

# ADAIR COUNTY COMMISSION MINUTES

## TUESDAY, JULY 19, 2016

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**PRIMARY RATE ISDN: SMARTTRUNK® SERVICE**  
**AT&T ILEC Service Agreement Provided Pursuant To Custom Rates and Terms**  
 Arkansas, Kansas, Missouri, Oklahoma, Texas

**7. GENERAL TERMS**

a. If agreed to by the parties, this Agreement may be superseded and replaced by a new term agreement that includes all the Service Components then being purchased by Customer under this Agreement and no early termination charges shall apply, if the new term agreement also includes:

- an effective date within 150 days before the expiration of the Pricing Schedule Term; or
- a term equal to or greater than the remainder of the Pricing Schedule Term, and (b) the Service Components, Quantities and Rates for replacement agreement are equal to or greater than the Service Components, Quantities and Rates in this Pricing Schedule.

b. **Service Publications:** AT&T may revise Tariffs and Guidebooks (collectively "Service Publications") at any time and may reflect the tariffs listed above. The order of priority of the documents is: this Service Agreement, then the applicable Service Publication; except Tariffs will be first wherever contact terms may not take precedence over non-stabilized tariffs. This Agreement continues after the Pricing Schedule Term until Services no longer are provided, at which point the Agreement is terminated.

c. **Services:** AT&T will provide or cause to be provided to Customer, subject to the availability and operational limitations of systems, facilities and equipment. Where required, an AT&T affiliate authorized by the appropriate regulatory authority will be the service provider. Customer may not resell the Services or retransmit the Services for resale to third parties. Customer will cause Users (anyone who uses or accesses any Service provided to Customer) to comply with this Agreement and is responsible for any Service.

d. **Access:** Customer will allow AT&T timely access or will at Customer's expense obtain timely access to property (other than public property) and to equipment reasonably required for the Services. Access includes information, the right to construct, install, repair, maintain, replace and remove access lines and network facilities and the right to use ancillary equipment space within the building for Customer's connection to AT&T's network. Customer will furnish any conduit, holes, wireways, wiring, plans, equipment, space, power/ventilation and other items reasonably required for the Services and will obtain any necessary licenses, permits and consents (including easements and rights-of-way).

e. **Safe Environment:** Customer will ensure that the location where AT&T installs, maintains or provides Services ("Site") is a suitable and safe working environment, free of any substance or material that poses an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, to protection of air, water or soil or to health and safety. If AT&T encounters hazardous materials, AT&T may terminate any affected component of a Service ("Service Component") or suspend performance.

f. **AT&T Equipment:** Services may be provided using AT&T-owned equipment located at the Site ("AT&T Equipment"). Title to AT&T Equipment remains with AT&T. Customer must provide electric power for and keep all AT&T Equipment physically secure and free from liens and encumbrances. Customer bears the risk of loss or damage (other than ordinary wear and tear) to all AT&T Equipment.

g. **Pricing Schedule Term:** Except as stated in the Pricing Schedule, the prices listed in this Service Agreement are stabilized for the Pricing Schedule Term and apply in lieu of the corresponding prices set forth in the applicable Service Publication, and no promotion, credit, discount or waiver set forth in a Service Publication for Customer to discontinue a Service Component under a month-to-month service arrangement.

h. **Taxes:** Prices are exclusive of and Customer will pay all taxes, regulatory surcharges, recovery fees, customs clearances, duties, levies, shipping charges and other similar charges relating to the sale, transfer of ownership, installation, license, use or provision of the Services.

i. **Billing, Payments, Deposits and MARC:** Unless a Service Publication specifies otherwise, Customer's obligation to pay for a Service Component begins upon availability of the Service Component to Customer ("Delivery"). Payment is due 30 days after the invoice date (unless another date is specified in an applicable Service Publication) and must refer to the invoice number. Restrictive endorsements or other statements on checks are void. If Customer does not dispute a charge in writing within 6 months after the invoice date, Customer waives the right to dispute the charge. AT&T may recover all costs (including attorney fees) of collecting delinquent or dishonored payments and may charge late payment fees at the lowest of 1.5% per month (18% per annum), the rate specified in the Service Publication or the maximum rate allowed by law. If the Pricing Schedule includes a Minimum Annual Revenue Commitment ("MARC") and Customer's MARC-Eligible recurring and usage charges (after deducting discounts and credits) in any applicable 12-month period are less than the MARC, Customer will pay the shortfall, and AT&T may withhold contractual credits until Customer pays the shortfall charge.

