

No. _____

STATE OF TEXAS,

§
§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

and

TRAVIS COUNTY, TEXAS

AT&T CORP.

_____ JUDICIAL DISTRICT

ASSURANCE OF VOLUNTARY COMPLIANCE

On this date, came on for hearing, the State of Texas, (hereinafter "State") acting by and through Attorney General Greg Abbott, and AT&T Corp. (hereinafter "AT&T" or "Respondent"), and respectfully submit the following Assurance of Voluntary Compliance (hereinafter "AVC") for the Court's approval and filing in accordance with the Deceptive Trade Practices-Consumer Protection Act ("DTPA"), TEX. BUS. & COM. CODE. ANN. § 17.58.

I.

DEFINITIONS

1.1 For purposes of this AVC, the following definitions shall apply:

- A. "AT & T" means AT & T Communicatons of Texas, L.P., AT & T Corp., or any other affiliated entity, subsidiary, parent, successor or assign, controlling or controlled by AT & T. AT & T is an interexchange carrier registered with the Public Utility Commission of Texas ("PUC") to provide intrastate interexchange telecommunications services. AT & T is also a local exchange company certificated by the Commission to provide local exchange services;
- B. "Basic Rate Plan" refers to the state-to-state direct-dialed long distance plan for which AT&T instituted a Monthly Recurring Charge ("MRC") on or about January

1, 2004;

- C. "CARE" means Customer Account Record Exchange. CARE is customer account information that is exchanged between a long distance telephone company and certain local exchange carriers that participate in the voluntary CARE process.
- D. "Clear and conspicuous" means that the required disclosure(s), when made in writing, or via television or the Internet, are presented in such a manner, given their size, color, contrast and proximity to any related information as to be readily apparent to the person to whom it is being disclosed. Nothing in the definition is intended to prohibit the use of a footnote, super (as in television advertising) or a hyperlink (as in Internet advertising) so long as those disclosures are otherwise clear and conspicuous;
- E. "Monthly Recurring Charge" or "MRC" refers to a \$3.95 charge that AT&T imposed upon certain long distance customers on or about January 1, 2004;
- F. "LEC" means Local Exchange Company;
- G. "PIC" means Primary Interchange Carrier. This term is used to refer to a long distance company that has been selected by the consumer to serve as the consumer's long distance service provider;
- H. "PUC" means the Public Utility Commission of Texas;
- I. "Assurance" or "AVC" means this Assurance of Voluntary Compliance; and
- J. "Parties" means AT&T and the Attorney General, collectively.

II.

STATE'S ALLEGATIONS

2.1 The Office of the Attorney General has alleged that the Respondent has violated the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §§ 17.41 *et seq.* (Vernon 2002 and Supp. 2004) (hereinafter "DTPA") by engaging in certain false, misleading or deceptive acts or practices relating to the Respondent's imposition of the MRC on certain Texas consumers beginning on or about January 1, 2004;

2.2 The Office of the Attorney General has alleged that it received a number of complaints alleging, *inter alia*, that AT&T repeatedly erroneously billed consumers, including: (i) consumers who were not AT&T customers; (ii) consumers who previously had notified AT&T that they wished to cancel their AT&T long distance service; and (iii) consumers who had no billing history with AT&T for an extended period of time. Moreover, some consumers have complained to the Office of the Attorney General that when they called AT&T to report billing errors, that AT&T representatives refused or failed to address these problems directly, and/or gave them misinformation about their rights and subjected them to persistent sales pitches. Finally, the State has also alleged that the written notices AT&T sent to consumers prior to the implementation of the MRC provided insufficient notice of the planned increase.

III.

AT&T'S RESPONSE

3.1 Effective January 1, 2004, AT&T added a \$3.95 MRC to the residential telephone bills of AT&T long distance customers enrolled in Respondent's interstate Basic Rate plan. The MRC was

not to be imposed on the following classes of consumers: AT&T residential long distance customers who were enrolled in one of AT&T's other domestic long distance calling plans; AT&T's long distance "Lifeline" plan; or any AT&T local service customer. AT&T alleges that implementation of the MRC did not, in any manner, change the product or the actual service provided to the customer. AT&T further alleges that the changes implemented in January 2004 were solely to the rate of the existing service;

3.2 Prior to implementation of the MRC, AT&T sent written notice to affected customers, posted advance notice on its website, filed a tariff with the Federal Communications Commission, and published a service guide pursuant to its AT&T Consumer Service Agreement;

3.3. Due to coding and systems processing errors, AT&T billed the MRC in error to certain of its residential long distance subscribers as well as to certain consumers who were not AT&T customers. AT&T erroneously billed the MRC charge to approximately 75,000 Texas consumers (about one-quarter of whom were billed the MRC in error due to erroneous CARE data provided to AT&T from the consumers' LEC); and

3.4 AT&T has processed refunds or bill credits for the Texas consumers whom AT&T identified as having been billed the MRC in error. AT&T further sent letters of apology to Texas consumers who were billed the MRC in error and who have received credits or refunds as part of AT&T's automatic adjustment process for the MRC billing error.

IV.

