

1 A. The agreement itself, kind of in charge of
2 the document and the drafts and things like
3 that.

4 Q. So you don't -- do you recall preparing any
5 documents summarizing -- prior to execution
6 of the Interconnection Agreement --
7 summarizing the status of the
8 interconnection negotiations?

9 A. Myself, I don't.

10 Q. Do you recall seeing those that were
11 prepared by someone else at MFS?

12 A. I don't remember. I mean, I don't remember.

13 Q. Did you participate in any internal strategy
14 meetings to discuss MFS's policy position on
15 various interconnection issues, including
16 open issues with Southwestern Bell?

17 A. I mean, we would have phone calls
18 occasionally to talk about where are we at,
19 I mean, what are the big things with
20 Southwestern Bell. But I -- it really, like
21 a lot of these agreements in the last few
22 weeks, it goes fast and things fall into
23 place and it's really a fast kind of
24 process. So it's not like -- MFS was not a
25 bureaucratic, large organization that had a

1 lot of meetings. It was mostly action
2 oriented. You know.

3 Q. Did you have full authority on any
4 interconnection issue to make any decision
5 you wanted?

6 A. For -- I couldn't actually execute unless,
7 you know, the executives approved it being
8 executed, but I would drive the agreements,
9 generally.

10 Q. Okay.

11 A. I would tee them up up until execution, and
12 I wasn't an officer in the company so
13 actually Alex Harris would end up signing
14 them since he was a vice-president and
15 officer. Some of them I actually signed,
16 but Alex -- I'm pretty sure Alex was the one
17 that signed this one. Alex got more
18 involved in the -- he was more involved in
19 the Southwestern Bell one than he had been
20 in other agreements.

21 It was one of the last ones
22 for MFS to negotiate. You know. We had
23 knocked off -- I believe we had knocked off
24 all the RBOC agreements and Southwestern
25 Bell was the last one. There was a lot of

1 pressure to get that done. A lot more
2 people were involved in the SBC one than the
3 predecessor agreements.

4 Q. Did you have any internal discussions with
5 any of your either outside lawyers -- strike
6 that. I don't want to know what your
7 lawyers told you. Did you have any internal
8 discussions at MFS regarding whether
9 Internet traffic would be compensated as
10 local traffic under this agreement?

11 A. Oh --

12 Q. This agreement being Deposition Exhibit 1.

13 A. Yeah. I don't remember any exact
14 conversations with a specific person, but we
15 were happy that Southwestern Bell wasn't
16 making it an issue. So, they didn't -- they
17 weren't making it an issue, so it wasn't
18 becoming an issue. Clearly, I mean, if you
19 go to my Bell South negotiations, you can
20 see that Bell South was pushing a reverse
21 CAP of -- you know how CAPs have worked in
22 compensation where once you're out of
23 balance more than once, let's say 5 percent,
24 then you don't -- you don't compensate each
25 other if you're within balance, if it's just

1 within 5 or 10 percent. If you're within
2 balance, just let's just do bill and keep.
3 Why hassle with billing each other. But if
4 you're out of balance, then you would
5 compensate.

6 Bell South had a reverse CAP.
7 If you were -- if you started to get -- if
8 you got within a -- I can't remember the
9 percentage. They made it so if you were out
10 of balance -- if you were out of balance,
11 you wouldn't compensate. So, with Bell
12 South, if you were out of balance, you
13 wouldn't compensate.

14 They're the only ones in any
15 negotiation that I ever had that, I don't
16 know -- we never talked about ISP traffic,
17 but they were trying to make it so if you
18 were out of balance, you wouldn't compensate
19 each other, which was ridiculous because if
20 it's 70-30 or 60-40, obviously, you should
21 be compensated because one person is
22 burdening more than the other.

23 Q. Going back to the SWBT negotiations, your
24 testimony was you didn't discuss with SWBT
25 negotiations Internet traffic at all, right?

1 A. Yes.

2 Q. Now I want to know about internally and
3 about this Southwestern Interconnection
4 Agreement before it was executed, so I'm
5 trying to limit the timeframe with you.

6 A. Yeah.

7 Q. Did you have any discussions internally as
8 to whether or not you should raise the
9 issue, MFS, of whether Internet traffic
10 should be compensated as local traffic under
11 the reciprocal compensation provisions of
12 this agreement?

13 A. No. It was our opinion, a call was a call
14 was a call. And an ISP call was a local
15 call, and that was our opinion and we didn't
16 need to raise it. They didn't make it an
17 issue, so it's like, great. They're
18 interpreting it how we're interpreting it.

19 Q. They didn't tell you that though, right?

20 A. They never raised it as an issue, no.

21 Q. Nor did you?

22 A. It wasn't -- we didn't think it should be an
23 issue. It wasn't an issue. Our
24 interpretation was an ISP call as described
25 earlier in this deposition, that was a local

1 call.

2 Q. Okay.

3 A. And so we didn't -- it wasn't an issue and
4 we didn't need to raise it as an issue.

5 Q. Did you review the complaint in this case
6 before it was filed?

7 A. No. I've just seen what was shown to me
8 today in the deposition, other than the
9 earlier things that -- when I worked at MFS.

10 Q. Okay. Just so it's clear, I've referred to
11 Internet traffic, and I think it's probably
12 the same definition that Mr. Lumley used
13 before for ISP-bound traffic, but what I
14 mean by that is traffic originated by, in
15 this case, a Southwestern Bell end user
16 destined for the Internet through a
17 connection provided by an ISP served by MFS.

18 MR. LUMLEY: Just for the
19 record, it's not the same words that I used.

20 THE WITNESS: Yeah.

21 MR. CONROY: As I was reading
22 it, I realized it wasn't exactly the same
23 words.

24 THE WITNESS: You said
25 destined for the Internet. I mean, to me,

1 I'm focused on a local call, and this ISP
2 traffic you're talking about, I mean, a call
3 from an end user of Southwestern Bell
4 terminated to an ISP who is a customer of
5 MFS or MCI WorldCom. But --

6 BY MR. CONROY:

7 Q. You understand there is a difference of
8 opinion --

9 A. -- where it's going --

10 Q. We can't talk at the same time. I'm sorry
11 if I interrupted you. I probably did in
12 that case. You understand there is a
13 difference of opinion as to whether that
14 traffic that's destined for the Internet,
15 there's no question that's the traffic we're
16 talking about, right? Right now?

17 A. Well, to an ISP. What happens after that, I
18 don't know. But to an ISP.

19 Q. All right.

20 A. Yes.

21 Q. There is a dispute in this case about what
22 terminated means, so, I appreciate your --
23 you telling us that your opinion is it's
24 terminated at the ISP, but I just want you
25 to understand there is a difference of

1 opinion as to where that traffic terminates.

2 A. Yes.

3 Q. Do you understand that?

4 A. Yes. Yes.

5 Q. Okay. Just to summarize, and I think you
6 have already talked about this, but I want
7 to make sure, it would be your testimony
8 that under the compensation provisions of
9 this agreement, the words Internet or
10 enhanced service provider aren't even used
11 in this agreement, are they?

12 A. Not that I'm aware of. Not that I can
13 recall.

14 Q. Okay. So, it would be fair to say that in
15 this agreement in the compensation
16 provisions, that there is no explicit
17 obligation, in other words, explicit in the
18 sense that it talks about Internet traffic
19 specifically, for either party to pay
20 reciprocal compensation for Internet or
21 ISP-bound traffic designated as such?

22 A. Yeah. There's no discussion about -- you
23 know, there is plain language that's in
24 there. There's no detail on any kind of
25 thing other than the language.

1 Q. You testified at the very beginning of this
2 deposition about a fairly lengthy career
3 based on an early starting age of your
4 career, involved in the telecommunications
5 industry.

6 A. Uh-huh.

7 Q. Now, when you were negotiating with
8 Southwestern Bell for the Missouri
9 Interconnection Agreement that's at issue in
10 this case, were you aware of the FCC's
11 orders providing that enhanced service
12 providers are not required to pay local
13 exchange carriers access charges?

14 A. Generally, but not the specifics of that
15 order. It was before I ended up getting
16 more focused on regulatory, so at MFS I
17 think I told you August of '94 until January
18 of '97 when I left, so ...

19 Q. Okay.

20 A. I don't remember exactly when that order --
21 but I think it was earlier.

22 Q. The orders I'm talking about go back to
23 1983.

24 A. Yeah. So, I mean, I wasn't -- I didn't work
25 actively in regulatory affairs on a

1 full-time basis until August of '94.

2 Q. Okay.

3 A. So prior to that, I mean, I worked in the
4 industry, I had supported regulatory
5 activities on an ad hoc occasional basis at
6 MFS but, you know, I wasn't -- I didn't have
7 a full-time job in regulatory like I did my
8 last three years at MFS.

9 Q. During your last three years at MFS, there
10 were also other orders from the FCC which
11 talked about the access charge exemption
12 from the FCC. Is it your testimony -- I
13 want to make sure I understand -- that you
14 were aware of it but generally, or is it
15 your testimony that you were not aware of
16 the FCC's exemption orders, access charge
17 exemption orders?

18 A. Yes. Generally aware, but I was focused
19 more on state activities and negotiations.
20 The federal activities -- Cindy Schonhaut
21 actually was a VP at MFS and she focused on
22 federal activities. So Alex Harris and the
23 group I was involved with focused on state
24 activities and the negotiations. So I was
25 generally aware that for enhanced providers

1 that they had, you know, an exemption, but
2 not the details of it. I couldn't cite
3 orders or the history of it and subsequent
4 orders.

5 But that never played -- that
6 never came up in the discussion with any of
7 our interconnection agreements. It wasn't
8 something that anybody thought needed to be
9 addressed, whether it was on our side or the
10 incumbent's side.

11 Q. You wouldn't know what Southwestern Bell
12 thought needed to be addressed in an
13 Interconnection Agreement unless they told
14 you, is that fair?

15 A. Well, I mean, they told us what they wanted
16 in an agreement but, I mean, we didn't
17 have -- they never brought up as a
18 discussion, you know, exemptions for end
19 service providers. So it's -- I mean, maybe
20 they had a thought in mind, but they didn't
21 communicate it to us, I guess is what I'm
22 saying.

23 Q. Okay. As you had a thought that was clear
24 in your mind at MFS, that on Internet
25 traffic, that wasn't communicated to

1 Southwestern Bell, is that accurate?

2 A. That -- well, there didn't need to be any
3 discussion because there wasn't an issue.

4 Q. In MFS's opinion there wasn't an issue that
5 needed to be discussed?

6 A. Sure.

7 Q. Were you aware that based on your general
8 knowledge of the FCC's access charge
9 exemption, that enhanced service providers
10 were permitted to pay a rate equal to the
11 local business rate for their switched
12 access connections to LEC central offices?

13 MR. LUMLEY: I object to the
14 question. I believe it misstates the nature
15 of those FCC orders. Subject to that
16 objection, if you can answer.

17 THE WITNESS: Yeah. I just --
18 like I said, I don't have the detailed
19 history of that, so I think I would be
20 stretching if I tried to comment on it.

21 BY MR. CONROY:

22 Q. So is it your testimony that you weren't
23 aware that enhanced service providers were
24 exempt from paying access charges?

25 A. I know they had some general exemptions

1 related to access, but I can't cite you the
2 detail and the economics and the components
3 and all that. So for what I had to do for
4 my job, it was never something that needed
5 to be addressed or discussed. So it never
6 came up in any of the 25 hearings I was
7 involved in or the 11 interconnection
8 agreements I negotiated.

9 Q. Okay. Let me show you a copy of the FCC's
10 Declaratory Ruling from February, released
11 February 26, 1999. Declaratory Ruling in
12 the CC Docket Number 96-98. I'm just
13 reading from the title. Notice of Proposed
14 Rule Making in CC Docket Number 99-68. And
15 I may refer to this again as the FCC's
16 Internet declaratory ruling, just so you
17 know what I'm talking about. Okay.

18 A. All right.

19 Q. Let me ask you to look at page 4 of that,
20 with regard to in particular Mr. Lumley's
21 objection as to what the FCC orders say.
22 Can I ask you to read from page 4 of that
23 declaratory ruling, the sentence that begins
24 after footnote 11 starts with the word
25 "thus".

1 A. Yeah. I haven't seen this before, so I'm
2 not familiar with it.

3 Q. Make sure I understand, you haven't seen the
4 FCC's declaratory ruling on Internet traffic
5 before today?

6 A. No.

7 MR. LUMLEY: Before you do
8 that, for the record, I object to the
9 reading of it because this order has been
10 vacated by the Court of Appeals, but subject
11 to that objection, you can certainly answer
12 the question.

13 THE WITNESS: I guess before I
14 read this, I want to -- I'd like to have a
15 better context of this. I don't know if you
16 can explain. Is this one sentence?

17 MR. CONROY: That's what I
18 want.

19 BY MR. CONROY:

20 Q. I want you to read that, or I will, into the
21 record if you want. I'm not asking you to
22 testify as to its truthfulness.

23 A. Starting with "thus"?

24 Q. Just the word "thus".

25 A. Thus, ESPs generally pay local business

1 rates and interstate subscriber line charges
2 for their switched access connections to the
3 local exchange company's central offices.

4 Is that all you want?

5 Q. That's enough. Do you agree with that
6 statement or disagree with that statement?

7 A. I think I answered the question earlier.
8 I'm aware that there are general exemptions
9 for end service providers, but the specific
10 components and rates, you know, I can't -- I
11 wasn't aware of that detail during my
12 negotiations, nor am I now.

13 Q. Other than from having me ask you to read
14 that?

15 A. Yes. I mean, really my job, I was focused
16 on business negotiations and I worked --

17 Q. There's no question so I'm going to have to
18 object to you volunteering information that
19 really wasn't asked.

20 A. Okay.

21 Q. Have you followed the FCC's orders on the
22 several Section 271 applications that have
23 been filed by Regional Bell Operating
24 Companies at all?

25 A. No. Not really. I haven't seen any. I

1 mean, you read in the paper occasionally,
2 but not other than general business. No.

3 Q. Okay. So, let me make sure that I'm clear
4 on this. Then you are not familiar -- I
5 think based on your last answer to my
6 question, you're not familiar with the FCC's
7 statement that intercarrier compensation for
8 ISP-bound traffic is not governed by Section
9 251(b)(5) of the act and is therefore not a
10 checklist item which I will represent to you
11 was contained in the Bell South -- sorry --
12 Bell Atlantic FCC Section 271 order; you're
13 not familiar with that statement?

14 A. No. I'm not familiar with that statement.
15 The only thing I've heard about at all was,
16 you know, when the DSL -- issue about DSL
17 and interstate and all that, but I
18 haven't -- I never read the orders, I don't
19 know any details, haven't consulted with any
20 regulatory attorneys, so I don't have much
21 use for that.

22 Q. Did MFS allow any affiliated or
23 unaffiliated -- let me ask you this. Would
24 you characterize UUNet as an affiliated ISP
25 of MFS at the time of these negotiations?

1 A. During the negotiations, I don't think UUNet
2 was closed until sometime in '96. I don't
3 remember the date.

4 Q. Okay.

5 A. It may have been closed even after this
6 agreement was executed. I have a good
7 feeling that it was closed after these
8 agreements were negotiated.

9 Q. Okay. Did MFS to your knowledge allow any
10 affiliated or unaffiliated ISPs to collocate
11 any of their equipment at MFS locations, as
12 you understand collocation?

13 A. You said affiliates or --

14 Q. Either one.

15 A. -- nonaffiliates?

16 Q. Yes.

17 MR. LUMLEY: Are you talking
18 about anywhere in the country?

19 MR. CONROY: Yes. At the
20 moment. Yeah.

21 THE WITNESS: So during these
22 negotiations, or what do you mean?

23 MR. CONROY: No. I'm asking
24 you at your career. I'll start and move it
25 narrower.

1 BY MR. CONROY:

2 Q. During your career at MFS, did MFS allows
3 ISPs to collocate their equipment at MFS
4 locations?

5 A. I know we had ISP customers that were ISPs.
6 I don't know if they were collocated or not.
7 But we did have customers that were ISPs.

