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November 6, 2001

VIA HAND DELIVERY

Honorable Janet Hand Deixler
Secretary
New York State
Public Service Commission
Three Empire State Plaza
Albany, New York 12223

01-C-1780
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00-C-0789
COPIES:
MR. J. THRAUS
MR. D. MARTIN
MR. G. PATTERNAUDE
MR. P. MCGOWAN
MS. M. MCGOWAN

Re: Case 00-C-0789 - Proceeding on Motion of the Commission Pursuant to
Section 97(2) of the Public Service Law to Institute an Omnibus
Proceeding to Investigate the Interconnection Arrangements Between
Telephone Companies

Dear Secretary Deixler:

On behalf of Time Warner Telecom - New York, L.P., enclosed please find an original and five (5) copies of an Agreement for the Exchange of Extended Area Service (EAS) Traffic and the Commission-Required Exchange of Traffic with Carriers Using Virtual NXX Numbers between Empire Telephone Corporation and Time Warner Telecom - New York, L.P. The agreement is being filed in accordance with Ordering Clause #3 of the New York State Public Service Commission's September 7, 2001 Order Denying Petitions for Rehearing, Clarifying NXX Order and Authorizing Permanent Rates in the above-referenced case.

If you have any questions regarding this filing, please contact me.

Sincerely,


Noelle M. Kinsch

Enclosure

cc: Brian T. FitzGerald, Esq.
Ms. Suraya Yahaya

AGREEMENT

for the

**EXCHANGE OF
EXTENDED AREA SERVICE (EAS) TRAFFIC AND THE
COMMISSION-REQUIRED EXCHANGE OF
TRAFFIC WITH CARRIERS USING
VIRTUAL NXX NUMBERS**

Effective as of October 29, 2001

Between

Empire Telephone Corporation

and

Time Warner Telecom - New York, L.P.

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AGREEMENT
for the
EXCHANGE OF EXTENDED AREA SERVICE (EAS) TRAFFIC
AND THE COMMISSION-REQUIRED EXCHANGE OF TRAFFIC WITH CARRIERS
USING VIRTUAL NXX NUMBERS

This is the AGREEMENT for the EXCHANGE OF EXTENDED AREA SERVICE (EAS) TRAFFIC AND THE COMMISSION-REQUIRED EXCHANGE OF TRAFFIC WITH CARRIERS USING VIRTUAL NXX NUMBERS ("Agreement") by and between Empire Telephone Corporation ("Empire"), a New York corporation with offices at 34 Main Street, Prattsburg, New York 14873, and Time Warner Telecom - New York, L.P. ("TWTC"), a limited partnership formed under the laws of the State of Delaware with offices at 14 Wall Street, 9th Floor, New York, New York 10005. This Agreement may refer to either Empire or TWTC as a "Party" or to both Empire and TWTC as the "Parties."

RECITALS

WHEREAS, Empire and TWTC are local exchange carriers authorized to provide telecommunications services in the State of New York; and

WHEREAS, the Parties individually provide telecommunications services in specific exchange areas in the State of New York; and

WHEREAS, the Parties recognize that certain end users have mutual calling demands and interests between certain separate communities as defined by the applicable EAS regulations of the Commission for which the provision of non-toll rated calling services is in the public interest; and

WHEREAS, the Parties recognize that the ability to provide two-way EAS calling between separate communities to their respective customers under a specific rate plan is dependent on the terms under which the Parties exchange EAS Traffic; and

WHEREAS, the specific exchange areas between which customers of the Parties exchange EAS calls are each separate and mutually exclusive geographic areas; and

WHEREAS, the Parties desire to interconnect their respective networks to allow either Party to deliver specific traffic to the other Party; and

WHEREAS, Empire's service and network responsibilities cannot and do not extend beyond Empire's incumbent LEC operating service area; and

WHEREAS, the Parties acknowledge that the Federal Communications Commission ("FCC") issued an Order on Remand and Report and Order in CC Docket Nos. 96-98, 99-68, FCC 01-131, on April 27, 2001 which addressed the intercarrier compensation treatment to be afforded telecommunications traffic delivered to Information Service Providers ("ISPs");

WHEREAS, this Agreement addresses the terms and conditions under which the Parties will exchange Virtual NXX Traffic arising from decisions of the New York Public Service Commission issued December 22, 2000 and September 7, 2001 in Case No. 00-C-0789, without

waiver by either Party to continue to argue its position regarding such type of traffic;

WHEREAS, TWTC may want to utilize, for its convenience, the network of one or more third party Local Exchange Carriers ("LECs") that connect to the LEC network of Empire as a means for the exchange of a limited scope of traffic as defined in this Agreement.

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

This Agreement sets forth the terms, conditions, and compensation between the Parties for the exchange of EAS Traffic delivered by one Party to the other Party and the exchange of traffic delivered by one Party to the other Party to a customer that has been assigned a Virtual NXX Number.