STIPULATIONS

4.1 The Office of the Attorney General and AT&T agree to and do not contest the entry of this AVC;

4.2 AT&T denies the allegations of the Office of the Attorney General. AT&T does not admit to any violations of the DTPA or any other state or federal law or rule. This AVC is being entered into by the Parties for the purpose of compromising disputed claims without the necessity for protracted and expensive litigation;

4.3 The corporate signatory hereto is an AT&T officer who is authorized to enter into this AVC and has read the AVC and agrees to entry of same; and

4.4 In consideration of the terms of this Assurance, the Office of the Attorney General releases AT&T, its subsidiaries, affiliates, successors, employees, officers, directors, and agents from all claims, complaints, demands, suits, actions or causes of action resulting from acts or omissions arising under the DTPA and which relate to the billing of the MRC and related charges or any consumer calls with AT&T relating to the billing of the MRC, or any other matters alleged or which could have been alleged under the DTPA which relate to AT&T's imposition of the MRC in Texas, and which occurred on or before the effective date of this AVC. This release does not and is not intended, however, to constitute a waiver of the right of the State of Texas to seek enforcement in a court of competent jurisdiction of AT&T's compliance with the terms contained herein. In addition, nothing in this release or AVC shall be construed as a waiver of any private rights, causes of action, or remedies of any person or consumer against AT&T with respect to its practices described in this AVC.

V.

TERMS OF COMPLIANCE

In consideration of this Assurance and in exchange for full settlement of all issues relating to the MRC as described herein, within 90 days of the effective date of this AVC, AT&T agrees to

comply with the following terms:

5.1 AT&T's customer care representatives who speak with a customer regarding their PIC status shall not represent to a consumer that he or she has selected AT&T as his or her PIC or is otherwise assigned to AT&T unless: (1) AT&T has received CARE from a local carrier specifying that the customer selected AT&T long distance service; (2) AT&T determines that there is AT&T toll usage on the customer's line indicating that the customer has selected AT&T as their long distance carrier; or (3) AT&T has obtained from the consumer a written, electronic, or oral authorization pursuant to Substantive Rule 26.130 of the Public Utility Commission of Texas, or according to AT&T's records the consumer selected AT&T as his/her long distance carrier prior to October 21, 2002, the date substantive Rule 26.130 became effective;

5.2 AT&T's customer care representatives who speak with customers concerning fees such as an MRC shall be required and instructed by AT&T not to represent to customers that the customer must pay a fee such as an MRC unless and until the customer care representative has first reviewed AT&T's records and verified that such records reflect that the customer in fact owes such fee(s);

5.3 AT&T's customer care representatives who speak with customers shall be required and instructed by AT&T not to represent to these customers that they will be impacted by a price increase such as the MRC unless the customer will in fact be impacted by such price increases;

5.4 AT&T shall not issue a notice of a price increase such as the implementation of an MRC for a specific long distance plan without including in such notice a clear and conspicuous disclosure accurately describing the plan and the terms of the plan affected by the increase;

5.5 AT&T shall require its agents to inform all customers who communicate via an electronic, oral or written complaint that they wish to cancel their long distance service of the following:

- (1) that the customer must contact his or her LEC to request cancellation of his/her AT&T service;
- (2) that, absent notification to AT&T from the LEC of the switch or termination, AT&T will remain the customer's long distance carrier; and
- (3) that the consumer can obtain information identifying the long distance carrier which he or she selected as his/her PIC by calling 700-555-4141 (or similar number that identifies the customer's long distance carrier);

5.6 AT&T shall require agents who provide customers with the information referenced in paragraph 5.5, above, to note the customer's complaint or inquiry in the customer's file together with a notation of the date of the inquiry and a notation that the disclosure required by paragraph 5.5 was given to the customer;

5.7 In all bills that AT&T sends directly to its customers, AT&T shall clearly and conspicuously disclose the mailing address where the customer can send AT&T written complaints or inquiries;

5.8 AT&T shall use its best efforts to maintain accurate customer lists and continue to update its customer records by promptly processing the CARE that it receives from LECs that participate in CARE;

5.9 Prior to the implementation of any future rate increases affecting Texas customers, AT&T shall adopt and implement reasonable business practices designed to assure that the implementation of such rate increases will not result in customers being billed in error as a result of coding or processing errors in related software systems;

5.10 Within 30 days of the date the PUC enters an order approving its Agreed Notice of Violation and Settlement Agreement (See Exhibit 2), AT&T shall re-notify via a letter all Texas Basic Rate

plan customers (as of the effective date of this Assurance) who are billed the MRC which will advise them of the following:

1. That, according to AT&T's records, they are AT&T residential long-distance customers assigned to AT&T's Basic Rate plan;
2. That AT&T imposes an MRC on Basic Rate plan customers and the amount of the charge;
3. How to obtain information on other AT&T calling plan options; and
4. How to disconnect AT&T service if they decide they do not want to continue their AT&T service.

A copy of the letter to be used to comply with paragraph 5.10 is attached hereto as Exhibit

1. The letter shall be sent by AT&T via United States First Class mail, and it will contain the following language on the outside of the envelope: "Notice of Customer Rights." This language will be in bold or in red ink and it cannot be written in less than 12-point font;

5.11 AT&T shall not report any negative credit information to a credit reporting agency for non-payment or late payment of the MRC for any person who was improperly billed the MRC. AT&T will also take all necessary action to remove and correct negative information that AT&T may have already reported, if any, with respect to such persons;

5.12 AT&T shall not attempt to collect payment of the MRC from any person who was improperly billed the MRC and who has not paid the MRC; and

5.13 AT&T shall establish a FAQ (frequently asked question) in the consumer services section of its website that describes the Basic Rate plan, and the MRC on this plan.

