

PIGNATELLI & O'BRIEN, LLC

Phone: 435.659.6368

Fax: 435.200.0274

Office Address

1887 Gold Dust Lane, Suite 302
Park City, Utah 84060

Mailing Address

P.O. Box 682590
Park City, Utah 84068

September 5, 2013

Via Hand Delivery

Public Service Commission of Utah
160 East 300 South
4th Floor
Salt Lake City, Utah 84111

Attention: Gary Widerburg
Commission Secretary

**Re: *FORMAL COMPLAINT OF PIGNATELLI & O'BRIEN, LLC AGAINST
INTEGRA TELECOM OF UTAH, Docket No. 13-__-__***

Dear Mr. Widerburg:

Pignatelli & O'Brien, LLC hereby submits for filing its Formal Complaint Against Integra Telecom of Utah. An original and four copies of this filing will be provided via hand delivery. We will also provide electronic versions of this filing to psc@utah.gov.

Pignatelli & O'Brien respectfully requests that all formal correspondence and requests for additional information regarding this filing be addressed to the following:

By E-mail (preferred): melissa@pandollic.net

By regular mail: Pignatelli and O'Brien, LLC
P.O. Box 682590
Park City, Utah 84068

Informal inquiries may be directed to Melissa O'Brien at (435) 659-6368.

Very Truly Yours,



Christina Pignatelli

cc: Division of Public Utilities
Box 146751
Salt Lake City, Utah 84114-6751
chrisparker@utah.gov
marmartinez@utah.gov
wduncan@utah.gov

Office of Consumer Services
Utah Department of Commerce
P.O. Box 146782
Salt Lake City, UT 84114-6782
mbeck@utah.gov
ocs@utah.gov

Integra Telecom of Utah
c/o Customer Operations – Billing Dispute
1201 NE Lloyd Blvd., Suite 500
Portland, Oregon 97232

Courtesy Copies To:

California Public Utilities Commission
California State Building
505 Van Ness Ave
San Francisco, CA 94102-3298
Public.advisor@cpuc.ca.gov

Arizona Corporation Commission
1200 West Washington Street
Phoenix, AZ 85007
mailmaster@azcc.gov
legaldiv@azcc.gov

Colorado Public Utilities Commission
1560 Broadway
Ste. 250
Denver, CO 80202
dora_puc_complaints@state.co.us

Idaho Public Utilities Commission
472 West Washington Street
PO Box 83720
Boise, ID 83720-0074
secretary@puc.idaho.gov

Montana Public Service Commission
Commission Secretary
1701 Prospect Avenue
PO Box 202601
Helena, MT 59620-2601
asolem@mt.gov

Minnesota Public Utilities Commission
121 Seventh Place East
Suite 350
St. Paul, MN 55101-2147
consumer.puc@state.mn.us

Nevada Public Utilities Commission
1150 East William Street
Suite 250
Carson City, NV 89701-3109
pkostas@puc.nv.gov

Oregon Public Utilities Commission
3930 Fairview Industrial Dr SE
PO Box 1088
Salem, OR 97308-1088
puc.consumer@state.or.us

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive
PO Box 47250
Olympia, WA 98504-7250
comments@utc.wa.gov

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

FORMAL COMPLAINT OF PIGNATELLI & O'BRIEN, LLC AGAINST INTEGRA TELECOM OF UTAH	Docket No. _____ Formal Complaint
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**COMPLAINT AGAINST INTEGRA TELECOM OF UTAH
FOR UNFAIR ASSESSMENT OF CHARGES**

Pignatelli & O'Brien, LLC ("P&O") respectfully files this complaint with the Public Service Commission of Utah (the "Commission"). P&O regrets having to appeal to the Commission for assistance but efforts to resolve the below dispute with Integra Telecom of Utah ("Integra" or the "Company") have been unsuccessful. P&O believes that, as a regulator of Integra, the Commission has special interest in ensuring that Integra is treating its customers fairly. As detailed in the below complaint, hiding under the veil of intentionally concealed and legally unconscionable language, Integra seeks to hold P&O liable for calls that Integra acknowledges were not made by P&O.

P&O is serving courtesy copies of this pleading on each of the public service commissions before which Integra does business. P&O's hope is that this will bring to light the manner in which Integra is treating its customers. P&O appeals to you, the Commission, to stop this practice before it puts small business customers out of business through no fault of their own. In this case, Integra thought nothing of charging a customer who rarely exceeded \$225 a month for service a total of \$28,815.79 for services that Integra acknowledges that P&O never used. P&O requests that the Commission initiate formal agency proceedings in this case, pursuant to R746-240-8.

Summary of Pignatelli & O'Brien's Position

P&O argues that:

1. Despite being well aware of the problem of toll fraud, Integra failed to respond to the hacking in a timely fashion because it has absolutely no incentive to act quickly to protect its customers.
2. Integra intentionally concealed its Master Service Agreement (“MSA”) because it contains unconscionable terms.
3. Integra’s MSA contains language too broad to be legally enforceable.
4. Integra’s tariff language is dated and does not take into account: (a) the changed environment of telecom fraud, and (b) Integra’s unfair application of the tariff language. Furthermore, P&O is curious about the process by which the Commission reviews tariff language, whether Commission approval is necessary in the telecom industry, and the representations made by Integra during any such review by the Commission.

Factual Background

P&O started taking phone service from Integra in December 2008. In the last four and a half years, P&O’s monthly bill has consistently been between \$200-225 and P&O has always paid timely. On June 15, 2013, in the middle of the night, two of the voicemail boxes at the P&O offices were hacked. The fraud was acknowledged in a form letter from Integra dated four days later attached hereto as Exhibit A. According to Integra, hackers try different combinations of passwords and break into the voicemails. They then have a way of selling international time and literally thousands of

calls can be made in a matter of hours. P&O had never heard of such a thing but Integra told P&O that it is becoming a more common scam. Integra called it “toll fraud.” It is apparently becoming so common that Integra has a form letter it sends to victims of this fraud. The letter received by P&O had no information as to the extent of the fraud and no information about what P&O should do next.

On July 17, 2013, P&O received a bill for \$28,815.79. That bill is attached as Exhibit B. P&O was told by the customer service representative at Integra that the figure represented 2,291 international calls over a seven hour timeframe.

When P&O received the bill, P&O immediately took steps to resolve the matter with Integra. The day after receiving the bill, P&O had its system checked by the installer who confirmed that their system was installed correctly. Once the system was inspected, P&O called Integra’s customer service department and when the representative could not help P&O, he refused to provide the phone number of a manager. He would only provide an email. P&O immediately emailed but was at the mercy of whenever Integra felt like responding. Despite efforts to resolve the matter, and an offer by Integra to waive half of the charges, P&O received another bill on August 19, 2013, with the same balance of \$28,815,79 due. Exhibit C. Pursuant to R746-240-7, P&O worked through the informal complaint process with the Division of Public Utilities. Attached as Exhibit D is a timeline of the efforts made by P&O to resolve the matter.

Integra’s Failure to Act Timely

In its response to the Informal Complaint, attached as Exhibit E, Integra acknowledges that it has an anti-fraud alert. It states that its anti-fraud function “is only

triggered when a sufficient volume of calls shows a pattern of abuse.” As discussed above, P&O was a \$200 a month client over four and a half years. If P&O had five international calls in any given month, it would be surprising. Nearly 2,300 calls were made on June 15, 2013. It took Integra over seven hours to block the calls. Even when an alert was triggered at 8:00 am, it took two hours and 25 minutes to put any sort of block on the calls.

P&O has not been given access to how the calls broke down but a straight extrapolation suggests that 791 calls were made between 8:00 am and 10:25 am while Integra got its act together. In dollar terms, that straight extrapolation amounts to \$9,948.

