jurisdiction may produce the opportunities that are comparable are and should be wholly within the discretion of the foreign jurisdiction. However, this Commission can and should evaluate whether the resulting opportunities are such that U.S. carriers in the foreign market are granted opportunities that are comparable to those available to carriers in the U.S. This comparability test will serve two functions: (1) it will permit the granting of access to the U.S. market only where U.S. competition will not be distorted by foreign market regulations and barriers;[24] and (2) to the extent foreign carriers value entry into the U.S., it will provide incentives to their governments to

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close to the U.S. regime." (MCI Petition to Deny BTNA Application to resell private lines from the U.K., File No. ITC-93-126, pp. 8, submitted April 16, 1993 (emphasis supplied)).

In any event, whether a particular market, such as the U.K. or Chile, meets the comparability test should be considered within the context of a specific application proceeding, and not the focus of the proposed rulemaking.

[24] The Office of the USTR has stated that "[i]nternational negotiations to liberalize market access for basic telecommunications services may affect important areas of U.S. regulatory policy, creating a direct link between regulatory decisions and trade negotiating objectives." Letter from Assistant USTR Harry G. Broadman, dated April 20, 1993 to Hon. Thomas J. Sugrue, Acting Assistant Secretary, NTIA, U.S. Department of Commerce, in response to NTIA's Notice of Inquiry (Docket No. 921251-2351), "Comprehensive Examination of U.S. Regulation of International Telecommunications Services" ("NTIA NOI").

take the steps they deem appropriate to ensure that the market opportunities that result therefrom are comparable to those available in the U.S.[25]

Further, the proposed rules leave to the Commission suitable discretion to weigh the various relevant factors to determine whether a market offers comparable opportunities. The relative weight of each factor could vary by country or scope of entry, depending on the Commission's reasonable judgment. The rule articulates the mix of ingredients, however, that would be reasonable to

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[25] TLD argues that there is no indication that the comparability standard would prompt the opening of foreign markets. TLD's argument defies logic and ample evidence in the trade arena that countries will, if required, liberalize access to their own markets to secure access to more lucrative markets (such as the U.S.). Indeed, private parties often act the same way -- AT&T does not believe it pure coincidence that BT finally offered to publish an interconnection tariff during the period in which it was seeking to convince the FCC that the U.K. market meets the "equivalency" test. While this single, insufficient (and yet unfulfilled) concession on BT's part is not adequate to conclude that the comparability standard will be successful, permitting foreign carriers unconditional entry is certain not to provide the incentive or motivation to foreign countries to open their markets to U.S. carriers -- as history demonstrates. (See AT&T Comments in response to NTIA NOI, pp. 33-35, submitted April 15, 1993). Indeed, Telefonica's entry is illustrative. Repeatedly, TLD reminds us that its monopoly in Spain can be modified by an act of the European Commission, but it has taken no steps on its own initiative to forego or renounce any of its protected status. Indeed, Telefonica reportedly has vigorously opposed the entry of competitors in Spain. See Tarifabulletin, "Spanish liberalisation creates a storm", October 1993, attached hereto as Attachment II.

expect in a competitive market, and to the extent none or a limited few of these factors are found to exist, one would be hard-pressed to conclude that comparable opportunities are present.

Nor are the proposed rules, as some contend, "unfair" or "restrictive". In fact, the rules that would be applied to foreign carriers are no more restrictive (and, in fact, less so) that those developed and applied by the Commission in the U.S., where, as a result of effective competition, carriers lead the world in the development of new and innovative service offerings. The additional requirement that foreign carrier applicants agree to set non-discriminatory, cost-based accounting rates is wholly consistent with the Commission's finding in the Accounting Rate Proceeding that U.S. settlement rates should be reduced to reflect the preferential rates granted by foreign carriers to other foreign carriers.[26]

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[26] Regulation of International Accounting Rates, 6 FCC Rcd 3434 (1991). Interestingly, none of the foreign carriers attempt to refute the fact that their accounting rates are above-cost, nor do they argue that establishment of non-discriminatory, cost-based accounting rates as a condition of entry is particularly onerous or unfair. BT tries again to deflect attention from the above-cost level of accounting rates by complaining about the success of USADirect® service in its market, and argues that the proposed rulemaking also should consider the settlements impact of country direct services. Although this is at already within the Accounting Rate Proceeding, if the Commission found it appropriate, AT&T would not object to expanding the inquiry to evaluate the public interest benefits of making country direct services

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B. Affiliations That Do Not Involve the Transfer of Legal Control Nonetheless Provide An Incentive For the Foreign Carrier and Its U.S. Affiliate To Act in Concert To The Detriment of Others

BT and DOMTEL challenge the appropriateness of applying the proposed rules to an entity in which a foreign carrier holds an ownership interest of five percent or more. These parties note that a foreign carrier affiliation, for the purposes of determining dominant/non dominant regulation in accordance with the International Services Order, is determined based on control, and is relevant only if the foreign carrier possesses control of bottleneck facilities. As Sprint notes in response to the BT/MCI Petition for Declaratory Ruling (cite), however, the fact that BT may not have legal control of MCI does not imply that BT has a passive interest or that BT will not have the incentive to favor MCI. BT enjoys special shareholder rights from its investment in MCI that are superior to those of any other non-controlling or passive investor. Moreover, in other contexts, the Commission has found that a five percent investment is be sufficient to provide an opportunity for