VI.

ATTORNEYS' FEES, COSTS, AND REFUNDS/CREDITS

6.1 Pursuant to the Agreed Notice of Violation and Settlement Agreement entered into by the PUC of Texas and AT & T regarding imposition of the MRC, the PUC shall have and recover a settlement payment from Respondent in the amount of One Hundred Ninety-Five Thousand Dollars (\$195,000.00), which will be due and payable as set forth in that Agreement. A true and correct copy of such Agreement is attached hereto as Exhibit 2;

6.2 The State of Texas, through the Office of the Attorney General of Texas, shall recover attorney's fees and costs in the amount of One Hundred Ninety-Five Thousand Dollars from Respondent. This total amount of \$195,000.00 shall be due no later than forty-five (45) days after entry of this Assurance and shall be paid by AT&T via company check and it shall be made payable to the Office of the Attorney General of Texas. The check shall contain the Attorney General's case number (041959099), and shall be delivered to the Office of the Attorney General, Consumer Protection & Public Health Division, 300 West 15th Street, Floor 9, William Clements Building, Austin, TX, 78701; and

6.3 The State of Texas and Respondent hereby acknowledge that Respondent has processed refunds and bill credits in the amount of \$ 805,393 for the Texas consumers whom AT&T identified as having been billed the MRC in error.

VII.

MISCELLANEOUS PROVISIONS

7.1 This AVC is governed by § 17.58 of the DTPA. The Parties agree that AT&T shall be obligated to comply with the remedial measures provided in paragraphs 5.1, 5.5, 5.6, 5.7, and 5.13

of this AVC for a period of eighteen (18) months after the effective date of this AVC and that after such time the measures provided in these paragraphs shall terminate and be of no force or effect;

7.2 AT&T agrees that it will not represent, directly, or by implication, that this Court, the Office of the Attorney General of Texas, or the PUC has approved any of AT&T's business practices;

7.3 This AVC shall be deemed effective the day it is entered by the Court. To the extent that the provisions of this AVC conflict with any Texas, local or federal law that now exists, or is later enacted or amended, such law and not this AVC shall apply where such conflict exists. For the purpose of this AVC, a conflict exists if conduct prohibited by this AVC is required or expressly permitted by such Texas, local, or federal law, or if conduct required by this AVC is prohibited by such Texas, local, or federal law;

7.4 The Parties acknowledge that AT&T will enter into a settlement agreement with the PUC regarding imposition of the MRC that is substantially similar to this AVC (see Exhibit 2). The Parties do not intend that AT&T is obligated to duplicate any measures imposed by these settlement documents; and

7.5 All relief not granted herein is hereby denied.

AGREED this 12th day of May, 2005.

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
Chief, Consumer Protection & Public Health Division



PEDRO PEREZ, JR.

GABRIEL GARCIA

D. ESTHER CHAVEZ

Assistant Attorney Generals

Consumer Protection & Public Health Division

State Bar No. 00788184

State Bar No. 00785461

State Bar No. 04162200

P. O. Box 12548

Austin, Texas 78711

(512) 475-4656

FAX (512) 473-8301

ATTORNEYS FOR THE STATE OF TEXAS

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:

By: Louis N. DeLong
Vice President, Consumer Services
AT&T
340 Mt. Kemble Avenue
Morristown, New Jersey 07962

By: E. LaMair, III
Edward H. LaMair, III
SBN#: 00794133
919 Congress Avenue, Suite 900
Austin, Texas 78701-2444
512-370-2074
832-213-0148 (FAX)

ATTORNEYS FOR AT&T

EXHIBIT 1

EXHIBIT 1

Date: _____, 2005

[Customer Name]
[Customer Address]
[Customer Number]

Dear Customer:

Our records indicate that you are an AT&T long distance customer and are on our state to state Basic Rate plan. On January 1, 2004, AT&T began charging a \$3.95 monthly fee for this plan, regardless of whether you actually make long distance calls.

If this plan no longer suits your needs, you have the following options:

(1) You may enroll in a different AT&T long distance calling plan. Call us at 1-800-222-0300 or visit us on the Web at www.att.com/home for information on other plans.

(2) You may cancel or switch your long distance telephone company and stop this \$3.95 monthly charge. In order to do so, you must take one of the following actions:

- To switch to a different long distance company, contact your local telephone company. Your local telephone company will notify us of your decision. You can also call the new long distance company you have chosen, and they will assist you in signing up for their service and explain their charges and rate plans.
- To cancel your AT&T long distance service without selecting a new long distance provider, simply contact your local telephone company and let them know that you wish to discontinue your AT&T long distance service. Your local telephone company will notify us of your decision and explain any fees and charges associated with this switch.

IMPORTANT: YOU MUST CONTACT YOUR LOCAL TELEPHONE COMPANY TO TERMINATE YOUR AT&T LONG DISTANCE SERVICE. IF YOU DO NOT TAKE ONE OF THE ACTIONS ABOVE, YOUR AT&T LONG DISTANCE SERVICE WILL CONTINUE AND YOU WILL BE SUBJECT TO THE \$3.95 MONTHLY CHARGE AND ANY OTHER APPLICABLE AT&T RATES AND CHARGES.

If you wish to verify which company currently provides your long distance service, you can simply call toll free 1-700-555-4141 from your home telephone or contact your local telephone company.

