

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI**

ST. LOUIS COUNTY, MISSOURI,

Plaintiff,

vs.

AT&T, INC., et al.,

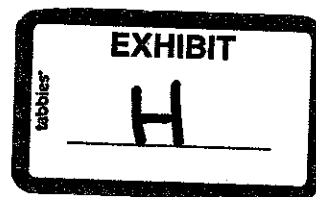
Defendants.

Case No. 08SL-CC125

Division No. 12

**SETTLEMENT AGREEMENT**

This Settlement Agreement is made and entered into as of June \_\_\_\_, 2009, by and among plaintiff St. Louis County, Missouri ("Plaintiff") and Southwestern Bell Telephone Company d/b/a AT&T Missouri, f/k/a Southwestern Bell Telephone, L.P., SBC Long Distance, LLC d/b/a AT&T Long Distance, AT&T Messaging, Inc., AT&T Inc., American Information Technologies Corporation (Nevada), American Telephone and Telegraph Company, Ameritech Information Industry Services, Inc., Ameritech Publishing, Inc., Ameritech Services, Inc., AT&T Advanced Solutions, Inc. (now merged into AT&T Corp.), AT&T Advertising, L.P., AT&T Broadband Services Purchasing and Leasing, LLC, AT&T Capital Holdings International, Inc., AT&T Capital Holdings, Inc., AT&T Capital Services, Inc., AT&T Communications - East, Inc., AT&T Communications of the Southwest, Inc., AT&T Consulting Solutions, Inc., AT&T Corp., AT&T Credit Holdings, Inc., AT&T DataComm, Inc., AT&T Foundation, AT&T Global Network Services, LLC, AT&T Government Solutions, Inc., AT&T Information Systems, Inc., AT&T Labs, Inc., AT&T Management Services, L.P., AT&T Messaging, LLC, AT&T Network Procurement L.P., AT&T Operations, Inc., AT&T Services, Inc., AT&T Solutions, Inc., AT&T Technical Services Company, Inc., AT&T Technologies, Inc., AT&T Video Services, Inc., Bell



South Long Distance, Inc. d/b/a AT&T Long Distance Service, L.M. Berry & Company, Missouri Bell Telephone Company, Pacific Bell Telephone Company, Resort WiFi Operating Corp., SBC Asset Management, Inc., SBC Global Services, Inc., SBC Internet Services, Inc., SBC Telecom, Inc., SBC Tower Holdings, LLC, SBCSI Purchasing & Leasing Limited Partnership, SNET of America, Inc. d/b/a AT&T Long Distance East, Southwestern Bell Yellow Pages, Inc., Southwestern Bell Yellow Pages Resources, Inc., Sterling Commerce (America), Inc., Sterling Commerce, Inc., SWBT Purchasing & Leasing Limited Partnership, TCG America, Inc., TCG Kansas City, Inc., TCG St. Louis, Inc., Teleport Communications Group, Inc., Wayport, Inc., and YellowPages.com, LLC. (collectively "Defendants").

Notwithstanding anything to the contrary herein, those AT&T Inc. subsidiaries governed by the wireless settlement agreement in *St. Louis County v. AT&T Wireless Services, Inc., et al.*, Case No. 01-CC-004454, Circuit Court of St. Louis County, are expressly excluded from this Settlement Agreement. Their obligations to Plaintiff are not affected or altered by this Agreement in any respect.

#### PREAMBLE

WHEREAS, a dispute has arisen between Plaintiff and Defendants regarding the applicability of Plaintiff's business license tax to receipts from certain of Defendants' products and services;

WHEREAS, Plaintiff claims that Defendants are liable to Plaintiff under §§ 502.150 through 502.157 of the Revised Ordinances of St. Louis County for taxes (collectively, the "County Business License Tax") on revenues derived from Carrier Access (interstate and intrastate), End User Common Linesurcharges ("EUCL"), private line services (interstate and intrastate), long distance toll services (interstate and intrastate), federal and state universal

service fee surcharges ("FUSF" and "SUSF"), and other revenues upon which County Business License Taxes are not currently being paid by Defendants, and for interest and/or penalties thereon;

WHEREAS, Defendants have denied and continue to deny any and all liability with respect to the allegations raised against them;

WHEREAS, Defendants and Plaintiff wish to avoid the expense and uncertainty of continued litigation and desire to settle their disputes without further litigation, including all claims and issues that have been brought or could have been brought in this Action by or on behalf of Plaintiff, including by compromising Defendants' alleged past tax liability owed to Plaintiff, and establishing and/or clarifying what taxes Defendants are to pay to Plaintiff on their future revenues, all in accordance with the terms and conditions set forth in this Settlement Agreement;

WHEREAS, Defendants and Plaintiff have conducted an investigation and evaluation of the facts and law relating to the claims in this Action and believe this settlement is fair, reasonable, adequate, and in the best interests of the Parties, in light of the continued uncertainty and expense of litigation; and

WHEREAS, after arm's-length negotiations between counsel for Plaintiff and counsel for Defendants this Settlement Agreement has been reached.

