

- b. LSP agrees to compensate SWBT for the termination of LSP Local Traffic originated by LSP end users in the SWBT exchanges described in Appendix DCO and terminating to SWBT end users located within those exchanges referenced therein. SWBT agrees to compensate LSP for the termination of SWBT Local Traffic originated by SWBT end users in the SWBT exchanges described in Appendix DCO and terminating to LSP end users located within those exchanges referenced therein.

2. Rate Elements:

- a. Tandem served rate element is applicable to tandem Routed Local Traffic on a terminating local MOU basis and includes compensation for the following sub-elements:
  - i. Tandem Switching - compensation for the use of tandem switching functions.
  - ii. Common Transport - compensation for the transmission facilities between the local tandem and the end offices subtending that tandem.
  - iii. Local Switching - compensation for the local end office switching and line terminator functions necessary to complete the transmission.
- b. End Office Served rate element is applicable to Local Routed Traffic on a terminating local MOU basis and includes compensation for the following subelement:

Local Switching - compensation for the local end office switching and line terminator functions necessary to complete the transmission.

The rates for Tandem Switching, Common Transport and Local Switching are listed in Appendix PRICING SCHEDULE, which is attached hereto and made a part hereof.

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

**B. Reciprocal Compensation for "Through-put" Traffic**

**1. Applicability of Rates:**

The Parties agree to compensate one another for the transport of "through-put" or (intermediate tandem) Local traffic which neither originates nor terminates on billing Party's network.

**2. Rate Element:**

A Tandem Through-put rate element applies to all minutes of use between local exchange service providers which traverse the billing Party's tandem switch, but which neither originate with, nor terminate to that Party's end user. This rate element includes compensation for tandem switching and common transport to connect local exchange service providers to third party providers, including CMRS providers. Charges are owed by the originating local exchange service provider. The local interconnect rate does not apply to such traffic.

**3. Rates:**

The rate for Tandem Through-put is listed on the Appendix PRICING SCHEDULE.

**C. Reciprocal Compensation for termination of IntraLATA Interexchange Traffic**

For intrastate intraLATA and intraLATA interstate 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 or interstate access service tariff.

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

1. LSP 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. LSP's 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.

E. 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 XXI (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) which shall be provided to LSP upon request.

#### IV. Numbering

- A. LSP 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 LSP 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 OCC 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.<sup>2</sup> LSP 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 LSP in a neutral and nondiscriminatory manner, consistent with regulatory requirements, in regard to LSP's requests for assignment of central office code(s) (NXX) consistent with the Central Office Code Assignment Guidelines, and any applicable OCC rules and/or orders.
- C. It shall be the responsibility of each Party to program and update its own switches to recognize and route traffic to other Party's assigned NXX codes. Neither Party shall impose fees or charges on the other Party for required programming and updating switching activities.
- D. LSP 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 LSP request, SWBT shall update the LERG for LSP. The charge for such service shall be listed in Appendix PRICING SCHEDULE. SWBT shall not be liable for any losses or damages arising out of errors, defects, or failures associated with the input of LSP data into the LERG other than direct damages. LSP direct damages shall not exceed the amount of the charges paid to SWBT by LSP for LERG input under this STC.

LSP 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. LSP shall defend against all end user claims just as if LSP had performed its own input to the LERG.

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

- E. Neither Party is responsible for notifying the other Parties' end users of any changes in dialing arrangements, including those due to NPA exhaust.
- F. Where either Party has activated an entire NXX for a single end user, or activated more than half of an NXX for a single end user with the remaining numbers in that NXX either reserved for future use or otherwise unused, if such end user chooses to receive service from the other Party, the first Party shall cooperate with the second Party to have the entire NXX reassigned in the LERG (and associated industry databases, routing tables, etc.) to an End Office operated by the second Party. Such transfer will require development of a transition to minimize impact on the Network and on the end user(s)' service and will be subject to appropriate industry lead-times (currently 45 days) for movements of NXXs from one switch to another. The Party to whom the NXX is migrated will pay NXX migration charges listed in Appendix PRICING SCHEDULE.

