

TRAFFIC EXCHANGE AGREEMENT

This Agreement ("Agreement") is entered into by and among Time Warner Telecom Holdings Inc. and Time Warner Telecom Management Co. LLC on behalf of themselves and their wholly owned certified local exchange carriers who are exchanging traffic hereunder¹ (collectively "TWTC") and Pac-West Telecomm, Inc. ("PAC-WEST") and applies to the exchange of traffic in the following states where both entities are certified local exchange carriers: Alabama, Arizona, California, Colorado, District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, New Jersey, New Mexico, Nevada, New York, North Carolina, Oregon, Tennessee, Texas, Utah, Virginia, Washington and Wisconsin. This Agreement is effective as of November 1, 2007 and will apply to traffic exchanged by the parties on or after November 1, 2007. TWTC is not currently a certified local exchange carrier in Delaware, Massachusetts, Michigan, Pennsylvania and Rhode Island. If and when it becomes a certified local exchange carrier in any of these states, the exchange of traffic with PAC-WEST in such states will also be governed by this Agreement.

In consideration of the mutual obligations set forth below, the Parties agree to the following terms and conditions:

1. **Exchange of Traffic.** PAC-WEST and TWTC (the "Parties") agree to exchange all 251(b)(5) traffic including ISP-bound traffic (herein referred to as "Local Traffic") and all 251(g) traffic (herein referred to as "Intralata Toll Traffic") with one another through a direct or indirect interconnection facility between the Parties' networks. PAC-WEST and TWTC will exchange Local Traffic and Intralata Toll Traffic via this connection as supported by this Agreement. This Agreement does not apply to Local Traffic originated or terminated by third parties ("Transit" traffic). Calls will be rated based on a comparison of the originating and terminating NPA-NXX. If the originating and terminating NPA-NXX of the call are assigned to the same local calling area, the call will be rated as local.
2. **Direct and Indirect Connection.**
 - 2.1 In the event that traffic exchanged by the Parties exceeds the Indirect Traffic Threshold (as defined 2.2 below), or, if the Parties mutually agree at any time prior to traffic exceeding the Indirect Traffic Threshold, the Parties shall then evaluate the feasibility and economics of direct trunking for the exchange of Local Traffic and Intralata Toll Traffic.
 - 2.2 For the purposes of this Agreement, the Parties agree that the Indirect Traffic

¹ TWTC acquired Xspedius Communications LLC and many of its operating entities effective October 31, 2006. TWTC has integrated its local networks and operating entities with those of Xspedius. As a result, this Agreement is applicable to all traffic being exchanged by and between Pac-West and TWTC, as integrated with Xspedius. Exhibit A identifies TWTC's wholly owned operating entities in each of the applicable states following the integration.

Threshold shall be an aggregate of both Parties' traffic which reaches one (1) DS1 level volume of calls, per LATA, for any three (3) months, in any consecutive six (6) month period, or for any consecutive three (3) months.

- 2.3 Each Party agrees to perform and pay all design, installation, and maintenance of equipment and facilities of the direct connection between the Parties' networks sufficient to carry the traffic originated by each Party. If a portion of the network is provided by a third party, the Parties agree that the Provisioning Party shall bill the other Party fifty percent (50%) of the incurred cost when the Proportionate Percentage of Use ("PPU") of traffic remains within a 70/30 split. Where the PPU of traffic exceeds a 70/30 split, the Parties agree to apportion the cost, in accordance with the proportionate amount of each Party's traffic over the entire trunk group.
- 2.4 Each Party will ensure the facility is installed at the location designated by the other Party's specification and that the technology used is based on mutually negotiated specifications.
- 2.5 Both Parties agree to cooperate to design and install interconnection facilities in conformance with industry standards in an efficient and effective manner.
- 2.6 Provisioning Responsibilities for Direct Connections; Trouble Reporting and Management
 - 2.6.1 Each Party shall provide to the other Party the contact number(s) to its control office which shall be accessible and available 24 hours a day, 7 days a week, for the purpose of, without limitation; (a) coordinating trunk orders (e.g., notifying the other Party of delays in trunk provisioning); (b) maintaining service (e.g., notifying the other Party of any trouble or need for repairs); and (c) notifying the other Party of any equipment failures that may affect the interconnection trunks. Any changes to a Party's control office contact arrangement must immediately be provided to the other Party in writing pursuant to the procedures in Section 22, below.
 - 2.6.2 Each Party shall coordinate and schedule testing activities of its own personnel, and others as applicable, to ensure that trunks are installed in accordance with the ASR, meet agreed-upon acceptance test requirements, and are placed in service by the in-service date.
 - 2.6.3 Prior to reporting any trouble with interconnection facilities to the other Party, each Party shall perform sectionalization to determine if trouble is located in its facility or in its portion of the trunks.
 - 2.6.4 The Parties shall cooperatively plan and implement coordinated repair procedures for the interconnection facilities in order to ensure that trouble reports are resolved in a timely manner and that the trouble is promptly

