by the Act, as may be interpreted from time to time by the FCC, the Commission, or federal courts.

1.3 "As Described in the Act" means as described in or required by the Act, as may be interpreted from time to time by the FCC, the Commission, or federal courts.

1.4 "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than ten (10) percent. 47 U.S.C. § 153(1).

1.5 "Commercial Mobile Radio Services" or "CMRS" means a radio communication service between mobile stations or receivers and land stations, or by mobile stations communicating among themselves that is provided for profit and that makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public. 47 C. F. R. Part 20.

1.6 "Commission" means the Idaho Public Utilities Commission.

1.7 "Effective Date" means the date first above written.

1.8 "FCC" means the Federal Communications Commission.

1.9 "Interexchange Carrier" or "IXC" means a carrier, other than a CMRS carrier or LEC, that provides or carries, directly or indirectly, InterLATA Service or IntraLATA Toll Traffic.

1.10 "InterLATA Service" means telecommunications between a point located in a local access and transport area and a point located outside such area.

1.11 "IntraLATA Toll Traffic," means those station calls that originate and terminate within the same local access and transport area and that are carried outside Albion's Local or EAS Service Area.

1.12 "Local Exchange Routing Guide" or "LERG" is the reference customarily used to identify NPA-NXX routing and homing information, as well as network element and equipment designation.

1.13 "Local Access and Transport Area" or "LATA" means a contiguous geographic area:

(A) Established before February 8, 1996, by a Bell operating company such that no exchange area includes points within more than 1 metropolitan statistical area, consolidated metropolitan statistical area, or State, except as expressly permitted under the AT&T Consent Decree; or

(B) Established or modified by a Bell operating company after February 8, 1996, and approved by the Commission.



1.14 "Local Service Area" means the geographic area defined by the Commission for Albion. For Albion, its Local Service Area is its local exchange area as defined by its Commission-approved tariff.

1.15 "Section 251(b)(5) Traffic" is defined for purposes of determining compensation under this Agreement as traffic between Albion and Clear Talk that, at the beginning of a call, originates and terminates within the (MTA-36). However, "Section 251(b)(5) Traffic" does not include traffic that Albion delivers to Clear Talk over the facilities of an IXC.

For purposes of determining the originating and terminating points for application of Reciprocal Compensation, the origination and termination point for each Party shall be:

Albion: The end office switch serving the calling or called party;

Clear Talk: The cell site or access point location which services the calling or called party at the beginning of the call.

1.16 "Local Exchange Carrier" or "LEC" means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c) of the Act, except to the extent that the Federal Communications Commission finds that such service should be included in the definition of such term. 47 U.S.C. §153(26).

1.17 "Major Trading Area" or "MTA" means the Major Trading Area designated by the FCC in 47 C. F. R. Part 24.202.

1.18 "Non-Section 251(b)(5) Traffic"— means all traffic that is not Section 251(b)(5) Traffic as defined in Section 1.15 hereof.

1.19 "NPA" or the "Number Plan Area" also referred to as an "area code" refers to the three-digit code which precedes the NXX in a dialing sequence and identifies the general calling area within the North American Numbering Plan scope to which a call is to be routed (i.e., NPA/NXX-XXXX.).

1.20 "NXX" means the three-digit code, which appears as the first three digits of a seven-digit telephone number within a valid NPA or area code.

1.21 "Party" means either Albion or Clear Talk, and "Parties" means Albion and Clear Talk.

1.22 "POI" or "Point of Interconnection" means the point designated by two telecommunications carriers at which one carrier's responsibility for service begins and the other carrier's responsibility ends..

1.23 "Reciprocal Compensation" means an arrangement between two carriers in which each receives the same compensation rate from the other carrier for the transport and termination of Section 251(b)(5) Traffic, as defined in Section 1.15 above, that originates on the network facilities of the other carrier.

1.24 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. 47 U.S.C. § 153(43).