1.0 DEFINITIONS

If used in this Agreement, the following terms shall have the meanings specified below in this Section 1.0.

1.1 "Act" means the Communications Act of 1934, as amended.

1.2 "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, a Party to this Agreement.

1.3 "Commission" means the New York Public Service Commission.

1.4 "Commission Order" means the decisions issued by the Commission on December 22, 2000 and on September 7, 2001 in Case No. 00-C-0789.

1.5 "Common Channel Interoffice Signaling" or "CCIS" or "Common Channel Signaling System 7" ("CCS") mean the signaling system, developed for use between switching systems with stored-program control, for transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data traffic of the call. "SS7" means the common channel out of band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph ("CCITT") and the American National Standards Institute ("ANSI").

1.6 "Customer," "End User" or "End User Customer" means the residence or business subscriber that is the ultimate user of Telecommunications Services provided by either of the Parties, and, for purposes of this Agreement, may (1) place or receive EAS calls or (2) place or receive calls where the residential or business customers is assigned a Virtual NXX Number. An ISP shall be considered a Customer subject to the specific provisions of Section 3.4.2 of this Agreement.

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

1.8 "Digital Signal Level 1" or "DS1" or "T1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing.

1.9 "Digital Signal Level 3" or "DS3" or "T3" means the 44.736 Mbps third-level in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

1.10 "Extended Area Service" or "EAS" is a service arrangement whereby End Users that obtain local exchange service in a specific local service exchange area are provided the ability to place and receive interexchange calls to End Users that obtain local exchange service in another mutually exclusive specific local service exchange area on the basis of terms, conditions and charges that are distinct from the terms applicable to message toll service and exchange service and where compliance with all applicable Commission-prescribed EAS regulations has been demonstrated. EAS is separate and distinct from exchange service that permits End Users to place and receive calls to End Users in the same local service exchange area. EAS is separate and distinct from toll services that permit End Users to place interexchange calls according to interexchange toll rates based on usage and/or distance-based charges. EAS is separate and distinct from traffic delivered to Customers served through Virtual NXX Service. EAS calling is established to meet the public interest demand of End Users in specific communities to place calls to, and receive calls from, End Users in other specific communities without incurring specific telephone message toll charges. For purposes of this Agreement, EAS includes traffic between the specific local service exchange areas as set forth in Exhibit 1 to this Agreement.

1.11 "EAS Traffic" means two way traffic that falls within the definition of "EAS" that is exchanged between the Parties.

1.12 "Foreign Exchange" means with respect to an End User any exchange and associated specific geographic area other than the Home Exchange of an End User. The Foreign Exchange is the exchange in which that End User obtains Foreign Exchange Service.

1.13 "Foreign Exchange Service" means a service arrangement under which an End User obtains local exchange service in an exchange area other than the End User's Home Exchange. Foreign Exchange Service includes both a charge to the End User for local exchange service and a charge associated with a dedicated, private facility from the Foreign Exchange to the Home Exchange. Foreign Exchange Service is distinct from Virtual NXX Service.

1.14 "Home Exchange" means the exchange and specific geographic area for that exchange in which the End User's premises is physically located.

1.15 "Information Service" is as defined in the Communications Act of 1934, as amended.

1.16 "Information Service Provider" or "ISP" is any entity, including but not limited to an Internet service provider, that provides information services.

1.17 "ISP Traffic" is traffic originated by an end user of one Party and delivered to the other Party for switching to an ISP. ISP Traffic is not EAS Traffic as defined in this Agreement.

1.18 "Local Access and Transport Area" or "LATA" has the same meaning as that contained in the Act.

1.19 "Local Calling Area" means with respect to an End User and with respect to the specific exchange in which that End User is physically located, the geographic area that includes the exchange in which that End User is physically located, and all other exchange areas to which that End User is provided mandatory EAS service by Empire in compliance with Commission-prescribed community of interest standards.

1.20 "Local Exchange Carrier" or "LEC" is any common carrier authorized to provide exchange and exchange access services.

1.21 "Local Service Exchange Area" or "Local Service Area" is a specific geographic service area encompassing an exchange area served by a Party as set forth in Exhibit 1 to this Agreement. The Local Service Exchange Areas define the mutually exclusive geographic areas between which the Parties exchange EAS pursuant to this Agreement.

1.22 "NXX Code" means a ten thousand (10,000) block of numbers which has the same initial three (3) digit prefix with a seven digit dialing sequence which is assigned to a LEC for the provision of its local exchange service.

1.23 "Virtual Exchange" means, with respect to a specific End User, the exchange where the rate center point associated with the telephone number assigned to that End User is not the same rate center point as that End User's Home Exchange. A Virtual Exchange's rate center must be in the same LATA and the same state as the rate center of the Home Exchange.

1.24 "Virtual NXX Number" means a number assigned by a carrier to a Customer that has obtained Virtual NXX Service.