#### V. Appendices

Attached to this STC are Appendices DEFINE, LIDB, WP, RESALE, SS7, CH, PORT, NIM, PRICING SCHEDULE, OSS, AIN, LIDB-V, 800, DAL, DIRECT, POLE, DCO, ITR, 911, CELLULAR, FGA, HOST, UNE, 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 STC (not including the Appendices), those definitions, terms, or conditions shall supersede those contained in the main body of this STC, 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 an agreement pursuant to this STC, except as may be necessary to interpret the Appendix.

#### VI. Additional Services and Unbundled Elements

##### 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 LSP. That is, when customers of SWBT and LSP 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 Listings (DAL)

In lieu of purchasing DA service from SWBT, LSP may elect to enter into a mutual licensing agreement with SWBT for each other's directory assistance listings under the terms and conditions identified in Appendix DAL, which is attached hereto and made a part hereof.

E. Direct Access to Directory Assistance Database

SWBT shall provide nondiscriminatory access to SWBT's Directory Assistance listing information which includes published listings, non-listed listings, as well as listed names, address, zip code and telephone numbers with the exception of non-published telephone numbers in accordance with Appendix DIRECT, which is attached hereto and made a part hereof. Non-published Directory Assistance listing information will display the customer name and address only along with an indicator that the number is non-published. Access to SWBT Directory Assistance listing information is for the sole purpose of providing voice Directory Assistance to LSP customers. Access to SWBT's Directory Assistance listing information allows the LSP operator to query SWBT's Directory Assistance database and obtain the identical information that is available to SWBT's Directory Assistance operators.

F. Support Systems Services

1. Transfer of Service Announcements (Intercept)

When an end user changes from SWBT to LSP, or from LSP 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.

G. 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.

H. Hosting

Upon request, SWBT shall perform hosting responsibilities for the provision of billable message data and/or access usage data received from LSP for distribution to the appropriate billing and/or processing location or for delivery to LSP 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.

**I. Recording**

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

**J. BCR**

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

**VII. Poles, Ducts, Conduits and Rights-of-Way**

Upon request, SWBT shall provide non-discriminatory access to the poles, ducts, conduits, and rights-of-way it owns or controls pursuant to the terms contained in Appendix POLE, which is attached hereto and made a part hereof.

**VIII. Other Unbundled Arrangements**

Upon request, SWBT shall provide to LSP unbundled network components not otherwise described hereunder. SWBT's terms and conditions are identified in Appendix UNE, which is attached hereto and made a part hereof. The unbundled elements contained in Appendix UNE and the rates referenced therein, are available only to those requesting telecommunications carriers to which SWBT is required by Section 251(c) of the 1996 Act to make such unbundled network elements available, and only to the extent required by Sections 251 and 271 of the 1996 Act.

**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**

The terms and conditions for resale of SWBT services are contained in Appendix RESALE. The specific services to be provided by SWBT to LSP and the discounts for such services are identified in Appendix RESALE.

**XI. 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 STC, 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. Termination of Service**

Upon nonpayment of any sum due, or upon violation of any conditions governing the furnishing of service, a Party may give notice, without incurring any liability, that such Party will discontinue furnishing service under this Agreement. Proper notice shall consist of notice sent by certified mail, return receipt requested, at least thirty (30) days prior to the stated date of disconnection; notice is complete upon mailing.

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.

At its option, a Party to whom past due amounts are owed may net those amounts against funds which otherwise might be due the other Party.

**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, of the OCC. 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 STC.

**XII. Other Obligations of the LSP**

**A. Operating Company Number (OCN)**

LSP agrees that it shall not send to SWBT traffic that is destined for the network of a third party unless and until compensation arrangements acceptable to LSP and the third party have been reached.

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

**B. Special Arrangements**

Special arrangements will be provided under the Bona Fide Request process as described in Appendix UNE.

### **XIII. 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 LSP 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 SWBT's Handbook for Switch Based providers, a copy of which shall be made available to LSP upon request. The

Parties acknowledge that Handbook may be amended by SWBT from time to time. Each Party shall maintain the capability of respectively implementing basic protective controls such as "Cancel To" and "Call Gap."

#### **XIV. 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 STC, 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.

