**Exhibit 10.4(a)**



**IDT Puerto Rico & Co.**

5108 Ganges Street,

El Paraiso Industrial Park,

Rio Piedras, Puerto Rico 00926

P (787) 620-0440

F (787) 620-0431

**CONFIDENTIAL**

November 26, 2003

Mr. Yu Wen Ching

American Telecom Services Corporation

1191 Huntington Drive, Suite 311

Duarte, CA 91010-2400

Re: **Letter Agreement**

**Our Reference# 15995:**

Dear Mr. Yu:

This Letter Agreement (“Agreement”), effective as of the date executed by the last to sign of the parties (“Effective Date”), between IDT Puerto Rico & Co. (“IDT”), a Puerto Rico corporation, located at Ganges Plaza, 108 Ganges Street, El Paraiso Industrial Park, Rio Piedras, Puerto Rico 00926, and American Telecom Services Corporation a Delaware corporation (“Customer”) located at 1191 Huntington Drive, Suite 311, Duarte CA 91010-2400 memorializes the obligations of the parties in connection with cordless landline telephone sets including a pre-programmed prepaid residential service account button (“Telephones”) provided by Customer. IDT, through one or more of its Affiliates, provides long distance telecommunication and debit platform services, customer services and wholesale minutes (“Services”) to support prepaid long distance telecommunication services accounts (“Account” or “Accounts”). Customer desires to purchase Accounts from IDT with such Services. The Telephones shall be linked to the Services through a programmed key on the Telephone sets. The Telephones shall be distributed to Customer’s retail outlets and subsequent resale to consumers (“End Users”). The term “Affiliate” means an entity controlling, controlled by, or under common control with the specified Party, with control meaning (a) owning directly or indirectly more than 50% of the outstanding voting equity interests of an entity or (b) having the right directly or indirectly to appoint a majority of members of the board or other body which directs the management and policies of an entity.

1. CUSTOMER OBLIGATIONS.
   1. Upon execution of this Agreement, Customer will use commercially reasonable efforts to provide the product functionality for the Telephones as set forth in the attached Exhibit D. Subject to Section 5 below, Customer further agrees to design the packaging for the Telephones combined with the Accounts provided by IDT as mutually agreed upon by the parties. Customer acknowledges that the Accounts and any retail packaging or materials relating to the same shall include information necessary to comply with FCC regulations as mutually agreed upon by the parties and provided for by IDT.
   2. Customer agrees to provide all End User customer and technical support relating to the Telephones and any related hardware functionality.



IDT Legal Forms; Letter Agreement

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* 1. Customer shall specify, in writing from time to time, to IDT (the “Account Order”) the aggregate number of initial Accounts to be produced by IDT, the denominations of the Accounts, the number of each such denomination to be produced by account value, and Customer’s production centers to which IDT shall deliver the Accounts to be packaged with the Telephone sets.
  2. If at the point of termination of the Agreement under Section 12 or 13 below, the number of Accounts unactivated is more than **[Subject to a** **request for confidential treatment; Separately filed with the Commission]** Accounts, then for all Accounts above **[Subject to a request for confidential treatment; Separately filed with the Commission]** the charge shall be **[Subject to a request for confidential treatment; Separately filed with the Commission]** per Account up to a maximum charge of **[Subject to a request for confidential treatment; Separately filed with the Commission]**.
  3. Customer will reimburse IDT for active Accounts lost due to theft, loss or other casualty occurring following delivery of the Accounts to Customer based on the wholesale value of the Promotional Minutes. Upon notification of Accounts being stolen, IDT shall terminate the account and. any unused value in the Account will not be billed to Customer.
  4. Customer will use commercially reasonable efforts to resolve all End User disputes regarding Telephones within a commercially reasonable amount of time.

1. IDT OBLIGATIONS.
   1. During the term and subject to the terms and conditions contained herein, IDT agrees to provide Customer with the functionality as described in the technical requirements schedule at Exhibit D, which is executed and delivered by the Parties (the “Technical Requirements”). Customer or IDT may deem it necessary or appropriate from time to time to add other functionality, reduce, or change the scope of IDT’s responsibilities (a “Service Change”). Either Party may make a proposal for a Service Change, whereupon the Parties shall mutually evaluate feasibility, manner and timing for implementation, impact on pricing, impact on performance requirements and all other relevant matters. A Service Change shall not be implemented unless and until the Service Change is approved by both Parties. If the Service Change is approved by the Parties, the Service Change shall be implemented by IDT within a timeframe mutually agreed upon by the parties. An approved Service Change shall be set forth in a written amendment to the applicable Technical Requirements, which amendment shall be signed by authorized representatives of the Parties.
   2. In compliance with regulatory requirements, IDT will provide End Users with notice that Services are being provided by IDT, as follows: “Services provided by IDT” or “Service powered by IDT,” at IDT’s discretion.
   3. IDT will use commercially reasonable efforts to resolve all End User disputes regarding Services within a commercially reasonable amount of time.
   4. Subject to FCC and other applicable regulations and compliance with Customer notice and consent requirements, IDT agrees to use commercially reasonable efforts to provide Customer with End User information. Neither party shall market additional products or services to the End

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Users using the information collected from End Users, as set forth in the Technical Requirements under this Agreement, without the prior written agreement of the other party.