1.25 "Virtual NXX Service" means a service arrangement whereby an End User with its premises physically located in one exchange area is assigned a telephone number that is associated with a different exchange area other than the End User's Home Exchange. Under this arrangement, the telecommunications carrier providing Virtual NXX Service to the End User provides transmission of telecommunications between the Virtual Exchange and the End User's Home Exchange. Virtual NXX Service is distinct from Foreign Exchange Service in that Virtual NXX Service does not require the End User to obtain and pay charges associated with a dedicated, private circuit between the Home Exchange and the Foreign Exchange. The Virtual Exchange must be in the same LATA and the same state as the Home Exchange.

1.26 "Virtual NXX Traffic" means traffic from or to a Customer assigned a Virtual NXX Number by that Party.

1.27 "Point of Connection," or "POC" as stated in the Commission Order shall be at the certificated service area boundary of Empire.

1.28 "Rate Center" means the specific geographic point ("Vertical and Horizontal" ("V&H") coordinates) and corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC for its provision of basic exchange telecommunications services. The "rate center point" is the finite geographic point identified by a specific V&H coordinate, which is used to measure distance-sensitive end user traffic to/from, the particular NPA-NXX designations associated with the specific Rate Center. The "rate center area" is the exclusive geographic area identified as the area within which the LEC provides basic exchange telecommunications service bearing the particular NPA-NXX designations associated with the specific Rate Center, except as provided for in the Commission Order.

1.29 "Tariff" means any applicable federal or state tariff of a Party that sets forth the generally available terms and conditions under which a Party offers a particular service, facility, or arrangement.

1.30 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received.

2.0 INTERPRETATION AND CONSTRUCTION

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

2.2 The Parties acknowledge that some of the services, facilities, or arrangements described herein reference the terms of federal or state Tariffs of the Parties. Each Party hereby incorporates by reference those provisions of any tariff that governs any terms specified in this Agreement for the exchange of EAS Traffic. If any provision contained in this main body of the Agreement and any Exhibit hereto cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this main body of this Agreement shall prevail. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the Parties agree that the provision contained in this main body of this Agreement shall prevail.

3.0 SCOPE OF TRAFFIC COVERED BY THIS AGREEMENT

3.1 INCLUDED TRAFFIC

3.1.1 This Agreement sets forth: (a) the terms and conditions under which the Parties agree to exchange certain EAS Traffic delivered by one Party to the other Party; (b) the terms and conditions under which traffic is exchanged between the Parties to an End User that has obtained Virtual NXX Service from one of the Parties; and (c) subject to Section 3.4, the terms

and conditions under which information access will be provided by the Parties. The delivery of EAS Traffic under this Agreement only applies to traffic between an end user of one Party and an end user of the other Party. The exchange of Virtual NXX Traffic for completion is only under the condition that the End User that has obtained Virtual NXX Service is located within the same LATA and the same state as the other End User involved in call. The specific Local Service Exchange Areas that are the subject of this Agreement between which customers of the Parties may be provided EAS calling service(s), together with the identification and location of associated end offices and the location of the point of connection, are set forth in Exhibit 1 to this Agreement.

3.1.2 This Agreement's provisions regarding EAS apply only to the specific Local Service Exchange Areas specified in Exhibit 1. From time to time, the Parties can negotiate the exchange of EAS Traffic between additional pairs of Local Service Exchange Areas where the Parties have first complied with all applicable Commission-prescribed EAS regulations, but this Agreement does not require the Parties to negotiate any changes. Without agreement by both Parties to such changes, the specific Local Service Exchange Areas set forth in Exhibit 1 and the combination(s) of Local Service Exchange Areas that determines EAS calling as also set forth in Exhibit 1 shall not change.

3.1.3 This Agreement's provisions regarding EAS apply only to the exchange of two-way EAS Traffic for which the rate structure applied to end user services by one Party for calls in one direction is the same as the rate structure applied by the other Party for calls in the opposite direction. This Agreement only applies with respect to a rate structure which allows customers to place and receive EAS calls on an unlimited basis for a flat monthly charge.

3.1.4 Each Party agrees that it will not provision any of its services in a manner that permits the arbitrage and/or circumvention of the application of intrastate access charges by the other Party including, but not limited to, the resale or bridging of EAS service beyond the two specified exchanges between which EAS is provided. Each Party also agrees to take all reasonable steps to terminate any service to one of its users that permits that user to arbitrage and/or circumvent the application of intrastate access charges by the other Party.

3.1.5 Each Party will cooperate fully in identifying to the other Party all Customers that it has assigned a Virtual NXX Number and/or is classified as an ISP. Each Party shall provide an initial report containing said Customer's assigned telephone numbers, service location, and if applicable, an ISP indication. The initial report shall be provided thirty (30) days after the effective date of the contract. The Parties shall provide updates to the list within thirty (30) days of a change. In addition, upon request but not more than quarterly, a Party may request that a summary report of the information delineated above.

