

Exhibit No.:

Issues: Reciprocal Compensation

Witness: Don Price

Sponsoring Party: MCI WorldCom Communications,
and Brooks Fiber Communications
of Missouri, Inc.

Type of Exhibit: Direct Testimony

Case No.: TC-2000-225, et al.

FILED³

MAY 01 2000

Missouri Public
Service Commission

MCI WORLDCOM COMMUNICATIONS, INC.

AND

BROOKS FIBER COMMUNICATIONS OF MISSOURI, INC.

DIRECT TESTIMONY

OF

DON PRICE

CASE NO. TC-2000-225, et al.

St. Louis, Missouri

May 1, 2000

STATE OF TEXAS)
) SS.
COUNTY OF TRAVIS)

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

**MCI WorldCom Communications, Inc.,
Brooks Fiber Communications of
Missouri, Inc., and BroadSpan Communications,
Inc., d/b/a Primary Network
Communications, Inc.,**

Complainants,

Case No. TC-2000-225, et al.

vs.

Southwestern Bell Telephone Company,

Respondent.

AFFIDAVIT OF DON PRICE

Don Price, of lawful age, sound of mind and being first duly sworn, deposes and states:

1. My name is Don Price. I am Senior Manager, State Regulatory Policy for MCI WorldCom.
2. Attached hereto and made a part hereof for all purposes is my direct testimony in the above-referenced case.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Don Price

SUBSCRIBED AND SWORN TO before me, a Notary Public, this 1 day of May, 2000.

Notary Public

My Commission Expires:

Direct Testimony of Don Price

1 **Q. Please state your name, your current position of employment, business address, and**
2 **your duties.**

3 **A. My name is Don Price. I am presently the Senior Manager of State Regulatory Policy for**
4 **MCI WorldCom. My business address is 701 Brazos, Suite 600, Austin, Texas**
5 **78701. My current responsibilities include providing national policy guidance on pricing**
6 **issues related to interconnection negotiations. I also have responsibilities for the**
7 **company's contract enforcement activities related to disputes over the payments of**
8 **reciprocal compensation.**

9
10 **Q. Please describe your education and employment background.**

11 **A. I have a Bachelor of Arts in Sociology from the University of Texas at Arlington,**
12 **conferred in 1976, and a Masters of Arts in Sociology from the University of Texas**
13 **Arlington, conferred in 1978. I began my career in telecommunications with GTE**
14 **(General Telephone Company of the Southwest) in 1979 in the Economic Planning**
15 **department, where I was responsible for making internal forecasts of central office**
16 **switching equipment and outside plant needs. I assumed positions of increasing**
17 **responsibilities during my five years with GTE, becoming familiar with many of the**
18 **workings of a regulated local exchange telephone company, including the business office,**
19 **billing systems, and network design and operations. In 1983, I took a position with the**
20 **Public Utility Commission of Texas, providing policy recommendations and testimony**
21 **on a variety of telecommunications issues including switched and special access charges,**
22 **long distance services, and numerous other service offerings. I went to work for MCI**

1 Telecommunications Corporation (which merged with WorldCom in 1998 to become
2 MCI WorldCom) in the State Regulatory department in Austin in 1986. Since that time I
3 have provided expert testimony on complex pricing and policy issues in twelve states,
4 including Missouri, and have represented the company before the FCC. I have also
5 appeared on panels and made presentations to professional and trade associations on
6 telecommunications policy. In the period immediately following the passage of the
7 Telecommunications Act of 1996, I represented the company in a number of arbitration
8 proceedings to resolve disputes arising in negotiations on interconnection agreements.
9

10 **Q. On whose behalf are you testifying?**

11 A. I am testifying on behalf of the Complainants that are MCI WorldCom companies –
12 Brooks Fiber Communications of Missouri, Inc. ("Brooks") and MCI WorldCom
13 Communications, Inc. (MCIWC).
14

15 **Q. Identify Brooks.**

16 A. Brooks is a Delaware corporation. Brooks is a "local exchange carrier" within the
17 meaning of the Act, is authorized to and does provide local exchange services within the
18 State of Missouri as a foreign corporation, and is subject to the jurisdiction of the
19 Commission. Brooks is authorized to operate in Missouri as a competitive local
20 exchange carrier (CLEC), including in Southwestern Bell Telephone Company's
21 (SWBT's) service areas, under certificate granted and tariffs approved by the
22 Commission.

1 **Q. Identify MCIWC.**

2 A. MCIWC is a Delaware corporation formerly known as WorldCom Technologies, Inc.,
3 and is the successor in interest to MFSCC under the interconnection agreement with
4 SWBT at issue in this case pursuant to transactions and reorganizations approved by this
5 Commission. (See Case Nos. TA-98-15 and TM-99-588). As used herein, "MCIWC"
6 refers to both the Complainant and its predecessors in interest. MCIWC is a "local
7 exchange carrier" within the meaning of the Act, is authorized to and does provide local
8 exchange services within the State of Missouri as a foreign corporation, and is subject to
9 the jurisdiction of the Commission. MCIWC is authorized to operate in Missouri as a
10 competitive local exchange carrier (CLEC), including in SWBT's service areas, under
11 certificate granted and tariffs approved by the Commission.

12
13 **Q. What is the purpose of your testimony and how does it relate to the testimony of**
14 **other witnesses?**

15 A. The purpose of my testimony is to provide the Missouri Public Service Commission
16 ("Commission") with Brooks' and MCIWC's position on the issues in this case and to
17 provide the Commission with an analytical framework for resolving the issues associated
18 with the Complaints brought by Brooks and MCIWC.

19
20 Mr. Ed Cadieux, who is now with Gabriel Communications, provides direct testimony
21 regarding the pertinent facts surrounding the negotiation of the interconnection agreement
22 between Brooks and Southwestern Bell Telephone Company ("SWBT"). Mr. Cadieux
23 was one of the lead negotiators on behalf of Brooks at the time. Mr. Tim Devine, who is
24 now with Dantis, has testified at a deposition regarding the pertinent facts surrounding

1 the negotiation of the interconnection agreement between MCIWC and SWBT. Mr.
2 Devine was the lead negotiator on behalf of MCIWC's predecessor MFSCC at the time.
3 Pertinent portions of Mr. Devine's deposition are submitted with Complainants' direct
4 testimony. Mr. Dan Aronson, Director of Local Carrier Revenue Services for MCI
5 WorldCom, provides direct testimony regarding the amounts due and owing from SWBT
6 to Brooks and MCIWC for reciprocal compensation for the termination of local calls
7 under the interconnection agreements.

8
9 **Q. What is the nature of the complaints filed with the Commission by Brooks and**
10 **MCIWC against SWBT?**

11 **A.** Brooks and MCIWC have filed complaints regarding SWBT's failure and refusal to pay
12 reciprocal compensation to them, as required by the interconnection agreements SWBT
13 made and entered with Brooks and MCIWC, for local calls placed by SWBT's end users
14 to end users served by Brooks and MCIWC that are Internet Service Providers (ISPs).
15 Brooks and MCIWC are simply asking this Commission to enforce the terms of their
16 interconnection agreements with SWBT. This case can be resolved by simply looking to
17 the language of each contract, the parties' intent, and the industry custom and practice at
18 the time each contract was entered into, and then answering the question – What types of
19 calls did the parties intend to include within the provisions of the contracts dealing with
20 reciprocal compensation?

21
22 **Q. What are interconnection agreements?**

23 **A.** Historically, SWBT and other incumbent carriers enjoyed monopoly power over local
24 telephone service. Congress decided to end those monopolies by enacting the landmark

1 1996 Act "to shift monopoly [telephone] markets to competition as quickly as possible."
2 [H.R. Rep. No. 104-204, at 89 (1995), reprinted in 1996 U.S.C.C.A.N. 10, 55.] To that
3 end, the Act subjects incumbents such as SWBT to "a host of duties" aimed at bringing
4 competition to the local telephone market. [*AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct.
5 721, 726 (1999).]

6
7 The Act requires incumbent local exchange carriers like SWBT to make the local
8 telephone networks available for use by new competitors and sets forth procedures for
9 opening local markets to competition. [47 U.S.C. §§ 251-52.]

10
11 The terms under which new entrants interconnect with the incumbent's network are
12 contained in interconnection agreements. [47 U.S.C. § 252.] The Act directs new
13 entrants and incumbents to attempt to reach agreement upon terms of interconnection
14 through negotiation. If they cannot agree, the governing state commission conducts an
15 arbitration to resolve disputed issues. [*Id.* § 252(b)(1).] The results of the negotiation and
16 arbitration are memorialized in binding interconnection agreements as approved by the
17 appropriate state commission. [*Id.* § 252(e).]

18
19 The duties imposed by the Act are minimum requirements only, and parties may agree to
20 obligations in interconnection agreements that go beyond the Act's requirements. The
21 Act provides that incumbent carriers and new entrants "may negotiate and enter into a
22 binding agreement . . . without regard" to the Act's minimum obligations. [47 U.S.C. §
23 252(a)(1).]

1 **Q. What is reciprocal compensation?**

2
3 **A.** One of the principal issues that arises in the context of local competition is inter-carrier
4 compensation. With the advent of local competition, customers of one local carrier
5 necessarily will call customers of another local carrier. When that happens, the two
6 carriers must assist each other in delivering the calls. There are two forms of inter-carrier
7 compensation local carriers can receive for assisting another carrier in delivering calls:
8 "reciprocal compensation" and the sharing of "access charges."

9 The first form of inter-carrier compensation—reciprocal compensation—is designed to
10 compensate a carrier for completing a local call, as defined by the parties to the
11 interconnection agreement, for another carrier. When a customer of one carrier makes a
12 local call to a customer of another carrier, only the originating party (i.e., the caller) pays
13 its carrier for the telephone services—leaving the other carrier uncompensated. The
14 caller's local carrier must therefore compensate the other carrier whose facilities are used
15 to complete the local call.

16
17 The second form of inter-carrier compensation is access charges. When callers make
18 long-distance toll calls they pay their long-distance company, and not their local carrier,
19 for the calls. In turn, the long-distance company pays access charges to local telephone
20 carriers to compensate the local carriers for originating and terminating the long distance
21 toll calls over their networks. The service local carriers provide to long-distance
22 companies in this context is "exchange access," which the 1996 Act defines as "the
23 offering of access to telephone exchange services or facilities for the purpose of the
24 origination or termination of telephone toll services" [47 U.S.C. § 153(16)].

25 **Q. Can you identify Price Schedule 1?**

1 A. Price Schedule 1 is the Brooks/SWBT Missouri interconnection agreement that is on file
2 with the Commission.

3

4 **Q. Has the Commission approved the Brooks/SWBT Missouri interconnection**
5 **agreement?**

6 A. Yes. As shown by Price Schedule 2, the Commission approved the agreement on July
7 25, 1997 in Case No. TO-97-334, and it became effective.

8

9 **Q. Can you identify Devine Deposition Exhibit 1?**

10 A. Devine Deposition Exhibit 1 is the MCIWC/SWBT Missouri interconnection agreement
11 that is on file with the Commission.

12

13 **Q. Has the Commission approved the MCIWC/SWBT Missouri interconnection**
14 **agreement?**

15 A. Yes. As shown by Price Schedule 3, the Commission approved the agreement on
16 October 18, 1996 in Case No. TO-97-27, and it became effective. As an aside, a few
17 additional interconnection issues between MCIWC and SWBT that are unrelated to this
18 case were arbitrated by the Commission in Case No. TO-97-23.

19

20 **Q. What are the provisions of these agreements regarding reciprocal compensation?**

21 A. Specifically, the Brooks/SWBT agreement defines "Local Traffic" at Appendix Define,
22 "P" as follows:

23

24

25

26

"Local Traffic" means traffic that originates and terminates within a SWBT
exchange including SWBT mandatory local calling scope arrangements.
Mandatory Local Calling Scope is an arrangement that requires end users to
subscribe to a local calling scope beyond their basic exchange serving area.

1 The agreement also defines "Terminating Traffic" at Appendix Define, "X" as follows:

2 "Terminating Traffic" is a voice-grade telecommunications service which is
3 delivered to an end user(s) as a result of another end user's attempt to establish
4 communications between the parties."
5

6 Further, in Section III, the agreement addresses "Compensation for Delivery of Traffic"
7 as follows:

8 Calls originated by one Party's end users and terminated to the other
9 Party's end users shall be classified as "Local Traffic" under this
10 Agreement if the call: (i) originates and terminates in the same SWBT
11 exchange area; or (ii) originates and terminates within different SWBT
12 exchanges which share a common mandatory local calling area. Calls not
13 classified as local under this Agreement shall be treated as interexchange
14 for intercompany compensation purposes.
15

16 Section III.A. of the Brooks/SWBT agreement states:

17 A. Reciprocal Compensation for Termination of Local Traffic

18 1. Applicability of Rates:

19 a. The rates, terms, and conditions in this Subsection
20 A apply only to the termination of Local Traffic,
21 except as explicitly noted.
22

23 b. Brooks agrees to compensate SWBT for the
24 termination of Brooks Local Traffic originated by
25 Brooks end users in the SWBT exchanges described
26 in Appendix DCO and terminating to SWBT end
27 users located within those exchanges referenced
28 therein. SWBT agrees to compensate Brooks for
29 the termination of SWBT Local Traffic originated
30 by SWBT end users in the SWBT exchanges
31 described in Appendix DCO and terminating to
32 Brooks end users located within those exchanges
33 referenced therein.
34
35
36

37 2. Local Interconnect Rates:

<u>Serving Method</u>	<u>Price Per Minute of Use</u>
Tandem Served	\$0.0092
End Office Served	\$0.0072

1 The MCIWC/SWBT agreement also contains pertinent definitions:
2

3 1.30 "Local Traffic" for purposes of intercompany
4 compensation, means traffic that originates and terminates between
5 or among end users within a SWBT local calling area as defined in
6 SWBT tariffs and any successor tariffs, including mandatory local
7 calling scope arrangements but excluding optional EAS areas.
8 Mandatory Local Calling Scope is an arrangement that requires
9 end users to subscribe to a local calling scope beyond their basic
10 exchange serving area. In no event shall the Local Traffic area for
11 purposes of local call termination billing between the Parties be
12 decreased during the Term of this Agreement.
13

14 1.18 "End User" means a third-party residence or business that
15 subscribes to Telecommunications Services provided by either of
16 the Parties.
17

18 Likewise, the MCIWC/SWBT agreement provides at Section 5.3:

19 5.3.1. Reciprocal compensation applies for transport and termination of Local
20 Traffic and Optional EAS Traffic which a Telephone Exchange Service
21 end user originates on SWBT's or MFS's network for termination on the
22 other Party's network.
23

24 5.3.2 The Parties shall mutually and reciprocally compensate each other for
25 transport and termination of Local Traffic at the rates provided in the
26 Pricing Schedule. For purposes of Section 28.16, the Parties acknowledge
27 that the Reciprocal Compensation rate for Local Traffic listed in the
28 Pricing Schedule is not comparable to Local Traffic termination rates
29 SWBT may establish with others which may reflect different rates for
30 calls terminated to a tandem and for calls terminated to an end office. The
31 Parties agree that the Reciprocal Compensation rate listed for Local
32 Traffic in the Pricing Schedule is designed to compensate each Party for
33 transport and termination of Local Traffic from the single point of
34 Interconnection in each Metropolitan Exchange Area to the ultimate end
35 user including all transport and/or intermediary switching and/or final
36 switching. To this extent, the Reciprocal Compensation rate listed for
37 Local Traffic in the Pricing Schedule is tied directly to the Interconnection
38 network architectures specified in Section 4.0 and to the trunk
39 configuration criteria and procedures specified in this Section 5.0 and
40 Exhibit C. Any other requested Interconnection architecture will require
41 renegotiations of rates.
42

43 5.3.3 The Parties shall mutually and reciprocally compensate each other for
44 transport and termination of Optional EAS Traffic at the rates provided in
45 the Pricing Schedule. Maps and lists depicting Optional EAS Traffic areas
46 are attached as Schedule 5.0.
47

1 In the MCIWC/SWBT Pricing Schedule, the reciprocal compensation rates were set as
2 follows:

3
4 Local Rate = \$0.009 per minute
5 Optional EAS Rate = \$0.0160 per minute
6

7 Thus, both agreements require the parties to pay each other reciprocal compensation on
8 all local traffic.
9

10 In contrast, reciprocal compensation obligations do not apply when the companies
11 interconnect to provide access services, which relate to the origination and termination of
12 long distance toll traffic. When the parties provide each other with access services, the
13 agreements provide that they will pay each other access charges. When the companies
14 jointly provide access services to interexchange carriers, the agreements provide that they
15 will share the access charges paid by long-distance companies.
16

17 **Q. What is an ISP?**

18 A. An ISP provides its customers the ability to obtain on-line information through the
19 Internet. ISPs provide "information services" to their customers, meaning they offer "a
20 capability for generating, acquiring, storing, transforming, processing, retrieving,
21 utilizing, or making available information via telecommunications[.]" [47 U.S.C. §
22 153(20).] ISPs purchase local telephone services to provide these information services.
23 They do not provide either local or long distance (toll) telephone services and thus are not
24 required to be certified by the Missouri Commission.
25

26 The most common method by which an Internet user connects to an ISP is via the public
27 switched telephone network. ISPs are assigned a local seven-digit telephone number

1 when they purchase local service. All local exchange carriers, including SWBT, bill
2 their customers for a local call when their customers call ISPs within the local calling
3 area. The charge to the customer is determined by the carriers' local tariffs, whether it is
4 part of a flat monthly rate or a per-call or per-minute charge. Local exchange carriers,
5 including SWBT, do not receive access charges from ISPs, but instead provide local
6 services to ISPs under ordinary local tariffs for business customers. Local exchange
7 carriers, including SWBT, also treat calls to ISPs as local calls in the revenue and
8 expense reports they file with the FCC.