It begs the question of the threshold of Integra’s anti-fraud function. P&O never made even five international calls a month. In this case, 2,291 international calls were made in seven hours. If the threshold to trigger an alarm at Integra is so high, its system is flawed at best, completely ineffective at worst. To make matters worse, Integra acknowledges that it was well aware of this type of fraud before it happened with P&O. Yet it did nothing to upgrade its system to prevent against the extent to which a customer can be harmed.

The simple fact is that, under Integra’s “take no responsibility” policy, it has no incentive to stop the calls or to act with any sort of urgency. Integra, the only party that can stop the calls, has absolutely no reason to do so promptly. Instead, a customer that has no idea the calls are being made is held responsible for all of them and Integra makes a profit. The policy is nonsensical.

The policy also runs counter to industry norm. Credit card companies have invested in anti-fraud technology because they are on the hook when customers are billed

for unauthorized charges. It is a common occurrence that a credit card customer cannot use her credit card for a few hours because there has been questionable activity. Customers put up with, and even appreciate, this minor inconvenience because it means credit card companies are watching that their customers are not the victims of fraud. Integra does not watch out for its customers because it is going to bill them anyway. Perhaps if Integra had some responsibility placed on it, it would change its fraud alert system so that hackers could not do the type of damage they did in this case.

Integra Never Provided its Master Service Agreement to P&O

In its response to P&O's Informal Complaint, Integra states that P&O was formerly an Eschelon customer before Integra took over Eschelon's customer base. This is factually incorrect. P&O opened its office in December of 2008 when it signed up with Integra. Integra states that Eschelon's practice was to provide a Master Service Agreement ("MSA") to its customers. This is immaterial as P&O was never an Eschelon customer. Similarly, when Integra sent the former Eschelon customers a MSA on July 1, 2008, P&O did not receive it because it was neither an Eschelon customer nor an Integra customer at that time. That Integra believes that (1) P&O was ever an Eschelon customer and (2) that Integra provided the above referenced notice to P&O speaks to the quality of its record keeping.

Nor did P&O receive the MSA when it signed up for service with Integra. P&O understands that Integra is hanging its hat on the fine print at the bottom of the "Agreement for Service" that purported to set out expected rates. Not only is an incorporation by reference in fine print sneaky and bad business, if you can read on, the

cited provision states that the MSA and Rules and Regulations can be found on Integra's website. This is not true. There is no MSA listed in the "Public Info and Policies" section, where it would logically fall. In addition, a search of Master Service Agreement in the Search command results in 13 documents, none of which is the MSA that Integra has recently sent P&O and the Commission.

Integra knows that the language is unconscionable. It knows it is so broad as to fail legal scrutiny, as discussed in more detail below. So it buries the language.

In addition, it is important to note that this is a service agreement under which P&O had no bargaining power. Integra puts a "Service Agreement" in front of its customer after its technician has set up service. Despite the MSA being squeezed into a short pamphlet using small type, it does not have its technicians provide the MSA when customers are asked to sign a Service Agreement. Instead, Integra puts the onus on the customer to go find the MSA. A customer may think that the MSA is one of the 13 documents that resulted from the Search command on Integra's website, but they would be incorrect. The MSA is apparently a document that resides in the desks of Integra employees to send to customers only when they are being held responsible for something they did not know could happen.

In *Williams v. Walker-Thomas Furniture Company*, the court found that "when a party of little bargaining power, and hence little real choice, signs a commercially unreasonable contract with little or no knowledge of its terms, it is hardly likely that his consent, or even an objective manifestation of his consent, was ever given to all the terms." In such a case, the "court should consider whether the terms of the contract are

so unfair that enforcement should be withheld.” 350 F.2d 445 (D.C. Cir. 1965). *See also Weaver v. American Oil Co.*, 276 N.E.2d 144 (1971)

When a party can show that the contract, which is sought to be enforced, was in fact an unconscionable one, due to a prodigious amount of bargaining power on behalf of the stronger party, which is used to the stronger party’s advantage and is unknown to the lesser party, causing a great hardship and risk on the lesser party, the contract provision, or the contract as a whole, if the provision is not separable, should not be enforceable on the grounds that the provision is contrary to public policy. The party seeking to enforce such a contract has the burden of showing that the provisions were explained to the other party and came to his knowledge and there was in fact a real and voluntary meeting of the minds and not merely an objective meeting.

The Provisions of the MSA are Too Broad to be Legally Enforceable

Section 4 of the MSA reads:

Customer is responsible for payment of any charges incurred due to fraud, abuse, or misuse of the Services, whether known or unknown to Customer. It is the Customer’s obligation to take all measures to ensure against such occurrences.

Basically, Integra absolves itself of responsibility for any sort of fraud, even if it was the party in the best position to stop or limit the damage of the fraud. In *Industralease Automated & Scientific Equipment Corp. v. R.M.E. Enterprises, Inc.*, 58 A.D.2d 482 (1977), the court said that “the basic test is whether, in the light of the general commercial background and the commercial needs of the particular trade or case, the clauses involved are so one-sided as to be unconscionable under the circumstances existing at the time of the making of the contract.” There is no denying that the clause cited above is so one-sided to be unconscionable. P&O had no way of knowing that the fraud was occurring until after the damage had been done. Integra, the one party that

could have stopped the fraud, did not do so, and now points to the unbelievably broad and unconscionable language cited above.

P&O had its phone system professionally installed. It had it professionally inspected after the fraud occurred and everything was installed properly. In fact, before Integra initiated service, it sent not one but two employees out to P&O's office and Integra's own technicians inspected the installation. P&O has not a single employee that knows about the technology behind phone service or that toll fraud was even a possibility. From P&O's standpoint, it had done everything correctly. It had dotted its i's and crossed its t's. It relied on Integra to do what it was hired to do.

The Tariff Should be Reopened and Reexamined

Integra points to its tariff language as cover for its behavior. Again, the tariff language is not provided on Integra's website. If Integra wants to point to tariff language as a way to escape responsibility, an honest company would put said tariff language in a place where customers could find and review it.

A careful look at the tariff pages shows that the tariff became effective on December 28, 2009. As a company not involved in the telecom industry, P&O is not aware of what was involved in making the tariff effective. Is Commission approval necessary? Did the Commission conduct hearings? Was there notice and an opportunity to be heard as required by due process? How many days of hearings did the Commission hold? Did any public witnesses appear? In other words, if Integra is going to point to the onerous language in its tariff as a basis to charge a small business customer

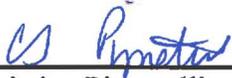
for nearly \$29,000 in fraudulent charges, what representations to the Commission did Integra have to make to allow its tariff to become “effective.”

P&O respectfully submits that it is time that the Commission reopen Integra’s tariff and take a good look at the provisions and how the Company is applying them. In addition, perhaps the advent and rise of toll fraud necessitates a reevaluation of this policy. P&O cannot imagine that assessing a small business with \$28,815.79 for calls that everyone acknowledges were not made by P&O is what the Commission had in mind for this language. Knowing how Integra is applying this language should raise a red flag as to their policies in general.

Conclusion

BASED ON THE FOREGOING, Pignatelli & O’Brien respectfully requests: (1) that the Commission initiate formal investigative proceedings pursuant to R746-240-8; (2) that the Commission find that Integra’s filed tariffs do not provide adequate notice to its customers; (3) that the Commission find the provisions of Integra’s MSA to be so overbroad as to be legally unenforceable; (4) that the Commission reopen Integra’s filed tariff to ensure that it is fair to customers, allowing notice and opportunity to be heard for all parties; and (5) that the Commission Order that Pignatelli & O’Brien is not responsible for the fraudulent charges incurred in June 2013.

RESPECTFULLY SUBMITTED: September 5, 2013.