3.1.6 Both Parties warrant and represent that they will: (a) assign telephone numbers in a manner consistent with this Agreement to only those End Users physically located within the same LATA and within the same state as the Batavia exchange so that the resulting traffic exchanged between the Parties will be confined to the scope of this Agreement as set forth in Section 3.1.1; (b) provision their local exchange carrier services in a manner that the resulting traffic exchanged between the Parties pursuant to this Agreement will be confined to the scope of the traffic as set forth in Section 3.1.1; (c) adopt the Rate Center areas and Rate Center points that are identical to those used by Empire; (d) shall assign whole NXX Codes to each Rate Center, or where, applicable, thousand number blocks within a NXX Code assigned to that Rate Center; and (e) provide Calling Party Number on at least ninety-five percent (95%) of all traffic delivered to the POC.

3.1.7 In the event that a Party violates (the "Violating Party") any of the warranties and representations provided for in Section 3.1.6 service (a "Violation"), the other Party (the Non-Violating") shall assess to the Violating Party, and the Violating Party shall pay to the Non-Violating Party, originating and terminating switched access charges for the amount of traffic usage that is outside the scope of the traffic defined in Section 3.1.1. Both Parties agree that they will engineer their respective networks and design their respective systems to deliver traffic in compliance with Section 3.1.1.

3.1.7.1 If the Non-Violating Party provides written notification to the Violating Party of a suspected Violation(s), or if the Violating Party discovers the suspected violation(s) itself, the Violating Party shall, unless otherwise mutually agreed to by the Parties, within five (5) days following such notification or discovery, correct and/or remove the specific service arrangement that has resulted in the Violation(s), if any. In addition, the Non-Violating Party may request an ad-hoc study or other such demonstration of available switch data that the Violation(s) has been corrected and/or removed.

3.1.7.2 The Parties further agree that, in the event that the amount of traffic outside the scope defined in Section 3.1.1 as a result of the Violation exceeds, within a given month, five percent (5%) of the total traffic defined as within the scope of this Agreement pursuant to Section 3.1.1, the Violating Party shall also pay all reasonable costs and attorneys' fees ("Costs and Fees") incurred by the Non-Violating Party associated with both the identification and collection of the access charge compensation due pursuant to this Section 3.1.7; provided, however, that the Costs and Fees shall not be required to be paid by the Violating Party if, after written notice from the Non-Violating Party, the Violating Party can demonstrate that (a) the five percent (5%) threshold had not been reached in any of the immediately preceding three (3) months, (b) the action that led to the exchange of traffic outside the scope of the Agreement was the result of an inadvertent error, and (c) the Violating Party remedied, in accordance with Section 3.1.7.1, the inadvertent error following notification. Regardless of the treatment of Costs and Fees, the Violating Party shall be responsible for the payment of switched access charges to the Non-Violating Party for all traffic that is the result of the Violation(s). The Parties agree that any adjustments and/or payments made by the Violating Party shall be subject to a two (2) year period of retroactivity.

3.2 EXCLUDED TRAFFIC

This Agreement does not cover any traffic originating or terminating in areas other than the Local Service Exchange Areas set forth in Exhibit 1. This Agreement does not apply to any traffic that both originates and terminates within the same Local Service Exchange Area. Except as provided in Section 3.1, the terms and conditions of this Agreement are not applicable to intraLATA toll traffic; switched access traffic; interLATA toll traffic; or any other traffic that is not specifically identified in Section 3.1 as subject to this Agreement. Except as provided in Section 3.3, below, this Agreement is not applicable to traffic originated, terminated, or carried on third party networks not Parties to this Agreement or any traffic originated or terminated by users of Commercial Mobile Radio Services. The Parties specifically exclude verification traffic and 911 traffic.

3.3 INTERMEDIARY EAS TRAFFIC FUNCTIONS

Neither Party shall provide an intermediary function for the other Party's connection of its End Users to the end users of a third party telecommunications carrier without the consent of all parties and without the establishment of mutually agreeable terms and conditions governing the provision of the intermediary function. This Agreement does not obligate either Party to utilize any intermediary or transit traffic functions of the other Party.

3.4 RESERVATION OF RIGHTS WITH RESPECT TO VIRTUAL NXX TRAFFIC AND ISP TRAFFIC

3.4.1 Virtual NXX Traffic. The Parties acknowledge and agree that Virtual NXX Traffic is included in this Agreement solely for the benefit of TWTC and as a result of the Commission Order. The Parties also acknowledge and agree that Empire would not have included Virtual NXX Traffic within this Agreement in the absence of the Commission Order. Accordingly, Virtual NXX Traffic is included in this Agreement without waiver or prejudice to any positions that either Party has taken previously or may take in the future in any legislative, regulatory, or other public forum addressing or related to Virtual NXX Traffic. The Parties further acknowledge and agree that, if any aspect of the Commission Order is subsequently modified in any manner or vacated by a court of competent jurisdiction or by any other judicial, regulatory or legislative body in a manner consistent with the positions set forth in the Petition for Rehearing filed with the Commission by the Small Company Group on February 16, 2001 (the "Action"), any provision of this Agreement that is affected by the Action will be modified in accordance with the Action, and the Parties agree to enter into negotiations to modify only those portions of this Agreement necessary to comport with the Action, with the remaining portions of this Agreement remaining in full force and effect. The Parties further agree that any modification required by the Action shall be retroactive to the effective date of the Action.