8 Q. That's not really my question. But --

9 A. I don't know if people were collocated or
10 not.

11 Q. You don't have any --

12 A. I didn't work in product management, so it
13 wasn't -- it wasn't my responsibility. I
14 didn't talk to customers.

15 Q. So you didn't know, is your answer, right?

16 A. We didn't do that. When I was doing product
17 management, we didn't do that.

18 Q. You weren't aware of it?

19 A. I wasn't aware of it. Just -- that wasn't
20 my focus or my responsibility.

21 Q. Would you agree that an end user person who
22 initiates a dial-up connection to reach the
23 Internet doesn't really want their
24 communication to end at the ISP, but they
25 want to connect to the Internet?

1 MR. LUMLEY: I'm going to
2 object on the grounds it calls for
3 speculation of what customers want. Subject
4 to that objection, if you can answer.

5 THE WITNESS: Yeah. I don't
6 know, when you keep asking your question,
7 you keep talking as though someone is going
8 past the ISP. ISPs have a lot of local
9 servers that do a lot of local things too,
10 like, you know, weather, music and things
11 like that. So I don't know each user, what
12 they're doing and where they want to go to.
13 Some calls may stay with that ISP in the
14 market and some may not. I don't know. I
15 don't have any statistics.

16 BY MR. CONROY:

17 Q. Do you use the Internet?

18 A. Yes.

19 Q. Based on your own usage, how many times do
20 you believe when you are on line you don't
21 go outside the local exchange when you are
22 accessing information?

23 A. I don't know where people have their
24 servers. I mean, the business that I have
25 is we're putting servers all around the

1 network. I don't know if you're familiar
2 with like -- people now, people that have
3 Web sites have multiple -- the same
4 information duplicated all over the world.
5 If you go to Akamai, Akamai has hundreds of
6 sites around the world that provide the same
7 information at all those sites. It's called
8 caching. You have it locally represented.
9 So I don't know where -- the people that
10 I -- when I go into the Internet, I don't
11 know if they're locally cached here with
12 Digital Island or Akamai or Exodus.

13 Q. What do you believe the likelihood is that
14 you don't leave the local exchange for the
15 information that you access on the Internet?

16 A. I'm sure some leave the exchange and I'm
17 sure some don't. You know. I would be
18 playing horse shoes trying to guess. I
19 don't know. I'm sure it depends. More and
20 more things are being cached locally.

21 MR. LUMLEY: Would you spell
22 that word for her?

23 THE WITNESS: C-A-C-H-E. Or
24 caching, C-A-C-H-I-N-G.

25 MR. LUMLEY: Thank you.

1 THE WITNESS: I'm sure some
2 stay local. I'm sure some go to like
3 Europe.

4 BY MR. CONROY:

5 Q. There is a reason they called it the
6 Worldwide Web.

7 A. Yeah. I don't know where they go. Some go
8 local. They go all over the place. I don't
9 know.

10 Q. In the situation where an end user is
11 connecting to the Internet via an ISP
12 locally, and let's assume for the moment
13 that that traffic is going outside the
14 exchange. I'm not going to talk about the
15 cached information.

16 A. Okay.

17 Q. Would it be fair to characterize the ISP in
18 that situation as performing an intermediate
19 switching function for that traffic to the
20 Internet, to the distant location?

21 A. Switching, I mean --

22 Q. Is the ISP -- I'll repeat.

23 A. It's hard to answer that question because
24 there's such a blurb between everything
25 nowadays. So, it really, it's --

1 traditional switching like in the telephone
2 mentality, no. I mean, I wouldn't call it
3 switching. I don't know what you would call
4 it.

5 Q. What would you call it? It at least directs
6 that traffic to the appropriate -- the ISP
7 would be directing that traffic to the point
8 on the Internet that the user wants to get
9 to?

10 A. Well, most ISPs have dedicated connections
11 into the Internet or into different
12 providers or to other ISPs. So, you know, a
13 call might go in here from a small -- a lot
14 of small ISPs don't have those kind of
15 Internet connectivity. They don't have
16 Internet connectivity to the Net. So, a
17 call might go from a local ISP and get
18 connected to another ISP. And then that ISP
19 might do something or they might send it out
20 to the Net. I mean --

21 Q. As that traffic works its way to the
22 Internet, it's being routed, and you can
23 tell me if that's not the right technical
24 term, but it's being routed by everybody who
25 touches it to the address that's represented

1 by a code, right?

2 A. Sure.

3 Q. That it's trying to get to in the Internet?

4 A. That's correct. Yes.

5 (Recess.)

6 BY MR. CONROY:

7 Q. Regarding Mr. Ball's affidavit that was
8 marked as Exhibit 4 for the deposition, did
9 you review that before Mr. Ball filed it?

10 A. No. I read it when Carl was asking me
11 questions.

12 Q. First time?

13 A. Yes.

14 Q. Okay. Do you know Gary Ball?

15 A. Well, I worked with him, and I talked to him
16 this morning. I called him to tell him I
17 was running late to get here, if he could
18 call somebody. But, yeah.

19 Q. Somebody like Mr. Lumley, or --

20 A. I didn't -- I had Gary's number.

21 Q. Okay. So did Gary Ball arrange for you to
22 be at this deposition today?

23 A. Gary asked me if I had a problem with being
24 deposed for interpretations of the
25 Interconnection Agreement, and I said, no

1 problem. So, you know, because it's here in
2 Minneapolis. And I didn't have to get on a
3 plane to go anywhere.

4 Q. I'll suggest to you it's here in Minneapolis
5 because you're here in Minneapolis.

6 A. Yeah. I said no problem. I'll do that.
7 Not a big deal.

8 Q. So he did arrange it, right?

9 A. Yeah. He coordinated it and then Mickey
10 Henry I think talked and I think Mickey, you
11 know -- between Mickey Henry or Gary Ball at
12 MCI WorldCom, they coordinated or
13 facilitated to get here, I guess.

14 Q. Did you discuss the case at all with
15 Mr. Ball when he called you?

16 A. Yes. I just said what is it for. He said
17 that Southwestern Bell is interpreting that
18 they should -- that ISP calls should be
19 compensated for.

20 Q. Did he say should be compensated for, or did
21 he say that should be compensated for as
22 local traffic?

23 A. Yeah. Local call. Yeah. So we only talked
24 for like three minutes. So, I said, what is
25 the issue. He said, you know, questioning

1 compensation, reciprocal comp. I said okay.
2 I said, what -- then I went into my story
3 about my son and stuff.

4 Q. Did you talk to anybody else at MFS or
5 former employees at MFS or anybody at MCI
6 WorldCom about your testimony this morning
7 and this afternoon?

8 A. No. Other than Mickey Henry coordinating,
9 telling me where to go and what time.

10 Q. Okay.

11 A. Most of the people I know that I worked with
12 at MFS don't work at MCI WorldCom. Most of
13 them are gone.

14 Q. Probably went out and started businesses
15 like yours.

16 A. I think they were about ten of them that
17 did. Gary is one of the few people I know
18 that still works there, in fact.

19 Q. Did you review any materials at all prior to
20 coming to this deposition to prepare for
21 this deposition?

22 A. No. Any materials -- all I have is an
23 e-mail from I think Carl or Mickey that said
24 questions that were going to be answered,
25 like tell me about yourself and what you did

1 at MFS. Like seven or eight simple
2 questions which Carl asked me. I think he
3 asked me them all, yeah.

4 Q. You testified earlier that you recalled --
5 I'm not sure if you looked at it or not, but
6 you were correct in recalling that the local
7 compensation rate was nine tenths of a cent?

8 A. I thought it was about nine tenths, because
9 that was generally the rates we agreed to.

10 MR. LUMLEY: .009?

11 BY MR. LUMLEY:

12 Q. .009 dollars would be nine tenths of a cent,
13 right?

14 A. Yeah. Generally that was the rate between,
15 you know, eight and a half to nine tenths,
16 most of the rates we agreed to between Bell
17 South and NYNEX, Ameritech, so it's -- if
18 it's not nine tenths, it's pretty close
19 because, you know, most of them are around
20 that.

21 Q. I will represent to you that it is nine
22 tenths of a cent in this agreement.

23 A. Okay.

24 Q. I want you to assume the following
25 illustration that a Southwestern Bell end

1 user in Missouri utilizing services of an
2 ISP, receiving service from MFS under the
3 terms of this Interconnection Agreement
4 which has been marked as Exhibit 1 --

5 A. Can you go through again?

6 Q. Sure.

7 A. I want to draw a picture when you do, just
8 to make sure.

9 Q. Sure. I want to get to the meat of how
10 compensation would work under how your view
11 of what this agreement provides.

12 A. Okay.

13 Q. What I want you to do is to assume that a
14 Southwestern Bell end user is connecting to
15 an ISP served by MFS.

16 A. Okay.

17 Q. It's the same example when --

18 A. Same thing we talked about earlier.

19 Q. Okay. I want you to assume the nine tenths
20 of a penny compensation rate.

21 A. Yeah.

22 Q. I want you to assume that the Southwestern
23 Bell end user leaves their computer active
24 and hooked up to, lack of a technical term,
25 they remain connected to the ISP 24 hours a

1 day, seven days a week.

2 A. Continuously.

3 Q. All month. Because you understand I think
4 that many ISPs have these -- have what are
5 commonly referred to as all you can eat
6 pricing plans where you pay a flat fee and
7 you get unlimited access. Are you familiar
8 with that?

9 A. A lot of them have that, but most ISPs time
10 you out.

11 Q. Are you also familiar with the software that
12 can defeat the timeout function of ISPs?

13 A. No, I'm not a -- I just -- most ISPs have
14 timeouts because they don't -- they don't
15 have anything to gain by having somebody on
16 line just hanging there. So, their
17 incentive to timing out customers is to
18 automatically disconnect them. I know most
19 of the ISP -- we use DSL at work, so I think
20 for businesses and heavy -- if somebody is
21 using a circuit 24 hours a day, they are
22 probably getting DSL or cable modem
23 nowadays, but I'm not sure if you want to go
24 through your scenario.

25 Q. Okay. Find where I was here. If my math is

1 correct, using that rate of .009 dollars or
2 nine tenths of a penny, if that Internet
3 user, Southwestern Bell end user, who is
4 accessing the Internet by an ISP served by
5 in this case MFS, if they keep that
6 connection open and they're successful in
7 keeping it open 24 hours a day, seven days a
8 week, let's use a thirty day month as an
9 example, my math is that that would be
10 54 cents an hour, \$12.96 a day, and \$388
11 roughly a month in reciprocal compensation
12 that Southwestern Bell would have to pay MFS
13 in this case for that month that that end
14 user left that connection open. Does that
15 sound right to you?

16 A. I mean, I don't have a calculator, but if
17 the numbers are correct, they're correct. I
18 don't know.

19 Q. Have you done that sort of calculation ever
20 before?

21 A. (Witness shakes head.)

22 Q. You have never done that sort of
23 calculation?

24 A. No. It's not -- that's not reality, so ...

25 Q. Well, I'm asking you to assume it as real

1 for this question. Okay.

2 A. I've never calculated, no.

3 Q. Okay.

4 A. I've never needed to. Don't -- have no
5 reason to do it.

6 Q. Do you have any idea how much Southwestern
7 Bell in that situation, just generally -- it
8 doesn't even have to be Southwestern Bell,
9 but let's use Southwestern Bell as an
10 example here -- what revenues Southwestern
11 Bell would receive from their end user for
12 that line on a monthly basis that they're
13 providing to their end user?

14 A. Yeah.

15 Q. Assuming a residence end user.

16 A. Residence. EAS is big. I mean, it depends.

17 Q. I'm asking you --

18 A. General, national, residential, dial tone?

19 Q. Let me ask you this. I don't want you to
20 assume anything about EAS. Just for local
21 service. Do you have any idea --

22 A. EAS is calculated as revenue too for
23 recovery purposes, I think.

24 Q. I don't want you to discuss EAS at all,
25 consider it at all.

1 A. Okay.

2 Q. I want you to consider how much Southwestern
3 Bell gets for a flat rate residential
4 service in Missouri. Do you have any idea
5 how much that is?

6 A. I don't recall. No.

7 Q. Would you agree with me if I told you it was
8 under \$12 -- under \$15 a month for a flat
9 rate?

10 A. For a --

11 Q. Basic local service.

12 A. I mean, it could be.

13 MR. LUMLEY: I'm going to
14 object. If he said he doesn't know, he
15 doesn't know.

16 THE WITNESS: I don't know
17 every state. I mean, all I know is whatever
18 the local rate is, they get money from
19 switched access and a lot of other services,
20 too, so ...

21 BY MR. CONROY:

22 Q. Well, let's assume this line is dedicated to
23 Internet traffic. Okay. Wouldn't be
24 receiving any switched access on that, would
25 they?

1 A. No. But, like I said, I don't think
2 that's reality what you're talking about,
3 so I think it's a false assumption you're
4 making that someone will -- they'll go buy
5 DSL or they'll buy cable modem or they
6 just -- they're not -- people just don't do
7 that.

8 Q. Okay.

9 A. They don't do that.

10 Q. I understand that to be your testimony. But
11 I'm asking you to assume that somebody
12 actually did do this. For that line,
13 Southwestern Bell wouldn't be receiving any
14 other revenues, would they? No access
15 revenues, certainly?

16 A. If it were connected continuously all the
17 time, they're going to get their -- whatever
18 their retail charges are for that line.

19 Q. Okay. If you assume that that retail charge
20 is let's say \$12 a month, by my calculation,
21 after the first day in that scenario, and
22 I'm accepting your assumption that that --
23 or your testimony it's not realistic, but I
24 want you to go through this assumption with
25 me factually, if you will. By the end of

1 the first day, Southwestern Bell has a
2 negative territory from a revenue
3 perspective on that line, is that right?

4 A. What was the daily --

5 Q. \$12.96.

6 MR. LUMLEY: I think he means
7 the calculation.

8 THE WITNESS: What is the
9 reciprocal comp revenue? Is that what
10 you're saying is \$12.96?

11 MR. CONROY: Yes. For one
12 day. Yes.

13 THE WITNESS: Well, if those
14 are the numbers --

15 BY MR. CONROY:

16 Q. Just so it's clear, assuming Southwestern
17 Bell receives \$12 for a flat rate for a
18 month of basic local service, nothing else
19 is considered because there would be no
20 access on this call, and that under the
21 reciprocal compensation provisions of this
22 agreement, at nine tenths of a penny per
23 minute -- is it per minute or per second?

24 A. Per minute.

25 Q. Per minute. Assuming that's \$12.96 a day if

1 it's left open, Southwestern Bell would be
2 on negative ground after just one day of the
3 month with respect to that line?

4 A. Assuming your false assumptions, yes.

5 Q. Well, again, I know you think that's a false
6 assumption. It's okay for you to say I
7 don't agree with your assumption, but I
8 understand you to be characterizing my --

9 A. Sure.

10 Q. -- scenario as being not possible. And
11 that's not accurate, is it? It certainly is
12 possible?

13 MR. LUMLEY: We'll stipulate
14 that \$12 is less than \$12.96. That's
15 basically what you're asking him to do.

16 MR. CONROY: Well, not
17 actually.

18 THE WITNESS: I mean, I'll
19 just tell you I strongly disagree. I mean,
20 at Ovation did we have ISP customers? Sure.
21 They time out their customers. ISPs have no
22 incentive, zero incentive for leaving those
23 customers open and on the whole time. If
24 they're not generating revenue from them,
25 they're not doing transactions. It's

1 just -- you know.

2 BY MR. CONROY:

3 Q. Would you agree with me --

4 A. There's no incentive. The ISPs are incented
5 to knock people off within a matter of
6 minutes. They just don't -- it's not --
7 they're not incented to doing anything other
8 than that. It's reverse of what the
9 practice is out there.

