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Commissioner

Arizona Corporation Commission
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T-03943A-04-0867
T-02532A-04-0867

IN THE MATTER OF THE APPLICATION)
OF TIME WARNER TELECOM OF)
ARIZONA LLC FOR THE APPROVAL OF)
A TRAFFIC EXCHANGE AGREEMENT)
BETWEEN MIDVALE TELEPHONE)
EXCHANGE, INC. AND TIME WARNER)
TELECOM OF ARIZONA LLC)

Docket No. T-_____

APPLICATION FOR APPROVAL
OF TRAFFIC EXCHANGE
AGREEMENT

Time Warner Telecom of Arizona LLC ("TWTA") submits to the Arizona Corporation Commission ("Commission") this Application for Approval of a Traffic Exchange Agreement between Midvale Telephone Exchange, Inc. ("Midvale") and TWTA dated November 16, 2004 ("Agreement"). In support of this Application, TWTA states as follows:

1 A. Midvale is an Idaho corporation and is the incumbent local exchange
2 carrier in certain exchanges in Arizona including the Granite Mountain Exchange, which
3 is relevant to this Agreement.

4 B. Time Warner Telecom of Arizona LLC is a Delaware limited liability
5 company providing intrastate telecommunications services in the state of Arizona.

6 C. TWTA and Midvale entered into this agreement to establish the terms,
7 conditions and pricing under which the parties will exchange traffic and compensate each
8 other for the transport and termination of local traffic, EAS traffic, ISP traffic and any
9 intra-LATA toll traffic. The parties reached this agreement through voluntary negotiations
10 and to the extent required, are submitting this Agreement pursuant to Commission
11 regulations. A copy of the Agreement is attached as Exhibit "A."

12 D. The main provisions of the Agreement are summarized as follows:

- 13 (1) Section 10.1 provides that the Agreement shall continue for a
14 term of 2 years.
- 15 (2) Section 3 of the Agreement governs the exchange of traffic,
16 including local, EAS, and intrastate intra-LATA toll traffic.
- 17 (3) Section 4 of the Agreement addresses trunk forecasting,
18 ordering and provisioning for exchange of traffic through direct
19 interconnection.
- 20 (4) Section 5 of the Agreement addresses network traffic
21 management, including blocking standards, protective protocols,
22 and expansive protocols.
- 23 (5) Section 6 of the Agreement addresses signaling.
- 24 (6) Section 7 of the Agreement addresses the measurement and
25 billing for compensable traffic between the parties.
26

1 (7) Section 8 of the Agreement addresses payments and disputes
2 between the parties.

3 (8) Section 18 of the Agreement provides that the Agreement shall
4 be governed by the laws of the state of Arizona; provided that, if
5 federal law applies, federal law shall control.

6 E. TWTA believes that Midvale takes the position that it is a rural
7 telephone company pursuant to the Telecom Act. For this reason, TWTA has not included
8 with this filing certain information required pursuant to R14-2-1506. To the extent the
9 Commission determines that this Agreement is not required to be filed pursuant to R14-2-
10 1506, TWTA request that the Commission treat this Application as an informational filing
11 only.

12 F. TWTA submits that approval of this Agreement is consistent with
13 public interest as it will further the goals of competition as stated by the Commission, the
14 State of Arizona, the FCC, and Congress.

15 G. This Agreement is consistent with applicable state law and the rules and
16 regulations of the Commission.

17 H. Because the Agreement was reached by the parties through negotiation,
18 TWTA requests that it be approved without a hearing.

19 I. All communications regarding this Application should be addressed to
20 the following:

21
22 Thomas H. Campbell
23 Michael Hallam
24 LEWIS AND ROCA
25 40 N. Central Avenue
26 Phoenix, AZ 85004
(602) 262-5723

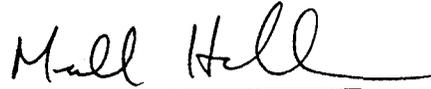
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with a copy to:

Brian Thomas
Vice President—Regulatory
Time Warner Telecom
233 Taylor Avenue North
Seattle, WA 98109

RESPECTFULLY SUBMITTED this 3rd day December, 2004.

LEWIS AND ROCA



Thomas H. Campbell
Michael T. Hallam
40 N. Central Avenue
Phoenix, Arizona 85004

Attorneys for Time Warner Telecom of Arizona,
LLC

ORIGINAL AND ten (13) copies
of the foregoing hand-delivered this
3rd day of December, 2004, to:

Arizona Corporation Commission
Utilities Division – Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007

COPY of the foregoing hand-delivered
this 3rd day of December, 2004,
to:

Lyn Farmer
Chief Administrative Law Judge, Hearing Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

LEWIS
AND
ROCA
LLP

LAWYERS

1 Christopher Kempley, Esq.
Chief Counsel, Legal Division
2 Arizona Corporation Commission
1200 West Washington Street
3 Phoenix, Arizona 85007

4 Ernest Johnson
Director, Utilities Division
5 Arizona Corporation Commission
1200 West Washington Street
6 Phoenix, Arizona 85007

7 COPY of the foregoing mailed
8 this 3rd day of December, 2004, to:

9 Karen J. Ellison
10 Midvale Telephone
PO Box 7
11 Midvale, ID 83645

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EXHIBIT A

TRAFFIC EXCHANGE AGREEMENT

Dated as of November 16, 2004

By and Between

MIDVALE TELEPHONE EXCHANGE, INC.

And

TIME WARNER TELECOM OF ARIZONA LLC

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TRAFFIC EXCHANGE AGREEMENT

This Traffic Exchange Agreement ("Agreement"), by and between Time Warner Telecom of Arizona LLC with offices located at 10475 Park Meadows Drive, Littleton, CO 80124, ("TWTC") and Midvale Telephone Exchange, Inc., with offices located at PO Box 7, Midvale, ID 83645 ("MTE"), (TWTC and MTE being referred to collectively as the "Parties" and individually as "Party") is effective as of this 16th day of Nov, 2004 (the "Effective Date").

WHEREAS, the Parties are duly authorized carriers providing local exchange and other services in the State of Arizona and

WHEREAS, the Parties wish to enter into an Agreement pursuant to which they may terminate calls originating on the other Party's network, either directly or through a transiting arrangement with a Local Exchange Carrier ("LEC").

WHEREAS the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will exchange traffic and compensate each other for the Transport and Termination of Local Traffic, EAS Traffic, ISP Traffic and any Intra-LATA Toll Traffic (as defined below).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

Capitalized terms used in this Agreement shall have the meanings specified below in this Section or as specifically otherwise defined elsewhere within this Agreement.

- 1.1. "Act" means the Communications Act of 1934 (47 U.S.C. § 151 et seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission having authority to interpret the Act within its state of jurisdiction.
- 1.2. "Automatic Number Identification" ("ANI") shall mean the process that identifies the telephone number of the line initiating a call in order to send this information to the automatic message accounting system.
- 1.3. "Calling Party Number" ("CPN") is a Common Channel Interoffice Signaling ("CCIS") parameter which refers to the number transmitted through a network identifying the calling party.
- 1.4. "Central Office Switch" means a switch used to provide Telecommunications Services, including, but not limited to:
 - (a) "End Office Switches" which are used to terminate Customer station loops for the purpose of interconnection to each other and to trunks; and