3.4.2 ISP Traffic. The Parties recognize they are bound by the ruling of the Federal Communications Commission in CC Docket Nos. 96-98 and 99-68 and recognize that the network and/or regulatory jurisdiction treatment of information access traffic directed to ISPs and other information service providers is still subject to review and/or change. The Parties further acknowledge and agree that the long term resolution of issues related to information access traffic directed to ISPs and other information service providers could affect both Parties and could necessitate modification to this Agreement. Any voluntary switching and/or transport of information access traffic directed to ISPs or other information service providers over the facilities established pursuant to this Agreement by either Party, however, shall not be construed as either agreement or acknowledgment by the Parties that this arrangement is an appropriate long term resolution. In the event that any action or decision of an appropriate regulatory or legal body results in a determination that any specific treatment of information access traffic directed to ISPs or other information service provider is unlawful, improper, or not specifically required, either Party may initiate negotiations of new terms and conditions regarding the treatment of information access traffic directed to ISPs or other information service providers. Either Party may also terminate, consistent with existing regulatory requirements and law, the treatment pursuant to this Agreement of information access traffic directed to ISPs or other information service providers. In the event that either Party exercises any rights set forth in this subsection, the Parties agree to enter into good faith negotiations to determine mutually agreeable terms and conditions regarding information access traffic directed to ISPs or other information service providers; however, in no case will either Party be obligated to provide compensation, including, but not limited to, compensation for switching, transport or termination, to the other Party for

terminating information access traffic to ISPs or other information service providers. Under any circumstances where the Parties are subsequently unable to reach agreement with respect to new terms and conditions to replace this Subsection or other provisions of this Agreement related to the treatment of information access traffic directed to ISPs or other information service providers, the Parties agree to enter into arbitration consistent with the provisions of Section 252 of the Act. The voluntary application of the provisions of Section 252 by the Parties does not create obligations for either Party under the Act that do not otherwise apply.

3.5 TRUNK GROUPS

3.5.1 The Parties agree to connect their respective networks for the purpose of allowing each Party to exchange or deliver that traffic defined in Section 3.1.1. The Parties agree to establish the Empire certificated service area boundary as the Point of Connection as set forth in Exhibit 1. Each Party will make available to the other Party, at the POC, trunks over which the originating Party can terminate EAS calls to the end users of the terminating Party. The Parties agree to provide and maintain their own facilities up to the POC.

3.5.1.1 If TWTC does not provision direct trunks to the POC, TWTC shall, as required by the Commission Order, make all necessary arrangements with Verizon New York, Inc. ("Verizon") to arrange for the transport service described in the Commission Order (the "Transport Service") from the Verizon tandem to the POC. Empire agrees that it will participate in any necessary discussions and implementation of connecting carrier facilities and necessary agreements with Verizon associated with the TWTC election to utilize the Transport Service of Verizon. TWTC further agrees that where TWTC elects to utilize the Transport Service of Verizon, TWTC is responsible for the establishment of all proper business arrangements and agreements associated with the use of such Transport Service in a manner consistent with both the terms and conditions of this Agreement and the Commission Order including, but not limited to, bearing all costs and the payment of all charges associated with ordering and use of the Transport Service. In addition to all other indemnifications included in this Agreement, TWTC also agrees to indemnify, defend and hold Empire harmless against charges and any other claims, whatsoever, by Verizon and any third party associated with TWTC's ordering and use of the Transport Service.

3.5.1.2 The Parties agree that TWTC may utilize the Verizon trunking arrangement described in Section 3.5.1.1 to exchange EAS Traffic and Virtual NXX Traffic that does not exceed one (1) DS1 level volume of calls for any three (3) months in any consecutive six (6) month period or for any consecutive three (3) months ("Threshold Level"). TWTC shall monitor such traffic level and shall provide written notification to Empire within one (1) month of the date that the Threshold Level has been met or exceeded.

3.5.1.3 Notwithstanding Section 3.5.1.2, TWTC agrees that, prior to beginning to provide service to a Customer that consists of large-volume call termination to that Customer, TWTC shall not use the Verizon trunking arrangement described in Section 3.5.1.1 and, in lieu thereof, directly connect its network to Empire at the POC in the manner described in Section 3.5.2.

3.5.1.4 Where traffic congestion associated with TWTC's utilization of the Verizon trunking arrangement described in Section 3.5.1.1, both Parties agree that they will utilize industry-accepted network traffic and engineering standards to determine how TWTC's utilization of the Verizon trunking arrangement should be modified to relieve such traffic congestion. In the event that the requirements of this Section 3.5.1.4 are triggered, TWTC agrees

to use its best efforts to ensure that Verizon and any other carrier also utilizing Verizon's trunking arrangement are included in the discussions required to relieve the traffic congestion.