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available to consumers and appropriate means to reduce above-cost accounting rates.

abuse or collusion between entities to act to the detriment of competitors.[27]

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[27] In the Final Report and Order in In the Matter of Applications of Telephone Companies for Section 214 Certificates for Channel Facilities Furnished to Affiliated Community Antenna Television Systems, 21 F.C.C.2d 307 (1970), the Commission promulgated rules prohibiting telephone companies from furnishing CATV in their service areas, either directly or indirectly through affiliates. The Commission noted that "to fulfill the intended purposes of this report and order, we shall broadly interpret the concept of affiliation" (id. at para. 49). Section 63.55 of the Commission's Rules implemented a 5% cross-ownership limitation applicable to telephone and cable television companies based on the Commission's view that 5% cross-ownership would be sufficient to provide an opportunity and incentive for telephone companies having control over facilities needed by the cable industry to favor affiliated cable companies. The Commission's decision was affirmed by the U.S. Court of Appeals in General Telephone Co. v. U.S., 449 F.2d 846 (5th Cir. 1971).

Further, Section 13d of the Securities Exchange Act, 15 U.S.C. 78, which requires disclosure of 5% equity interests in publicly held companies similarly expresses Congress' determination that "an ownership interest of more than five percent in a public held company is often sufficient to influence corporate management" and "might represent a potential shift in corporate control." PL-213, p. 4111; GAF Corp. v. Milstein, 453 F.2d 709, 717 (2d Cir. 1971). In fact, the Act was amended in 1970 to reduce this threshold from ten percent to five percent because of Congress' concern that acquisition of more than five percent "may lead to important changes in the management of the business of the company." House Report No. 91-1655, Dec. 2, 1970, Cong. Rec. Vol. 116, p. 5028 (1970). It is, therefore, not unreasonable for the Commision to utilize a five percent threshold as a benchmark at which to determine if it needs to consider the possibilities of abuse. As in all cases under the Commission's rules, if in a particular case application of the 5% rule would be inappropriate or unnecessary, its application could be waived by the Commission.

DOMTEL argues that there is no basis for applying the rules proposed by AT&T to carriers which lack foreign market power. AT&T agrees with DOMTEL that a foreign carrier applicant that does not control bottleneck facilities in its home market or otherwise possess the ability to discriminate against U.S. carriers should not be subject to those aspects of the rule that address the leveraging of foreign market power.[28] The foreign carrier should, however, be otherwise obligated to conform its behavior with its affiliated U.S. carrier consistent with the proposed rules.

C. Prohibiting Exclusive Service Arrangements for International Enhanced Services Is An Appropriate Exercise of Commission Authority and Is Necessary to Preserve Competition in the Basic Services Market

ENTEL (pp. 11-13) incorrectly contends that the proposed rule inappropriately would subject enhanced services to Title II regulation. The proposed rule seeks only to prohibit a foreign carrier from using its protected position or control over distribution facilities to favor a

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[28] Market power can exist either because of a position protected by regulation or control of essential distribution facilities. Whether or nor a foreign carrier possesses market power, however, it is appropriate to take steps to open other markets to the same extent as the U.S. to avoid situations where foreign carriers gain an artificial market advantage over U.S. competitiors in the global market through "self-correspondency", by being uniquely positioned to participate on both ends of a call. See note 5 supra.

U.S. affiliate. Such a provision is necessary, because the seamless global services desired by customers today most often reflect a mixture of both basic and enhanced services; if a competitor cannot compete for the provision of enhanced services because of an exclusive relationship conferred on a U.S. carrier by a foreign carrier with control over bottleneck facilities, that competitor's ability to compete for basic services also will be seriously undermined. The Commission has long had a policy against exclusive arrangements with foreign entities which permit foreign administrations to favor selected U.S. carriers and which block U.S. competitors from serving a market or market segment.[29] Application of the proposed rules to enhanced service arrangements is consistent with Commission decisions in analogous cases, and does not represent re-regulation of enhanced service providers.

Despite Commission decisions to forego rate and tariff regulation of cable services, the Commission historically took steps to ensure that the market power of telephone companies derived from their control over distribution facilities was not leveraged into adjacent

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[29] Interconnection among Record Carriers, 93 F.C.C.2d 845, 876 (1983); Circuits between the United States and British Commmonwealth, 12 FCC 526, 550-51 (1947), cited in Fedex International Transmission Corporation, File Nos. ITC-85-025, ITC-85-026, slip op., 1985 FCC Lexis 3584 (Mar. 29, 1985).

market segments. The Commission established cross-ownership limitations on telephone and cable television companies to foster the competitiveness of the cable industry. In like fashion, adopting a policy prohibiting arrangements which would preclude competition among U.S. carriers for enhanced services will facilitate competition in the provision of global enhanced services, and preserve competition in the provision of basic international services.

