

Department/Agency Number

CAA

**CONTRACT**

THIS CONTRACT (Contract), made and effective upon the date of the Colorado State Controller's signature (the Effective Date), by and between the State of Colorado for use and benefit of the Colorado Department of Corrections (collectively, State or DOC), State of Colorado, P. O. Box 1010, Canon City, Colorado, and MCI WORLDCOM Communications, Inc., on behalf of itself and its U.S.-based affiliates and their respective successors (collectively, WorldCom or Contractor). The Contract will also be for the use and benefit of the Colorado General Support Services, Colorado Government Technology Services, Colorado Department of Human Resources, and Colorado Mental Health Institute in Pueblo for the purpose of interLATA long-distance carrier service for their respective public telephones as well as for commissions paid based upon generated revenues.

WHEREAS the State desires that WorldCom provide inmate telephone services and interLATA long-distance carrier service for the State's public pay telephones for the term of this Contract, under which no State general fund dollars are to be expended by way of this Contract, and the State represents that required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS WorldCom desires to provide such services, subject to the terms, conditions and provisions of this Contract; and

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. **Contract.**

- a. Contractor agrees to provide the Inmate Telephone Service (ITS) and the Public Pay Telephone Service (PPTS) (collectively, the Services), by furnishing all work, labor and materials and performing all work required, for the complete and prompt execution of everything described or shown in the terms, conditions, specifications and provisions of: this Contract, including the Statement of Work for Inmate Telephone Services (ITS) and for interLATA long-distance carrier service for the State's Public Pay Telephones (PPTS), attached hereto as Exhibit 1, the Statement of Rates and Commissions attached hereto as Exhibit 2, and the State's Special Provisions defined in section 24 of this Contract, all of which are made a part of this Contract. Except for the Special Provisions, in the event of any conflict, inconsistency, variance or contradiction between any terms, conditions, specifications or provisions of the documents forming this Contract, the following order of precedence shall apply:

- (1) This 16 - page Contract;
- (2) Exhibit 1, Statement of Work for Inmate Telephone Services and InterLATA Long-Distance Carrier Services for the State's Public Pay Telephones, including the training manual/plan attached to Exhibit 1 as Attachment A; and
- (3) Exhibit 2, Statement of Rates and Commissions.

b. Except to the extent any provision of the Special Provisions is inapplicable to this Contract by its own terms, the Special Provisions shall govern performance of this Contract, and shall always be controlling over other provisions of this Contract and any amendments. The factual representations in the Special Provisions concerning the absence of bribery or corrupt influences and personal interest of State employees are presently re-affirmed.

2. **Term.** The initial term of this Contract shall commence on the Effective Date and continue for three (3) years. The State shall have two (2) options to renew the Contract, for one (1) year each. The State may exercise its option to annually renew the Contract by delivering to the Contractor a written notice, which shall be provided to the Contractor for the next ensuing renewal year, in accordance with the notice clause of this Contract, not less than sixty (60) calendar days before the end of the then-current performance period of the Contract. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed five (5) years; provided, however, the State may extend this Contract on a month-to-month basis thereafter, by providing notice thereof to Contractor not less than sixty (60) calendar days before the end of said five (5) year period. During a month-to-month extension, either party may terminate this Contract upon not less than thirty (30) days notice to the other party.

3. **Inmate Telephone Service for New or Expanded DOC Facilities and Privately-Managed DOC Facilities.** For any new or expanded DOC facilities created during the term of this Contract that require the ITS, Contractor agrees to install the ITS as set forth in Exhibit 1 at no cost to the DOC, with the required (same) equipment and software to bring that expanded or new facilities into compliance with this Contract as a fully functioning part of the ITS network; provided, however, in consideration of Contractor's installation of the ITS in any new DOC facility after the twenty-fourth (24<sup>th</sup>) month of the term of this Contract, Contractor and the State will negotiate in good faith an equitable downward adjustment to the commissions payable by Contractor and any other affected term, condition or provision of this Contract.

4. **Inmate Telephone Service for other State Agencies and Political Subdivisions of the State.** During the term of the Contract, additional State agencies or counties and other political subdivisions of the State may request that WorldCom provide service with features and functionality similar to the ITS (such as call control and monitoring); provided,

however, Contractor's obligation to provide such services is subject to further mutual agreement with the State agency or other political subdivision making the request, including, but not limited to, the commissions payable by Contractor in connection with such services.

