

## SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT is made this 10th day of February, 1995, by and among Life Insurance Company of Georgia, a Georgia corporation ("Lender"); Pelham (WH) Ventures, Inc., an Alabama corporation ("Landlord"), and BellSouth Tele-  
communications, Inc., with offices at 3196 Highway 280 South  
Birmingham, Alabama ("Tenant");

### WITNESSETH:

WHEREAS, Tenant has entered into a certain lease (the "Lease") dated January 1, 1995 and Addendum dated July 6, 1994, with Landlord covering premises (the "Premises") in the City of Pelham, Shelby County, Alabama, on the real property more particularly described on Exhibit "A" attached hereto and incorporated herein, and

WHEREAS, Lender has agreed to make a loan (the "Loan") to Landlord to be evidenced by a promissory note issued by Landlord to Lender (the "Note") and to be secured by a Mortgage (the "Mortgage"), a Security Agreement, and by an Assignment of Rents and Leases (the "Assignment") encumbering, inter alia, the Premises, and

WHEREAS, it is to the mutual benefit of the parties hereto that Lender make such loan to Landlord, and

WHEREAS, it is a condition precedent to obtaining the Loan that the Mortgage be a lien or charge upon the Premises unconditionally prior and superior to the Lease and the leasehold interest of Tenant thereunder, and

WHEREAS, Tenant acknowledges that the Mortgage, when recorded, will constitute a lien or charge upon the Premises which is unconditionally prior and superior to the Lease

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and the leasehold interest of Tenant thereunder, and

**WHEREAS**, Lender has been requested by Tenant and by Landlord to enter into a nondisturbance agreement with Tenant;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto mutually covenant and agree as follows:

1. The Lease and any extensions, renewals, replacements or modifications thereof, and all of the right, title and interest of Tenant thereunder in and to the Premises are and shall be subject and subordinate to the Mortgage and to all of the terms and conditions contained therein, and to any renewals, modifications, replacements, consolidations and extensions thereof.

2. Lender agrees that in the event Lender comes into possession of or acquires title to the Premises as a result of the foreclosure or other enforcement of the Mortgage or the Note, or as a result of any other means, Lender agrees that, so long as Tenant is not then in default hereunder or under the Lease, and so long as Tenant is then in possession of the Premises and is open and operating its business therein, Lender will recognize Tenant and will not disturb Tenant in its possession of the Premises for any reason other than one which would entitle Landlord to terminate the Lease under its terms or would cause, without any further action by Landlord, the termination of the Lease or would entitle Landlord to dispossess Tenant from the Premises.

3. Tenant agrees with Lender that if the interest of Landlord in the Premises shall be transferred to and owned by Lender by reason of foreclosure or other proceedings brought by it, or any other manner, or shall be conveyed thereafter by Lender or shall be

conveyed pursuant to a foreclosure sale of the Premises, Tenant shall be bound to Lender under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, and Tenant does hereby attorn to Lender as its landlord, said attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties hereto immediately upon Lender succeeding to the interest of Landlord in the Premises. Tenant agrees, however, upon the election of and written demand by Lender within twenty (20) days after Lender receives title to the Premises, to execute an instrument in confirmation of the foregoing provisions, satisfactory to Lender, in which Tenant shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy.

4. Tenant agrees with Lender that if Lender shall succeed to the interest of Landlord under the Lease, Lender shall not be (a) liable for any action or omission of any prior landlord under the lease, or (b) subject to any offsets or defenses which Tenant might have against any prior landlord, or (c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord, or (d) bound by any security deposit which Tenant may have paid to any prior landlord, unless such deposit is in an escrow fund available to Lender, or (e) bound by any amendment or modification of the Lease made without Lender's written consent, or (f) bound by any provision in the Lease which obligates the landlord to erect or complete any building or to perform any construction work or to make any improvements to the Premises or to expand or rehabilitate any existing improvements or to restore any improvements following any casualty or taking,



or (g) bound by any notice of termination given by Landlord to Tenant without Lender's written consent thereto, or (h) personally liable under the Lease and Lender's liability under the Lease shall be limited to the ownership interest of Lender in the Premises. Tenant further agrees with Lender that Tenant will not voluntarily subordinate the Lease to any lien or encumbrance without Lender's written consent.