Sincerely,

AT&T Consumer Services

EXHIBIT 2

AGREED NOTICE OF VIOLATION	§	PUBLIC UTILITY COMMISSION
AND SETTLEMENT AGREEMENT	§	
REGARDING AT&T	§	OF TEXAS
COMMUNICATIONS OF TEXAS, LP'S	§	
ALLEGED VIOLATION PURA AND/OR	§	
COMMISSION RULES		

AGREED NOTICE OF VIOLATION AND SETTLEMENT AGREEMENT

NOW COME the Legal and Enforcement Division ("LED") of the Public Utility Commission of Texas ("Commission") and AT&T Communications of Texas, L.P., ("AT&T" or the "Company") (collectively referred to herein as "Signatories"), who hereby enter into and agree upon the terms of this Agreed Notice of Violation and Settlement Agreement ("Agreement") based on the Company's alleged violation of the Public Utility Regulatory Act¹ ("PURA") and/or the Commission's Substantive Rules.

I. INTRODUCTION

1.1 WHEREAS, the LED has concluded an informal investigation of whether certain of AT&T's billing practices (more fully described below) violated PURA and/or the Commission's Substantive Rules, including but not limited to alleged violations of the Public Utility Regulatory Act and/or the Commission's Substantive Rules regarding unauthorized carrier charges (also known as "cramming").

1.2 WHEREAS, the Signatories participated in informal discussions regarding AT&T's alleged

¹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 -64.158 (Vernon 1998 & Supp. 2004).

violations and a recommended amount for an administrative penalty;

1.3 NOW, THEREFORE, the Signatories, through their undersigned representatives, agree to and recommend for approval by the Commission as a means of resolving this docket, the following provisions of this Agreement:

1.4 This Agreement is intended to constitute a report of settlement to the Commission as required by P.U.C. PROC. R. 22.246(g).

1.5 The Signatories agree that the provisions of this Agreement shall be subject to final approval by the Commission by incorporation of such provisions by reference in a final order by the Commission.

1.6 The Signatories agree that this Agreement shall be effective on the date a final order is issued by the Commission. Upon approval, the final order, as well as this Agreement, shall have the same force and effect as any Commission order, and any violation of the terms of this Agreement shall constitute a violation of a Commission order entitling the Commission to exercise any and all rights to seek any and all remedies authorized by law for the enforcement of a Commission order.

1.7 AT&T admits to the jurisdiction of the Commission for purposes of this Agreement and the jurisdiction and authority of the Commission to enter a final order approving this Agreement.

II. DEFINITIONS

2.1 For purposes of this Agreement, the following definitions shall apply:

- A. "AT&T" means AT&T Communications of Texas, L.P., AT & T Corp., or any other affiliated entity, subsidiary, parent, successor or assign, controlling or controlled by AT & T. AT & T is an interexchange carrier registered with the Public Utility

Commission of Texas ("PUC") to provide intrastate interexchange telecommunications services. AT & T is also a local exchange company certificated by the Commission to provide local exchange services;

- B. "Basic Rate Plan" refers to the state-to-state direct-dialed long distance plan for which AT&T instituted a Monthly Recurring Charge ("MRC") on or about January 1, 2004;
- C. "CARE" means Customer Account Record Exchange. CARE is customer account information that is exchanged between a long distance telephone company and certain local exchange carriers that participate in the voluntary CARE process.
- D. "Clear and conspicuous" means that the required disclosure(s), when made in writing, or via television or the Internet, are presented in such a manner, given their size, color, contrast and proximity to any related information as to be readily apparent to the person to whom it is being disclosed. Nothing in the definition is intended to prohibit the use of a footnote, super (as in television advertising) or a hyperlink (as in Internet advertising) so long as those disclosures are otherwise clear and conspicuous;
- E. "Monthly Recurring Charge" or "MRC" refers to a \$3.95 charge that AT&T imposed upon certain long distance customers on or about January 1, 2004;
- F. "LEC" means Local Exchange Company;
- G. "PIC" means Primary Interchange Carrier. This term is used to refer to a long distance company that has been selected by the consumer to serve as the consumer's long distance service provider;

- H. "PUC" means the Public Utility Commission of Texas;
- I. "Agreement" means this Agreed Notice of Violation and Settlement Agreement; and
- J. "Parties" means AT&T and the LED, collectively.

III. ALLEGATIONS

3.1 The LED has alleged that AT&T's imposition of the MRC on Texas consumers beginning in or about January 2004 violated PURA and/or the Commission's Substantive Rules, including but not limited to alleged violations of PURA § 17.151 (Requirements for Submitting Charges), and PUC Subst. R. 26.32 (Protection Against Unauthorized Billing Charges ("Cramming")). The LED alleges that the MRC implemented by AT&T failed to:

- a) thoroughly inform the customer of the product or service being offered, including all associated charges,
- b) demonstrate that the customer clearly and explicitly consented to obtain the product or service offered and to have the associated charges appear on the customer's telephone bill, and
- c) verify customer consent.

3.2 The LED has alleged that it received a number of complaints alleging, *inter alia*, that AT&T repeatedly erroneously billed consumers, including: (i) consumers who were not AT&T customers; (ii) consumers who previously had notified AT&T that they wished to cancel their AT&T long distance service; and (iii) consumers who had no billing history with AT&T for an extended period of time. Moreover, some consumers have complained to the LED that when they called AT&T to report billing errors, that AT&T representatives refused or failed to address these problems directly, and/or gave them misinformation about their rights and subjected them to persistent sales pitches. Finally, the State has also alleged that the written notices AT&T sent to consumers prior to the

implementation of the MRC provided insufficient notice of the planned increase.