eliminated.

2.6.5 Prior to the placement of any orders for direct connection trunks, the Parties shall meet and mutually agree upon technical and engineering parameters, including Glare and other control responsibilities.

2.6.6 To the extent possible, TWTC and PAC-WEST will maintain the existing trunk groups used to transit traffic through the Local Exchange Carrier's (LEC) tandem or alternative tandems. Overflow traffic carried on the direct trunks will be routed to LEC tandems or third party tandem providers.

2.6.7 For traffic exchanged indirectly via transit service provided by a third party tandem, the originating Party will be solely responsible for the cost of the transit providers transit charges.

3. **Reciprocal Compensation (Local Traffic and Toll Traffic).** PAC-WEST and TWTC each agrees to pay the other transport and termination, on a reciprocal compensation basis, for Local Traffic it originates that the other Party terminates. The rates the Parties charge for reciprocal compensation for Local Traffic will be \$.001 per MOU. The Parties' Interstate and Intrastate Access Tariffs, as applicable, will apply to 251(g) traffic unless and until the mutually agree to other rates for such traffic.

4. **Traffic Recording, Exchange of Necessary Factors and Audits.**

4.1 Either Party may request the other Party to verify the accuracy of amounts shown on invoices provided pursuant to this Agreement. The Party receiving the request shall provide information reasonably sufficient to verify its invoices within thirty (30) days after the request date.

4.1.1 For billing and/or self-auditing purposes whether direct or indirect Interconnection is used, the Parties agree that they will each pass actual originating Calling Party Number ("CPN") information on all calls to the extent technically feasible. Neither Party shall intentionally suppress CPN or substitute, generate or knowingly pass incorrect CPN or SS7 parameters on traffic exchanged pursuant to the Agreement. If a Party has intentionally suppressed CPN or substituted, generated or knowingly passed such incorrect parameters on traffic exchanged pursuant to this Agreement, the offending Party shall pay the other Party the difference between compensation paid (if any) and applicable access charges, plus interest due under the terms of the applicable access tariff from the date the traffic would have been billed if such parameters had been provided unaltered.

4.2 The Parties agree to provide state-wide factors, which include Percent Local Usage (PLU) and Percent Interstate Usage (PIU) factors for all traffic exchanged between the parties directly and indirectly via a Tandem Transit provider. The PLU will be applied to all traffic within the LATA including traffic that is not identified by CPN, except when a Party elects to bill based on rated call records, whereby the actual jurisdiction of each call is identified, then the PLU will be applied to the traffic where jurisdiction can not be determined. A Party electing to use PLUs shall provide the initial factors to the other within 30 days of execution of the Agreement. Adjustments to the applicable factors, if any, may be made on a calendar-year quarterly basis, within 15 calendar days after the end of each quarter. When billing the other Party, a Party may classify traffic as either Local Traffic or Intrastate or Interstate Toll Traffic using CPN information when provided. When classifying unmeasured traffic, a Party may classify it as either Local Traffic or IntraLATA Toll Traffic using such PLU and PIU factors. If quarterly factors are not provided, the factors provided for the previous quarter will be applied.