Christina Pignatelli
Melissa Pignatelli O'Brien

Managers, Pignatelli & O'Brien

EXHIBIT A



825 NE Multnomah St., Suite 1400, Portland, Oregon 97232

June 19, 2013

PIGNATELLI & O'BRIEN LLC
Attn: Melissa O'Brien
2503 ASPEN SPRINGS DR
PARK CITY, UT 84060

Dear Melissa O'Brien,

I regret to hear about and empathize with your fraudulent call incident that occurred recently. Unfortunately you experienced what is referred to in the telecommunications industry as "hacking". Hacking occurs when a telephone system is accessed and used by an unauthorized person, a thief, who then places outgoing calls over the telephone lines associated with the equipment that has been compromised. Hacking is not something that Integra can prevent. We typically provide only the telephone service to our customers and do not provide nor have any control over nor program the customer's telephone equipment.

I want to further explain how toll fraud generally works with the services you are being provided by Integra in conjunction with your PBX vendor. Basic installation of PBX voice mailboxes includes a 'first time' pass-code that is generally known in the industry and unfortunately known by the hacking community. This pass-code allows the caller remote entry to the setup of a mailbox configuration and feature setup. One particular feature of mailbox configurations is the ability to transfer a call upon no answer. This feature is generally known as Transfer Destination. This feature allows a string of numbers to be programmed and called upon no answer, such as '9011'. In this example, the 9 would secure an outside trunk, and 011 would secure an international trunk. Once on the International trunk the caller can finish the dialing sequence to whatever destination they wish.

Hacking is the activity in calling telephone numbers in hopes to find a mailbox that has not been protected with a secure pass-code. Once finding an unprotected mailbox, the hacker can establish the Transfer Destination feature to an outside trunk and sell this 'new found' mailbox telephone number to fraudulent buyers of long distance.

Upon installation of a PBX, it is paramount that responsible parties secure all configurations, pass-codes, and features of the PBX and voice mail to ensure outside hackers are kept from taking control and selling fraudulent long distance at the PBX owner's expense.

Integra has the ability to block long distance calls on a line or trunk, but that generally defeats the overall service requirements for most PBX owners. Therefore, securing long distance capabilities generally lies within the PBX equipment.

I hope this clarifies what I believe may have occurred at PIGNATELLI & O'BRIEN LLC.

Kevin Kavanah
VP Customer Care

EXHIBIT B



Account Number 790330
 Account Name PIGNATELLI & O'BRIEN LLC
 Invoice Date 07/11/2013 Invoice No 11086469
 Total Amount Due \$28,815.79



Contact us:

Account Consultant Customer Service 866-468-3472 customerservice@integratelecom.com www.integratelecom.com

MONTHLY INVOICE SUMMARY

Account History

Previous Balance 237.71
 Payments Applied -237.71
 Balance Forward \$0.00

Summary of Current Charges

Monthly Service 184.35
 Usage Based Service 22,231.98
 Other Charges & Fees 6,377.34
 Taxes & Surcharges 22.12
 Current Charges - Due on 8/1/13 \$28,815.79



Total Amount Due \$28,815.79

To avoid late charges, please pay the Total Amount Due by the due date.

Manage your account online!

IntegraCare online account management provides the freedom and flexibility to manage your account from any internet connection. Visit <http://integracare.integratelecom.com> for more information.



Detach this form and return it with your payment. Write your Account Number on your check or money order (U.S. Dollars only). Make check payable to and mail to: Integra



1201 NE Lloyd Blvd, Ste 500
 Portland, OR 97232-1259

7532 0300 NO RP 13 07112013 YYNNNNNN 0003022 33 T33
 2326 1 AT 0.381

PIGNATELLI & O'BRIEN LLC
 2503 ASPEN SPRINGS DR
 PARK CITY UT 84060-7537



Payment Due By	Total Amount Due	Amount Enclosed
8/1/13	\$28,815.79	\$

Account Number 790330
 Account Name PIGNATELLI & O'BRIEN LLC
 Invoice Date 07/11/13
 Invoice Number 11086469

INTEGRA
 PO BOX 2966
 MILWAUKEE, WI 53201-2966



0000790330001108646907102013000000028815791



Account Number	790330
Account Name	PIGNATELLI & O'BRIEN LLC
Invoice Date	07/11/2013 Invoice No 11086469
Total Amount Due	\$28,815.79

IMPORTANT INFORMATION ABOUT YOUR ACCOUNT

Thank you for choosing Integra.

This Communications Invoice is due and payable upon receipt and is past due if unpaid after the due date shown on the invoice. Please make check or money order payable in U.S. Dollars to Integra. Failure to pay these charges may result in collection action as well as termination of service. Past due balances are subject to a late fee of 1.5% per month, or the highest rate allowed by law.

Integra strongly supports the billing display requirements of the FCC Truth in Billing Rules. If there is any information presented on this bill about which you have questions or if you would like a further description of charges, please call your local customer care office number, found on the first page of your invoice.

For additional information, please see the terms and conditions of service found in your Master Service Agreement (MSA) included with your service agreement and order.

Please send any disputes to:
 Integra
 c/o Customer Operations - Billing Dispute
 1201 NE Lloyd Blvd., Suite 500
 Portland, OR 97232

Questions regarding your invoice? Contact us:

Customer Service	866-integra
Repair	800-360-4467
ISP Support	866-871-1114

Website	www.integratela.com
Email	customerservice@integratela.com

EXHIBIT C



Account Number	790330
Account Name	PIGNATELLI & O'BRIEN LLC
Invoice Date	08/11/2013 Invoice No 11186138
Total Amount Due	\$29,049.46



Contact us:
 Account Consultant Customer Service 866-468-3472 customerservice@integratelecom.com www.integratelecom.com

MONTHLY INVOICE SUMMARY

Account History

Previous Balance	28,815.79
Payments Applied	0.00

Balance Forward - Past Due \$28,815.79

Summary of Current Charges

Monthly Service	184.35
Usage Based Service	0.03
Other Charges & Fees	27.17
Taxes & Surcharges	22.12

Current Charges - Due on 9/1/13 \$233.67



Total Amount Due \$29,049.46

To avoid late charges, please pay the Total Amount Due by the due date.

Manage your account online!

IntegraCare online account management provides the freedom and flexibility to manage your account from any internet connection. Visit <http://integracare.integratelecom.com> for more information.

News from Integra

Notice of Price Increase

If applicable, you will see an increase in the monthly rates for the following services, effective with the September billing cycle: Novus T1, ISDN PRI T1, Internet DS1: \$10/month increase per Facility or Router Charge; On-Net Basic Business Lines (Arizona only), TDM Integrated T1 Business Lines, and Market Expansion Lines (MEL): \$2/month increase per line or path; and Interconnection Fee (ICF) for Off-Net Long Distance: \$1.50/month increase per line/number.



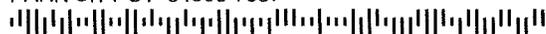
Detach this form and return it with your payment. Write your Account Number on your check or money order (U.S. Dollars only). Make check payable to and mail to: Integra



1201 NE Lloyd Blvd, Ste 500
 Portland, OR 97232-1259

7512 0300 NO RP 11 06112013 YNNNNNNN 0000795 SL T13
 2289 1 AT 0.381

PIGNATELLI & O'BRIEN LLC
 2503 ASPEN SPRINGS DR
 PARK CITY UT 84060-7537



Payment Due By	Total Amount Due	Amount Enclosed
9/1/13	\$29,049.46	\$

Account Number	790330
Account Name	PIGNATELLI & O'BRIEN LLC
Invoice Date	08/11/13
Invoice Number	11186138

INTEGRA
 PO BOX 2966
 MILWAUKEE, WI 53201-2966



0000790330001118613808102013000000029049465

EXHIBIT D

Integra Dispute Timeline

June 15, 2013	Hacking occurs
June 19, 2013	Letter is sent by Integra acknowledging the fraud, no contact information provided to resolve; Pignatelli & O'Brien LLC ("P&O") receives sometime that next week.
July 17, 2013	Bill for \$28,815.79 received by P&O.
July 17, 2013	Call is made to Integra, customer service representative refuses to provide a phone number for a manager, only provides email.
July 18, 2013	P&O has system evaluated by IT installers; sends email to Integra.
June 19, 2013	Letter is sent by Integra acknowledging the fraud, no contact information provided to resolve; P&O receives sometime that next week.
July 22, 2013	P&O sends certified letter disputing charges.
July 23, 2013	Integra sends email requesting dates for conference call.
July 23, 2013	P&O provides 5 different options for conference call over the immediate 72 hours.
July 24, 2013	Return email from Integra at 5:53 pm.
July 26, 2013	Conference call held; Integra offers to waive half of the charges and suggests that P&O file with its insurance carrier.
July 26, 2013	Integra confirms that all services received by P&O are out of contract.
August 2, 2013	P&O reaches out to Integra via email to see if position has changed.
August 6, 2013	Integra responds that its position remains the same, attaching a "Master Services Agreement," which assigns all responsibility for fraud to the customer, known or unknown.
August 6, 2013	P&O inquires as to who approved the Master Services Agreement and whether or not it was provided to P&O at any time.