**5. InterLATA Long-Distance Carrier Service for the State's Public Pay Telephones.** Upon request, Contractor shall provide the PPTS to any State agency or any political subdivision of the State, as set forth in Exhibit 1. Contractor shall not be required to perform any conversion for any State agency or other political subdivision of the State currently receiving the PPTS from Contractor.

**6. Governing Law; Venue.** This Contract is made under and governed by the law of the State of Colorado, which shall be applied to the interpretation, execution and enforcement of this Contract. Any legal action commenced to enforce any right or obligation of this Contract shall only be commenced in Federal or State courts located in Denver County in the State of Colorado. The State recognizes that WorldCom, in conducting its business in the manner set forth herein, is also subject to the Communications Act of 1934, as amended, and as interpreted and applied by the Federal Communications Commission (collectively, the Act). In the event any rates or charges set forth in or contemplated by Exhibit 2 require a tariff or other regulatory filing, such rates or charges shall not be effective until the FCC or State PUC, as applicable, grants any necessary approval.

**7. Royalties and Patents.**

- a. Contractor shall pay all applicable royalties and license fees for any software or other intellectual property utilized in performance of this Contract. Contractor, at its expense, will defend the State against any third party claim, threat, action, suit, or other proceeding, to the extent the same alleges infringement of any patent, trademark, or copyright or misappropriation of a trade secret, arising solely from the State's use of a Service in the form provided by Contractor in a country where such Service is provided to the State hereunder and when used by the State in conformity with all applicable written instructions and documentation provided by Contractor (an "Infringement Claim"). The Contractor will indemnify the State for damages finally awarded against the State in, or agreed to by Contractor in settlement of, an Infringement Claim. The Contractor shall have the exclusive right to defend or settle any such Infringement Claim. The Contractor's obligation to defend and indemnify the State against any Infringement Claim is contingent upon the State's providing the Contractor: (1) timely written notice of such Infringement Claim, provided that the failure of the State to provide timely notice shall not modify the Contractor's obligations under this paragraph except to the extent that the Contractor is materially prejudiced thereby; and (2) at the Contractor's reasonable expense, all reasonable information and assistance requested by the Contractor to settle or defend such Infringement Claim.

- b. The Contractor shall have no obligation to defend or indemnify the State for any Infringement Claim rising out of or relating to: (1) the State's combination or use of the Services with anything not provided by the Contractor as part of the Services, or (2) the State's modification of the Services. Further, notwithstanding anything to the contrary in this provision, the Contractor shall have no obligation to defend or indemnify the State for any Infringement Claim arising out of or relating to: (a) Contractor's implementation of the State's designs or specifications into the Services, where but for such implementation there would have been no Infringement Claim; or (b) State-supplied content, data, or other information transmitted, where but for such content, data, or other information there would have been no Infringement Claim. To the fullest extent permitted by applicable law, the State, at its expense, will defend the Contractor against, and indemnify the Contractor for, damages finally awarded against the Contractor or agreed to by the State in settlement of, any Infringement Claims within the scope of the foregoing two sentences, provided that the requirements of the last two sentences of paragraph a above shall apply equally to the Contractor in connection with the foregoing obligations of defense and indemnity of the State.
- c. If (1) the State's indemnified use of any of the Services is enjoined or otherwise prohibited, the Contractor shall be required, or (2) if the Contractor reasonably believes that there exists a threat of the same, the Contractor shall have the right, in its sole discretion and at its expense, in addition to its indemnification obligations above, to: (i) obtain for the State the right to continue to use the affected Service(s); (ii) replace the affected Service(s) with a non-infringing service providing substantially comparable functionality; (iii) modify the affected Service(s) so that it becomes non-infringing while still providing substantially comparable functionality; or (iv) terminate provision of the affected Service(s) and/or terminate this Contract.
- d. These provisions set forth the sole and exclusive remedy of the State, and the entire obligation and liability of the Contractor, as to any claim or proceeding alleging infringement or misappropriation of third party intellectual property or proprietary rights in connection with this Contract.

8. **Termination for Political Necessity.** The State may terminate this Contract should circumstances occur which remove the governmental power to fulfill the State's obligations under this Contract. The State shall give not less than ninety (90) days prior written notice of the termination to the Contractor and specify the date upon which termination becomes effective. Contractor shall remain liable to the State for all commissions accruing up to the date Contractor's

services cease.