1.25 "Telecommunications Carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. § 226(a)(2)).

1.26 "Telecommunications Services" means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

1.27 "Termination" means the switching of telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called Party's premises or mobile handset.

1.28 "Transit Traffic" is traffic that originates on one provider's network; "transits" one or more other provider's networks substantially unchanged, and terminates to yet another provider's network.

1.29 "Transport" means the transmission and any necessary tandem switching of telecommunications traffic subject to Section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

## **2. INTERPRETATION AND CONSTRUCTION**

All references to Sections, Exhibits, Attachments and Schedules shall be deemed to be references to Sections of, Exhibits of, Attachments of and Schedules to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument or other third party offering, guide or practice, statute, regulation, rule or tariff is for convenience of reference only and is not intended to be a part of or to affect the meaning of a rule or tariff as amended and supplemented from time-to-time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

### **3. SCOPE**

3.1 This Agreement is intended, inter alia, to describe and enable specific Reciprocal Compensation arrangements between the Parties. This Agreement does not obligate either Party to provide arrangements not specifically provided for herein.

3.2 This Agreement establishes the traffic subject to Reciprocal Compensation between the CMRS network of Clear Talk and the LEC network of Albion related to the exchange of Section 251(b)(5) Traffic, provided that the service provided by Clear Talk to its customer is a two-way mobile service as defined in 47 U.S.C. § 153(27). Clear Talk does not currently provide fixed wireless services in Albion's Local Service Area. Clear Talk agrees that it will provide Albion prior notice of its intent to launch fixed wireless services in Albion's Local Service Area. Upon Albion's receipt of such notice, the Parties agree to negotiate an appropriate agreement or an Amendment to this Agreement, which will address the exchange of such traffic.

3.3 This Agreement relates to exchange of traffic between Albion and Clear Talk. Clear Talk represents that it is a CMRS provider of telecommunications services to subscribers in MTA-36. Additions or changes to Clear Talk's NPA/NXXs will be as listed in the Local Exchange Routing Guide ("LERG") under Clear Talk's Operating Company Numbers ("OCNs") specified in Attachment A. Albion NPA/NXX(s) are listed in the LERG under the OCN specified in Attachment A.

3.4 This Agreement does not cover Clear Talk one-way paging service traffic.

3.5 Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party.

3.6 Traffic that is exchanged through an Interexchange Carrier is not subject to Reciprocal Compensation under this Agreement.

### **4. SERVICE AGREEMENT**

4.1 Description of Arrangements: This Agreement provides for the compensation of Section 251(b)(5) Traffic arising from indirect interconnection arrangements. This Agreement does not pertain to obligations under Section 251(c) of the Act between the networks of Albion and Clear Talk. Clear Talk and Albion do not have direct connection and exchange Section 251(b)(5) Traffic solely via facilities of Qwest Communications ("Qwest"). The POI will be the Albion meet-point with the third party transit service provider (i.e., Qwest).. Each Party shall be financially and operationally responsible for the entire costs of providing facilities from its network to the point of interconnection.

4.2 To the extent that Clear Talk has entered into or may enter into contractual arrangements with a third party transit provider for the delivery of Clear Talk traffic to the network of Albion for termination to a Albion customer, Albion will accept this traffic subject to the compensation arrangement outlined in Section 5 below. To the extent that Albion has entered into or may enter into contractual arrangements with a third party transit provider for the delivery of Albion traffic to the network of Clear Talk, for termination to Clear Talk's customers, Clear Talk will accept this traffic subject to the compensation arrangement outlined in Section 5 below.