August 6, 2013 Integra responds that it is not legal and not aware of who approved or if we ever received a copy of the Master Services Agreement– only that the original (now expired) contract references it.

August 7, 2013 P&O contacts Maria Martinez.

August 8, 2013 Integra requests an extension from the PSC complaint to “investigate” the issue.

August 19, 2013 P&O received a bill from Integra showing \$28,815.79 being charged. P&O contacts Integra and offers to pay our monthly service charges but none of the toll fraud charges.

August 22, 2013 P&O received Integra’s response to its informal complaint, maintaining that P&O should be liable for \$14,574.20.

August 22, 2013 P&O responded with its intention to file formal public service commission complaints.

August 28, 2013 P&O sends a certified letter disputing the August 19, 2013 bill.

September 3, 2013 Integra threatens to disconnect service despite commitments that the bill was being held in abeyance while the dispute is ongoing. After P&O responded, Integra puts the account back into a disputed status..

EXHIBIT E

August 22, 2013

Via E-Mail and Certified Mail

Pignatelli & O'Brien LLC
Attn: Melissa O'Brien
Christina Pignatelli
1887 Gold Dust Lane, Suite 302
Park City, Utah 84060

Re: Complaint with the Utah Public Service Commission, Index No. 5013 Contract for Service, Integra Telecom of Utah, Inc. and Pignatelli & O'Brien, Account No. 790330

Dear Ms. O'Brien and Ms. Pignatelli:

Enclosed please find the Response of Integra Telecom of Utah, Inc. to the above-referenced Complaint.

Should you have any questions, please contact Ginny Zeller at 763-458-6575, or ginny.zeller@integratelecom.com.

Sincerely,

A handwritten signature in cursive script that reads "Cathy Murray".

Cathy Murray

Manager, Regulatory Affairs

Phone: 763-745-8466

Facsimile: 763-745-8459

E-mail: camurray@integratelecom.com

cc: Marialie Martinez, Division of Public Utilities
at marmartinez@utah.gov

**UTAH DIVISION OF PUBLIC UTILITIES, COMPLAINT INDEX NUMBER 5013
RESPONSE OF INTEGRA TELECOM OF UTAH, INC. TO INFORMAL COMPLAINT
OF PIGNATELLI & O'BRIEN, LLC**

Introduction

Integra Telecom of Utah, Inc. (Integra) respectfully submits this Response to the Informal Complaint, Index No. 5013, filed by Integra customer Pignatelli & O'Brien, LLC (P&O) against Integra. P&O has refused to pay its outstanding charges for telecommunications services rendered by Integra. P&O bases its refusal on the fact that a third party illegally "hacked" into P&O's network hardware and placed long-distance calls. Although the terms of the parties' contract and the Utah tariff governing Integra's provision of service show that P&O is fully liable for the invoiced amount, Integra has agreed to credit a substantial portion of the invoiced charges. P&O nevertheless moved forward with its complaint, seeking a finding of zero liability. For the reasons that will be detailed in this Response, the Utah Division of Public Utilities (DPU) should dismiss P&O's complaint and find that P&O should pay the charges owing to Integra pursuant to contract and tariff.

History of Integra Contract with P&O

P&O first entered into a contract for telecommunications service with Eschelon Telcom of Utah, Inc. (Eschelon). Integra acquired Eschelon and its customer base in 2007. Eschelon had, and Integra continues to have, a policy and practice of providing to each customer signing a contract for service a copy of the governing document, the Master Service Agreement (MSA). Furthermore, on July 1, 2008, Integra mailed each of the former Eschelon customers a copy of the Integra Master Service Agreement (MSA), with notification that this document was the contract governing the customer's service. *Exhibit 1, July 1, 2008, Notification and attached Integra Master Service Agreement.* On December 5, 2008, P&O signed a new 36-month contract with Integra. *Exhibit 2, Voice and DSL Services Agreement.* The contract states, among other things, that, "Customer acknowledges that Customer has received, read and understands this Agreement and the Master Services Agreement, and agrees to be bound by all of the terms and conditions of the foregoing documents and policies."

Paragraph 1 of the Master Service Agreement states that term contracts will convert to month-to-month unless and until either party terminates the agreement:

Subject to the early termination provisions set forth herein at the end of the Services Term, this Agreement will automatically continue on a month to month basis ("Renewal Services Term") until terminated by either party with at least (30) days advance written notice to the other party.

Exhibit 1, July 1, 2008, Notification and attached Integra Master Service Agreement, Paragraph 1.

As the original 36-month term was succeeded by a month-to-month contract, the MSA continued to govern Integra's service to P&O.

Circumstances behind the Charges

Shortly before 5:00 AM, on June 15, 2013, an unknown party "hacked" into the hardware server on P&O's premises and originated an unauthorized call from the server to an international destination. This illegal activity is known as "toll fraud."

Integra's switch tracks all calls for billing and also monitors potential illegal activity. Because innumerable calls are legitimately placed to overseas destinations, and a telephone company cannot properly block a customer's calls without determining that the calls are something other than legitimate, the switch's anti-fraud function is only triggered when a sufficient volume of calls shows a pattern of abuse. In this case, this triggering volume occurred at just after 8:00 AM, whereupon the switch sent a "fraud alert." A trouble ticket was issued at 8:20 AM. After the completion of certain manual processes, rendered more complicated than usual by the multiple Business Telephone Numbers and the volume of customer circuits involved, all relevant international calls were blocked by 10:25 AM. Thereafter, at 10:45 AM, the underlying carrier, Level 3, issued its first "carrier alert" regarding toll fraud. A few illegitimate calls continued to come through the switch after the block was put on, probably because the calls had not been terminated until then and would therefore not have been tracked by the switch.

On July 11, 2013, Integra sent a bill to P&O for \$28,815.79, which included \$22,231.98 in toll fraud charges and \$6,377.34 in associated Other Charges and Fees. Thereafter, Integra issued a credit to P&O for 50% of the toll fraud charges, or \$11,115.87. The taxes and surcharges associated with the toll fraud charges will also be reduced by 50% in the following month's bill, which will bring the total credit to \$14,241.59. After application of all credits, P&O's remaining liability to Integra is therefore \$ 14,574.20.

P&O has refused to pay anything on the bill but its monthly service charge of \$184.35.

Terms of the Master Service Agreement and Governing Tariff.

Both Integra's governing MSA and its filed tariffs require that customers will be responsible for payment of toll fraud charges. Logic supports this position. Integra is responsible for carrying the communications service to and from the customer premises. The customer is responsible for

installing and maintaining hardware that will interface with the communications service and ensure that calls are legitimate. Unless Integra is the customer's hardware vendor--which is not the case here--the vendor, not Integra, is able to install, set, and monitor the customer's PBX. Among many things the vendor or telecommunications consultant can do to protect the customer's system are: run periodic security audits to check for loopholes in the PBX; tailor access to the PBX to conform to business needs; delete/change all default passwords; frequently change default codes/passwords on voice mailboxes; and program the PBX to terminate access after the third invalid attempt. As the service provider, Integra can do none of these things. The terms of the MSA make clear the customer's responsibility in the case of toll fraud. Section 4 of the MSA states in relevant part:

FRAUD, TELEPHONE NUMBERS AND DIRECTORY LISTINGS

Customer is responsible for payment of any charges incurred due to fraud, abuse, or misuse of the Services, whether known or unknown, to Customer. It is the Customer's obligation to take all measures to ensure against such occurrences.