9. **Termination for Default.** If the Contractor refuses or fails to timely perform any of the material provisions of this Contract, with such diligence as will ensure its completion within the time specified in this Contract, the State may notify the Contractor in writing of the non-performance, and if not promptly corrected within the time specified, which shall be not less than thirty (30) calendar days, State may terminate the Contractor's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. The Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere. If after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of the Force Majeure clause of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Political Necessity clause of this Contract.

- a. Contractor's Duties: Notwithstanding termination of the Contract hereunder and subject to any directions from the State, the Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest. The parties acknowledge, however, that this is not a purchase Contract, and no State general fund dollars are to be expended by way of this Contract.

10. **Permits, Licenses, Rates and Commissions.**

- a. Contractor will, at its own expenses, obtain all necessary licenses to continue operating a communication company within Colorado under FCC and Colorado PUC guidelines, rules and regulations.
- b. Contractor agrees to notify DOC in writing within ten (10) days upon determining that it may be precluded by a change in Federal, State or local law or regulations from providing the ITS or the PPTS. Contractor further agrees that, in the event Contractor or any subcontractor is precluded by applicable law from continuing to provide the ITS, Contractor will reasonably assist DOC in identifying another vendor's system which provides substantially the same features and functionality as the Contractor-provided system; provided, however, DOC shall make its own independent determination of whether another vendor's system meets DOC's requirements, and Contractor shall have no further liability in connection with rendering any such assistance to DOC. Upon DOC's selection of a replacement vendor, at no cost to the State, Contractor will reasonably assist DOC with the conversion from Contractor's system or services, without unnecessary interruption.
- c. The Statement of Rates and Commissions attached hereto as Exhibit 2, sets forth the per minute rates and per call surcharges that called parties

will be charged (in the case of collect calls) and calling parties (in the case of debit calls) will be charged under the Inmate Telephone Service, and describes the Contractor's right to modify such rates and surcharges from time to time and the limitations on such right. Exhibit 2 also sets forth the commissions the Contractor shall pay the State as a result of providing the Services under this Contract. In the event of any law, order, rule, regulation or other mandate of any Federal, State, or local government agency enacted during the term of this Contract, including any extensions, including but not limited to any Colorado PUC rate caps or flat fee requirement, which requires Contractor to charge less than Exhibit 2 would otherwise entitle Contractor to charge users of the ITS, then the Parties will negotiate in good faith an equitable downward adjustment to the commissions payable by Contractor for the ITS, as well as any other affected terms, conditions or provisions of this Contract. The rates and charges that Contractor will charge for the Public Pay Telephone Service will be as set forth in WorldCom's applicable Federal and State tariff(s) from time to time during the Contract term, or their successor(s), which tariff(s) are subject to change at WorldCom's discretion in accordance with applicable law.

11. **Laws and Regulations.** Contractor agrees to do all work in a first class, complete and workmanlike manner in strict accordance with the provisions of this Contract, all applicable safety codes and Federal Communication Commission (FCC) and Colorado Public Utilities Commissions (PUC) guidelines. Contractor shall comply with all laws, ordinances, rules and regulations in effect on the date of execution of the Contract applicable to the Services. If, without notice to DOC, the Contractor, or its subcontractor(s), performs any work knowing it is contrary to applicable laws, ordinances, rules and regulations, Contractor shall bear all costs arising therefrom. The cost of complying with any changes in such laws, ordinances, rules and regulations arising after the execution of this Contract shall be the sole responsibility of the Contractor; provided, however, in the event of a change in such laws, ordinances, rules and regulations that has a material adverse effect on the Contractor's ability or cost of providing the Services under this Contract, the parties will negotiate in good faith, an equitable adjustment to rates, commissions and other affected terms, conditions and provisions of this Contract.

Contractor understands and agrees that it may not, without the prior written authorization of the DOC, monitor, record, or disclose any information obtained through an inmate telephone conversation, during the Contractor's installation or on-going maintenance of the ITS and related equipment, and that any such monitoring, recording or disclosure that occurs without the DOC's prior written authorization is a violation of DOC Policy and may constitute a felony and/or misdemeanor under Colorado Revised Statutes § 18-9-304 and § 24-72-308, respectively. To assist in avoiding any such unauthorized activities, Contractor shall disclose this provision, in writing, to each of its employees and subcontractors prior to their assignment to work in any DOC facility, and shall maintain the confidentiality of any such information, by exercising the same degree of care it uses to protect its own confidential information, but in any case not less

than reasonable care.