#### **XV. 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. LSP agrees to indemnify, defend, and hold harmless SWBT

from any Loss arising out of SWBT's provision of 911 services or out of LSP' end users' use of the 911 service, whether suffered, made, instituted or asserted by LSP 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 STC, involving:
  - (a) Tort claims, including claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Indemnifying Party's own communications or the communications of such Indemnifying Party's end users; or
  - (b) Claims for patent, trademark, copyright infringement or other infringement of intellectual property rights, arising from the Indemnifying Party's acts combining or using the service furnished by the Indemnified Party in connection with facilities or equipment furnished by the Indemnifying Party or its end users, agents, subcontractors or others retained by such parties.
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.
6. LSP acknowledges that its rights under this contract to interconnect with SWBT's network and to unbundle and/or combine SWBT's network elements (including combining with the LSP's network elements) may be subject to or limited by intellectual property (including, without limitation, patent, copyright and trade secret rights) and contract rights of third parties. It is the sole obligation of LSP to obtain any consents, authorizations, or licenses under intellectual property or proprietary rights held by third parties that may

be necessary for its use of SWBT network facilities under this Agreement. SWBT hereby conveys no licenses to use such intellectual property rights and makes no warranties, express or implied, concerning LSP's (or any third party's) rights with respect to such intellectual property and contract rights, including, without limitation, whether such rights will be violated by such interconnection or unbundling and/or combining of elements (including combining with the LSP's network elements) in SWBT's network. SWBT does not and shall not indemnify or defend, nor be responsible for indemnifying or defending, LSP for any liability losses, claims, costs, damages, demand, penalties or other expenses arising out of, caused by or relating to LSP's interconnection with SWBT's network and unbundling and/or combining SWBT's network elements (including combining with the LSP's network elements).

7. LSP agrees to indemnify and hold SWBT harmless from and against all liability, losses, claims, costs, damages, demand, penalties or other expenses, including but not limited to costs of litigation and reasonable attorneys fees, arising out of, caused by, or relating to any real or potential claim, demand or action that LSP's interconnection with SWBT's network, or LSP's use of services or functions offered hereunder, or unbundling and/or combining of SWBT's network elements (including combining with the LSP's network elements) violates or infringes upon any intellectual property rights of any third party or constitutes a breach of contract. LSP shall notify SWBT in writing within ten (10) days after LSP receives notification of any claim or suit subject to this provision. SWBT shall undertake and control the defense and settlement of any such claim or suit and LSP shall cooperate fully with SWBT in connection herewith. In no event shall SWBT be liable for any consequential damages or loss of profits which LSP may suffer arising out of same.

#### B. LIMITATION OF LIABILITY

1. Except for Losses alleged or made by an end user of either Party, in the case of any Loss alleged or made by a third party arising from the negligence or willful misconduct of both Parties, each Party shall bear, and its obligations under this Section shall be limited to, that portion (as mutually agreed to by the Parties) of the resulting expense caused by its (including that of its agents, servants, contractors, or others acting in aid or concert with it) negligence or willful misconduct.
2. Except for Indemnity obligations under this Section, each Party's liability to the other Party for any Loss relating to or arising out of any negligent act or omission in its performance of an agreement executed pursuant to this STC,

whether in contract or in tort, shall not exceed in total the amount SWBT or LSP 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 on liability restrictions shall apply to actions by either Party against the other Party under applicable regulatory laws, rules, regulations or orders.

## **XVI. 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:
    - (a) the installation by SWBT of unbundled Loops for LSP, including the installation of unbundled Loops under applicable tariff(s) ("Unbundled Loop Installation");
    - (b) SWBT's provision of Interim Number Portability; or
    - (c) the repair of out of service problems for LSP's unbundled loops ("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 on an LSP unbundled loop