9
10 **Q. How do the agreements treat a local call from a SWBT end user to a Brooks or**
11 **MCIWC end user that is an ISP with respect to reciprocal compensation?**

12 **A.** A local call from a SWBT end user to a Brooks or MCIWC end user that is an ISP is
13 treated like any other local call under these agreements and, therefore, is subject to
14 reciprocal compensation. Such a call originates when SWBT's end user places the call,
15 and terminates when Brooks or MCIWC completes the call to their ISP end user. When
16 such a call originates and terminates in the same local calling scope, it is local traffic
17 under the plain language of the agreements. There are no provisions in either of the
18 interconnection agreements that exclude local calls to ISPs from the requirement that
19 reciprocal compensation will be due for those calls.

20
21 **Q. How do you know the parties meant to include local calls to ISPs for purposes of**
22 **reciprocal compensation?**

23 **A.** When the parties negotiated the agreements, they understood and intended for local calls
24 to ISPs to be treated as Local Traffic subject to reciprocal compensation. Before and after

1 the agreements became effective, SWBT always treated calls to ISPs as local traffic. For
2 example:

- 3 • SWBT assigned its ISP customers a local seven-digit telephone number when
4 they purchased local service for their use in providing information services;
5
- 6 • When SWBT customers made local calls to ISPs, SWBT billed its customers
7 for those calls pursuant to its local tariff;
8
- 9 • Similarly, SWBT provided local services to ISPs under ordinary local tariffs
10 for business customers;
11
- 12 • In ARMIS and other reports filed with the FCC, SWBT treated revenues and
13 expenses associated with ISP traffic as intrastate rather than interstate; and
14
- 15 • SWBT did not have measures in place that segregated ISP traffic from other
16 local traffic and measured such traffic for billing purposes. Indeed, the
17 industry standards that governed the form of bills that carriers send one
18 another for reciprocal compensation did not require local calls to ISPs to be
19 segregated or treated any differently from any other local calls.
20

21 After execution of the interconnection agreements, SWBT has continued to treat calls to
22 ISPs as "local calls" just as it always had treated them, as just described. It admits to this
23 treatment in its response to discovery, as follows:

24 **Interrogatory No. 9**
25

26 Please state the following with regard to the time period from February 8,
27 1996 to June 9, 1997 (and if you have a different answer for different portions of
28 such time period, provide each answer and indicate the pertinent portion of the
29 time period):
30

- 31 a) whether you served ISPs in Missouri out of intrastate or interstate
32 tariffs (and identify the tariffs and services involved);
33
- 34 b) whether revenues for your services to ISPs in Missouri were
35 counted as interstate or intrastate revenues (and explain the purposes for
36 such counting);
37
38

1 c) whether you made any effort to meter such ISP-bound traffic or
2 otherwise segregate it from other traffic (and describe such efforts, the
3 purposes thereof – including but not limited to reciprocal compensation
4 billing purposes - and provide pertinent dates);

5
6 d) whether you included calls to ISPs in Missouri in local telephone
7 charges billed to end users by message or time units.
8

9 **Answer:**

10
11 (a) SWBT has no information that identifies a customer as an ISP.
12 Therefore, it is impossible to know for certain which of SWBT's
13 customers in Missouri are ISPs and whether they are served out of
14 interstate or intrastate tariffs. SWBT customers who buy intrastate services
15 are served out of intrastate tariffs and likewise for interstate services.
16

17 (b) Revenues derived from services purchased out of intrastate tariffs
18 are counted as intrastate revenues and likewise revenues derived from
19 services purchased out of interstate tariffs are counted as interstate
20 revenues.
21

22 (c) SWBT began identifying potential ISP usage in July 1997. See the
23 response to Interrogatory No. 12 for the procedures used to identify ISP-
24 bound traffic.
25

26 (d) Charges for local calls to ISPs end users, as are calls to any local
27 customer, are included in the appropriate rates for local service. They can
28 be flat rated local service or local service billed to end users by message or
29 time units.
30

31 **Request for Production No. 3**

32
33 Please produce any and all invoices from you to any of the Complainants
34 that include reciprocal compensation amounts for ISP-bound traffic
35 originated by end users served by Complainants in Missouri.
36

37 **Response**

38
39 As described below, SWBT cannot provide the documents requested.
40

41 Under the existing record exchange process, upon which invoices are
42 based, CLECs such as Complainants provide originating traffic records to
43 SWBT, which identify the type of traffic that was sent to SWBT
44 exchanges. SWBT's ratings and billing for reciprocal compensation is
45 based on the records that SWBT receives from the CLEC and the rates
46 that have been negotiated between the Parties.
47

1 SWBT has requested that CLECs, including Complainants, remove
2 Internet minutes originated by their end user customers from the Category
3 92 summary records forwarded to SWBT. For local calls originating from
4 CLEC end user customers, SWBT is currently unable to separately
5 identify ISP traffic from other types of calls. As SWBT has previously
6 requested, the CLEC, utilizing its own originating recordings, should use
7 the same methodology that SWBT uses on its end user customers'
8 originated local calls and provide SWBT with a report of the potential ISP
9 numbers. Under the existing record exchange process, the CLEC is
10 currently the only party that can separately identify the ISP traffic since
11 line level calling detail is not a part of the record that the CLEC provides
12 to SWBT.

13
14 **Interrogatory No. 12**

15
16 Please describe any and all processes or procedures that you use to avoid
17 including on invoices to Complainants reciprocal compensation amounts
18 for ISP-bound traffic originated by end users served by Complainants in
19 Missouri.

20
21 **Answer**

22
23 See Response to Request for Production No. 3 above. Under the existing
24 record exchange process, CLECs provide records to SWBT, which
25 identify the type of traffic that was sent to SWBT exchanges. SWBT's
26 rating and billing for reciprocal compensation is based on the records that
27 SWBT receives from the CLEC and the rates that have been negotiated
28 between the Parties. SWBT has requested that CLECs remove Internet
29 traffic from the records they provide to SWBT.

30
31 For local calls originating from CLEC end user customers, SWBT is
32 currently unable to separately identify ISP traffic from other types of calls.
33 The CLEC, utilizing its own originating recordings, should use the same
34 methodology that SWBT uses on its end user customers' originated local
35 calls and provide SWBT with a report of the potential ISP numbers. Under
36 the existing record exchange process, the CLEC is currently the only party
37 that can separately identify the ISP traffic since line level calling detail is
38 not a part of the record that the CLEC provides to SWBT.

39
40 **Interrogatory No. 13**

41
42 Please describe any and all processes or procedures that you use to
43 identify ISP-bound traffic placed by your end users or by end users served by
44 CLECs for purposes of making reports to the FCC, state regulatory commission,
45 or any other governmental agency.

Answer:

For SWBT end user customer originated local calls that are destined to a CLEC operating area, SWBT, in the absence of ISP numbers provided by the CLEC, utilizes the following identification process:

On a monthly basis, utilizing the Category 92 originating records, SWBT determines if any number has received more than 200 calls/month or if it has calls over 60 minutes in duration. If either of the above criteria is met, this number is placed on a report. The numbers appearing on the report are then validated to determine the type of tone (data vs. tone) received. The report with the potential ISP numbers identified is used to populate a table in the Primary Carrier System. Message originated by SWBT and sent to the potential ISP number are totaled by minutes and messages by each potential ISP number and placed on a report which is provided to the CLEC.

For local calls originating from CLEC end user customers, SWBT is currently unable to separately identify ISP traffic from other types of calls. The CLEC, utilizing its own originating recordings, should use the same methodology that SWBT uses on its end user customers' originated local calls and provide SWBT with a report of the potential ISP numbers. Under the existing record exchange process, the CLEC is currently the only party that can separately identify the ISP traffic since line level calling detail is not a part of the record that the CLEC provides to SWBT.

SWBT currently treats that usage as intrastate for purposes of separations and ARMIS reporting, in accordance with the FCC's letter dated May 18, 1999. Prior to that time SWBT treated the identified Internet traffic as interstate, as described in a May 21, 1999 letter to Magalie Sales, Secretary of the FCC. SWBT continues to believe that Internet traffic is interstate based on the FCC's order in the GTE DSL order, Declaratory Ruling in CC Docket No. 99-68 Notice of Proposed Rulemaking in CC Docket No. 99-68, released February 26, 1999, paragraph 18. The issue of the jurisdictional nature of the Internet use for separations purposes has been referred to the Separations Joint Board in CC Docket No. 80-286.

Likewise, MCIWC intended to include local calls to ISPs in the mix of traffic subject to reciprocal compensation. The interconnection negotiation that Mr. Devine was engaged in with SWBT was regional in nature, consistent with the negotiations with all of the other Regional Bell Operating Companies. We intended to treat ISP-bound local traffic like all other local traffic, including for reciprocal compensation purposes. The language in these interconnection agreements was substantially the same across all of the states in

1 the areas in which we desired to operate.

2
3 **Q. How did MCIWC inform SWBT that MCIWC intended to treat ISP-bound local**
4 **traffic like all other local traffic?**

5 **A.** MCIWC informed SWBT that MCIWC intended to treat ISP-bound local traffic like all
6 other local traffic by means of the plain language it proposed and by means of the fact
7 that it did not propose any special treatment of such traffic. When MCIWC commenced
8 negotiations with SWBT, it sent a letter that defined traffic subject to reciprocal
9 compensation as "calls between ... respective exchange service users." (Devine
10 Deposition Exhibit 2, p. 2). Both calling parties and ISPs purchase and use local
11 exchange service. Furthermore, during the negotiations, as Mr. Devine testifies, MCIWC
12 provided SWBT with various sample agreements, such as agreements negotiated with
13 PacBell and Ameritech. Other commissions and courts have already held that MCIWC
14 and the ILECs intended ISP-bound local traffic to be subject to reciprocal compensation
15 under these agreements. Towards the end of the negotiations with SWBT, MCIWC made
16 clear that it expected reciprocal compensation for "all traffic handed off at a designated
17 interconnection point". (Devine Deposition Exhibit 3, page 4).

18
19 Further, calls to ISPs were considered as local calls that terminated at the ISP locations
20 under the industry custom and practice at the time. In accordance with FCC Rules and
21 Orders, ISPs were (and still are) allowed to purchase services from local exchange tariffs
22 and calls to ISPs from end users were (and still are) dialed using the seven digit or ten
23 digit local dialing pattern. End users are charged for placing the calls out of local service
24 tariffs. Furthermore, from an accounting standpoint, based on FCC Accounting Rules

1 and Orders, revenues and expenses were (and still are) reported as intrastate by SWBT
2 and the other carriers who report under ARMIS to the FCC.
3

4 The United States Court of Appeals for the Fifth Circuit recently ruled in a case involving
5 SWBT that both the telecommunications industry as a whole and SWBT treated ISP-
6 bound calls as terminating locally during the time period (1996-97) that the Brooks and
7 MCIWC agreements were negotiated. The court stated:

8 "Beyond the four corners of the parties' agreement, their intent may be evidenced
9 from the surrounding facts and circumstances when the contract was entered. The
10 court may consider . . . ordinary terms, customs and usages then in effect . . ."
11 *Intratex Gas*, 886 at 278. The parties obviously agreed that "terminate" would
12 mean whatever the telecommunications industry took it to mean at the time they
13 signed the agreements, i.e., in 1996 and 1997.
14

15 A 1996 FCC Report defined "termination," for purposes of section 251(b)(5), as
16 "the switching of traffic from that switch to the called party's premises."⁽¹⁷⁾
17 Implementation of the Local Competition Provisions of the Telecommunications
18 Act of 1996, First Report and Order, 11 F.C.C.R. 15,499 ¶ 1040 (1996), *aff'd in*
19 *part, vacated in part on other grounds, Iowa Utils. Bd.*, 120 F.3d 753. As for the
20 modem calls here at issue, the ISPs are Time Warner's customers, making Time
21 Warner the terminating carrier. So, under the foregoing definition, "termination"
22 occurs when Time Warner switches the call at its facility and delivers the call to
23 "the called party's premises," which switches the call at its facility and delivers
24 the call to "the called party's premises," which is the ISP's local facility. Under
25 this usage, the call indeed "terminates" at the ISP's premises.
26

27 Both the FCC and Southwestern Bell have heretofore embraced a custom of
28 treating calls to ISPs as though they were local, terminating within the same local
29 exchange network. The FCC recognized that agreements negotiated prior to the
30 Reciprocal Compensation Ruling, as were the ones at issue here, had been
31 negotiated in the "context of this Commission's longstanding policy of treating
32 this traffic as local." Reciprocal Compensation Ruling ¶ 24.⁽¹⁸⁾ In fact, the FCC
33 noted that its historic "policy of treating ISP-bound traffic as local for purposes of
34 interstate access charges would, if applied in the separate context of reciprocal
35 compensation, *suggest that [reciprocal] compensation is due for that traffic.* Id. ¶
36 25 (emphasis added).
37

38 We are convinced that the PUC considered ample evidence that both the
39 telecommunications industry as a whole and the parties to this dispute in
40 particular treated ISP-bound calls as terminating locally at the time the
41 interconnection agreements were being negotiated. By the end of 1996, five State

1 commissions had already ruled that modem calls to ISPs are subject to reciprocal
2 compensation. For years, Southwestern Bell had recorded calls made to ISPs as
3 "local" in internal reports and bookkeeping records. Southwestern Bell did not
4 change this practice until 1998, well after entering the instant interconnection
5 agreements. An internal Southwestern Bell memorandum acknowledged that,
6 under then-current FCC rulings, it expected to pay reciprocal compensation for
7 modem calls: "As long as the 'ESP' exemption ⁽¹⁹⁾ remains intact we can
8 anticipate ... that we will compensate other [LECs] for traffic they terminate to
9 internet access providers." And for some time Southwestern Bell has run an ISP
10 of its own, despite the fact that as an incumbent LEC it is forbidden to offer long-
11 distance/interstate service. It has justified its running of an ISP to the FCC by
12 arguing that ISPs provide local, not interstate, service.

13
14 Southwestern Bell Telephone Co. vs. Public Utility Commission of Texas, et al., Case
15 No. 98-50787, United States Court of Appeals, Fifth Circuit (Mar. 30, 2000) (footnotes
16 omitted).

17
18 Given this industry custom and practice, if either party had an intent to exclude local calls
19 to ISPs from the reciprocal compensation provisions of the contract, that party would
20 have and should have insisted upon language to accomplish this intention. In fact, long
21 after these arrangements were made, and SWBT's position had changed, SWBT
22 proposed such "carve out" language in its negotiations with Birch Telecom, as reflected
23 by arbitration proceedings before this Commission. SWBT could have, but (as the
24 agreements show and as Mr. Cadieux and Mr. Devine testify) did not, request that ISP
25 traffic be routed, billed, or accounted for separately from other local traffic, for reciprocal
26 compensation purposes or otherwise. First, it is plain from the language of the
27 agreements that there is no such separate treatment. There is no discussion of any
28 process for segregating or otherwise separately identifying ISP-bound local traffic from
29 other traffic. Moreover, I know this independent of Mr. Devine's testimony because, had
30 such a request been made by SWBT, our national position would have required that such
31 a request be arbitrated. For example, US West contemporaneously objected to the
32 treatment of ISP traffic as local traffic subject to reciprocal compensation during the
33 course of negotiations with us for Washington, Oregon, Arizona, Colorado, and

1 Minnesota, and the issue was then arbitrated in each of these states. It should be noted
2 that all of these arbitration decisions required US West to pay reciprocal compensation
3 for ISP-bound local traffic. No such arbitration was necessary in Missouri because
4 SWBT agreed upon language requiring payment of reciprocal compensation on all local
5 traffic, including calls to ISPs.

6
7 Regarding the Brooks/SWBT negotiations, which occurred about six months after the
8 MCIWC/SWBT negotiations, Mr. Cadieux testifies SWBT expressly acknowledged that
9 it was agreeing to pay reciprocal compensation to Brooks on ISP-bound local calls when
10 it agreed to language essentially the same as the MCIWC/SWBT agreement.

11
12 **Q. Does the Missouri language agreed upon by SWBT in the MCIWC and Brooks**
13 **agreements require each company to pay reciprocal compensation to the other**
14 **company on calls to ISPs?**

15 **A.** Consistent with the custom and practice of the industry, the parties agreed upon language
16 that subjected all local traffic, including calls to ISPs, to reciprocal compensation. In the
17 Fifth Circuit case I have already mentioned, the court held that when SWBT agreed to
18 language substantially the same as that used in the MCIWC and Brooks agreements, it
19 agreed to pay reciprocal compensation on ISP-bound local traffic.

20 The first agreement between these parties specifies that calls "originated by one
21 Party's end users and *terminated to the other Party's end users* shall be classified
22 as Local Traffic under this Agreement if the call originates and terminates in the
23 same [Southwestern Bell] exchange area . . . or originates and terminates within
24 different [Southwestern Bell] exchanges which share a common mandatory local
25 calling area." An "End User" is defined as "a third-Party residence or business
26 that subscribes to telecommunications services provided by either of the parties."
27 The parties' second agreement adds the phrase "or by another telecommunications
28 service provider."
29

1 These contractual provisions lend additional support to the conclusions of the
2 PUC and the district court. The ISPs, as business subscribers to Time Warner
3 services, are indeed end users under the agreements. The PUC classified "a call
4 between two end users in the same local calling area" as "Local Traffic" and
5 concluded that the interconnection agreements unambiguously include ISP traffic
6 within the definition of "Local Traffic." The PUC rule that, "[w]hen a
7 transmission path is established between two subscribers in the same mandatory
8 calling area, traffic carried on that path is local traffic, with the
9 telecommunications service component of the call terminating at the ISP
10 location." The district court noted that "as end users, ISPs may receive *local calls*
11 *that terminate* within the local exchange network." (emphasis in original). The
12 court concluded that a modem call to an ISP terminates at the ISP's facility within
13 the local exchange network, basing its conclusion in part on the FCC's treatment
14 of ISPs as end users lying within the local exchange. The FCC treats ISPs as "end
15 users" for pricing purposes, permitting them to purchase telephone service at local
16 business rates rather than interstate access tariffs. Reciprocal Compensation
17 Ruling ¶¶ 5, 17, 23. We conclude that the PUCs' consideration of the end-user
18 status of an ISP is appropriate in light of the contractual provision mentioning
19 "termination to [an] end user[]." 20

21 Southwestern Bell Telephone Co. vs. Public Utility Commission of Texas, et al., Case
22 No. 98-50787, United States Court of Appeals, Fifth Circuit (Mar. 30, 2000).
23
24

25 **Q. Are there any other provisions of the agreements that demonstrate that the parties**
26 **agreed to pay reciprocal compensation to each other on ISP-bound local traffic?**

27 **A.** Yes. In both the MCIWC/SWBT agreement and the Brooks/SWBT agreement, the
28 parties agreed that in certain instances there would be separate trunks for local traffic, and
29 that only local traffic would be routed over such separate trunks. These provisions are set
30 forth in Section 5.1, Section 6, and Exhibit C of the MCIWC/SWBT agreement, and in
31 Section II and Appendix ITR of the Brooks/SWBT agreement.
32

33 The parties have consistently routed ISP-bound local traffic over such separate local
34 trunks. There is nothing in either agreement that suggests the parties did not mean what
35 they said when they agreed that only local traffic would be routed over such trunks, or
36 that they intended any exceptional treatment of ISP-bound local traffic. Moreover, the

1 MCIWC/SWBT agreement expressly states that the reciprocal compensation and
2 trunking arrangements are "tied directly" together (Section 5.3.2 quoted above).