1. REPORTS. IDT shall provide to Customer the reports described in the Technical Requirements at the frequencies provided therein. In addition, from time to time, Customer may identify additional reports to be generated by IDT and delivered to Customer on an ad hoc or periodic basis. To the extent IDT must dedicate significant labor or resources to the preparation of additional reports that can only be manually generated or to the implementation of system changes to permit such reports to be electronically generated (other than those set forth in the Technical Requirements), Customer shall reimburse IDT at IDT’s standard time and material rates for costs incurred by IDT in connection therewith.
2. DEACTIVATION. IDT reserves the right to terminate Services to any Account if it determines, in its sole discretion, that End-Users of such Accounts are actually or allegedly engaged in activities that are illegal, fraudulent or wrongful or which may be harmful to IDT in any way. Customer will be entitled to a refund for the value of the unused portion of any such terminated Accounts. Customer shall receive a monthly report of all such deactivated Accounts, as set forth in the Technical Requirements.
3. MARKETING AND DISTRIBUTION. Customer will use its best efforts to promote, market and distribute the Services in conjunction with Customer’s Telephones under this Agreement. Customer shall have discretion to decide the methods and channels used to market, promote and distribute the Services. Nothing herein shall limit Customers right to promote, market and distribute other Telephones that are not bundled with the Services provided by IDT. Customer shall be solely responsible for any expenses associated with marketing and distributing the Accounts and shall submit all promotional, marketing, inserts at Exhibit B and advertising materials (“Materials”) to IDT for review and approval prior to any use or dissemination. IDT will review and respond to approval requests on Materials in writing within a reasonable period of time, not to exceed five (5) business days, and will provide the reasons for any rejection. Without limiting the foregoing, IDT shall have the right to approve or reject any marketing or promotional initiatives that require a financial contribution from IDT. Customer acknowledges that the provision of Services by IDT is regulated by the Federal Communications Commission and applicable state regulatory commissions (“Regulatory Authorities”). Any such materials used or disseminated by Customer must comply with IDT’s tariffs filed with such Regulatory Authorities, all regulations promulgated by such Regulatory Authorities and any other applicable laws or regulations. IDT agrees to provide Customer with all disclosures required by Regulatory Authorities that are to be included with the Telephones in a timeframe sufficient to permit Customer to include the disclosures with the Telephones.
4. EXCLUSIVITY. IDT agrees that during the Term of this Agreement, IDT will sell Services for use with cordless landline phones in retail outlets where the Customer has received a purchase order or has a pending agreement for the distribution of the Services in conjunction with the Telephones only in cooperation with Customer. Subject to the above limitation, IDT reserves the right to sell Services to a competitor of Customer provided that IDT does not create its own brand for such purposes.



1. RATES. For each Prepaid Calling Minute used by an End User, IDT shall deduct from such End User’s account a flat fee per minute of Service used (the “Flat Fee”).

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* 1. For domestic calls originating within the Continental United States and terminating anywhere within the Continental United States, the Flat Fee shall be $.039 per Prepaid Calling Minute, exclusive of any payphone surcharge and any charge for calls made by End Users from other than their home telephone number. Other than the Flat Fee, and unless otherwise agreed to by the parties, no additional charges, costs or fees of any type may be levied or charged on the Service, including, but not limited to, federal, state or local taxes or fees, shall be charged to the End User or Customer (all state, federal and local taxes or fees are included in the Flat Fee and any such obligations shall the responsibility of IDT).
  2. For international calls originating in the United States and terminating outside the United States, the Flat Fee per minute shall be determined according to the destination called, as set forth on Exhibit C hereto. The Parties may change said international rates on mutual agreement from time to time. Recognizing that the international rates may fluctuate due to factors beyond the parties’ control, Customer agrees that IDT may from time to time submit notice of proportionate changes to the international rates set forth in Exhibit C with explanation in writing to Customer and may only change such rates when IDT corporate-wide cost change dictates that such change must be made. IDT must immediately notify Customer in writing of all changes affecting the 25 highest traffic volume countries. Rates for other jurisdictions shall be as set forth at Exhibit C. Other than the Flat Fee for international calls, and unless otherwise agreed to by the parties, no additional charges, costs or fees of any type which may be levied or charged on the Service, including, but no limited to, federal, stat or local taxes or fees, shall be charged to the End User or Customer (all state, federal and local taxes are included in the Flat Fee and any such obligations shall be the responsibility of IDT).