Moreover, requiring non-exclusive enhanced services arrangements is particularly appropriate and necessary in light of BT/MCI's apparent plan to reclassify international virtual private network services -- which have been considered "basic" service since their inception -- as "enhanced" services, for the purposes of its Joint Venture. Neither BT nor MCI refuted AT&T's interpretation of the BT/MCI Joint Venture Agreement's definition of "Enhanced and value-added Telecommunications Services", which would include IVPN service.[30] Under the terms of the Joint

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[30] See Section 1.C supra. MCI's denials are half-hearted and unconvincing. MCI states that "BT and MCI will continue their correspondent-based services with other companies." However, the Joint Venture Agreement defines "Enhanced Services" so as to exclude services that are provided on a correspondent basis "for regulatory reasons", and then includes a definition of "Enhanced Services" that encompasses IVPN service. Thus, MCI's statement does not confirm that BT and MCI will provide IVPN service on a correspondent basis with unaffiliated carriers.

Similarly, BT (p. 15) states that it will continue its "correspondent services ... in the customary fashion and

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Venture Agreement, BT is prohibited from offering IVPN-like services with any other carrier -- unless specifically required to do so by a regulator. The Commission should not refrain from taking up the challenge. To the extent the Commission permits BT and MCI to skirt its regulations and International Settlements Policy by unilaterally re-classifying basic services as enhanced services, the ability of the Commission to regulate the international services market as it deems appropriate will be frustrated.

CONCLUSION

The Commission should immediately establish a rulemaking proceeding to reassess its international services policies in light of the globalization of telecommunications services, and promulgate rules designed to encourage the opening of foreign markets to U.S. carriers and to minimize the opportunity for foreign carriers to distort competition

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in compliance with applicable law and regulation", and that "BT and MCI will not impermissibly exclude competitors from the market for regulated basic resale services." (Emphasis supplied). Although BT indicates that it will not terminate its existing arrangements with its international correspondents, the Agreements provide that the parties will terminate all arrangements inconsistent with the exclusivity principles set forth in the Distribution Agreements "as soon as practicable following Closing, and, in any event within a period of one year from Closing or longer, to the extent justified by any customer contract..." Joint Venture Agr., Art. 18.2(b).

in the provision of services to U.S. customers through their monopoly power derived from closed foreign markets.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

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Dated: November 16, 1993

ATTACHMENT I

RELEVANT PROVISIONS OF
BT/MCI AGREEMENTS

the Company on the equity method and otherwise to comply with applicable requirements of U.S. and U.K. securities laws, and generally accepted accounting principles, provided that representatives of BT shall be afforded a reasonable opportunity to discuss the foregoing factors (and any other factors that BT may consider relevant to such determination) with the Independent Directors.

(d) If the Board of Directors of the Company decides to sell the Company, then the Board of Directors shall provide BT with, in the reasonable judgment of the Independent Directors, a reasonable opportunity to submit an Acquisition Proposal in accordance with commercial practice and in the event that the Board of Directors decides to sell the Company pursuant to an auction, such auction shall be conducted on commercially reasonable terms as established in a Determination of the Independent Directors and BT shall be entitled to participate in such auction on the same terms and conditions as any other prospective bidder.

(e) The Company agrees not to take, and the Company shall not directly or indirectly engage in any of the following actions without the consent of BT: (x) any single or related series of sales, transfers or other dispositions or encumbrances of assets having a Fair Market Value in excess of 15% of the aggregate Fair Market Value (established in a Determination of the Independent Directors) of all of the assets of the Company and its Subsidiaries taken as a whole at the time that the Company executes a definitive agreement to effect such disposition or encumbrance, provided that a sale of all or substantially all of the assets of the Company shall not be deemed a disposition or encumbrance for purposes of this clause (x); or (y) the declaration of any extraordinary cash dividends or other distribution to holders of any class or classes, and/or any series thereof, of capital stock of the Company in excess of 5% of the Market Capitalization of the Company at the time of such dividend or other distribution; provided, however, that nothing in clause (x) or clause (y) shall require any consent of BT in order for the Company to enforce its rights under this Agreement, the Newco Agreement or any related agreement, for any transaction effected in accordance with the Certificate of Incorporation, for any other transaction between or in respect of the Company or any of its Affiliates, on the one hand, and BT or any of its Affiliates, on the other hand, or in connection with any action pursuant to a Requirement of Law.

9.12. Balance of Rights and Obligations. (a) Except as otherwise provided in Section 9.12(b), subsequent to the Closing, in the event that BT or any of its Affiliates engages directly or indirectly in the Core Business of the Company in the Americas or transfers or provides sales and marketing support, technology or customer traffic in connection with any Person engaged in the Core Business of the Company in the Americas or holds or acquires an interest in any Person who

(x) less than 20% of such Person's consolidated revenues are derived from sales in the Americas contributed by operations within the Core Business of the Company and (y) BT, at the request of the Company, shall sell or cause the sale of the subsidiary, division or other entity conducting such operations in accordance with the procedures (the "First Offer Procedures") set forth in Section 9.12(h), provided further that such subsidiary, division or other entity shall not be required to be sold until such time as it generates annual revenues of $25 million or more per year;