Exhibit 1, July 1, 2008, Notification and attached Integra Master Service Agreement, Section 4.

Similarly, Integra's state tariffs governing its service, filed pursuant to Utah Public Service Commission rule, establish the customer's responsibility for charges incurred through toll fraud.

Section 2.7.2 of the Integra state tariff, under Liability of the Customer, states in relevant part:

B. Liability for Unauthorized Use

1. Except as provided for elsewhere in this Price List, the Customer is responsible for payment of all charges for Services provided under this Price List. This responsibility is not changed due to any use, misuse, or abuse of the Customer's service or Customer-provided equipment by Users or other third parties, the Customer's employees, or the public.

Section 2.9.7 of the tariff, found under Section 2.9, Customer Responsibilities, states:

In accordance with the "filed tariff doctrine," as established by judicial and regulatory decisions and precedents, Customer shall pay all charges due and owing irrespective of any claims of loss, liability, set off, damages, or other claims against Company to which Customer may claim to be entitled, the duty to pay such charges shall arise upon the demand for payment by Company and shall not be delayed or deferred by the commencement of any legal or equitable action by either Customer or Company in connection with such charges incurred under this Price List.

Exhibit 3, Relevant Sections of Integra Telecom of Utah, Inc. Regulations and Schedules, Utah Price List No. 3.

Integra Acted Promptly and Appropriately and Should Be Paid for Its Costs of Service

Upon being alerted by its switch regarding possible toll fraud activity, Integra acted promptly and appropriately to block further calls. From its position as network provider, Integra acted as quickly as possible to address the problem associated with illegal activity directed against the customer's server. It is significant to note that Integra had the customer's outgoing fraudulent calls blocked by the time the underlying carrier, Level 3, sent its first fraud alert.

Integra has significant underlying costs of service provided by its own underlying carriers in this matter. Integra should not be forced to bear losses for those costs if its service is uncompensated by its customer.

Conclusion

For the reasons stated, Integra requests that the Utah DPU dismiss P&O's complaint against Integra, and find that P&O should pay Integra the balance owing to Integra for services rendered: that is, the \$28,815.79 charges shown in the July 11, 2013, invoice, less credits applied by Integra in the amount of \$14,241.59, for **a total balance owed by P& O of \$14,574.20.**

Dated: August 22, 2013.



Cathy Murray

Manager, Regulatory Affairs

Phone: 763-745-8466

Facsimile: 763-745-8459

E-mail: camurray@integratelecom.com

Please read this document carefully. This is your written notification that effective July 1, 2008, the following Integra Telecom Master Service Agreement will replace and supersede the terms and conditions of your current Eschelon Communications Service Agreement Terms and Conditions.

INTEGRA TELECOM MASTER SERVICE AGREEMENT

Integra Telecom, Inc., by and through its subsidiaries, including Electric Lightwave, LLC and Eschelon Telecom, Inc. (hereinafter "INTEGRA") and Customer, hereby agree to the following terms and conditions for INTEGRA services to Customer:

1. EFFECTIVE DATE, SERVICES, AND SERVICES TERM. This Master Service Agreement, along with the order for service ("Service Agreement(s)"), any attachments, the policies and procedures found on INTEGRA's website: www.integratелеcom.com, and any filed tariffs, price lists or schedules, comprise the entire agreement between the parties ("Agreement") for the communication services described herein. This Agreement supersedes any and all prior discussions, representations, memoranda, or agreements, oral or written, between the parties related hereto. INTEGRA reserves the right, in its sole reasonable discretion, to reject any service agreement. This Agreement is fully binding and enforceable as of the date the Service Agreement(s) is signed by both parties ("Effective Date"). INTEGRA agrees to provide to Customer (subject to availability and adequacy of underlying service) and Customer agrees to procure from INTEGRA the communication services as described herein, at the locations set forth, ("Services") for the number of months set forth ("Services Term"), all as detailed on the Service Agreement(s) incorporated as part of this Agreement. The Services Term commences upon installation of the Services by INTEGRA ("Installation Date"). Installation of services occurs at the delivery of operating circuits to the demarcation terminal at the Customer's premise ("Installation of Service"). INTEGRA will use reasonable efforts to install the services on the date agreed upon by the parties. INTEGRA does not guarantee that Services will be installed and provisioned on Customer's desired due date. Subject to the early termination provisions set forth herein, at the end of the Services Term, this Agreement will automatically continue on a month to month basis ("Renewal Services Term") until terminated by either party with at least (30) days advance written notice to the other party. Unless otherwise provided by law, Customer shall, upon providing INTEGRA notice of termination of Services, be responsible for payment from the Service End Date (date of disconnection) to the end of the 30 day notice period. In the event of early termination, the early termination fee shall be calculated from the end of the 30 day notice period until the expiration date of the Service Agreement term.

2. RATES, CHARGES, BILLING AND PAYMENT. Rates and charges are described in this Agreement. INTEGRA will notify Customer when Customer's circuit has been delivered and installation of Service has thus occurred. Upon delivery of the circuit, Customer agrees to convert its telecommunications services and commit to a specific conversion date. Customer further agrees that billing will commence with INTEGRA's first regular billing cycle after installation of Service regardless of the Customer's actual conversion date. Monthly recurring charges ("MRC") will be billed in advance each month. Non-recurring charges ("NRC") will be billed on the first invoice after the Installation Date, or if the NRC are incurred after the Installation Date, or are usage based, such charges will be billed on the next invoice thereafter. Customer is responsible for payment of all originating and terminating calls to Customer's number(s). Payments are due on the Payment Due By date set forth on the INTEGRA invoice. Customer must provide payment in full on Payment Due By date. If Customer believes it has been billed in error or otherwise disputes a charge, Customer must notify INTEGRA within 90 days of the date of the invoice containing the disputed charge. INTEGRA will promptly investigate and notify Customer of the results of its investigation. Customer's notice must specifically detail the dispute and provide supporting documentation for the amount in dispute. INTEGRA will investigate all disputes and if appropriate, credit Customer's account or notify Customer of denial of the dispute. INTEGRA may assess a late fee of 1.5% per month (not to exceed the maximum rate allowed under state law) on any undisputed balances not paid when due or any disputed balances later found to be correct. Late fees may be assessed, as of the original Due By Date, against any disputed amount denied by INTEGRA. INTEGRA has the option to suspend Services and/or to pursue any

and all other legal remedies until payment is made. Termination of Services may follow. Customer will pay any and all costs incurred in collection of rates and charges due and payable, including reasonable attorney's fees and all collection agency costs, whether or not a suit is instituted. All payments hereunder will be in U.S. currency.

Customer hereby authorizes INTEGRA to conduct a credit search and agrees to provide INTEGRA with information regarding payment history for communications services, number of years in business, financial statement analysis and commercial credit bureau rating. This Agreement is subject to credit approval. INTEGRA may require Customer to tender a deposit up to the maximum permitted by law to guarantee payment hereunder. Such deposit may have, as an additional component, deposit for any INTEGRA-provided Customer Premise Equipment. When Customer establishes acceptable credit history or upon termination of this Agreement, INTEGRA will return the balance of the deposit, if any, to Customer along with interest as required by law.

INTEGRA shall not be liable for any third party charges arising from or related to the termination of any previous agreement for telecommunications services or the failure of Customer to terminate any previous agreement for telecommunications services.

If any property owner, under which Customer is a tenant, assess a fee against INTEGRA in order to, or as a result of, the provisioning of any Services to Customer, INTEGRA may pass through such charges to Customer.