- B. Specified Performance Breach. In recognition of (1) the loss of end user opportunities, revenues and goodwill which LSP might sustain in the event of a Specified Performance Breach; (2) the uncertainty, in the event of such a Specified Performance Breach, of LSP having available to it customer opportunities similar to those opportunities currently available to LSP; and (3) the difficulty of accurately ascertaining the amount of damages LSP would sustain in the event of such a Specified Performance Breach, SWBT agrees to pay LSP, 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 LSP as a result of a Specified Performance Breach shall be \$25,000 for each Specified Performance Breach (collectively, the "Liquidated Damages"). LSP 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 LSP and SWBT at the time of the negotiation and entering into an agreement pursuant to this STC, with due regard given to the performance expectations of each Party; (2) the Liquidated Damages constitute a reasonable approximation of the damages LSP would sustain if its damages were readily ascertainable; and (3) LSP 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 LSP 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 LSP, (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 LSP for SWBT's breach of the Performance Criteria or a Specified Performance Breach as described in this Section and shall be in lieu of any other damages or credit LSP 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 such agreement of each Specified Activity and its compliance with the Performance Criteria. SWBT shall provide to LSP such records in a self-reporting format on a monthly basis. Such records shall be deemed confidential information under the following Section.

## **XVII. Nondisclosure**

The Parties to an agreement executed pursuant to this STC, 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 such 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 such 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 OCC or its staff or FCC Staff, provided that these third-parties are bound by the same or comparable confidentiality requirements as the Parties to such Agreement.

The provisions of this Section will remain in effect notwithstanding the termination of such 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.

#### **XVIII. 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.

#### **XIX. Assignment**

Neither Party may assign, subcontract, or otherwise transfer its rights or obligations under an Agreement executed pursuant to this STC 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.

#### **XX. Dispute Resolution**

For dispute resolution arising out of an agreement executed pursuant to this STC, the following procedures shall apply:

A. Finality of Disputes

No claims shall be brought for disputes arising from an agreement executed pursuant to this STC, more than twenty-four (24) months from the date of occurrence which gives rise to the dispute.

B. Alternative to Litigation

The Parties desire to resolve disputes arising out of such agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of such agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedure as their sole remedy with respect to any controversy or claim of \$25,000 or less, arising out of or relating to such agreement or its breach.

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 such 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.

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 such 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.

## **XXI. Verification Reviews**

Each Party to an agreement executed pursuant to this STC, 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 such agreement. This includes on-site verification reviews at the other Party's or the Party's vendor locations.

After the initial year of such agreement verification reviews will normally be conducted on an annual basis with provision for staged reviews, as mutually agreed, so that all subject matters are not required to be reviewed at the same time. Follow up reviews will be permitted on a reasonable time schedule between annual reviews where significant deviations are found. During the initial year of such Agreement more frequent reviews may occur.

The review will consist of an examination and verification of data involving records, systems, procedures and other information related to the services performed by either Party as related to settlement charges or payments made in connection with such agreement as determined by either

Party to be reasonably required. Each Party, whether or not in connection with an on-site verification review, shall maintain reasonable records for a minimum of twenty-four (24) months and provide the other Party with reasonable access to such information as is necessary to determine amounts receivable or payable under such agreement.

The Parties right to access information for verification review purposes is limited to data not in excess of twenty-four (24) months in age. Once specific data has been reviewed and verified, it is unavailable for future reviews. Any items not reconciled at the end of a review will, however, be subject to a follow-up review effort. Any retroactive adjustments required subsequent to previously reviewed and verified data will also be subject to follow-up review. Information of either Party involved with a verification review shall be subject to the nondisclosure terms of such 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.

## **XXII. Compliance with Laws**

SWBT believes in good faith that the services to be provided under an agreement to be executed pursuant to this STC would satisfy the requirements of the Telecommunications Act of 1996, specifically § 251, § 252 and § 271, and would be in the public interest. In the event a court or regulatory agency of competent jurisdiction should determine that modifications of such 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 such 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.

Such agreement shall be an integrated package that reflects a balancing of interests critical to the Parties. It will be submitted to the OCC as a negotiated agreement under § 252(a)(1), and the Parties will specifically request that the OCC refrain from taking any action to change, suspend or otherwise delay implementation of such agreement. So long as such agreement remains in effect, the Parties shall not advocate before any legislative, regulatory, or other public forum that any terms of such specific agreement be modified or eliminated, except pursuant to procedures specifically sanctioned by the terms of such agreement, including those established in Section XXIII, below. Notwithstanding this mutual commitment, however, the Parties enter into such 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 such agreement.