NOW THEREFORE, it is hereby stipulated and agreed that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, this Action shall be fully and finally settled and dismissed with prejudice and without costs to Defendants except as provided for under the following terms and conditions:

#### **I. DEFINITIONS**

As used in this Settlement Agreement and the related documents attached hereto as exhibits, the following terms shall have the meanings set forth below:

- A. "Action" means the civil action entitled *St. Louis County, Missouri v. AT&T, Inc., et al.*, No. 08SL-CC125, pending in the Circuit Court of the County of St. Louis, Missouri.
- B. "Court" means the Circuit Court of the County of St. Louis, Missouri.
- C. "Carrier Access" means a service provided by any Defendant whereby it originates or terminates long-distance traffic for other telecommunications carriers. It does not include EUCL, intraLATA toll charges and services, and other surcharges, products and services that Defendants have agreed to include as a Future Tax Benefit under Section II.A.2 herein.
- D. "Defendants" means (1) Southwestern Bell Telephone Company d/b/a AT&T Missouri SBC Long Distance, LLC d/b/a AT&T Long Distance, AT&T Messaging, Inc., AT&T Inc., American Information Technologies Corporation (Nevada), American Telephone and Telegraph Company, Ameritech Information Industry Services, Inc., Ameritech Publishing, Inc., Ameritech Services, Inc., AT&T Advanced Solutions, Inc. (now merged into AT&T Corp.), AT&T Advertising, L.P., AT&T Broadband Services Purchasing and Leasing, LLC, AT&T Capital Holdings International, Inc., AT&T Capital Holdings, Inc., AT&T Capital Services, Inc., AT&T Communications - East, Inc., AT&T Communications of the Southwest, Inc., AT&T Consulting Solutions, Inc., AT&T Corp., AT&T Credit Holdings, Inc., AT&T DataComm, Inc., AT&T Foundation, AT&T Global Network Services, LLC, AT&T Government Solutions, Inc., AT&T Information Systems, Inc., AT&T Labs, Inc., AT&T Management Services, L.P., AT&T Messaging,

LLC, AT&T Network Procurement L.P., AT&T Operations, Inc., AT&T Services, Inc., AT&T Solutions, Inc., AT&T Technical Services Company, Inc., AT&T Technologies, Inc., AT&T Video Services, Inc., Bell South Long Distance, Inc. d/b/a AT&T Long Distance Service, L.M. Berry & Company, Missouri Bell Telephone Company, Pacific Bell Telephone Company, Resort WiFi Operating Corp., SBC Asset Management, Inc., SBC Global Services, Inc., SBC Internet Services, Inc., SBC Telecom, Inc., SBC Tower Holdings LLC, SBCSI Purchasing & Leasing Limited Partnership, SNET of America, Inc. d/b/a AT&T Long Distance East, Southwestern Bell Yellow Pages, Inc., Southwestern Bell Yellow Pages Resources, Inc., Sterling Commerce (America), Inc., Sterling Commerce, Inc., SWBT Purchasing & Leasing Limited Partnership, TCG America, Inc., TCG Kansas City, Inc., TCG St. Louis, Inc., Teleport Communications Group, Inc., Wayport, Inc., and YellowPages.com, LLC; (2) all Persons on whose behalf any of the foregoing entities acted or purported to act; and (3) for each of the foregoing Persons and entities, each of their present, former, or future officers, directors, shareholders, employees, representatives, agents, principals, consultants, contractors, insurers, accountants, attorneys, partners, members, administrators, legatees, executors, heirs, estates, successors in interest, or assigns or any other Person or entity with whom any of them is affiliated or otherwise for whom any of them is responsible at law or in equity. For purposes of clarification, the term "Defendants" shall not include those AT&T Inc. subsidiaries governed by the wireless settlement agreement in *City of University City, et al. v. AT&T Wireless Services, Inc., et al.*, Case No. 01-CC-004454, Circuit Court of St. Louis County.

- E. **"Defendants' Counsel"** means John F. Medler, Jr., AT&T Legal Department, One AT&T Center, Room 3558, St. Louis, MO 63101, and Stephen B. Higgins, Amanda J. Hettinger, Sharon B. Rosenberg, and Ann Ahrens Beck, Thompson Coburn, LLP, One US Bank Plaza, St. Louis, MO 63101.
- F. **"Effective Date of Future Tax Benefit(s)"** means November 1, 2009.
- G. **"Joint Stipulation for Dismissal"** means the stipulations for dismissal, in the form attached hereto as Exhibit A, dismissing with prejudice all claims against Defendants, asserted in the Action.
- H. **"Parties"** means Defendants and Plaintiff.
- I. **"Back Tax Payment"** has the meaning set forth in Section II.A.1 below.
- J. **"Person" or "Persons"** means any natural person, firm, corporation, unincorporated association, partnership, or other form of legal entity or government body, including its agents and representatives.
- K. **"Released Claims"** means, without limitation, any and all claims, actions, demands, audits, rights, liabilities, complaints, causes of action (including, but not limited to, claims based on violation of any federal, state, or local law or regulation, fraud, unjust enrichment, unpaid taxes, back tax liability, and breach of contract, and claims arising under the laws of any other jurisdiction that have been or could or might have been alleged by Plaintiff in any form in the United States of America, as part of the present Action, or in any other action, arbitration, or proceeding), requests for damages, requests for injunctive relief, disgorgement of monies, requests for declaratory relief, requests for equitable relief of every nature and description whatsoever, requests for interest, penalties, attorneys' fees, costs, and expenses, whether known or unknown, arising out of