- (b) "Tandem Office Switches" or "Tandems" which are used to connect and switch trunk circuits between and among other Central Office Switches.
 - (c) "Tandem Switching" is defined as the function that establishes a communications path between two switching offices through a third switching office through the provision of trunk side to trunk side switching.
- 1.5. "Commission" means the applicable state administrative agency to which the state legislature has delegated the authority to regulate the operations of LECs within the state of Arizona.
 - 1.6. "Common Channel Interoffice Signaling" or "CCIS" means the signaling system, developed for use between switching systems with stored-program control, in which all of the signaling information for one or more groups of trunks is transmitted over a dedicated high-speed data link rather than on a per-trunk basis and, unless otherwise agreed by the Parties, the CCIS used by the Parties shall be SS7.
 - 1.7. "Confidential Information" shall mean confidential or proprietary information (including without limitation technical and business plans, specifications, drawings, computer programs, network configurations, facilities deployment information, procedures, orders for services, usage information, Customer Service Records ("CSRs"), Customer account data, and CPNI) that one Party ("Owner") may disclose to the other Party ("Recipient") in connection with the performance of this Agreement and that is disclosed by an Owner to a Recipient in document or other tangible form (including on magnetic tape) or by oral, visual or other means, and that the Owner prominently and clearly designates as proprietary and confidential whether by legends or other means.
 - 1.8. Customer Proprietary Network Information ("CPNI") as defined by 47 U.S.C. § 222 and the rules and regulations of the Federal Communications Commission.
 - 1.9. "Customer" or "End User" means a third-party residence or business that subscribes to Telecommunications Services provided by either of the Parties.
 - 1.10. "Exchange Message Interface" ("EMI") means the standard used for exchange of Telecommunications message information among Telecommunications providers for billable, non-billable, sample, settlement and study data. EMI format is administered by Alliance for Telecommunications Industry Solutions ("ATIS") or the Ordering and Billing forum ("OBF").
 - 1.11. "Exchange Access" is as defined in the Act.
 - 1.12. "Exchange Area" means an area, defined by the Commission, for which a distinct local rate schedule is in effect.
 - 1.13. "Extended Area Service Traffic" ("EAS Traffic") means those calls that fall within a type of calling arrangement as generally defined and specified in the general subscriber service tariff of the ILEC.

- 1.14. "FCC" means the Federal Communications Commission.
- 1.15. "Incumbent Local Exchange Carrier" ("ILEC") is as defined in the Act.
- 1.16. "Intellectual Property" means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.
- 1.17. "Intra-LATA Toll Traffic" means all intraLATA calls other than Local Traffic calls.
- 1.18. "Internet Service Provider Traffic" ("ISP Traffic") mean any traffic that is transmitted to or returned from the internet at any point during the duration of the transmission.
- 1.19. "Local Access and Transport Area" ("LATA") is as defined in the Act.
- 1.20. "Local Exchange Carrier" ("LEC") is as defined in the Act.
- 1.21. "Local Traffic" means those calls that originate from an End User's use of local or foreign exchange service in one exchange, that, originate in one exchange and terminate in either the same exchange, or, other calling area associated with the originating exchange, as generally defined and specified in the general subscriber service tariff of the ILEC.
- 1.22. "Loss" or "Losses" means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including reasonable attorneys' fees), except incidental, consequential, indirect, and special losses or damages.
- 1.23. "North American Numbering Plan" ("NANP") means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.
- 1.24. "NXX" means the 3-digit code that appears as the first 4-digits of a 7-digit telephone number.
- 1.25. "Rate Center" means the specific geographic point that has been designated by a given LEC as being associated with a particular NPA-NXX code that has been assigned to the LEC for its provision of Telephone Exchange Service. The Rate Center is the finite geographic point identified by a specific Vertical and Horizontal ("V&H") coordinate, which is used by that LEC to measure, for billing purposes, distance sensitive transmission services associated with the specific Rate Center; provided that a Rate Center cannot exceed the boundaries of an Exchange Area as defined by the Commission.
- 1.26. "Routing Point" means a location that a LEC has designated on its own network as the homing (routing) point for inbound traffic to one or more of its NPA-NXX codes. The Routing Point is also used to calculate mileage measurements for the distance-sensitive transport element charges of Switched Exchange Access

Services. Pursuant to Telecordia Technologies (formerly known as Bellcore) Practice BR 795-100-100 (the "RP Practice"), the Routing Point (referred to as the "Rating Point" in such RP Practice) may be an End Office Switch location, or a "LEC Consortium Point of Interconnection."

- 1.27. "SS7" means Signaling System 7.
- 1.28. "Signaling Transfer Point" ("STP") is as defined in the Act.
- 1.29. "Switched Exchange Access Service" means the offering of transmission or switching services (other than dedicated access services) to Telecommunications Carriers for the purpose of originating or terminating telephone toll service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 8xx access and 900 access and their successor or similar Switched Exchange Access Services.
- 1.30. "Telecommunications" is as defined in the Act.
- 1.31. "Telecommunications Carrier" is as defined in the Act.
- 1.32. "Telecommunications Service" is as defined in the Act.
- 1.33. "Telephone Exchange Service" is as defined in the Act.
- 1.34. "Unbillable Calls" shall mean calls from which the End User account cannot be identified.

2. INTERPRETATION AND CONSTRUCTION

All references to Sections, Exhibits and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context specifically otherwise requires. In the event of a conflict or discrepancy between the provisions of this Agreement and the Act, the provisions of the Act shall govern.

3. EXCHANGE OF TRAFFIC

- 3.1 The Parties each agree, in accordance with the terms of this Agreement, to terminate Local, EAS, ISP and intrastate Intra-LATA Toll Traffic originating on the other Party's network, that is destined for the terminating Party's subscribers, including without limitation, calls to internet service providers and other enhanced service providers.
- 3.2 The Parties understand that should traffic volumes for termination of the services covered hereunder constitute sufficient amounts to justify direct trunk connections between the Parties, the provisions of Section 4 will apply. Traffic measured as specified in Section 4.2 will govern direct trunk arrangements.
- 3.3 In consideration of sub-Section 3.2 above, the Parties agree that, except as set forth in Section 4 below, traffic shall be exchanged through a LEC tandem, in

accordance with the relevant transit traffic terms and conditions as agreed to individually, between the Parties and the LEC. Such traffic exchange shall be routed to each Party's networks through the switches, as set forth in Appendix 1.

- 3.4 Each Party shall be responsible for ensuring that it has adequate facilities in place to connect its network with each LEC tandem that is used by the Parties to transit traffic, and, shall bear its own costs associated therewith.
- 3.5 The Parties hereby agree that the Party on whose network the call originated shall be responsible for payment of any transit charges (including without limitation, tandem switching and transport charges) assessed by the LEC for use of the applicable tandem.

4. TRUNK FORECASTING, ORDERING AND PROVISIONING FOR EXCHANGE OF TRAFFIC THROUGH A DIRECT INTERCONNECTION

- 4.1 In the event that traffic exchanged by the Parties exceeds the Transit Traffic Threshold (as defined below), or, if the Parties mutually agree at any time prior to traffic exceeding the Transit Traffic Threshold, the Parties shall then evaluate the feasibility and economics of direct trunking for local exchange traffic arrangements to handle such volumes.
- 4.2 For the purposes of this Agreement, the Parties agree that the Transit Traffic Threshold shall be an aggregate of both Parties' traffic which reaches one (1) DS1 level volume of calls, per LATA, for any three (3) months, in any consecutive six (6) month period, or for any consecutive three (3) months.
- 4.3 Direct trunking shall be made available on a two-way basis, where technically feasible, unless, on a case by case basis, both Parties agree to implement one-way directionalized trunks, in which case, the Parties shall document the terms and conditions of the directionalized arrangement and incorporate such terms and conditions herein as Appendix 2.
- 4.4 TWTC and MTE shall mutually agree to establish the Point of Interconnection ("POI") at a technically feasible and economically advantageous location within their networks. The Parties agree to meet to discuss such locations in a timely fashion.
- 4.5 When two-way direct trunking is utilized, the Parties may establish a direct connection by either self-provisioning the trunking in accordance with Section 4.6 below, or, through a third party in accordance with Section 4.7 below.
- 4.6 Self-provisioning is defined as a direct connection between the Parties' networks, without the use of any third-party facilities. In the case of self-provisioning, the following arrangements shall apply:

- 4.6.1 Based upon an assessment of economic and technical feasibility, the Parties shall mutually agree as to which Party shall provision (“Provisioning Party”) the direct Trunks (as defined below) and, the price of such Trunks. The price will be based upon relevant factors, including but not limited to, the specific network configurations of the Parties required to provision the facilities, the size of the Trunks, and the specifics of the applicable geographic area.
- 4.6.2 The Provisioning Party shall provision an appropriate number of T1s and/or DS3 trunks (“Trunk” or “Trunks”) for the use of both Parties traffic.
- 4.6.3 The price of the Trunks shall be apportioned as follows:
 - 4.6.3.1 Where the Proportionate Percentage of Use (“PPU”) of traffic remains within a 70/30 split, the Parties agree that the Provisioning Party shall bill the other Party fifty percent (50%) of the agreed upon cost of provisioning the Trunks pursuant to Section 4.6.1., including both recurring and non-recurring charges.
 - 4.6.3.2 Where the PPU of traffic exceeds a 70/30 split, the Parties agree to apportion the cost, in accordance with the proportionate amount of each Party’s traffic over the entire Trunk group. In this scenario, the Provisioning Party shall bill the other Party the appropriate amount for the cost of the Trunks, based upon the other Party’s proportion of traffic over that Trunk group, including both recurring and non-recurring charges.
 - 4.6.3.3 The specific pricing applicable as of the effective date of the direct trunking relationship shall be negotiated and incorporated herein as Appendix 3.
- 4.7 In a scenario where direct connection is established through a third-party ILEC, the following arrangements shall apply:
 - 4.7.1 Based upon a mutually agreed upon traffic study, the Parties shall agree as to which Party shall be responsible for the ordering of Trunks from the ILEC (“Ordering Party)
 - 4.7.2 The cost of the Trunks shall be apportioned as follows:
 - 4.7.2.1 Where the PPU of traffic remains within a 70/30 split, the Ordering Party shall bill the other Party fifty percent (50%) of the third party charges, including both recurring and non-recurring charges.