10 Q. Would you agree with me that the CLEC in
11 that situation, MFS, does have an incentive
12 for that connection to be maintained open
13 continuously, the incentive being the \$388
14 in reciprocal compensation per month that
15 they would receive for that?

16 A. No. The best utilization, the best margin
17 and cash flow activity on a telephone switch
18 and in a local phone company is -- whether
19 it's a LEC or a CLEC is switched access.
20 Whether it was five years ago or it's today,
21 our best highest margin at Ovation was
22 switched access.

23 Q. But assuming --

24 A. Switched access is a gold mine. We -- we
25 prefer -- I mean, that was the best. That's

1 the best traffic. So, if we have limited
2 resources and capital and CPU on the
3 switches, no. There's better uses of
4 connectivity. Also, if we have shared trunk
5 groups or there is a limitation, because
6 that's what I saw at Ovation and it started
7 at MFS, just from what I'd hear, the RBOCs
8 had to invest money in putting in more
9 switches and more trunks and everything
10 because the Internet was growing like crazy.
11 So everybody was benefiting from Internet.
12 I would rather have more trunks doing
13 switched access than to do recip comp for
14 local calls. So --

15 Q. When you say everybody benefits from
16 Internet, I don't see how that -- how
17 Southwestern Bell receiving \$12 on this
18 customer and paying, on this assumption,
19 these assumed facts, but paying out \$388 is
20 any better for Southwestern Bell in that
21 situation.

22 A. Well, you're making -- when I said a false
23 assumption, you're looking very narrowly.
24 If you can say as a representative of SBC
25 that the Internet hasn't benefited SBC, I

1 think Ed Whitaker would say that the
2 Internet has benefited SBC as a whole.

3 Q. As a whole you may be right and he probably
4 would say that, but we're talking about the
5 Interconnection Agreement and the rates
6 contained in there. We're talking about
7 compensation for calls under this agreement.
8 You understand that's the --

9 A. No. I agree. It's hard for me to stomach a
10 false assumption because there's -- the
11 mechanism is in place to address off hook or
12 the open hook, continuous 24 hours a day,
13 seven days a week, thirty days a month,
14 that's not reality. And I ran a CLEC. My
15 best cash flow was for switched access. I
16 wanted to get as many of my trunks because
17 U.S. West or Ameritech would say, I don't
18 have enough facilities. I prefer to get
19 more 800 access on that. My customers all
20 driving 800 access, because I make a lot
21 more cash, positive cash flow from 800
22 access than I do from Internet traffic.

23 Q. I understand that to be, and that's your
24 opinion. You also mentioned earlier that
25 there were CLECs that had a business plan

1 that they were presenting to Wall Street
2 analysts, I think you said, that was based
3 on receiving reciprocal compensation.
4 Either -- I think it was CLECs that had
5 business plans.

6 A. I know of one. Focal. The business plan
7 wasn't to say they're focused on that, but
8 they -- unfortunately they had a lot of ISPs
9 coming to them and they signed them up as
10 customers. They were trying to diminish,
11 and actually they have diversified their
12 revenue a lot. Their business models. They
13 have a lot more corporate accounts now but,
14 I mean, it was seen as a negative.

15 When you are a CLEC and you're
16 trying to raise money and trying to build a
17 business, the reciprocal compensation issue
18 for ISPs you're talking about, they're seen
19 as a negative on Wall Street. It's a
20 volatile issue. People don't want -- I
21 mean, we started turning down ISPs. A lot
22 of CLECs turned down ISPs from signing them
23 up because they flood your network, they
24 take up a lot of resources from your switch
25 and from your employees and they're seen as

1 a negative in terms of value of your firm.
2 So I think it's the opposite of where you're
3 going. CLECs have an incentive not to have
4 too many ISPs, too much ISP traffic.

5 Q. So --

6 A. It's not a positive thing. People are
7 trying to trim down on the amount of ISPs.
8 In fact, MCI WorldCom here in town, I'll
9 tell you, when I had Ovation as a CLEC, they
10 shut off some ISPs in town. They shut off
11 one ISP and we took them on as a customer.
12 They shut them off. Because the ISPs were
13 flooding and clogging and blocking calls for
14 MCI.

15 In fact, the ISP filed a
16 complaint with the commission. MCI in their
17 tariff, like all phone companies say, if it
18 harms the network, they can shut you off.
19 They shut off some ISPs.

20 Q. Okay.

21 A. ISPs are not that great for your network,
22 you know.

23 Q. Okay. So you would be surprised then if an
24 ISP -- I'm sorry -- if a CLEC had a
25 marketing plan to -- that focused on ISPs,

1 focused on providing service to ISP, is that
2 accurate?

3 A. Yes. I think it's a bad plan. McLeod, it
4 was less than one percent of our revenue.

5 Q. Would you be surprised if a CLEC had actual
6 traffic transiting from, in this case, from
7 my example, a Southwestern Bell end user to
8 an ISP or ISP served by that CLEC, if that
9 traffic comprised 80, 90 or 95 percent of
10 the overall traffic that that CLEC accepted
11 from Southwestern Bell in total?

12 A. I would be surprised if that is true of any
13 CLEC. If it is, they're not going to get
14 funded very well.

15 Q. Okay. Now, let me ask you about your
16 familiarity with CLECs providing financial
17 incentives to ISPs to become their customers
18 so that they can receive reciprocal
19 compensation for Internet traffic. Have
20 you -- are you familiar with that type of an
21 arrangement?

22 A. I'm not familiar with that and I have never
23 practiced it. You know. Especially, you
24 know, states regulate prices. In Minnesota,
25 for instance, and a lot of states regulate

1 prices of local telephone service. You
2 can't discriminate. So, you know, a PRI is
3 a PRI is a PRI, a T-1 dial tone, whatever.
4 You can't discriminate.

5 Q. Have you heard of that practice?

6 A. No. It wouldn't make sense. It would be
7 suicide to your business. For one, you're
8 taking down the pricing structure of the
9 industry, and two is, you know, you're
10 putting lower margin traffic on your network
11 when you can get switched access. Eight
12 hundred origination is the best traffic you
13 want on your network.

14 Q. We've already heard that. It's your
15 testimony that MFS did not have that kind of
16 a business plan of any sort of that
17 providing financial benefits to an ISP in
18 order to obtain providing service --
19 obtaining them as a customer?

20 A. Yeah. I didn't work in sales and marketing
21 or product management when we were doing
22 dial tone so, I mean, I wasn't negotiating
23 or cutting deals with customers, but I
24 wasn't -- in my role with the company as a
25 director and a senior director and assistant

1 vice-president, and there were probably
2 maybe when I left between assistant
3 vice-presidents and vice-presidents maybe
4 fifty in the company, I had never talked to
5 anybody, had a discussion about how there
6 were plans or incentive plans.

7 Q. You didn't hear anything about that?

8 A. Yeah. I didn't. Not at all. If it were a
9 big issue, I would have been hearing about
10 it. I mean, on Wall Street, the value of --
11 the most value CLECs get is for end user
12 subscribers. MFS at the time had more
13 collos than anyone out there and they were
14 pushing a big retail strategy. That was
15 their strategy.

16 Q. Okay. If MFS had had that strategy, who
17 would you say would be the person who would
18 know most about it?

19 A. (No response.)

20 Q. I'm not asking you to assume they did. I
21 want to know who the person in marketing or
22 salesperson who would know about that?

23 A. I don't know. There were so many
24 different -- we had MFS Telecom, MFS
25 Telenet, Data Net. So I don't --

1 Q. Surely you know who the person would be. If
2 you need to go to senior vice-president
3 level, who would be the person who would
4 know about that?

5 MR. LUMLEY: At that time?

6 MR. CONROY: At that time.

7 I'm talking --

8 MR. LUMLEY: While he was
9 there?

10 MR. CONROY: While you were at
11 MFS. That's fair.

12 THE WITNESS: If there were
13 something like that going on, who would
14 know?

15 MR. CONROY: Yes.

16 THE WITNESS: So making
17 decisions about pricing or something?

18 BY MR. CONROY:

19 Q. Pricing and arrangements with respect to
20 service provided to Internet Service
21 Providers.

22 A. I mean, I would just be throwing out like a
23 president of a division which I don't know
24 if they would know.

25 Q. I'm only asking for your best estimate.

1 A. Buddy Pickle, who was president of MFS --
2 was it Telenet at the time? I don't know.
3 I worked at MFS Communications Company,
4 which we were, you know, external and
5 regulatory affair support function for the
6 company. So I didn't work in the day-to-day
7 operating unit. I worked in kind of the
8 corporate support function.

9 Q. Are you familiar with the FCC's advanced
10 services order from last December?

11 A. (Witness shakes head.)

12 MR. LUMLEY: You need to
13 answer out loud.

14 THE WITNESS: No.

15 BY MR. CONROY:

16 Q. So you're not familiar with that order,
17 you're not familiar that the -- I'm going to
18 make a statement and I'll represent to you
19 what is contained in that order. I want to
20 make sure you're not aware of that
21 statement.

22 A. Okay.

23 Q. ISP-bound traffic does not originate and
24 terminate within an exchange and, therefore,
25 does not constitute telephone exchange

1 service within the meaning of the 1996 act.

2 You're not familiar with that?

3 A. That's a federal order?

4 Q. It's a FCC advanced services order.

5 A. No.

6 MR. CONROY: I believe that's
7 all the questions I have. Can we go off the
8 record for five minutes? I want to make
9 sure, go through my notes.

10 (Off the record.)

11 MR. CONROY: I have no further
12 questions.

13 MR. LUMLEY: I don't have any
14 further questions. Mr. Devine, you have the
15 right to review this transcript and make
16 corrections and sign it. You also have the
17 right to waive that and just accept the
18 transcript as written with the knowledge
19 that you didn't proofread it and fine tune
20 it. My request to you is that you waive the
21 right just so that we can get the process
22 done, but it's your decision.

23 THE WITNESS: Okay. I'll
24 waive the right.

25 MR. LUMLEY: Thank you.

(The deposition was concluded
at 2:05 p.m. The ORIGINAL transcript was
provided to Mr. Lumley and a copy provided
to Mr. Conroy.)

STATE OF MINNESOTA)
) ss. CERTIFICATE
COUNTY OF DAKOTA)

BE IT KNOWN, that I, Becky Skorpak, Notary Public in and for the County of Dakota, State of Minnesota, certify that the foregoing is a true record of the deposition of TIMOTHY DEVINE, who was first duly sworn by me to testify to the truth, said testimony having been reduced to writing in accordance with my stenographic notes made at said time and place.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that affects or has a substantial tendency to affect my impartiality;

That all parties who ordered copies have been charged at the same rate for such copies;

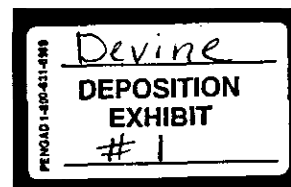
That the right to read and sign the deposition was waived by the witness.

IN WITNESS WHEREOF, I have hereunto set my hand on this 25th day of April, 2000.

BECKY SKORPAK, RPR
Court Reporter and Notary Public
Dakota County, Minnesota

EXECUTION COPY

To-97-27



**INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252
OF THE TELECOMMUNICATIONS ACT OF 1996**

Dated as of July 16, 1996

by and between

SOUTHWESTERN BELL TELEPHONE COMPANY

and

MFS COMMUNICATIONS COMPANY, INC.

000001

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INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT OF 1996

This Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 ("Agreement"), is by and between Southwestern Bell Telephone Company, a Missouri Corporation ("SWBT"), and MFS Communications Company, Inc., a Delaware Corporation, on behalf of itself and its operating subsidiaries in Missouri (collectively "MFS").

WHEREAS, the Parties want to interconnect their networks at mutually agreed upon points of interconnection to provide, directly or indirectly, Telephone Exchange Services (as defined below) and Exchange Access (as defined below) to residential and business end users predominantly over their respective telephone exchange service facilities in Missouri; and

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 interconnect their networks and provide other services as required by the Telecommunications Act of 1996 ("Act") and additional services as set forth herein.

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

1.0 DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below in this Section 1.0. For convenience of reference only, the definitions of certain terms that are as defined in the Act (as defined below) are set forth in Schedule 1.0. Schedule 1.0 sets forth the definitions of such terms as of the date specified on such Schedule and neither Schedule 1.0 nor any revision, amendment or supplement thereof intended to reflect any revised or subsequent interpretation of any term that is set forth in the Act is intended to be a part of or to affect the meaning or interpretation of this Agreement.

1.1 "Act" means the Communications Act of 1934 (47 U.S.C. 153(R)), 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 a Commission within its state of jurisdiction.

1.2 "Affiliate" is as defined in the Act.

1.3 "As defined in the Act" means as specifically defined by the Act and as from time-to-time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

1.4 "As described in the Act" means as described in or required by the Act and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission.

1.5 "Automatic Number Identification" or "ANI" is a switching system feature that forwards the telephone number of the calling party and is used for screening, routing and billing purposes.

1.6 "Calling Party Number" or "CPN" is a feature of signaling system 7 (SS7) protocol whereby the 10 digit number of the calling party is forwarded from the end office.

1.7 "Central Office Switch" means a single switching system within the public switched telecommunications network, including the following:

"End Office Switches" which are Class 5 switches where end user Exchange Services are directly connected and offered.

"Tandem Office Switches" which are Class 4 switches used to connect and switch trunk circuits between Central Office Switches.

Central Office Switches may be employed as combination End Office/Tandem Office switches (combination Class 5/Class 4).

1.8 "CLASS Features" mean certain CCS-based features available to end users including, but not limited to: Automatic Call Back; Call Trace; Caller Identification and related blocking features; Distinctive Ringing/Call Waiting; Selective Call Forward; and Selective Call Rejection.

1.9 "Collocation" means an arrangement whereby one Party's (the "Collocating Party") facilities are terminated in its equipment necessary for Interconnection or for access to Network Elements on an unbundled basis which has been installed and maintained at the premises of a second Party (the "Housing Party"). Collocation may be "physical" or "virtual." In "Physical Collocation," the Collocating Party installs and maintains its own equipment in the Housing Party's premises. In "Virtual Collocation," the Housing Party installs and maintains the collocated equipment in the Housing Party's premises.

1.10 "Commission" or "PSC" means the Public Service Commission of Missouri.

1.11 "Common Channel Signaling" or "CCS" is a special network, fully separate from the transmission path of the public switched network, that digitally transmits call set-up

and network control data. Unless otherwise agreed by the Parties, the CCS used by the Parties shall be SS7.

1.12 "Cross Connection" means a connection provided pursuant to Collocation at the Digital Signal Cross Connect, Main Distribution Frame or other suitable frame or panel between (i) the Collocating Party's equipment and (ii) the equipment or facilities of the Housing Party.

1.13 "Dialing Parity" is as defined in the Act. As used in this Agreement, Dialing Parity refers to both Local Dialing Parity and Toll Dialing Parity.

1.14 "Digital Signal Level" means one of several transmission rates in the time-division multiplex hierarchy.

1.15 "Digital Signal Level 0" or "DS0" means the 64 Kbps zero-level signal in the time-division multiplex hierarchy.

1.16 "Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing.

1.17 "Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

1.18 "End User" means a third-party residence or business that subscribes to Telecommunications Services provided by either of the Parties.

1.19 "Exchange Message Record" or "EMR" means the standard used for exchange of Telecommunications message information among Telecommunications Carriers for billable, non-billable, sample, settlement and study data. EMR format is contained in Bellcore Practice BR-010-200-010 CRIS Exchange Message Record.

1.20 "Exchange Access" is as defined in the Act.

1.21 "FCC" means the Federal Communications Commission.

1.22 "Fiber-Meet" means an Interconnection architecture method whereby the Parties physically Interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at a mutually agreed upon location.

1.23 "Interconnection" is as Described in the Act and refers to the connection of separate pieces of equipment, facilities, or platforms between or within networks for the

purpose of transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic.

1.24 "Interconnection Activation Date" is the date that the construction of the joint facility Interconnection arrangement has been completed, trunk groups have been established, and joint trunk testing is completed.