the claims that were made or that could have been made against Defendants regarding the alleged failure of Defendants to pay, or the alleged underpayment by Defendants of, the County Business License Tax, as applied to receipts due before June 20, 2009, or due after June 20, 2009, with respect to any receipts earned before June 20, 2009, from services: (1) alleged to be telephone, telecommunications, exchange telephone, public utility, and similar services; and/or (2) alleged to be related to such services, including but not limited to, receipts from Carrier Access (switched and special, interstate and intrastate), EUCL, private line service (interstate and intrastate), long distance toll (intra-LATA and inter-LATA, intrastate and interstate), FUSF and SUSF, all other fees and/or taxes, CallNotes ® voice messaging services, data services, information services, voice services, Customer Premises Equipment ("CPE"), rental or lease of network elements, wireless access, reciprocal compensation, directory and operator services, operator surcharges, dishonored fees and late fees, trunks, installation services, construction services, repair services, security services, advertising services, call blocking services, vertical services, call screening services, adjustments and credits, third-party billing services, charges for allowing customers to call outside a local area or into a local area (including, but not limited to, Outside the Base Rate Area ("OBRA") charges, Metropolitan Calling Area ("MCA") charges, optional Extended Area Service ("EAS") charges, and non-optional EAS charges), Voice-over-Internet-Protocol services and calling plans, inside wire and jack maintenance plans, surcharges for prison inmate calling, payphone services, Lifeline services, deaf relay services, 1-900 services, call forwarding services, network services, number portability charges and surcharges, all services billed out of the Defendants' CRIS or CABS databases or similar databases, and

other similar services. Plaintiff expressly acknowledges that "Released Claims," include, and this Settlement Agreement constitutes a release of, any and all claims that Plaintiff does not know or suspect to exist in its favor at the time of the release, which, if known by it, might have affected its settlement with and release of Defendants or might have affected its decision whether to object or participate in this Settlement Agreement or any portion or aspect of the Settlement Agreement reached by the Parties.

L. "Revenues Derived From Interstate Services" means revenues derived from, among other items, interstate telephone service and interstate private line service. It does not include revenues derived from intraLATA interstate telephone service.

M. "Settlement Agreement," "Settlement," or "Agreement" means this Settlement Agreement, including the attached Exhibits.

## II. RELIEF

In consideration of a full, complete, and final settlement of this Action, and in consideration of dismissal of the Action with prejudice with respect to Defendants and the Releases and Dismissals in Section IV below, the Parties agree to the following:

### A. Benefit

1. Amount of Back Tax Payment. AT&T Missouri and SBC Long Distance, LLC shall remit to Plaintiff a Back Tax Payment of \$ 4,605,672 within 30 days of the execution of this Agreement. Since the amount due Plaintiff is based on Plaintiff's proportionate share of a total settlement amount shared with municipalities in State ex rel. City Collectors of Wellston, et al. v. SBC Communications, Inc., et al, Cause No. 044-02645 in the Circuit Court of the City of St. Louis, ("Wellston") the final calculated amount may be different. Accordingly, AT&T Missouri shall adjust by withholding or



making additional payment as necessary when the final calculation in Wellston is made. Neither AT&T Inc., AT&T Messaging, Inc., nor any AT&T Inc. subsidiary other than AT&T Missouri and SBC Long Distance, LLC shall have any obligation to make a Back Tax Payment. Plaintiff agrees that the consideration paid by AT&T Missouri and SBC Long Distance, LLC is sufficient consideration to support a valid and binding settlement agreement and a full release of back tax liability for those entities, as well as themselves.

2. Future Tax Benefit. Beginning on the Effective Date of Future Tax Benefits, both AT&T Missouri and SBC Long Distance, LLC, and any Defendants providing similar services, shall pay, going forward, future County Business License Taxes to Plaintiff as follows:

a. *AT&T Missouri*

With respect to AT&T Missouri, the County Business License Tax shall be interpreted, beginning on the Effective Date of Future Tax Benefits, to apply to: (i) revenues upon which AT&T Missouri already pays County Business License Tax; PLUS (ii) revenues from any additional services that are subject to Missouri's state sales tax on "telecommunications service" as that term is used in § 144.010.1(13), as restricted by § 144.030.1, RSMo.; PLUS (iii) revenues as described in section (ii) above from any retail customer which would otherwise be subject to the Missouri state sales tax but for an exemption for such customer from the state sales tax (e.g., not-for-profits under § 144.030.2(19), RSMo). Services subject to the Business License Tax shall include, but not be limited to, FUSE, SUSF, intraLATA toll service, EUCL, and intrastate private line. Services subject to the County Business License Tax shall not include, inter alia, Carrier