(v) any inadvertent condition or act (each an "Inadvertent Condition") that would otherwise result in a Loss of BT Rights, including, without limitation, any such condition or act that results solely from the actions of any Person other than BT or its Affiliates or any activity undertaken without the knowledge of any executive officer of BT, provided that, if BT shall become aware of such Inadvertent Condition, it shall promptly give written notice of such Inadvertent Condition to the Company and BT and the Company shall negotiate in good faith to reach an agreement in writing with respect to a cure for such Inadvertent Condition, provided further that, unless otherwise agreed by BT and the Company in such written agreement, within one year following the delivery of such notice, BT shall dispose of the securities, assets or business that gave rise to such Inadvertent Condition, provided that BT, at the request of the Company, shall sell or cause the sale of such securities, assets or business in accordance with the First Offer Procedures;

(vi) ownership of Newco and the activities contemplated by the Newco Agreement and the "Related Agreements" (as defined in the Newco Agreement); or

(vii) any activity undertaken with confirmation in writing by the Company that such activity will not result in a Loss of BT Rights;

(c) Except as otherwise provided in Section 9.12(d), subsequent to the Closing, in the event that the Company or any of its Affiliates engages directly or indirectly in the Core Business of BT outside the Americas or transfers or provides sales and marketing support, technology or customer traffic in connection with any Person engaged in the Core Business of BT outside the Americas or holds or acquires an interest in any Person who is engaged in the Core Business of BT outside the Americas as a partner, shareholder, principal or in any other capacity of ownership or control (such activities, whether or not engaged in outside the Americas, are collectively referred to as being "Engaged in the Core Business of BT"), then Sections 5.1, 5.3, 7.1, 7.2, 7.3, 10.2 and 10.3 of this Agreement shall become void and of no further force and effect (such consequences are collectively referred to herein as the "Loss of Company Rights") and all further obligations of the Company and BT or any of their respective Affiliates or their respective officers or directors

with respect to any obligation thereunder shall terminate without further liability, provided that any determination as to whether the Company has undertaken the foregoing activities shall be determined in accordance with the arbitration procedures set forth in Section 9.12(e) and 9.12(f).

(d) Notwithstanding anything contained in Section 9.12(c), the Company shall not be subject to the Loss of Company Rights under Section 9.12(c) from:

(i) acquiring or owning, directly or indirectly, for investment purposes, securities of any Person not principally Engaged in the Core Business of BT (or if it is principally Engaged in the Core Business of BT, less than 10% of its Core Business revenues are derived outside the Americas) if such Person is a publicly traded company and the Company and its Affiliates own less than 5% of the voting securities of such Person, provided that such investment does not exceed 0.5% of the Company's total consolidated assets;

(ii) correspondent relationships in the ordinary course of business and the activities listed on Schedule 9.12;

(iii) any activity undertaken by the Company or its Affiliates pursuant to Requirements of Law if the failure to comply with such law would have a material adverse effect on the business or results of operations of the Company;

(iv) a transaction whereby, directly or indirectly, control of (by merger, tender offer or otherwise), or all or substantially all of the assets of, any Person Engaged in the Core Business of BT outside the Americas are transferred to the Company or any of its Affiliates, provided that (x) less than 20% of such Person's consolidated revenues are derived from sales outside the Americas contributed by operations within the Core Business of BT and (y) the Company, at the request of BT, shall sell or cause the sale of the subsidiary, division or other entity conducting such operations in accordance with the First Offer Procedures set forth in Section 9.12(h), provided further that such subsidiary, division or other entity shall not be required to be sold until such time as it generates annual revenues of $25 million or more per year;

(v) any Inadvertent Condition that would otherwise result in a Loss of Company Rights, including, without limitation, any such condition or act that results solely from the actions of any Person other than the Company or its Affiliates or any activity undertaken without the knowledge of any executive officer of the Company, provided that, if the Company shall become aware of such Inadvertent Condition, it shall promptly give written notice of such Inadvertent Condition to BT and the Company and BT shall negotiate in good faith to reach an agreement in writing with respect to a cure for such Inadvertent Condition,

provided further that, unless otherwise agreed by the Company and BT in such written agreement, within one year following the delivery of such notice, the Company shall dispose of the securities, assets or business that gave rise to such Inadvertent Condition, provided that the Company, at the request of BT, shall sell or cause the sale of such securities, assets or business in accordance with the First Offer Procedures;

(vi) ownership of Newco and the activities contemplated by the Newco Agreement and the "Related Agreements" (as defined in the Newco Agreement); or

(vii) any activity undertaken with confirmation in writing by BT that such activity will not result in a Loss of Company Rights.

(e) In the event that either of the parties hereto (the "Investing Party") is considering any activity that it believes the other party ("Subject Party) may view as resulting in the loss of rights as specified in Section 9.12(a) or 9.12(c) as may be applicable (the "Loss of Rights"), then the Investing Party may provide notice (the "Investing Notice") of such proposed activity to the Subject Party and seek the Subject Party's consent to engaging in such activity. If following good faith consultation the Subject Party fails to grant such consent, then the Investing Party may within 30 days after delivery of the Investing Notice initiate binding arbitration as to whether such activities would result in the Loss of Rights as hereinafter provided pursuant to the arbitration procedures set forth in Section 9.12(g) (the "Arbitration"). The parties shall seek to conclude the Arbitration as promptly as practicable but in no event shall the Arbitration be conducted more than 90 days subsequent to the initiation of Arbitration. If the result of the Arbitration is that the Investing Party would incur a Loss of Rights if it engaged in the activity being considered, then the Investing Party shall be subject to a Loss of Rights, without the opportunity for cure, if it then goes forward with such activities. Any determination by the Arbitration shall take into account any proposed divestment by the Investing Party to an unaffiliated third party, provided that (i) such divestment occurs as promptly as commercially reasonable (but no more than one year following the activity or investment that would otherwise lead to a Loss of Rights) and (ii) is conducted in accordance with the First Offer Procedures.