4.7.2.2 Where the PPU of traffic exceeds a 70/30 split, the Parties agree to apportion the cost, in accordance with the proportionate amount of each Party's traffic over the entire Trunk group. In this scenario, the Ordering Party shall bill the other Party the appropriate amount for the cost of the Trunks, based upon the other Party's proportion of traffic over that Trunk group, including both recurring and non-recurring charges.

4.8 Traffic measurements will be performed individually by the Parties at the beginning of each month and at the end of each calendar quarter the Parties will conduct a meeting within a reasonable period of time prior to any invoices being rendered for the month immediately following the end of such calendar quarter to analyze the traffic measurements for such preceding calendar quarter and to determine whether the PPU should be adjusted for the immediately following calendar quarter. If the Parties agree to an adjustment of the PPU, the adjusted PPU will be used by the Parties for such following calendar quarter and the previously used PPU will become null and void.

4.9 TWTC shall be responsible for engineering and maintaining its network on its side of the POI. MTE shall be responsible for engineering and maintaining its network on its side of the POI.

4.10 Regardless of the method of direct connection agreed to, the procedures set forth in Section 4.11 below shall be used by the Parties for the ordering of Trunk groups. The number of trunk groups used to connect the Parties' networks shall be determined, in part, by the exchange of Trunk forecasts between the Parties as set forth in Section 4.11 below. Trunks shall be provided, at a minimum, over a DS1 line with B8ZS and 64 Clear Channel Capability ("CCC").

4.11 Trunk Forecasts For Direct Connections

4.11.1 Each Party shall provide the other Party with trunk quantity forecasts in a mutually agreed upon format once every six (6) months, commencing on the date the Parties decide to establish a direct connection. The forecasts shall include all information necessary to allow the other Party to manage its trunking facilities. Any direct trunks installed pursuant to this Agreement shall carry Local, EAS and intrastate Intra-LATA Toll traffic only.

4.11.2 The Parties shall exchange forecasted trunk quantity requirements for a period that is no less than one (1) year from the date of the forecast and no more than two (2) years from the date of the forecast. The forecast shall be itemized by switch location. Each switch location shall be identified by the use of Common Language Location Identifier ("CLLI") Codes, which are described in Telecordia documents BR 795-100-100 and BR

4.12 Review and Update of Trunk Forecasts

4.12.1 At the time the direct connection is established, each Party shall provide the other with a point of contact for the reconciliation of trunk forecasts. In the event that there is a discrepancy between the Parties' forecasts, the Parties shall negotiate in good faith to reconcile the forecasts. If either Party becomes aware of any factors that would materially modify the forecast it has previously provided pursuant to Section 4.11 above, it shall promptly provide written notice of such modifications to the other Party.

4.13 Trunk Ordering For Direct Connections

- 4.13.1 To establish the initial trunk groups to directly connect the Parties, the Party who's originating traffic exceeds the Transit Traffic Threshold ("Requesting Party") will order two-way trunks by submitting an Access Service Request (an "ASR") (or any other industry standard request eventually adopted to replace the ASR for local service ordering that has been mutually accepted by both Parties as a method for ordering trunks).
- 4.13.2 The Parties agree to use all reasonable efforts to ensure that the ordered trunk groups are installed, tested and available for use at the earliest possible date.
- 4.13.3 Each Party shall monitor the trunk utilization of the trunk groups for an initial trial period of three (3) months. At the end of the initial three (3) month period, each Party shall review the trunk utilization for the third month of the initial three (3) month trial period. If the average trunk utilization of the trunk groups during such third month is at or above sixty percent (60%) of the total trunk capacity, the Requesting Party will issue an ASR in accordance with Section 4.13.1 to resize the trunk group. After the initial three (3) month period, the Requesting Party shall augment the trunk groups when trunk utilization during the third month of any three (3) month period is at or above seventy-five percent (75%) of the total trunk capacity. the Requesting Party will order additional trunks in accordance with Section 4.13.1 to resize the trunk group.
- 4.13.4 Either Party may initiate an order to resize the trunk groups used to directly connect the Parties at any time after the initial establishment of trunk groups and ordering of trunks. Any order to resize the trunk groups shall follow the procedures set forth in Section 4.13.3. the Requesting Party may request an augment and/or a disconnect through issuance of a Trunk Group Service Request ("TGSR") to the other Party.

4.14 Provisioning Responsibilities for Direct Connections; Trouble Reporting and Management

- 4.14.1 Each Party shall provide to the other Party the contact number(s) to its control office which shall be accessible and available 24 hours a day, 7 days a week, for the purpose of, without limitation, (a) coordinating trunk orders (e.g., notifying the other Party of delays in trunk provisioning), (b) maintaining service (e.g., notifying the other Party of any trouble or need for repairs), and (c) notifying the other Party of any equipment failures which may affect the interconnection trunks. Any changes to a Party's control office contact arrangement must immediately be provided to the other Party in writing pursuant to the procedures in Section 22, below.
- 4.14.2 Each Party shall coordinate and schedule testing activities of its own personnel, and others as applicable, to ensure that trunks are installed in accordance with the ASR, meet agreed-upon acceptance test requirements, and are placed in service by the in-service date.
- 4.14.3 Prior to reporting any trouble with interconnection facilities to the other Party, each Party shall perform sectionalization to determine if trouble is located in its facility or in its portion of the trunks.
- 4.14.4 The Parties shall cooperatively plan and implement coordinated repair procedures for the interconnection facilities in order to ensure that trouble reports are resolved in a timely manner and that the trouble is promptly eliminated.
- 4.14.5 Prior to the placement of any orders for direct connection trunks, the Parties shall meet and mutually agree upon technical and engineering parameters, including Glare and other control responsibilities.
- 4.14.6 To the extent possible, TWTC and MTE will maintain the existing trunk groups used to transit traffic through the LEC's tandem or alternative tandems. Overflow traffic carried on the direct trunks will be routed to LEC tandems.

5.0 NETWORK TRAFFIC MANAGEMENT

- 5.1 Blocking Standard. Each Party shall maintain a blocking standard of no more than one percent (1%) during the bouncing busy hour, i.e., the peak busy time each day, based upon mutually agreed engineering criteria.
- 5.2 Protective Protocols. In order to protect their respective networks from facility failures, switch congestion or focused overload (e.g., excessive traffic to a specific subscriber due to radio show call-ins), either Party may use protective network traffic management protocols. These protocols may include, without limitation, 10-digit code gaps on traffic, whereby the originating Party limits traffic directed to a designated 10-digit subscriber at the originating end office.

Each Party must provide notice (using a format and method mutually agreed upon by the Parties) to the other Party's control office in advance of any planned event requiring the need for a protective protocol. If the event requiring a protective protocol is not a planned event (e.g., a facility failure) the Parties shall notify each other of the need for a protective protocol as soon as practicable.