1.25 "Interexchange Carrier" or "IXC" means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services. For purposes of Section 6.0 of this Agreement, the term "IXC" includes any entity which purchases FGB or FGD Switched Exchange Access Service in order to originate or terminate traffic to/from MFS's end users.

1.26 "Interim Number Portability" or "INP" is as described in the Act.

1.27 "InterLATA" is as defined in the Act.

1.28 "IntraLATA Toll Traffic" means those intraLATA station calls that are not defined as Local Traffic in this Agreement.

1.29 "Local Access and Transport Area" or "LATA" is as defined in the Act.

1.30 "Local Traffic," for purposes of intercompany compensation, means traffic that originates and terminates between or among end users within a SWBT local calling area as defined in SWBT tariffs and any successor tariffs, including mandatory local calling scope arrangements but excluding Optional EAS areas. Mandatory Local Calling Scope is an arrangement that requires end users to subscribe to a local calling scope beyond their basic exchange serving area. In no event shall the Local Traffic area for purposes of local call termination billing between the Parties be decreased during the Term of this Agreement.

1.31 "Local Exchange Carrier" or "LEC" is as defined in the Act.

1.32 "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 attorneys' fees).

1.33 "MECAB" refers to the *Multiple Exchange Carrier Access Billing (MECAB)* document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of access services provided to an IXC by two or more LECs, or by one LEC in two or more states within a single LATA. The latest release is issue No. 5, dated June 1994.

1.34 "MECOD" refers to the *Multiple Exchange Carriers Ordering and Design (MECOD) Guidelines for Access Services - Industry Support Interface*, a document developed by the Ordering/Provisioning Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of the Alliance for Telecommunications Industry Solutions (ATIS). The MECOD document, published by Bellcore as Special Report SR STS-002643, establishes methods for processing orders for *access service* which is to be provided to an IXC by two or more telecommunications providers. The latest release is issue No. 3, dated February 1996.

1.35 "Meet-Point Billing" or "MPB" refers to a billing arrangement whereby two or more Telecommunications Carriers jointly provide for switched access service to an IXC, with each LEC receiving an appropriate share of its switched access revenues as defined by its effective access tariffs.

1.36 "Metropolitan Exchange Area" means a geographical area defined in SWBT current tariffs effective June, 1996 as a metropolitan exchange local calling area.

1.37 "Network Element Bona Fide Request" means the process described on Exhibit A that prescribes the terms and conditions relating to a Party's request that the other Party provide a Network Element.

1.38 "North American Numbering Plan" or "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.

1.39 "Number Portability" is as defined in the Act.

1.40 "NXX" means the three-digit code which appears as the first three digits of a seven digit telephone number.

1.41 "Optional EAS," as used in this Agreement, means the geographic areas throughout which end users can pay a distinct charge to enlarge their flat-rate calling scope. These areas are depicted in Schedule 5.0. Optional EAS need not be distinguished from Local Traffic for the purpose of routing and transmission of traffic over the network, but is distinguished from Local Traffic for purposes of Reciprocal Compensation.

1.42 "Party" means either SWBT or MFS, and "Parties" means SWBT and MFS.

1.43 "Rate Center" means the specific geographic point which has been designated by a given LEC as being associated with a particular NPA-NXX code which 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 V&H coordinate, which is used by that LEC to measure, for billing purposes, distance sensitive transmission services associated with the specific Rate Center. Rate Centers will be identical for each Party until such time as MFS is permitted by an appropriate regulatory body to create its own Rate Centers within an area.

1.44 "Reciprocal Compensation" is as Described in the Act, and refers to the payment arrangements that recover costs incurred for the transport and termination of Telecommunications originating on one Party's network and terminating on the other Party's network.

1.45 "Routing Point" means a location which 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 Bell Communications Research, Inc. ("Bellcore") Practice BR 795-100-100 (the "Bellcore Practice"), the Routing Point (referred to as the "Rating Point" in such Bellcore Practice) may be an End Office Switch location, or a "LEC Consortium Point of Interconnection." Pursuant to such Bellcore Practice, each "LEC Consortium Point of Interconnection" shall be designated by a common language location identifier (CLLI) code with (x)KD in positions 9, 10, 11, where (x) may be any alphanumeric A-Z or 0-9. The Routing Point must be located within the LATA in which the corresponding NPA-NXX is located. However, Routing Points associated with each NPA-NXX need not be the same as the corresponding Rate Center, nor must there be a unique and separate Routing Point corresponding to each unique and separate Rate Center; provided only that the Routing Point associated with a given NPA-NXX must be located in the same LATA as the Rate Center associated with the NPA-NXX.

1.46 "Switched Exchange Access Service" means the offering of transmission or switching services to Telecommunications Carriers for the purpose of the origination or termination of Telephone Toll Service. Switched Exchange Access Services include, but are not necessarily limited to: Feature Group A, Feature Group B, Feature Group D, 800/888 access, and 900 access and their successors or similar Switched Exchange Access services.

1.47 "Synchronous Optical Network" or "SONET" means an optical interface standard that allows inter-networking of transmission products from multiple vendors. The base rate is 51.84 Mbps (OC-1/STS-1) and higher rates are direct multiples of the base rate, up to 13.22 Gpbs.

1.48 "Technically Feasible Point" is as described in the Act.

1.49 "Telecommunications" is as defined in the Act.

1.50 "Telecommunications Act" means the Telecommunications Act of 1996 and any rules and regulations promulgated thereunder.

1.51 "Telecommunications Carrier" is as defined in the Act.

1.52 "Telecommunications Service" is as defined in the Act.

1.53 "Telephone Exchange Service" is as defined in the Act.

1.54 "Telephone Toll Service" is as defined in the Act.

1.55 "Wire Center" means an occupied structure or portion thereof in which a Party has the exclusive right of occupancy and which serves as a Routing Point for Switched Exchange Access Service.

2.0 INTERPRETATION AND CONSTRUCTION

All references to Sections, Exhibits, Schedules, and Appendices shall be deemed to be references to Sections of, and Exhibits, Schedules and Appendices to, this Agreement unless the context shall otherwise require. The headings of the Sections and the terms defined in Schedule 1.0 are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including SWBT or other third party offerings, guides or practices), statute, regulation, rule or tariff is to such agreement, instrument, statute, regulation, rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

3.0 IMPLEMENTATION SCHEDULE AND INTERCONNECTION ACTIVATION DATES

Subject to the terms and conditions of this Agreement, Interconnection of the Parties' facilities and equipment pursuant to Sections 4.0, 5.0 and 6.0 for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic shall be established on or before the corresponding "Interconnection Activation Date" shown for each such Metropolitan Exchange Area on Schedule 3.0. Schedule 3.0 may be revised and supplemented from time to time upon the mutual agreement of the Parties to reflect the Interconnection of additional Metropolitan Exchange Areas pursuant to Section 4.5 by attaching one or more supplementary schedules to such schedule.

4.0 INTERCONNECTION PURSUANT TO SECTION 251(c)(2)

4.1 Scope

Section 4.0 describes the physical architecture for Interconnection of the Parties' facilities and equipment for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic pursuant to Section 251(c)(2) of the Act. Exhibit C prescribes the specific trunk groups (and traffic routing parameters) which will be configured over the physical connections described in this Section 4.0 to provide the facilities for the transmission and routing of Telephone Exchange Service traffic (as described in Section 5.0), Exchange Access traffic (as described in Section 6.0), LSV/BLI traffic (as described in Section 7.2), E911/911 traffic (as described in Section 7.5), and Directory Assistance traffic (as described in Section 7.6). Use of this physical connection shall be limited to the trunk groups described in Exhibit C, until such time as the Parties mutually agree to expansion of the use of this physical connection.

4.2 Physical Architecture

Unless otherwise mutually agreed, in each Metropolitan Exchange Area identified on Schedule 3.0, MFS and SWBT shall jointly engineer and operate a single Synchronous Optical Network ("SONET") transmission system by which they shall Interconnect their networks for the transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic pursuant to Section 251(c)(2) of the Act. This SONET transmission system shall be configured as illustrated in Exhibit B, and engineered, installed, and maintained as described in this Section 4.0 and in the Joint Grooming Plan (as defined in Section 8.6).

4.2.1 Unless otherwise mutually agreed, the Parties shall install Fujitsu Optical Line Terminating Multiplexor ("OLTM") equipment at each end of the SONET transmission system.

4.2.2 Each Party shall, at its own expense, procure, install and maintain the agreed upon OLTM, multiplexing and fiber equipment in its respective Interconnection Wire Center ("IWC") as illustrated on Exhibit B and set forth in Schedule 3.0, in capacity sufficient to provision and maintain all trunk groups described in Exhibit C.

4.2.3 Each Party shall designate a manhole or other suitable entry-way immediately outside its IWC as a Fiber-Meet entry point, and shall make all necessary preparations to receive, and to allow and enable the other Party to deliver a single mode fiber optic cable into that manhole.

4.2.4 Each Party shall, at its own expense, provide and maintain from its IWC to the designated manhole or other suitable entry-way immediately outside the other Party's IWC a single mode fiber optic cable with sufficient spare length to reach the OLTM equipment

in the IWC. To the extent facilities are available, the Parties will use their best efforts to provide physically separate routes for the fiber.

4.2.5 Each Party shall pull the other Party's fiber optic cable from its designated manhole/entry-way into its IWC and through appropriate internal conduits utilized for fiber optic facilities and shall connect the other Party's cable to the OLT equipment.

4.2.6 Each Party shall use its best efforts to ensure that fiber received from the other Party will enter the Party's Wire Center through a point separate from that which the Party's own fiber exited.

4.2.7 The Parties shall jointly coordinate and undertake maintenance of the SONET transmission system. Each Party shall be responsible for maintaining the components of the SONET transmission system as illustrated on Exhibit B.

4.3 Interim Alternative Physical Architecture

4.3.1 The Parties may mutually agree to interconnect via an electrical interface instead of the SONET transmission system for some mutually defined interim period. In the event either Party requires termination of the interim connection on or before twelve (12) months from the Interconnection Activation Date, the requesting Party shall pay the nonrequesting Party applicable tariffed or contract charges for facility rearrangements not to exceed \$1,000 per DS3 and/or \$280 per DS1.

4.3.2 This electrical interface interim alternative architecture shall occur over a Collocation at a mutually agreeable Wire Center in accordance with Section 12.0 or any other arrangement to which the Parties may agree.

4.3.3 During any Interim Period, specific trunk groups (and traffic routing parameters) prescribed in Exhibit C and Sections 5.0, 6.0, and 7.0 will be configured over the alternate physical architecture, unless otherwise mutually agreed.

4.3.4 Unless otherwise mutually agreed, the requesting Party will provide written notice of the need to transition to a SONET transmission system for the applicable Metropolitan Exchange Area pursuant to Section 4.2 at least 150 days prior to the desired facility transition date.

4.4 Technical Specifications

4.4.1 MFS and SWBT shall work cooperatively to install and maintain a reliable network. MFS and SWBT shall exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement

and other security agencies of the Government and such other information as the Parties shall mutually agree) to achieve this desired reliability.

4.4.2 MFS and SWBT shall work cooperatively to apply sound network management principles by invoking network management controls to alleviate or to prevent congestion.

4.4.3 The following list of publications describe the practices, procedures, specifications and interfaces generally utilized by SWBT and are listed herein to assist the Parties in meeting their respective Interconnection responsibilities related to Electrical/Optical Interfaces:

SWBT Technical Publication TP-76839 - SONET Transmission Requirements - Performance and Interface Specifications, Issue 1, January 1996, or the most current version.

SWBT Technical Publication TP-76625 - High Capacity Digital Service (1.544 Mbs and 44.736 Mbs Requirements and Transmission Limits, Issue 1, June 1990, or the most current version.

4.5 Interconnection in Additional Metropolitan Exchange Areas

4.5.1 If MFS determines to offer Telephone Exchange Services in any other Metropolitan Exchange Areas in which SWBT also offers Telephone Exchange Services, MFS shall provide written notice to SWBT of the need to establish Interconnection in such Metropolitan Exchange Areas pursuant to this Agreement.

4.5.2 The notice provided in Section 4.5.1 shall include (i) the initial Routing Point MFS has designated in the Metropolitan Exchange Area; (ii) MFS's requested Interconnection Activation Date; and (iii) a non-binding forecast of MFS's trunking requirements.

4.5.3 Unless otherwise agreed by the Parties, the Parties shall designate the Wire Center MFS has identified as its initial Routing Point in the Metropolitan Exchange Area as the MFS Interconnection Wire Center ("MIWC") in that Metropolitan Exchange Area and shall designate the SWBT Tandem Office Wire Center within the Metropolitan Exchange Area nearest to the MIWC (as measured in airline miles utilizing the V&H coordinates method) as the SWBT Interconnection Wire Center ("SIWC") in that Metropolitan Exchange Area.

4.5.4 Unless otherwise agreed by the Parties, the Interconnection Activation Date in each new Metropolitan Exchange Area shall be the one-hundred and fiftieth (150th) day following the date on which MFS delivered notice to SWBT of the need to establish Interconnection pursuant to Section 4.5.1. Within ten (10) business days of SWBT's receipt of

MFS's notice, SWBT and MFS shall confirm the SIWC, the MIWC and the Interconnection Activation Date for the new Metropolitan Exchange Area by attaching a supplementary schedule to Schedule 3.0.

4.6 SONET Capacity Provisioning

Unless otherwise agreed, the Parties shall use the following approach to jointly provision/size the interconnection OLTMs with the intent being to minimize investment, deploy facilities in a "just in time" fashion, and avoid a facilities exhaust situation.

4.6.1 The initial fiber optic system deployed for each interconnection shall be the smallest standard available, unless the mutually agreed upon forecast over a two year period would dictate otherwise. For SONET this is an OC-3 system.

4.6.2 The Parties will take action to provide relief to existing facilities when (i) either Party provides written notice to the other that the overall system facility (DS1s) is at 80% capacity, or (ii) the Parties agree that the overall system facility will exhaust within 90 days. The joint planning process/negotiations should be completed no later than thirty (30) days after such notification or agreement. Because the quantity of traffic and rate of growth will be difficult to predict during the first two years of implementation, the Parties will use their best efforts to expand capacity on an "as needed" basis.

4.6.3 Both Parties will perform an annual joint validation to ensure current trunk groups do not have excess capacity as defined in Section 8.0. If any trunk groups have excess capacity, trunks will be turned down as appropriate. If the trunk group resizing lowers the fill level of the system below 80%, the growth planning process will be suspended and will not be reinitiated until a 80% fill level is achieved. Trunk design blocking criteria described in Section 8.0 will be used in determining trunk group sizing requirements and forecasts.

4.6.4 If based on the forecasted equivalent DS1 growth, the existing fiber optic system is not projected to exhaust within one year, the Parties will suspend further relief planning on this SONET interconnection until a date one year prior to the projected exhaust date. If growth patterns change during the suspension period, either Party may re-initiate the joint planning process.

4.6.5 If the placement of a minimum size OLTM will not provide adequate augmentation capacity for the joint forecast over a two-year period, and the forecast appears reasonable based upon history, the next larger system size shall be deployed. In the case of a SONET system, the OC-3 system will be upgraded to an OC-12 or higher. If the forecast does not justify a move to the next larger system, another minimal size system (such as OC-3) will be placed. This criteria assumes both Parties would negotiate placement of additional fibers or higher bit rate systems.

4.6.6 Both Parties will negotiate a project service date and corresponding work schedule to construct relief facilities in an effort to achieve "just in time" deployment.

5.0 TRANSMISSION AND ROUTING OF TELEPHONE EXCHANGE SERVICE TRAFFIC PURSUANT TO SECTION 251(c)(2)

5.1 Scope of Traffic

This Section 5.0 prescribes parameters for Traffic Exchange trunk groups the Parties shall establish over the Interconnections specified in Section 4.0. The Traffic Exchange trunk groups specified in this Section 5.0 and in Exhibit C shall be employed by the Parties for the transmission and routing of all Local and IntraLATA Toll Traffic between the Parties' respective Telephone Exchange Service end users.