Access, Revenues Derived From Interstate Services, except as otherwise provided in subsection c below (although AT&T Missouri agrees to pay the County Business License Tax on revenues from intraLATA interstate telephone service), Call Notes voice messaging services, and CPE. For purposes of clarification only, AT&T Missouri acknowledges that it will include receipts from County Business License Tax surcharges in the County Business License Tax base.

b. *SBC Long Distance, LLC*

With respect to SBC Long Distance, LLC, the County Business License Tax shall be interpreted, beginning on the Effective Date of Future Tax Benefits, to apply to: (i) revenues from services that are subject to Missouri's state sales tax on "telecommunications service" as that term is used in § 144.010.1(13), as restricted by § 144.030.1, RSMo.; PLUS (ii) revenues as described in section (i) above from any retail customer which would otherwise be subject to the Missouri state sales tax but for an exemption for such customer from the state sales tax (e.g., not-for-profits under § 144.030.2(19), RSMo). Services subject to the County Business License Tax shall include, but not be limited to, intrastate long distance telephone services. Services subject to the County Business License Tax shall not include, inter alia, interstate long distance telephone services, except as otherwise provided in subsection c. below. For purposes of clarification only, SBC Long Distance, LLC acknowledges that, henceforth, it will include receipts from County Business License Tax surcharges in the County Business License Tax base.

c. *Bundled and Packaged Telephone Services*

In the event Defendants, individually or collectively, receive revenues from bundled or packaged telephone services, whether intrastate or interstate, and such telephone services are not separately accounted for on an end-user's bill, Defendant(s) shall pay future County Business License Taxes on such bundled and packaged telephone services consistent with 12 Mo. CSR 10-3.188(7) or any successor regulation.

*d. Reservation of Rights*

Notwithstanding this Settlement Agreement, Plaintiff retains the right to audit and inspect the books and records of AT&T Missouri, SBC Long Distance, LLC, and any other Defendant entity to ensure compliance with this Agreement, and does not waive or abrogate any right(s) it possesses under its codes or ordinances. In the event Plaintiff has reason to question compliance with this Agreement, and in particular to question whether a service is taxable pursuant to § 144.010.1(13), as restricted by § 144.030.1, RSMo, the Parties agree Plaintiff reserves all legal and equitable rights, including, but not limited to, the right to institute legal proceedings to enforce compliance with this Agreement.

*e. Hancock Amendment*

Nothing in this Settlement Agreement is intended to broaden the County Business License Tax base in violation of the Hancock Amendment to the Missouri Constitution.

*f. Rates*

Defendants agree to pay future County Business License Taxes at the rates

specified within Plaintiff's ordinances, unless and until there is a change in law as specified in subsection "g" below.

*g. Change of Law*

*(i) Change of Law Altering Defendants' Future Obligations*

The obligations of Defendants shall continue with respect to Plaintiff unless and until: (1) a court or administrative or regulatory body of competent jurisdiction determines, or Plaintiff specifies in writing after the Parties execute this Agreement, that the County Business License Tax does not apply to any or all of the subject services or gross receipts derived therefrom, and such determination is not subject to further appeal or the time to appeal has expired and no appeal or further appeal has been timely filed; (2) the Missouri General Assembly or other legislative body enacts constitutional legislation removing the authority of Plaintiff to impose a County Business License Tax to any or all of the subject services or gross receipts derived therefrom, and such legislation is in effect; (3) the Missouri Department of Revenue issues a final ruling that any service taxable pursuant to Sections II.A.2.a.(ii) and b.(i) of this Agreement is no longer subject to the state sales tax; or (4) any other constitutional change in law, including a change in the County Business License Tax, occurs that affects the obligations of Defendants under this Section, in which case, the remaining obligations shall be consistent with such determination, legislation, or change. Defendants shall not, in the case of any judgment, legislation, or other change of law as referred to above, be entitled to recover any sums paid which became due and owing prior to the finality of such judgment or effective date of such legislation or other change of law.

*(ii) Change of Code or Ordinance*

Nothing in this Settlement Agreement shall serve to restrict Plaintiff from amending its ordinance or code in the future, in accordance with law, to tax or exclude from taxation any product or service covered by this Settlement Agreement. In the event Plaintiff seeks to amend the County Business License Tax to expand its tax base, the Parties agree the Defendants reserve all legal and equitable rights, including, but not limited to, the right to institute legal proceedings to challenge the legality, application or enforcement of the amendment.