## **5.0 COMPENSATION**

- 5.1 Traffic Subject to Reciprocal Compensation. Reciprocal compensation is applicable for Transport and Termination of Section 251(b)(5) Traffic and is related to the exchange of traffic described in Section 4. For the purposes of billing compensation for Section 251(b)(5) Traffic shall be counted in one minute increments at each terminating switch and billed monthly by each entity at the rate described in attachment B.
- 5.2 The Parties acknowledge that the preferred approach would be for the terminating carrier to record and measure actual traffic. In the absence of such recording ability, the billed minutes will be based upon actual usage recorded and/or records/reports provided by the transiting carrier. Measured usage begins when the terminating recording switch receives answer supervision from the called end-user and ends when the terminating recording switch receives or sends disconnect (release message) supervision, whichever occurs first. The measured usage is aggregated at the end of the measurement cycle and rounded to a whole minute. Billing for Section 251(b)(5) Traffic shall be based on the aggregated measured usage less traffic that is deemed Non-Section 251(b)(5) Traffic based on the default factor provided in Section 5.4.3. If actual traffic measurements of Section 251(b)(5) Traffic are not available to Clear Talk, the traffic factors identified in Attachment B will be used for calculating reciprocal compensation.

The rate for Section 251(b)(5) Traffic shall be as specified in Attachment B.

The Parties agree to bill each other for Section 251(b)(5) Traffic as described in this Agreement unless the Section 251(b)(5) Traffic exchanged between the Parties is balanced and falls within an agreed upon threshold ("Traffic Balance Threshold"). The Parties agree that for purposes of this Agreement, the Traffic Balance Threshold is reached when the Section 251(b)(5) Traffic exchanged, both directly and indirectly, falls between 55% / 45% in either the wireless-to-landline or landline-to-wireless direction. When either Party's actual usage data for three (3) consecutive months indicates that the Section 251(b)(5) Traffic exchanged, both directly and indirectly, falls within the Traffic Balance Threshold , then

either Party may provide the other Party a written request, along with verifiable information supporting such request, to eliminate billing for Reciprocal Compensation. Upon written consent by the Party receiving the request, which shall not be withheld unreasonably, there will be no billing for Reciprocal Compensation on a going forward basis unless otherwise agreed to by both Parties, in writing. The Parties' agreement to eliminate billing for Reciprocal Compensation carries with it the precondition regarding the Traffic Balance Threshold discussed above.

5.2 Traffic Subject to Access Charges. Access charges apply to all Non-Section 251(b)(5) Traffic originating on the Clear Talk network and delivered to Albion by Clear Talk for termination to the Albion's customers. Clear Talk shall compensate Albion at Albion's applicable access tariff rate. The Parties agree that the InterMTA factor identified in Attachment B will be used to identify the percentage of traffic that is subject to access charge rates payable by Clear Talk.

5.3 Calculation of Payments and Billing.

5.3.1 Clear Talk will compensate Albion at the rates provided for in Attachment B for Section 251(b)(5) Traffic originating on the Clear Talk network and delivered to Albion for termination to its customers and for any access charges as provided in Section 5.2 above. Albion will compensate Clear Talk at the rate provided for in Attachment B for Section 251(b)(5) Traffic originating on the Albion network and delivered to Clear Talk.

5.3.2 Clear Talk shall prepare a monthly billing statement to Albion, reflecting the calculation of compensation due Clear Talk for Section 251(b)(5) Traffic relying on its own land-to-mobile Section 251(b)(5) Traffic records or records provided by the third-party tandem operator. Albion shall prepare a monthly billing statement to Clear Talk relying on mobile-to-land traffic records generated either by its own switch or provided by the third-party tandem operator.

The Parties acknowledge that Clear Talk may not have the technical capability to segregate land-to-mobile Section 251(b)(5) Traffic from Non-Section 251(b)(5) Traffic records at the time this Agreement takes effect. During the term of this Agreement and until Clear Talk is capable of segregating such records for billing to Albion, Clear Talk shall calculate the Albion originated Section 251(b)(5) Traffic land-to-mobile minutes for use in its monthly billing statement by (i) dividing the Section 251(b)(5) Traffic mobile-to-land minutes of use as billed by Albion by the mobile-to-land factor contained in Attachment B; and (ii) multiplying the results in (i) by the land-to-mobile percent contained in Attachment B. The calculated land-to-mobile Local Traffic minutes will be billed by Clear Talk at the rate contained in Attachment B.