(f) In the event that either party (the "Aggrieved Party") believes that the other party (the "Active Party") has engaged in activities that would subject such Active Party to a Loss of Rights, then the Aggrieved Party shall notify the Active Party and the parties shall seek to resolve the matter to their mutual satisfaction. If the parties cannot resolve the matter within 60 days, then either party can initiate Arbitration within 60 days thereafter as provided in Section 9.12(g). The parties shall seek to conclude the Arbitration as promptly as practicable but in no event shall such Arbitration be conducted more than 90

days subsequent to the initiation of Arbitration. If the result of the Arbitration is that the Active Party should be subject to a Loss of Rights, then the Active Party shall be entitled to a one year cure period (if the arbitrators believe that the activity is capable of cure) which cure shall be effected by divestment pursuant to the First Offer Procedures, provided that the Active Party shall not be entitled to a cure period, or shall be entitled to a reduced cure period, at the discretion of the arbitrators, if the arbitrators conclude that the Aggrieved Party's business, results of operations or prospects were materially and adversely affected by the conduct of the Active Party or that the Active Party engaged in activities that gave rise to the Arbitration in willful disregard of the consequences.

(g) Arbitration under Section 9.12(e) or 9.12(f) shall proceed as herein set forth:

(i) The Investing Party shall give the Subject Party a written notice which shall also contain, in addition to the demand for arbitration, a clear statement of the issue to be resolved by the Arbitration, the name and address of the arbitrator selected by the Investing Party and the address to which all further papers regarding the Arbitration are to be mailed or delivered.

(ii) The Subject Party shall deliver a written response to the arbitration notice within 30 days following its actual receipt of such notice. Such response shall contain a clear statement of its position concerning the issue in dispute, the name and address of the arbitrator selected by the Subject Party and the address to which all further papers regarding the Arbitration are to be mailed or delivered. If the Subject Party fails to designate its arbitrator within the time allowed, the Investing Party may apply to the United States District Court for the Southern District of New York (the "New York Court") for designation of the second arbitrator. The application shall provide no less than five days' notice to the Subject Party, before presentation to the New York Court. The Subject Party may appoint the second arbitrator at any time prior to the day the Court appoints the second arbitrator.

(iii) Within five Business Days following the selection of the second arbitrator, the two arbitrators shall select a third arbitrator. In the event they fail to do so within that time period, either party may apply to the New York Court for appointment of a third arbitrator. The application shall provide no less than five days' notice to the other party before presentation to the New York Court. The third arbitrator must be an attorney reasonably experienced in commercial affairs who is a member of the New York Bar, must be impartial and must otherwise satisfy the requirements of CPLR 7506(a) and 9 U.S.C. Section 10. The method of selection of arbitrators, or the arbitrators as selected, may be changed at any time only upon written agreement of the parties.

"Business Plan" means a rolling 5 year business plan for NEWCO and the NEWCO Group (which, without limitation, will deal with all material matters for the Business during the period in question and shall set out the Shareholders' joint funding commitment for the period to which it relates) together with all variations, updates and extensions approved under the procedures of Clause 11.1 or 20.4, the first such Business Plan being in the agreed form, subject to any changes thereto which may be agreed between the Shareholders pursuant to Clause 20.1 (the "First Business Plan");

"'C' Shares" means all issued 'C' ordinary shares of 1 Pounds Sterling each in the capital of NEWCO;

"CEO" means the chief executive officer of NEWCO from time to time;

"Closing" means the completion of this Agreement in accordance with Clause 6;

"Closing Balance Sheet" means the consolidated balance sheet of the NEWCO Group, as at the time immediately prior to Closing, as agreed or deemed to be agreed pursuant to Clause 6.6 or, failing which, as determined by the independent accountants instructed pursuant to Clause 6;

"Companies Act" means the Companies Act 1985;

"director" means a director of NEWCO as current from time to time and shall be deemed to include any alternate director validly appointed by such director in accordance with the Articles;

"Distribution Agreements" means the BT Distribution Agreement and the MCI Distribution Agreement;

"EC Commission" means the Commission of the European Communities;

"EEC Treaty" means the Treaty establishing the European Community (Treaty of Rome);

"Enhanced and Value-added Telecommunication Service" or "Enhanced and Value Added Services" means any international telecommunications service which regulation permits to be offered (other than those described in (i), (ii), (iii) and (iv) below) between two or more countries by members of a single Group and which regulation permits to be managed on an end to end basis but, for the avoidance of doubt, this shall not include (i) voice international simple resale (ii) international direct distance dialling provided on a

correspondent basis (iii) the provision of international private leased circuits and (iv) any services which for regulatory reasons must be offered on a correspondent basis;