3. CHANGES IN RATES, TERMS AND CONDITIONS. INTEGRA may change its rates, terms and/or conditions (including policies and procedures found at www.integratелеcom.com) upon 30 days notice to Customer. Use of INTEGRA services after the thirty (30) day notice period shall be deemed consent to the changed rates, terms and conditions.

4. FRAUD, TELEPHONE NUMBERS AND DIRECTORY LISTINGS. Customer is responsible for payment of any charges incurred due to fraud, abuse, or misuse of the Services, whether known or unknown, to Customer. It is the Customer's obligation to take all measures to ensure against such occurrences.

INTEGRA shall take all reasonable measures to provide Customer with continuation of existing telephone numbers. However, if Customer is changing location at the time of conversion or taking service for the first time at a location, INTEGRA makes no warranties regarding assignment of particular telephone numbers to Customer. INTEGRA shall not be liable to Customer for any change in telephone numbers due to actions of any vendor or supplier of services to INTEGRA. Customer's reliance upon and/or use of any Service numbering information prior to installation and acceptance of Service is at the Customer's sole risk.

INTEGRA shall not be liable for any inaccurate or dropped listings of any publisher/directory database. INTEGRA shall not be liable for any errors or omissions, whether arising through negligence or otherwise, in the information furnished to a publisher or to a directory database(s). Additional costs may be assessed for publisher/directory database listing charges.

5. TAXES, SURCHARGES AND ASSESSMENTS. Customer is responsible for payment of any and all federal, state and local taxes, or surcharges (excluding INTEGRA income taxes). INTEGRA will collect all such taxes, charges, and surcharges unless Customer provides INTEGRA with proof of exemption. Customer will indemnify INTEGRA for any and all costs, claims, taxes, charges, and surcharges levied against INTEGRA relative to such exempt status. Surcharges and assessments, which are not required by regulatory agencies, but which INTEGRA is permitted to charge to recover expenses, may be applied. All such charges will be set forth on a detailed invoice.

6. TARIFF APPLICATION. In the event of any conflict between any provision of this Agreement and any provision of the tariff or price list, the provision of such tariff or price list will control.

7. COMPLIANCE WITH LAW. This Agreement is subject to all applicable federal, state, and local laws, regulations, rulings, orders and other actions of governmental agencies ("Rules"), and the obtaining and continuance of any required approvals, authorizations, or tariffs or price lists filed with the FCC or any other governmental agency. INTEGRA will use good faith reasonable efforts to obtain, retain, and maintain such approvals and

authorizations. If any such Rule adversely affects the Services or requires INTEGRA to provide Services other than in accordance with the terms of this Agreement, either party may, without liability to the other party, terminate the affected Services upon 30 days prior written notice to the other party. In performing their obligations under this Agreement, the parties will comply with all applicable Rules, specifically including, but not limited to, the Rules governing 911/E-911 and any other emergency services.

Subject to INTEGRA's 911/E-911, and unless otherwise specifically agreed, (a) INTEGRA will provide Customer with the network connection for each circuit, billing telephone number (BTN) or trunk group that comprise the Services, and (b) INTEGRA will provide the appropriate Public Safety Answering Point (PSAP) with the automatic location identification (ALI), including the same emergency response location, for all BTNs of the circuit or trunk group regardless of the number of lines, trunks, or unique telephone numbers on that circuit or trunk group. Customer will be responsible for providing all other 911/E-911 services as required by the Rules, including, but not limited to agreements with, and network or other connection to, the local PSAPs. Customer will maintain the necessary databases and update and transfer the ALI to the appropriate PSAPs. INTEGRA is not responsible for and will not make any changes or submit updates to 911/E-911 databases for any services other than the one emergency response location as set forth above. Customer agrees to fully indemnify, defend, and hold harmless INTEGRA, its officers, directors, parent, and affiliated companies, employees, agents and subcontractors from all liabilities, claims, fees, expenses, costs or damages of any kind arising out of personal injury or death or damage to property related to Customer's failure to meet any 911/E-911 requirements or agreements.

8. SERVICES, MAINTENANCE AND UPGRADE OF FACILITIES. Services will meet industry standards. INTEGRA will maintain its facilities and equipment used to provide the Services as set forth in its policies and procedures, at no additional charge to Customer, except where work or service calls result from failure or malfunction in, or improper operation of, Customer's facilities and/or equipment. In such event, Customer will reimburse INTEGRA for the cost of the required maintenance at INTEGRA's standard time and material rate plus any taxes imposed upon INTEGRA related to such maintenance. INTEGRA reserves the right to suspend Service for scheduled maintenance or planned enhancements or upgrades or emergencies repairs to INTEGRA's network without notice to Customer. INTEGRA equipment will remain the sole and exclusive property of INTEGRA or INTEGRA's assignee. Customer will not tamper with, remove or conceal any INTEGRA identifying plates, tags or labels. Customer will indemnify, hold harmless and defend INTEGRA against any liens placed on INTEGRA equipment due to Customer's action or inaction. Any lien will be discharged by Customer within then (10) days of notice of filing. Failure to discharge any such lien is a material breach of this Agreement, and may result in immediate termination.

Customer will provide equipment compatible with the Services and INTEGRA's network, and facilities. Customer will bear the costs of any additional apparatus reasonably required to be installed because of the use of INTEGRA's network or facilities.

Upon termination of the Service, Customer grants INTEGRA the right to recover INTEGRA provided equipment from customer's premises upon the termination of this agreement. In the event Customer fails to return the equipment, INTEGRA may invoice Customer for the then fair market value of such equipment.

INTEGRA reserves the right to substitute, change or rearrange any equipment used in delivering Services that does not affect the quality, cost or type of Services. INTEGRA will manage its network in INTEGRA's sole discretion. Customer will provide all reasonable information, authorizations, and access required by INTEGRA for the purpose of installing Services, performing routine network grooming, maintenance, upgrades, and addressing emergencies.

9. SERVICE INTERRUPTION CREDITS. Credits are subject to the limitation of liability set forth in Section 10, and shall only be given for disruption of Services in accordance with this Section. Upon request, Customer shall be entitled to a Credit for any disruption that exceeds twenty-four (24) hours and for which INTEGRA is the sole cause of such disruption and such disruption is not the result of (i) scheduled maintenance that occurs between the hours of eleven pm and six am; (ii) planned enhancements; or (iii) upgrades. Such credit shall be based upon the ratio of the duration of the service interruption (measured from the time the interruption is reported to or detected by Company, whichever occurs first) to the total time in a 30 day month. That ratio,

multiplied by the monthly rate for the service affected shall determine the amount of the credit allowance. No Credit shall be owing for any disruption resulting from a Force Majeure event.

10. **DISCLAIMER/LIMITED WARRANTY.** EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, INTEGRA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, INTEGRA DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

11. **LIMITED LIABILITY, INTEGRA'S LIABILITY AND THE EXCLUSIVE REMEDY OF CUSTOMER FOR DAMAGES ARISING OUT OF OR RELATED TO THE SERVICES AND/OR THIS AGREEMENT, WILL BE SOLELY LIMITED TO AN AMOUNT NO GREATER THAN THE AMOUNTS PAID BY CUSTOMER TO INTEGRA DURING THE MONTH OF THE OCCURRENCE OF ANY CLAIM, IN NO EVENT WILL INTEGRA BE LIABLE TO THE CUSTOMER FOR LOSS OF USE, INCOME OR PROFITS, LOSS OF REVENUES, LOSS OF SAVINGS OR HARM TO BUSINESS OR ANY OTHER SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES, REGARDLESS OF THE FORSEE ABILITY THEREOF.**

12. **CUSTOMER WARRANTIES.** (a) The Customer represents and warrants that it is an entity, duly organized, validly existing and in good standing under the laws of its origin, with all requisite power to enter into and perform its obligations under this Agreement in accordance with its terms; (b) Customer represents and warrants that neither its equipment nor facilities will pose a hazard to INTEGRA's Equipment or facilities or create a hazard to INTEGRA's personnel or customers or the public in general; (c) Customer represents and warrants that its use of the Service will comply and conform with all applicable federal, state and local laws, administrative and regulatory requirements and any other authorities having jurisdiction over the subject matter of this Agreement and it will be responsible for applying for, obtaining and maintaining all registrations and certifications which may be required by such authorities; (d) Customer represents and warrants that it will not resell all or a portion of the Service(s) provided by INTEGRA under this Agreement. Customer will indemnify and hold INTEGRA harmless from any and all loss, liability, claim, demand, and expense (including reasonable attorneys' fees) related to Customer's violation of this Section.