- 5.3.3 Clear Talk and Albion may agree to revise the interMTA factor semi-annually. To change the percentage, a party must provide at least one month of auditable switch records which can be used to separate traffic between Section 251(b)(5) and Non-Section 251(b)(5) categories. This information must be provided to the other Party who has sixty (60) days to agree, in writing, before a change will be implemented. The actual recorded usage shall be the basis for billing, when available and verifiable.
- 5.3.4 Each party may request to inspect, during normal business hours, the records which are the basis for any monthly bill issued by the other Party and to request copies thereof provided that the requested records do not exceed 24 months in age from the date the monthly bill containing said record information was issued.

## **6.0 NOTICE OF CHANGES**

If a Party contemplates a change in its network, which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party, provided, however, that this provision shall not apply to changes necessitated by emergencies or other circumstances outside the control of the party modifying its network.

## **7.0 GENERAL RESPONSIBILITIES OF THE PARTIES**

7.1 Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting and, consistent with Section 5, measuring and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in an acceptable industry standard format, and to terminate the traffic it receives in that acceptable industry standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including The National Network Security Plan and The Emergency Preparedness Plan. Neither Party shall use any service related to or use any of the Services provided in this Agreement in any manner that prevents other persons from using their service or destroys the normal quality of service to other carriers or to either Party's customers, and subject to notice and a reasonable opportunity of the offending Party to cure any violation, either Party may discontinue or refuse service if the other Party violates this provision.

7.2 Each Party is solely responsible for the services it provides to its customers and to other Telecommunications Carriers.

7.3 Each Party is responsible for managing NXX codes assigned to it.

7.4 Each Party is responsible for obtaining Local Exchange Routing Guide (“LERG”) listings of the Common Language Location Identifier (“CLLI”) assigned to its switches.

## **8.0 TERM AND TERMINATION**

8.1 Subject to the provisions of Section 13, the initial term of this Agreement shall be for a ONE year (“Term”), which shall commence on the Effective Date. Upon execution of this Agreement, each party will bill the other the amount due from the Effective Date through the date of execution, and the other party will pay this amount within 30 days of the date it receives the invoice. After this, the monthly billing as outlined in Section 5.4.2 above shall apply to traffic exchanged between the Parties. Upon conclusion of the Term, this Agreement shall continue in effect for consecutive one (1) month terms until either Party gives the other Party at least thirty (30) calendar days written advance notice of termination. Where a notice of termination is given, either Party may, prior to the actual termination date, give notice under Section 252 of the Act or 47 C.F.R. § 20.11(f) of its desire to negotiate a successor agreement, in which case this Agreement shall continue in effect until the earlier of the date when a new agreement becomes effective, or the date when all relevant time periods and extensions of such periods for negotiation and/or arbitration under the Act have passed with no new agreement having become effective.

8.2 The Parties agree that disputed and undisputed amounts due under this Agreement shall be handled as follows:

8.2.1 If any portion of an amount due to a Party (the “Billing Party”) under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the “Non-Paying Party”) shall, within thirty (30) days of its receipt of the invoice containing such disputed amount, give written notice to the Billing Party of the amounts it disputes (“Disputed Amounts”) and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due all undisputed amounts to the Billing Party. The Parties will work together in good faith to resolve issues relating to the disputed amounts. If the dispute is resolved such that payment is required, the Non-Paying Party shall pay the disputed amounts with interest at one and one-half percent (1-1/2%) per month.

8.2.2 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at one and one-half percent (1-1/2%) per month.