4.2.1 If a Party performs an audit on the factors provided by the other Party and find that the factors provided do not correctly represent the jurisdiction of the traffic being exchanged, the Billing Party may correct the factors for billing applications. The Billing Party may calculate and adjust billed usage due to the correction of factors for a timeframe of no more than one (1) year.

5. Payments and Disputes.

5.1 Although it is the intent of both Parties to submit timely and accurate statements of charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and the billed Party shall not be entitled to dispute the billing Party's statement(s) based on such Party's failure to submit them in a timely manner; provided however, that neither Party shall charge the other for traffic more than one year old on the date the bill is rendered.

5.2 Each Party will also pay, if charged, a late fee at the lesser of a) 1.5% per month, and b) the greatest amount allowed by law, for undisputed charges not paid within thirty (30) days of the bill date, and all reasonable costs of collection, including attorneys' fees. Each Party will also pay, if charged, interest at the lesser of i) 1.5% per month, and ii) the greatest amount allowed by law, for disputed charges withheld but later found to be due and owing, plus all reasonable costs of collection, including attorneys' fees. If such bills are not received at least twenty (20) days prior to the payment due date, then the bill(s) shall be considered delayed. When a bill has been delayed, the due date will be extended by the

number of days the bill was delayed, upon request of the receiving Party. Such request must be accompanied with proof of late bill receipt.

- 5.3 If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") shall within ninety (90) days of its receipt of the invoice containing such disputed amount give notice to the Billing Party of the amount it disputes and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party shall pay all undisputed amounts to the Billing Party when due.
- 5.4 If the Parties are unable to resolve the issues related to the disputed amount in the normal course of business within thirty (30) days after delivery to the Billing Party of notice of the disputed amount, each of the Parties shall appoint a designated representative that has authority to settle the dispute and that is at a higher level of management than the persons with direct responsibility for billing issues. The designated representatives shall meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives; however, all reasonable requests for relevant information made by one Party to the other Party shall be honored.
- 5.5 If the Parties are unable to resolve issues related to the disputed amount within fifteen (15) days after the Parties' appointment of designated representatives, then either Party may pursue its right to resolution of the dispute with an appropriate body having jurisdiction over the dispute.
- 5.6 Non-Billing Related Disputes. If the Parties are unable to resolve the issues related to non-billing related disputes in the normal course of business within forty-five (45) days after delivery of notice of the dispute to the other Party, each of the Parties shall appoint a designated representative that has authority to settle the dispute and who is at a higher level of management than the person or persons with direct responsibility over the disputed issues. The Parties agree that the timeframes and procedural steps for resolving all non-billing related disputes shall be the same as those specified for billing related disputes provided in Sections 5.4 and 5.5 above. Except as otherwise specifically provided for in this Agreement, no claim may be brought for any non-billing related dispute arising from this Agreement more than twenty-four (24) months from the date the occurrence giving rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.

6. General Responsibilities of the Parties.

- 6.1 **Loading/Testing of NXX Codes.** Where appropriate, PAC-WEST and TWTC agree to load and test each other's NXX codes, which may change from time to

time, into their respective switch translation databases in a reasonable and timely manner, in accordance with standard industry practices. Each Party agrees to ensure that the other Party's NXXs so loaded will route accurately no later than the activation date listed in the LERG or within ten (10) days of the effective date of this Agreement, whichever is later.