"Financial Year" means in respect of the first Financial Year the period from the date of Closing to the next Accounting Reference Date and in respect of each subsequent Financial Year the period commencing with the date following the end of the previous Financial Year and ending on the next Accounting Reference Date;

"Global Platform" means those transmission, switching, signalling, network intelligence and/or service management systems which from time to time are owned, leased, managed or contracted for by NEWCO excluding any Remote Network in order to provide the Services ("Services" and "Remote Network" being as defined in the Distribution Agreements);

"Global Products" means any current or future Enhanced and Value-added Telecommunication Service between two or more countries;

"Group" means any corporation and its Subsidiary Undertakings;

"holding company", "subsidiary" and "wholly-owned subsidiary" have the meanings ascribed to them in Sections 736 and 736A of the Companies Act as in effect at the date hereof save that NEWCO shall not be considered to be a subsidiary of either Ultimate Parent and, for the avoidance of doubt, for the purpose of determining whether a company is a "wholly-owned subsidiary" any share held by a nominee shall be deemed to be held by the company appointing such nominee;

"ICTA" means the Income and Corporation Taxes Act 1988;

"Infonet" means Infonet Services Corporation;

"Intellectual Property Agreement" means the agreement in the agreed form to be entered by NEWCO and each of the Ultimate Parents or their affiliates relating to intellectual property rights;

"International Outsourcing Services" means the provision of the services described in Clause 4.1(d);

"Investment Agreement" means the agreement of even date herewith between BT and MCI concerning the acquisition by BT of shares of the class A common stock in MCI and related terms in connection therewith;

apply, and NEWCO shall purchase such products, services and facilities from the Ultimate Parents or their respective affiliates, only if in each case the relevant Ultimate Parent (or such affiliate) can provide the same on terms at least as favourable as regards price, quality and service to NEWCO as would be obtainable in an arm's length transaction from an other supplier of the same who is not an affiliate of NEWCO or a Shareholder. In the event that both Ultimate Parents (or their respective affiliates) offer or are able to offer to provide competitive products, services or facilities which are comparable, NEWCO shall purchase the same from the Ultimate Parent (or affiliate) which offers to supply the same to NEWCO on the more favourable terms.

17.4 In their commercial dealings with the NEWCO Group the Parties shall offer to supply products, services and facilities to NEWCO and its Subsidiary Undertakings at not more than on an arm's length, cost plus reasonable market rate of return basis.

17.5 Nothing contained in this Clause 17 shall be deemed to require any of the Parties to do anything that would conflict with any regulatory licence or condition with which that Party must comply.

17.6 For the purpose of this Clause 17, it shall be assumed that the terms of the Related Agreements (but excluding items still to be agreed or added thereto and other than the Investment Agreement) as adopted at the date hereof comply with this Clause 17.

18. <u>Restrictions and Obligations on Shareholders</u>

18.1 Subject to the following terms of this Clause 18, while any Shareholder retains any Shares, that Shareholder and its Ultimate Parent undertakes to NEWCO and the other Shareholder and its Ultimate Parent that it shall not and shall procure that its subsidiaries shall not, and shall use its best endeavours to procure that none of its affiliates (excluding subsidiaries) shall, do or permit any of the following without the prior written consent of the other Ultimate Parent:

(a) except in accordance with the Distribution Agreements, either solely or jointly with or on behalf of any person directly or indirectly carry on or be engaged or interested in the provision of Enhanced and Value-added Telecommunication Services anywhere in the world or International Outsourcing Services (except as the holder of investments or securities dealt in on a recognised stock exchange which does not involve that Shareholder (or its affiliates) beneficially owning more than 10% of the issued share capital of a company

carrying on, either directly or through one or more subsidiaries, any such business) or appoint any person to be a director (or equivalent officer holder) of a business which provides such services other than as a director of NEWCO or its Subsidiary Undertakings;

(b) except in accordance with the Distribution Agreements, solicit the custom of any person for the purpose of offering to that person Enhanced and Value-added Telecommunication Services or International Outsourcing Services;

(c) solicit or entice away or endeavour to solicit or entice away any employee of, or seconded to, NEWCO or to any Subsidiary Undertaking of NEWCO, but without prejudice to the right of that Shareholder to terminate arrangements under which any of its staff are seconded to NEWCO or any such Subsidiary Undertaking or cause or permit any person directly or indirectly under its control to do any of the foregoing acts or things.