(iii) Change of Law for a Municipality Applies to Plaintiff

In the event of:

- (1) a settlement of or a final non-appealable judgment in City of Springfield v. Cingular Wireless LLC, et al., cause no. 04-CV-4099, currently pending in the U. S. District Court for the Western District of Missouri, at any time, or
- (2) a settlement of or a final non-appealable judgment in another case within five years of the Effective Date of the Settlement, or
- (3) a legislative change within five years of the Effective Date of the Settlement, and pursuant to which Defendants, individually or collectively, voluntarily or involuntarily, pay a Business License Tax to a Municipality whose ordinances are substantially similar to the County Business License Tax, in the future, and include or are required to include receipts from a product or service excluded from this Settlement, then Defendants agree to treat Plaintiff the same as the Municipality being paid and to pay taxes to Plaintiff on the same receipt(s), if Plaintiff has satisfied the preconditions set forth in Section II.B.2, at then-existing rates, unless such receipts are specifically and expressly excluded from taxation by the County Business License Tax. Plaintiff shall

not, in case of any settlement, final non-appealable judgment, or legislative change referred to above, be entitled to recover back taxes on receipts from a product or service excluded from this Settlement earned prior to the finality of such settlement, final non-appealable judgment or legislative change.

Should Plaintiff have reason to question Defendants' compliance with this provision, and in particular to question whether its ordinance is substantially similar to the ordinance of the Municipality being paid, the Parties agree Plaintiff reserves all legal and equitable rights, including, but not limited to, the right to institute legal proceedings to enforce compliance with this provision.

Likewise, each Defendant, either individually or collectively, reserves all legal and equitable rights, including, but not limited to, the right to institute legal proceedings should it have reason to question whether Plaintiff is entitled to payment pursuant to this provision. Further, the Parties agree that nothing in this paragraph shall serve to preclude Plaintiff from amending the County Business License Tax code or ordinances in the future, so as to clarify or conform its code or ordinance to reflect any change in law.

The Parties agree that the promises and commitments contained in this section are vital provisions going to the very substance or root of the Settlement and that a failure or breach of such promises and commitments would constitute a material breach of this Settlement Agreement. In said event, Plaintiff and each Defendant, either individually or collectively, would be entitled to all remedies available at law or in equity for such a material breach, including, but not limited to, rescission of this Settlement Agreement. Similarly, in the event of:

(1) a final, contested<sup>1</sup>, non-appealable judgment in the case of City of Springfield v. Cingular Wireless LLC, et al., cause no. 04-CV-4099, currently pending in the U. S. District Court for the Western District of Missouri, at any time, or

(2) a legislative change within five (5) years of the Effective Date of the Settlement,

and pursuant to which Defendants, individually or collectively, are relieved from paying, or are determined not to owe, Business License Taxes on receipts from a product or service that is specifically included within this Settlement, then Defendants may treat Plaintiff insofar as its ordinance is substantially similar to Springfield's ordinance the same (or conform its payments to the legislative change, as the case may be) and may refrain from paying County Business License Taxes to Plaintiff on the same receipts, unless such receipts are specifically and expressly included in the tax base by the Plaintiff's County Business License Tax and otherwise authorized by law..

This provision (iii) shall not apply in the event Defendants' payment of a Business License Tax to any Municipality on revenues in addition to those listed in this Settlement Agreement is the result of any Municipality expanding the scope of its Business License Tax base through a legislative change or as otherwise authorized by law.

**(iv) Separate Agreements with Wellston Class Members**

If Defendants, individually or collectively, enter into a written agreement with a Wellston Class Member or a representative of a Wellston Class Member that is

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<sup>1</sup> The term "contested," as used in this provision, is meant to exclude a settlement, consent judgment, consent decree, negotiated compromise, friendly suit, or similar resolution.

enforceable by such Class Member within five (5) years of the date of execution of this Agreement, and such agreement includes terms that are materially more favorable to the Class Member than to Plaintiff, then Defendants shall promptly notify Plaintiff of such agreement, and Plaintiff shall, at its discretion, have the right to amend this Agreement to take advantage of such more favorable terms. This provision shall only apply in the event any Wellston Class Member enters into an agreement with a Defendant that allows or requires such Defendant to pay prospective Business License Taxes without regard to ordinance exemption(s) or exclusion(s), or on materially more favorable terms than those being paid by Defendants under this Agreement. In such case, insofar as Plaintiff is similarly situated, Defendants shall on a going forward basis pay Business License Taxes to Plaintiff (unless Plaintiff instructs otherwise) on the same terms as those applicable to the Wellston Class Member(s) who reached the agreement(s).

*h. New Products and Services*

In the future, Defendants, individually or collectively, may develop new products and services. If they are taxable pursuant to Section II.A.2, above, and in particular pursuant to § 144.010.1(13), as restricted by § 144.030.1, RSMo., then Defendants agree to include such products and services in the County Business License Tax base and to pay County Business License Taxes thereon. In the event Plaintiff has reason to question compliance with this provision, and in particular to question whether a product or service is taxable pursuant to § 144.010.1(13), as restricted by § 144.030.1, RSMo, the Parties agree Plaintiff reserves all legal and equitable rights, including, but not limited to, the right to institute legal proceedings to enforce compliance with this provision.