3
4 Likewise, in the MCIWC/SWBT agreement at 13.0 et seq., even though the parties
5 negotiated a detailed formula for calculating net terminating compensation from traffic
6 routed by means of interim number portability (INP), they did not provide for any special
7 treatment of ISP-bound local calls in that formula.

8
9 **Q. When did MCIWC first become aware of a change in SWBT's position regarding**
10 **the applicability of reciprocal compensation to ISP-bound local traffic?**

11 A. In June, 1997, more than eight months after the MCIWC/SWBT agreement took effect,
12 SWBT sent a letter to MCIWC indicating that it would no longer pay reciprocal
13 compensation on such traffic. A copy of a form letter regarding such matters is attached
14 hereto as Price Schedule 4. The distribution schedule reflects it was sent to MFS
15 representatives. However, the letter we received may have been slightly different in
16 format, because we may have already been receiving payments from SWBT.

17
18 **Q. Did MCIWC respond?**

19 A. Yes. Alex Harris, Vice-President of Regulatory Affairs, immediately wrote a letter to
20 SWBT indicating in no uncertain terms that SWBT's change in position was
21 unacceptable and in violation of the agreement.

1 Q. Do you have a copy of that letter?

2 A. No, but I have attached hereto as Price Schedule 5 a letter from SWBT to MFS that
3 confirms it received Mr. Harris' letter.
4

5 Q. Is there a trend to SWBT's conduct?

6 A. Yes, there is a very clear trend to SWBT's conduct: SWBT has moved from voluntarily
7 agreeing to pay reciprocal compensation on ISP-bound traffic to attempting to avoid that
8 agreement. First, SWBT agreed to pay a single local reciprocal compensation rate on all
9 local traffic, including ISP-bound local traffic. Then, as SWBT came to better understand
10 the financial implications of such an agreement given the growing volumes of ISP-bound
11 local traffic being terminated by CLECs, it began to demand a bifurcated rate structure
12 that would reduce the amount it would have to pay (as described in Mr. Cadieux's
13 testimony). Later, well after making both the MCIWC and the Brooks agreements,
14 SWBT decided that it did not want to pay any reciprocal compensation on ISP-bound
15 local traffic. Further, it decided to refuse to make further payments under its prior
16 commitments.

17 Q. What relief do MCIWC and Brooks seek from the Commission in this case?

18 A. After examining the language of the interconnection agreements, the intentions of the
19 parties, and the custom and practice of the industry at the time the agreements were
20 made, we request that the Commission order that SWBT owes Brooks and MCIWC for
21 reciprocal compensation as a result of local calls from SWBT end users to ISP end users
22 served by Brooks and MCIWC in Missouri.

1 Q. Does this conclude your direct testimony?

2 A. Yes.

MISSOURI INTERCONNECTION AGREEMENT

by and between

SOUTHWESTERN BELL TELEPHONE COMPANY

and

BROOKS FIBER COMMUNICATIONS OF MISSOURI, INC.

Price Schedule 1

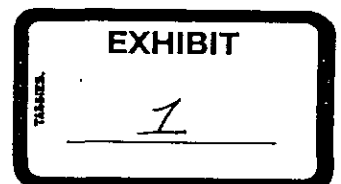


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Appendices

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NIM (Network Interconnection Methods)
ITR (Interconnection Trunking)
FGA (Feature Group A)
WIRELESS (Wireless Traffic)
LIDB - AS (Administration System)
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RESALE
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UNC-DUS (Unbundled Network Components)
DA (Directory Assistance)
OS (Operator Services)
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PRICE (Price Schedule)
OSS (Operational Support Systems)

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Schedule OCA

AGREEMENT

This Agreement is between Brooks Fiber Communications of Missouri, Inc., (collectively referred to herein as "Brooks"), on the one hand, and Southwestern Bell Telephone Company ("SWBT"), on the other hand, (with Brooks and SWBT collectively referred to as, "the Parties") entered into this 10th day of February, 1997.

WHEREAS, the Parties wish to establish terms for interconnection for purposes of exchanging local, intraLATA interexchange and interLATA interexchange traffic pursuant to the Telecommunications Act of 1996 (the "Act"); and

WHEREAS, Brooks desires to provide local exchange service to residential and business end users and to wholesale customers through use of its own telephone exchange service facilities in combination with unbundled network elements, facilities and services of SWBT in the states of Missouri.

THEREFORE, the Parties hereby agree as follows:

I. DEFINITIONS

Definitions of the terms used in this Agreement are listed in Appendix DEFINE, attached hereto and incorporated by reference.

II. NETWORK INTERCONNECTION ARCHITECTURE

The Parties shall provide for interoperation of their networks as stated below:

A. Parties shall interconnect their facilities as follows:

1. Brooks shall interconnect with SWBT's facilities as follows:

- a. In each SWBT exchange area in which Brooks chooses to offer local exchange service, Brooks, at a minimum, will interconnect its network facilities to (a) each SWBT access tandem(s), and (b) to either each SWBT local tandem(s) or each SWBT end office(s) subtending that local tandem(s). SWBT End Offices ("EO") and tandems through which Brooks will terminate its traffic will be called Designated Connecting Offices ("DCOs") and are identified in Appendix DCO attached hereto and incorporated herein by reference. Subsequent changes in DCO designations consistent

with the requirements of this provision (e.g., changes from local tandem to end offices subtending the local tandem) can be accomplished through mutual agreement of the Parties, which agreement shall not be unreasonably withheld. As Brooks initiates exchange service operations in additional SWBT exchange areas, SWBT and Brooks shall agree upon additional DCOs in each new exchange area. Brooks agrees that if SWBT establishes additional tandems in an exchange area within which Brooks offers local exchange service, Brooks will interconnect to the additional tandems.

- b. Interconnection to a SWBT local tandem(s) will provide Brooks local access to the SWBT end offices and NXX's which subtend that tandem(s), and to other LSPs and LECs [subject to Section XIII (Other Obligations of the LSP)] which are connected to that tandem(s). Interconnection to a SWBT end office(s) will provide Brooks access only to the NXX's served by that individual end office(s) to which Brooks interconnects.
 - c. Interconnection to a SWBT access tandem will provide Brooks interexchange access to SWBT, Interexchange Carriers (IXCs), LECs and CMRS providers [subject to Section XIII (Other Obligations of LSP)] which are connected to that tandem. Where an access tandem also provides local tandem functions, interconnection to a SWBT access tandem serving that exchange will also provide Brooks access to SWBT's end offices with the same functionality described in (b) above.
 - d. Where Brooks requires ancillary services (e.g., Directory Assistance, Operator Assistance, 911/E911) additional DCOs or special trunking will be required for interconnection to such ancillary services.
2. SWBT shall interconnect with Brooks' facilities under terms and conditions no less favorable than those identified in Section A, Paragraph 1, above, at points designated in Appendix DCO as follows:
- B. Where the Parties interconnect, for the purpose of exchanging traffic between networks, the Parties will use the following interconnection method for each tandem and EO identified in Appendix DCO. Technical parameters, descriptions and charges for that method is defined or referenced, as appropriate, in Appendix NIM (Network Interconnection Methods), which is attached hereto and made a part hereof.

1. For the LSP's local exchange areas, Brooks and SWBT agree to provide facilities and trunks from their respective offices to the NIP, as outlined in Appendix DCO, subject to the terms and conditions of the NIM and ITR Appendices. This arrangement will provide for connection between the appropriate SWBT tandems and Brooks facilities for the purpose of terminating Brooks local, intraLATA, 911, Operator Services, and meet point billed interLATA trunks. These interconnection facilities will be utilized for SWBT trunks terminating to the Brooks switch, and for trunks terminating to the SWBT tandems.
 2. SWBT will provide to Brooks at Brooks' request, virtual collocation at the same rates, terms, and conditions as FCC 73, Section 25.
 3. SWBT will provide to Brooks, at Brooks' request, physical collocation under the same terms and conditions available to similarly situated carriers at the time of such request.
 4. SWBT will provide to Brooks, at Brooks' request, SONET Based Interconnection ("SBI") whereby Brooks would provide fiber cable to SWBT for connection to SWBT-designated basic transmission equipment located in the DCO at the DCO and dedicated solely for Brooks' use. SWBT would own and maintain the basic transmission equipment. For ease of drafting, this option shall be offered under terms and conditions which are consistent with SWBT's SBI tariff.
 5. Other interconnection methods as may be negotiated.
- C. In addition, the Parties agree to follow the interconnection and trunking requirements listed in Appendix ITR, which is attached hereto and made a part hereof.
- D. The Parties shall identify the V&H coordinates for each NIP. Appendix DCO which identifies the specific interconnection points agreed upon by the Parties is attached hereto and incorporated herein by reference.
- E. To the extent a Party provides only one switching facility in an exchange, such facility shall be treated as an end office for compensation purposes.

III. COMPENSATION FOR DELIVERY OF TRAFFIC

For purposes of compensation under this Agreement, the telecommunications traffic traded between the Parties shall be classified as either Local Traffic, Transit Traffic,

Optional Area Traffic (OCA), IntraLATA Interexchange traffic, or InterLATA Interexchange. The Parties agree that, notwithstanding the classification of traffic under this Agreement, either Party is free to define its own "local" calling scope(s) for purposes of its provision of telecommunications service to its end users.

Calls originated by one Party's end users and terminated to the other Party's end users shall be classified as "Local Traffic" under this Agreement if the call: (i) originates and terminates in the same SWBT exchange area; or (ii) originates and terminates within different SWBT exchanges which share a common mandatory local calling area. Calls not classified as local under this Agreement shall be treated as interexchange for intercompany compensation purposes.

Intercompany compensation for Feature Group A traffic is described in Appendix FGA, which is attached hereto and incorporated herein by reference.

The Parties agree that they shall include the originating calling number in the information they transmit with each call being terminated on the other's network, so that correct jurisdiction of the call can be made under this section for the purpose of intercompany compensation. The type of originating calling number transmitted is dependent upon the protocol of the trunk signaling utilized for interconnection. Traditional toll protocol is used with Multi-frequency (MF) signaling and Automatic Number Identification (ANI) is sent from the end office switch towards the tandem switch. Signaling System Seven (SS7) protocol utilizes Calling Party Number (CPN) to identify the originating calling number. The CPN is defined by the originating switch to be the billing number. In some cases (i.e., call forwarding) this may not be the actual originating calling number.

If the percentage of calls passed with CPN is greater than ninety (90) percent, all calls exchanged without CPN information will be billed as either Local Traffic, OCA Traffic or intraLATA Toll Traffic in direct proportion to the MOUs of calls exchanged with CPN information. If the percentage of calls passed with CPN is less than ninety (90) percent, all calls passed without CPN will be billed as switched access. Where one Party is passing CPN, but the other Party is not properly receiving information, the Parties will cooperate to rate the traffic correctly.

Intercompany compensation records for calls hereunder shall be subject to the verification procedures set forth in Section XXII (Verification Reviews). Compensation for all calls shall be paid regardless of a Party's ability to collect charges from its end user for such call or calls. Subject to the foregoing principles, the following compensation terms and conditions apply:

Subject to the foregoing principles, the following compensation terms and conditions shall apply:

A. Reciprocal Compensation for Termination of Local Traffic

1. Applicability of Rates:

- a. The rates, terms, and conditions in this subsection A apply only to the termination of Local Traffic, except as explicitly noted.
- b. Brooks agrees to compensate SWBT for the termination of Brooks Local Traffic originated by Brooks end users in the SWBT exchanges described in Appendix DCO and terminating to SWBT end users located within those exchanges referenced therein. SWBT agrees to compensate Brooks for the termination of SWBT Local Traffic originated by SWBT end users in the SWBT exchanges described in Appendix DCO and terminating to Brooks end users located within those exchanges referenced therein.

2. Local Interconnect Rates:

<u>Serving Method</u>	<u>Price per Minute of Use *</u>
Tandem Served	\$0.0092**
End Office Served	\$0.0072**

* Usage shall be measured up to the nearest tenth of a minute and cumulated to one minute increments for billing.

** Because of the unique structure of the Brooks local network, the Parties agree, on an interim basis, that 90% of the local traffic originated by SWBT end users and terminated to Brooks end users will be deemed, for compensation purposes, to be terminated to a Brooks end office and 10% will be deemed to be terminated at a Brooks tandem. This interim arrangement will be used only until SWBT can directly route local traffic, at its option, to a Brooks end office or a Brooks local tandem. This interim compensation arrangement applies only, and to the extent, the following conditions are present ("interim compensation prerequisites"): Brooks has installed and serves end users from more than one local switch, within an exchange area, equipped with direct trunking capability, where the local switch subtends another Brooks local switch and where none of these switches serves an NXX exclusively. Whenever, and to the extent that, the interim compensation prerequisites are not present, the compensation applicable when SWBT end users terminate local calls

to Brooks end users shall be at the end office served rate. When Brooks has multiple switches, including a local tandem, and either the tandem or any subtending office has its own, exclusive NXX, SWBT shall have the option to terminate its local traffic to Brooks on a tandem served or end office served basis and compensate Brooks accordingly.

C. Reciprocal Compensation for Transit Traffic

Transit Traffic allows one Party to send traffic to a third party network through the other Party's tandem. A Transit Traffic rate element applies to all MOUs between a Party and third party networks that transit the other Party's tandem switch. The originating Party is responsible for the appropriate rates unless otherwise specified. The Transit Traffic rate element is only applicable when calls do not originate with (or terminate to) the transit Party's end user. There are two categories of Transit Traffic: 1. Local and 2. Optional Area.

1. The Local Transit Traffic rate element is applicable when both the originating and terminating end users are within SWBT local and mandatory exchanges.
2. The Optional Area Transit Traffic rate element is applicable when one end user is in a SWBT optional exchange which is listed in Schedule OCA and the other end user is within the SWBT local or mandatory exchanges.

3. Prices for Transit Traffic are as follows:

Local	\$0.0031/MOU
Optional Area	\$0.0040/MOU

4. The parties also acknowledge that traffic originated in third party incumbent LEC exchange areas may traverse the SWBT tandem and terminate in other third party LEC exchange areas. Although direct connections could be used for this traffic, SWBT agrees to transit this traffic for the rate of \$0.006 per MOU if the other LEC exchanges share a common mandatory local calling area with all SWBT exchanges included in a metropolitan exchange area. Any other LEC mandatory exchanges are listed in Schedule OCA.

D. Reciprocal Compensation for termination of IntraLATA Interexchange Traffic

1. Optional Calling Area Compensation (OCA) - For the SWBT optional calling areas listed in Schedule OCA, the compensation for termination of

intercompany traffic will be at the rate of \$0.0160/MOU. This terminating compensation rate applies to all traffic to and from the exchanges listed in Schedule OCA, attached hereto and incorporated by reference, and the associated metropolitan area and is independent of any retail service arrangement established by either Party.

2. SWBT also agrees to apply the OCA compensation rate of \$0.0160/MOU for traffic terminating to LSP end users in other incumbent LEC exchanges that share a common mandatory calling area with all SWBT exchanges that are included in the metropolitan exchange area. Schedule OCA lists the shared mandatory local calling areas.
3. For intrastate intraLATA interexchange service, compensation for termination of intercompany traffic will be at terminating access rates for Message Telephone Service or "MTS" and originating access rates for 800 Service, including the Carrier Common Line or "CCL" as set forth in each Party's intrastate access service tariff. For interstate intraLATA intercompany service traffic, compensation for termination of intercompany traffic will be at terminating access rates for MTS and originating access rates for 800 service, including the CCL charge, as set forth in each Party's interstate Access Service Tariff.

E. Compensation for Origination and Termination of InterLATA Interexchange Traffic (Meet-Point Billing "MPB" Arrangements)

1. Brooks and SWBT may mutually agree to establish Meet-Point billing arrangements in order to provide Switched Access Services to IXCs via an SWBT access tandem switch, 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. Brooks' Meet-Points with SWBT shall be those identified in Appendix DCO.
2. 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.
3. As detailed in the MECAB document, the Parties will, in accordance with accepted time intervals, exchange all information necessary to accurately, reliably and promptly bill third parties for Switched Access Services traffic jointly handled by the Parties via the Meet-Point arrangement. Information shall be exchanged in Exchange Message Record (EMR)

format, on magnetic tape or via a mutually acceptable electronic file transfer protocol.

4. Initially, billing to IXC's for the Switched Access Services jointly provided by the Parties via the Meet-Point Billing arrangement shall be according to the multiple bill/multiple tariff method as described in the MECAB document.
5. Meet-Point billing shall also apply to all traffic bearing the 900, 800, 888 NPA.