8.2.3 Undisputed amounts shall be paid within thirty (30) days of receipt of invoice from the Billing Party.

8.3 Upon termination or expiration of this Agreement in accordance with this Section:

- (a) Each Party shall comply immediately with its obligations as set forth in Section 8.2 above;
- (b) Each Party shall promptly pay all undisputed amounts (including any late payment charges) owed under this Agreement; and
- (c) Each Party's indemnification obligations shall survive termination or expiration of this Agreement.

8.4 Either Party may terminate this Agreement in whole or in part in the event of a default of the other Party, provided, however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and the defaulting Party does not correct the alleged default within thirty (30) days after receipt of written notice thereof.

#### **9.0 CANCELLATION CHARGES**

Except as provided herein, no cancellation charges shall apply.

#### **10.0 NON-SEVERABILITY**

Each party recognizes that the other party must provision facilities in order to allow for exchange of traffic under this Agreement, and agrees that compensation for establishing and provisioning these facilities is non-severable from provisioning of such facilities.

#### **11.0 INDEMNIFICATION**

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

- (1) damage to tangible personal property or for personal injury proximately caused by the negligence or willful misconduct of the Indemnifying Party, its employees, agents or contractors;
- (2) claims for libel, slander, or infringement of copyright arising from the material transmitted over the Indemnified Party's facilities arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's customers; and



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

11.2 The Indemnified Party will notify the Indemnifying Party promptly in writing of any claims, lawsuits, or demands by customers 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 the defense of such claim, lawsuit or demand.

(1) In the event the Indemnifying Party does not promptly request to assume 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 actual loss, cost liability, damage and expense.

(2) In the event the Party otherwise entitled to indemnification from the other elects in writing to decline such indemnification, then the Party making such written election shall, at its own expense, assume all costs of defense and settlement of the claim, lawsuit or demand.

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

## **12.0 LIMITATION OF LIABILITY**

12.1 No liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

12.2 Except as otherwise provided in Section 11.0, 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.

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

### **13.0 REGULATORY APPROVAL**

The Parties understand and agree that this Agreement will be filed with the Commission, and to the extent required by FCC rules may thereafter be filed with the FCC. The preparation of any such filings shall be the responsibility of Albion. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252(e) of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Commission or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Further, this Agreement may be subject to change, modification, or cancellation as may be required by a final order of a regulatory authority or court in the exercise of its lawful jurisdiction.

The Parties agree that their entrance into this Agreement is without prejudice to any positions they may have taken previously, or may take in future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements covered in this Agreement.

### **14.0 CHANGE IN LAW**

The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the text of the Telecommunications Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date ("Applicable Rules"). In the event of any amendment to the Telecommunications Act, any effective legislative action or any effective, final regulatory or judicial order, rule, regulation, arbitration award, dispute resolution procedures under this Agreement or other legal action purporting to apply the provisions of the Telecommunications Act to the Parties or in which the FCC or the Commission makes a generic determination that is generally applicable which revises, modifies or reverses the Applicable Rules (individually and collectively, Amended Rules), either Party may, to the extent permitted or required, by providing written notice to the other party, require that the affected provisions of this Agreement be renegotiated in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions of each such Amended Rules relating to any of the provisions in this Agreement.

### **15.0 MISCELLANEOUS**

#### **15.1 Authorization**

15.1.1 Albion is a corporation duly organized, validly existing and in good standing under the laws of the State of Idaho and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

15.1.2 Clear Talk is an assumed business name for NTCH-Idaho, Inc., an Idaho corporation duly organized, validly existing and in good standing under the laws of the State of Idaho, and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, subject to any necessary regulatory approval.

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

15.3 Independent Contractors. Neither this Agreement, nor any actions taken by Clear Talk or Albion in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between Clear Talk and Albion, or any relationship other than that of co-carriers. Neither this Agreement, nor any actions taken by Clear Talk or Albion in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between Clear Talk and Albion end users or others.