12. **Equipment Ownership and Confidentiality of Records.**

- a. The DOC agrees and acknowledges that all telephone instruments, system equipment, recording equipment, software and fixtures, including printers, modems, computers (as inventoried to Contractor) and supplies installed or furnished by Contractor in order to perform the Services, shall remain the sole and exclusive property of the Contractor, third party manufacturers, or the Contractor's subcontractor(s) or licensor(s), as applicable. The Contractor agrees to provide and maintain computer hard drive space in such size and quantity, as is necessary to hold ITS call recordings including incomplete calls for a maximum of sixty (60) days and completed calls for not less than ninety (90) days. Such recordings shall be accessible on site at the server or on hard disk. The Contractor acknowledges that the content of such recordings, including any and all intellectual property therein, and the recording media on which the recordings are located, shall be the property of DOC and the tapes or other recording media will be turned over to DOC upon the expiration or termination of the Contract, with no claim from Contractor.
- b. In the event the Contractor shall obtain access to any records or files of the State in connection with this Contract, or in connection with the performance of its obligations under this Contract, which records, files or other information are designated as confidential by the State, by markings, written notice to the Contractor, or other appropriate means, then the Contractor shall keep such records and information confidential and shall comply with all laws and regulations concerning the confidentiality of such records. The Contractor shall notify its employees that they are subject to the confidentiality requirements as set forth above, and shall provide each employee with a written explanation of the confidentiality requirements before the employee is permitted access to confidential data.
- c. Except as required by law, the State will not disclose to third persons, other than contractors or consultants of the State whose performance of services require disclosure, any information marked as "confidential" or "proprietary" or otherwise marked as agreed by the parties. Except as otherwise agreed, "confidential" or "proprietary" information of the Contractor which may be marked is information relating to its research, development, trade secrets, business affairs, internal operations and management procedures and like information of its customers, clients, or affiliates, but does not include information lawfully obtained from third parties, information in the public domain, exhibits, attachments, or appendices to the contract, or information required to be delivered to the

State pursuant to the terms of this contract. With respect to any such disclosure to other contractors or consultants of the State, the State agrees to inform them concerning the restrictions on disclosure and include suitable nondisclosure provisions in their agreements.

- d. Nothing herein is intended or shall operate as a waiver of any applicable law governing disclosure of records, including the Colorado Open Records Act (Section 24-72-101, CRS). The State agrees to provide the Contractor with prompt written notice of requests for disclosure under such laws of any Contractor information within the scope of this clause.

13. **Remedies.** In addition to any other remedies provided for in this Contract, and without limiting its remedies otherwise available at law, if the Contractor substantially fails to satisfy or perform the material duties and obligations in this Contract, and the Contractor does not cure any such failure within thirty (30) days after notice thereof from the State, then the State may exercise the following remedial actions. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect or improper performance, activities, or inaction by Contractor. These remedial actions are as follows:

- a. Suspend Contractor's performance pending necessary corrective action as specified by the State without Contractor's entitlement to adjustment in price/cost or schedule; and/or
- b. Terminate the Contract for default, in accordance with the Termination for Default clause of this Contract.

The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.

14. **Limitations of Liability.** The express remedies provided herein are the State's sole remedies for breach of any and all warranties and for the Contractor's liability arising from the supplies, disaster recovery services, or other services provided hereunder, and any other performance by the Contractor under or pursuant to this Contract. In no event shall the Contractor's or its suppliers' contractual liability to the State for damages of any nature exceed the total charges payable under this Contract, as it may be amended from time to time. The Contractor will not have any responsibility for any product or service provided by persons other than the Contractor. This limitation of liability provision, and any other limitation or exclusion of damages in this Contract, do not limit or exclude the Contractor's liability for intellectual property rights infringement or for death or bodily injury or damage to tangible property arising out of Contract performance and caused by the Contractor, its employees, agents, or subcontractors.

15. **Force Majeure.** Neither the Contractor nor the State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this Contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to



the extent that, such delay or failure is caused by "force majeure". As used in this Contract, "force majeure" includes, but is not limited to: acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; acts or omissions of the other party or any third party beyond the reasonable control of the party whose performance is affected; or any other cause or circumstance beyond the reasonable control, and without the negligence or other fault, of the party whose performance is affected. Any delay or failure in the Contractor's performance resulting from "force majeure" shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable.

15A. **Performance Bond.** Within ten (10) days after the Effective Date of this Contract, the Contractor shall provide to the State, at the Contractor's cost, a duly executed performance bond in the penal sum of Five Hundred Thousand Dollars (\$500,000), issued by a surety licensed to do business in the State of Colorado, and shall maintain such performance bond for the term of this Contract, including any extensions or renewals.