j. **Termination and Suspension:** Either party may terminate this Agreement immediately upon notice if the other party becomes insolvent, ceases operations, is the subject of a bankruptcy petition or makes an assignment for the benefit of its creditors. AT&T may terminate or suspend an affected Service or Service Component and, if the activity implicates the entire Agreement, terminate or suspend the entire Agreement, immediately upon notice if Customer: (i) commits a fraud upon AT&T; (ii) uses the Service to commit a fraud upon another party; (iii) unlawfully uses the Service; (iv) abuses or misuses AT&T's network or Service; or (v) interferes with another customer's use of AT&T's network or services. Customer may terminate an affected Service Component for material breach by AT&T if such breach is not cured within 30 days of notice. AT&T may terminate or suspend (and later reterminate) an affected Service Component for material breach by Customer if such breach is not cured within 30 days of notice.

k. **Termination Charges:** If prior to Customer termination a Service Component other than for cause or AT&T terminates a Service Component for cause, Customer will reimburse AT&T for time and materials, including any third-party charges, incurred prior to the effective date of termination. Thereafter, if Customer terminates a Service Component for Customer's convenience or AT&T terminates a Service Component for cause, Customer must pay (i) 50% (unless a different percentage is specified in the Pricing Schedule) of the monthly recurring charges for the terminated Service Component multiplied by the months remaining in an applicable Minimum Payment Period specified in the Pricing Schedule or Service Publication, and (ii) any access facilities cancellation charges and other third-party charges incurred by AT&T due to the termination. If the Pricing Schedule includes a MARC and Customer terminates other than for cause or AT&T terminates for cause, Customer must pay an amount equal to 50% of the unsatisfied MARC for the balance of the

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Pricing Schedule Term. In addition, Customer may terminate an affected Service Component without incurring termination charges if (i) AT&T revises a Service Publication and the revision has a materially adverse impact upon Customer; (ii) Customer gives 30 days notice of termination to AT&T within 90 days of the date of the revision; and (iii) AT&T does not remedy the materially adverse impact prior to the effective date of termination. "Materially adverse impacts" do not include changes to non-stabilized pricing, charges required by governmental authority or assessment of or changes to recovery fees, surcharges or taxes.

1. **Early Termination:**

- If Customer migrates an AT&T ILEC PRI Service or Service Component, including DS1 used as transport for AT&T ILEC PRI Service (the "Terminated ILEC Service") to a qualifying AT&T Business Voice over IP (BVoIP) Service, then AT&T will waive the Early Termination Charge directly resulting from terminating the Terminated ILEC Service if:
  - The Terminated ILEC Service has been installed at the Customer site for no fewer than 12 months;
  - The term for the replacement agreement is equal to or greater than the remaining term for the Terminated ILEC Service;
  - The replacement AT&T BVoIP Service is installed or available at the same Customer sites as the Terminated ILEC Service; and
  - Activation of the replacement AT&T BVoIP service at the Customer site occurs within 90 days of termination of the Terminated ILEC Service at that Customer site.

m. **Limitations of Liability and Disclaimers:**

(1) AT&T MAKES NO EXPRESS OR IMPLIED WARRANTY, DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, AND DISCLAIMS ANY WARRANTIES ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING. PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S DATA AND INFORMATION, OR THAT SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. AT&T IS NOT LIABLE FOR ANY DAMAGES RELATING TO INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, DATA, EQUIPMENT, SERVICES, CONTENT OR NETWORKS PROVIDED BY CUSTOMER OR OTHERS; SERVICE DEFECTS, SERVICE LEVELS, DELAYS, SERVICE ERRORS OR INTERRUPTIONS, INCLUDING INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 CALLS OR ANY OTHER CALLS OR TRANSMISSIONS (EXCEPT FOR LIABILITY EXPLICITLY SET FORTH HEREIN); LOST OR ALTERED TRANSMISSIONS, OR UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S OR OTHERS' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS.

(2) AT&T'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR DAMAGES ARISING OUT OF AT&T'S BREACH OF THIS AGREEMENT AND NOT DISCLOSED UNDER THIS AGREEMENT SHALL NOT EXCEED THE APPLICABLE CREDITS SPECIFIED IN THE SERVICE PUBLICATION OR, IF NO CREDITS ARE SPECIFIED, AN AMOUNT EQUAL TO THE TOTAL NET CHARGES TO CUSTOMER FOR SERVICE TO WHICH SUCH BREACH RELATES DURING THE PERIOD IN WHICH SUCH BREACH OCCURS AND CONTINUES. IN NO EVENT SHALL ANY OTHER LIABILITY ATTACH TO AT&T. THIS LIMITATION WILL NOT APPLY TO BODILY INJURY, DEATH OR DAMAGE TO REAL OR TANGIBLE PROPERTY DIRECTLY CAUSED BY AT&T'S NEGLIGENCE OR INTENTIONAL MISCONDUCT. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY UNDER ANY CIRCUMSTANCES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES.