3. No Lobbying Missouri General Assembly



Defendants agree that, for a period of five (5) years from the date this Agreement is executed by counsel for Plaintiff and counsel for Defendants, Defendants will not seek or support legislation in the Missouri General Assembly that would (a) cap or reduce the County Business License Taxes subject to this Settlement Agreement, (b) interfere with or reduce Plaintiff's rights under Sections II.A.2.g (ii) and (iii) or (c) exclude from the County Business License Tax base sources of revenue agreed in this Settlement Agreement to be included within the tax base. Nothing in this Section shall preclude Defendants from opposing any proposal to increase the rate or broaden the scope of the County Business License Tax. The Parties agree that the promises and commitments by Defendants contained in this Section are vital provisions going to the very substance or root of the Settlement and that failure or breach of such promises or commitments would constitute a material breach of this Settlement Agreement, entitling Plaintiff to all remedies available at law or equity for such a material breach, including but not limited to rescission of this Agreement.

**4. Interim Prospective Tax Payments**

Any payments of County Business License Taxes by AT&T Missouri made before the Effective Date of Future Tax Benefits shall be made in the same manner and on the same sources of revenue as AT&T Missouri has always made such payments. The obligation of SBC Long Distance, LLC to make any future tax payments shall not arise until the Effective Date of Future Tax Benefits. Neither Defendant shall have any liability to Plaintiff, other than the obligations set forth in this Settlement Agreement, for any future tax payments until the Effective Date of Future Tax Benefits.

**B. Most Favored Nation—Other Landline Providers Treated the Same**

**1. Non-Discrimination; Reasonable Efforts to Enforce**

Plaintiff agrees not to unconstitutionally discriminate among landline telephone providers, and to treat similarly-situated providers similarly. Accordingly, Plaintiff agrees to use reasonable efforts to enforce its Business License Taxes in a similar way with respect to similarly situated landline telephone providers, and to treat, as taxable, the same or similar revenue sources of such other landline providers as are taxable under this Agreement. Plaintiff further agrees to take reasonable tax enforcement actions to ensure that all similarly-situated landline providers pay a Business License Tax in the same manner as Defendants are required to do so.

In the event Plaintiff breaches this provision, each Defendant agrees that its remedy shall be limited to specific performance only.

2. Disclosures by Landline Providers

If Plaintiff seeks to enforce any of the rights guaranteed by Section II.A.2.g(iii) of this Agreement, Plaintiff, as a pre-condition of enforcing its rights under such Section, shall present proof to Defendants that it has, as part of its reasonable efforts under Section II. B. 1, adopted a rule requiring (in whatever manner or procedure authorized by statute, ordinance, County charter, or otherwise) all similarly situated landline providers within the County to file, at least once each year, a verified statement disclosing the revenue streams on which it pays or does not pay the County Business License Tax. The revenue streams contained in such statement shall include, at minimum, substantially the following: FUSF, SUSE, intraLATA toll service, EUCL, intrastate long-distance, fixed VoIP and intrastate private line service as well as any additional items the Plaintiff contends are taxable as a result of the application of Section II.A.2.g(iii).

3. More Favorable Settlements.

If Plaintiff settles claims regarding the alleged failure of another similarly situated landline provider to pay Business License Taxes, and such settlement includes terms that are materially more favorable to the other provider than those set forth herein, Plaintiff shall promptly notify Defendants of such agreement, and Defendants shall, at their discretion, have the right to amend this Agreement to take advantage of such more favorable terms.

In the event Plaintiff breaches this provision, Defendants agree they shall not be entitled to recover any sums paid which became due and owing prior to the date of occurrence of said breach.

With regard to Defendants' payment of Future Tax Benefits pursuant to Section II.A.2 above, this provision shall apply in the event Plaintiff enters into an Agreement or issues instructions to another similarly situated landline provider that allows such provider to pay prospective Business License Taxes at a lower rate or otherwise on more favorable terms than those being paid by Defendants. In such case, Defendants shall be entitled on a going forward basis to pay the County Business License Taxes at the same rate and/or the same terms as those applicable to such other provider. However, nothing in this section shall be construed to apply to another provider's payment of back Business License Taxes, or in any way affect Defendants' obligations to pay Back Tax Benefits under Section II.A.1 of this Agreement.

4. Notwithstanding anything to the contrary contained herein, Defendants agree that this Section B (Most Favored Nation) shall not encompass any landline telephone provider while in bankruptcy, nor shall the treatment of any landline telephone provider while in bankruptcy, either through action or inaction, serve to impose any obligations upon Plaintiff under this provision. For purposes of clarification, the terms "landline telephone provider" or "landline provider", as used in this Section B., do not include any company while in bankruptcy or any

company with a landline market share of 10% or less as measured by the receipts subject to the County's Business License Tax base.

**C. Pass Through**

Plaintiff agrees not to challenge the right of Defendants to pass through to their retail customers all or any part of the sums paid or to be paid to Plaintiff under the County Business License Tax and this Settlement Agreement.

**III. PAYMENT OF ATTORNEYS' FEES AND EXPENSES**

Each Party shall bear its own costs and attorney's fees.