F. Wireless Traffic

1. Appendix Wireless sets forth the terms and conditions under which the Parties will distribute revenue from their joint provision of Wireless Interconnection Service for mobile to landline traffic terminating through the Parties' respective wireline switching networks within a LATA. If either Party enters into an interconnection agreement with a CMRS provider, Appendix Wireless shall no longer be applicable between the Parties with respect to such CMRS providers. In such circumstances, compensation between the other Party and the CMRS provider shall be determined by those parties.
2. The Parties will apply the Local Transit Traffic rate to each other for calls that originate on one Party's network and are sent to the other Party for termination to a CMRS Provider as long as such Traffic can be identified as wireless traffic. Each Party shall be responsible for interconnection arrangements with CMRS providers, including terminating compensation arrangements, as appropriate, regarding traffic originating on the Party's network and terminating on the CMRS provider's network. The originating Party agrees to indemnify the transiting Party for any claims of compensation that may be made by the CMRS provider against the transiting Party regarding compensation for termination of such traffic.
3. When traffic is originated by either Party to a CMRS Provider, and the traffic cannot be specifically identified as wireless traffic for purposes of compensation between SWBT and Brooks, the traffic will be treated, in comport with its origination and termination, as either Local, Optional Area, or Access and the appropriate compensation rate will apply.

G. Billing Terms and Conditions

Other than for traffic described in subsection D above, each Party shall deliver monthly settlement statements for terminating the other Party's traffic based on a mutually agreed schedule as follows:

- a. Each Party will record its originating minutes of use including identification of the originating and terminating NXX for all intercompany calls.
- b. Each Party will transmit the summarized originating minutes of use (from a. above) to the transiting and/or terminating Party for subsequent monthly intercompany settlement billing.
- c. Bills rendered by either Party shall be paid within 30 days of receipt subject to subsequent audit verification as described in Section XXII (Verification Reviews).
- d. Detailed technical descriptions and requirements for the recording, record exchange and billing of traffic are included in the Technical Exhibit Settlement Procedures (TESP).¹

H. Compensation for porting OCA numbers.

A \$12.40 monthly charge shall apply per ported OCA number.

IV. NUMBERING

- A. Brooks is responsible for obtaining its own NXX codes. This responsibility shall include obtaining a separate NXX code or codes for each SWBT exchange or mandatory SWBT local calling scope where Brooks intends to provide local service. The purpose of this responsibility is to provide the means by which to rate and measure the jurisdictional nature of traffic consistent with PSC and other lawful requirements. Either Party's rights to employ or to request and be assigned central office codes (NXX), are set forth in the Central Office Code Assignment

¹Technical Exhibit Settlement Procedures, previously provided to Brooks.

Guidelines.² Brooks agrees it will assign numbers from the assigned NXX codes to end users located in the SWBT exchange or mandatory local calling scope where the NXX is assigned.

- B. To the extent SWBT serves as Central Office Code Administrator for a given region, SWBT will work with Brooks in a neutral and nondiscriminatory manner, consistent with regulatory requirements, in regard to Brooks' requests for assignment of central office code(s) (NXX) consistent with the Central Office Code Assignment Guidelines, and any applicable PSC rules and/or orders.
- C. It shall be the responsibility of each Party to program and update its own switches to recognize and route traffic to other Party's assigned NXX codes. Neither Party shall impose fees or charges on the other Party for required programming and updating switching activities.
- D. Brooks agrees that it shall input all required data necessary to update the Local Exchange Routing Guide (LERG) on its own behalf. In the alternative, upon Brooks' request, SWBT shall update the LERG for Brooks. The charge for such service shall be \$110 per NXX. SWBT shall not be liable for any losses or damages arising out of errors, defects, or failures associated with the input of Brooks' data into the LERG other than direct damages. Brooks' direct damages shall not exceed the amount of the charges paid to SWBT by Brooks for LERG input under this Agreement.

Brooks agrees to defend, indemnify and hold harmless SWBT from any and all losses, damages, or other liabilities, including attorneys' fees, that it may incur as a result of claims, demands, or other suits brought by any party that may arise out of the data submitted and/or the input of that data into the LERG by SWBT. Brooks shall defend against all end user claims just as if Brooks had performed its own input to the LERG.

- E. Neither Party is responsible for notifying the other Parties' end users of any changes in dialing arrangements, including those due to NPA exhaust.
- F. NXX Migration

Where either Party has activated an entire NXX for a single end user, or activated more than half of an entire 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

²Last published by the Industry Numbering committee ("INC") as INC 95-0407-008, Revision 4/7/95, formerly ICCF 93-0729-010.

the second Party to have the entire NXX reassigned in the LERG (and associated industry data bases, routing tables, etc.) to an end office operated by the second Party. Such transfer will require development of a transition process to minimize impact on the Network and on end user service and will be subject to appropriate industry lead times (currently forty-five (45) days for movements of NXXs from one switch to another). The Party to whom the NXX is migrated will pay an NXX migration charge of \$10,000 per NXX.

V. APPENDICES

Attached to this Agreement are Appendices DEFINE, LIDB-AS, LIDB-V, WP, RESALE, SS7, CH, PORT, NMC, DCO, ITR, 911, WIRELESS, FGA, HOST, UNC-DUS, UNE, DA, OS, CNAM, RECORDING, BCR, NIM, Price Schedule, and OSS. To the extent that any definitions, terms, or conditions in such Appendices differ from those contained in the main body of this Agreement (not including the Appendices), those definitions, terms, or conditions shall supersede those contained in the main body of this Agreement, but only in regard to the services or activities listed in such Appendices. In particular, if an Appendix contains a term length and the main body of this is for a different term length, the term length of that Appendix shall control the length of time that services or activities are to occur under the Appendix but shall not be held to extend the term length of the remainder of this Agreement, except as may be necessary to interpret the Appendix.

VI. ADDITIONAL SERVICES

A. 911/E911

SWBT shall make available nondiscriminatory access to 911 or E911 service under the terms and conditions described in Appendix 911, which is attached hereto and incorporated by reference.

B. Dialing Parity

1. Local Dialing Parity

SWBT agrees that local dialing parity will be available to Brooks. That is, when customers of SWBT and Brooks have the same exchange boundaries, these customers will be able to dial the same number of digits when making a "local" call.

2. IntraLATA Dialing Parity.

SWBT agrees to make intraLATA dialing parity available in accordance with Section 271(e) of the Telecommunications Act of 1996.

C. White Page Directory Listings and Distribution

SWBT shall provide nondiscriminatory access to White Pages directory listing and distribution services under the terms described in Appendix WP, which is attached hereto and incorporated by reference.

D. Directory Assistance (DA)

SWBT will provide nondiscriminatory access to DA services under the terms and conditions identified in Appendix DA, which is attached hereto and incorporated by reference.

E. Support Systems Services

1. Transfer of Service Announcements (Intercept)

When an end user changes from SWBT to Brooks, or from Brooks to SWBT, and does not retain its original telephone number, the Party formerly providing service to the end user will provide a transfer of service announcement on the abandoned telephone number. This announcement will provide the new number to be dialed to reach this end user, unless the end user requests that the new number not be published. Each Party will provide this service consistent with its tariffs.

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. Either Party may respond with accurate information in answering customer questions.

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

3. Information Page

At LSP's request, SWBT shall include information in the "Informational Page" section of SWBT's White Pages directory for those geographical areas in which LSP provides Exchange Services, for LSP's customer contact information regarding emergency services, billing and service information, repair services and other similar such pertinent information. SWBT shall provide this service under the terms described in Appendix WP, which is attached hereto and incorporated by reference.

F. Operator Services

SWBT shall provide nondiscriminatory access to Operator Services, including Line Status Verification and Busy Line Interrupt, under the terms and conditions identified in Appendix OS, which is attached hereto and incorporated by reference.

G. LIDB Services

SWBT shall provide nondiscriminatory access to LIDB services pursuant to tariff and the additional terms and conditions in Appendix LIDB, which is attached hereto and incorporated by reference.

H. Clearinghouse Services

SWBT shall provide for the settlement of revenues from certain messages through the Clearinghouse services provided by SWBT pursuant to the terms and conditions in Appendix CH, which is attached hereto and made a part hereof.

I. Hosting

Upon request, SWBT shall perform hosting responsibilities for the provision of billable message data and/or access usage data received from Brooks for distribution to the appropriate billing and/or processing location or for delivery to Brooks of such data via SWBT's internal network or the nationwide CMD5 network pursuant to Appendix HOST, which is attached hereto and made a part hereof.

J. Recording

Upon request, SWBT shall perform recording, message processing and message detail services for Brooks pursuant to Appendix RECORDING which is attached hereto and made a part hereof.

K. CNAM

Upon request, SWBT shall provide Calling Name Delivery Query Service to Brooks pursuant to Appendix CNAM which is attached hereto and made a part hereof.

L. BCR

Upon request, SWBT shall provide Billing, Collecting and Remitting services to Brooks pursuant to Appendix BCR which is attached hereto and made a part hereof.

M. Riser Space

Upon request, the Parties shall provide access to Riser Space on terms and conditions no less favorable than contained in other agreements of the Parties.

N. OSS

SWBT shall make Operational Support Systems available to Brooks under the terms and conditions contained in Appendix OSS.

VII. POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

Upon request, the Parties shall provide non-discriminatory access to the poles, ducts, conduits, and rights-of-way they own or control. If a request for such access is made, the Parties will negotiate a stand alone agreement to provide for it.

VIII. UNBUNDLED ARRANGEMENTS

Upon request, SWBT shall provide to Brooks unbundled network components. SWBT's terms and conditions are identified in Appendices UNC-DUS and UNE, which are attached hereto and made a part hereof. Appendix UNC-DUS is limited to a specific term. Appendix UNE shall apply if Appendix UNC-DUS does not.

The rates which shall be applicable for unbundled elements such as unbundled loops and cross-connects are those specified in Appendix UNC-DUS when ordered by Brooks Fiber for its Missouri operations from commencement of this Agreement through January 10, 1998, unless prior to said date Brooks adopts other unbundled network element rates by exercise of such rights as it may possess pursuant to Section XXIV (Effect of Other Agreements) of this Agreement, in which case the adopted rates shall apply prospectively from the effective date of such adoption. Unless such rights have been exercised, unbundled network elements not contained in Appendix UNC-DUS may be ordered out of Appendix UNE at the rates, terms and conditions specified in Appendix UNE and the Price Schedule for the term of this agreement.

If Brooks does not adopt unbundled network element rates pursuant to Section XXIV of the Agreement prior to January 10, 1998, the rates for the unbundled elements contained in Appendix UNE such as unbundled loops and cross-connects for Brooks' Missouri operations ordered after January 10, 1998 and through the remainder of the term of this Agreement shall be those rates specified in the Price Schedule of this Agreement; provided, however, that if prior to the expiration of the term of this Agreement SWBT provides different Missouri unbundled element rates to another telecommunications carrier pursuant to an approved (by the Missouri Public Service Commission) and effective Interconnection Agreement, Brooks may, pursuant to Section XXIV of this Agreement and upon ten (10) days written notice to SWBT, adopt such other rates.

IX. LOCAL NUMBER PORTABILITY

Upon request, the Parties shall provide reciprocal interim number portability arrangements. SWBT's terms and conditions for the provisioning of this service are outlined in Appendix PORT, which is attached hereto and made a part hereof.

X. RESALE

Upon request, SWBT shall provide certain services for resale. SWBT's terms and conditions regarding the resale of local exchange telephone services are outlined in Appendix RESALE, which is attached hereto and made a part hereof.

XI. LEASED SPACE

Conditioned upon the provisions contained in Appendix NIM, SWBT shall permit LSP to place, maintain and operate in collocation premises any telecommunications equipment not specified by the FCC in CC Docket 91-141 that is necessary for LSP to provide any and all services which LSP has legal authority to provide.

XII. ADDITIONAL RESPONSIBILITIES OF THE PARTIES

A. Notice of Network Changes

The Parties agree to provide each other reasonable notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as other changes that would affect the interoperability of those facilities and networks.

B. Cooperation on Fraud

The Parties agree that they shall cooperate with one another to investigate, minimize and take corrective action in cases of fraud. The Parties' fraud minimization procedures are to be cost effective and implemented so as not to unduly burden or harm one Party as compared to the other.

At a minimum, such cooperation shall include providing to the other Party, upon request, information concerning end users who terminate services to that Party without paying all outstanding charges, when such end user seeks service from the other Party. It shall be the responsibility of the Party seeking such information to secure the end user's permission to obtain such information.

C. Payments of Rates and Charges

When a Party orders service from another Party, the service provider may require, prior to the time the service order is accepted, an advance payment. The Parties shall pay all rates and charges due and owing within 30 days of receipt of an invoice unless such charges are governed by the clearinghouse process included as Appendix CH. Interest on overdue invoices shall apply at the applicable rates specified in SWBT's Access Services Tariffs.

If a Party is billed incorrectly for services rendered pursuant to this Agreement, a billing adjustment will be calculated. If a refund is due, an adjustment shall be made for the entire period of the overcharges, not to exceed twenty-four (24) months. If an overcharge is adjusted within three billing cycles of the bill in error, interest will not be applicable. If the overcharge is not adjusted within three billing cycles, interest on the amount will be credited at the applicable rate from SWBT's Access Services Tariffs.

D. Enforcement for Non-Payment or Other Violations

Upon nonpayment of any sum due, or upon violation of any conditions governing the furnishing of service, a Party may, after exhaustion of the dispute resolution

procedures specified in Section XXI., herein, seek redress by any and all means as may be available under state or federal law, regulations or decisions. If a Party disputes any charges billed or imposed by the other Party, it shall promptly notify the other Party of the charges which it disputes and pay any undisputed amount.

Prior to termination of service for nonpayment, the Parties agree to investigate any allegations of improper charges and agree to attempt to resolve each dispute prior to the disconnection of any account(s) for nonpayment.

E. Changes in Subscriber Carrier Selections

Each Party will abide by applicable state or federal laws and regulations in obtaining end user authorization prior to changing end user's local service provider to itself and in assuming responsibility for any applicable charges as specified in Section 258 (b) of the Telecommunications Act of 1996. LSP shall make authorization available to SWBT upon request and at no charge.

Only an end user can initiate a challenge to a change in its local exchange service provider. If an end user notifies SWBT or LSP that the end user requests local exchange service, the Party receiving such request shall be free to immediately provide service to such end user.

When an end user changes or withdraws authorization, each Party shall release customer-specific facilities in accordance with the end user's direction or the end user's authorized agent. Further, when an end user abandons the premise, SWBT is free to reclaim the resold or unbundled network element facilities for use by another customer and is free to issue service orders required to reclaim such facilities.

XIII. OTHER OBLIGATIONS OF LSP

A. Compensation Between LSP and Third Parties

Brooks acknowledges that it has the responsibility to make such compensation arrangements as may be necessary with third-parties where traffic originated on Brooks' network is destined to a third-party's network. Brooks agrees to indemnify and hold harmless SWBT with respect to any claims or damages arising from any dispute between Brooks and a third-party concerning compensation for the termination of Brooks' traffic on such third-party's network. Brooks further agrees to take all reasonable steps to avoid situations where a third-party would block termination of Brooks'- originated traffic which traverses SWBT's network.

For the purposes of establishing service and providing efficient and consolidated billing to Brooks, Brooks is required to provide SWBT its authorized and nationally recognized Operating Company Number (OCN).

B. Special Service Arrangements

For special service arrangements not covered under this Agreement, special charges shall apply as provided in the applicable state General Exchange Tariff or the interstate Access Services tariff.

C. Special Construction

If Brooks' request for service requires construction of special facilities, special construction charges shall apply as provided in the applicable state General Exchange Tariff or the interstate Access Services tariff.

XIV. NETWORK MAINTENANCE AND MANAGEMENT

The Parties will work cooperatively to install and maintain a reliable network. The Parties will exchange appropriate information (e.g., maintenance contact numbers, network information, information required to comply with law enforcement and other security agencies of the government, etc.) to achieve this desired reliability.

A. Law Enforcement and Civil Process

SWBT and Brooks shall handle law enforcement requests as follows:

- 1) 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 a customer of the other Party, it shall refer such request to the Party that serves such customer, 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.
- 2) 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 users service provider, in which case the Party will respond to any valid request.

- 3) HOSTAGE OR BARRICADED PERSONS 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 any 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.

B. Network Management Controls

Each Party shall provide a 24-hour contact number for Network Traffic Management issues to the other's surveillance management center. A FAX number must also be provided to facilitate event notifications for planned mass calling events. Each Party agrees, at a minimum, to maintain the network traffic management controls capabilities set forth in Appendix NMC. Each Party shall maintain the capability of respectively implementing basic protective controls such as "Cancel To" and "Call Gap."

XV. FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: fire, explosion, power failure, cable cuts caused by a third party, Acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by the other party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. 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 relate to the performance so interfered with). The affected party shall use its best efforts to avoid or remove the cause of non-performance and both parties shall proceed to perform with dispatch once the causes are removed or cease.

XVI. INDEMNIFICATION AND LIMITATION OF LIABILITY

A. INDEMNIFICATION

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.
2. Except as otherwise provided in this Section, 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.
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. Brooks agrees to indemnify, defend, and hold harmless SWBT from any Loss arising out of SWBT's provision of 911 services or out of Brooks' end users' use of the 911 service, whether suffered, made, instituted or asserted by Brooks 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 willful misconduct.
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

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.

5. The Indemnifying Party agrees to defend any suit brought against the Indemnified Party for any Loss identified in this Section. 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.

B. LIMITATION OF LIABILITY

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 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.
2. Except for Indemnity obligations under this Section, 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 Brooks 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.
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 this Section 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.

4. Notwithstanding any other provision of this Section, none of the limitations shall prohibit a Party from seeking injunctive relief, or remedies under applicable federal or state law once administrative remedies have been exhausted or where repeated material violations of the Agreement are alleged.

XVII. LIQUIDATED DAMAGES FOR SPECIFIED ACTIVITIES

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

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.