3.5.2 The Parties agree to work cooperatively to forecast trunk requirements for the exchange or delivery of traffic provided for in Section 3.1.1 between the respective End Users of the Parties. In accordance with the Commission Order and in a manner that does not expose Empire to any costs not associated with the specific facilities at issue, when traffic volumes reach the Threshold Level, TWTC shall connect with Empire via a separate/direct trunk group. Once the Threshold Level has been reached, the Parties shall mutually agree regarding whether to implement one-way or two-way trunks.

3.5.3 Regardless of how such facilities are provisioned (e.g., owned, leased or obtained pursuant to tariff, etc.) each Party is individually responsible to provide facilities to the POC which are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in a mutually acceptable format and in a manner that neither destroys nor degrades the normal quality of service each Party provides to its respective end users.

3.5.4 Upon Empire's request and at no more than once per year, and no cost to Empire, TWTC shall provide to Empire an ad hoc study of the available switch data. Such data may be aggregated at the NPA/NXX level, and, shall include message count and minutes of use. Such aggregated data may be requested by Empire either on a monthly or daily summary basis. It is also agreed that if there is a reasonable follow-up request to the ad hoc study or a material change to either traffic patterns and/or volumes, TWTC will not unreasonably deny additional requests for studies as defined in this Section 3.5.4.

3.6 SIGNALING

Both Parties agree to exchange SS7 Common Channel Signaling ("CCS") between their respective networks where technically feasible for the traffic addressed in this Agreement. Both Parties will provide CCS connectivity in accordance with accepted industry practice and standard technical specifications. The Parties agree to cooperate on the exchange of all appropriate CCS messages for EAS call set-up, including ISDN User Part ("ISUP") and Transaction Capability User Part ("TCAP") messages to facilitate interoperability of CCS-based features and functions between their respective networks, including CLASS features and functions. All CCS signaling parameters, including the Jurisdictional Indicator Parameter ("JIF"), will be provided in conjunction with EAS Traffic where available with specific trunk connections. Where CCS signaling is not available for the exchange of EAS calls, in-band multi frequency signaling shall be used in accordance with accepted industry practice and standards.

3.7 NETWORK MAINTENANCE AND TRUNK PROVISIONING

The Parties will work cooperatively to install and maintain a reliable network for the provision of EAS calling between the Parties' respective end users. The Parties will exchange relevant information to maintain reliability. The Parties agree to work cooperatively to forecast trunk requirements.

3.8 NO COMPENSATION

Except as provided in Subsection 3.1, neither Party has any obligation to provide compensation to the other Party for the other Party's origination or termination of traffic

described in Section 3.1.1.

4.0 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

5.0 NO CANCELLATION OR NON-RECURRING CHARGES

No cancellation charges shall apply with respect to any of the terms of this Agreement. No non-recurring charges shall apply with respect to any of the terms of this Agreement.

6.0 INDEMNIFICATION

6.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, including, but not limited to, reasonable costs and attorneys' fees (collectively, a "Loss"), (a) whether suffered, made, instituted, or asserted by any other party or person, relating to personal injury to or death of any person, or for loss, damage to, or destruction of real and/or personal property, whether or not owned by others, incurred during the term of this Agreement and to the extent proximately caused by the acts or omissions of the indemnifying Party, regardless of the form of action, or (b) suffered, made, instituted, or asserted by its own customer(s) against the other Party arising out of the other Party's provision of services to the indemnifying Party under this Agreement, except to the extent caused by the indemnified Party's intentional or gross negligent acts or willful misconduct. Notwithstanding the foregoing indemnification, nothing in this Section 6.0 shall affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s), regulations or laws for the indemnified Party's provision of said services.

6.2 The indemnification provided herein shall be conditioned upon:

6.2.1 The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification.

6.2.2 The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense. Prior to retaining legal counsel pursuant to this

Section 6.2.2, the indemnifying Party shall seek written assurances from the legal counsel chosen that such counsel does not have any conflict of interest with the indemnified Party.

6.2.3 In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld.

6.2.4 The indemnified Party shall, in all cases, assert any and all provisions in its Tariffs that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation of liability.

6.2.5 The indemnified Party shall offer the indemnifying Party all reasonable cooperation and assistance in the defense of any such action.

6.3 To the extent permitted by law, and in addition to its indemnity obligations under Sections 6.1 and 6.2, each Party shall provide, in its Tariffs that relate to any Telecommunications Service provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any Customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable Customer for the service(s) or function(s) that gave rise to such Loss, or (ii) any Consequential Damages (as defined in subsection 7.2, below).