### **XXIII. Effect of Other Agreements**

If SWBT enters into an agreement (the "Other Agreement") approved by the OCC pursuant to Section 252 of the Act, which provides for the provision of arrangements covered in this STC, to another requesting Telecommunications Carrier, SWBT shall make available in Oklahoma, to LSP such arrangements upon the same rates, terms and conditions as those provided in the Other Agreement. At its sole option, the LSP 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 STC);  
or
- (2) Access to Unbundled Network Elements - Section 251(c)(3) of the Act (Section VIII and Appendix UNE of this STC); or
- (3) Resale - Section 251(c)(4) of the Act (Appendix RESALE of this STC); or
- (4) Collocation - Section 251(c)(6) of the Act (Appendix NIM of this STC); or
- (5) Number Portability - Section 251(b)(2) of the Act (Appendix PORT) of this STC);  
or
- (6) Access to Rights of Way - Section 251(b)(4) of the Act (Appendix POLE of this STC); or
- (7) Cellular Traffic (Appendix CELLULAR of this STC); or
- (8) White Pages - (Appendix WP of this STC);
- (9) Operator Services - (Appendix OS of this STC);
- (10) Directory Assistance - (Appendix DA of this STC);

If and to the extent the OCC, the FCC or a court of competent jurisdiction issues a final and effective order obligating SWBT 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 an agreement executed pursuant to this STC, such Agreement shall be construed to prevent prospective

implementation of such different rates terms and conditions for the remainder of the term of such Agreement.

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

#### **XXIV. Certification Requirements**

LSP warrants that it has obtained or will obtain all necessary jurisdictional certification required in Oklahoma . LSP covenants that if it should forward to SWBT any messages originating from a third Party, LSP will ensure that the originating service provider has obtained all required certification. Upon request by any governmental entity, LSP shall provide proof of certification to SWBT.

#### **XXV. Notices**

In an event any notices are required to be sent under the terms of an agreement executed pursuant to this STC, they shall be sent by registered mail, return receipt requested to the persons and locations listed by the Parties in such agreement.

#### **XXVI. Third Party Beneficiaries**

An agreement executed pursuant to this STC shall not provide any non-party with any remedy, claim, cause of action or other right.

#### **XXVII. Taxes**

LSP shall be responsible for all federal, state or local, sales, use, excise or gross receipts or similar taxes or fees imposed on or with respect to the services or equipment provided under this STC including those taxes and fees, the incidence of which is imposed on SWBT. LSP shall reimburse SWBT for the amount of any such taxes or fees which SWBT is required to pay or collect.

#### **XXVIII. Term**

This STC contemplates that SWBT and LSP would agree to interconnect pursuant to the terms defined in this STC for a term of one (1) year from the date LSP completes its first commercial call, and thereafter such agreement shall continue in force and effect unless and until terminated as provided herein. Either party may terminate such agreement by providing written notice of termination to the other party, such written notice to be provided at least sixty (60) days in advance of the date of termination. In the event of such termination as described herein, such agreement shall continue without interruption until: (a) a new interconnection agreement becomes effective between the parties, or (b) the OCC determines that interconnection shall be by tariff rather than

contract and both SWBT and LSP have in place effective interconnection tariffs. By mutual agreement, SWBT and LSP may amend such agreement to modify the term of such agreement.

**XXIX. Waiver**

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

**XXX. Disclaimer of Warranties**

SWBT MAKES 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, SWBT ASSUMES NO RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY LSP WHEN THIS DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

**XXXI. Effective Date/Implementation**

An agreement executed pursuant to this STC shall become effective upon final approval by the OCC when it determines that such 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.

**XXXII. Relationship of the Parties**

An agreement executed pursuant to this STC 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 such agreement, is provided. Nothing in such 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.

**XXXIII. Complete Terms**

An agreement executed pursuant to this STC 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.

An agreement executed pursuant to this STC shall not bind LSP and SWBT until executed by both parties. Such agreement will be governed by and interpreted in accordance with the laws of the State of Oklahoma.