

August 9, 2004

Ms. JoAnn Oerter
North Carolina Department of Transportation
Division of Highways
ITS Operations Unit
1533 Mail Service Center
Raleigh, NC 27699-1533

RE: 511 Request

Dear Ms. Oerter:

This letter shall constitute the terms and conditions under which AT&T Wireless (“AT&T Wireless”) shall provide 511 dialing service to the State of North Carolina Department of Transportation (the “Requesting Entity”) in the state of North Carolina (the “Contract”). Please read the terms and conditions of this Contract carefully. This Contract governs the relationship between the Requesting Entity and AT&T Wireless regarding 511 dialing service and explains our respective legal rights concerning all aspects of our relationship. Either of the following shall constitute your acceptance of and consent to the terms and conditions set forth in this Contract: (i) your provision to AT&T Wireless of the Termination Number pursuant to section 2.a., below; or (ii) acceptance of 511 calls from AT&T Wireless’ subscribers. If you do not agree with these terms and conditions, please contact the undersigned promptly.

1. General Information. 511 service is a three digit dialing arrangement available in specified areas for delivery of general information via voice grade facilities. Pursuant to Order 00-256 issued by the Federal Communications Commission (FCC) in CC Docket 92-105, the 511 dialing code has been designated for access to traveler information services. The Requesting Entity certifies that it provides access to traveler information services on a statewide basis, that it has received any requisite state approval to be the designated 511 carriers, and thus is qualified to request the use of 511 Service under FCC Order 00-256.

2. Requesting Entity's Obligations.

- a. Provision of Termination Number.** The Requesting Entity will provide AT&T Wireless with a single toll free number to which all 511 calls should be translated ("Termination Number"). The Requesting Entity certifies that the Termination Number will allow callers from anywhere in North Carolina to complete calls on a toll-free basis. If the Requesting Entity fails to provide AT&T Wireless with the Termination Number within (30) days from the date of this letter, AT&T Wireless' offer to provide 511 service to the Requesting Party shall be deemed withdrawn and the terms and conditions of the Contract shall be null and void.
- b.** The Requesting Entity may change the Termination Number, provided, however, that it must give AT&T Wireless at least 30 days notice of the change of such number so that AT&T Wireless can make the necessary changes in its network to ensure proper routing. In addition, the Requesting Entity must notify AT&T Wireless of any change in carrier providing service to the termination number.
- c. Provision of Traveler Information Services.** No later than 6 months from the date of request (or upon another mutually agreed upon date) the Requesting Entity shall provide traveler information services to customers who dial 511 unless the Requesting Entity contacts AT&T Wireless and notifies them of a delay in the project. The Requesting Entity agrees to have procured sufficient telecommunications facilities and services and to have adequate staffing levels and hours of service to handle its expected volume of calls. The Requesting Entity shall comply with any orders and rules pertaining to 511 service adopted by the FCC in rulemaking CC Docket No. 92-105.
- d. Testing.** The Requesting Entity shall participate fully in all mutually agreed upon testing deemed necessary or appropriate by AT&T Wireless for implementation of 511 service.
- e. Other Information.** The Requesting Entity shall provide a customer escalation contact name and number.

3. AT&T Wireless' Obligations.

- a. Implementation.** AT&T Wireless will translate 511 to the Termination Number and will use reasonable efforts to route 511

calls it receives from its subscribers and others using the AT&T Wireless network in the state to that number. Normal airtime charges will apply.

- b. Timing of Implementation.** AT&T Wireless will use reasonable efforts to comply with the Requesting Entity's order by August 25, 2004, unless another mutually agreed upon date between the two parties has been determined.
- c. Availability.** AT&T Wireless will use reasonable efforts to make the 511 dialing code (as translated to the Termination Number) available to its subscribers in areas of the state where AT&T Wireless owns facilities and provides its wireless mobility services. In those cases where AT&T Wireless' service area extends beyond the boundaries of the state, AT&T Wireless will use its best efforts to correlate its 511 translations with state boundaries. However due to the nature of the radio-based service it provides, exact correlation is not possible. Access to the 511 dialing code may be available in locations in the state outside of AT&T Wireless' service area. AT&T Wireless shall have no obligation to make the 511 dialing code to any person or entity within the state but outside its service area.