1. FEES AND INVOICING.
   1. Upon activation by an End User, Customer agrees to pay IDT a sum equal to seventy-five percent (75%) of the total value of minutes made available to an End User (“Promotional Minutes”). IDT will invoice Customer for Promotional Minutes every two (2) weeks for the initial value of the activated Accounts, less the discount applied. Payment from Customer shall be due within fourteen (14) days from date of invoice (“Due Date”). Invoices will be based upon data collected by IDT relating to number of activated Accounts, and the dollar face value of activated Accounts. All payments shall be made to IDT via wire transfer or, with Customer’s consent, by IDT initiated ACH transfer. Any non-disputed



payments not received by the Due Date will bear interest at a rate of one and one-half percent (1 1/2 %) per month from the Due Date until paid in full. A deposit (“Deposit”) in an amount to be mutually agreed upon shall be due from Customer before any Accounts are activated. If a payment is not made within fourteen (14) days of the Due Date, then, in addition to any other remedy available to IDT under this Agreement or at law or equity, IDT may deduct or offset the payment amount from the Deposit and Recharge Amount due to Customer, provided that the payment is not the subject of a good faith dispute between the parties. Promotional Minutes shall expire not later than ninety (90) days after first use if the End User does not recharge the Account within that period.

1. With regard to Accounts that are recharged by End Users (“Recharge Accounts”), IDT shall be responsible for maintaining all billing, collection and transaction records with respect to the End User’s renewal and use of the Service, including, but not limited to, all records with respect to payment by a End User through adding cash value to such End User’s Account. IDT agrees to pay Customer twenty-five percent (25%) of the Net Revenues collected from End Users on

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Recharge Accounts. The term “Net Revenues” means gross revenues less any documented chargebacks, refunds, losses due to fraud and any transaction fees as detailed in the attached Schedule 10(b) incurred by IDT. All payments to Customer on Recharge Accounts shall be made to Customer via wire transfer within seven (7) days of collection from End Users, provided that no such payment shall be made for a sum less than $1,000, in which case the amount shall be accrued in an account earmarked for Customer and paid with the next payment due to Customer.

* 1. Each party hereto shall maintain reasonably complete, clear and accurate records of all information required to determine the amounts of any payments or transactions under the Agreement. Each party hereto, upon giving thirty (30) days prior written notice to the other party hereto, and no more than once during any twelve (12) month period, may conduct, at reasonable times during regular business hours and subject to the Confidentiality Obligations of Section 20, and inspection and audit of the portions of such books and records of the other party as is necessary to verify that such payments, including the amounts thereof, have been made in accordance with the terms hereof.

1. TERM. This Agreement shall continue from the date this Agreement was entered into until the second anniversary of the date on which the first Account is activated (“Initial Term”) and shall automatically renew for one (1) year terms unless terminated by either party upon at least thirty (30) days written notice prior to the expiration of the Initial Term or any subsequent term (the Initial Term and any subsequent terms shall collectively be referred to as the “Term”). IDT will be ready to provide Services to support a commercial launch by October 31, 2003.
2. TERMINATION. This Agreement may be terminated prior to its expiration upon the occurrence of any of the following: (a) by either party, if one of the parties shall be declared insolvent or bankrupt; (b) by the non-breaching party, if the other party materially breaches this Agreement which breach is not cured within thirty (30) days of written notice thereof to the breaching party (except for non-payment by Customer, which is addressed in Section 9 hereof); (c) by IDT or Customer, upon a determination by any governmental authority with jurisdiction over the parties that the provision of the Telephones and/or Services under this Agreement in the jurisdictions in which the Telephones are being distributed is contrary to existing laws, rules or regulations; (d) by either party if the functionality required under the Technical Requirements at Exhibit D is impossible or highly impractical, provided that prior to terminating the Agreement pursuant to subsection (c) or (d), the party electing to terminate shall provide written notice to the other party setting forth in reasonable detail the factual basis for such termination and the parties agree in good faith to attempt to create a solution or workaround, or modify the Technical Requirements or the Services to eliminate the requirement creating the basis for such termination in a manner mutually agreeable for a period of no less than ten (10) business days after the receipt of such notice and if such agreement is reached or the factual basis for such termination is otherwise resolved, then the Agreement shall not be terminated. Upon termination of this Agreement for any reason, Customer shall immediately cease production of the Telephones with Service provided by IDT. Should Customer decide, in its sole discretion, to have IDT continue to activate promotional minutes in Inventory, Customer shall provide IDT with a final accounting setting forth the number of units in retail inventory (“Inventory Units”). IDT will continue to support promotional minutes on Inventory Units until all units are sold, provided that Customer shall retain the sum of $50,000 in escrow with an escrow agent mutually agreed upon by the parties to cover the cost of the promotional minutes (less a fifteen percent discount) due and payable to IDT. Subject to Section 2(d), and with the exception of promotional minutes on Inventory Units, Customer and IDT further agree to use commercially reasonable efforts to migrate service on Telephones to