- 6.2 **Porting of Numbers.** Each Party agrees to port telephone numbers in accordance with this Agreement and all applicable laws, rules and regulations.
- 6.3 **Contact with Subscribers.** Each Party shall be the primary contact and account control for all interactions with its own subscribers. If a Party is contacted by a subscriber of the other Party, that Party shall: (a) provide only mutually agreed referral numbers in response to inquiries about the other Party's services or products; (b) not disparage the other Party or its products or services; and (c) provide information about its own products or services only in response to a specific subscriber inquiry about such products or services.
- 6.4 **Customer Service Records.** The old service provider agrees to provide Customer Service Record ("CSR") information upon request to the new service provider, provided that the request is made in writing, directed to the contact designated by the old service provider, and contains the new service provider's contact information. Each Party warrants that it will comply with all legal and regulatory requirements applicable to requesting and providing CSR information and changing service providers, including obtaining customer authorization prior to requesting a CSR. By submitting a CSR request, a Party is certifying that it has obtained such customer authorization. Neither Party may require the other Party to submit any letter of authorization or other proof of service order, but the new service provider agrees to indemnify the old service provider against customer claims related to unauthorized provider changes and transfers of CSR information. Each Party will bear its own costs and will not charge the other Party in connection with providing CSR information.
- 6.5 **Escalation Contact Lists and Service Recovery Procedures.** Each Party shall provide the other Party with all network escalation contact lists and service recovery procedures (including, without limitation, the procedures for opening of trouble tickets) necessary to facilitate the rapid resolution of disputes and service issues in a mutually agreed upon format and in a timely and reasonable manner. The Parties shall provide each other with as much advance notice as possible of any changes in their respective escalation contact lists and service recovery procedures.
- 6.6 **SS7 Deployment.** PAC-WEST and TWTC agree to interconnect their SS7 (Signaling System 7) networks either directly or through third parties. PAC-WEST and TWTC further agree to exchange TCAP (Transaction Capabilities Application Part) messages that are necessary to provide call management features

(automatic callback, automatic recall, and screening list editing) between the PAC-WEST local STPs (Signaling Transfer Points) and the STPs that provide connectivity with the TWTC local switch. The Parties agree to set message screening parameters so as to accept messages from any switching systems destined to any signaling point in the SS7 network with which the parties have a legitimate signaling relation. The Parties further agree to exchange and load point code information in a reasonable and timely manner in accordance with standard industry practices. Neither Party will bill the other Party for exchange of these TCAP messages.

- 6.7 **Collocation.** Except as specifically provided herein, nothing in this Agreement shall obligate either Party to provide collocation space, facilities or services to the other Party. Any such collocation arrangement shall be entered into by each Party in its sole discretion. The terms and conditions for any agreed-upon collocation shall be set forth in a separate written agreement between the Parties.
7. **Term and Termination.** This Agreement is effective when fully executed and has an initial term of one (1) year. This Agreement will automatically renew for successive one year periods, unless either Party requests renegotiation or gives notice of termination with at least sixty (60) days prior written notice after the expiration of the initial term. In the event the Parties undertake renegotiation, and such renegotiation does not conclude prior to expiration of a term, this Agreement continues in full force and effect until replaced by a superseding agreement.

8.0 **Disclaimer of Representations and Warranties**

- 8.1 **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY MATTER SUBJECT TO THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

9. **Limitation of Liability.**

- (a) **Except as otherwise provided herein, neither Party will be liable to the other in connection with the provision or use of services provided under this Agreement. Neither Party will be liable to the other for any Loss relating to or arising out of any ordinary negligent act or omission by a Party, except involving cases of infringement of a third party's intellectual property rights or the improper disclosure of Confidential Information. In no event will either Party be liable to the other Party for any indirect, special, incidental or consequential damages, including, but not limited to loss of profits, income or revenue, even if advised of the possibility thereof, whether such damages arise**

out of breach of contract, breach of warranty, negligence, strict liability, or any other theory of liability and whether such damages were foreseeable or not at the time this Agreement was executed.