13. **CONFIDENTIAL INFORMATION.** Customer proprietary network information shall only be disclosed in accordance with INTEGRA's policies and procedures.

In addition to the foregoing, the parties may have access to certain information, the ownership and confidential status of which is highly important to the other party and is treated or designated by one of the parties as confidential (herein referred to as "Confidential Information"). Neither party will disclose the other party's Confidential Information, directly or indirectly under any circumstances, to any third person without the express written consent of the other party, and neither party will copy, transmit, reproduce, summarize, quote, or make commercial or other use whatsoever of the other party's Confidential Information, except as may be necessary to perform its duties hereunder or as required by the Rules. Each party will exercise the highest degree of care in safeguarding the other party's Confidential Information against loss, theft, or other inadvertent disclosure and take all steps necessary to maintain such confidentiality.

14. **INDEMNIFICATION.** Customer will indemnify, hold harmless, and defend INTEGRA, its officers, directors, parent and/or affiliated companies, employees, agents and subcontractors from liabilities, claims or damages and expenses whatsoever (including reasonable attorney's fees) arising out of or in connection with Customer's use and/or Customer's end-users or third parties resale or sharing of the Services. Customer's indemnification obligations do not apply to claims for damages to real or tangible personal property or for bodily injury or death which is solely caused by INTEGRA due to INTEGRA's gross negligence or willful misconduct.

15. **DEFAULT/TERMINATION.** Customer's use of the Services provided herein and any equipment associated therewith will not: (a) interfere with or impair service over INTEGRA's network; (b) impair privacy of any communications over such network; (c) cause damage of any nature to INTEGRA's assets or customers; (d) be used to frighten, abuse, torment or harass, or create hazards to INTEGRA or its network; or (e) violate the provisions of any of INTEGRA's policies and procedures, including INTEGRA's 911/E-911 Policy. INTEGRA may immediately suspend or terminate, without liability, the Services for

any violation of these provisions. INTEGRA reserves the right to revise the terms and provisions of all of its policies and procedures as it deems appropriate and this Agreement is subject to all its revisions.

Except as set forth above, if either party violates any provision of this Agreement the non-defaulting party may send the defaulting party written notice detailing the default. The defaulting party will have: (a) 10 days from the date of the written notice to cure a payment default, or (b) 30 days from the date of the written notice to cure a non-payment default. If the defaulting party fails to cure, the non-defaulting party may terminate this Agreement and any Services hereunder upon notice or pursue any and all other legal remedies. This Agreement also may be terminated by either party in accordance with the provisions of the then current tariff or price list.

If Customer terminates this Agreement or all or any part of the Services at any time after the Effective Date, or if INTEGRA terminates this Agreement as a result of Customer's breach, INTEGRA may charge Customer an early termination fee equal to and including any or all of the following: 100% of the total MRC, surcharges and taxes for the Services Term then remaining, plus any unpaid activation, installation and/or special construction charges, and all other fees or costs, whether previously waived or not, less amounts already paid.

Customer will not be liable for the early termination fees set forth above if INTEGRA breaches the Agreement or if Customer orders from INTEGRA services of equal or greater MRC than the Services terminated and the new services are approved by INTEGRA. Customer acknowledges that INTEGRA's damages for early termination would be difficult to determine and the termination charge(s) constitutes liquidated damages and are not intended as a penalty. All such amounts will become immediately due and payable by Customer to INTEGRA.

16. **FORCE MAJEURE.** In the event that either party's performance is delayed, prevented, or inhibited because of any Act of God, fire, casualty, delay or disruption in transportation, flood, war, strike, lockout, epidemic, destruction or shut-down of facilities, shortage or curtailment, riot, insurrection, governmental acts or directives, any full or partial failure of any communications or computer network or any cause beyond such party's reasonable control, the party's performance will be excused and the time for the performance will be extended for the period of delay or inability to perform resulting from such occurrence. The occurrence of such an event will not constitute grounds for a declaration of default by either party hereunder.

17. **GENERAL.** Any amendment must be in writing and signed by the parties hereto. Facsimile copies of this Agreement and any amendments or modification hereto, including facsimile signatures, will be accepted by the parties as originals. The failure of either party to insist upon the performance of any provision or to exercise any right granted hereunder, will not be construed as a waiver of such provision(s), and the same will continue in full force. If any provision hereof is held to be invalid, void, or unenforceable, the remainder of the provisions will nevertheless remain unimpaired and in effect. All notices under this Agreement will be in writing and will be made by personal delivery, overnight delivery, certified mail or by facsimile transmission with receipt verification. Notices will be sent to the addresses listed on the front this Agreement and in the case of a notice to INTEGRA, a copy to the Legal Department, 1201 NE Lloyd Blvd., Suite 500, Portland, OR 97232 FAX NO. 503-453-8223. The various rights and remedies given to or reserved by either party herein or allowed by law, are cumulative, and no delay or omission to exercise any of its rights will be construed as a waiver of any default or acquiescence, nor will any waiver of any breach or any provision be considered a condonement of any continuing or subsequent breach of the same provision. Customer may not assign its obligations hereunder without the prior written consent of INTEGRA, which will not be unreasonably withheld. This Agreement will be governed by and interpreted in accordance with the laws for the state where the Services are to be provided. Nothing in this Agreement is intended to, or shall be construed, as creating a partnership or any third-party beneficiaries. The provisions of 5, 6, 7, 9, 11, 12, 13 and 14, shall survive termination.



INTEGRA TELECOM, INC.

MASTER SERVICE AGREEMENT

TERMS AND CONDITIONS

1201 NE LLOYD BLVD., SUITE 500
PORTLAND, OR 97232

TC1
Integra Telecom, Inc.
Master Service Agreement
5/08

www.integratelecom.com

Voice & DSL Services Agreement



Integra Telecom of Utah, Inc.
288 East 100 South
St. George, UT 84090
801-748-2000
801-748-2001
www.integratels.com

Customer Name Pignatelli & O'Brien, LLC
Service Address 1887 Gold Dust Lane
Suite 302
City/State/Zip Park City Utah 84080
Main Telephone Number _____ ICD Number _____
Contact Name & Number _____

Order Date 12/4/2008
Service(s) Term 36 Months
Account Executive Andrew Buchner
Promotion code _____
Promotion code _____
ICB# _____

Business Line	Monthly Recurring	ICB	Activation Charge	Total Monthly Charges	Total Activation Charges
Business Lines	Select 22.95			4 \$ 91.80	\$ -
Calling Features & Feature Packages	Total 12.50		\$ -	1 \$ 12.50	\$ -
Voice Messaging Long Form	Total -			\$ -	\$ -
Voice Messaging	Select -			\$ -	\$ -
Market Expansion Lines	Select -			\$ -	\$ -
Account Codes - enter # of digits	-			\$ -	\$ -
Authorization Codes	first 20 -			\$ -	\$ -
Expedite Fee	Business Lines -			\$ -	\$ -

Long Distance Service	Monthly Recurring	ICB	Activation Charge	Total Monthly Charges	Total Activation Charges
Select				\$ -	\$ -
Domestic Inbound/Outbound Interstate	\$0.050	Basic \$0.05		\$ -	\$ -
Domestic Inbound/Outbound Intra-state	\$0.050	Basic \$0.05		\$ -	\$ -
International 1-		Integra Connect Plan D		\$ -	\$ -
Toll Free Service Plan				\$ -	\$ -
MEL LD Rate				\$ -	\$ -