IV. AT&T'S RESPONSE

4.1 Effective January 1, 2004, AT&T added a \$3.95 MRC to the residential telephone bills of AT&T long distance customers enrolled in Respondent's interstate Basic Rate plan. The MRC was not to be imposed on the following classes of consumers: AT&T residential long distance customers who were enrolled in one of AT&T's other domestic long distance calling plans; AT&T's long distance "Lifeline" plan; or any AT&T local service customer. AT&T alleges that implementation of the MRC did not, in any manner, change the product or the actual service provided to the customer. AT&T further alleges that the changes implemented in January 2004 were solely to the rate of the existing service;

4.2 Prior to implementation of the MRC, AT&T sent written notice to affected customers, posted advance notice on its website, filed a tariff with the Federal Communications Commission, and published a service guide pursuant to its AT&T Consumer Service Agreement;

4.3. Due to coding and systems processing errors, AT&T billed the MRC in error to certain of its residential long distance subscribers as well as to certain consumers who were not AT&T customers. AT&T erroneously billed the MRC charge to approximately 75,000 Texas consumers (about one-quarter of whom were billed the MRC in error due to erroneous CARE data provided to AT&T from the consumers' LEC); and

4.4 AT&T has processed refunds or bill credits for the Texas consumers whom AT&T identified as having been billed the MRC in error. AT&T further sent letters of apology to Texas consumers who were billed the MRC in error and who have received credits or refunds as part of AT&T's

automatic adjustment process for the MRC billing error.

V. STIPULATIONS

5.1 The LED and AT&T agree to and do not contest the entry of this Agreement;

5.2 AT&T denies the allegations of the LED. AT&T does not admit to any violations of the PURA or the Commission's Substantive rules or any other state or federal law or rule. This Agreement is being entered into by the Parties for the sole purpose of compromising disputed claims without the necessity for protracted and expensive litigation;

5.3 The corporate signatory hereto is an AT&T officer who is authorized to enter into this Agreement and has read the Agreement and agrees to entry of same; and

5.4 In consideration of the terms of this Agreement, the LED releases AT&T, its subsidiaries, affiliates, successors, employees, officers, directors, and agents from all claims, complaints, demands, suits, actions or causes of action resulting from acts or omissions arising out of the billing of the MRC, or any other matters alleged or which could have been alleged relating to AT&T's imposition of the MRC in Texas, and which occurred on or before the date of the effective date of this Agreement. This release does not and is not intended, however, to constitute a waiver of the right of the PUC to seek enforcement in a court of competent jurisdiction of AT&T's compliance with the terms contained herein.

VI. TERMS OF COMPLIANCE

In consideration of this Agreement and in exchange for full settlement of all issues relating to the MRC as described herein, within 90 days of the effective date of this Agreement, AT&T agrees to comply with the following terms:

6.1 AT&T's customer care representatives who speak with a customer regarding their PIC status **shall not** represent to a consumer that he or she has selected AT&T as his or her PIC or is otherwise assigned to AT&T unless: (1) AT&T has received CARE from a local carrier specifying that the customer selected AT&T long distance service; (2) AT&T determines that there is AT&T toll usage on the customer's line indicating that the customer has selected AT&T as their long distance carrier; or (3) AT&T has obtained from the consumer a written, electronic, or oral authorization pursuant to Substantive Rule 26.130 of the Public Utility Commission of Texas, or according to AT&T's records the consumer selected AT&T as his/her long distance carrier prior to October 21, 2002, the date substantive Rule 26.130 became effective;

6.2 AT&T's customer care representatives who speak with a customer concerning a fee such as an MRC shall be required and instructed by AT&T not to represent to customers that the customer must pay a fee such as an MRC unless and until the customer care representative has first reviewed AT&T's records and verified that such records reflect that the customer in fact owes such fee;

6.3 AT&T customer care representatives who speak with a customer shall be required and instructed by AT&T not to represent to these customers that they will be impacted by a price increase such as the MRC unless the customer will in fact be impacted by such prices increases;

6.4 AT&T **shall not** issue a notice of a price increase such as the implementation of an MRC for

a specific long distance plan without including in such notice a clear and conspicuous disclosure accurately describing the plan and the terms of the plan affected by the increase;

6.5 AT&T shall require its agents to inform all customers who communicate via an electronic, oral or written complaint that they wish to cancel their long distance service of the following:

- (1) that the customer must contact his or her LEC to request cancellation of his/her AT&T service;
- (2) that, absent notification to AT&T from the LEC of the switch or termination, AT&T will remain the customer's long distance carrier; and
- (3) that the consumer can obtain information identifying the long distance carrier which he or she selected as his/her PIC by calling 700-555-4141 (or similar number that identifies the customer's long distance carrier);

6.6 AT&T shall require agents who provide customers with the information referenced in paragraph 6.5, above, to note the customer's complaint or inquiry in the customer's file together with a notation of the date of the inquiry and a notation that the disclosure required by paragraph 6.5 was given to the customer;

6.7 In all bills that AT&T sends directly to its customers, AT&T shall clearly and conspicuously disclose the mailing address where the customer can send AT&T written complaints or inquiries;

6.8 AT&T shall use its best efforts to maintain accurate customer lists and continue to update its customer records by promptly processing the CARE that it receives from LECs that participate in CARE;