- 5.3 Expansive Protocols. In order to temporarily relieve network congestion due to facility failures or unanticipated abnormal calling patterns, the Parties may use expansive protocols. These protocols may include, without limitation, originating or terminating traffic reroutes (e.g., high volume call-in networks), and NXX or NPA blocking, whereby the originating Party blocks traffic directed to an affected trunk group at the originating end office. Expansive protocols shall be used only as a temporary remedy to alleviate abnormal network volume and not as a method to circumvent normal trunk servicing. Expansive protocols which require extensive coordination between the Parties or substantial network resources, such as originating or terminating traffic reroutes, shall be used only when mutually agreed upon by the Parties. The Parties agree to negotiate in good faith to determine and implement the appropriate expansive protocol for each such case as soon as practicable.

6. SIGNALING

- 6.1 Common Channel Interoffice Signaling ("CCIS") shall be used by the Parties via SS7 to set up calls between the Parties' Telephone Exchange Service networks. Each Party shall supply, at a minimum, Automatic Number Identification ("ANI") and Calling Party Number ("CPN") within the SS7 signaling message as described in Section 6.3.
- 6.2 Each Party is responsible for ensuring that SS7 messages can be exchanged with the other Party's CCIS network. Each Party shall connect to a pair of access STPs that serve each LATA where traffic will be exchanged or shall arrange for signaling connectivity through a third party provider which is connected to the other Party's signaling network. The Parties shall establish interconnection at the STP.
- 6.3 The Parties will cooperate on the exchange of all appropriate SS7 messages for local, EAS and Intra-LATA call set-up signaling, including ISDN User Part ("ISUP") and Transactional Capabilities Application Part ("TCAP") messages to facilitate full interoperability of CCIS-based features between their respective networks, including all CLASS features and functions, to the extent each Party offers such features and functions to its Customers. All SS7 and CCIS signaling parameters will be provided, including CPN and ANI, Originating Line Information ("OLI"), calling party category and charge number. For terminating Exchange Access traffic, such information shall be passed by a Party to the extent that such information is provided to such Party. Also included are all

parameters relating to network signaling information, such as Carrier Information Parameter ("CIP"), wherever such information is needed for call routing or billing.

7. MEASUREMENT AND BILLING FOR COMPENSABLE TRAFFIC

7.1 Local, EAS and ISP Traffic

7.1.1 Each Party will bill its End Users for Local, EAS and ISP Traffic. Initially, each Party will be entitled to retain all revenues from such traffic without payment of further compensation to the other Party (a "Bill & Keep").

7.1.2 However, the Parties agree to initiate billing for and payment of reciprocal compensation for the termination of Local, EAS and ISP Traffic at the rate specified in Section 7.1.4, at such time when both of the following conditions are satisfied:

- i. the total minutes of use representing Local, EAS and ISP Traffic terminating to either Party within the LATA is more than ten percent (10%) greater than the total of such minutes of use terminating to the other party for three (3) consecutive months; and
- ii. applying the rates specified in Section 7.1.4 below, the net amount that would be billable by the party with the greater amount of minutes of use terminating to it for Local, EAS and ISP Traffic within the LATA from the other Party would exceed a sum of one thousand dollars (\$1000) in any billing month during the three (3) month period referred to above.

7.1.3 Subject to the conditions in Section 7.1.2 above, compensation for Local, EAS and ISP Traffic may be initiated by written notice from either Party to the other Party, provided that the Party providing such written notice is able to support its decision to commence billing if requested to do so. Further, the Parties agree to allow either Party to conduct a traffic analysis of the other Party's traffic, in accordance with the audit provision in Section 7.3.2, prior to the commencement of billing for Local, EAS and ISP Traffic.

7.1.4 Subject to Section 7.1.1 and Section 7.1.2 above, Local, EAS and ISP Traffic originating from one Party for termination on the other Party's network shall be compensated at \$0.0007 per Minute of Use ("MOU").

7.2 Intra-LATA Toll Traffic and Switched Exchange Access Traffic

7.2.1 The Parties will compensate each other for Intra-LATA Toll Traffic at the

terminating Party's applicable tariffed rates.

- 7.2.2 Switched Exchange Access Traffic, if applicable, is compensable in accordance with Multiple Exchange Carrier Access Billing ("MECAB") Guidelines and at either Party's applicable switched access tariffed rates.

7.3 Traffic Recording, Exchange of Necessary Factors and Audits

- 7.3.1 The Parties shall each perform traffic recording and identification functions necessary to provide the services contemplated hereunder. Notwithstanding the foregoing, in order to accurately bill traffic exchanged, the Parties agree to exchange Percent Local Usage ("PLU") and Percent Interstate Usage ("PIU") factors as necessary ("Necessary Factors"), on an agreed to basis (usually quarterly). Such discussion and agreement on the exchange of the Necessary Factors shall be made between MTE and TWTC's authorized billing representative, who shall be identified by each Party prior to the execution of this Agreement. Each Party will re-evaluate its Necessary Factors every three (3) months and provide its new factor, if needed, to the other Party within twenty (20) calendar days after the end of each quarter. The Necessary Factors shall be applied to usage for the following quarter. If a Necessary Factor is not provided, the one already in effect stays in effect, or, the Necessary Factor in the Party's current tariff shall apply.
- 7.3.2 Audits. Notwithstanding the Parties' right to conduct an audit prior to the commencement of billing for Local, EAS and ISP Traffic in Section. 7.1.3 above, on thirty (30) days written notice, each Party must provide the other the ability and opportunity to conduct an audit to ensure the proper billing of traffic. The auditing Party may review records of call detail and supporting network information relevant to the exchange of traffic under this Agreement and request that such network information include switch translations for call routing data, which can be used to determine the jurisdiction in which the call originated. If such a request for switch translation verification is made, the audited Party must submit the necessary information, or, allow the audit to be accomplished on the audited Party's premises within a reasonable time period. The audit must be accomplished during normal business hours. Audit requests may not be submitted more frequently than once per calendar year. Statistical sampling methods may be employed in order to extrapolate over or underpayments across the population of transactions during the audit period. The Parties will agree upon the sampling method used in advance. A mutually acceptable independent auditor paid for by the Party requesting the audit may perform audits. The Parties agree to work together cooperatively to resolve any problems uncovered as the result of an audit performed in accordance with this Section 7.3.2. If it is

determined that the auditing Party has overpaid the audited Party, the audited Party must refund the overpaid amount to the auditing Party within thirty (30) days of such determination. If it is determined that the auditing Party has underpaid the audited Party, the auditing Party must reimburse the audited Party the difference between the amount paid and the amount which should have been paid within thirty (30) days of such determination. If the Parties are unable to agree on the results of the audit, then either or both Parties may pursue such disputes under the dispute resolution process described in Section 8. TWTC and MTE must retain records of call detail and other information subject to audit under this Section for a minimum of twelve (12) months from the date the records are established, from which the Necessary Factors can be ascertained.

- 7.4** Each Party agrees that it will use best efforts to accurately capture and report the actual usage interchanged between them for calculating the necessary compensation under this Agreement. Should actual traffic information (measured in minutes of use) not be available, the Parties will mutually agree on a suitable alternative basis for calculating compensation that most closely approximates the actual interchanged usage. Each Party shall prepare and provide the other Party monthly statements regarding the termination of the other Party traffic.

7.5 Billing Of Minutes Of Use

- 7.5.1** Terminating calls will be measured by the Parties to determine the basis for chargeable traffic minutes. Measured minutes or fractions thereof (the exact value of the fraction being a function of the switch technology where the measurement is made) are accumulated daily or monthly, and are then rounded up to the nearest traffic minute. Measurement of traffic minutes shall be on conversation minutes of use.
- 7.5.2** For billing purposes, each Party shall pass ANI or CPN information on each call carried over the local/intraLATA trunks, whenever technically feasible.
- 7.5.3** Calls that originate on a Party's network that are exchanged without a CPN and ANI information, may be billed by the other Party as intrastate Intra-LATA Toll Traffic in accordance with Section 7.2.1 above, provided that such calls can be proved to have originated from the other Party's network, and, the other Party has the ability to verify such bills.
- 7.5.4** Calls that originate on a Party's network that contain CPN and ANI information which indicate that the origination point is not within the same LATA as the termination point, shall be billed as Switched Exchanges Access Traffic in accordance with Section 7.2.2 above, provided that such calls can be proved to have originated from the other

Party's network, and, the other Party has the ability to verify such bills.