16. **Insurance.** The Contractor shall obtain, and maintain at all times during the term of this Contract, insurance in the following kinds and amounts:

- a. Standard Worker's Compensation and Employer Liability as required by State statute, including occupational disease, covering all employees on or off the work site, acting within the course and scope of their employment.
- b. General, Personal Injury, and Automobile Liability (including bodily injury, personal injury, and property damage) minimum coverage:
  1. Combined single limit of \$600,000 if written on an occurrence basis.
  2. Any aggregate limit will not be less than \$1,000,000.
  3. Combined single limit of \$600,000 for policies written on a claims-made basis. The policy shall include an endorsement, certificate, or other evidence that coverage extends two years beyond the performance period of the Contract.
  4. If any aggregate limits are reduced below \$600,000 because of claims made or paid during the required policy period, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish a certificate or other document showing compliance with this provision.
- c. The State of Colorado shall be named as additional insured on all liability policies.
- d. The insurance shall include provisions preventing cancellation without 60 days prior notice to the State by certified mail.

- e. The Contractor shall provide certificates showing adequate insurance coverage to the State within 7 working days of award or contract execution, unless otherwise provided.

17. **Security.** Contractor shall ensure that all employees, as well as all subcontractors and their employees, who will perform work on DOC premises, are informed of all applicable Federal, State and local law and regulations, including DOC regulations, regarding introduction of contraband and relationships between personnel and inmates. Pursuant to C.R.S. Sec. 17-19-01, all Contractor employees and all employees of Contractor's subcontractors, who will perform work on DOC premises, will be required to sign a Consent to Search Authorization prior to working on any DOC premises. Contractor agrees to provide DOC a list of names, date of birth, current driver's license number and social security number of such persons, for the purpose of enabling DOC to perform a background investigation on such persons. All Contractor employees and subcontractors will be required to provide a written inventory of all tools being brought into the facilities prior to gaining entrance. All conditions of this paragraph shall be complied with prior to work being performed on DOC premises under this Contract. As authorized by law, DOC shall retain the right to search, and remove if required, all vehicles or persons and equipment entering DOC facilities.

18. **Independent Contractor Relationship.** The Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income taxes and local head tax on any monies paid pursuant to the contract. Contractor acknowledges that Contractor and its employees are not entitled to unemployment insurance benefits unless Contractor or a third party provides such coverage and that customer does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the ordering entity to any contracts, liability, or understanding except as expressly set forth herein. Contractor shall provide and keep in force worker's compensation (and show proof of such insurance) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of Contractor, its employees or agents.

19. **Entire Agreement.** This Contract, including all exhibits and attachments hereto, is intended as the complete integration of all understandings between the parties concerning the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings and communications, whether written or oral, concerning the subject matter hereof. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied in this Contract in writing. No subsequent novation, renewal, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment approved and executed by both parties in accordance with applicable law.

20. **Severability.** To the extent this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of this Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or

provision hereof. The parties further agree that in the event such term is an essential part of this Contract, they will immediately begin negotiations to replace the invalid or inoperative term with a mutually acceptable term.

21. **Waiver.** The failure of either party to insist upon the other party's strict performance of any term, condition or provision of this Contract, in one or more instances, shall not constitute a waiver. The waiver by either party of any breach by the other party of any term, condition or provision of this Contract, shall not be construed as a waiver of any other term, condition or provision of this Contract or of any subsequent breach of the same term, condition or provision. No waiver shall be valid and enforceable unless in writing, signed by an authorized representative of the party against which the waiver is sought to be enforced.

22. **Governmental Immunity.** Notwithstanding any other provision of this Contract to the contrary, no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et. seq.*, CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, *et. seq.*, CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, *et. seq.*, CRS, as now or hereafter amended.