6.9 Prior to the implementation of any future rate increases affecting Texas customers, AT&T

shall adopt and implement reasonable business practices designed to assure that the implementation of such rate increases will not result in customers being billed in error as a result of coding or processing errors in related software systems;

6.10 Within 30 days of the Commission entering an order approving this agreement, AT&T shall re-notify via a letter all Texas Basic Rate plan customers (as of the effective date of this Agreement) who are billed the MRC which will advise them of the following:

1. That, according to AT&T's records, they are AT&T residential long-distance customers assigned to AT&T's Basic Rate plan;
2. That AT&T imposes an MRC on Basic Rate plan customers and the amount of the charge;
3. How to obtain information on other AT&T calling plan options; and
4. How to disconnect AT&T service if they decide they do not want to continue their AT&T service.

A copy of the letter to be used to comply with paragraph 6.10 is attached hereto as Exhibit 1. The letter must be sent by AT&T via United States First Class mail, and it must contain the following language on the outside of the envelope: "Notice of Customer Rights." This language shall be in bold or in red ink and it cannot be written in less than 12-point font;

6.11 AT&T shall not report any negative credit information to a credit reporting agency for non-payment or late payment of the MRC for any person who was improperly billed the MRC. AT&T will also take all necessary action to remove and correct negative information that AT&T may have already reported, if any, with respect to such persons;

6.12 AT&T shall not attempt to collect payment of the MRC from any person who was

improperly billed the MRC and who has not paid the MRC; and

6.13 AT&T shall establish a FAQ (frequently asked question) in the consumer services section of its website that describes the Basic Rate plan, and the MRC on this plan.

VII. SETTLEMENT PAYMENT, ATTORNEY FEES, AND CUSTOMER REFUNDS

7.1 AT&T hereby binds itself to pay, and LED agrees to accept, a settlement payment in the amount of One Hundred Ninety-Five Thousand Dollars (\$195,000) as complete satisfaction and settlement of all issues raised by this proceeding. AT&T agrees to remit payment of the full amount of the settlement payment on or before thirty (30) calendar days after the date the Commission issues a final order in this docket.

7.2 AT&T shall tender full payment of the settlement payment in the form of a check or wire transfer payable to the Public Utility Commission of Texas.

7.3 Pursuant to the Assurance of Voluntary Compliance ("AVC") entered into by the Attorney General of Texas and AT&T regarding imposition of the MRC, the Attorney General shall have and recover a settlement payment from AT&T in the amount of One Hundred Ninety-Five Thousand Dollars (\$195,000), which shall be due and payable as set forth in that AVC. A true and correct copy of such AVC is filed under seal as Confidential Exhibit 2.

7.4 Pursuant to paragraphs 7.1, 7.2, and 7.3, AT&T binds itself to pay as settlement payments in the aggregate amount of Three Hundred Ninety Thousand Dollars (\$390,000), as full and final settlement of the issues herein and in the Assurance of Voluntary Compliance.

7.5 The LED and AT&T hereby acknowledge that AT&T has processed refunds and bill credits in the amount of \$805,393 for the Texas consumers whom AT&T identified as having been billed the MRC in error.

7.6 Within 90 days of the date this Agreement is approved by the Commission and upon execution by the Parties of the confidentiality agreement attached hereto as Exhibit 3, AT&T will submit to the LED, pursuant to the confidentiality agreement, the following information: (1) the names of the persons who received the refunds and/or credits referenced in paragraph 7.5 above; (2) the names of the persons to whom AT&T sends the re-notice letter referenced in paragraph 6.10 above; and (3) the number of persons representing the difference between those to whom AT&T sent the original AT&T written notice referenced in paragraph 4.2, above, and those to whom AT&T sends the re-notice letter referenced in paragraph 7.5, above.

VIII. MISCELLANEOUS PROVISIONS

8.1 This Agreement constitutes the full and final resolution of any and all claims and allegations described in this Agreement.

8.2 The Parties agree that AT&T shall be obligated to comply with the remedial measures provided in paragraphs 6.1, 6.5, 6.6, 6.7, and 6.13 of this Agreement for a period of eighteen (18) months after the effective date of this Agreement and that after such time the measures provided in these paragraphs shall terminate and be of no force or effect.

8.3 The Signatories stipulate and agree that any suit arising from this Agreement shall be brought in Travis County, Texas; provided, however, that no suit shall be brought unless or until appropriate administrative remedies have been exhausted, if applicable.

8.4 The Signatories mutually agree that they have entered into this Agreement for their exclusive benefit and the benefit of their respective lawful successors. The Signatories agree that nothing in

this Agreement shall be construed to confer any right, privilege or benefit on any person or entity other than the Signatories and their respective lawful successors.

8.5 The provisions of this Agreement are deemed severable and, if a court of competent jurisdiction or other binding authority deems any provision of this Agreement unenforceable, the remaining provisions shall be valid and enforceable.

8.6 The Signatories contemplate that this Agreement will be approved as required by P.U.C. PROC. R. 22.246(g)(1)(C); however, if the Commission does not approve this Agreement as presented, or issues an interim or final order inconsistent with any term or provision of this Agreement as presented, any Signatory adversely affected by that modification or inconsistency shall have the right to withdraw its consent from this Agreement, thereby becoming released from its commitments and obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. Any party withdrawing its consent shall notify the other party in writing, via first-class United States mail not later than twenty (20) calendar days following the date the Commission issues the interim or final order.