- 7.5.5 Calls that are carried over the local trunks for termination on either Party's network, which have originated from non-working telephone numbers on the other Party's network, may be billed by the terminating party as Intra-LATA Toll Traffic, in accordance with Section 7.2.1 above.
- 7.5.6 All compensation payable pursuant to this Agreement shall be payable within thirty (30) days of the bill date. Any amounts not paid when due shall accrue interest from the date such amounts were due at the rate of one and one-half percent (1.5%) monthly. Any billing disputes involving disputed amounts shall be resolved in accordance with the procedures set forth in Section 8 of this Agreement.

7.6 Alternate Billed Calls

- 7.6.1 Each Party will provide the other Party billing, collecting and remitting services on Alternate Billed Calls. Alternate Billed Calls are calls that require exchange of billing records between the Parties. These types of records include intrastate and/or intra-LATA toll service Alternate Billed Calls (e.g calling card, bill to third party and collect calls) carried as LECs. This does not include billing and collection services for inter-exchange long distance traffic.
- 7.6.2 Each Party will provide to the other Party standard formatted EMI records for billing of messages to their End Users at a minimum on a monthly basis.
- 7.6.3 Each Party shall exchange records and bill its own End Users on behalf of the other Party, for Alternately Billed Calls.
- 7.6.4 Unbillable Calls will be the responsibility and liability of the originating company. The billing company shall appropriately account for and return the Unbillable Calls to the originating company pursuant to EMI standard guidelines.
- 7.6.5 Uncollectible calls will be the responsibility and liability of the billing company.
- 7.6.6 The payments of revenues for these type of calls will be processed through Centralized Message Distribution System ("CMDS"), Calling Card and Third Party Settlement ("CATS") and Non-Intercompany Settlement ("NICS") processes through each Party's CMDS host.

7.7 Toll Free Services

- 7.7.1 For toll free services, the Party originating such traffic will bill the Party offering the toll free service. Each Party shall provide to the other Party,

in a timely manner, billing records in standard EMI format. The compensation for origination of such traffic, the charges for which will include usage and query charges, shall be billed at the rate in that Party's state switched access tariff, price list, or, in the absence of a tariffed or price listed rate, at a rate of \$0.025 per minute. Record provisioning charges shall be billed at the rate in the Party's state switched access tariff, price list, or, in the absence of a tariff or price list, at a rate of \$0.03 per record. The records for these types of calls will be processed through the CMDS process through each Party's Host or as otherwise negotiated.

7.8 UNE-P Traffic

- 7.8.1 The Parties understand that due to the nature of UNE-P traffic, billing and validation of bills for traffic terminating to and originating from customers served using UNE-P services ("UNE-P Customers") cannot be equitably accomplished without Customer Detail Records ("CDRs").
- 7.8.2 Should the ILEC not provide either Party with CDRs of UNE-P Customers, the Parties agree to mutually meet and discuss an appropriate, equitable method for the billing and validation of UNE-P traffic within thirty (30) days of the execution of this Agreement. The approved billing and validation method shall be reduced to writing in a letter agreement executed by both Parties.
- 7.8.3 Until such billing and validation method is achieved, bills for UNE-P traffic shall be accrued and held in dispute and neither Party shall be penalized for late payment or any other penalties imposed under Section 8 of this Agreement.
- 7.8.4 Should discussion and mutual agreement on a billing and validation method not be achieved within a reasonable time period, either Party may request escalation of the issues through the dispute resolution procedures set forth in this Agreement.
- 7.8.5 If any applicable industry group or regulatory body develops a billing and/or validation method for UNE-P traffic, the Parties agree that the change of law provisions contained in this Agreement will apply.
- 7.8.6 The Parties reserve the right to request the establishment of a mutually agreeable method of retroactive billing and settlement of bills for UNE-P traffic that could not be previously billed or validated prior to the establishing a mutually agreed upon billing and validation method.

7.9 Deposits

- 7.9.1 **Requirement:** Either Party ("Billing Party") reserves the right to require the other Party ("Billed Party") to post or pay a deposit as security unless

satisfactory credit has already been established through twelve (12) consecutive months of current payments. The right to require a security deposit will arise in the event any undisputed amounts remain unpaid by the Billed Party for more than sixty (60) calendar days after the bill due date. In the event of such non-payment for more than sixty (60) calendar days, the Billed Party shall pay the deposit amount within five (5) calendar days of receipt of a written notice from the Billing Party specifying the deposit amount required.

- 7.9.2 Amount and Interest: The amount of the deposit will not exceed twice the estimated average monthly bill, unless a greater amount is allowed by state law or Commission rules. Interest on deposits will be paid at the greater of one percent (1%) per annum or the minimum rate required by state law or Commission rules. Interest is not payable unless and until the Billed Party's billing relationship with the Billing Party has existed for at least twelve (12) consecutive months or such earlier time as is required by state law or Commission rules. The posting or payment of a deposit in no way relieves the Billed Party from complying with the requirement for the prompt payment of bills.
- 7.9.3 Refund: After the Billed Party has established a consecutive twelve (12) month history of prompt payment, or such shorter period of time as required by state law or Commission rules, the deposit, plus interest if applicable, will be returned or credited to the Billed Party's account. Upon termination of this Agreement, or if the Billed Party at any time fails to pay any amounts when due under the terms of this Agreement, any deposit held by the Billing Party on behalf of the Billed Party will be applied to the outstanding balance of the Billed Party's account. Any amount remaining after satisfaction of the Billed Party's outstanding balance upon termination will be returned to the Billed Party.
- 7.9.4 Additional Deposits: Subject to the requirements set forth in Section 7.9.1, above, the Billing Party retains the right to require additional cash deposit amounts when the amount of the current deposit does not cover two (2) months billing.

8. PAYMENTS AND DISPUTES

8.1 Payment and Billing Disputes

- 8.1.1 Except as may be otherwise provided in this Agreement, each Party shall submit on a monthly basis a statement of charges incurred by the other Party during the preceding month for services rendered hereunder. Payment of billed amounts under this Agreement, whether billed on a monthly basis or as otherwise provided herein, shall be due, in immediately available United States funds, within thirty (30) days of the date of such statement.

- 8.1.2 Either Party may request the other Party to verify the accuracy of amounts shown on invoices provided pursuant to this Agreement. The Party receiving the request shall provide information reasonably sufficient to verify its invoices within ninety (90) days after the request date.
- 8.1.3 Although it is the intent of both Parties to submit timely and accurate statements of charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and the billed Party shall not be entitled to dispute the billing Party's statement(s) based on such Party's failure to submit them in a timely manner.
- 8.1.4 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within one hundred and twenty (120) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amount it disputes ("Disputed Amounts") and include in such notice the specific details, amounts and reasons for disputing each item. The Non-Paying Party shall pay all undisputed amounts to the Billing Party when due.
- 8.1.5 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within thirty (30) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative that has authority to settle the dispute and that is at a higher level of management than the persons with direct responsibility for billing issues. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however, all reasonable requests for relevant information made by one Party to the other Party shall be honored.
- 8.1.6 If the Parties are unable to resolve issues related to the Disputed Amounts within forty-five (45) days after the Parties' appointment of designated representatives pursuant to Section 8.1.5, then either Party may submit the dispute to mediation or arbitration before the Commission pursuant to the Commission's rules and practices for handling such disputes. In the event there are no such Commission rules and practices for handling the mediation or arbitration of the disputes, the Parties shall submit dispute resolution procedures to the Commission for consideration and approval. The prevailing Party is entitled to be reimbursed by the losing Party for all costs expended under this Section 8.1.6, provided, however, in such circumstances where there is no clear and obvious prevailing Party, each Party shall bear its own costs and expenses unless otherwise determined

by the mediation or arbitration decision. Neither Party is precluded from pursuing its rights and remedies under law or equity after first exhausting its administrative remedies.

8.1.7 Any Disputed Amounts not paid when due shall accrue interest from the date such amounts were due at one and one-half percent (1.5%) monthly, compounded daily for the number of days from the bill due date or date such overpayment was received until the date that payment or reimbursement, as the case may be, is actually received by the appropriate Party.