2. "Specified Activity" means any of the following activities:

the installation by SWBT of unbundled Loops for Brooks, including the installation of unbundled Loops under applicable tariff(s) ("Unbundled Loop Installation");

SWBT's provision of Interim Number Portability; or

the repair of out of service problems for Brooks ("Out of Service Repairs").

3. "Performance Criteria" means, with respect to each calendar month during the term of 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

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

C. Liquidated Damages. The damages payable by SWBT to Brooks as a result of a Specified Performance Breach shall be \$75,000 for each Specified Performance Breach (collectively, the "Liquidated Damages"). Brooks and SWBT agree and acknowledge that (1) the Liquidated Damages are not a penalty and have been determined based upon the facts and circumstances of Brooks 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; (2) the Liquidated Damages constitute a reasonable approximation of the damages Brooks would sustain if its damages were readily ascertainable; and (3) Brooks shall not be required to provide any proof of the Liquidated Damages.

- D. 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 (1) a failure by Brooks to perform any of its obligations set forth in this Agreement, (2) any delay, act or failure to act by an end user, agent or subcontractor of Brooks, (3) any Force Majeure Event, or (4) for INP, where memory limitations in the switch in the SWBT serving office cannot accommodate the request. If a Delaying Event (a) 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 (b) 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 basis, as applicable, equal to the duration of the Delaying Event.
- E. Sole Remedy. The Liquidated Damages shall be the sole and exclusive remedy of Brooks for SWBT's breach of the Performance Criteria or a Specified Performance Breach as described in this Section XVII and shall be in lieu of any other damages or credit Brooks 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.
- F. 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 Brooks such records in a self-reporting format on a monthly basis. Such records shall be deemed "Proprietary Information" under Section XVIII.

XVIII. NONDISCLOSURE

The Parties to this Agreement anticipate and recognize that they will exchange or come into possession of, technical or business information or data about each other's end users and each other's business as a result of this Agreement which will be considered confidential by that Party. Each Party agrees (1) to treat all such information as strictly confidential and (2) to use such information only for purposes of performance under this Agreement. Each Party agrees not to disclose confidential information on the other Party's end users or business to any person without first securing the written consent of the other Party. The foregoing shall not apply to information which is in the public domain.

If a court or governmental agency orders or a third-party requests a Party to disclose or to provide any data or information covered by this Section, that Party will immediately inform the other Party of the order or request before such data is provided and will inform the other Party both by telephone and certified mail. Notification and consent requirements described above are not applicable in cases where a court order requires the production of toll billing records of an individual residence or business end user customer.

This section will not preclude the disclosure by the Parties of information or data described in this Section to consultants, agents, or attorneys representing the respective Parties or the State Commissions or their staffs or FCC Staff, provided that these third-parties are bound by the same or comparable confidentiality requirements as the Parties to this Agreement.

The provisions of this Section will remain in effect notwithstanding the termination of this Agreement, unless agreed to in writing by both Parties.

Pursuant to Section 222 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.

XIX. PUBLICITY

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 such 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, in a manner that conveys or implies endorsement of the other Party.

XX. ASSIGNMENT

Neither Party may assign, subcontract, or otherwise transfer its rights or obligations under this Agreement except under such terms and conditions as are mutually acceptable to the other Party and with such Party's prior written consent, which consent shall not be unreasonably withheld.

XXI. DISPUTE RESOLUTION

A. Finality of Disputes

No claims shall be brought for disputes arising from this Agreement more than 24 months from the date of occurrence which gives rise to the dispute.

B. Alternative to Litigation

The Parties desire, where possible, to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the informal dispute resolution process described in subsection 1 below.

Additionally, the Parties may, by mutual consent regarding a particular dispute, agree to use the arbitration procedure described in subsection 2 below as their sole remedy with respect to a controversy or claim of \$25,000 or less, arising out of or relating to this Agreement or its breach. If either party declines to utilize the arbitration procedures described in subsection 2 below, the Parties shall be free to pursue any and all legal and administrative remedies which may be available under the circumstances once they have exhausted the procedures outlined in subsection 1 below.

1. Resolution of Disputes Between Parties to the Agreement

At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of settlement are exempt from discovery and production and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit. If the Parties are unable to resolve the dispute within thirty (30) days after the initial notification of the dispute (or within such shorter period as the circumstances may require, they shall thereafter have the right to pursue such legal or administrative remedies as may be available in the circumstances.

2. Arbitration

If the negotiations do not resolve the dispute within sixty (60) days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. A Party may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each Party may submit in writing to a Party, and that Party shall so respond, to a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following:

- (a) Interrogatories
- (b) Demands to produce documents
- (c) Requests for admission

Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) days of the demand for arbitration. The arbitration shall be held in the city where this Agreement was executed by SWBT. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties shall submit written briefs five days before the hearing. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) days after the close of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

3. Costs

Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the costs of production of documents (including search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.

XXII. VERIFICATION REVIEWS

Each Party to this Agreement will be responsible for the accuracy and quality of its data as submitted to the respective parties involved. Upon reasonable written notice, 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 a review and verification of the other Party to give assurances of compliance with the provisions of this Agreement. This includes on-site verification reviews at the other Party's or the Party's vendor locations.

Each Party's right to access information for verification review purposes is limited to data not in excess of 24 months in age. Information of either Party involved with a verification review shall be subject to the nondisclosure terms of this Agreement.

The Party requesting a verification review shall fully bear its costs associated with conducting the review. The Party being reviewed will provide access to required information, as outlined in this Section, at no charge to the reviewing Party. Should the reviewing Party request information or assistance beyond that reasonably required to conduct such a review, the Party being reviewed may, as its option, decline to comply with such request or may bill actual costs incurred in complying subsequent to the concurrence of reviewing Party.

XXIII. COMPLIANCE WITH LAWS.

SWBT believes in good faith that the services to be provided under this Agreement satisfy the requirements of the Telecommunications Act of 1996, specifically §251, §252 and §271, and is in the public interest. Brooks believes the Agreement satisfies the standard of review for negotiated interconnection agreements under Sec. 252(e)(2) of the Act. Brooks makes no further or additional admissions concerning whether and to what extent the Agreement may satisfy other provisions of the Act. In the event a court or regulatory agency of competent jurisdiction should determine that modifications of this Agreement are required to bring the services being provided hereunder into compliance with the Act, the affected Party shall promptly give the other Party written notice of the modifications deemed required. Upon delivery of such notice, the Parties shall expend diligent efforts to arrive at an agreement respecting such modifications required, and if the Parties are unable to arrive at such agreement, either Party may terminate this Agreement, without penalty, effective the day the affected Party is ordered to effect the modifications deemed required, or effective on the day either Party concludes and gives notice that the Parties will not be able to arrive at any agreement respecting such modifications, whichever date shall occur earlier.

This Agreement is an integrated package that reflects a balancing of interests critical to the Parties. It will be submitted to the State Commission as a negotiated agreement under Sec. 252(a)(1), and the Parties will specifically request that the State Commissions refrain from taking any action to change, suspend or otherwise delay implementation of the Agreement. So long as the Agreement remains in effect, the Parties shall not advocate before any legislative, regulatory, or other public forum that any terms of this specific Agreement be modified or eliminated, except pursuant to procedures specifically sanctioned by the terms of this Agreement, including those established in Section XXIV,

below. Notwithstanding this mutual commitment, however, the Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, or other public forum addressing any matters, including matters related to the types of arrangements prescribed by this Agreement.

XXIV. EFFECT OF OTHER AGREEMENTS

If either Party enters into an agreement (the "Other Agreement") approved by the State Commission, pursuant to Section 252 of the Act which provides for the provision of arrangements covered in this Agreement to another requesting Telecommunications Carrier, such Party shall make available in the State in which this Agreement is filed 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 all material conditions of the Other Agreement that directly relate to any of the following duties as a whole:

- (1) All Interconnection Rates - Section 251(c)(2) of the Act (Section III of this Agreement); or
- (2) Access to Unbundled Network Elements - Section 251(c)(3) of the Act (Section VIII and Appendix UNC of this Agreement); or
- (3) Resale - Section 251(c)(4) of the Act (Appendix RESALE of this Agreement); or
- (4) Collocation - Section 251(c)(6) of the Act (Appendix NIM of this Agreement); or
- (5) Number Portability - Section 251(b)(2) of the Act (Appendix PORT) of this Agreement); or
- (6) Access to Rights of Way - Section 251(b)(4) of the Act (by separate Agreement); or
- (7) Wireless Traffic (Appendix Wireless); or
- (8) White Pages - (Appendix WP);
- (9) Operator Services - (Appendix OS);
- (10) Directory Assistance - (Appendix DA);

If and to the extent the respective state public utility commission, the FCC or a court of competent jurisdiction issues a final and effective order obligating either Party to provide interconnection and related services and functions in a particular state(s) at specific rates terms and conditions which differ from those contained in this Agreement, nothing in this Agreement shall be construed to prevent prospective implementation of such different rates terms and conditions for the remainder of the term of this Agreement.

Nothing herein shall be interpreted to require Brooks to pay to SWBT the same rates or charges as Brooks pays to a third party for the same type of services or facilities provided to Brooks by SWBT under this Agreement.

XXV. CERTIFICATION REQUIREMENTS

At the time Brooks commences the offering of regulated services utilizing services or functions pursuant to this Agreement, Brooks will warrant that it has obtained all necessary jurisdictional certification required in those jurisdictions in which Brooks has ordered such services.

XXVI. NOTICES

In an event any notices are required to be sent under the terms of this Agreement, they shall be sent by registered mail, return receipt requested to:

To SWBT:
LSP Account Manager
One Bell Plaza, Room 0525
Dallas, Texas 75202

To Brooks:
John C. Shapleigh
Executive Vice-President
425 Woods Mill Road South, Suite 300
Town & Country, Missouri 63017

24 Hour Network Management Contact

For SWBT:
Gerald Lilly
1-800-792-2662

For Brooks:
Brett Kirby
1-800-968-1919

XXVII. THIRD PARTY BENEFICIARIES

This Agreement shall not provide any non-party with any remedy, claim, cause of action or other right.

XXVIII. TAXES

The Parties shall be responsible for all federal, state or local, sales, use, excise or gross receipts taxes or fees imposed on or with respect to the services or equipment provided by or to such Party under this Agreement. The Parties shall reimburse one another for the amount of any such taxes or fees which a Party is required to pay or collect on behalf of the other Party due to services provided to such other Party pursuant to this Agreement.

XXIX. TERM

SWBT and Brooks agree to interconnect pursuant to the terms defined in this Agreement for a term commencing with state commission approval of this Agreement in each respective state and continuing through December 31, 1998. Upon delivery of written notice no earlier than March 31, 1998 either Party may require negotiations of the rates, terms and conditions of the interconnection arrangements to be effective upon expiration of this Agreement. In the event the Parties fail to negotiate and implement a new interconnection arrangement coincident with the expiration of the term of this Agreement this Agreement shall continue without interruption until: (a) a new interconnection agreement becomes effective between the parties, or (b) the PSC in a particular state determines that interconnection shall be by tariff rather than contract and both SWBT and Brooks have in place effective interconnection tariffs. By mutual agreement, SWBT and Brooks may amend this Agreement to modify the term of this Agreement.

XXX. WAIVER

The failure of either Party to enforce or insist that the other Party comply with the terms or conditions of this Agreement, or the waiver by either Party in a particular instance of any of the terms or conditions of this Agreement, shall not be construed as a general waiver or relinquishment of the terms and conditions, but this Agreement shall be and remain at all times in full force and effect.

XXXI. DISCLAIMER OF WARRANTIES

THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR INTENDED OR PARTICULAR PURPOSE WITH RESPECT TO SERVICES PROVIDED HEREUNDER. ADDITIONALLY, NEITHER PARTY ASSUMES ANY RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY THE OTHER PARTY WHEN SUCH DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

XXXII. EFFECTIVE DATE/IMPLEMENTATION

This Agreement shall become effective upon final approval by the State Commission when the Commission determines that this Agreement is in compliance with Section 252 (e)(2) of the Act. Upon such approval in each state, the Parties agree that they will use their best efforts to implement interconnection between their networks as soon as reasonably possible under the circumstances.

XXXIII. RELATIONSHIP OF THE PARTIES

This Agreement shall not establish, be interpreted as establishing, or be used by either party to establish or to represent their relationship as any form of agency, partnership or joint venture. Neither Party shall have any authority to bind the other or to act as an agent for the other unless written authority, separate from this Agreement, is provided. Nothing in the Agreement shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both of the Parties. Nothing herein shall be construed as making either Party responsible or liable for the obligations and undertakings of the other Party.

XXXIV. COMPLETE TERMS

This Agreement together with its Appendices and Exhibits constitutes the entire agreement between the Parties and supersedes all prior discussions, representations or oral understandings reached between the Parties.

Neither Party shall be bound by any amendment, modification or additional terms unless it is reduced to writing signed by an authorized representative of the Party sought to be bound.

If this Agreement is acceptable to Brooks and SWBT, both Parties will sign in the space provided below. This Agreement shall not bind Brooks and SWBT until executed by both parties. This Agreement will be governed by and interpreted in accordance with the laws of the respective states in which it is filed.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION AGREEMENT.

D. Craig Young
Sign and Print Name: Date:
D. Craig Young

President/C.O.O.
Position/Title
Brooks Fiber Communications
of Missouri, Inc.

R. Zamora 2-10-97
Sign and Print Name: Date:

Ricardo Zamora
VP-Local Interconnection
Position/Title
Southwestern Bell Telephone Company

APPENDIX DEFINE

Appendix DEFINE

I. DEFINITIONS

- A. "Access Tandem" denotes a switching system that provides a concentration and distribution function for originating or terminating interexchange traffic between end offices and interexchange carriers.
- B. "Ancillary Services" are services which support but are not required for interconnection of telecommunication networks between two or more parties, e.g., 911, DA, Operator Services, Directory and LIDB Service.
- C. "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.
- D. "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.
- E. "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).
- F. "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. SWBT uses the Bellcore version of CCS protocol, generally referred to as "SS7."
- G. "EAS Traffic" means traffic that originates and terminates within SWBT exchanges sharing an optional two-way local calling scope.
- H. "Exchange" is the geographic territory delineated as an exchange area for SWBT by official commission boundary maps.

- I. "Exchange Message Record" or "EMR" is the standard used for exchange of telecommunications message information among Local Exchange Carriers for billable, non-billable, sample, settlement and study data. EMR format is contained in BR-010-200-010 *CRIS Exchange Message Record*, a Bellcore document which defines industry standards for exchange message records.
- J. "Exchange Services" are two-way switched voice-grade telecommunications services with access to the public switched network which originate and terminate within an exchange.
- K. "ISDN" means Integrated Services Digital Network, a switched network service providing end-to-end digital connectivity for the simultaneous transmission of voice and data. Basic Rate Interface-ISDN (BRI-ISDN) provides for digital transmission of two 64 Kbps bearer channels and one 16 Kbps data channel (2B+D). Primary Rate Interface-ISDN (PRI-ISDN) provides for digital transmission of twenty-three (23) 64 Kbps bearer channels and one 16 Kbps data channel (23 B+D).
- L. "Local Number Portability" or "LNP" is a service arrangement whereby an end user, who switches subscription for Exchange Services from one provider to another, is permitted to retain, for its use, the existing assigned number provided that the end user remains at the same location.
- M. "Local Exchange Carrier" or "LEC" means the incumbent carrier that provides facility-based Exchange Services which has universal service and carrier of last resort obligations.
- N. "Local Service Provider" or "LSP" is a nonincumbent carrier which has obtained the certification and authority necessary to provide Exchange Services.
- O. "Local Tandem" denotes a switching system that provides a concentration and distribution function for originating or terminating local traffic between end offices.
- P. "Local Traffic" means traffic that originates and terminates within a SWBT exchange including SWBT mandatory local calling scope arrangements. Mandatory Local Calling Scope is an arrangement that requires end users to subscribe to a local calling scope beyond their basic exchange serving area.
- Q. "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.

- R. "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, establish 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.
- S. "Meet-Point Billing" or "MPB" refers to a billing arrangement whereby two or more telecommunications providers jointly provide the transport element of a switched access service to an IXC, with each LEC receiving an appropriate share of the transport element revenues as defined by their effective access tariffs.
- T. "North American Numbering Plan" or "NANP" means the system of telephone numbering employed in the United States, Canada, and certain Caribbean countries.
- U. "Numbering Plan Area" or "NPA" is also called an area code. An NPA is the 3-digit code that occupies the A, B, and C positions in the 10-digit NANP format that applies throughout World Zone 1. NPAs are of the form NXX, where N represents the digits 2-9 and X represents any digit 0-9. In the NANP, NPAs are classified as either geographic or non-geographic.
 - a) Geographic NPAs are NPAs which correspond to discrete geographic areas within World Zone 1.
 - b) Non-geographic NPAs are NPAs that do not correspond to discrete geographic areas, but which are instead assigned for services with attributes, functionalities, or requirements that transcend specific geographic boundaries. The common examples are NPAs in the N00 format, "e.g., 800."
- V. "NXX" "NXX Code," "Central Office Code" or "CO Code" is the three digit switch indicator which is defined by the "D", "E", and "F" digits of a 10-digit telephone number within the North American Numbering Plan ("NANP"). Each NXX Code contains 10,000 station numbers.

- W. "Originating Traffic" is a voice-grade switched telecommunications service which is initiated as the result of an end-user's attempt to establish communications between itself and another end user(s).
- X. "Terminating Traffic" is a voice-grade switched telecommunications service which is delivered to an end user(s) as a result of another end user's attempt to establish communications between the parties.
- Y. "Transit Traffic" is the intermediate transport of local, optional area, or CMRS traffic between an originating LSP's or LEC's network and the terminating LEC's or LSP's network by a third party carrier which neither originates nor terminates that traffic on its network.