18.2 Nothing in Clause 18.1 shall preclude or restrict either Ultimate Parent, Shareholder or their affiliates from providing any products, services or facilities within the respective Territories (as defined in the Distribution Agreements) covered by its Distribution Agreement:

(a) to the extent that such provision is necessary in order to ensure continuity of service is maintained to fulfil existing contractual commitments to customers in circumstances where NEWCO has discontinued such service; or

(b) which would otherwise be in breach of Clause 18.1 but which that Ultimate Parent, Shareholder or any affiliate of an Ultimate Parent provided to customers by whatever means (including, without limitation, through marketing arrangements with third parties) prior to Closing, PROVIDED THAT such Ultimate Parent or Shareholder shall procure that such products, services or facilities are discontinued and no longer actively marketed as soon as reasonably practicable following Closing and, in any event, within a period of 1 year from Closing or longer, to the extent justified by any customer contract the unexpired length of which as at Closing extends beyond such 1 year period; or

(c) which would otherwise be in breach of Clause 18.1 but which that Ultimate Parent, Shareholder or any affiliate of an Ultimate Parent provided to customers at a time after Closing but before any product, service or facility became Enhanced and Value-added Telecommunication Services due to regulatory changes, provided that such Ultimate Parent or Shareholder shall use reasonable endeavours to procure that such products, services or facilities are migrated to NEWCO and no

longer actively marketed to customers as soon as reasonably practicable following the time at which such products, services or facilities first became Enhanced and Value-added Telecommunication Services.

18.3 Neither BT nor BTN shall be in breach of its undertaking in Clause 18.1 as a consequence of any action taken by BT in complying with its obligations under the terms of the licence granted by the Secretary of State to BT on 22 June 1984 under Section 7 of the Telecommunications Act 1984 or BT or BTN complying with any other regulatory obligation imposed upon it by a relevant governmental or similar authority in the United Kingdom of Great Britain and Northern Ireland or the Isle of Man.

18.4 Neither MCI nor MCH shall be in breach of its undertaking in Clause 18.1 as a consequence of any action taken by MCI or its affiliates in complying with its obligations in the United States of America under the terms of applicable regulatory certificates, licences, authorisations or with any other regulatory obligations imposed upon any of them by a relevant governmental or similar authority in the United States of America.

18.5 If either BT, BTN, MCI or MCH as appropriate is prevented from complying with the provisions of Clause 18.1 for the reasons set out in Clauses 18.3 or Clause 18.4, it shall use all reasonable endeavours to find an alternative means of ensuring it is able to comply with or achieve a similar financial effect as would be derived by NEWCO and its compliant distributor had there been such compliance with Clause 18.1 as soon as practicable, but if any such Party is not so able to comply with Clause 18.1, BT (in the case of BT or BTN) or MCI (in the case of MCI or MCH) shall pay to NEWCO an amount equal to any Profits made as a result of BT or MCI or their respective affiliates (for the purpose of this Clause 18.5, "the defaulting Ultimate Parent") not so complying with Clause 18.1, and such amount shall:

(a) be paid quarterly in arrears to NEWCO, in $ within 30 days from the end of each calendar quarter;

(b) be accompanied by a certificate signed by the defaulting Ultimate Parent showing details of the calculation of the payment (a copy of which shall be forwarded at the same time to the non-defaulting Ultimate Parent); and

(c) unless otherwise agreed, be accompanied by self-billing invoices prepared and presented by the defaulting Ultimate Parent in respect of the payment of sums due to NEWCO hereunder, and the defaulting Ultimate Parent shall, in addition, pay any VAT and any other applicable sales taxes in presenting such invoices to NEWCO;

(d) be made in full without any deduction or withholding (whether in respect of set-off, counterclaim, duties, taxes, charges or otherwise whatsoever) unless the deduction or withholding is required by law, in which event the defaulting Ultimate Parent shall:

(i) ensure that the deduction or withholding does not exceed the minimum amount legally required;

(ii) pay to the relevant taxation or other authorities within the period for payment permitted by applicable law the full amount of the deduction or withholding;

(iii) furnish to NEWCO, within the period for payment permitted by the relevant law either an official receipt of the relevant taxation authorities involved in respect of all amounts so deducted or withheld or, if such receipts are not issued by the taxation authorities concerned, a certificate of deduction or equivalent evidence of the relevant deduction or withholding; and

(iv) to the extent that any such deduction or withholding is not creditable, relievable or allowable against NEWCO's liability to taxation on such sum, pay such additional amount after allowance for any further deduction or withholding thereon and any credit, relief or allowance therefor as shall leave NEWCO in the same after-tax position had no deduction or withholding been required;

(e) if the non-defaulting Ultimate Parent serves notice in writing on NEWCO within 30 days of receipt of the copy of any certificate referred to in Clause 18.5(b) that it disputes the contents of the said certificate, the defaulting Ultimate Parent shall instruct its own auditors (for the purposes of this Clause 18.5 the "Auditors") to review and verify the said certificate;

(f) the Auditors shall be instructed by the defaulting Ultimate Parent to reach their decision as soon as practicable and in any event within 60 days from the date of instructions and shall act as an expert and not as an arbitrator. The decision of the Auditors as to the sum to be paid pursuant to this Clause 18.5 shall be final and binding on the defaulting Ultimate Parent;

(g) in the event of a discrepancy of more than 10 per cent the costs incurred by the Auditors in carrying out such exercise shall be borne by the defaulting Ultimate Parent, otherwise such costs shall be borne by the non-defaulting Ultimate Parent;

(h) for the purpose of this Clause 18.5, "Profits" shall mean the amount of profits which can be attributed to any particular service or services during the relevant quarterly period after taking into account accumulated losses from such service or services and including a reasonable contribution towards overheads to the intent that, overall, the defaulting Ultimate Parent shall have neither gained nor lost from the provision of such a service or services.