- (b) With respect to any claim or suit for damages arising out of mistakes, omissions, interruptions, delays or errors, or defects in transmission occurring in the course of furnishing service hereunder, the liability of the Party furnishing service, if any, shall not exceed an amount equivalent to the proportionate charge to the other Party for the period of service during which such mistake, omission, interruption, delay, error or defect in transmission or service occurs and continues. However, any such mistakes, omissions, interruptions, delays or errors, or defects in transmission or service which are caused or contributed to by the negligent or willful act of the other Party, or which arise from the use of the other Party's provided facilities or equipment, the liability of the Party furnishing service, if any, shall not exceed an amount equivalent to the proportionate charge to the other Party for the period of service during which such mistake, omission, interruption, delay, error or defect in transmission or service occurs and continues. This limitation of liability provision does not restrict or otherwise affect a Party's indemnification obligations under this Agreement**

10. Indemnification.

- (a) Each Party (the "Indemnifying Party") will indemnify and hold harmless the other Party ("Indemnified Party") from and against any loss, cost, claim, liability, damage expense (including reasonable attorney's fees) to third parties, relating to or arising out of the negligence or willful misconduct by the Indemnifying Party, its employees, agents, or contractors in the performance of this Agreement or the failure of the Indemnifying Party to perform its obligations under this Agreement. In addition, the Indemnifying Party will, to the extent of its obligations to indemnify hereunder, defend any action or suit brought by a Third Party against the Indemnified Party.
- (b) The Indemnified Party will (i) notify the Indemnifying Party promptly in writing of any written claims, lawsuits, or demand by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section and (ii) tender the defense of such claim, lawsuit or demand to the Indemnifying Party. The Indemnified Party also will cooperate in every reasonable manner with the defense or settlement of such claim, demand, or lawsuit. The Indemnifying Party will keep the Indemnified Party reasonably and timely apprised of the status of the claim, demand or lawsuit. The Indemnified Party has the right to retain its own counsel, at its expense, and participate in but not direct the defense, provided, however, that if there are reasonable defenses in addition to those asserted by the Indemnifying Party, the Indemnified Party and its counsel may direct such defenses, which will be at the expense of the Indemnifying Party.

- (c) The Indemnifying Party will not be liable under this Section for settlements or compromises by the Indemnified Party of any claim, demand, or lawsuit unless the Indemnifying Party has approved the settlement or compromise in advance or unless the defense of the claim, demand, or lawsuit has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense.

11. **Compliance.**

- 11.1 Each Party shall comply with all applicable federal, state, and local laws, rules, and regulations applicable to its performance under this Agreement.

- 12. **Force Majeure.** Neither Party is liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence, such as acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, or unusually severe weather. Notwithstanding anything in this Agreement to the contrary, (a) a cable cut, regardless of cause, shall not be deemed a “Force Majeure Event” under this Agreement, (b) no act or omission of any employee, agent, contractor or subcontractor of Provider shall be deemed “beyond the reasonable control” of Provider for purposes of this Article XII. In the event of an excused delay in the performance of a party's obligation(s) under this Agreement, the due date for the performance of the original obligation(s) is extended by a term equal to the time lost by reason of the delay. In the event of an excused delay, the delaying Party must perform its obligations at a performance level no less than that which it uses for its own operations.

- 13. **Independent Contractor.** The Parties to this Agreement are independent contractors and nothing contained herein constitutes the Parties as joint venturers, partners, employees or agents of one another, and neither Party has the right or power to bind or obligate the other.

14. **Confidential Information.**

- (a) The Parties agree that it may be necessary to exchange certain confidential information during the term of this Agreement including, without limitation, technical and business plans, technical information, proposals, specifications, drawings, procedures, orders for services, usage information in any form, customer account data and Customer Proprietary Network Information (“CPNI”) as that term is defined by the Communications Act of 1934, as amended, and the rules and regulations of the Federal Communications Commission and similar information (“Confidential Information”). The Confidential Information is deemed proprietary to the disclosing Party and the recipient agrees to protect it as the recipient would protect its own proprietary information, but in no event at a level less than a reasonable standard of care. Neither

Party may disclose or use Confidential Information for any purpose other than to provide service as specified in this Agreement.