5. In the event that Landlord shall default in the performance or observance of any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Lender and Lender shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease, including, without limitation, any action in order to terminate, rescind or void the Lease or to withhold any rental thereunder for a period of thirty (30) days after receipt of such written notice by Lender (provided, that in the case of any default which cannot be cured by the payment of money and cannot with diligence be cured within such thirty-day period because of the nature of such default, or because Lender requires time to obtain possession of the Premises in order to cure the default, if Lender shall proceed promptly to attempt to obtain possession of the Premises, where possession is required, and to cure the same and thereafter shall prosecute the curing of such default with diligence and continuity; then the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity).

6. Landlord has agreed in the Mortgage and in the Assignment that the rentals payable under the Lease shall be paid directly by Tenant to Lender. Accordingly, Tenant shall pay to Lender, in accordance with the Directive to Pay Rents to Lock Box, all rentals

and other monies due and to become due to Landlord under the Lease, or amounts equal thereto. Landlord hereby waives any right, claim or demand it may now or hereafter have against Tenant by reason of such payment to Lender, and any such payment shall discharge the obligations of Tenant to make such payment to Landlord.

7. Tenant declares, agrees and acknowledges that:

(a) Lender, in making disbursements pursuant to any agreement relating to the Loan, is under no obligation or duty to, nor has Lender represented that it will, see to the application of such proceeds, and any application or use of such proceeds for purposes other than those provided for in such agreement shall not defeat the subordination herein made in whole or in part, and

(b) It intentionally and unconditionally waives, relinquishes and subordinates the Lease and its leasehold interest thereunder in favor of the lien or charge upon said land of the Mortgage, and that in consideration of this waiver, relinquishment and subordination, specific loans and advances are being and will be made by Lender to Landlord and, as part and parcel thereof, specific monetary and other obligations are being made and will be entered into by Landlord and Lender which would not be made or entered into but for said reliance upon this waiver, relinquishment and subordination.

8. This Agreement shall bind and inure to the benefit of the parties hereto, their successors and assigns. As used herein, the term "Tenant" shall include Tenant, its successors and assigns; the words "foreclosure" and "foreclosure sale" as used herein shall be deemed to include the acquisition of Landlord's estate in the Premises by voluntary deed (or assignment) in lieu of foreclosure; and the word "Lender" shall include the Lender

herein specifically named and any of its successors, participants and assigns, including anyone who shall have succeeded to Landlord's interest in the Premises by, through or under foreclosure of the Mortgage.

9. All notices, consents and other communications pursuant to the provisions of the Agreement shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a nationally recognized courier service, and shall be deemed given when deposited in the mail or, in the event of a courier service, one day following delivery to that service, and addressed as follows:

If to Lender: Life Insurance Company of Georgia  
ING NA Investment Centre  
300 Galleria Parkway - Suite 1200  
Atlanta, Georgia 30339  
Attention: Linda R. Sessler, Esq.

If to Tenant: BellSouth Telecommunications, Inc.  
3071 Parker Drive  
Pelham, Alabama 35124

If to Landlord: Pelham (WH) Ventures, Inc.  
201 Vulcan Road  
Suite 110  
Birmingham, Alabama 35209

or to such other address as shall from time to time have been designated by written notice by such party to the other parties as herein provided.

10. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the Lease and the leasehold interest of Tenant

thereunder to the lien or charge of the Mortgage in favor of Lender, and shall supersede and control any prior agreements as to such, or any subordination, including, but not limited to, those provisions, if any, contained in the Lease which provide for the subordination of the Lease and the leasehold interest of Tenant thereunder to a deed or deeds of trust or a mortgage or mortgages to be thereafter executed, and shall not be modified or amended and no provision herein shall be waived except in writing signed by the party against whom enforcement of any such modification or amendment is sought.

The use of the neuter gender in this Agreement shall be deemed to include any other gender, and the words in the singular shall be held to include the plural, when the sense requires. In the event any one or more of the provisions of the Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of the Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The Agreement shall be governed by and construed in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the day and year first above mentioned.

TENANT:

BellSouth Telecommunications, Inc.

By

James A. Murray  
Its MANAGER - REAL ESTATE

HBD



LANDLORD:

PELHAM (WH) VENTURES, INC.,  
a corporation

By Frank L. Haden  
Its President

LENDER:

LIFE INSURANCE COMPANY OF  
GEORGIA By: Internationale Nederlanden North America  
Investment Centre, Inc  
By Maurice M. Moore Its Duly Authorized Representative  
Its Maurice M. Moore, Senior Vice President

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