15.4 Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). If any Force Majeure condition occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all commercially reasonable steps to correct the Force Majeure condition. During the pendency of the Force Majeure, the duties of the Parties under this Agreement affected by the Force Majeure condition shall be abated and shall resume without liability thereafter.

#### 15.5 Confidentiality

15.5.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its "Representatives" and

with a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with Section 15.5.2 of this Agreement.

15.5.2 If any Receiving Party is required by any governmental authority or by applicable law to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.

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

15.6 Governing Law. This Agreement shall be governed by the laws of the State of Idaho without reference to conflict of law provisions, except to the extent that Federal law governs. Notwithstanding the foregoing, the Parties may seek resolution of disputes under this Agreement by the FCC, the Commission, or the Idaho state court, or federal court, as appropriate.

15.7 Taxes. Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such

purchasing Party for such services (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide such sale for resale tax exemption certificate will result in no exemption being available to the purchasing Party.

15.8 Assignment. Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party which consent will not be unreasonably withheld; provided that either Party may assign this Agreement to a corporate Affiliate or an entity acquiring all or substantially all of its assets or equity by providing written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void *ab initio*. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

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

15.10 Notices. Notices given by one Party to the other Party under this Agreement shall be in writing and shall be: (i) delivered personally; (ii) delivered by express delivery service; or (iii) mailed, certified mail, return receipt to the addresses of the Parties specified in Attachment A, or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of: (i) the date of actual receipt; (ii) the next business day when notice is sent via express mail or personal delivery; or (iii) three (3) days after mailing in the case of certified U.S. mail.

15.11 Publicity and Use of Trademarks or Service Marks. Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent, which approval may be withheld in a Party's sole and absolute discretion.

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

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

15.14 No License. No license under patents, copyrights, or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party, or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

15.15 Technology Upgrades. Nothing in this Agreement shall limit either Parties' ability to upgrade its network through the incorporation of new equipment, new software or otherwise, provided it is to industry standards, and that the Party initiating the upgrade shall provide the other Party written notice at least ninety (90) days prior to the incorporation of any such upgrade in its network which will materially impact the other Party's service. Each Party shall be solely responsible for the cost and effort of accommodating such changes in its own network.

15.16 Entire Agreement. The terms contained in this Agreement and any Schedules, Exhibits, tariffs and other documents or instruments referred to herein are hereby incorporated into this Agreement by reference as if set forth fully herein, and constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications. This Agreement may only be modified in writing.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as the dates listed below.

<b>NTCH-Idaho, Inc.</b>	<b>ALBION TELEPHONE COMPANY</b>
By: <u>[Signature]</u> Name: <u>Thomas Curry</u> Title: <u>President</u> Date: <u>6-20-07</u>	By: <u>[Signature]</u> Name: <u>Mike Dolzal</u> Title: <u>General Manager</u> Date: <u>6/26/07</u>

**Attachment A**

Applicable OCNs and Contact Information

**OCNs**

Albion  
2213

Clear Talk  
2096

**CONTACT INFORMATION**

To: **Clear Talk**

To: **ALBION**

Clear Talk 233 N. Main Pocatello, Idaho 83204	Albion Telephone Company P.O. Box 98 Albion, ID 83311  Attn: Mike Dolezal
With a copy to: Cleartalk Wireless 703 Pier Ave. Suite B PMP #813 Hermosa Beach, CA 90254  Attn:	With a copy to: Michael C. Creamer Givens Pursley LLP 601 W. Bannock Street P.O. Box 2720 Boise, ID 83701-2720 Attn: Michael C. Creamer



## **Attachment B**

### Rates and Ratios for Calculating Compensation

- 1) The rate for Section 251(b)(5) Traffic shall be \$0.0225 per minute of use.
- 2) The interMTA factor is 0.0%. The rate for interMTA traffic is based on Albion's applicable access tariff.
- 3) Traffic Factors:

Traffic shall be measured by total minutes measured at terminating switch.