23. **Miscellaneous.**

- a. The Contractor assures DOC that at all times during performance of this Contract, that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in, or denied to benefits of, the service, programs or activities performed by Contractor hereunder, or be subjected to any discrimination by the Contractor, upon which assurance DOC relies.
- b. Any reports, studies, photographs, negatives, database information, or other documents prepared by the Contractor in performance of its obligations hereunder shall be the joint property of the parties, and all such materials shall be identified to DOC by the Contractor upon completion, termination or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of its obligations under this Contract, without DOC's prior written consent.
- c. This Contract is in the nature of personal services. The duties and obligations of the Contractor can not be assigned, delegated or subcontracted, except with the prior written consent of DOC, which consent shall not be unreasonably withheld or conditioned; provided, however, Contractor shall have the right to assign or otherwise transfer this Contract, in whole or in part, to its parent or to any other controlled affiliate or

subsidiary thereof. Contractor shall remain responsible for the performance of all of its obligations under this Contract, notwithstanding any subcontractor(s) consented to by DOC.

d. The Contract shall benefit and burden the parties hereto in accordance with its terms, conditions and provisions, and is not intended, and shall not be deemed or construed, to confer any rights, powers, benefits or privileges on any person or entity other than the parties to this Contract. This Contract is not intended to create any rights, liberty interests or entitlement in favor of any DOC inmate or offender. This Contract is intended only to set forth the contractual rights and responsibilities of the parties hereto. DOC inmates and offenders shall have only those entitlements, if any, created by Federal or State constitution, statutes, regulations or case law.

e. The Contractor assures and guarantees that it possesses the legal authority to enter into this Contract. The person signing this Contract on behalf of Contractor does hereby warrant and guarantee that he has full authorization to sign this Contract on Contractor's behalf.

f. Except as otherwise expressly provided in Exhibit 1 with respect to Change Orders under the ITS, all notices or communications required or permitted to be given under this Contract shall be in writing, and sent by postage prepaid, certified U.S. mail, or commercial overnight delivery, addressed to the parties as follows:

If intended for DOC: Colorado Department of Corrections  
Attn: Mary Lou LaCouture  
2862 South Circle Drive, Suite 400  
Colorado Springs, CO 80906

If intended for WorldCom: WorldCom  
Attn: Keith Eismann  
20855 Stone Oak Parkway  
San Antonio, TX 78258

With fax copy to: WorldCom - Law & Public Policy  
5055 North Point Parkway  
Alpharetta, GA 30022  
Attn: K. McGeady (Fax: 678-259-1185)

Notices shall be effective when delivered. Either party may change its designated notice address or addressee from time to time, by providing notice of the change to the other party in accordance with this paragraph.

- g. The parties may execute this Contract in two or more counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

## 24. SPECIAL PROVISIONS

### CONTROLLER'S APPROVAL

1. This contract shall not be deemed valid until it shall have been approved by the Controller of the State of Colorado or such assistant as he may designate. This provision is applicable to any contract involving the payment of money by the State.

### FUND AVAILABILITY

2. Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

### BOND REQUIREMENT

3. If this contract involves the payment of more than fifty thousand dollars for the construction, erection, repair, maintenance, or improvement of any building, road, bridge, viaduct, tunnel, excavation or other public work for this State, the Contractor shall, before entering upon the performance of any such work included in this contract, duly execute and deliver to the State official who will sign the contract, a good and sufficient bond or other acceptable surety to be approved by said official in a penal sum not less than one-half of the total amount payable by the terms of this contract. Such bond shall be duly executed by a qualified corporate surety conditioned upon the faithful performance of the contract and in addition, shall provide that if the Contractor or his subcontractors fail to duly pay for any labor, materials, team hire, sustenance, provisions, provendor or other supplies used or consumed by such Contractor or his subcontractor in performance of the work contracted to be done or fails to pay any person who supplies rental machinery, tools, or equipment in the prosecution of the work the surety will pay the same in an amount not exceeding the sum specified in the bond, together with interest at the rate of eight per cent per annum. Unless such bond is executed, delivered and filed, no claim in favor of the Contractor arising under such contract shall be audited, allowed or paid. A certified or cashier's check or a bank money order payable to the Treasurer of the State of Colorado may be accepted in lieu of a bond. This provision is in compliance with CRS 38-26-106.

### INDEMNIFICATION

4. To the extent authorized by law, the Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

### DISCRIMINATION AND AFFIRMATIVE ACTION

5. The Contractor agrees to comply with the letter and spirit of the Colorado Antidiscrimination Act of 1957, as amended, and other applicable law respecting discrimination and unfair employment practices (CRS 24-34-402), and as required by Executive Order, Equal Opportunity and Affirmative Action, dated August 1987. *Pursuant thereto, the following provisions shall be contained in all State contracts or subcontracts.*

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age. The Contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to the above mentioned characteristics. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising; lay-offs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth provisions of this non-discrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, State that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, marital status, religion, ancestry, mental or physical handicap, or age.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the contracting officer, advising the labor union or workers' representative of the Contractor's commitment under the Executive Order, Equal Opportunity and Affirmative Action, dated August 1987, and rules, regulations, and relevant Orders of the Governor.