8.7 This Agreement constitutes the entire understanding and agreement between LED and AT&T as to the matters addressed herein, and the Agreement supersedes all other written and oral exchanges or negotiations among the Signatories or their representatives regarding the matters addressed herein.

8.8 Each person executing this Agreement represents that he or she is authorized to sign on behalf of, and to bind, the party represented. Facsimile copies of signatures are valid for purposes of evidencing such execution. This Agreement may be executed in multiple counterparts, each of which is deemed an original but all of which constitute one and the same instrument.

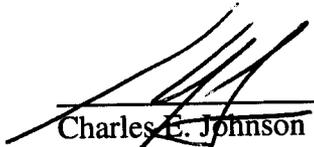
8.9 The Signatories agree that this Agreement is only binding on each Signatory for the purpose of settling the issues herein and for no other purpose. The Signatories acknowledge and agree that a Signatory's support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forum. Because this is a settlement agreement, a Signatory is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement whether those proceedings present the same or a different set of circumstances. The Signatories have entered into this Agreement in order to amicably settle the issues and to avoid the substantial time, effort, and expense that would be required if these matters were resolved by a hearing on the merits.

8.10 The Parties acknowledge that AT&T will enter into an Assurance of Voluntary Compliance ("AVC") with the State of Texas regarding imposition of the MRC that is substantially similar to this Agreement (see Confidential Exhibit 2). The Parties do not intend that AT&T is obligated to duplicate any measures imposed by these settlement documents.

WHEREFORE, this Agreement has been executed, approved and agreed to by the Signatories hereto in multiple counterparts, each of which shall be deemed an original, on the date indicated below by the Signatories hereto, by and through their duly authorized representatives. The Signatories request that the Commission enter a final order consistent with this Agreement.

ENTERED into this 11th day of May 2005.

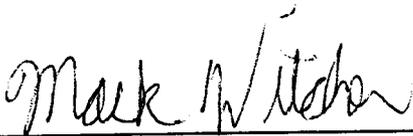
Public Utility Commission of Texas



Charles E. Johnson
Legal & Enforcement Division
Public Utility Commission of Texas

AT&T Communications of Texas, L.P.

By:



Mark Witcher Bar No. 218220900
Edward (Trey) LaMair
AT&T Law Department
SBN#: 00794133
919 Congress Avenue, Suite 900
Austin, Texas 78701-2444
512-370-2074
832-213-0148 (FAX)

ATTORNEYS FOR AT&T

EXHIBIT 1

EXHIBIT 1

Date: _____, 2005

[Customer Name]
[Customer Address]
[Customer Number]

Dear Customer:

Our records indicate that you are an AT&T long distance customer and are on our state to state Basic Rate plan. On January 1, 2004, AT&T began charging a \$3.95 monthly fee for this plan, regardless of whether you actually make long distance calls.

If this plan no longer suits your needs, you have the following options:

(1) You may enroll in a different AT&T long distance calling plan. Call us at 1-800-222-0300 or visit us on the Web at www.att.com/home for information on other plans.

(2) You may cancel or switch your long distance telephone company and stop this \$3.95 monthly charge. In order to do so, you must take one of the following actions:

- To switch to a different long distance company, contact your local telephone company. Your local telephone company will notify us of your decision. You can also call the new long distance company you have chosen, and they will assist you in signing up for their service and explain their charges and rate plans.
- To cancel your AT&T long distance service without selecting a new long distance provider, simply contact your local telephone company and let them know that you wish to discontinue your AT&T long distance service. Your local telephone company will notify us of your decision and explain any fees and charges associated with this switch.

IMPORTANT: YOU MUST CONTACT YOUR LOCAL TELEPHONE COMPANY TO TERMINATE YOUR AT&T LONG DISTANCE SERVICE. IF YOU DO NOT TAKE ONE OF THE ACTIONS ABOVE, YOUR AT&T LONG DISTANCE SERVICE WILL CONTINUE AND YOU WILL BE SUBJECT TO THE \$3.95 MONTHLY CHARGE AND ANY OTHER APPLICABLE AT&T RATES AND CHARGES.

If you wish to verify which company currently provides your long distance service, you can simply call toll free 1-700-555-4141 from your home telephone or contact your local telephone company.

Sincerely,

AT&T Consumer Services

EXHIBIT 2

EXHIBIT 3

CONFIDENTIALITY AGREEMENT

The purpose of the Confidentiality Agreement set forth below is to provide a mechanism outside of a contested case or other formal proceeding whereby the Staff of the Public Utility Commission of Texas (Commission) can obtain information from telecommunications utilities under the Commission's jurisdiction, subject to the limitations imposed by the Public Utility Regulatory Act.¹ In the event that some or all of the information requested and provided under this Confidentiality Agreement subsequently becomes part of a contested case proceeding or arbitration proceeding, the dissemination of said information shall be governed by the protective order entered in that proceeding.²

This Confidentiality Agreement shall govern the use of information requested by the undersigned Commission Staff (Staff) which AT&T Communications of Texas, L.P. ("AT&T") submits in compliance with paragraph 7.6 of the Parties' Agreed Notice of Violation and Settlement Agreement relating to AT&T's imposition of a Monthly Recurring Charge ("MRC") in or about January 2004. This information includes confidential commercial and financial information that could cause harm to AT&T if not protected from public disclosure under the law ("Protected Material").