7.0 LIMITATION OF LIABILITY

7.1 Except in the instance of harm resulting from an intentional or grossly negligent action or willful misconduct of one Party, the liability of either Party to the other Party for damages arising out of (1) failure to comply with a direction to install, restore or terminate facilities, or (2) out of failures, mistakes, omissions, interruptions, delays, errors, or defects occurring in the course of furnishing any services, arrangements, or facilities hereunder shall be determined in accordance with the terms of the applicable tariff(s) of the providing Party. In the event no tariff(s) apply, the providing Party's liability shall not exceed an amount equal to the pro rata monthly charge for the period in which such failures, mistakes, omissions, interruptions, delays, errors or defects occur. Recovery of said amount shall be the injured Party's sole and exclusive remedy against the providing Party for such failures, mistakes, omissions, interruptions, delays, errors or defects. Because of the mutual nature of the exchange of traffic arrangement between the Parties pursuant to this Agreement, the Parties acknowledge that the amount of liability incurred under this Section 7.1 may be zero.

7.2 In no event shall either Party shall be liable to the other in connection with the provision or use of services offered under this Agreement for indirect, incidental, consequential, reliance or special damages, including (without limitation) damages for lost profits (collectively, "Consequential Damages"), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including, without limitation, negligence of any kind, even if the other Party has been advised of the possibility of such damages; provided, that the foregoing shall not limit a Party's obligation under Section 6.

7.3 Except in the instance of harm resulting from an intentional or grossly negligent action or willful misconduct, the Parties agree that neither Party shall be liable to the Customers of the other Party in connection with its provision of services to the other Party under this Agreement. Nothing in this Agreement shall be deemed to create a third party beneficiary relationship between the Party providing the service and the Customers of the Party purchasing the service. In the event of a dispute involving both Parties with a Customer of one Party, both Parties shall assert the applicability of any limitations on liability to customers that may be contained in either Party's applicable Tariff(s).

8.0 TERM AND TERMINATION

This Agreement shall be effective on the date on which it is executed and shall continue in force and effect unless and until terminated as provided herein. TWTC will agree to file this Agreement with the Commission for approval, on behalf of the Parties, within ten (10) days of execution by both Parties. Either Party may terminate this 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.

9.0 COMPLIANCE WITH LAWS AND REGULATIONS

9.1 Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement. Each Party shall promptly notify the other Party in writing of any governmental action that suspends, cancels, withdraws, limits, or otherwise materially affects its ability to perform its obligations hereunder.

9.2 This Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or a court in the exercise of its lawful jurisdiction. The Parties agree to negotiate in good faith any such changes or modifications required to comply with the requirements of this Subsection. Unless otherwise specifically required to comply with the effective date of an action described in this Subsection, and except as otherwise provided for in Section 3.4, any change or modification shall be effective upon the execution of an amendment by the Parties to this Agreement regarding such change or modification.

9.3 Notwithstanding the provisions contained in this Agreement, the Parties nevertheless 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 specifically to this Agreement or other types of arrangements prescribed in this Agreement. In the event that the Commission were to reject this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Further, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction.

9.4 The Parties agree that EAS Traffic exchanged pursuant to this Agreement will be in accordance with the rules and regulations of the Commission. Accordingly, both Parties acknowledge that the exchange of EAS Traffic does not constitute an interconnection agreement pursuant to 47 USC §§ 251 or 252 or any rules promulgated by the Federal Communications Commission thereunder. The Parties agree that it is in their mutual interest to seek approval of this Agreement. The filing of this Agreement does not create obligations for either Party under the Act that do not otherwise apply.

10.0 SEVERABILITY

If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal of that provision results in a material change to this

Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language that does not materially alter the economic effect of this Agreement on either Party. If replacement language cannot be agreed upon within a reasonable period, either Party may terminate this Agreement without penalty or liability for such termination upon written notice to the other Party in accordance with Section 8.0.

11.0 MISCELLANEOUS

11.1 AUTHORIZATION

11.1.1 Empire is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder.

11.1.2 TWTC is a limited partnership duly organized in the State of Delaware, authorized to do business in and in good standing under the laws of the State of New York and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

11.2 DISCLAIMER OF AGENCY; NO THIRD PARTY BENEFICIARIES; INDEPENDENT CONTRACTOR

Neither this Agreement, nor any actions taken by either Party, in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between the Parties, nor any similar type relationship. Neither this Agreement, nor any actions taken by either Party in compliance with this Agreement, shall create an agency, or any other type of relationship or third party liability between the Parties or between either Party and the customers of the other Party. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-party beneficiary rights hereunder. Nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

11.3 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: adverse weather conditions, 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 affected Party 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 interferences (and the

other Party shall likewise be excused from performance of its obligations on a day-to-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(s) of non-performance and both Parties shall proceed to perform with dispatch once the cause(s) are removed or cease.