8.2 Non-Billing Related Disputes. If the Parties are unable to resolve the issues related to non-billing related disputes in the normal course of business within forty-five (45) days after delivery of notice of the dispute to the other Party, each of the Parties shall appoint a designated representative that has authority to settle the dispute and who is at a higher level of management than the person or persons with direct responsibility over the disputed issues. The Parties agree that the timeframes and procedural steps for resolving all non-billing related disputes shall be the same as those specified for billing related disputes provided in Sections 8.1.5 and 8.1.6 above. Except as otherwise specifically provided for in this Agreement, no claim may be brought for any non-billing related dispute arising from this Agreement more than twenty-four (24) months from the date the occurrence giving rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

9. GENERAL RESPONSIBILITIES OF THE PARTIES.

9.1 Contact with Subscribers. Each Party shall be the primary contact and account control for all interactions with its own subscribers. If a Party is contacted by a subscriber of the other Party, that Party shall: (a) provide only mutually agreed referral numbers in response to inquiries about the other Party's services or products; (b) not disparage the other Party or its products or services; and (c) provide information about its own products or services only in response to a specific subscriber inquiry about such products or services.

9.2 Escalation Contact Lists and Service Recovery Procedures. Each Party shall provide the other Party with all network escalation contact lists and service recovery procedures (including, without limitation, the procedures for opening of trouble tickets) necessary to facilitate the rapid resolution of disputes and service issues in a mutually agreed upon format and in a timely and reasonable manner. The Parties shall provide each other with as much advance notice as possible of any changes in their respective escalation contact lists and service recovery procedures.

9.3 Collocation. Except as specifically provided herein, nothing in this Agreement

shall obligate either Party to provide collocation space, facilities or services to the other Party. Any such collocation arrangement shall be entered into by each Party in its sole discretion. The terms and conditions for any agreed-upon collocation shall be set forth in a separate written agreement between the Parties.

10. TERM AND TERMINATION OF AGREEMENT

- 10.1** The initial term of this Agreement shall commence on the Effective Date and shall continue thereafter for a period of two (2) years (the "Initial Term").
- 10.2** Following expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year terms unless either Party requests re-negotiation or gives notice of termination at least sixty (60) days prior to the expiration of the then-current term.
- 10.3** In the event that any requested re-negotiation does not conclude prior to expiration of the then-current term, this Agreement shall continue in full force and effect until replaced by a successor agreement. For purposes of clarification, the Parties agree that in this instance, each Party will continue to terminate the traffic originating from the other Party, and, that any charges associated with compensation for such traffic termination, if different from charges incurred under this Agreement, will be, if necessary, retroactively calculated from the effective date of the successor agreement.
- 10.4** The Parties shall use their best endeavours to resolve all outstanding issues in the re-negotiation process. However, if the Parties are unable to come to a resolution of certain issues during the re-negotiation process, either Party may at any time during the re-negotiation, request arbitration, mediation or assistance from the Commission or, if applicable, the FCC, to resolve the remaining issues in the re-negotiation process, in accordance with the Commission's or FCC's, as appropriate, prescribed procedures.
- 10.5** Payment - Upon Expiration or Termination. In the case of the expiration or termination of this Agreement for any reason, each of the Parties shall be entitled to payment for all services performed and expenses accrued or incurred prior to such expiration or termination, except to the extent that any such payments for service or expense are subject to a pending dispute resolution process under this Agreement or any administrative or judicial procedure, in which case the payment for such service or expense shall be handled and resolved in accordance with the applicable procedure.

11. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

- 11.1** DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR

WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER SUBJECT TO THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

12. INDEMNIFICATION

- 12.1 Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party ("Indemnified Party") from and against all Losses arising out of any claims, demands or suits ("Claims") of a third party against the Indemnified Party to the extent arising out of any acts or omissions of the Indemnifying Party or out of the failure of the Indemnifying Party to perform, or cause to be performed, its obligations under this Agreement, including but not limited to, services furnished by the Indemnifying Party or by any of its subcontractors, under worker's compensation laws or similar statutes.
- 12.2 Each Party, as an Indemnifying Party, agrees to indemnify, defend, and hold harmless the other Party from any third party Claims that assert any infringement or invasion of privacy or confidentiality of any person or persons caused or claimed to be caused, directly or indirectly, by the Indemnifying Party's or its employees, agents and contractors, or by the Indemnifying Party's equipment, associated with the provision of any service provided under this Agreement. This provision includes but is not limited to Claims arising from unauthorized disclosure of the End User's name, address or telephone number, from third party Claims that the equipment provided by one Party to the other Party or the manner in which either Party configures its network violates any third party intellectual property right.
- 12.3 The Indemnified Party shall notify the Indemnifying Party promptly in writing of any Claim by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section 12. The Indemnified Party shall tender the defense of such Claim to the Indemnifying Party and shall cooperate in every reasonable manner with the defense or settlement of such Claim.
- 12.4 The Indemnifying Party shall, to the extent of its obligations to indemnify under this Agreement, defend with counsel any Claim brought by a third party against the Indemnified Party. The Indemnifying Party shall keep the Indemnified Party reasonably and timely appraised of the status of the Claim. The Indemnified Party shall have the right to retain its own counsel, at its expense, and participate in but not direct the defense; provided, however, that if there are reasonable defenses in addition to those asserted by the Indemnifying Party, the Indemnified Party and its counsel may raise and direct such defenses, which shall be at the expense of the Indemnifying Party.
- 12.5 The Indemnifying Party shall not be liable under the indemnification provisions

of this Agreement for a settlement or compromise of any Claim unless the Indemnifying Party has approved the settlement or compromise in advance. The Indemnifying Party shall not unreasonably withhold, condition or delay such approval. If the defense of a Claim has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense, then the Indemnifying Party shall be liable under the indemnification provisions of this Agreement for a settlement or compromise of such Claim by the Indemnified Party, regardless of whether the Indemnifying Party has approved such settlement or compromise.

- 12.6** The indemnification obligations of the Parties under this Section 12 shall survive the expiration or termination of this Agreement for a period of three (3) years.

13. LIMITATION OF LIABILITY

- 13.1** Except as otherwise provided herein, neither Party will be liable to the other in connection with the provision or use of services provided under this Agreement. Neither Party will be liable to the other for any Loss relating to or arising out of any ordinary negligent act or omission by a Party, except involving cases of infringement of a third party's intellectual property rights or the improper disclosure of Confidential Information. In no event will either Party be liable to the other Party for any indirect, special, incidental or consequential damages, including, but not limited to loss of profits, income or revenue, even if advised of the possibility thereof, whether such damages arise out of breach of contract, breach of warranty, negligence, strict liability, or any other theory of liability and whether such damages were foreseeable or not at the time this Agreement was executed.
- 13.2** With respect to any claim or suit for damages arising out of mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring in the course of furnishing service hereunder, the liability of the Party furnishing service, if any, shall not exceed an amount equivalent to the proportionate charge to the other Party for the period of service during which such mistake, omission, interruption, delay, error or defect in transmission or service occurs and continues. However, any such mistakes, omissions, interruptions, delays or errors, or defects in transmission or service which are caused or contributed to by the negligent or wilful act of the other Party, or which arise from the use of the other Party's provided facilities or equipment, the liability of the Party furnishing service, if any, shall not exceed an amount equivalent to the proportionate charge to the other Party for the period of service during which such mistake, omission, interruption, delay, error or defect in transmission or service occurs and continues. This limitation of liability provision does not restrict or otherwise affect a Party's indemnification obligations under this Agreement.

14. COMPLIANCE

14.1 Each Party shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement.

15. INDEPENDENT CONTRACTORS

15.1 No partnership, joint venture, fiduciary, employment or agency relationship is established by entering into this Agreement. Each Party shall perform services hereunder as an independent contractor and nothing herein shall be construed as creating any other relationship between the Parties.

16. FORCE MAJEURE

16.1 In no event shall either Party have any claim or right against the other Party for any delay or failure of performance by such other Party if such delay or failure of performance is caused by or is the result of causes beyond the reasonable control of such other Party and is without such Party's fault or negligence (a "Force Majeure Event"), including, but not limited to, acts of God, fire, flood, epidemic or other natural catastrophe; unusually severe weather; explosions, nuclear accidents or power blackouts; terrorist acts; laws, orders, rules, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter of this Agreement or any civil or military authority; the condemnation or taking by eminent domain of any of a Party's facilities used in connection with the provision of services to its subscribers; national emergency, insurrection, riot or war; labor difficulties or other similar occurrences.