(b) Recipient has no obligation to safeguard Confidential Information (i) which was in the recipient's possession free of restriction prior to its receipt from disclosing party, (ii) after it becomes publicly known or available through no breach of this Agreement by recipient, (iii) after it is rightfully acquired by recipient free of restrictions on its disclosing party, or (iv) after it is independently developed by personnel of recipient to whom the disclosing party's Confidential Information had not been previously disclosed. Recipient may disclose Confidential Information if required by law, a court, or governmental agency, provided that disclosing party has been notified of the requirement promptly after recipient becomes aware of the requirement, and provided that recipient undertakes all lawful measures to avoid disclosing the Confidential Information until disclosing party has had reasonable time to obtain a protective order. Recipient agrees to comply with any protective order that covers the Confidential Information to be disclosed.

(c) Each Party agrees that disclosing party would be irreparably injured by a breach of this paragraph 14 by recipient or its representatives and that disclosing Party is in that event entitled to seek equitable relief, including injunctive relief and specific performance. Such remedies are in addition to all other remedies available at law or in equity.

15. Governing Law

15.1 This Agreement shall be governed by the laws of the State in which services provided under this Agreement are performed, without giving effect to the principles of conflicts of law thereof, except that if federal law, including the Act, applies, federal law shall control.

16. Taxes

16.1 Each Party purchasing services under this Agreement shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, municipal fees, transfer, transaction or similar taxes, fees, or surcharges (hereinafter "Tax") imposed on, or with respect to, the products and services under this Agreement provided by or to such Party, except for (a) any Tax on either party's corporate existence, status, or income, (b) any corporate franchise Taxes or (c) property taxes. Whenever possible, Taxes shall be billed as a separate item on the invoice.

16.2 With respect to any purchase of services under this Agreement if any Tax is required or permitted by Applicable Law to be collected from the purchasing Party by the providing Party, then: (i) the providing Party shall bill the purchasing Party for such Tax; (ii) the purchasing Party shall remit such Tax to the providing Party; and (iii) the providing Party shall remit such collected Tax to the applicable taxing authority. Failure to include Taxes on an invoice or to state a Tax

separately shall not impair the obligation of the purchasing Party to pay any Tax.

- 16.3 Nothing shall prevent the providing Party from paying any Tax to the appropriate taxing authority prior to the time: (a) it bills the purchasing Party for such Tax, or (b) it collects the Tax from the purchasing Party. Notwithstanding anything in this Agreement to the contrary, the purchasing Party shall be liable for and the providing Party may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.
- 16.4 With respect to any purchase services under this Agreement that are resold to a third party, if any Tax is imposed by Applicable Law on the End User in connection with any such purchase, then: (i) the purchasing Party shall be required to impose and/or collect such Tax from the End User; and (ii) the purchasing Party shall remit such Tax to the applicable taxing authority. The purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such tax to such authority.
- 16.5 If the providing Party fails to bill or to collect any Tax as required herein, then, as between the providing Party and the purchasing Party: (i) the purchasing Party shall remain liable for such uncollected Tax; and (ii) the providing Party shall be liable for any penalty and interest assessed with respect to such uncollected Tax by such authority. However, if the purchasing Party fails to pay any Taxes properly billed, then, as between the providing Party and the purchasing Party, the purchasing Party will be solely responsible for payment of the Taxes, penalty and interest.
- 16.6 If the purchasing Party fails to impose and/or collect any Tax from End Users as required herein, then, as between the providing Party and the purchasing Party, the purchasing Party shall remain liable for such uncollected Tax and any interest and penalty assessed thereon with respect to the uncollected Tax by the applicable taxing authority. With respect to any Tax that the purchasing Party has agreed to pay or impose on and/or collect from End Users, the purchasing Party agrees to indemnify and hold harmless the providing Party for any costs incurred by the providing Party as a result of actions taken by the applicable taxing authority to collect the Tax from the providing Party due to the failure of the purchasing Party to pay or collect and remit such Tax to such authority.
- 16.7 If either Party is audited by a taxing authority or other Governmental Authority, the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.
- 16.8 To the extent a sale is claimed to be for resale and thus subject to tax exemption,

the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation of the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party for any period prior to the date that the purchasing Party presents a valid certificate. If Applicable Law excludes or exempts a purchase of services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (a) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the Applicable Law that both allows such exemption and does not require an exemption certificate; and (b) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless from any tax, interest, penalties, loss, cost or expense with respect to forbearing to collect such Tax.