4. General Provisions.

- a. Term.** Subject to section 4.b., the term of this Contract shall commence on the date of execution of the Contract by the parties and shall continue for a period of one (1) year. After the conclusion of the one-year term, the Contract will continue until terminated by either party with thirty (30) days advance written notice.
- b. Termination.** The Requesting Entity acknowledges that a final decision has not been reached by the FCC as to whether commercial mobile radio service ("CMRS") providers such as AT&T Wireless are required to provide 511 service. Motions for Reconsideration are currently pending in CC Docket No. 92-105 regarding CMRS carrier participation in 511 Service. Accordingly, AT&T Wireless may elect to terminate this Contract upon 60 days notice to the Requesting Entity, if the FCC determines by a final and appealable order that (i) CMRS carriers are not required to provide 511 service; or (ii) the 511 dialing code should no longer be assigned to traveler information services. Either party may terminate this Contract in whole or in part in the event of a default by the other party; provided however, that the non-defaulting party

notifies the defaulting party in writing of the alleged default and the defaulting party does not rectify the alleged default within 60 days of receipt of written notice thereof. The defaulting party will make every effort to rectify the alleged default in an expeditious manner upon 60 days notice and in the event of any emergency or other event outside the reasonable control of the party that impairs or prevents the party from performing its obligations herein, the party may terminate this Contract. Default is defined to include (i) a party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the party; or (ii) a party's refusal or failure in any material respect properly to perform its material obligations under this Contract, or the violation any of the material terms or conditions of this Contract.

- c. **Transfer.** The Requesting Entity may not sell or otherwise transfer the 511 number (or the provision of the traveler information services) to any person or entity not affiliated with the Requesting Entity.

- d. **Limitation of Liability.** In no event shall AT&T Wireless be liable for any losses or damages of any kind resulting from the unavailability of its equipment or facilities or for any act, omission or failure of performance by the Requesting Entity, its employees, or agents, in connection with the service requested by the Requesting Entity. AT&T Wireless shall not be responsible for calls that cannot be completed as a result of repair or maintenance difficulties on AT&T Wireless facilities and equipment nor on equipment owned or leased by the Requesting Entity. Except as otherwise provided in this Contract, each party agrees that the other party shall in no event be liable for, and each party expressly waives its right to claim, any indirect, special, collateral, exemplary, incidental or consequential damages (including, but not limited to, lost profits) directly or indirectly arising out of or in connection with performance or nonperformance of the services to be provided under this Contract. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER AT&T WIRELESS NOR THE REQUESTING ENTITY ASSUMES ANY LIABILITY FOR ANY ACT OR OMISSION OF THE OTHER, BY VIRTUE OF ENTERING INTO THIS AGREEMENT.

- e. **Disclaimer of Warranties.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NO PARTY HAS MADE, AND THAT THERE

DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE FOR ANY SERVICE (OR GOOD) PROVIDED UNDER THIS AGREEMENT. AT&T WIRELESS PROVIDES A SERVICE UNDER THIS AGREEMENT AND NOT "GOODS" AS DEFINED IN THE UNIFORM COMMERCIAL CODE.

- f. Advertising/Press Release:** AT&T Wireless absolutely shall not publicly disseminate any information concerning this Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.
- g. Governing Laws, Jurisdiction, and Venue:**
1. This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract, its situs and forum, shall be Wake County, North Carolina, where all matters, whether surrounding in contract or in tort, relating to its validity, construction interpretation and enforcement shall be determined. The parties stipulate that Wake County shall be the proper venue for all matters.
 2. Except to the extent the provisions of this Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this contract. As stated above, AT&T Wireless provides a service under this Contract and not "goods" as defined in the Uniform Commercial Code.
- h. Contact Information.** All contacts regarding this Contract shall be provided to AT&T Wireless in writing (by fax or overnight courier), as follows:

AT&T Wireless
External Affairs
Attn: 511 Coordinator
7277 - 164th Avenue NE
Redmond, WA 98052
Fax: 425 580-8652

September 22, 2005

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Sincerely,

Kimberly Nielsen

AGREED TO AND ACCEPTED:

North Carolina Department of Transportation

By: _____

Its: _____

AT&T Wireless

By: _____

Its: _____