18.6 Nothing in Clause 18.1 shall preclude or restrict BT (or its affiliates) from continuing to hold shares in McCaw Communications Inc. or Belize Telecommunications Limited.

18.7 Nothing in Clause 18.1 shall preclude or restrict MCI (or its affiliates) from continuing to hold shares in AAP Telecommunications Pty Limited, Australia or Clear Communications Limited, New Zealand.

18.8 There shall be no breach of Clause 18.1 in the event that an Ultimate Parent or any of its affiliates shall directly or indirectly acquire any interest in any Non-Material Business, Provided That, if the ownership of such interest would otherwise be in breach of Clause 18.1, that Ultimate Parent shall serve notice as soon as practicable after such acquisition to NEWCO and the other Ultimate Parent that it intends to sell, dispose or otherwise divest itself of the Non-Material Business and Further Provided That the completion of such divestiture takes place on or before the first anniversary of such acquisition of such Non-Material Business. For such purposes, "Non-Material Business" means a business or operation which directly or indirectly carries on or is engaged in the provision of Enhanced or Value-Added Services or International Outsourcing Services which did not, in the financial year of such Non-Material Business which is most recent to completion of its acquisition, exceed an aggregate revenue, in respect of such activities, of greater than 7.5% of the aggregate revenues of the NEWCO Group during the 12 months up to the date of such completion, as shown in the NEWCO Group's management accounts.

18.9

(a) MCI will, or will procure that its affiliates will, provide to BT such telecommunication services in the Americas (as defined in the MCI Distribution Agreement) as BT shall reasonably require to enable it to offer to customers outside the Americas services to locations in the Americas in response to competitors' voice international simple resale offerings in a manner that will not require BT to seek US regulatory approval.

(b) If

(i) MCI is unable or unwilling to provide such services to BT on such terms and prices that BT is, in its reasonable opinion, able to respond effectively to competitive services in the United Kingdom based on voice international simple resale; or

(ii) BT at any time subsequently concludes, in its reasonable opinion, that the terms on which MCI offers to provide such services do not enable BT to respond effectively to competitive services based on voice international resale;

BT and MCI shall consult together in good faith with a view to enabling BT to respond effectively to such services.

(c) If BT and MCI are unable to agree on a method of so enabling BT, except by means of voice international simple resale, then:

(i) voice international simple resale shall thenceforward be deemed for the purposes of this Agreement to be included in the definition of "Enhanced and Value Added Services" for the purposes of this Agreement and the Related Agreements; and

(ii) nothing in this Agreement (including, without limitation, the Shareholder consent rights contained in Clause 11) shall prevent or restrict NEWCO or the NEWCO Group from providing voice international simple resale to BT in accordance with this Clause 18.9(c); and

(iii) MCI shall provide to NEWCO, and through NEWCO to BT as applicable, such telecommunication services as may be reasonably required to distribute and deliver in the Americas the services offered by BT to customers outside the Americas. Such services shall be provided by MCI on fair and reasonable terms, with the intent that BT is put into the same financial position it would have been in had it been able itself to provide such services, such terms to be agreed by MCI, NEWCO and BT, such agreement not to be unreasonably withheld or delayed.

18.10

(a) BT will, or will procure that its affiliates will, provide to MCI such telecommunication services in the Territory (as defined in the BT Distribution Agreement) as MCI shall reasonably require to enable it to offer to customers outside the Territory services to locations in the Territory in response to competitors' voice international simple resale offerings.

(b) If

(i) BT is unable or unwilling to provide such services to MCI on such terms and prices that MCI is, in its reasonable opinion, able to respond effectively to competitive services in the Americas based on voice international simple resale; or

(ii) MCI at any time subsequently concludes, in its reasonable opinion, that the terms on which BT offers to provide such services do not enable MCI to respond effectively to competitive services based on voice international resale;

MCI and BT shall consult together in good faith with a view to enabling MCI to respond effectively to such services.

(c) If MCI and BT are unable to agree on a method of so enabling MCI, except by means of voice international simple resale, then:

(i) voice international simple resale shall thenceforward be deemed for the purposes of this Agreement to be included in the definition of "Enhanced and Value Added Services" for the purposes of this Agreement and the Related Agreements; and

(ii) nothing in this Agreement (including, without limitation, the Shareholder consent rights contained in Clause 11) shall prevent or restrict NEWCO or the NEWCO Group from providing voice international simple resale to MCI in accordance with this Clause 18.10(c); and

(iii) BT shall provide to NEWCO, and through NEWCO to MCI as applicable, such telecommunication services as may be reasonably required to distribute and deliver in the Territory the services offered by MCI to customers outside the Territory. Such services shall be provided by BT on fair and reasonable terms, with the intent that MCI is put into the same financial position it would have been in had it been able itself to provide such services, such terms to be agreed by BT, NEWCO and MCI, such agreement not to be unreasonably withheld or delayed.

19. <u>Restrictive Trade Practices Act</u>

No provision of this Agreement or any Related Agreement, or any documents relating to the arrangements contemplated thereby, which is subject to registration under the RTPA shall come into effect until the day following the day on which particulars of this Agreement and the Related Agreements (and such documents) have been furnished to the