16.9 With respect to any Tax or Tax controversy covered by this Section 20, the purchasing Party is entitled to contest with the imposing jurisdiction, pursuant to Applicable Law and at its own expense, any Tax that it is ultimately obligated to pay or collect. The purchasing Party will ensure that no lien is attached to any asset of the providing Party as a result of any contest. The purchasing Party shall be entitled to the benefit of any refund or recovery of amounts that it had previously paid resulting from such a contest. Amounts previously paid by the providing Party shall be refunded to the providing Party. The providing Party will cooperate in any such contest.

16.10 All notices, affidavits, exemption certificates or other communications required or permitted to be given by either Party to the other under this Section 16 shall be sent in accordance with Section 17 hereof.

17. **Notices.** All notices and communications concerning this Agreement shall be in writing and shall be addressed to:

To PAC-WEST: Regulatory Department
Pac-West Telecomm, Inc.
1776. W. March Lane, Suite 250
Stockton, CA 95207
Fax (209) 926-4585
Phone: (800) 722-9378

To TWTC at: Time Warner Telecom Holdings Inc.
Att'n: Sr. V.P. & Deputy General Counsel
10475 Park Meadows Drive
Littleton, CO 80124
Fax (303) 566-1010
Phone: (303) 566-1000

With a CC to: Time Warner Telecom Holdings Inc.
Att'n: Interconnection Manager - Negotiations
10475 Park Meadows Drive
Littleton, CO 80124
Fax (303) 566-1596
Phone: (303) 566-1000

A party may change its notice address by providing notice pursuant to this paragraph 17.

- 17.1 Notices shall be sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service that provides a confirmation of delivery, or by facsimile, and shall be deemed delivered to addressee on actual receipt or refusal of receipt as reflected by the date of return receipt acknowledgment (in the case of notices sent via U.S. Mail) or the confirmation notice (in the case of notices sent via overnight delivery); provided, however, that on receipt of a returned notice marked "unclaimed," the sending Party shall make reasonable effort to contact and notify the other Party by telephone. Notwithstanding the aforementioned, the original of the facsimile notice must be sent by overnight delivery service in order for the delivery of facsimile notice to be deemed effected.
18. **Severability.** If any part of this Agreement is held invalid for any reason, that invalidity will affect only the portion of the Agreement that is invalid. In all other respects this Agreement stands as if the invalid provision had not been a part of it, and the remainder of the Agreement remains in full force and effect.
19. **Successors and Assigns.** This Agreement is binding upon, and inures to the benefit of, the Parties hereto and their respective successors and assigns.
20. **Entire Agreement.** This Agreement, including all attachments, exhibits, and subordinate documents attached hereto or referenced herein, all of which are hereby incorporated by reference, constitute the entire matter thereof, and supersede all prior oral or written agreements, representations, statements, negotiations, understandings, proposals, and undertakings with respect to the subject matter thereof.
21. **Counterparts.** This Agreement may be executed in counterparts and such counterparts together constitute one and the same instrument.

PAC-WEST and TWTC hereby authorize and execute this Traffic Exchange Agreement.

Pac-West Telecomm, Inc.

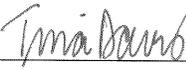

Signature

Ethan Sprague
Name Printed or Typed

Title: V.P. Regulator

11/5/07
Date

Time Warner Telecom Holdings Inc.