16.2 In the event that a Force Majeure Event causes a Party to delay or fail to perform any obligation(s) under this Agreement, the delaying Party shall resume performance of its obligations as soon as practicable in a nondiscriminatory manner that does not favor its own provision of services over that of the non-delaying Party.

17. CONFIDENTIALITY

17.1 By virtue of this Agreement, TWTC and MTE may have access to or exchange Confidential Information belonging to the other Party. A recipient of such Confidential Information shall not disclose any Confidential Information to any person or entity except recipient's employees, contractors and consultants who have a need to know and who agree in writing to be bound by this Section 17 to protect the received Confidential Information from unauthorized use or disclosure. Confidential Information shall not otherwise be disclosed to any third party without the prior written consent of the owner of the Confidential Information. The recipient shall use Confidential Information only for the purpose of this Agreement and shall protect such Confidential Information from

disclosure to others, using the same degree of care used to protect its own confidential or proprietary information, but in no event less than a reasonable degree of care.

- 17.2** The restrictions of this Section 17 shall not apply to information that: (i) was publicly known at the time of the owner's communication thereof to the recipient; (ii) becomes publicly known through no fault of the recipient subsequent to the time of the owner's communication thereof to the recipient; (iii) was in the recipient's possession free of any obligation of confidence at the time of the owner's communication thereof to the recipient, and, the recipient provides the owner with written documentation of such possession at the time the owner makes the disclosure; (iv) is developed by the recipient independently of and without reference to any of the owner's Confidential Information or other information that the owner disclosed in confidence to any third party; (v) is rightfully obtained by the recipient from third parties authorized to make such disclosure without restriction; or (vi) is identified in writing by the owner as no longer proprietary or confidential.
- 17.3** In the event the recipient is required by law, regulation or court order to disclose any of the owner's Confidential Information, the recipient will promptly notify the owner in writing prior to making any such disclosure in order to facilitate the owner seeking a protective order or other appropriate remedy from the proper authority to prevent or limit such disclosure. The recipient agrees to cooperate with the owner in seeking such order or other remedy. The recipient further agrees that if the owner is not successful in precluding or limiting the requesting legal body from requiring the disclosure of the Confidential Information, the recipient will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable written assurances that confidential treatment will be accorded the Confidential Information.
- 17.4** All Confidential Information disclosed in connection with this Agreement shall be and remain the property of the owner. All such information in tangible form shall be returned to the owner promptly upon written request and shall not thereafter be retained in any form by the recipient.
- 17.5** The Parties acknowledge that Confidential Information is unique and valuable, and that disclosure in breach of this Section 17 will result in irreparable injury to the owner for which monetary damages alone would not be an adequate remedy. Therefore, the Parties agree that in the event of a breach or threatened breach of confidentiality, the owner shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.
- 17.6** CPNI related to a Party's subscribers obtained by virtue of this Agreement shall be such Party's Confidential Information and may not be used by the other Party for any purpose except performance of its obligations under this Agreement, and in

connection with such performance, shall be disclosed only in accordance with this Section 17, unless the Party's subscriber expressly directs such Party in writing to disclose such information to the other Party pursuant to the requirements of 47 U.S.C. Section 222(c)(2). If the other Party seeks and obtains written approval to use or disclose such CPNI from the Party's subscribers, such approval shall be obtained only in compliance with Section 222(c)(2) and, in the event such authorization is obtained, the requesting Party may use or disclose only such information as the disclosing Party provides pursuant to such authorization and may not use information that the requesting Party has otherwise obtained, directly or indirectly, in connection with its performance under this Agreement.

17.7 Except as otherwise expressly provided in this Section 17, nothing herein shall be construed as limiting the rights of either Party with respect to its subscriber information under applicable law, including without limitation 47 U.S.C. Section 222.

17.8 The provisions of this Section 17 shall survive the termination or expiration of this Agreement.

18. GOVERNING LAW

18.1 This Agreement shall be governed by the laws of the State of Arizona, without giving effect to the principles of conflicts of law thereof, except that if federal law, including the Act, applies, federal shall control.

19. TRANSFER AND ASSIGNMENT

19.1 Neither Party may assign or transfer this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party, which consent shall not be unreasonably conditioned, withheld or delayed, provided however, either Party may assign this Agreement to a parent, subsidiary, affiliate, or to an entity that acquires all or substantially all the equity or assets by sale, merger or otherwise without the consent of the other Party, provided the assignee agrees in writing to be bound by the terms of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns. No assignment or delegation hereof should relieve the assignor of its obligations under this Agreement.

20. TAXES

20.1 Each Party purchasing services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on, or with respect to, the products and services under this Agreement provided by or to such Party, except for (a) any Tax on

either party's corporate existence, status, or income, (b) any corporate franchise Taxes or (c) property taxes. Whenever possible, Taxes shall be billed as a separate item on the invoice.

- 20.2** With respect to any purchase of services under this Agreement if any Tax is required or permitted by Applicable Law to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax; (ii) the purchasing Party shall remit such Tax to the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. Failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills the purchasing Party for such Tax, or (2) it collects the Tax from the purchasing Party. Notwithstanding anything in this Agreement to the contrary, the purchasing Party shall be liable for and the providing Party may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.
- 20.3** With respect to any purchase services under this Agreement that are resold to a third party, if any Tax is imposed by Applicable Law on the End User in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the End User; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.
- 20.4** If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.
- 20.5** If the purchasing Party fails to impose and/or collect any Tax from End Users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from End Users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the

providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.

- 20.6** If either Party is audited by a taxing authority or other Governmental Authority, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 20.7** To the extent a sale is claimed to be for resale and thus subject to tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate. If Applicable Law excludes or exempts a purchase of services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.
- 20.8** With respect to any Tax or Tax controversy covered by this Section 20, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to Applicable Law and at its own expense, any Tax that it is ultimately obligated to pay or collect. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.
- 20.9** All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 20 shall be sent in accordance with Section 22 hereof.

21. NON-WAIVER

- 21.1** No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either Party unless in writing and executed by the other Party as the case may be. Neither the failure of either Party to insist upon a strict performance of any of this agreements, nor the acceptance of any payments from either Party with knowledge of a breach of this Agreement by the other Party in

the performance of its obligations hereunder, shall be deemed a waiver of any rights or remedies.

22. NOTICES

22.1 Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (a) delivered personally, (b) delivered by nationally recognized overnight delivery service, (c) mailed by, certified US mail postage prepaid, return receipt requested or (d) delivered by telecopy to the following addresses of the Parties or to such other address as either Party shall designate by proper notice:

Time Warner Telecom of Arizona LLC:

Tina Davis
Vice President and Deputy General Counsel
Time Warner Telecom
10475 Park Meadows Drive
Littleton, CO 80124
Tel : (303) 566-1279
Fax : (303) 566-1010

With a copy to :

Brian Thomas
Vice President, Regulatory Northwest
223 Taylor Avenue North
Seattle, WA 98109

Midvale Telephone Exchange, Inc.:

Karen J. Ellison, Ph.D.
Midvale Telephone Exchange, Inc.
PO Box 7
Midvale, ID 83645
(208) 355-2211 phone
(208) 355-2222 fax

22.2 Notices will be deemed given as of the date of actual receipt or refusal to accept, as evidenced by the date set forth on the return receipt, confirmation, or other written delivery verification.

23. PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS

23.1 Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent, which consent may be granted in such Party's sole discretion.

24. USE OF LICENSES

24.1 No license under patents, copyrights or any other intellectual property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

25. INSURANCE

25.1 Both Parties shall maintain during the term of this Agreement all insurance and/or bonds required to satisfy its obligations under this Agreement and all insurance and/or bonds required by Applicable Law, including, without limitation, its obligations set forth in this Agreement. At a minimum and without limiting the foregoing covenant, both Parties shall maintain the following minimum insurance:

- a) Commercial General Liability Insurance, on an occurrence basis, including but not limited to, premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, and personal injury, with limits of at least \$5,000,000 each occurrence.
- b) Automobile Liability, Comprehensive Form, with limits of at least \$5,000,000 combined single limit for each occurrence.
- c) Workers Compensation insurance as required by Applicable Law and Employer's Liability Insurance with limits of not less than \$1,000,000 each person/each disease/policy limit.
- d) Errors and Omissions Liability insurance, on an occurrence basis, with limits of at least \$5,000,000 each wrongful act.