(3) These disclaimers and limitations will apply regardless of the form of action, whether in contract, tort, strict liability or otherwise, of whether damages were foreseeable and of whether a party was advised of the possibility of such damages. These disclaimers and limitations of liability will survive failure of any exclusive remedies provided in this Agreement.

n. **Assignment:** AT&T agrees at its expense to defend and either to settle any claim against Customer, its corporate affiliates and its and their employees and directors or to pay all damages finally awarded against such parties if the claim alleges that a Service infringes any patent, trademark, copyright or trade secret, except if the claim arises out of: (i) Customer's or a User's content; (ii) modifications to the Service by Customer or third parties or contributors of the Service with any non-AT&T services or products; (iii) AT&T's adherence to Customer's written requirements; or (iv) use of the Service in violation of this Agreement. AT&T at its option may either procure the right for Customer to continue using the Service or may replace or modify the Service so that it is non-infringing or may terminate the Service without liability to Customer. Customer agrees at its expense to defend and either to settle any claim against AT&T, its affiliates and its and their employees, directors, subcontractors and suppliers or to pay all damages finally awarded against such parties if: (i) the claim alleges that a Service infringes any patent, trademark, copyright or trade secret and falls within the exceptions under (i)-(iv) of the preceding paragraph; or (ii) the claim alleges a breach by Customer, its affiliates or Users of a software license agreement governing software provided with the Service.

o. **ARBITRATION:** ALL CLAIMS AND DISPUTES ARISING FROM THIS AGREEMENT SHALL BE SETTLED BY BINDING ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES (SUBJECT TO THE REQUIREMENTS OF THE FEDERAL ARBITRATION ACT). ANY JUDGMENT ON ANY AWARD RENDERED MAY BE ENTERED AND ENFORCED IN A COURT HAVING JURISDICTION. THE ARBITRATOR SHALL NOT HAVE THE AUTHORITY TO AWARD ANY DAMAGES DISCLAIMED BY THIS AGREEMENT OR IN EXCESS OF THE LIABILITY LIMITATIONS IN THIS AGREEMENT, SHALL NOT HAVE THE AUTHORITY TO ORDER PRE-HEARING DEPOSITIONS OR DOCUMENT DISCOVERY, BUT MAY COMPEL ATTENDANCE OF WITNESSES AND PRODUCTION OF DOCUMENTS AT THE

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**HEARING. THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY AND WAIVE ANY RIGHT TO PARTICIPATE IN OR INITIATE CLASS ACTIONS; IF THE PARTIES CANNOT WAIVE THESE RIGHTS, THIS ENTIRE SECTION IS VOID.**

**P. Selected Provisions:** This Agreement and any pricing or other proposals are confidential to AT&T. Neither party may publicly disclose any confidential information of the other party without the prior written consent of the other, unless authorized by applicable law, regulation or court order. User directed otherwise by Customer in writing, if AT&T designates a dedicated account representative as Customer's primary contact with AT&T, Customer authorizes that representative to discuss and disclose Customer's customer proprietary network information to any employee or agent of Customer without a need for further authorization or subpoena. Each party will comply with all applicable laws and regulations and with all applicable orders issued by courts or other governmental bodies of competent jurisdiction. This Agreement may not be assigned by either party without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed, except that AT&T may: (i) assign in whole or relevant part its rights and obligations under this Agreement to an AT&T affiliate, or (ii) subcontract work to be performed under this Agreement, but AT&T will in each such case remain financially responsible for the performance of such obligations. Any claim or dispute arising out of this Agreement must be filed within two (2) years after the cause of action arises. This Agreement does not provide any third party (including Users) the right to enforce it or to any remedy, claim, liability, cause of action or other right or privilege. Unless a regulatory agency with jurisdiction over the applicable Service applies a different law, this Agreement will be governed by the law and regulations of the State set forth above for Customer's address, without regard to its conflict of law principles. This Agreement is limited to Services as provided in the United States. The United Nations Convention on Contracts for International Sale of Goods will not apply. Except for payment of amounts due, neither party will be liable for any delay, failure, interruption, loss or damage due to causes beyond such party's reasonable control, including strikes and labor disputes. Customer must send any notice required or permitted under this Agreement in writing to the AT&T address set forth above. This Agreement constitutes the entire agreement between the parties concerning its subject matter and supersedes all previous agreements, whether written or oral. This Agreement may not be modified or supplemented without a writing signed by authorized representatives of both parties.

**8. NOTICE OF WITHDRAWAL**

Service and Service Component Withdrawals during Pricing Schedule Term	
Prior Notice Required from AT&T to Withdraw and Terminate a Service	12 months
Prior Notice Required from AT&T to Withdraw and Terminate a Service Component	120 days

For AT&T internal use only

Billing Telephone Number for Existing Service, if applicable:	800 665-2263, 222
SDA Code:	BGEZ2
ECATS/AT&T Contract ID No.:	20130117-4061

End of Document

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ATTEST: *Dandra Collop* County Clerk      *Stanley Pukeris* Presiding Commissioner