

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.

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 IXCs 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. 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 XVII (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

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 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

¹Technical Exhibit Settlement Procedures, previously provided to Brooks.

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

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.

V. APPENDICES

Attached to this Agreement are Appendices DEFINE, LIDB, CA, WP, RESALE, SS7, CH, RF, PORT, NMC, DCO, ITR, 911, CELLULAR, FGA, HOST, UNC, DA, OS, CNAM, RECORDING, BCR. . 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 deliver to Brooks of such data via SWBT's internal network or the nationwide CMDS 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. RF

Upon request, the Parties shall provide access to Riser Space pursuant to the terms and conditions of Appendix RF.

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, the SWBT shall provide to Brooks unbundled network components. SWBT's terms and conditions are identified in Appendix UNC, which is attached hereto and made a part hereof.

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

Changes in subscriber carrier selections shall be effected only in a manner consistent with rules and decisions of the Federal Communications Commission (FCC) or, if applicable, respective state public utility commissions. In the absence of any state or federal rules applicable to changes in subscriber carrier selections for in local service, the rules of the FCC establishing methods for subscriber changes in Primary Interexchange Carrier selections shall apply to changes in subscriber carrier selections for local service under this Agreement.

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, 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.

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

- (c) 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 *XVIII* 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 Arkansas and Oklahoma Commissions 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 XXIII, 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 Oklahoma Corporation Commission or the Arkansas Public Service Commission, respectively, 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 Oklahoma or Arkansas, respectively, 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) Cellular Traffic (Appendix Cellular); or
- (9) White Pages - (Appendix WP);
- (10) Operator Services - (Appendix OS);
- (11) 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:

To Brooks:

24 Hour Network Management Contact

For SWBT:

For Brooks:

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 June 30, 1998. Upon delivery of written notice no earlier than September 30, 1997, 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 in each individual state upon final approval by the Arkansas Public Service Commission and the Oklahoma Corporation Commission when each respective 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

David R. Lopez

D. Craig Young 8-28-96

David R. Lopez 8/29/96

Sign and Print Name: Date:

Sign and Print Name: Date:

President

President

Position/Title

Position/Title

Brooks Fiber Communications
of Tulsa, Inc., Brooks Fiber
Communications of Oklahoma, Inc., and
Brooks Fiber Communications of
Arkansas, Inc.

Southwestern Bell Telephone Company

PRICE SCHEDULE