25.2 Both Parties shall name the other Party as an additional insured on the general liability insurance. In addition, both Parties' insurance will provide for a waiver of

subrogation. Any policy minimums may be met by an umbrella or excess liability insurance policy.

- 25.3** Both Parties shall, within two (2) weeks of the date hereof and on an annual basis thereafter, furnish ACORD certificates or other acceptable proof of the foregoing insurance. The certificates or other proof of the foregoing insurance from Time Warner Telecom shall be sent to: Midvale Telephone Exchange, Inc., PO Box 7, Midvale, ID 83645. The certificates or other proof of the foregoing insurance from other Party shall be sent to: Risk Management Dept, Time Warner Telecom, 10475 Park Meadows Drive, Littleton, CO 80124. In addition, both Parties shall require its agents, representatives, and contractors, if any, that may enter upon the premises of other Party or other Party's affiliated companies to maintain similar and appropriate insurance and, if requested, to furnish other Party certificates or other adequate proof of such insurance. Certificates furnished shall notify the certificate holder in writing at least thirty (30) days prior to cancellation of, or any material change in, the insurance.

26. HAZARDOUS MATERIALS, SAFETY, HEALTH AND ACCIDENT REPORTING

- 26.1** The safety and health of employees and agents brought on any premises are and shall be the mutual responsibility of both Parties. Both Parties will ensure that their respective employees comply with all rules and regulations on premises. The Parties will report all accidents, injury-inducing occurrence arising from the performance of services immediately.
- 26.2** Both Parties are responsible for any governmental or quasi-governmental compliance concerning hazardous materials, safety, health and accident reporting of any kind, including but not limited to packaging, transporting, or installation. Either Party is entitled to receive, at its request, copies of any reports filed with either Party's insurer or others.
- 26.3** Both Parties shall furnish or present Material Safety Data Sheets that are consistent with and include information required by any governmental or quasi-governmental compliance, including but not limited to, the Occupational Safety and Health Act of 1970 (OSHA) and the Hazard Communication Standard (29 CFR 1910.1200), as the same may be amended or supplemented from time to time. Any violating Party shall indemnify and hold the other Party harmless for any claims, liabilities and damages, including but not limited to attorneys' fees, costs of defense, cleanup costs, response costs, costs of corrective action, costs of financial assurance, and/or natural resource damages, that may arise, be imposed on, be incurred by, be asserted against or be sustained by the other Party by reason of the violating Party's failure to comply with the terms of this Section.

27. SURVIVAL

- 27.1** Except as otherwise specifically stated, the Parties' obligations under this

Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

28. ENTIRE AGREEMENT

28.1 The terms contained in this Agreement and any Schedules, Exhibits, Appendices, tariffs and other documents or instruments referred to herein, which are incorporated into this Agreement by this reference, constitute the entire agreement between the Parties with respect to the subject matter hereof, superseding all prior understandings, proposals and other communications, oral or written. Neither Party shall be bound by any preprinted terms additional to or different from those in this Agreement that may appear subsequently in the other Party's form documents, purchase orders, quotations, acknowledgments, invoices or other communications.

29. COUNTERPARTS

29.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

30. AUTHORITY

30.1 Each Party represents and warrants to the other that (a) it has full power and authority to enter into and perform this Agreement in accordance with its terms, (b) the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement, and (c) it has authority to do business in each of the jurisdictions in which it provides local exchange services to subscribers under this Agreement, and has obtained and will maintain all licenses, approvals and other authorizations necessary to provide such services and to perform its obligations under this Agreement, and (d) it is an entity, duly organized, validly existing and in good standing under the laws of the state of its origin.

31. GENERAL

31.1 Amendment or Other Changes to the Act; Reservation of Rights. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based in part on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date. In the event of any amendment to the Act, or any effective legislative, regulatory, judicial order, rule or regulation or other legal action that revises or reverses the Act, the FCC's First Report and Order in CC Docket

Nos. 96-98 and 95-185, and CS Docket No. 96-166, or any applicable Commission rule, Local Service Guideline, order or arbitration award purporting to apply the provisions of the Act (individually and collectively, an "Amendment"), either Party may, by providing written notice to the other Party require that any provision that would be materially affected by the Amendment be renegotiated in good faith and this Agreement be amended accordingly to reflect each such Amendment relating to any of the provisions in this Agreement. If any such amendment to this Agreement affects any rates or charges of the services provided hereunder, each Party reserves its rights and remedies with respect to the collection of such rates or charges; including the right to seek a surcharge before the applicable regulatory authority.

- 31.2** Regulatory Changes. If any legislative, regulatory, judicial or other legal action (other than an Amendment, which is provided for in Section 31.1 above) materially affects the ability of a Party to perform any material obligation under this Agreement, a Party may, on thirty (30) days' written notice to the other Party (delivered not later than thirty (30) days following the date on which such action has become legally binding), require that the affected provision(s) be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new provision(s) as may be required; provided that such affected provisions shall not affect the validity of the remainder of this Agreement.
- 31.3** Remedies. In the event of a dispute between the Parties hereunder, unless specifically delineated in another Section of this Agreement, either Party may, at its option, exercise any remedies or rights it has at law or equity, including but not limited to, filing a complaint with the state commission, termination, or any service under this Agreement, or termination of this Agreement. No remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under applicable law or otherwise. However, any other rights or remedies now or hereafter existing under applicable law or otherwise shall continue to be available only to the extent such right or remedy has not been excluded or modified by the terms of this Agreement.
- 31.4** Severability. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. However, the Parties shall negotiate in good faith to amend this Agreement to replace, with enforceable language that reflects such intent as closely as possible, the unenforceable language and any provision that would be materially affected by vacation of the unenforceable language.
- 31.5** No Third Party Beneficiary, No Agency Relationship. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights

hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a joint venturer, partner, employee, legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

- 31.6** Joint Work Product. This Agreement is the joint work product of TWTC and MTE. Accordingly, in the event of ambiguity, no presumption shall be imposed against either Party by reason of document preparation.
- 31.7** Non-exclusive. This Agreement between TWTC and MTE is non-exclusive. Nothing in this Agreement shall prevent either Party from entering into similar arrangements with any other entities.
- 31.8** Regulatory Filing. The Parties acknowledge that this Agreement, and any or all of the terms hereof, may be subject to filing with, and regulatory approval by, various state and/or federal agencies. Should such filing or approval be required from time to time, or at any time, the Parties shall cooperate, to the extent reasonable and lawful, in providing such information as is necessary in connection with such filing or approval.
- 31.9** Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter referred to herein and supersedes any and all prior or contemporaneous agreements, whether written or oral; provided, however, that unless otherwise expressly stated herein, nothing in this Agreement is intended to supersede the terms of any separate agreement between TWTC and MTE for other services, including, without limitation, dedicated transport or switched access services. This Agreement does not in any way affect either Party's obligation to pay the other Party for any goods or services provided by the other Party pursuant to a separate agreement or under tariff.
- 31.10** Amendments. Unless otherwise expressly permitted herein, this Agreement cannot be modified except in writing signed by a duly authorized officer of both Parties.
- 31.11** In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement or the ability of either Party to perform any material terms of this Agreement, either Party may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate, in good faith, such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, either Party may request that the dispute be resolved in accordance with the dispute resolution procedures set forth in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first written above.

Time Warner Telecom of Arizona LLC

Midvale Telephone Exchange, Inc.

**By: Time Warner Telecom Holdings Inc.,
its sole member**

By: Tina Davis

By: Lane Williams

Tina Davis

Name: Lane Williams

Vice President and Deputy General Counsel

Title: President

Date : NOV 16 2004

Date : 11-11-04

AECN# _____ OCN# _____ ACNA _____

(Facility Based – if applicable)

Appendix 1

NETWORK ARRANGEMENTS SCHEDULE

TWTC Switch CLLI CODE	TWTC NPA/NXX CODES	POI CLLI Code	CLEC Switch CLLI CODE	CLEC NPA/NXX CODES