APPENDIX DCO

Appendix DCO

INTERCONNECTION SCHEDULE

Metropolitan Exchange Area	Direction ¹	BFC Interconnection Wire Center (UIWC) ²	SWBT Interconnection Wire Center (SIWC) ³	NIP ⁴	Electrical Handoff Rate
KANSAS CITY MO	BFC TO SWBT SWBT TO BFC INTRALATA, INTERLATA, LOCAL, TOPS	KSCYMO?	KSCYMO5503T	KSCYMO5 5	DS1
	BFC TO SWBT SWBT TO BFC 911	KSCYMO?	KSCYKSJO07T	KSCYKSJO	DS1
SPRINGFIELD	BFC TO SWBT SWBT TO BFC INTRALATA, INTERLATA, LOCAL, TOPS	SPFDMO?	SPFDMO	SPFDMO	DS1
	BFC TO SWBT SWBT TO BFC 911	SPFDMO?	SPFDMO	SPFDMO	DS1

¹ This column will be completed by indicating the direction of the terminating traffic (e.g., either BFC to SWBT or SWBT to BFC.)

² **BFC INTERCONNECTION WIRE CENTER (UIWC)** - The address of the BFC location that will house the interconnection equipment and through which SWBT will terminate traffic on BFC's network.

³ **SWBT INTERCONNECTION WIRE CENTER (SIWC)** - The address of the SWBT end office or tandem through which BFC will terminate traffic on SWBT's network.

⁴ **NETWORK INTERCONNECTION POINT (NIP)** - The NIP is the location where SWBT and BFC facilities connect. The NIP will be identified by address and V&H Coordinates. The NIP for traffic going from BFC to SWBT and going from SWBT to BFC could be different. Where the physical interface occurs at a SWBT end office or tandem, the NIP shall be located at the SIWC. Where the physical interface occurs at the BFC location, the NIP for that interconnection shall be located at the BFC location.

APPENDIX NIM

Appendix NIM

The network interconnection methods (NIMs) are defined in this Appendix. These include: Mid-Span Fiber Interconnection; Virtual Collocation Interconnection; SONET Based Interconnection; Physical Collocation Interconnection and Leased Facility Interconnection.

In general, each Party is responsible for transporting their interconnection trunks as defined in Appendix DCO. When direct end office trunks are required, SWBT agrees to provide the transport from the SWBT tandem location to the SWBT end office, unless the LSP is physically collocated at that SWBT end office. The LSP will be required to transport the direct end office trunks from the SWBT tandem to the LSP switch. When the LSP has physical collocation, the LSP agrees to transport the direct end office trunks over their physical collocation facilities to the LSP switch.

MID-SPAN FIBER INTERCONNECTION (MSFI)

MSFI between Southwestern Bell Telephone (SWBT) and a local service provider (LSP) can occur at any mutually agreeable, economically and technically feasible point between the LSP's premises and a SWBT tandem or end office. This interconnection shall be on a point-to-point SONET system over single mode fiber optic cable.

MSFI may be used to provide interoffice trunking for the purpose of originating and terminating calls between the LSP and SWBT.

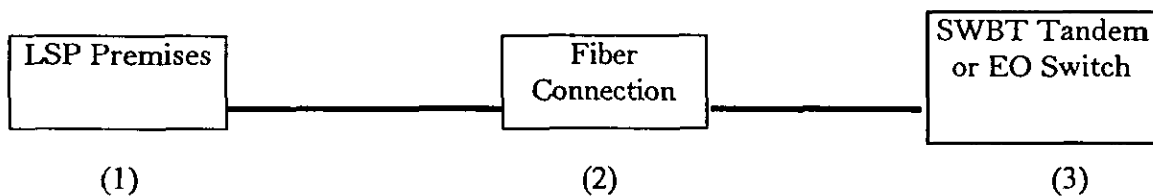
There are two basic mid-span interconnection designs:

1. The LSP's fiber cable and SWBT's fiber cable are connected at an economically and technically feasible point between the LSP location and the last entrance manhole at the DCO.
 - A. Where possible, a location with access to an existing SWBT fiber termination panel should be selected. In these cases, the network interconnection point (NIP) shall be designated outside of the SWBT building, even though the LSP fiber may be physically terminated on a fiber termination panel inside of a SWBT building.
 - B. If a suitable location with an existing fiber termination panel cannot be agreed upon, the LSP and SWBT shall mutually determine provision of a fiber termination panel housed in an outside, above ground, cabinet placed at the physical NIP. Ownership and the cost of provisioning the panel will be negotiated between the two parties.
2. The LSP provides fiber cable to the last entrance manhole at the SWBT tandem or end office switch with which the LSP wishes to interconnect. The LSP provides a sufficient length of fiber optic cable for SWBT to pull the fiber cable to the SWBT cable vault for termination on the SWBT fiber distribution frame(FDF). In this case the NIP shall be at the manhole location.

SWBT is responsible for designing, provisioning, ownership and maintenance of all equipment and facilities on its side of the NIP. Similarly, the LSP is responsible for designing, provisioning, ownership and maintenance of all equipment on its side of the NIP. Each party is free to select the manufacturer of its Fiber Optic Terminal (FOT). Neither party is allowed to access the Data Communication Channel (DCC) of the other Party's FOT.

Negotiations shall be held to determine the precise terms of mid-span interconnection for each DCO. These negotiations will cover the technical details of the interconnection as well as other network interconnection, provisioning and maintenance issues.

Following is a drawing that describes the two basic mid-span interconnection designs:



- (1) The LSP location includes FOTs, multiplexing and fiber required to take the optical signal handoff from SWBT for trunking or transport of unbundled loop traffic.
- (2) The fiber connection point may occur at several locations:
 - § A location with an existing SWBT fiber termination panel. In this situation, the NIP shall be outside the SWBT building which houses the fiber termination panel.
 - § A location with no existing SWBT fiber termination panel. In this situation, SWBT and the LSP shall negotiate provision, maintenance and ownership of a fiber termination panel and above ground outside cabinet as a NIP and for connection of the fiber cables.
 - § A manhole outside the DCO. In this situation, the LSP shall provide sufficient fiber optic cable for SWBT to pull the cable into the SWBT cable vault for termination on the SWBT FDF. The NIP shall be at the manhole and SWBT shall assume ownership and maintenance responsibility for the fiber cabling from the manhole to the FDF.
- (3) The SWBT tandem or end office switch includes all SWBT FOT, multiplexing and fiber required to take the optical signal hand-off provided from the LSP for trunking or transport of unbundled loop traffic. This location is SWBT's responsibility to provision and maintain.

In both approaches the LSP and SWBT will mutually agree on the size of the FOT(s) to be utilized. The sizing shall be based on equivalent DS1s that contain trunks and unbundled loops and shall include clauses for compensation for underutilized facilities or other criteria to avoid gross over-provisioning by either party.

Capacity Provisioning:

One of two approaches may be used to jointly provision/size the interconnection FOTs. The first approach is to size the FOT based on a two-year forecast of equivalent DS1s for trunks, ~~and unbundled loop transport requirements~~. Detailed trunking capacity management terms are included in Appendix ITR. Compensation for over provisioning by either party is defined in *Over Provisioning Compensation* below. JC
DB

The second approach is to deploy the smallest standard available FOT (OC-3), then augment this capacity as the facility nears exhaust. The process for augmenting capacity is described in *Joint Facility Growth Planning Criteria* also below.

Avoidance of Over Provisioning:

Underutilization is a situation involving the inefficient deployment and use of the network due to forecasting the need for more capacity than actual usage requires, and results in unnecessary costs for SONET systems. To avoid over provisioning the parties will agree to one of two options - 1) Over Provisioning Compensation or 2) Joint Facility Growth Planning.

Over Provisioning Compensation

If, at the end of the negotiated period, the original forecast of a party used to justify the sizing of the SONET system (expressed on an aggregated DS1 equivalent basis) exceeds by at least xx% the combined DS1 equivalent requirements for trunking and unbundled loops actually needed by such party, and the total required DS1 equivalents for both parties did not justify the terminal size that was deployed based on their combined forecasts, such party shall compensate the other. Compensation will be based on the difference in quantity of forecasted DS1 equivalents minus the required DS1 equivalents which will include 5% administrative spare.

SIZE OF FOT INSTALLED	SIZE OF FOT REQUIRED	COMPENSATION PER YEAR
OC12	OC3	\$
OC48	OC12	\$

Joint Facility Growth Planning Criteria

The initial fiber optic system deployed for each interconnection shall be the smallest standard available. For SONET this is an OC-3 system. The steps that follow define the criteria and step-by-step process to satisfy additional capacity requirements beyond the initial system.

Criteria

- Investment is to be minimized.
- Facilities are to be deployed in a "just in time" fashion.

Process

- Discussions to provide relief to existing facilities will be triggered when either Party recognizes that the overall system facility (DS1s) is at 90% capacity.
- Both parties will perform a joint validation to ensure current trunks have not been over-provisioned. If any trunk groups are over-provisioned, trunks will be turned down as appropriate. If the trunk group resizing lowers the fill level of the system below 90%, the growth planning process would be suspended and would not be reinitiated until a 90% fill level is achieved. Trunk design blocking criteria described in Appendix ITR will be used in determining trunk group sizing requirements and forecasts.
- 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 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.
- If the placement of a minimum size FOT 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 may be deployed. In the case of a SONET system, the OC-3 system could be upgraded to an OC-12. If the forecast does not justify a move to the next larger system, another minimal size system (such as an OC-3) could be placed. This criteria assumes both Parties have adequate fibers for either scenario. If adequate fibers do not exist, both Parties would negotiate placement of additional fibers.
- 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.
- The joint planning process/negotiations should be completed within two months of identification of 90% fill.

Virtual Collocation Interconnection

For ease of drafting, the terms of virtual collocation shall be those contained in SWBT's virtual collocation tariffs (i.e., SWBT's Tariff F.C.C. No. 73, Section _____). Additionally where physical collocation space is not available, LSP shall be permitted to purchase and place TR303 equipment in its Virtual Collocation space. SWBT shall maintain such equipment at the maintenance of service charges contained in Appendix UNC. The specific terms and conditions of such service shall be covered in a separate agreement.

Sonet-Based Interconnection

For ease of drafting, the terms of SONET-based Interconnection shall be those contained in SWBT's Sonet-based interconnection tariffs (i.e., SWBT's Tariff F.C.C. No. 73, Section ____.)

Leased Facility Interconnection

Both Parties agree that where facilities exist, either Party may lease facilities for interconnection from the other. Brooks agrees to charge SWBT \$1,000.00 nonrecurring and \$150.00 monthly for DS1 facilities and \$1,500.00 nonrecurring and \$1,500.00 monthly for DS3 facilities. SWBT agrees to provide DS1 and DS3 facilities at prices no greater than access tariff rates.

Physical Collocation Interconnection

WHEREAS, SWBT is an incumbent local exchange carrier having a statutory duty to provide for "physical collocation" of "equipment necessary for interconnection or access to unbundled network elements" at its premises, 47 U.S.C. 251(c)(6);

WHEREAS, the LSP wishes to physically locate certain of its equipment within the Premises (as defined herein) and connect with SWBT;

NOW THEREFORE, SWBT and the LSP agree as follows:

ARTICLE I - PREMISES

1.1 Right to Use. Subject to this Agreement, SWBT grants to LSP the right to use the premises described on Exhibit ____ ("Premises"), attached and incorporated herein, within real property at _____ in the City of _____, County of _____, State of _____.

1.2 Relocation. Notwithstanding Section 1.1, in the event that SWBT determines it necessary for the Premises to be moved within the building in which the Premises is located ("Building") or to another SWBT wire center, the LSP is required to do so. In such an event, the LSP shall be responsible for the preparation of the new premises at the new location if such relocation arises from circumstances beyond the reasonable control of SWBT, including condemnation or government order or regulation that makes the continued occupancy of the Premises or Building uneconomical in SWBT's sole judgment. Otherwise SWBT shall be responsible for any such preparation.

In the event that the LSP requests that the Premises be moved within the Building or to another SWBT wire center, SWBT shall permit the LSP to relocate the Premises, subject to the availability of space and associated requirements. The LSP shall be responsible for all applicable charges associated with the move, including the reinstallation of its equipment and facilities and the preparation of the new Premises and the new wire center as applicable.

In either such event, the new premises shall be deemed the "Premises" hereunder and the new wire center the "Building."

1.3 The Premises. SWBT agrees, at the LSP's sole cost and expense as set forth herein, to prepare the Premises in accordance with working drawings and specifications entitled _____ and dated _____, which documents, marked Exhibit _____, are attached and incorporated herein. The preparation shall be arranged by SWBT in compliance with all applicable codes, ordinances, resolutions, regulations and laws. After the LSP has made the initial payments required by Section 4.4 and the state regulatory approval is obtained in accordance with Section 2.1 hereof, SWBT agrees to pursue diligently the preparation of the Premises for use by the LSP.

ARTICLE II - EFFECTIVENESS AND REGULATORY APPROVAL

2.1 Submission to State Commission. As noted in Section ___ of the Agreement, the effectiveness of the Agreement, including this Appendix, is conditioned upon the unqualified approval of this Agreement, whether as a result of an approval process or by operation of law, under 47 U.S.C. 252(a)(1). After execution of this Agreement, the parties shall submit it to the State commission for the State in which the Premises is located as thereby required for approval, and shall defend the Agreement and support any reasonable effort to have this Agreement so approved, including the supplying of witnesses and testimony if a hearing is to be held.

2.2 Failure to Receive Approval. In the event that this Agreement does not receive such unqualified approval, this Agreement shall be void upon written notice of either party to the other after such regulatory action becomes final and unappealable. Thereafter LSP may request to begin negotiations again under 47 U.S.C. 251. Alternatively, the parties may both agree to modify this Agreement to receive such approval, but neither shall be required to agree to any modification. Any agreement to modify shall not waive the right of either party to pursue any appeal of the ruling made by any reviewing regulatory commission.

2.3 Preparation Prior to Regulatory Approval. At the written election of the LSP, SWBT shall begin preparing the Premises for the LSP prior to receiving the approval required by Section 2.1 hereof. The sole evidence of such election shall be the payment

to SWBT of the initial payments specified in Sections 4.4. Payment to SWBT of the remaining charges under these Sections shall be due upon completion. Upon such an election, this Agreement shall become effective but only insofar as to be applicable to the Premises preparation. In the event that the Agreement does not become fully effective as contemplated by this Article, the LSP shall not be entitled to any refund or return of any such payments beyond any portion of the charges paid but not attributable to costs incurred by SWBT. To the extent that SWBT has incurred preparation costs not included within any payment made by the LSP, the LSP shall pay those costs within thirty (30) days of notice by SWBT.

ARTICLE III - TERM

3.1 Commencement Date. These terms for physical collocation shall be month-to-month, beginning on the "Commencement Date." The "Commencement Date" shall be the first day after this Appendix becomes effective in accordance with Article II hereof.

3.2 Occupancy. Unless there are unusual circumstances, SWBT will notify the LSP that the Premises is ready for occupancy within ____ days after receipt of the payments due under Sections 4.4. The LSP must place operational telecommunications equipment in the Premises and connect with SWBT's network within sixty (60) days after receipt of such notice; provided, however, that such 60-day period shall not begin until regulatory approval is obtained under Article II. If the LSP fails to do so, these terms of the Appendix are terminated except that the LSP shall be liable in an amount equal to the unpaid balance of the charges due under and, further, shall continue to be bound by Articles II, IV, XI, XIV, XV, XVII, XVIII, XX, XXI, XXVI and XXVII hereof. For purposes of this Section, the LSP's telecommunications equipment is considered to be operational and interconnected when connected to SWBT's network for the purpose of providing service.

ARTICLE IV - PREMISES CHARGES

4.1 Monthly Charges. Beginning on the Commencement Date, LSP shall pay to SWBT a charge of _____ Dollars (\$_____) per month for use of the Premises. The monthly charge may be increased upon thirty (30) days' notice by SWBT.

4.2 Billing. Billing shall occur on or about the 25th day of each month, with payment due thirty (30) days from the bill date. SWBT may change its billing date practices upon thirty (30) days notice to the LSP.

4.3 Preparation Charge. The one-time charge for preparing the Premises for use by the LSP is estimated to be _____ Dollars (\$XXX.XX) ("Preparation

Charge”), of which _____ Dollars (\$XXX.XX) is the estimate for subcontractor charges (“Subcontractor Charges”).

4.4 Payment of Preparation Charge. SWBT is not obligated to start any preparation of the Premises until the LSP pays SWBT fifty percent (50%) of the Preparation Charge and eighty-five percent (85%) of the charges for any custom work required to create or vacate any entrance facility for the LSP. Such charges shall be due no later than ten (10) business days after the Agreement has become effective in accordance with Article II hereof. The remainder of the Preparation Charge and any custom work charges are due upon completion and prior to occupancy by the LSP.

4.5 Occupancy Conditioned on Payment. SWBT shall not permit the LSP to have access to the Premises for any purpose other than inspection until SWBT is in receipt of complete payment of the Preparation Charge and any custom work charges.

4.6 Subcontractor Charges. Within ____ (XX) days of the completion date of the Premises, SWBT shall perform a true-up of all Subcontractor Charges using the actual amounts billed by subcontractors. Any amounts incurred above the Subcontractor Charges will be billed to the LSP or, alternatively, any amount below such Charges will be remitted to the LSP.

4.7 Breach Prior to Commencement Date. In the event that the LSP materially breaches these terms by purporting to terminate this Agreement after SWBT has begun preparation of the Premises but before SWBT has been paid the entire amounts due under Sections 4.4 and 4.6, then in addition to any other remedies that SWBT might have, the LSP shall be liable in the amount equal to the non-recoverable costs less estimated net salvage. Non-recoverable costs include the non-recoverable cost of equipment and material ordered, provided or used; true-up Subcontractor Charges, the non-recoverable cost of installation and removal, including the costs of equipment and material ordered, provided or used; labor; transportation and any other associated costs.

4.8 Late Payment Charge. In the event that any charge is not paid when due, the unpaid amounts shall bear interest in accordance with the terms and conditions set forth in SWBT’s intrastate tariff late payment provision(s) applicable to access services for the State in which the Premises is located, or the highest rate permitted by law, whichever is lower, from the due date until paid.