(d) The Contractor and labor unions will furnish all information and reports required by Executive Order, Equal Opportunity and Affirmative Action of August 1987, and by the rules, regulations and Orders of the Governor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the office of the Governor or his designee for purposes of investigation to ascertain compliance with such rules regulations and orders.

(e) A labor organization will not exclude any individual otherwise qualified from full membership rights in such labor organization, or expel any such individual from membership in such labor organization or discriminate against any of its members in the full enjoyment work opportunity because of race, creed, color, sex, national origin, or ancestry.

(f) A labor organization, or the employees or members thereof will not aid, abet, incite, compel or coerce the doing of any act defined in this contract to be discriminatory or obstruct or prevent any person from complying with the provision of this contract or any order issued thereunder; or attempt, either directly or indirectly, to commit any act defined in this contract to be discriminatory.

(g) In the event of the Contractor's non-compliance with the non-discrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further State contracts in accordance with procedures, authorized in Executive Order, Equal Opportunity and Affirmative Action of August 1987 and the rules, regulations, or orders promulgated in accordance therewith, and such other sanctions as may be imposed and remedies as may be invoked as provided in Executive Orders, Equal Opportunity and Affirmative Action of August 1987, or by rules, regulations, or orders promulgated in accordance therewith, or as otherwise provided by law.

(h) The Contractor will include the provisions of paragraphs (a) through (h) in every subcontract and subcontractor purchase order unless exempted by rules, regulations, or orders issued pursuant to Executive Order, Equal Opportunity and Affirmative Action of August, 1987, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontracting or purchase order as the contracting agency may direct, as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation, with the subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the State of Colorado to enter into such litigation to protect the interest of the State of Colorado.

## **COLORADO LABOR PREFERENCE**

6a. Provisions of CRS 8-17-101 & 102 for preference of Colorado labor are applicable to this contract if public works within the State are undertaken hereunder and are financed in whole or in part by State funds.

b. When a construction contract for a public project is to be awarded to a bidder, a resident bidder shall be allowed a preference against a non-resident bidder from a State or foreign country equal to the preference given or required by the State or foreign country in which the non-resident bidder is a resident. If it is determined by the officer responsible for awarding the bid that compliance with this subsection 6 may cause denial of federal funds which would otherwise be available or would otherwise be inconsistent with requirements of Federal law, this subsection shall be suspended, but only to the extent necessary to prevent denial of the moneys or to eliminate the inconsistency with Federal requirements (CRS 8-19-101 and 102).

## **GENERAL**

7. The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract whether or not incorporated herein by reference which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision

rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

8. At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

9. Pursuant to CRS 24-30-202.4 (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

10. The signatories aver that they are familiar with CRS 18-8-301, et. seq., (Bribery and Corrupt Influences) and CRS 18-8-401, et. seq., (Abuse of Public Office), and that no violation of such provisions is present.

11. The signatories aver that to their knowledge, no State employee has any personal or beneficial interest whatsoever in the service or property described herein:

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day first above written.

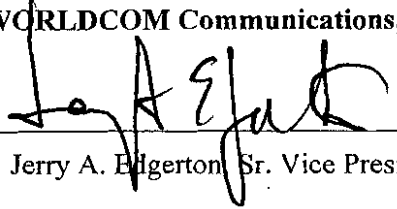
Contractor:

STATE OF COLORADO

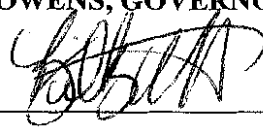
MCI WORLDCOM Communications, Inc.

BILL OWENS, GOVERNOR

By:

  
Jerry A. Edgerton, Sr. Vice President

By:

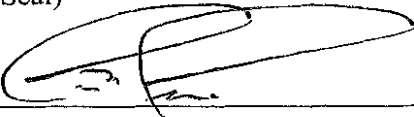
  
EXECUTIVE DIRECTOR  
COLORADO DEPARTMENT OF CORRECTIONS

Contractor's FEIN: 47-0751768

(If Corporation:)

Attest (Seal)

By:



Corporate Secretary, or Equivalent, Town/City/County Clerk

APPROVALS:

ATTORNEY GENERAL

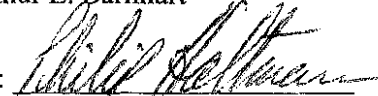
STATE CONTROLLER

Arthur L. Barnhart

By:



By:



Date: November 1, 2001

*Pursuant to Colorado Revised Statutes, Section 24-3-903, (1988 and Comm Supp 1994) the Executive Director, Colorado Government Technology Services, Department of General Support Services, has signed this contract for Colorado Mental Health Institute, Department of Human Resources.*



**EXHIBIT 2**

**STATEMENT OF RATES AND COMMISSIONS  
FOR  
COLORADO INMATE TELEPHONE SERVICES (ITS)  
AND INTER-LATA LONG DISTANCE CARRIER SERVICES  
FOR  
STATE'S PUBLIC PAY TELEPHONES (PPTS)**

**A. ITS RATES & CHARGES:**

Per minute rates and per call charges for Local, IntraLATA and InterLATA (IntraState – Colorado) ITS Collect and Debit calls, and InterState ITS Debit calls, are set forth below. These rates and charges are fixed for the term of the Contract, including any extensions or renewals, unless otherwise agreed by the parties. Per minute rates and per call charges for Interstate ITS Collect calls will be as set forth in WorldCom's applicable FCC Tariff(s) and its successor(s) from time to time during the Contract term, including any extensions or renewals, and are subject to change at WorldCom's discretion. WorldCom will exercise reasonable efforts to provide the DOC with prior notice of any changes in its Interstate ITS Collect call rates and charges, but failure to provide such notice will not affect WorldCom's right to make such changes nor constitute a breach or default under this Contract.

<b>ITS COLLECT CALLS</b>			
Local Per Call Charge:	\$2.46	Rate Per Minute:	N/A
IntraLATA Per Call Charge:	\$2.11	Rate Per Minute:	\$0.20 Day \$0.11 Night/Week End
IntraState/InterLATA Per Call Charge:	\$3.00	IntraState/InterLATA Rate Per Minute:	\$0.24 All Times
InterState Per Call Charge:	Per Tariff	Rate Per Minute:	Per Tariff
<b>ITS DEBIT CALLS</b>			
Local Per Call Charge:	\$1.25	Rate Per Minute:	N/A
IntraLATA Per Call Charge:	\$1.00	Rate Per Minute:	\$0.20 Day \$0.11 Night/Week End
IntraState/InterLATA		IntraState/InterLATA	

Per Call Charge:	\$1.25	Rate Per Minute:	\$0.19 All Times
InterState Per Call Charge:	\$1.25	Rate Per Minute:	\$0.19 All Times

**B. PPTS RATES & CHARGES:**

Per minute rates and per call charges for PPTS calls will be as set forth in WorldCom's applicable FCC and state Tariff(s) and their successor(s) from time to time during the Contract term, including any extensions or renewals, and are subject to change at WorldCom's discretion..

**C. COMMISSIONS:**

1. Commissions on ITS Calls. WorldCom shall pay the DOC a monthly commission equal to twenty-seven percent (27%) of the "ITS Commissionable Revenue" from ITS Collect and Debit Calls under this Contract for the initial three (3) year base term, and a commission equal to thirty-three percent (33%) of the "Commissionable Revenue" from ITS Collect and Debit Calls under this Contract for any extensions or renewals of the initial term.

2. ITS Commissionable Revenue: ITS Commissionable Revenue is the total billable revenue for all ITS Collect (excluding international ITS Collect calls, if such calls are permitted by the DOC) and Debit calls handled by either WorldCom or Qwest, and carried on the WorldCom or Qwest network, as applicable, less: (i) taxes; (ii) credits; (iii) any amount WorldCom or Qwest, as applicable, collects or otherwise pays to third parties in support of programs mandated by governmental or quasi-governmental authorities, such as the Universal Service Fund and the Carrier Access Charge; (iv) any amount WorldCom or Qwest, as applicable, pays to payphone service providers pursuant to Section 276 of the Telecommunications Act of 1996 ("Section 276") and the regulations implementing Section 276; and (v) any costs incurred by WorldCom or Qwest, as applicable, in connection with such compensation requirements in support of programs mandated by governmental or quasi-governmental authorities, including without limitation those of Section 276.

3. Commissions on PPTS Calls. As set forth in subsection 3.8 of Exhibit 1, WorldCom will pay Owner a monthly commission that is equal to thirty-three percent (33%) of Commissionable Revenue for PPTS Calls that month.

[END OF EXHIBIT 2]