5.2 Measurement and Billing

5.2.1 For billing purposes, each Party shall, unless otherwise agreed, pass the originating call record for the recording, record exchange and billing of traffic using the guidelines as set forth in the Technical Exhibit Settlement Procedures (TESP), provided by SWBT to MFS.

5.2.2 Measurement of all billing minutes shall be in actual conversation seconds. In each billing period, total conversation seconds shall be rounded to the next whole minute for billing purposes.

5.2.3 Where one Party is passing CPN but the other Party is not properly receiving the information, the Parties shall cooperatively work to correctly rate the traffic.

5.3 Reciprocal Compensation Arrangements -- Section 251(b)(5)

5.3.1 Reciprocal Compensation applies for transport and termination of Local Traffic and Optional EAS Traffic which a Telephone Exchange Service end user originates on SWBT's or MFS's network for termination on the other Party's network.

5.3.2 The Parties shall mutually and reciprocally compensate each other for transport and termination of Local Traffic at the rates provided in the Pricing Schedule. For purposes of Section 28.16, the Parties acknowledge that the Reciprocal Compensation rate for Local Traffic listed in the Pricing Schedule is not comparable to Local Traffic termination rates SWBT may establish with others which may reflect different rates for calls terminated to a tandem and for calls terminated to an end office. The Parties agree that the Reciprocal Compensation rate listed for Local Traffic in the Pricing Schedule is designed to compensate each Party for transport and termination of Local Traffic from the single point of

Interconnection in each Metropolitan Exchange Area to the ultimate end user including all transport and/or intermediary switching and/or final switching. To this extent, the Reciprocal Compensation rate listed for Local Traffic in the Pricing Schedule is tied directly to the Interconnection network architectures specified in Section 4.0 and to the trunk configuration criteria and procedures specified in this Section 5.0 and Exhibit C. Any other requested Interconnection architecture will require renegotiation of rates.

5.3.3 The Parties shall mutually and reciprocally compensate each other for transport and termination of Optional EAS Traffic at the rates provided in the Pricing Schedule. Maps and lists depicting Optional EAS Traffic areas are attached as Schedule 5.0.

5.3.4 The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to IntraLATA Toll calls. Each Party shall bill the other Party for transport and termination of such calls according to rates, terms, and conditions contained in that Party's effective Switched Access tariffs.

5.3.5 The Reciprocal Compensation arrangements set forth in this Agreement are not applicable to Switched Exchange Access Service. Compensation for such jointly provided services are set forth in Section 6.0 and shall continue to be governed by the terms and conditions of the applicable federal and state tariffs.

5.3.6 Compensation for transport and termination of all traffic which has been subject to performance of INP by one Party for the other Party pursuant to Section 13.0 shall be as specified in Section 13.5.

6.0 TRANSMISSION AND ROUTING OF EXCHANGE ACCESS TRAFFIC PURSUANT TO 251(c)(2)

6.1 Scope of Traffic

Section 6.0 prescribes parameters for certain trunk groups ("Access Toll Connecting Trunks") to be established over the Interconnections specified in Section 4.0 for the transmission and routing of Exchange Access traffic between MFS Telephone Exchange Service end users and Interexchange Carriers via a SWBT access tandem.

6.2 Trunk Group Architecture and Traffic Routing

6.2.1 The Parties shall jointly establish Access Toll Connecting Trunks as described in Exhibit C, by which they will jointly provide tandem-transported Switched Exchange Access Services to Interexchange Carriers to enable MFS's end users to originate and terminate traffic to/from such Interexchange Carriers.

6.2.2 Access Toll Connecting Trunks shall be used solely for the transmission and routing of Switched Exchange Access to allow MFS end users to originate and terminate traffic to/from any Interexchange Carrier which is connected to a SWBT Access Tandem. In addition, the trunks shall be used to allow MFS's end users to connect to, or be connected to, the 800 Services of any Telecommunications Carrier connected to the SWBT Access Tandem.

6.2.3 The Parties shall jointly determine which SWBT access Tandem(s) will be sub-tended by each MFS End Office Switch. Except as otherwise agreed by the Parties, SWBT shall allow each MFS End Office Switch to sub-tend the Access Tandem nearest to the Routing Point associated with the NXX codes assigned to that End Office Switch and shall not require that a single MFS End Office Switch sub-tend multiple Access Tandems, even in those cases where such End Office Switch serves multiple Rate Centers.

6.3 Meet-Point Billing Arrangements

6.3.1 MFS and SWBT agree to establish Meet-Point Billing arrangements in order to provide Switched Exchange Access Services to Interexchange Carriers via a SWBT Access Tandem Switch over the Access Toll Connecting Trunks described above, in accordance with the Meet-Point Billing guidelines adopted by and contained in the Ordering and Billing Forum's MECAB and MECOD documents, except as modified herein. MFS's Meet-Points with SWBT shall be those identified in Schedule 3.

6.3.2 Billing to Interexchange Carriers for the Switched Exchange Access Services jointly provided by the Parties via Meet-Point Billing arrangement shall be according to the multiple bill/single tariff method. As described in the MECAB document, each Party will render a bill in accordance with its own tariff for that portion of the service it provides. For the purpose of this Agreement, MFS is the Initial Billing Company (IBC) and SWBT is the Subsequent Billing Company (SBC). The assignment of revenues, by rate element, and the Meet-Point Billing percentages applicable to this Agreement are set forth in the Meet Point Billing Arrangement Revenue Assignment Schedule. The actual rate values for each element shall be the rates contained in that Party's own effective applicable access tariffs.

6.3.3 Meet-Point Billing shall also apply to all jointly provided minutes of use traffic bearing the 900, 800, and 888 NPAs or any other non-geographic NPAs which may likewise be designated for such traffic in the future where the responsible party is an Interexchange Carrier. For 800 database queries performed by SWBT, SWBT will charge the provider of the Signaling Service Point for the database query in accordance with standard industry practices.

6.3.4 The Parties will maintain provisions in their respective federal and state access tariffs, or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor tariff, sufficient to reflect this Meet-Point Billing arrangement, including

Meet-Point Billing percentages. MFS shall use its best efforts to include in such tariff the billing percentages and associated information as a nonmember of NECA.

6.3.5 Each Party shall coordinate and exchange the billing account reference ("BAR") and billing account cross reference ("BACR") numbers for the Meet Point Billing service. Each Party shall notify the other if the level of billing or other BAR/BACR elements change, resulting in a new BAR/BACR number.

6.3.6 As detailed in the MECAB document, the Parties will exchange all information necessary to accurately, reliably and promptly bill third parties for Switched Exchange Access Services traffic jointly handled by the Parties via the Meet-Point Billing arrangement. The Parties will exchange the information in Exchange Message Record (EMR) format, on magnetic tape or via a mutually acceptable electronic file transfer protocol as described below:

(i) SWBT will perform assembly and editing, message processing and provision of Access Usage Records (AUR). The records will be generated by SWBT and provided to MFS on a weekly basis no later than fourteen (14) days from the last day of recorded usage in that week; and

(ii) MFS will provide Summary Usage Records (SUR) to SWBT within ten (10) working days of sending MFS's bills to the IXC.

6.3.7 Each Party reserves the right to charge the other Party for the recording/processing functions it performs pursuant to 6.3.6 on nondiscriminatory terms and conditions.

6.3.8 Errors may be discovered by MFS, the IXC or SWBT. Both SWBT and MFS agree to provide the other Party with notification of any discovered errors within two (2) business days of the discovery.

6.3.9 In the event of a loss of data, both Parties shall cooperate to reconstruct the lost data within 60 days of notification and if such reconstruction is not possible, shall accept a reasonable estimate of the lost data, based upon no more than three (3) to twelve (12) months of prior usage data, if available.

6.3.10 SWBT shall provide to MFS the billing name, billing address, and CIC of the IXCs in order to comply with the MPB Notification process as outlined in the MECAB document and pursuant to OBF guidelines.

7.0 TRANSPORT AND TERMINATION OF OTHER TYPES OF TRAFFIC

7.1 Information Services Traffic

7.1.1 At such time as the Parties shall agree to route intraLATA Information Services Traffic to one another, they shall agree to exchange rating and billing information to effectively allow the Parties to bill their end users and to charge reciprocal rates.

7.2 Line Status Verification/Busy Line Interrupt Traffic

7.2.1 Line Status Verification ("LSV") is performed when one Party's end user requests assistance from the operator bureau to determine if the called line of the other Party is in use, however, the operator bureau does not complete the call for the end user initiating the LSV inquiry.

7.2.2 Busy Line Interrupt ("BLI") is performed when one Party's operator bureau interrupts a telephone call in progress after LSV has occurred. The operator bureau will interrupt the busy line and inform the called party that there is a call waiting. The operator bureau will only interrupt the call and will not complete the telephone call of the end user initiating the BLI request.

7.2.3 Each Party's operator bureau shall accept LSV and BLI inquiries from the operator bureau of the other Party in order to allow transparent provision of LSV/BLI Traffic between the Parties' networks. Only one LSV attempt will be made per end user operator bureau call, and the applicable charge shall apply whether or not the called party releases the line. Only one BLI attempt will be made per end user operator telephone call, and the applicable charge shall apply whether or not the called party releases the line.

7.2.4 Each Party shall route LSV/BLI Traffic inquiries between the Parties' respective operator bureaus over trunks described in Exhibit C.

7.2.5 Each Party shall compensate the other Party for LSV/BLI Traffic as set forth on the Pricing Schedule.

7.3 Transit Service

7.3.1 The Parties shall provide and compensate one another for Transit Service on the terms and conditions set forth in this section 7.3.

7.3.2 "Transit Service" means (i) the delivery of Local Traffic between MFS and a third party which subtends a SWBT tandem by SWBT over Traffic Exchange trunks or (ii) the delivery of Local Traffic between SWBT and a third party which subtends an MFS tandem by MFS over the Traffic Exchange trunks. Charges for Transit Service are listed in

the Pricing Schedule, assessed on a minute of use basis, and are owed by the originating service provider except as set forth in Section 7.3.5.

7.3.3 In addition, MFS may also exchange IntraLATA Toll Traffic between its Telephone Exchange Service end users and third party LECs over the Traffic Exchange trunk groups. Such IntraLATA Toll Traffic shall not be subject to a transit charge but shall instead be billed by SWBT to MFS as Switched Exchange Access Service.

7.3.4 MFS represents that it shall not send Local Traffic to SWBT that is destined for the network of a third party unless and until MFS has the authority to exchange traffic with the third party.

7.3.5 While the Parties agree that it is the responsibility of each third party to enter into arrangements to deliver Local Traffic to MFS, they acknowledge that such arrangements are not currently in place and MFS wants an interim arrangement to ensure traffic completion. Accordingly, until the earlier of (i) the date on which SWBT has entered into a transit arrangement with such third party to deliver Local Traffic through SWBT to MFS or (ii) one hundred and eighty (180) days after the Interconnection Activation Date, SWBT will deliver and MFS will terminate Local Traffic originated from such third party without charge other than SWBT's charge to MFS for Transit Service to the extent the originating service provider is not obliged by contract or tariff to pay SWBT a fee for such transit service. If after 180 days SWBT has not finalized transiting arrangements with applicable third parties, SWBT will continue to deliver and MFS will terminate such traffic without charge to each other.

7.3.6 SWBT expects that all networks with CCS involved in Transit Service will deliver each call to each involved network with CCS and the appropriate Transactional Capabilities Application Part ("TCAP") message to facilitate full interoperability and CCS billing functions. In all cases, the Parties are responsible to follow the Exchange Message Record ("EMR") standard and exchange records between the Parties and the terminating third party to facilitate the billing process to the originating network.

7.4 Cellular Traffic

Section 7.4 sets forth the terms and conditions under which the Parties will distribute revenue from their joint provision of Cellular Interconnection Service for calls terminating through the Parties' respective wireline switching networks within a LATA over the Traffic Exchange trunk groups. MFS shall be compensated under this Section 7.4 only to the extent that it has not otherwise already been compensated directly from the Cellular Mobile Carrier ("CMC") under other tariffs, settlement agreements or contracts. This Section 7.4 is subject to the terms and conditions of applicable tariffs.

7.4.1 SWBT will compute, bill, collect and distribute the revenue for jointly provided Cellular Interconnection Service for terminating traffic (i.e., that traffic which is delivered by a CMC to SWBT for termination at a point on the intraLATA wireline switching network). On jointly provided Cellular Interconnection Service, SWBT shall distribute a portion of the Local Transport (LT) Revenues to MFS for its part in terminating traffic from the CMC. SWBT shall distribute applicable Local Switching (LS), and Carrier Common Line (CCL) charges, and Residual Interconnection Charge (RIC), if any, which are collected from the CMC to MFS. When traffic is originated by either Party to a CMC which cannot be specifically identified as CMC traffic, such traffic will be treated as end user-to-end user traffic and the appropriate compensation rate will apply. If either Party enters into an interconnection agreement with a CMC which would require compensation for such traffic, MFS and SWBT agree to meet and negotiate a new compensation agreement for this jointly handled traffic.

7.4.2 Distribution of revenues will be computed using the rate elements as defined in SWBT's applicable Wireless Carrier Interconnection Service Tariff.

7.4.3 For Terminating Traffic, actual monthly cellular MOU for each office in the LATA will be measured by SWBT or provided to SWBT by the CMC in those cases where SWBT is unable to measure the actual terminating usage.

7.4.4 SWBT will prepare a revenue and usage statement on a monthly basis. Within ninety (90) calendar days after the end of each billing period, SWBT shall remit the compensation amount due MFS. When more than one compensation amount is due, they may be combined into a single payment. No distribution shall be made for revenue SWBT is unable to collect, unless its inability to collect such revenue is due to its own negligence.

7.4.5 The revenue and usage statement will contain the following information:

- (a) The number of MOU for each MFS end office, the corresponding rate elements to be applied to the MOU for each end office, and the resulting revenues;
- (b) The total of the MOU and revenues for MFS;
- (c) The percent ownership factor used to calculate the distribution of Local Transport revenues; and,
- (d) Adjustments for uncollectibles.

7.4.6 The Parties agree that revenue distribution under this Section 7.4 will apply as of the Interconnection Activation Date. SWBT will start revenue distribution on usage within 90 calendar days from that date.

7.4.7 SWBT will apply the Transit Traffic rate to MFS for calls which originate on MFS's network and are sent to SWBT for termination to a CMC as long as such Traffic can be identified as Cellular Traffic. Similarly, in the event calls which originate on SWBT's network are sent to MFS for termination to a CMC, MFS will apply the Transit Traffic rate to SWBT for those calls.

7.4.8 SWBT agrees to accept CMC Terminating Traffic from MFS under terms and conditions no less favorable to SWBT than those that apply to MFS in this Section 7.4.

7.5 911 Service

7.5.1 Pursuant to Section 271(c)(2)(B)(vii) of the Act, SWBT will make nondiscriminatory access to 911 service available under the terms and conditions of Appendix 911, attached hereto and incorporated by reference.

7.5.2 MFS shall route 911 traffic over trunks as described in Exhibit C.

7.6 Directory Assistance Service

7.6.1 Pursuant to Section 271(c)(2)(B)(vii) of the Act, SWBT will make nondiscriminatory access to Directory Assistance service available under the terms and conditions of Appendix DA, attached hereto and incorporated by reference.

7.6.2 DA traffic shall be routed over trunks as described in Exhibit C.

7.7 Feature Group A Traffic

The Parties shall divide compensation of Feature Group A traffic between their end users in accordance with the terms and conditions of the Pricing Schedule and Appendix FGA, attached hereto and incorporated by reference.