**IV. RELEASES AND DISMISSALS**

In order to effectuate the Parties' desire to fully, finally and forever settle, compromise, and discharge all disputes arising from or related to the Action by way of compromise rather than by way of further litigation, Plaintiff and Defendants agree as follows:

A. Release by Plaintiff. Upon execution of this Agreement by both Plaintiff and Defendants, Plaintiff shall be deemed to have fully, finally, and forever released, relinquished, and discharged the Released Claims, as defined in Section I.K. Further, upon such execution, and to the fullest extent permitted by law, Plaintiff shall be barred and estopped from commencing, prosecuting, or participating in, either directly, indirectly, representatively, as a member of or on behalf of the general public, or in any capacity, any recovery in any action in this or any other forum (other than participation in the settlement as provided herein) in which any of the Released Claims is asserted.

B. Release by Defendants. Upon execution of this Agreement by both Plaintiff and Defendants, Defendants shall be deemed to have, and by operation of this Agreement shall have, fully, finally, and forever released, relinquished, and discharged Plaintiff and its present and

former officials, agents, employees, and attorneys, from all claims and counterclaims arising out of, in any way relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the litigation or the Released Claims. In any future dispute relating to Defendants' payment of County Business License Tax, Defendants shall not raise any claims or defenses relating to the enactment or validity of the County Business License Tax in the form existing as of the execution date of this Settlement Agreement or the applicability of those codes or ordinances to the revenue streams deemed included within the County Business License Tax base under this Settlement Agreement.

C. Dismissal of Action. Defendants and Plaintiff agree to file the Joint Stipulation for Dismissal in the Action, no later than ten (10) days after the execution of this Agreement by both Defendants and Plaintiff.

D. Preclusive Effect. Upon execution of this Settlement Agreement by both Plaintiff and Defendants, Plaintiff shall be bound by this Settlement Agreement and shall have recourse exclusively to the benefits, rights and remedies provided hereunder. No other action, demand, suit or other claim may be pursued against the Defendants with respect to the Released Claims by Plaintiff. The Parties acknowledge and agree that Defendants' agreement to pay the Back Tax Payment and the County Business License Tax going forward is based on Plaintiff's representation that it has the authority to enter into, and will be bound by, this Settlement Agreement. The Parties further acknowledge and agree that, in the event a court of competent jurisdiction declares that this Settlement Agreement is unenforceable against, or can be voided or rescinded by, Plaintiff, it would be unjust and inequitable for Plaintiff to retain the consideration paid by Defendants hereunder, yet reinstitute any legal proceeding against Defendants with respect to the matters released herein. Notwithstanding anything to the contrary contained herein

or provided under applicable law (including without limitation, to the extent applicable, § 432.070, RSMo), the dismissal with prejudice of the Action as set forth herein shall be res judicata and shall bar the re-filing of any and all claims that were or could have been brought by Plaintiff. In addition, in the event that, despite the provisions of this Settlement Agreement, Plaintiff is permitted in the future to pursue any claim that is or was a Released Claim under this Agreement, Plaintiff shall forfeit and return to Defendants, prior to proceeding with any such claim, any Back Tax Payment received from Defendants pursuant to this Agreement. For avoidance of doubt, the provisions of this Section shall be severable from the remaining provisions of this Settlement Agreement, and the Parties acknowledge and agree that the consideration given by Defendants under this Settlement Agreement constitutes fair and adequate consideration for the release by Plaintiff hereunder, and for the obligations of Plaintiff under this Section and the remaining Sections of this Settlement Agreement.

E. Mistake. In entering into this Settlement Agreement, Plaintiff and Defendants each assume the risk of any mistake of fact or law. If they, or any of them, should later discover that any fact which they relied upon in entering this Agreement is not true, or that their understanding of the facts or law was incorrect, they shall not be entitled to set aside this Settlement Agreement by reason thereof.

F. Covenant Not to Sue. As of the date of execution of this Settlement Agreement by both Plaintiff and Defendants, this Settlement Agreement may be pled as a full and complete defense to any Released Claims that may be instituted, prosecuted or attempted in breach of this Settlement Agreement. Except as otherwise provided in Sections II.A.2.d, II.A.2.g, and II.A.2.h herein, Plaintiff covenants that it will not institute or prosecute, against the Defendants, or any of them, any action, suit or other proceeding based in whole or in part upon any of the Released

Claims, and Defendants likewise covenant that they will not institute or prosecute against Plaintiff, or any of its officials or employees, any action, suit or other proceeding based in whole or in part upon any of the Released Claims nor based in whole or in part on the defenses, counterclaims, or other assertions raised by the Defendants in the Action.

G. Injunctive Relief. The Parties, and each of them, covenant that this Settlement Agreement may be used as a basis for a temporary restraining order, preliminary injunction and permanent injunction against any breach of this Agreement. The Parties judicially admit hereby for all purposes that time is of the essence as to all terms and conditions of the Settlement Agreement and that damages for a breach of this Settlement Agreement would be inadequate.