11.4 TREATMENT OF PROPRIETARY AND CONFIDENTIAL INFORMATION

11.4.1 Both Parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as "Proprietary Information"). Proprietary Information shall remain the property of the disclosing Party. Both Parties agree that all Information shall be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Information will be returned to the owner within a reasonable time. Both Parties agree that the Information shall be utilized by the non-disclosing Party only to the extent necessary to fulfill the terms of this Agreement or upon such terms and conditions as may be agreed upon between the Parties in writing, and for no other purpose. Both Parties agree to receive such Proprietary Information and not to disclose such Information. Both Parties agree to protect the Information received from distribution, disclosure or dissemination to anyone except employees and duly authorized agents of the Parties with a need to know such Information and which employees and agents agree to be bound by the terms of this Section. Both Parties will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information.

11.4.2 Notwithstanding the foregoing, both Parties agree that there will be no obligation to protect any portion of the Information that is either: 1) made publicly available by the owner of the Information or lawfully disclosed by a non-party to this Agreement; 2) lawfully obtained from any source other than the owner of the Information; 3) publicly known through no wrongful act of the receiving Party; 4) previously known to the receiving Party without an obligation to keep it confidential; 5) required to be disclosed by any governmental authority or applicable law; or 6) approved for release by written authorization of the disclosing Party.

11.5 CHOICE OF LAW

The construction, interpretation, enforcement and performance of this Agreement shall be in accordance with the laws of the State of New York, without regard to its conflict of laws provisions, except to the extent that federal law applies, in which case federal law shall control.

11.6 TAXES

Each Party shall be responsible for any and all taxes and surcharges arising from its conduct under this Agreement and shall, consistent with Section 6, indemnify and hold harmless the other Party for its failure to pay and/or report any applicable taxes and surcharges. With respect to Empire, and where applicable, the treatment of all taxes will be subject to the terms and conditions of the appropriate Empire tariff that applies to the end user treatment of the traffic.

11.7 DISPUTE RESOLUTION

Any dispute between the Parties regarding the interpretation or enforcement of this

Agreement or any of its terms shall be addressed in the first instance by good faith negotiation between the Parties, in conjunction with the applicable Tariffs and applicable regulatory decisions and state and federal laws. Should such negotiations fail to resolve the dispute in a reasonable time, either Party may initiate an appropriate action in a regulatory or judicial forum of competent jurisdiction.

11.8 NOTICES

Notices given by one Party to the other Party under this Agreement shall be in writing and shall be (a) delivered personally, (b) delivered by express delivery service, or (c) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested to the following addresses of the Parties:

To: Empire

Brian J. Ketchum, Vice President
Empire Telephone Corporation
34 Main Street
P.O. Box 349
Prattsburg, New York 14873

To: TWTC

Time Warner Telecom - NY, L.P.
Attention: Tina Davis
Vice President & Deputy General Counsel
Park Ridge One
10475 Park Meadows Drive
Littleton, Colorado 80124

With a copy to:

Rochelle Jones
Vice President, Regulatory Northeast & Hawaii
Time Warner Telecom
14 Wall St, 9th Floor
New York, NY 10005

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of (i) the next business day when notice is sent via express delivery service or personal delivery, or (ii) three (3) days after mailing in the case of first class or certified U.S. mail.

11.10 JOINT WORK PRODUCT

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

11.11 NO LICENSE

11.11.1 Nothing in this Agreement shall be construed as the grant of a license,

either express or implied, with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except

in accordance with the terms of a separate license agreement between the Parties granting such rights.

11.11.2 Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its customers based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision of any facilities by either Party under this Agreement, alone or in combination with that of the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third party. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim.

11.11.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY THE PARTIES OF THE OTHER'S FACILITIES, ARRANGEMENTS, OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM BY ANY THIRD PARTY OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH THIRD PARTY.

11.12 SURVIVAL

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

11.13 PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS

Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos, company name or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

11.14 NON-WAIVER

Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege. The Parties recognize that Empire is a rural telephone company and is entitled to all rights afforded rural telephone companies under the Act including, but not limited to, exemptions, suspensions, and modifications under 47 USC § 251(f). This Agreement does not affect, and Empire does not waive, any rights including, but not limited to, the rights afforded Empire under 47 USC § 251(f).

11.15 ENTIRE AGREEMENT

This Agreement and any Exhibits, Schedules, or tariffs which are incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

11.16 COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

11.17 MODIFICATION, AMENDMENT, SUPPLEMENT, OR WAIVER

No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties. A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this 29th day of October, 2001.

Empire Telephone Corporation

Time Warner Telecom - New York, L.P.

By: Time Warner Telecom General
Partnership, Its general partner

By: Time Warner Telecom Holdings, Inc.,
Its managing general partner

By Brian J. Ketchum

By Tina Davis

Printed: Brian J. Ketchum

Printed: Tina Davis

Title: Vice President

Title: Vice President and Deputy
General Counsel

Date: November 1, 2001

Date: October 29, 2001

Exhibit 1

TWTC Switch CLLI CODE	TWTC NPA -NXX CODES	POI CLLI Code	Empire Switch CLLI CODE	Empire NPA-NXX CODES
ROCHNYEIDS0	716/409	BFLONYFR50T	EPMBNYXADS0	716/762