8.0 TRUNKING CRITERIA, SIGNALING, JOINT GROOMING PLAN AND INSTALLATION, MAINTENANCE, TESTING AND REPAIR

8.1 Trunk Design Blocking Criteria

Trunk forecasting and servicing for the trunk groups included in Exhibit C shall be based on the industry standard objective of 2% overall time consistent average busy season busy hour loads (1% from the End Office to the Tandem and 1% from tandem to End Office based on Neal Wilkinson B.01M [Medium Day-to-Day Variation] until traffic data is available). Listed below are the trunk group types and their objectives:

<u>Trunk Group Type</u>	<u>Blocking Objective</u> <u>(Neal Wilkinson M)</u>
Traffic Exchange Trunks	
Local Tandem	1%
IntraLATA Toll Tandem	1%
Combined IntraLATA Toll/Local Tandem	1%
High Usage Direct End Office	ECCS
911	1%
DA/DACC	1%
LSV/BLVI	1%
Access Toll Connecting	0.5%

8.2 Forecasting/Servicing Responsibilities

Both Parties agree to provide an initial forecast for establishing the initial interconnection facilities. Subsequent forecasts will be provided on a semiannual basis (January and July). Trunk servicing will be performed on a monthly basis at a minimum. SWBT shall be responsible for forecasting and servicing the trunk groups terminating to MFS. MFS shall be responsible for forecasting and servicing the trunk groups originating from MFS, including trunks for operator services, DA service, and interLATA toll service. Standard trunk traffic engineering methods will be used as described in Bell Communications Research, Inc. (Bellcore) document SR-TAP-000191, Trunk Traffic Engineering Concepts and Applications.

8.3 Servicing Objective/Data Exchange

Each Party agrees to service trunk groups to the foregoing blocking criteria in a timely manner when trunk groups exceed measured blocking thresholds on an average time consistent busy hour for a 20 business day study period. Upon request, each Party will make available to the other, trunk group measurement reports for trunk groups terminating in the requesting Party's network. These reports will contain offered load, measured in Centum CS (100 call seconds), that has been adjusted to consider the effects of overflow, retrials and day-to-day variation. They will also contain overflow Centum CS associated with the offered load, day-to-day variation, peakedness factor, the date of the last week in the four week study period and the number of valid days of measurement. These reports shall be made available at a minimum on a semi-annual basis upon request.

8.4 Trunk Facility Under Utilization

At least once a year the Parties shall exchange trunk group measurement reports for trunk groups terminating to the other Party's network. Each Party will determine the required trunks for each of the other Party's trunk groups for the previous 12 months. Required trunks

will be based on the objective blocking criteria included in Section 8.1 and time consistent average busy hour usage measurements from the highest 4 consecutive week (20 business day) study. Trunk groups with excess capacity will be identified to the other Party as eligible for downsizing. Excess capacity exists when a trunk group, on a modular trunk group design basis, has 48 trunks (2 modular digroups) or 10%, whichever is larger, over the required number of trunks.

The party with excess trunking capacity will assess the trunk capacity based on forecasted requirements and agrees to disconnect trunks in excess of forecasted requirements for the next twelve (12) months. If after twelve (12) months the trunk group continues to have excess capacity the party agrees to take timely steps to disconnect all excess capacity.

8.5 Signaling

8.5.1 Where available, CCS signaling shall be used by the Parties to set up calls between the Parties' Telephone Exchange Service networks. If CCS signaling is unavailable, MF (Multi-Frequency) signaling shall be used by the Parties. Each Party shall charge the other Party equal and reciprocal rates for CCS signaling in accordance with applicable tariffs. During the Term of this Agreement neither Party shall charge the other Party additional usage-sensitive rates for SS7 queries made for Local Traffic.

8.5.2 The following list of publications describe the practices, procedures and specifications generally utilized by SWBT for signaling purposes and are listed herein to assist the Parties in meeting their respective Interconnection responsibilities related to signaling:

SWBT Technical Publication, TP-76638 - Common Channel
Signaling Network Interface Specifications

GR-000246-CORE, Bell Communications Research
Specifications of Signaling System 7

GR-000317-CORE, Switching System Requirements for Call
Control Using the Integrated Services Digital Network User Part

GR-000394-CORE, Switching System Requirements for
Interexchange Carrier Interconnection Using the Integrated
Services Digital Network User Part

GR-000606-CORE, LATA Switching Systems Generic
Requirements-Common Channel Signaling-Section 6.5

GR-000905-CORE, Common Channel Signaling Network
Interface Specification Supporting Network Interconnection

Message Transfer Part (MTP) and Integrated Digital Services
Network User Part (ISDNUP)

8.5.3 The Parties will cooperate on the exchange of Transactional Capabilities Application Part (TCAP) messages to facilitate interoperability of CCS-based features between their respective networks, including all CLASS features and functions, to the extent each Party offers such features and functions to its end users. All CCS signaling parameters will be provided including, without limitation, calling party number (CPN), originating line information (OLI), calling party category and charge number.

8.5.4 Where available and upon the request of the other Party, each Party shall cooperate to ensure that its trunk groups are configured utilizing the B8ZS ESF protocol for 64 kbps clear channel transmission to allow for ISDN interoperability between the Parties' respective networks.

8.6 Joint Grooming Plan

On or before October 1, 1996, MFS and SWBT shall jointly develop a grooming plan (the "Joint Grooming Plan") which shall define and detail, inter alia,

- (a) maintenance of the SONET transmission system;
- (b) disaster recovery provisions and escalations;
- (c) the NXX migration process;
- (d) direct/high usage trunk engineering guidelines; and
- (e) such other matters as the Parties may agree.

8.7 **Installation, Maintenance, Testing and Repair.** SWBT's standard intervals for Feature Group D Switched Exchange Access Services will be used for Interconnection as specified in the most current SWBT Accessible Letter, currently SWA96-036, dated April 15, 1996. MFS shall meet the same intervals for comparable installations, maintenance, joint testing, and repair of its facilities and services associated with or used in conjunction with Interconnection or shall notify SWBT of its inability to do so and will negotiate such intervals in good faith.

9.0 NUMBERING

9.1 Nothing in this Agreement shall be construed to limit or otherwise adversely impact in any manner either Party's right to employ or to request and be assigned any NANP

number resources including, but not limited to, central office (NXX) codes pursuant to the Central Office Code Assignment Guidelines¹, or to establish, by tariff or otherwise, Exchanges and Rating Points corresponding to such NXX codes. Each Party is responsible for administering the NXX codes assigned to it.

9.2 At a minimum, in those Metropolitan Exchange Areas where MFS intends to provide local exchange service, MFS shall obtain a separate NXX code for each SWBT exchange or group of exchanges that share a common mandatory calling scope as defined in SWBT tariffs to enable MFS and SWBT to identify the jurisdictional nature of traffic for intercompany compensation until such time as both Parties have implemented billing and routing capabilities to determine traffic jurisdiction on a basis other than NXX codes.

9.3 Each Party agrees to make available to the other, up-to-date listings of its own assigned NPA-NXX codes, along with associated Rating Points and Exchanges.

9.4 To the extent SWBT serves as Central Office Code Administrator for a given region, SWBT will work with MFS in a neutral and nondiscriminatory manner, consistent with regulatory requirements, in regard to MFS's requests for assignment of central office code(s) (NXX) consistent with the Central Office Code Assignment Guidelines.

9.5 It shall be the responsibility of each Party to program and update its own switches and network systems to recognize and route traffic to the other Party's assigned NXX codes at all times. Neither Party shall impose fees or charges on the other Party for such required programming and updating activities.

9.6 It shall be the responsibility of each Party to input required data into the Routing Data Base Systems (RDBS) and into the Bellcore Rating Administrative Data Systems (BRADS) or other appropriate system(s) necessary to update the Local Exchange Routing Guide (LERG), unless negotiated otherwise.

9.7 Neither Party is responsible for notifying the other Parties' end users of any changes in dialing arrangements, including those due to NPA exhaust, unless otherwise ordered by the Commission, the FCC, or a court.

¹ Last published by the Industry Numbering Committee ("INC") as INC 95-0407-008, Revision 4/7/95, formerly ICCF 93-0729-010.

10.0 RESALE -- SECTIONS 251(c)(4) and 251(b)(1)

10.1 Availability of Wholesale Rates for Resale

SWBT shall offer to MFS for resale at wholesale rates its Telecommunications Services, as described in Section 251(c)(4) of the Act, pursuant to the terms and conditions of Appendix Resale attached hereto and incorporated herein by this reference. The Parties acknowledge that, at its option, MFS may seek to negotiate additional or different terms and conditions for resale with SWBT than those set forth in Appendix Resale.

10.2 Availability of Retail Rates for Resale

Each Party shall make available its Telecommunications Services for resale at retail rates to the other Party in accordance with Section 251(b)(1) of the Act.

11.0 NOTICE OF CHANGES -- SECTION 251(c)(5)

If a Party makes a change in its network which it believes will materially affect the interoperability of its network with the other Party, the Party making the change shall provide at least ninety (90) days advance written notice of such change to the other Party. Both Parties agree to coordinate interconnection matters consistent with the requirements of the Americans with Disabilities Act (42 U.S.C. 12101) and with Sections 255 and 256 of the Act.

12.0 COLLOCATION -- SECTION 251(c)(6)

12.1 SWBT shall provide to MFS Physical Collocation of equipment necessary for Interconnection (pursuant to Section 4.0) or access to Network Elements on an unbundled basis except that SWBT may provide for Virtual Collocation if SWBT demonstrates to the Commission that Physical Collocation is not practical for technical reasons or because of space limitations, as provided in Section 251(c)(6) of the Act. SWBT shall provide such Collocation for the purpose of Interconnection or access to Network Elements on an unbundled basis, except as otherwise mutually agreed to in writing by the Parties or as required by the FCC or the appropriate Commission subject to applicable federal and state tariffs. Attached as Exhibit D and incorporated herein by this reference is a model Physical Collocation agreement which sets forth the standard terms and conditions applicable to such Physical Collocation arrangements.

Except as otherwise ordered by the Commission or the FCC, or as mutually agreed to by MFS and SWBT, Physical Collocation shall be available at a Central Office Switch location classified as an end office location, a serving wire center, a tandem office

location, or a remote node that serves as a rating point for special access or switched access transport.

12.2 Although not required to do so by Section 251(c)(6) of the Act, by this Agreement, MFS agrees to provide to SWBT upon SWBT's Network Element Bona Fide Request and subject to space availability, Collocation of equipment for purposes of Interconnection (pursuant to Section 4.0) on a nondiscriminatory basis and at comparable rates, terms and conditions as MFS may provide to other third parties. MFS shall provide such Collocation subject to applicable tariffs or contracts.

12.3 At its option, either Party may elect to simultaneously have both physical and virtual collocation arrangements in the same Central Office and at a Physical Collocation site may fully utilize all such arrangements by disconnecting existing circuits and adding new circuits upon request and payment of appropriate charges.

12.4 Where MFS is Virtually Collocated on the Effective Date at a premise that was initially prepared for Physical Collocation, MFS may elect to (i) retain its Virtual Collocation in that premises and expand that Virtual Collocation according to current procedures, or (ii) revert to its original Physical Collocation arrangement or one of similar dimensions having power and racking arrangements equivalent to those of its original Physical Collocation arrangement by entering the attached Exhibit D agreement, to the extent that space for such arrangement is available at the time of MFS's election and outstanding balances due for tariffed charges have been paid, in which case MFS shall coordinate with SWBT for rearrangement of its equipment (transmission and IDLC) and circuits, for which SWBT shall impose no conversion charge. All applicable Physical Collocation recurring charges shall apply.

12.5 Where MFS is Virtually Collocated in a premises which was initially prepared for Virtual Collocation, MFS may elect to (i) retain its Virtual Collocation in that premises and expand that Virtual Collocation according to current procedures and applicable tariffs, or (ii) unless it is not practical for technical reasons or because of space limitations, convert its Virtual Collocation at such premises to Physical Collocation in which case MFS shall coordinate the construction and rearrangement with SWBT of its equipment (transmission and IDLC) and circuits for which MFS shall pay SWBT at applicable tariff rates. In addition, all applicable Physical Collocation recurring and nonrecurring charges shall apply.

12.6 For both Physical Collocation and Virtual Collocation, the Collocating Party shall provide its own or third-party leased transport facilities and terminate those transport facilities in equipment located in its Physical Collocation space at the Housing Party's premises as described in applicable tariffs or contracts and purchase Cross Connection if applicable, to services or facilities as described in applicable tariffs or contracts.

12.7 MFS acknowledges receipt of SWBT's Technical Publication for Physical Collocation (third revision) and agrees to comply with the terms described therein, except to the extent such terms conflict with other terms herein or those contained in the Physical Collocation agreement attached. SWBT will identify for MFS future revisions of the publication and MFS agrees to abide by them unless it notifies SWBT of its objections to same within thirty (30) days of such notification.

SECTION 251(b) PROVISIONS

13.0 NUMBER PORTABILITY -- SECTION 251(b)(2)

13.1 Scope

13.1.1 The Parties shall provide Number Portability on a reciprocal basis to each other to the extent technically feasible, and in accordance with the requirements of the Act.

13.1.2 Until Number Portability is implemented by the industry as required by the Act, the Parties agree to provide INP to each other through Remote Call Forwarding and Direct Inward Dialing (DID). The Parties acknowledge that some technical limitations are inherent in the provisioning of INP through DID and Remote Call Forwarding. The Parties further agree to abide by any final order of the FCC which specifies different terms for compensation for INP than those set forth in the Pricing Schedule. In addition, the Parties agree to provide INP to each other through NXX migration, although acknowledging that such migration is not literally a type of number portability.

13.1.3 Once Number Portability is implemented, either Party may withdraw, at any time and at its sole discretion, its INP offerings, subject to advance notice to the other Party and coordination to allow the seamless and transparent conversion of INP end user numbers to Number Portability.

13.1.4 INP services and facilities will only be provided where technically feasible, subject to the availability of facilities. INP services and facilities are not offered for SWBT operated coin telephone service.

13.1.5 Other provisions of this Section 13.0 notwithstanding, the Parties agree and stipulate as follows:

(a) The Parties shall comply with all effective FCC, Commission and/or court orders governing INP cost recovery and compensation. To the extent such an order is issued which specifically directs different treatment of INP-related payments previously made between the Parties pursuant to this Section 13.0, the Parties shall within thirty (30) days of the issuance of such order true-up all such previous INP-related payments to reflect such order.

To the extent subsequent regulatory or court action overturns those provisions of such order which created the impact on the Parties' prior payments, within thirty (30) days of such action the Parties shall likewise true-up to reflect such subsequent regulatory or court action.

(b) Neither Party waives its rights to advocate its views on INP cost recovery, or to present before any appropriate regulatory or other agency its views on FCC or Commission actions pertaining to INP cost recovery.

13.2 Procedures for Providing INP Through Remote Call Forwarding

MFS and SWBT shall provide INP through Remote Call Forwarding as follows:

13.2.1 An end user of one Party ("Party A") elects to become an end user of the other Party ("Party B"). The end user elects to utilize the original telephone number(s) corresponding to the Telephone Exchange Service(s) it previously received from Party A and within the same NPA-NXX code area, in conjunction with the Telephone Exchange Service(s) it will now receive from Party B. Upon authorization by an end user, Party B will issue an associated service order to Party A, assigning the number to Party B. Party A will comply with the service order. Party A will route the forwarded traffic to Party B over the appropriate Traffic Exchange trunks.

13.2.2 Notwithstanding the above, Party A may refuse to port any number to Party B if Party A has ceased providing dial tone to the end user as of the time that Party A receives the service order from Party B to port the number. In such an instance, Party A agrees to port the number to Party B at the time that Party A restores dial tone to the end user.

13.2.3 Party B will become the customer of record for the original Party A telephone numbers subject to the INP arrangements. The billing of all collect, calling card and billed to third number calls to INP numbers will be handled through a process that is mutually agreed to by both parties. This process will be implemented in a time frame that is consistent with the appearance of first usage.