ARTICLE V - INTERCONNECTION CHARGES
[INSERT HERE]

ARTICLE VI - FIBER OPTIC CABLE AND DEMARCATION POINT

6.1 Fiber Entrances. The LSP shall use a single mode dielectric fiber optic cable as a transmission medium to the Premises. The LSP shall be permitted no more than two (2) entrance routes into the Building, if available.

6.2 Demarcation Point. SWBT shall designate the point(s) of termination within the Building as the point(s) of physical demarcation between the LSP's network and SWBT's network, with each being responsible for maintenance and other ownership obligations and responsibilities on its side of that demarcation point. SWBT anticipates that the demarcation point (and the NIP for purposes of Appendix DCO) will be within the point-of-termination frame.

ARTICLE VII - USE OF PREMISES

7.1 Nature of Use. Except as provided in 7.6, the Premises are to be used by the Interconnector for purposes of locating equipment and facilities within SWBT's central offices to connect with SWBT services only. Consistent with the nature of the Building and the environment of the Premises, the Interconnector shall not use the Premises for office, retail, or sales purposes. No signage or markings of any kind by the Interconnector shall be permitted on the Building or on the grounds surrounding the Building.

7.2 Equipment List. A list of all of the LSP's equipment and facilities that will be placed within the Premises is set forth on Exhibit ___, attached and incorporated herein, with the associated power requirements, floor loading, and heat release of each piece. The LSP warrants and represents that Exhibit ___ is a complete and accurate list, and acknowledges that any incompleteness or inaccuracy would be a material breach of this Agreement. The LSP shall not place or leave any equipment or facilities within the Premises beyond those listed on Exhibit ___ without the express written consent of SWBT.

7.2.1 Subsequent Requests to Place Equipment. In the event that subsequent to the execution of this Agreement the LSP desires to place in the Premises any equipment or facilities not set forth on Exhibit ___, the LSP shall furnish to SWBT a written list and description thereof substantially in the form of Attachment A, which is attached and incorporated. Thereafter, in its sole discretion, SWBT may provide such written consent or may condition any such consent on additional charges arising from the request, including any engineering design charges and any additional requirements such as power and environmental requirements for such listed and described equipment and/or facilities. Upon the execution by both parties of a final list and description, including any

applicable charges, this Agreement shall be deemed to have been amended to include the terms and conditions of the final list and description.

7.2.2 Limitations. The foregoing imposes no obligation upon SWBT to purchase additional plant or equipment, relinquish used or forecasted space or facilities, or to undertake the construction of new quarters or to construct additions to existing quarters in order to satisfy a subsequent request for additional space or the placement of additional equipment or facilities.

7.3 Administrative Uses. The LSP may use the Premises for placement of equipment and facilities only. The LSP's employees, agents and contractors shall be permitted access to the Premises at all reasonable times, provided that the LSP's employees, agents and contractors comply with SWBT's policies and practices pertaining to fire, safety and security. The LSP agrees to comply promptly with all laws, ordinances and regulations affecting the use of the Premises. Upon the expiration of the Agreement, the LSP shall surrender the Premises to SWBT, in the same condition as when first occupied by the LSP, ordinary wear and tear excepted.

7.4 Threat to Network or Facilities. LSP equipment or operating practices representing a significant demonstrable technical threat to SWBT's network or facilities, including the Building, are strictly prohibited.

7.5 Interference or Impairment. Notwithstanding any other provision hereof, the characteristics and methods of operation of any equipment or facilities placed in the Premises shall not interfere with or impair service over any facilities of SWBT or the facilities of any other person or entity located in the Building; create hazards for or cause damage to those facilities, the Premises, or the Building; impair the privacy of any communications carried in, from, or through the Building; or create hazards or cause physical harm to any individual or the public. Any of the foregoing events would be a material breach of this Agreement.

7.6 Interconnection to Other Collocated Interconnectors Within the Building To the extent that SWBT is required by law to permit such interconnection, SWBT will provide the connection between physical collocation arrangements on a time and materials basis whenever the collocated interconnectors cannot for technical reasons provide the connection for themselves by passing the facility through the cage wall(s). SWBT will provide nothing more than the labor and physical structure(s) necessary for the collocater(s) to pull facilities provided by one collocator from its cage to the cage of another collocator. If the collocators are not located on the same floor and cannot physically pull the cable themselves through the SWBT provided structure(s), SWBT will perform the cable pull on an time and materials basis. At no time will the collocators be

allowed access to any portion of the central office other than the collocation area. SWBT will not make the physical connection within the collocater's cage, SWBT will not accept any liability for the cable or the connections and SWBT will not maintain any records concerning these connections.

7.7 Personalty and its Removal. Subject to this Article, the LSP may place or install in or on the Premises such fixtures and equipment as it shall deem desirable for the conduct of business. Personal property, fixtures and equipment placed by the LSP in the Premises shall not become a part of the Premises, even if nailed, screwed or otherwise fastened to the Premises, but shall retain their status as personalty and may be removed by LSP at any time. Any damage caused to the Premises by the removal of such property shall be promptly repaired by LSP at its expense.

7.8 Alterations. In no case shall the LSP or any person purporting to be acting through or on behalf of the LSP make any rearrangement, modification, improvement, addition, repair, or other alteration to the Premises or the Building without the advance written permission and direction of SWBT. SWBT shall consider a modification, improvement, addition, repair, or other alteration requested by the LSP, provided that SWBT shall have the right to reject or modify any such request. The cost of any such construction shall be paid by LSP in accordance with SWBT's then-standard custom work order process.

ARTICLE VIII - STANDARDS

8.1 Minimum Standards. This Agreement and the physical collocation provided hereunder is made available subject to and in accordance with the (i) Bellcore Network Equipment Building System (NEBS) Generic Requirements (GR-63-CORE and GR-1089-CORE), as may be amended at any time and from time to time, and any successor documents; (ii) SWBT's Technical Publication for Physical Collocation dated _____, 1996, as may be amended from time to time; (iii) SWBT's Technical Publication 76300, Installation Guide, followed in installing network equipment and facilities within SWBT central offices, as may be amended from time to time; (iv) SWBT's Emergency Operating Procedures, as may be amended from time to time; and (v) any statutory and/or regulatory requirements in effect at the execution of this Agreement or that subsequently become effective and then when effective. The LSP shall strictly observe and abide by each.

8.2 Revisions. Any revision to SWBT's Technical Publication for Physical Collocation, its Technical Publication 76300, or its Emergency Operating Procedures shall become effective and thereafter applicable under this Agreement thirty (30) days after such revision is released by SWBT; provided, however, that any revision made to

address situations potentially harmful to SWBT's network or the Premises, or to comply with statutory and/or regulatory requirements shall become effective immediately.

8.3 Compliance Certification. The LSP warrants and represents compliance with the Bellcore Network Equipment Building System (NEBS) Generic Requirements (GR-63-CORE and GR-1089-CORE) for each item set forth on Exhibit _____. The LSP also warrants and represents that any equipment or facilities that may be placed in the Premises pursuant to Section 7.2.1 or otherwise shall be so compliant. **DISCLOSURE OF ANY NON-COMPLIANT ITEM ON EXHIBIT __, PURSUANT TO SECTION 7.2.1, OR OTHERWISE SHALL NOT QUALIFY THIS ABSOLUTE CERTIFICATION IN ANY MANNER.**

ARTICLE IX - RESPONSIBILITIES OF THE LSP

9.1 Contact Number. The LSP is responsible for providing to SWBT personnel a contact number for LSP technical personnel who are readily accessible 24 hours a day, 7 days a week, 365 days a year.

9.2 Trouble Status Reports. The LSP is responsible for providing trouble report status when requested by SWBT.

9.3 Optical Fiber Extension. The LSP is responsible for bringing its fiber optic cable to the wire center entrance manhole(s) designated by SWBT, and for leaving sufficient cable length in order for SWBT to fully extend the LSP-provided cable through the cable vault to the Premises.

9.4 Regeneration. Regeneration of either DS1 or DS3 signal levels may be provided by the LSP, or SWBT under its then-standard custom work order process, including payment requirements prior to the installation of the regeneration equipment.

9.5 Removal. The LSP is responsible for removing any equipment, property or other items that it brings into the Premises or any other part of the Building. If the LSP fails to remove any equipment, property, or other items from the Premises within thirty (30) days after discontinuance of use, SWBT may perform the removal and shall charge the LSP for any materials used in any such removal, and the time spent on such removal at the then-applicable hourly rate for custom work. Further, in addition to the other provisions herein, the LSP shall indemnify and hold SWBT harmless from any and all claims, expenses, fees, or other costs associated with any such removal by SWBT.

9.6 LSP's Equipment and Facilities. The LSP is solely responsible for the design, engineering, testing, performance, and maintenance of the equipment and facilities used

by the LSP in the Premises. The LSP will be responsible for servicing, supplying, repairing, installing and maintaining the following facilities within the Premises:

- (a) its fiber optic cable(s);
- (b) its equipment;
- (c) required point of termination cross connects;
- (d) point of termination maintenance, including replacement of fuses and circuit breaker restoration, if and as required; and
- (e) the connection cable and associated equipment which may be required within the Premises to the point(s) of termination.

SWBT NEITHER ACCEPTS NOR ASSUMES ANY RESPONSIBILITY WHATSOEVER IN ANY OF THESE AREAS.

9.7 Verbal Notifications Required. The LSP is responsible for immediate verbal notification to SWBT of significant outages or operations problems which could impact or degrade SWBT's network, switches, or services, and for providing an estimated clearing time for restoral. In addition, written notification must be provided within twenty-four (24) hours.

9.8 Service Coordination. The LSP is responsible for coordinating with SWBT to ensure that services are installed in accordance with the service request.

9.9 Testing. The LSP is responsible for testing, to identify and clear a trouble when the trouble has been isolated to an LSP-provided facility or piece of equipment. If SWBT testing is also required, it will be provided at charges specified in SWBT's F.C.C. No. 73, Section 13.

ARTICLE X - QUIET ENJOYMENT

Subject to the other provisions hereof, SWBT covenants that it has full right and authority to permit the use of the Premises by the LSP and that, so long as the LSP performs all of its obligations herein, the LSP may peaceably and quietly enjoy the Premises during the term hereof.

ARTICLE XI - SHARING

The LSP shall not permit another LSP or other interconnecting entity to jointly occupy the Premises.

ARTICLE XII - CASUALTY LOSS

- 12.1 Damage to Premises. If the Premises are damaged by fire or other casualty, and
- (i) The Premises are not rendered untenable in whole or in part, SWBT shall repair the same at its expense (as hereafter limited) and the rent shall not be abated, or
 - (ii) The Premises are rendered untenable in whole or in part and such damage or destruction can be repaired within ninety (90) days, SWBT has the option to repair the Premises at its expense (as hereafter limited) and rent shall be proportionately abated while LSP was deprived of the use. If the Premises cannot be repaired within ninety (90) days, or SWBT opts not to rebuild, then this Agreement shall (upon notice to the LSP within thirty (30) days following such occurrence) terminate as of the date of such damage for the Premises so affected.

Any obligation on the part of SWBT to repair the Premises shall be limited to repairing, restoring and rebuilding the Premises as originally prepared for the LSP and shall not include any obligation to repair, restore, rebuild or replace any alterations or improvements made by the LSP or by SWBT on request of the LSP; or any fixture or other equipment installed in the Premises by the LSP or by SWBT on request of the LSP.

12.2. Damage to Building. In the event that the Building shall be so damaged by fire or other casualty that closing, demolition or substantial alteration or reconstruction thereof shall, in SWBT's opinion, be advisable, then, notwithstanding that the Premises may be unaffected thereby, SWBT, at its option, may terminate these terms as to the Premises in that Building by giving the LSP ten (10) days prior written notice within thirty (30) days following the date of such occurrence, if at all possible.

ARTICLE XIII - RE-ENTRY

In addition to the provisions for default in the Agreement, if the LSP shall default in performance of any agreement herein, and the default shall continue for thirty (30) days after receipt of written notice, or if the LSP is declared bankrupt or insolvent or makes an assignment for the benefit of creditors, SWBT may, immediately or at any time thereafter, without notice or demand, enter and repossess the Premises, expel the LSP and any claiming under the LSP, remove the LSP's property, forcibly if necessary, and thereupon this Agreement shall terminate as to the Premises so repossessed, without prejudice to any other remedies SWBT might have.

SWBT may also refuse additional applications for service and/or refuse to complete any pending orders for additional space or service by the LSP at any time thereafter.

ARTICLE XIV - LIMITATION OF LIABILITY

14.1 Limitation. In addition to the provisions on Limitations of Liability in the Agreement, when the LSP is provided service under this Appendix, SWBT shall be indemnified, defended and held harmless by the LSP against any claim, loss or damage arising from the end users's use of services offered under this Appendix, involving:

- (1) Claims for libel, slander, invasion of privacy, or infringement of copyright arising from the end user's own communications;
- (2) Claims for patent infringement arising from the end users's acts combining or using the service furnished by SWBT in connection with facilities or equipment furnished by the end user; or
- (3) All other claims arising in connection with any act or omission of the LSP in the course of using services provided pursuant to this Agreement.

14.2 Third Parties. The LSP acknowledges and understands that SWBT may provide space in or access to the Building to other persons or entities ("Others"), which may include competitors of LSPs; that such space may be close to the Premises, possibly including space adjacent to the Premises and/or with access to the outside of the Premises; and that the cage around the Premises is a permeable boundary that will not prevent the Others from observing or even damaging the LSP's equipment and facilities. In addition to any other applicable limitation, SWBT shall have absolutely no liability with respect to any action or omission by any Other, regardless of the degree of culpability of any such Other or SWBT, and regardless of whether any claimed SWBT liability arises in tort or in contract. The LSP shall save and hold SWBT harmless from any and all costs, expenses, and claims associated with any such acts or omission by any Other.

ARTICLE XV - INDEMNIFICATION OF SWBT

In addition to any other provision hereof, the LSP agrees to indemnify, defend and save harmless SWBT (including its officers, directors, employees, and other agents) from any and all claims, liabilities, losses, damages, fines, penalties, costs, attorney's fees or other expenses of any kind, arising in connection with LSP's use of the Premises, conduct of its business or any activity, in or about the Premises, performance of any terms of this Agreement, or any act or omission of the LSP (including its officers, directors, employees, agents, contractors, servants, invitees, or licensees). Defense of any claim shall be reasonably satisfactory to SWBT.

ARTICLE XVI - SERVICES, UTILITIES, MAINTENANCE AND FACILITIES

16.1 Operating Services. SWBT, at its sole cost and expense, shall maintain for the Building customary building services, utilities (excluding telephone facilities), including janitor and elevator services, 24 hours a day, 365 days a year. The LSP shall be permitted to have a single-line business telephone service for the Premises subject to applicable SWBT tariffs.

16.2 Utilities. SWBT will provide negative DC and AC power, back-up power, heat, air conditioning and other environmental support necessary for the LSP's equipment, in the same manner that it provides such support items for its own equipment within that wire center.

16.3 Maintenance. SWBT shall maintain the exterior of the Building and grounds, and all entrances, stairways, passageways, and exits used by the LSP to access the Premises.

16.4 Legal Requirements. SWBT agrees to make, at its expense, all changes and additions to the Premises required by laws, ordinances, orders or regulations of any municipality, county, state or other public authority including the furnishing of required sanitary facilities and fire protection facilities, except fire protection facilities specially required because of the installation of telephone or electronic equipment and fixtures in the Premises.

ARTICLE XVII - SUCCESSORS BOUND

Without limiting Article XI hereof, the conditions and agreements contained herein shall bind and inure to the benefit of SWBT, the LSP and their respective successors and, except as otherwise provided herein, assigns.

ARTICLE XVIII - CONFLICT OF INTEREST

The LSP represents that no employee or agent of SWBT has been or will be employed, retained, paid a fee, or otherwise has received or will receive any personal compensation or consideration from the LSP, or any of the LSP's employees or agents in connection with the arranging or negotiation of this Agreement or associated documents.

ARTICLE IX - NON-EXCLUSIVE REMEDIES

No remedy herein conferred upon is intended to be exclusive of any other remedy in equity, provided by law, or otherwise, but each shall be in addition to every other such remedy.

ARTICLE XX - COMPLIANCE WITH LAWS

The LSP and all persons acting through or on behalf of the LSP shall comply with the provisions of the Fair Labor Standards Act, the Occupational Safety and Health Act, and all other applicable federal, state, county, and local laws, ordinances, regulations and codes (including identification and procurement of required permits, certificates, approvals and inspections) in its performance hereunder. The LSP further agrees during the term of this Agreement to comply with all applicable Executive and Federal regulations as set forth in SW9368, attached as Exhibit _____ and incorporated herein, as may be modified from time to time.

ARTICLE XXI - OSHA STATEMENT

The LSP, in recognition of SWBT's status as an employer, agrees to abide by and to undertake the duty of compliance on behalf of SWBT with all federal, state and local laws, safety and health regulations relating to the Premises which the LSP has assumed the duty to maintain pursuant to this Agreement, and to indemnify and hold SWBT harmless for any judgments, citations, fines, or other penalties which are assessed against SWBT as the result of the LSP's failure to comply with any of the foregoing. SWBT, in its status as an employer, shall comply with all federal, state and local laws, safety and health standards and regulations with respect to the structural and those other portions of the Premises which SWBT has agreed to maintain pursuant hereto.

ARTICLE XXII - INSURANCE

22.1 Coverage Requirements. The LSP shall, at its sole cost and expense procure, maintain, pay for and keep in force the following insurance coverage and any additional insurance and/or bonds required by law and underwritten by insurance companies having a BEST Insurance rating of A+VII or better, and which is authorized to do business in the jurisdiction in which the Premises are located. SWBT shall be named as an ADDITIONAL INSURED on general liability policy.

- (1) Comprehensive General Liability insurance including Products/Completed Operations Liability insurance including the Broad Form Comprehensive General Liability endorsement (or its equivalent(s)) with a Combined Single

limit for Bodily Injury and Property Damage of \$1,000,000. Said coverage shall include the contractual, independent contractors products/completed operations, broad form property, personal injury and fire legal liability.