DSL Line Telephone Number	Monthly Recurring	ICB	Activation Charge	Total Monthly Charges	Total Activation Charges
DSL Speed	DSL Express Pro (up to 1.5 Mbps/80K) - No ISP 34.95			1 \$ 34.95	\$ -
DSL Equipment	Single Port Equipment Activation \$ -		\$ 99.00	1 \$ -	\$ 99.00
Hosting	ISP Bundle 9.95		\$ 10.00	1 \$ 9.95	\$ 10.00

Company Name	<u>Pignatelli & O'Brien, LLC</u>	If additional listings are requested please submit a completed Directory Listings form.
Telephone Number to List	<u>New (at)</u>	
Address	<u>1887 Gold Dust Lane, Suite 302</u>	
City, State, Zip	<u>Park City, Utah 84080</u>	
Listing Type:	<input checked="" type="checkbox"/> Business <input type="checkbox"/> Residential <input type="checkbox"/> Published <input type="checkbox"/> Non-Published <input type="checkbox"/> Non-Used <input type="checkbox"/> CHRT Address	Choose Directory <u>Select</u>
Notes:		<input type="checkbox"/> Add Directory Listings Attached

Total Free Rings To Main In Hunt group at _____	Total Monthly Charges \$ <u>149.20</u>	Total Activation Charges \$ <u>109.00</u>
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Customer represents and warrants the above information is true and correct and further grants Integra the right to deliver customer's name, address, and phone number as set forth above to the appropriate directory publishers and directory assistance data bases. Customer will advise Integra immediately of any change in the above information. Customer assumes full responsibility concerning the cost to list only name of a directory listing and agrees to hold Integra free and harmless from any claim, cost, damage, or liability that may result from the use of such listing. Integra will take all reasonable steps to ensure that the above information appears in the next directory to be published, however, Integra does not warrant that the listing will be error-free. Integra's liability for errors or omissions in Customer directory listings shall be limited to the charges for publishing, if any, during the effective life of the directory containing the error or omission.

This Agreement including Integra's Master Service Agreement, any schedule of attach-ments herein, and Integra Telecom's policies and procedures located at www.integratels.com.com, incorporated by reference herein, constitute a binding commitment between Integra Telecom and Customer, effective upon execution of this Service Agreement, and supersede all prior or contemporaneous agreements, understandings or representations relating to the subject matter contained herein. Customer acknowledges that Customer has received, read, and understands this Agreement and the Master Service Agreement, and agrees to be bound by all of the terms and conditions of the foregoing documents and policies. Early Termination fees may apply as set forth in Section 15 of the Integra Master Service Agreement.

Customer Acceptance: Melissa P. O'Brien (Print Name) [Signature] (Authorized Signature) 12/5/08 (Date)

Integra Telecom Acceptance: Chris Arambula (Print Name) [Signature] (Signature) 12/5/08 (Date)

1. Estimated Total Charges are based on Customer information described herein. Actual Total Charges are subject to final Customer acceptance of Services activated. Monthly charges for long distance are estimated based on customer's per minute charges. Integra will invoice a service summary bill format unless contacted by the Customer to revert back to a detailed invoice option at no charge. Integra will invoice a service summary bill format unless contacted by the Customer to revert back to a detailed invoice option at no charge. On average, your invoice may include approximately 10 to 15 percent in government-mandated surcharges, taxes and fees. In addition, Integra will impose the following Company surcharges to support its provision of service: a Network Access Assessment (NAA) applied as a percentage of revenue to certain services; and an Interconnection Fee (ICF) and an Interstate Access Charge (IAC) applied to voice services according to product. For a full description of these surcharges, taxes, and fees, visit www.integratels.com

Integra Telecom of Utah, Inc.
Salt Lake City, Utah

Utah Price List No. 3
Original Title Sheet No. 1

REGULATIONS AND SCHEDULES

of

Intrastate Interexchange and Competitive Local Exchange
Telephone Services
Applying to End-User Communications
Services within the
State of Utah
Provided by:

INTEGRA TELECOM OF UTAH, INC.

**THIS UTAH PRICE LIST NO. 3
REPLACES AND SUPERSEDES
UTAH TARIFF NO. 2 IN ITS ENTIRETY**

This Price List contains the descriptions, regulations and rates applicable to the furnishing of telecommunications services provided by Integra Telecom of Utah, Inc. ("Company") within the State of Utah. This Price List is on file with the Utah Public Service Commission ("Commission"). Copies may be inspected during normal business hours at the Company's principal place of business: 265 East 100 South, Suite 200, Salt Lake City, UT 84111.

Issued: December 21, 2009
Issued By:

Manager, Regulatory Affairs
Integra Telecom of Utah, Inc.
265 East 100 South, Suite 200
Salt Lake City, UT 84111

Effective Date: December 28, 2009

SECTION 2 - RULES AND REGULATIONS, Continued**2.7. LIABILITY OF THE CUSTOMER, Continued****2.7.2. Liability of the Customer for Unauthorized Use of the Network, Continued****B. Liability for Unauthorized Use**

1. Except as provided for elsewhere in this Price List, the Customer is responsible for payment of all charges for Services provided under this Price List. This responsibility is not changed due to any use, misuse, or abuse of the Customer's service or Customer-provided equipment by Users or other third parties, the Customer's employees, or the public.
2. The Customer is responsible for payment of all outbound call charges arising from calls placed to a Customer's 800 service number, whether or not such calls are authorized or fraudulent, where the User gains access to the Customer's outbound calling equipment and services.
3. The Customer is liable for all costs incurred as a result of unauthorized use of the Network, including Service charges and any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages. The Company will take reasonable steps, upon verbal or written notification that fraud has occurred, or is believed to have occurred, to assist the Customer in identifying the nature and/or source of the fraud, and in terminating the fraudulent use of the Customer's service. The Company will also assist the Customer in facilitating changes in phone number, and assist the Customer in identifying perpetrator(s) of the fraud for purposes of pursuing civil remedies.
4. The Customer is responsible for payment of any charges related to the suspension and/or termination of Service, and any charges for reconnection of Service, incurred as a result of unauthorized use of the Network.

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Salt Lake City, UT 84111

Integra Telecom of Utah, Inc.
Salt Lake City, Utah

Utah Price List No. 3
Original Sheet No. 43

SECTION 2 - RULES AND REGULATIONS, Continued

2.9. CUSTOMER RESPONSIBILITIES, Continued

- 2.9.7. In accordance with the "filed tariff doctrine," as established by judicial and regulatory decisions and precedents, Customer shall pay all charges due and owing irrespective of any claims of loss, liability, set off, damages, or other claims against Company to which Customer may claim to be entitled, the duty to pay such charges shall arise upon the demand for payment by Company and shall not be delayed or deferred by the commencement of any legal or equitable action by either Customer or Company in connection with such charges incurred under this Price List.
- 2.9.8. The Customer is responsible for damage to or loss of the Company's facilities or equipment caused by the acts or omissions of the Customer or of any User; or by the noncompliance by the Customer or any User, with these regulations; or by fire or theft or other casualty on the Customer Premises or the premises of any User, unless caused by the negligence or willful misconduct of the employees or agents of the Company;
- 2.9.9. The Customer is responsible for providing, at no charge, as specified from time to time by the Company, any needed equipment, space and power to operate Company facilities and equipment installed on the premises of the Customer, and the level of heating and air conditioning necessary to maintain the proper operating environment on such premises;
- 2.9.10. The Customer is responsible for obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduit necessary for installation of fiber optic cable and associated equipment used to provide Services to the Customer from the cable building entrance or property line to the location of the building equipment space. Any and all costs associated with the obtaining and maintaining rights-of-way described herein, including the costs of altering the structure to permit installation of the Company provided facilities, shall be borne entirely by, or may be charged by the Company, to the Customer. The Company may require the Customer to demonstrate its compliance with this Section prior to accepting an order for service.

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