13.2.4 Party A will update its Line Information Database ("LIDB") listings for retained numbers, and restrict or cancel line-number-based calling cards associated with those forwarded numbers as directed by Party B. In addition, Party A will update the retained numbers in the LIDB with the screening options provided by Party B on a per-order basis. Party B will determine which mutually agreeable screening options should be made available by Party A. In recognition of the expectation that INP will be an interim device, the inability of Party A to easily identify LIDB queries directed to ported numbers, Party B's willingness to forego any claim to a share in the revenues which may result from those queries, and other factors, the Parties agree they will not assess a charge to each other to maintain ported numbers in their respective LIDB databases.

13.2.5 Within two (2) business days of receiving notification from the end user, Party B shall notify Party A of the end user's termination of service with Party B, and shall further notify Party A as to that end user's instructions regarding its telephone number(s). Party A will reinstate service to that end user, cancel the INP arrangements for that end user telephone number(s), or redirect the INP arrangement to another INP-participating-LEC pursuant to the end user's instructions at that time.

13.3 Procedures for Providing INP Through Direct Inward Dial

Upon request, SWBT shall provide INP to MFS via Direct Inward Dial Trunks in accordance with its standard procedures and at the rates set forth in the Pricing Schedule.

13.3.1 If MFS has facilities to the Central Office where the DID numbers reside, then SWBT will route the DID traffic from the calling party over SWBT's interoffice facilities to that Central Office and then forward the traffic to MFS over connecting facilities.

13.3.2 If DID numbers reside in SWBT Central Offices other than the Central Office that serves MFS, MFS shall also purchase interoffice mileage, which shall be equal to the distance between the SWBT wire center that serves the MFS location and the Central Office where the DID numbers reside. SWBT will then forward the DID traffic from that Central Office to the MFS location over interoffice facilities, then onto MFS's connecting facilities.

13.4 Procedures for Providing INP Through NXX Migration

Where either Party has activated an entire NXX for a single end user, or activated more than half of an NXX for a single end user with the remaining numbers in that NXX either reserved for future use or otherwise unused, if such end user chooses to receive service from the other Party, the first Party shall cooperate with the second Party to have the entire NXX reassigned in the LERG (and associated industry databases, routing tables, etc.) to an End Office operated by the second Party. Such transfer will require development of a transition process, to be included in the Joint Grooming Plan, to minimize impact on the Network and on the end user(s)' service and will be subject to appropriate industry lead-times (currently 45 days) for movements of NXXs from one switch to another. The Party to whom the NXX is migrated will pay NXX migration charges listed in the Pricing Schedule.

13.5 Receipt of Terminating Compensation on Traffic to INP'ed Numbers

The Parties agree that under INP, the net terminating compensation on calls to INP'ed numbers will be received by each end user's chosen local service provider as if each call to the end user had been originally addressed by the caller to a telephone number bearing an NPA-NXX directly assigned to the end user's chosen local service provider. In order to accomplish this objective where INP is employed, the Parties shall utilize the process set forth

in this Section 13.5 below (or other mutually developed and agreed to arrangement) whereby the net terminating compensation on calls subject to INP will be passed from the Party (the "Performing Party") which performs the INP to the other Party (the "Receiving Party") for whose end user the INP is provided. The process outlined in this Section 13.5 shall not apply in the case of NXX migration pursuant to Section 13.4 since in such cases the end user's chosen provider will directly receive all terminating compensation.

13.5.1 The Parties will treat all ported calls as two separate call segments in the interLATA and intraLATA access billing and local interconnection settlement billing systems.

13.5.2 The Performing Party will quantify the total monthly terminating ported minutes of use to the Receiving Party by each Performing Party's end office.

13.5.3 The Performing Party will quantify the total monthly interstate, intrastate, and local minutes of use in those Performing Party's end offices in accordance with Section 13.5.2 above in order to determine the jurisdictional percentages. The Receiving party shall have the right to audit those percentages, not to exceed once per quarter. The Performing Party shall provide the Receiving Party with detailed summary reporting on a total calling area basis each month.

13.5.4 Each month, using the percentages developed pursuant to Section 13.5.3 above, the Performing Party will calculate by end office the interstate and intrastate access adjustment amounts from the initial billing amounts under Section 13.5.1 for subsequent payment to the Receiving party. This adjustment will be based on the Performing Party's interstate and intrastate access rates utilizing the applicable rate elements, i.e., carrier common line (CCL), residual interconnection charge (RIC), local switching (LS), local transport termination (LTT), and local transport facility (LTF).

13.5.5 Each month the Performing Party will calculate a local interconnection settlement billing credit related to the interstate and intrastate (non-local) ported calls from the initial billing amounts under Section 13.5.1. The billing credit for these non-local calls will be included with the calculation under Section 13.5.4 for subsequent reimbursement to the Performing Party on a net payment basis by the Receiving Party.

13.5.6 Each month, the Performing Party will calculate an Optional EAS settlement additive payable to the Receiving Party applicable to the nontoll ported volumes remaining after the computations under Sections 13.5.3, 13.5.4, and 13.5.5. This will be based on the monthly relationship of Local and Optional EAS volumes of nonported Traffic that the Performing Party originates to the Receiving Party. The EAS settlement additive will be included with the calculations under 13.5.4 for subsequent reimbursement to the Receiving Party by the Performing Party.

13.5.7 The net terminating compensation will be reflective of the following:

(Local Traffic times the Reciprocal Compensation Rate set forth in the Pricing Schedule) plus (Optional EAS traffic times the Optional EAS compensation rate set forth in the Pricing Schedule) plus (Intrastate Access Traffic times SWBT's applicable intrastate access rates) plus (Interstate Access Traffic times SWBT's applicable interstate access rates).

14.0 DIALING PARITY -- SECTION 251(b)(3) and 271(e)(2)

14.1 The Parties shall provide Local Dialing Parity to each other as required under Section 251(b)(3) of the Act.

14.2 SWBT shall provide IntraLATA Dialing Parity in accordance with Section 271(e)(2) of the Act.

15.0 ACCESS TO RIGHTS-OF-WAY -- SECTION 251(b)(4)

Each Party shall provide the other Party access to its poles, ducts, rights-of-way and conduits it owns or controls in accordance with Section 224 of the Act on terms, conditions and prices comparable to those offered to any other entity pursuant to each Party's applicable tariffs and/or standard agreements.

16.0 DATABASE ACCESS

In accordance with Section 271 of the Act, SWBT shall provide MFS with nondiscriminatory access to databases and associated signaling necessary for call routing and completion. When requesting access to databases not otherwise provided for in this Agreement, or appropriate interfaces, regardless of whether they constitute unbundled Network Elements, MFS will use the Network Element Bona Fide Request process.

17.0 COORDINATED SERVICE CALLS

17.1 **Referral Announcement.** When an end user changes its service provider from SWBT to MFS, or from MFS to SWBT, and does not retain its original telephone number, the Party formerly providing service to such end user shall provide a referral announcement ("Referral Announcement") on the abandoned telephone number which provides details on the end user's new number to the extent the new number is listed. Referral Announcements shall

be provided reciprocally, free of charge to either the other Party or the end user, for a period of not less than one hundred eighty (180) days after the date the end user changes its telephone number in the case of business end users and not less than ninety (90) days after the date the end user changes its telephone number in the case of residential end users. However, if either Party provides Referral Announcements for a period longer than the above respective periods when its end users change their telephone numbers, such Party shall provide the same level of service to end users of the other Party.

17.2 Coordinated Repair Calls. The Parties will employ the following procedures for handling misdirected repair calls:

- (a) The Parties will inform their respective end users of the correct telephone numbers to call to access their respective repair bureaus.
- (b) To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of local exchange service in a courteous manner, at no charge, and the end user will be provided the correct contact telephone number.

In responding to repair calls, neither Party shall make disparaging remarks about each other, nor shall they use these repair calls as the basis for internal referrals or to solicit customers or to market services, nor shall they initiate extraneous communications beyond the direct referral to the correct repair telephone number.

- (c) The Parties will provide their respective repair contact numbers to one another on a reciprocal basis.

18.0 OTHER SERVICES

18.1 White Pages. In accordance with Section 271(c)(2)(B) of the Act, SWBT will make nondiscriminatory access to White Pages service available under the terms and conditions of Appendix WP, attached hereto and incorporated by reference.

18.2 Calling Name Information. The Parties shall provide, on mutually agreeable and reciprocal terms, each other with access to Calling Name information of their respective end users whenever one Party initiates a query from a Signaling System Point for such information associated with a call terminating to an end user who subscribes to a calling name service.

19.0 GENERAL RESPONSIBILITIES OF THE PARTIES

19.1 SWBT and MFS shall each use their best efforts to meet the Interconnection Activation Dates.

19.2 Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with SWBT's network and to terminate the traffic it receives in that standard format to the proper address on its network. The Parties are each solely responsible for participation in and compliance with national network plans, including the National Network Security Plan and the Emergency Preparedness Plan.

19.3 Each Party shall, unless otherwise agreed, adhere to the requirements for the recording, record exchange, and billing of traffic using the guidelines as set forth in the Technical Exhibit Settlement Procedures (TESP), provided by SWBT to MFS.

19.4 Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's end users, and either Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, either Party shall provide the other Party notice, if practicable, at the earliest practicable time.

19.5 Each Party is solely responsible for the services it provides to its end users and to other Telecommunications Carriers.

19.6 The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

19.7 At all times during the term of this Agreement, each Party shall keep and maintain in force at each Party's expense all insurance required by law (e.g. workers' compensation insurance) as well as general liability insurance for personal injury or death to any one person, property damage resulting from any one incident, automobile liability with coverage for bodily injury for property damage. Upon request from the other Party, each Party shall provide to the other Party evidence of such insurance (which may be provided through a program of self insurance).

19.8 In addition to its indemnity obligations under Section 24.0, each Party shall provide, in its tariffs and contracts with its end users that relate to any Telecommunications Service provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any end user or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or

tort, that exceeds the amount such Party would have charged the applicable end user for the service(s) or function(s) that gave rise to such Loss, and (ii) any Consequential Damages (as defined in Section 25.3 below).

19.9 Unless otherwise stated, each Party will render a monthly bill to the other for service(s) provided hereunder. Remittance in full will be due within thirty (30) days of the billing date. Interest shall apply on overdue amounts (other than Disputed Amounts which are subject to Section 28.12) at the rate specified in Section 28.12, unless otherwise specified in an applicable tariff. Each Party reserves the right to net delinquent amounts against amounts otherwise due the other.

19.10 SWBT is participating with the industry to develop standardized methods through the OBF and shall implement ordering and billing formats/processes consistent with industry guidelines as capabilities are deployed. Where such guidelines are not available or SWBT decides not to fully utilize industry guidelines, SWBT will provide MFS with information on its ordering and billing format/process and requirements.

20.0 EFFECTIVE DATE, TERM, AND TERMINATION

20.1 This Agreement shall be effective upon approval by the Missouri PSC when it has determined that the Agreement is in compliance with Sections 251 and 252 of the Act ("Effective Date").

20.2 The initial term of this Agreement shall be two (2) years (the "Term") which shall commence on the Effective Date. Absent the receipt by one Party of written notice from the other Party at least sixty (60) days prior to the expiration of the Term to the effect that such Party does not intend to extend the Term of this Agreement, this Agreement shall automatically renew and remain in full force and effect on and after the expiration of the Term until terminated by either Party pursuant to Section 20.3.

20.3 Either Party may terminate this Agreement in the event that the other Party fails to perform a material obligation that disrupts the operation of either Party's network and/or end user service and fails to cure such material nonperformance within forty-five (45) days after written notice thereof.

20.4 If pursuant to Section 20.2 this Agreement continues in full force and effect after the expiration of the Term, either Party may terminate this Agreement ninety (90) days after delivering written notice to the other Party of its intention to terminate this Agreement, subject to Section 20.5. Neither Party shall have any liability to the other Party for termination of this Agreement pursuant to this Section 20.4 other than its obligations under Section 20.5.

20.5 Upon termination or expiration of this Agreement in accordance with this Section 20.0:

- (a) each Party shall comply immediately with its obligations set forth in Section 28.6.2; and
- (b) each Party shall promptly pay all amounts (including any late payment charges) owed under this Agreement.

If upon expiration or termination the Parties are negotiating a successor agreement, each party shall continue to perform its obligations and provide the services described herein that are to be included in the successor agreement until such time as the latter agreement becomes effective.

20.6 Except as set forth in Section 26.5, 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.

21.0 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NEITHER SWBT NOR MFS ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

22.0 SLAMMING

Each Party will abide by the FCC's rules and procedures regarding obtaining end user authorization to change an end user IXC in obtaining end user authorization to change an end user's local service provider to itself and in assuming responsibility for any applicable charges. Only an end user can initiate a challenge to a change in its local exchange telephone service. The rates, terms, and conditions herein shall be subject to change to comply with any Missouri PSC rules or orders.

23.0 SEVERABILITY

23.1 The services, arrangements, Interconnection, terms and conditions of this Agreement were mutually negotiated by the Parties as a total arrangement and are intended to be nonseverable, subject only to Section 28.16 of this Agreement.

23.2 In the event the Commission, the FCC, or a court rejects any portion or determines that any provision of this Agreement is contrary to law, or is invalid or unenforceable for any reason, the Parties shall continue to be bound by the terms of this Agreement, insofar as possible, except for the portion rejected or determined to be unlawful, invalid, or unenforceable. In such event, the Parties shall negotiate in good faith to replace the rejected, unlawful, invalid, or unenforceable provision and shall not discontinue service to the other party during such period if to do so would disrupt existing service being provided to an end user. Nothing in this Agreement shall be construed as requiring or permitting either Party to contravene any mandatory requirement of federal or state law, or any regulations or orders adopted pursuant to such law.

24.0 INDEMNIFICATION

24.1 Each Party shall be responsible only for service(s) and facility(ies) which are provided by that Party, its authorized agents, subcontractors, or others retained by such parties, and neither Party shall bear any responsibility for the services and facilities provided by the other Party, its agents, subcontractors, or others retained by such parties.

24.2 Except as otherwise provided in this Section 24.0 and Section 25.1, and to the extent not prohibited by law and not otherwise controlled by tariff, each Party (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any Loss to a third party arising out of the negligence or willful misconduct by such Indemnifying Party, its agents, its end user, contractors, or others retained by such parties, in connection with its provision of services or functions under this Agreement.

24.3 In the case of any Loss alleged or made by an end user of either Party, the Party ("Indemnifying Party") whose end user alleged or made such Loss shall defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any or all of such Loss alleged by each and every end user. MFS agrees to indemnify, defend and hold harmless SWBT from any Loss arising out of SWBT's provision of 911 services or out of MFS's end users' use of the 911 service, whether suffered, made, instituted or asserted by MFS or its end users, including for any personal injury or death of any person or persons, except for Loss which is the direct result of SWBT's own negligence or wilful misconduct.

24.4 Each Party ("Indemnified Party") shall be indemnified, defended and held harmless by the other Party ("Indemnifying Party") against any Loss arising from such Indemnifying Party's use of services offered under this Agreement, involving:

(a) Tort claims, including claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's end users; or

(b) Claims for patent, trademark, copyright infringement or other infringement of intellectual property rights, arising from the Indemnifying Party's acts combining or using the service furnished by the Indemnified Party in connection with facilities or equipment furnished by the Indemnifying Party or its end users, agents, subcontractors or others retained by such parties.

24.5 The Indemnifying Party agrees to defend any suit brought against the Indemnified Party for any Loss identified in this Section 24.0. The Indemnified Party agrees to notify the Indemnifying Party promptly in writing of any written claims, lawsuits, or demand for which such Indemnifying Party is or may be responsible and of which the Indemnified Party has knowledge and to cooperate in every reasonable way to facilitate defense or settlement of claims. The Indemnifying Party shall have the exclusive right to control and conduct the defense and settlement of any such actions or claims subject to consultation with the Indemnified Party. The Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.

25.0 LIMITATION OF LIABILITY

25.1 Except for Losses alleged or made by an end user of either Party, in the case of any Loss alleged or made by a third party arising from the negligence or willful misconduct of both Parties, each Party shall bear, and its obligations under this Section 25.0 shall be limited to, that portion (as mutually agreed to by the Parties) of the resulting expense caused by its (including that of its agents, servants, contractors or others acting in aid or concert with it) negligence or willful misconduct.