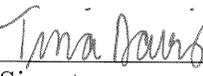

Signature

Tina Davis, Esq.
Name Printed or Typed

Title: Sr. Vice President & Deputy General
Counsel

10/25/07
Date

Time Warner Telecom Management Co. LLC


Signature

Tina Davis, Esq.
Name Printed or Typed

Title: Sr. Vice President & Deputy General
Counsel

10/25/07
Date

Exhibit A

- Alabama: Time Warner Telecom of Alabama LLC (former Xspedius' entities with CLEC authority in this state include Xspedius Management Co. of Birmingham, LLC, Xspedius Management Co. of Mobile, LLC, Xspedius Management Co. of Montgomery, LLC and Xspedius Management Co. Switched Services, LLC)
- Arizona: Time Warner Telecom of Arizona LLC, Xspedius Management Co. of Pima County, LLC and Xspedius Management Co. Switched Services, LLC
- California: Time Warner Telecom of California, L.P.
- Colorado: Time Warner Telecom of Colorado LLC (former Xspedius' entities with CLEC authority in this state include Xspedius Management Co. of Colorado Springs, LLC and Xspedius Management Co. Switched Services, LLC)
- District of Columbia: Time Warner Telecom of D.C. LLC (former Xspedius' entity with CLEC authority in this state was known as Xspedius Management Co. of D.C. LLC)
- Florida: Time Warner Telecom of Florida, L.P. (former Xspedius' entities with CLEC authority in this state include Xspedius Management Co. of Jacksonville, LLC and Xspedius Management Co. Switched Services, LLC)
- Georgia: Time Warner Telecom of Georgia, L.P. (former Xspedius' entities with CLEC authority in this state include Xspedius Management Co. of Atlanta, LLC and Xspedius Management Co. Switched Services, LLC)
- Idaho: Time Warner Telecom of Idaho LLC
- Illinois: Time Warner Telecom of Illinois LLC
- Indiana: Time Warner Telecom of Indiana, L.P.
- Kansas: Time Warner Telecom of Kansas City LLC (former Xspedius' entities with CLEC authority in this state include Xspedius Management Co. of Kansas City, LLC and Xspedius Management Co. Switched Services, LLC)

Kentucky: Time Warner Telecom of Kentucky LLC (former Xspedius' entities with CLEC authority in this state include Xspedius Management Co. of Lexington, LLC, Xspedius Management Co. of Louisville, LLC and Xspedius Management Co. Switched Services, LLC)

Louisiana: Time Warner Telecom of Louisiana LLC (former Xspedius' entities with CLEC authority in this state include Xspedius Management Co. of Baton Rouge, LLC, Xspedius Management Co. of Louisiana, LLC, Xspedius Management Co. of Shreveport, LLC, and Xspedius Management Co. Switched Services, LLC)

Minnesota: Time Warner Telecom of Minnesota LLC

Mississippi: Time Warner Telecom of Mississippi LLC (former Xspedius' entities with CLEC authority in this state include Xspedius Management Co. of Jackson, LLC and Xspedius Management Co. Switched Services, LLC)

New Jersey: Time Warner Telecom of New Jersey, L.P.

New Mexico: Time Warner Telecom of New Mexico LLC (former Xspedius' entities with CLEC authority in this state include Xspedius Management Co. of Albuquerque, LLC and Xspedius Management Co. Switched Services, LLC)

Nevada: Time Warner Telecom of Nevada LLC (former Xspedius' entities with CLEC authority in this state include Xspedius Management Co. of Las Vegas, LLC and Xspedius Management Co. Switched Services, LLC)

New York: Time Warner Telecom – NY, L.P.

North Carolina: Time Warner Telecom of North Carolina, L.P. (former Xspedius' entity was known as Xspedius Management Co. Switched Services, LLC)

Oregon: Time Warner Telecom of Oregon LLC

Tennessee: Time Warner Telecom of the Mid-South LLC (former Xspedius' entities with CLEC authority in this state include Xspedius Management Co. of Chattanooga, LLC and Xspedius Management Co. Switched Services, LLC)

Texas: Time Warner Telecom of Texas LLC (former Xspedius' entity was known as Xspedius Management Co. Switched Services, LLC)

Utah: Time Warner Telecom of Utah LLC

Virginia: Time Warner Telecom of Virginia LLC (former Xspedius' entity was known as Xspedius Management Co. of Virginia, LLC)

Washington: Time Warner Telecom of Washington LLC

Wisconsin: Time Warner Telecom of Wisconsin, L.P.