- (2) If use of an automobile is required or if the LSP is provided or otherwise allowed parking space by SWBT in connection with this Agreement, automobile liability insurance with minimum limits of \$1 million each accident for Bodily Injury, Death and Property Damage combine. Coverage shall extend to all owned, hired and non-owned automobiles. The LSP hereby waives any rights of recovery against SWBT for damage to the LSP's vehicles while on the grounds of the Building and the LSP will hold SWBT harmless and indemnify it with respect to any such damage or damage to vehicles of the LSP's employees, contractors, invitees, licensees or agents.
- (3) Workers' Compensation insurance with benefits afforded in accordance with the laws of the state in which the space is to be provided.
- (4) Employer's Liability insurance with minimum limits of \$100,000 for bodily injury by accident, \$100,000 for bodily injury by disease per employee and \$500,000 for bodily injury by disease policy aggregate.
- (5) Umbrella/Excess liability coverage in an amount of \$5 million excess of coverage specified above.
- (6) All Risk Property coverage on a full replacement cost basis insuring all of the LSP's personal property situated on or within the Building or the Premises. The LSP releases SWBT from and waives any and all right of recovery, claim, action or cause of action against SWBT, its agents, directors, officers, employees, independent contractors, and other representatives for any loss or damage that may occur to equipment or any other personal property belonging to LSP or located on or in the space at the instance of the LSP by reason of fire or water or the elements or any other risks would customarily be included in a standard all risk casualty insurance policy covering such property, regardless of cause or origin, including negligence of SWBT, its agents, directors, officers, employees, independent contractors, and other representatives. Property insurance on the LSP's fixtures and other personal property shall contain a waiver of subrogation against SWBT, and any rights of the LSP against SWBT for damage to the LSP's fixtures or personal property are hereby waived.

The LSP may also elect to purchase business interruption and contingent business interruption insurance, knowing that SWBT has no liability for loss of profit or revenues should an interruption of service occur.

22.2 Coverage Increases. The limits set forth in Section 24.1 may be increased by SWBT from time to time during the term of occupancy to at least such minimum limits as shall then be customary in respect of comparable situations within the existing SWBT buildings.

22.3 Primary Coverage. All policies purchased by the LSP shall be deemed to be primary and not contributing to or in excess of any similar coverage purchased by SWBT.

22.4 Effective Date. All insurance must be in effect on or before occupancy date and shall remain in force as long as any of the LSP's facilities or equipment remain within the Premises or the Building. If the LSP fails to maintain the coverage, SWBT may pay the premiums thereon and, if so, shall be reimbursed by the LSP.

22.5 Supporting Documentation. The LSP shall submit certificates of insurance and copies of policies reflecting the coverages specified above prior to the commencement of the work called for in this Agreement. The LSP shall arrange for SWBT to receive thirty (30) days advance written notice from the LSP's insurance company(ies) of cancellation, non-renewal or substantial alteration of its terms.

22.6 Carrier Recommendations. The LSP must also conform to the recommendation(s) made by SWBT's Property Insurance Company which LSP has already agreed to or to such recommendations as it shall hereafter agree to.

22.7 Material Breach. Failure to comply with the provisions of this section will be deemed a material violation of this Agreement.

ARTICLE XXIII - SWBT'S RIGHT OF ACCESS

SWBT, its agents, employees, and other SWBT-authorized persons shall have the right to enter the Premises at any reasonable time to examine its condition, make repairs required to be made by SWBT hereunder, and for any other purpose deemed reasonable by SWBT. SWBT may access the Premises for purpose of averting any threat of harm imposed by the LSP or its equipment or facilities upon the operation of SWBT equipment, facilities and/or personnel located outside of the Premises. If routine inspections are required, they shall be conducted at a mutually agreeable time.

ARTICLE XXIV - PURPOSE AND SCOPE OF AGREEMENT

Through this Agreement, the LSP is placing telecommunications equipment and facilities on SWBT property for the purpose of connecting with SWBT's network only. The parties agree that this Agreement does not constitute, and shall not be asserted to constitute, an admission or waiver or precedent with any State commission, the Federal Communications Commission, any other regulatory body, any State or Federal Court, or in any other form that SWBT has agreed or acquiesced that any piece of LSP equipment or facility is "equipment necessary for interconnection or access to unbundled network elements" under 47 U.S.C. 251(c)(6).

ARTICLE XXV - MISCELLANEOUS

25.1 Exhibits The following Exhibits are attached hereto and made part hereof:

Exhibit _____
Exhibit _____
Exhibit _____
Exhibit _____

25.2 Variations. In the event of variation or discrepancy between any duplicate originals hereof, including exhibits, the original Agreement held by SWBT shall control.

25.3 Joint and Several. If LSP constitutes more than one person, partnership, corporation, or other legal entities, the obligation of all such entities under this Agreement is joint and several.

25.4 Future Negotiations. SWBT may refuse requests for additional space in the Building or in any other SWBT premises if the LSP is in material breach of this Agreement, including having any past due charges hereunder. In any and each such event, the LSP hereby releases and shall hold SWBT harmless under Article XV from any duty to negotiate with the LSP or any of its affiliates for any additional space or physical collocation.

25.5 Paragraph Headings and Article Numbers. The headings of the articles and paragraphs herein are inserted for convenience only and are not intended to affect the meaning or interpretation of this Appendix.

25.6 Construction. This Appendix shall be interpreted and governed without regard to which party drafted this Appendix.

25.7 Rights Cumulative. The rights of a party hereunder are cumulative and no

exercise or enforcement by such party of any right or remedy hereunder shall preclude the exercise or enforcement of any other right or remedy hereunder or to which such party is entitled to enforce.

25.8 Binding Effect. (a) This Appendix is binding upon the parties hereto, their respective executors, administrators, heirs, assigns and successors in interest.

(b) All obligations by either party which expressly or by their nature survive the expiration or termination of this Appendix shall continue in full force and effect subsequent to and notwithstanding its expiration or termination and until they are satisfied in full or by their nature.

25.9 Survival. The terms, provisions, representations, and warranties contained in this Agreement that by their nature and/or context are intended to survive the performance thereof by either or both parties hereunder shall so survive the completion of performances and termination of this Agreement, including the making of any and all payments due hereunder.

ATTACHMENT A

Southwestern Bell Telephone Company
[Address and to the attention of per notice provision]

Re: [Reference Identifier on Cover Sheet]

Pursuant to the referenced Physical Collocation Agreement ("Agreement"), this letter constitutes a request to place the following additional equipment and/or facilities in the Premises:

<u>Generic Name</u>	<u># of Bays</u>	<u>Floor Loading</u>	<u>Power Req.</u>	<u>Heat Release</u>
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If this request is acceptable to Southwestern Bell Telephone Company ("SWBT"), please indicate that acceptance by executing both originals and returning one to the undersigned. With the return of an executed original, the Agreement shall be deemed amended to reflect that the listed equipment and facilities may be located in the Premises. In all other respects, the Agreement shall be unaffected.

If not acceptable, please let me know of SWBT's objections or conditions to its acceptance.

All capitalized terms not defined in this letter but defined in the Agreement shall have the meaning ascribed to such term in the Agreement.

Brooks Fiber Communications

By: _____

Title: _____

Name: _____

AGREED AND ACCEPTED:

**SOUTHWESTERN BELL TELEPHONE
COMPANY**

By: _____

Title: _____

Name: _____

Date: _____

APPENDIX ITR

APPENDIX ITR

Trunking Requirements:

This Appendix provides descriptions of the trunking requirements for LSPs to interconnect with SWBT. The attached scenarios depict the recommended trunk groups for message network, E911 and Operator Services interconnection. All references to incoming and outgoing trunk groups are from the perspective of the LSP.

A. LSP Originating (LSP to SWBT):

1. Local Traffic and IntraLATA Interexchange (Toll) Traffic:

When there are separate SWBT access and local tandems in an exchange, a separate local trunk group shall be provided to the local tandem and a separate intraLATA toll trunk group shall be provided to the access tandem. When SWBT has a combined local and access tandem in an exchange, intraLATA toll traffic may be combined with the local traffic on the same trunk group. When an LSP interconnects directly to a SWBT end office, local traffic may be terminated over a direct trunk group to the SWBT end office; however, intraLATA toll traffic shall be provided over a separate trunk group to the SWBT access tandem. This trunk group(s) shall be one-way outgoing only and can utilize either Multifrequency (MF) or Signaling System 7 (SS7) protocol signaling.

The designated trunk group traffic use code and modifier shall be as follows:

<u>Trunk Group Type</u>	<u>To</u>	<u>Code & Mod</u>	<u>Scenario</u>
Local Only	SWBT Local Tandem	TOJ	3,4
Local Only	SWBT End Office	IEJ	2,4
Local/IntraLATA Toll	SWBT Combined Local/ Access Tandem	DDJ	1,2
IntraLATA Toll Only	SWBT Access Tandem	DDJ	3,4

2. InterLATA Interexchange Traffic:

InterLATA traffic shall be transported to the SWBT access tandem over a separate trunk group from local and intraLATA toll traffic. This trunk group may be set up as one-way or two-way (two-way is preferred) and can utilize either MF or SS7 protocol signaling. The traffic use code and modifier for this trunk group should be MDJ (see Scenario 1, 2, 3 or 4).

3. IntraLATA 800:

A separate trunk group from the LSP to SWBT will be required for IntraLATA 800 service if the LSP chooses to handle the 800 database queries from its switch location. The purpose of the separate trunk group is to provide for the segregation of LSP originating 800 IntraLATA call volumes to ensure the proper billing of intercompany settlement compensation.

The trunk group shall be set up as one-way outgoing only and may utilize either MF or SS7 protocol signaling. The traffic use code and modifier for this trunk group should be **DD800J** (see Scenario 1, 2, 3 or 4).

When the LSP chooses SWBT to handle the 800 database queries from their switch location, all LSP originating 800 service queries will be routed over the InterLATA Interexchange Carrier (**MDJ**) trunk group. This traffic will include a combination of both InterLATA Interexchange Carrier 800 service and IntraLATA LEC 800 service that will be identified and segregated by carrier through the database query handled through the SWBT tandem switch.

4. E911:

A segregated trunk group will be required to each appropriate E911 tandem within the exchange in which the LSP offers Exchange Service. This trunk group shall be set up as a one-way outgoing only and shall utilize MF signaling. The traffic use code and modifier for this trunk group shall be **ESJ** (see Scenario 1, 2, 3 or 4).

5. Mass Calling (Public Response Choke Network):

A segregated trunk group shall be required to the designated Public Response Choke Network tandem in each serving area. This trunk group shall be one-way outgoing only and shall utilize MF signaling. It is recommended that this group be sized as follows:

<15001 access lines (AC)	2 trunks (min)
15001 to 25000 AC	3 trunks
25001 to 50000 AC	4 trunks
50001 to 75000 AC	5 trunks
>75000 AC	6 trunks (max)

The traffic use code and modifier for this trunk group shall be **TOCRJ** (see Scenario 1, 2, 3 or 4).

B. LSP Terminating (SWBT to LSP):

1. Local Traffic and IntraLATA Interexchange (Toll) Traffic:

SWBT shall provide local traffic to the LSP over a separate trunk group from the local tandem. SWBT may choose to trunk directly to an LSP from a SWBT end office. In those exchanges where SWBT has a combined local and access tandem, SWBT shall normally combine the local and the IntraLATA toll traffic over a

single trunk group to the LSP. When SWBT has a separate access and local tandem in an exchange, a trunk group shall be established from each tandem to the LSP. This trunk group(s) shall be one-way incoming only and can utilize either MF or SS7 protocol signaling.

The designated trunk group traffic use code and modifier shall be as follows:

<u>Trunk Group Type</u>	<u>From</u>	<u>Code & Mod</u>	<u>Scenario</u>
Local Only	SWBT Local Tandem	TGJ	3,4
Local Only	SWBT End Office	IEJ	2,4
Local/IntraLATA Toll	SWBT Combined Local/ Access Tandem	TCJ	1,2
IntraLATA Toll Only	SWBT Access Tandem	TCJ	3,4

2. InterLATA Interexchange:

InterLATA traffic shall be transported from SWBT's access tandem over a separate trunk group from local and IntraLATA toll traffic. This trunk group may be set up as one-way or two-way (two-way is preferred) and can utilize either MF or SS7 protocol signaling. The traffic use code and modifier for this trunk group will be **MDJ** (see Scenario 1, 2, 3 or 4).

C. Operator Services:

1. No Operator Contract:

Inward Operator Assistance (Call Code 121) - LSP may choose from two interconnection options for Inward Operator Assistance as follows:

Option 1 - Interexchange Carrier (IXC) Interface

The LSP may utilize the Interexchange Carrier Network (see Scenario 6). The LSP operator will route its calls requiring inward operator assistance through its designated IXC POP to SWBT's TOPS tandem. SWBT shall route its calls requiring inward operator assistance to the LSP's Designated Operator Switch (TTC) through the designated IXC POP.

Option 2 - LSP Operator Switch

The LSP reports its switch as the designated serving operator switch (TTC) for its NPA-NXXs and requests SWBT to route its calls requiring inward operator assistance to LSP's switch. This option requires a segregated one-way (with MF

signaling) trunk group from SWBT's Access Tandem to the LSP switch. The traffic use code and modifier for this trunk group should be **OAJ** (see Scenario 7). The LSP's operator will route its calls requiring inward operator assistance to SWBT's operator over an IXC network. Two-way trunking on the OA group is not recommended.

2. Operator Contract with SWBT:

a. Directory Assistance (DA):

The LSP may contract for DA services only. A segregated trunk group for these services would be required to SWBT's TOPS tandem. This trunk group is set up as one-way outgoing only and utilizes MF and Operator Services signaling. The traffic use code and modifier for this trunk group should be **DAJ** (see Scenario 5).

b. Directory Assistance Call Completion (DACC):

The LSP contracting for DA services may also contract for DACC. This requires a segregated one-way trunk group to SWBT's TOPS tandem. This trunk group is set up as one way outgoing only and utilizes MF signaling. The traffic use code and modifier for this trunk group should be **DACCJ** (see Scenario 5).

c. Busy Line Verification:

When SWBT's operator is under contract to verify the LSP's end user loop, SWBT will utilize a segregated one-way with MF signaling trunk group from SWBT's Access Tandem to the LSP switch. The traffic use code and modifier for this trunk group should be **VRJ** (see Scenario 5).

d. Operator Assistance (0+, 0-):

This service requires a one-way trunk group from the LSP switch to SWBT's TOPS tandem. Two types of trunk groups may be utilized. If the trunk group transports DA/DACC, the trunk group will be designated as **ETCMFJ** (0-, 0+, DA, DACC) (see Scenario 5). If DA is not required or is transported on a segregated trunk group, then the group will be designated as **ETCM2J** (see Scenario 5). MF and Operator Services signaling will be required on the trunk group.

D. Trunk Design Blocking Criteria:

Trunk forecasting and servicing for the local and intraLATA toll trunk groups 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 (Neal Wilkinson M)</u>
Local Tandem	1%
Local Direct	2%
IntraLATA Interexchange	1%
911	1%
Operator Services (DA/DACC)	1%
Operator Services (0+, 0-)	0.5%
InterLATA Direct	1%
InterLATA Tandem	0.5%

E. Forecasting/Servicing Responsibilities:

SWBT shall be responsible for forecasting and servicing the trunk groups terminating to the LSP. The LSP shall be responsible for forecasting and servicing the trunk groups terminating to SWBT end users and/or to be used for tandem transit to other provider's networks, operator services and DA service, and interLATA toll service. In accordance with mutually agreed upon trunk engineering rules, the Parties shall establish direct end office primary high usage trunk groups for Local Traffic.

F. 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. 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 CCS (100 call seconds), that has been adjusted to consider the effects of overflow, retrials and day-to-day variation. They will also contain overflow CCS 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.

Parties agree that no more than 2% of the first route, direct or alternate final trunk groups carrying local or intraLATA toll traffic will exceed a measured blocking threshold of 3% (1% design blocking objective) during a designated study period. Parties also agree that no more than 2% of the first route, direct or alternate final trunk groups carrying

interLATA traffic will exceed a measured blocking threshold of 2% (1/2% design blocking objective) during a designated study period. These objectives shall be based upon 20 valid days of measurement data and a trunk group size of seven or more trunks. Parties shall monthly self report % No Circuit (NC) blocking on these groups to requesting parties by the 15th of the month following the report month based upon a designated four week study period ending the last full week, containing no holidays, of the calendar month. The % NC report will identify any trunk group that exceeds its measured blocking threshold by its common language code. The following information shall also be reported: design blocking objective, measured blocking, busy hour, number of valid days when all measurements were available during the study period and an explanation for the excessive blocking. The measured blocking % NC shall be calculated by dividing the number of blocked calls by the number of offered calls. Exceptions to the threshold objectives will be made for groups overflowing due to weather/natural disaster, facility/central office failure, mass calling/telemarketing events and other extreme non-representative events.

G. Trunk Facility Under Utilization:

At least once a year both parties will exchange trunk group measurement reports (as detailed in Section F) for trunk groups terminating to the other Party's network to determine whether there is excess trunk group capacity. Each Party will determine the required trunks for each of the other Party's trunk groups for the previous 12 months. The required trunks will be based on the objective blocking criteria included in Section D and time consistent average busy hour usage measurements from the highest four consecutive week (20 business day) study. Excess capacity exists when a trunk group, on a modular trunk group design basis, has 48 trunks. Trunk groups with excess capacity will be identified and communicated to the other party as candidates for downsizing. If excess capacity is found to exist, and a Party with excess capacity on a trunk group wishes to retain the current trunk group size or increase it, the Party agrees to compensate the other Party if during the next 12 month period, the trunk group continues to have excess capacity. The Party agrees to a rate of \$5,000 per year, per modular trunk design digroup (24 trunks), over the required trunks (plus 10% allowable spare expressed on modular trunk design basis).