1. Designation of Protected Materials. Upon producing the Protected Material, AT&T will designate the document, or any portion of it, as confidential pursuant to this Confidentiality Agreement and pursuant to the terms of P.U.C. Proc. R. § 22.71. Protected Materials include not only the documents so designated, but also the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.

¹ Tex. Util. Code Ann. §§ 11.001 – 64.158 (Vernon 1998 & Supp. 2003).

² At the time of signature by Staff of this agreement there was no procedural or substantive rule that directly addresses informal production of alleged confidential information. By entering into this agreement, Staff does not waive the right to move, at any time, to initiate a rulemaking proceeding to govern such production

2. Materials Excluded from Protected Materials Designation. Protected Materials shall not include documents or information which at the time of, or prior to disclosure in a proceeding, is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Confidentiality Agreement.
3. Designation of Protected Materials. AT&T submits that the information that is requested by the undersigned Staff is entitled to an exemption from public disclosure under Section 552.101 of the Public Information Act.
4. Persons Permitted Access to Protected Materials. By the terms of this Confidentiality Agreement, access to the Protected Materials is limited to only those members of the Staff who have a need to review the information. All Staff employees must have signed the confidentiality agreement certification form prior to receiving access to the Protected Materials.
5. Public Information Requests. In the event of a request for any of the Protected Material under the Public Information Act, an authorized representative of the Commission, may furnish a copy of the requested Protected Materials to the Open Records Division at the Office of Attorney General (OAG) together with a copy of this Confidentiality Agreement only after notifying AT&T that such documents are being furnished to the OAG. Such notification must be provided to AT&T prior to the delivery of the Protected Materials to the OAG.
6. Required Certification. Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification set forth in the attachment to this Confidentiality Agreement:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of this Confidentiality Agreement and that I have been given a copy of it and have read the Confidentiality Agreement and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda,

or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Confidentiality Agreement. I further acknowledge that such Protected Materials shall be used only for the purpose for this information is requested. The Protected Materials may be used in accordance with the regulatory responsibilities of the Commission. I acknowledge that the obligations imposed by this certification are pursuant to such Confidentiality Agreement. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

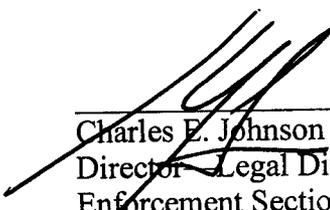
A copy of each signed certification shall be provided to AT&T.

7. Procedures for Confidential Treatment of Protected Materials and Information Derived from those Materials. Protected Materials, as well as the Staff's notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially and shall not be disclosed or used except as permitted and provided in this Agreement. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files. The Staff must take all reasonable precautions to insure that the Protected Materials, including notes and analyses made from Protected Materials that disclose Protected Materials, are not viewed or taken by any person other than designated Staff who has signed the confidentiality agreement certification. If Protected Materials including notes and analyses made from Protected Materials that disclose Protected Materials are entered into any electronic database or electronically copied, access shall be restricted by a password or other means that will limit access to the information to Staff who have a need to review the information.
8. Protection of Materials from Unauthorized Disclosure. All notices, applications, responses, or other correspondence shall be made in a manner that assures that all Protected Materials are protected from unauthorized disclosure.
9. Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials. Following the conclusion of Staff's review of the

Protected Material, the Commission shall return all copies of the Protected Materials to AT&T including copies reproduced by the Commission.

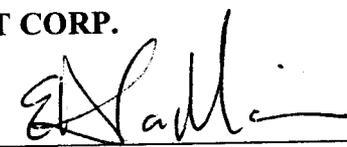
10. Applicability of Other Law. This Confidentiality Agreement is subject to the requirements of the Public Information Act, the Open Meetings Act, and any other applicable law.
11. Notify Defined. Notify, for purposes of this Agreement shall mean written notice to AT&T at least five (5) calendar days prior to release; including when the Commission receives a request under the Public Information Act. However, the Commission may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.
12. Breach of Confidentiality Agreement. In the event of a breach of the provisions of this Confidentiality Agreement, AT&T, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. AT&T shall not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, AT&T shall be entitled to pursue any other form of relief to which it is entitled.

SIGNED AT AUSTIN, TEXAS as of the 27th day of April 2005.



Charles E. Johnson
Director - Legal Division,
Enforcement Section
State Bar No. 10690500
Public Utilities Commission of Texas
1701 N. Congress Ave.
P. O. Box 13326
Austin, Texas 78711-3326
Telephone: 512-936-7290
Facsimile: 512-936-7268

AT&T CORP.

By: 

Trey LaMair
State Bar No. 00794133
AT&T Law Department
919 Congress Ave., Suite 900
Austin, TX 78701-2444
Telephone: 512-370-2074
Facsimile: 512-370-2096

**ATTORNEYS FOR AT&T
COMMUNICATIONS OF TEXAS, L.P.**

Confidentiality Agreement Certification

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Confidentiality Agreement , and that I have been given a copy of it and have read the Confidentiality Agreement and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Confidentiality Agreement. I further acknowledge that such Protected Materials shall be used only for the purposes for which the information is requested. Such Protected Materials may be used in accordance with the regulatory responsibilities of the Commission. I acknowledge that the obligations imposed by this certification are pursuant to such Confidentiality Agreement. Provided, however, if the information contained the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

Signature

Commission Staff

Printed Name

Date