#### V. **LIMITATIONS ON USE OF SETTLEMENT AGREEMENT**

The Parties' use of the Settlement Agreement shall be limited as follows:

A. No Admission. Neither the acceptance by Defendants of the terms of this Settlement Agreement nor any of the related negotiations or proceedings is or shall be construed as or deemed to be legal evidence of an admission by any of the Defendants with respect to the merits of the claims alleged in the Action, the validity of any claims that could have been asserted by Plaintiff in the Action, or the liability of any of the Defendants in the Action. Defendants specifically deny any liability or wrongdoing of any kind associated with the claims alleged in the Action. Aside from the obligation to pay the County Business License Tax going forward, as set forth in Section II.A.2 above, this Settlement Agreement is not intended to, and shall not be construed as imposing any other obligations on Defendants under the County Business License Tax, including without limitation any rate regulation or customer service requirements.

B. No Evidentiary Use. This Agreement shall not be used, offered or received into evidence in the Action for any purpose other than to enforce, construe or finalize the terms of the Settlement Agreement. Neither this Agreement nor any of its terms shall be offered or received into evidence in any other action or proceeding except in a proceeding by a third party challenging any of the payments or obligations hereunder, or as otherwise provided herein.

C. Characterization to Media. The Parties agree that in the event any counsel for any Party contacts or is contacted by any member of the media regarding the Action or this Settlement Agreement, said counsel shall not refer to or characterize the Action or the Settlement Agreement as continuing or evidencing an admission or inference of: (1) liability, fault or wrongdoing on the part of Defendants or Defendants' Counsel, including any wrongdoing in connection with the defense of the Action; or (2) lack of merit of any claim asserted in the Action, or wrongdoing on the part of Plaintiff or Plaintiff's Counsel in connection with the institution, prosecution or settlement of the Action.

## VI. MISCELLANEOUS PROVISIONS

A. Assignment. Except for the ordinary assignment of tax revenues in connection with municipal tax anticipations and other financings, each Party represents, covenants and warrants that it has not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, cause of action or rights that it herein releases.

B. Binding on Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors and assigns.

C. Captions and Interpretations. Section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or



describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

D. Construction. The Parties agree that the terms and conditions of this Settlement Agreement are the result of arm's-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party, or its counsel, participated in the drafting of this Agreement.

E. Counterparts. This Agreement, and any amendments hereto, may be executed in any number of counterparts, and any Party may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. The Parties agree that this Agreement may be signed by any Party and transmitted to the other Party by facsimile with originals to follow. The Parties agree that such signature transmitted by facsimile shall bind each such Party to this Agreement.

F. Governing Law. Construction and interpretation of the Agreement shall be determined in accordance with the laws of the State of Missouri, irrespective of the State of Missouri's choice of law principles.

G. Integration Clause. This Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties in respect of the subject matter contained herein. There are no promises, representations, warranties, covenants or undertakings governing the subject matter of this Agreement other than those expressly set forth in this Agreement. This Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Action. This Agreement may not be changed, altered or modified, except in a writing signed by the Parties. This

Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

H. Invalidation. The voiding, by Court order or otherwise, of any material portion of this Agreement shall invalidate the Agreement in its entirety unless the Parties agree in writing that the remaining provisions shall remain in full force and effect, except as otherwise explicitly provided for in Section IV.D.

I. Jurisdiction. The Court shall retain jurisdiction, after dismissal of the Action, with respect to enforcement of the terms of this Settlement, and all Parties submit to the exclusive jurisdiction of the Court with respect to the enforcement of the Settlement and any dispute with respect thereto.

J. No Collateral Attack. This Agreement shall not be subject to collateral attack by any Party at any time.

K. Parties' Authority. The signatories hereto hereby represent that they are fully authorized to enter into this Agreement and bind the Parties to the terms and conditions hereof.

L. Receipt of Advice of Counsel. The Parties acknowledge, agree, and specifically warrant to each other that they have read this Settlement Agreement, have received legal advice with respect to the advisability of entering into this Settlement, and fully understanding its legal effect.


M. Waiver of Compliance. Any failure of any Party to comply with any obligation, covenant, agreement or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant, agreement or condition. A waiver or failure to insist upon strict compliance with any

representation, warranty, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

IN WITNESS WHEREOF, Plaintiff's counsel and Defendants' Counsel have executed this Settlement Agreement on this 26<sup>th</sup> day of June, 2009.

*Plaintiff's Counsel:*

**PATRICIA REDINGTON  
COUNTY COUNSELOR**

  
Patricia Redington # 33143  
Cynthia L. Hoemann #28245  
James H. White # 21427  
41 South Central Ave.  
Clayton, MO 63105

Approved:


  
Director of Administration

Approved:

  
Accounting Officer

*Defendants' Counsel:*

By:

  
\_\_\_\_\_  
THOMPSON COBURN, L.L.P.

Stephen B. Higgins

Amanda J. Hettinger

Sharon B. Rosenberg

Ann A. Beck

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St. Louis MO 63101

  
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AT&T LEGAL DEPARTMENT

John F. Medler, Jr.

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