25.2 Except for indemnity obligations under Section 24.0, each Party's liability to the other Party for any Loss relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall not exceed in total the amount SWBT or MFS has or would have charged to the other Party for the affected service(s) or function(s) for the time period during which the service(s) or function(s) were not performed or were otherwise improperly performed.

25.3 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to, loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation under Section 24.2 to indemnify, defend and hold the other Party harmless against any amounts payable to a third party, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorneys' fees) and Consequential Damages of such third party.

26.0 LIQUIDATED DAMAGES FOR SPECIFIED ACTIVITIES

26.1 Certain Definitions. When used in this Section 26.0, the following terms shall have the meanings indicated:

26.1.1 "Specified Performance Breach" means the failure by SWBT to meet the Performance Criteria for any Specified Activity for a period of three (3) consecutive calendar months.

26.1.2 "Specified Activity" means any of the following activities:

- (i) the installation by SWBT of unbundled Loops for MFS, including the installation of unbundled Loops under applicable tariff(s) ("Unbundled Loop Installation");
- (ii) SWBT's provision of Interim Number Portability; or
- (iii) the repair of out of service problems for MFS ("Out of Service Repairs").

26.1.3 "Performance Criteria" means, with respect to each calendar month during the term of this Agreement, the performance by SWBT during such month of each Specified Activity shown below within the time interval shown in at least eighty percent (80%) of the covered instances:

SPECIFIED ACTIVITY	PERFORMANCE INTERVAL DATE
(i) <u>Unbundled Loop Installation</u>	
1-10 Loops per Service Order	5 days from SWBT's Receipt of valid Service Order
11-20 Loops per Service Order	10 days from SWBT's Receipt of valid Service Order
21 + Loops per Service Order	To be Negotiated
(ii) <u>Interim Number Portability</u>	
1-10 Numbers per Service Order	5 days from SWBT's Receipt of valid Service Order
11-20 Numbers per Service Order	10 days from SWBT's Receipt of valid Service Order
21 + Numbers per Service Order	To be Negotiated
(iii) <u>Out-of-Service Repairs</u>	Less than 24 hours from SWBT's Receipt of Notification of Out-of-Service Condition

26.2 Specified Performance Breach. In recognition of the (1) loss of end user opportunities, revenues and goodwill which MFS might sustain in the event of a Specified Performance Breach; (2) the uncertainty, in the event of such a Specified Performance Breach, of MFS having available to it customer opportunities similar to those opportunities currently available to MFS; and (3) the difficulty of accurately ascertaining the amount of damages MFS would sustain in the event of such a Specified Performance Breach, SWBT agrees to pay MFS, subject to Section 26.4 below, damages as set forth in Section 26.3 below in the event of the occurrence of a Specified Performance Breach.

26.3 Liquidated Damages. The damages payable by SWBT to MFS as a result of a Specified Performance Breach shall be \$75,000 for each Specified Performance Breach (collectively, the "Liquidated Damages"). MFS and SWBT agree and acknowledge that (a)

the Liquidated Damages are not a penalty and have been determined based upon the facts and circumstances of MFS and SWBT at the time of the negotiation and entering into of this Agreement, with due regard given to the performance expectations of each Party; (b) the Liquidated Damages constitute a reasonable approximation of the damages MFS would sustain if its damages were readily ascertainable; and (c) MFS shall not be required to provide any proof of the Liquidated Damages.

26.4 Limitations. In no event shall SWBT be liable to pay the Liquidated Damages if SWBT's failure to meet or exceed any of the Performance Criteria is caused, directly or indirectly, by a Delaying Event. A "Delaying Event" means (a) a failure by MFS to perform any of its obligations set forth in this Agreement (including, without limitation, the Implementation Schedule and the Joint Grooming Plan), (b) any delay, act or failure to act by an end user, agent or subcontractor of MFS, (c) any Force Majeure Event, or (d) for INP, where memory limitations in the switch in the SWBT serving office cannot accomodate the request. If a Delaying Event (i) prevents SWBT from performing a Specified Activity, then such Specified Activity shall be excluded from the calculation of SWBT's compliance with the Performance Criteria, or (ii) only suspends SWBT's ability to timely perform the Specified Activity, the applicable time frame in which SWBT's compliance with the Performance Criteria is measured shall be extended on an hour-for-hour or day-for-day basis, as applicable, equal to the duration of the Delaying Event.

26.5 Sole Remedy. The Liquidated Damages shall be the sole and exclusive remedy of MFS for SWBT's breach of the Performance Criteria or a Specified Performance Breach as described in this Section 26.0 and shall be in lieu of any other damages or credit MFS might otherwise seek for such breach of the Performance Criteria or a Specified Performance Breach through any claim or suit brought under any contract or tariff.

26.6 Records. SWBT shall maintain complete and accurate records, on a monthly basis, of its performance under this Agreement of each Specified Activity and its compliance with the Performance Criteria. SWBT shall provide to MFS such records in a self-reporting format on a monthly basis. Notwithstanding Section 28.6.1, the Parties agree that such records shall be deemed "Proprietary Information" under Section 28.6.

27.0 REGULATORY APPROVAL

The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC. The Parties believe in good faith and agree that the services to be provided under this Agreement satisfy the specifically-mentioned sections of the Act and are in the public interest. Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of the Act without modification.

28.0 MISCELLANEOUS

28.1 Authorization.

(a) SWBT is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder.

(b) MFS is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

28.2 Compliance and Certification.

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

28.2.2 MFS warrants that it has obtained all necessary state certification required in those states in which MFS has ordered services from SWBT pursuant to this Agreement. Upon request by any state governmental entity, MFS shall provide proof of certification.

28.2.3 Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with the Communications Law Enforcement Act ("CALEA"). Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

28.3 Law Enforcement

28.3.1 SWBT and MFS shall handle law enforcement requests as follows:

- (a) Intercept Devices: Local and federal law enforcement agencies periodically request information or assistance from local telephone service providers. When either Party receives a request associated with an end user of the other Party, it shall refer such request to the Party that serves such end user, unless the request directs the receiving Party to attach a pen register, trap-and-trace or form of intercept on the Party's facilities, in which case that Party shall comply with any valid request.

- (b) Subpoenas: If a Party receives a subpoena for information concerning an end user the Party knows to be an end user of the other Party, it shall refer the subpoena back to the requesting party with an indication that the other Party is the responsible company, unless the subpoena requests records for a period of time during which the Party was the end user's service provider, in which case the Party will respond to any valid request.
- (c) Emergencies: If a Party receives a request from a law enforcement agency for temporary number change, temporary disconnect, or one-way denial of outbound calls for an end user of the other Party by the receiving Party's switch, that Party will comply with an valid emergency request. However, neither Party shall be held liable for any claims or damages arising from compliance with such requests on behalf of the other Party's end user and the Party serving such end user agrees to indemnify and hold the other Party harmless against any and all such claims.

28.4 Independent Contractor. Each Party and each Party's contractor shall be solely responsible for the withholding or payment of all applicable federal, state and local income taxes, social security taxes and other payroll taxes with respect to its employees, as well as any taxes, contributions or other obligations imposed by applicable state unemployment or workers' compensation acts. Each Party has sole authority and responsibility to hire, fire and otherwise control its employees.

28.5 Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, cable cuts, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations related to the performance so interfered with). The affected Party shall use its best efforts to avoid or remove the cause of nonperformance and both Parties shall proceed to perform with dispatch once the causes are removed or cease.

28.6 Confidentiality.

28.6.1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data,

(i) furnished by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") dealing with customer-specific, facility-specific, or usage-specific information, other than customer information communicated for the purpose of publication or directory database inclusion, 911, call processing, billing or settlement or as otherwise mutually agreed upon, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary," or (iii) communicated orally and declared to the Receiving Party at the time of delivery, or by written notice given to the Receiving Party within ten (10) days after declaration to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the Disclosing Party.

28.6.2 Upon request by the Disclosing Party, the Receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic, or otherwise. In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement.

28.6.3 Each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only for performing the covenants contained in the Agreement and shall disclose such Proprietary Information only to those employees, contractors, agents or Affiliates who have a need to know. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the parties in writing.

28.6.4 Unless otherwise agreed, the obligations of confidentiality and nonuse set forth in the Agreement do not apply to such Proprietary Information as:

- (i) was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or
- (ii) is or becomes publicly known through no wrongful act of the receiving Party; or
- (iii) is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or
- (iv) is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or

- (v) is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or
- (vi) is approved for release by written authorization of the disclosing Party;
or
- (vii) is required to be made public by the Receiving Party pursuant to applicable law or regulation provided that the receiving party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then either seek appropriate protective relief from all or part of such requirement or, if it fails to successfully do so, it shall be deemed to have waived the Receiving Party's compliance with Section 28.6 with respect to all or part of such requirement. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief which such Disclosing Party chooses to obtain.

28.6.5 Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.

28.6.6 Pursuant to Section 222(b) of the Act, both parties agree to limit their use of Proprietary Information received from the other to the permitted purposes identified in the Act.

28.7 Governing Law. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the FCC, the exclusive jurisdiction and remedy for all such claims shall as provided for by the FCC and the Act. For all claims under this Agreement that are based upon issues within the jurisdiction (primary or otherwise) of the Commission, the exclusive jurisdiction for all such claims shall be with such Commission, and the exclusive remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the state of Missouri without reference to conflict of law provisions.

28.8 Taxes.

28.8.1 Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on or with respect to the services provided by or to such Party, except for any Tax on either party's corporate existence, status, or income. Whenever possible, these amounts shall be billed as a separate item on the invoice.

party's corporate existence, status, or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing party shall furnish the providing party a proper resale tax exemption certificate as authorized or required by statute or regulation by 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 until such time as the purchasing Party presents a valid certification. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party until such time as the purchasing Party presents a valid certificate.

28.8.2 With respect to any purchase of services, facilities or other arrangements, 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.

28.8.3 With respect to any purchase hereunder of services, facilities or arrangements 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 on an after-tax basis 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.

28.8.4 If the providing party fails 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.

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 on an after-tax basis 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.

28.9 Non-Assignment. This Agreement shall be binding upon every subsidiary and Affiliate of either Party that is engaged in providing Telephone Exchange and Exchange Access services in any territory within which SWBT is an Incumbent Local Exchange Carrier as of the date of this Agreement (the "SWBT Territory") and shall continue to be binding upon all such entities regardless of any subsequent change in their ownership. Each Party covenants that, if it sells or otherwise transfers to a third party its Telephone Exchange and Exchange Access network facilities within the SWBT Territory, or any portion thereof, to a third party, it will require as a condition of such transfer that the transferee agree to be bound by this Agreement with respect to services provided over the transferred facilities. Except as provided in this paragraph, neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party; provided that each Party may assign this Agreement to a corporate Affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

28.10 Non-Waiver. Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

28.11 Audits. Each Party to this Agreement will be responsible for the accuracy and quality of its data as submitted to the respective Parties involved. Where SS7 is deployed, each Party shall pass Calling Party Number (CPN) information on each call carried over the Traffic Exchange trunks; provided that so long as the percentage of calls passed with CPN is greater than ninety percent (90%), all calls exchanged without CPN information shall be billed as either Local Traffic or IntraLATA Toll Traffic in direct proportion to the minutes of use of calls exchanged with CPN information. If the percentage of calls passed with CPN is less than 90%, all calls passed without CPN shall be billed as IntraLATA Toll Traffic.

Upon reasonable written notice and at its own expense, each Party or its authorized representative (providing such authorized representative does not have a conflict of interest related to other matters before one of the Parties) shall have the right to conduct an audit of the other Party to give assurances of compliance with the provisions of this Agreement. This includes on-site audits at the other Party's or the Party's vendor locations. Each Party, whether or not in connection with an audit, shall maintain reasonable records for a minimum of 24 months and provide the other Party with reasonable access to such information as is necessary to determine amounts receivable or payable under this Agreement. Each Party's right to access information for audit purposes is limited to data not in excess of 24 months in age.

28.12 Disputed Amounts.

28.12.1 No claims, under this Agreement or its Appendices, shall be brought for disputed amounts more than twenty-four (24) months from the date of occurrence which gives rise to the dispute. Under this Section 28.12, 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 sixty (60) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay when due (i) all undisputed amounts to the Billing Party and (ii) all Disputed Amounts into an interest bearing escrow account with a third party escrow agent mutually agreed upon by the Parties.

28.12.2 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties shall appoint a designated representative who has authority to settle the dispute and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. 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.

28.12.3 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 28.11.2, then either Party may file a complaint with the Commission to resolve such issues or proceed with any other remedy pursuant to law or equity. The Commission may direct release of any or all funds (including any accrued interest) in the escrow account, plus applicable late fees, to be paid to either Party.

28.12.4 The Parties agree that all negotiations pursuant to this Section 28.12 shall remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

28.12.5 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law.

28.13 Dispute Resolution.

28.13.1 No claims shall be brought for disputes arising under this Agreement or its Appendices more than twenty-four (24) months from the date of occurrence which gives rise to the dispute.

28.13.2 For disputes other than disputed amounts under this Agreement or its Appendices, each Party shall appoint a designated representative as set forth in Section 28.12.2 and if unable to resolve the dispute, proceed as set forth in Section 28.12.3.

28.14 Notices. Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally, on the date receipt is acknowledged in writing by the recipient if delivered by regular mail, or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Notice may also be provided by facsimile, which shall be effective on the next Business Day following the date of transmission. "Business Day" shall mean Monday through Friday, SWBT/MFS holidays excepted. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address indicated below or such address as the Party to be notified has designated by giving notice in compliance with this section, except that notices to a Party's 24-hour contact number shall be by telephone and/or facsimile and shall be deemed to have been received on the date transmitted.

To MFS: Director of Regulatory Affairs, Southern Region
MFS Communications Company, Inc.
6 Concourse Parkway, Suite 2100
Atlanta, Georgia 30328
Facsimile Number: (770) 390-6787

To SWBT: General Manager-Competitive Provider Account Team
Southwestern Bell Telephone Company
One Bell Plaza, Room 525
Dallas, Texas 75202
Facsimile Number: (214) 464-1486

24-Hour Network Management Contact

For MFS:

1-800-MFS-CITY

For SWBT:

Area Manager-NSMC Control
1-800-792-2662

28.15 Publicity and Use of Trademarks or Service Marks.

28.15.1 The Parties agree not to use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures implying endorsement by the other Party or any of its employees without such Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied.

28.15.2 Nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for commercial purposes without prior written approval.

28.16 Section 252(i) Obligations. If either Party enters into an agreement (the "Other Agreement") approved by the Commission pursuant to Section 252 of the Act which provides for the provision of arrangements covered in this Agreement to another requesting Telecommunications Carrier, including an Affiliate, such Party shall make available to the other Party such arrangements upon the same rates, terms and conditions as those provided in the Other Agreement. At its sole option, the other Party may avail itself of either (i) the Other Agreement in its entirety or (ii) the prices, terms and conditions of the Other Agreement that directly relate to any of the following duties as a whole:

- (1) Interconnection and Exchange Access - Section 251(c)(2) of the Act (Sections 4.0, 5.0, 6.0, and 7.3 of this Agreement); or
- (2) Information Services Traffic (Section 7.1 of this Agreement); or
- (3) LSV/BLI Traffic (Section 7.2 of this Agreement); or
- (4) Cellular Traffic (Section 7.4 of this Agreement); or
- (5) Resale - Section 251(c)(4) of the Act (Section 10.0 of this Agreement); or
- (6) Collocation - Section 251(c)(6) of the Act (Section 12.0 of this Agreement); or
- (7) Number Portability - Section 251(b)(2) of the Act (Section 13.0 of this Agreement); or
- (8) Database Access - Section 271(c)(2)(B)(x) of the Act (Section 16.0 of this Agreement); or