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August 17, 2010

VIA ERF5

Ms. Sandra Paske
Secretary to the Commission
Public Service Commission of Wisconsin
610 North Whitney Way, P.O. Box 7854
Madison, Wisconsin 53707-7854

Re: Docket No. 05-TI-2046
Request to Approve Traffic Exchange Agreement Between tw telecom of
wisconsin l.p. and Metropolitan Telecommunications of Wisconsin, Inc.

Dear Ms. Paske:

tw telecom of wisconsin l.p. (TWTC) hereby requests approval pursuant to 47 U.S.C. § 252 of the attached voluntary Traffic Exchange Agreement between TWTC and Metropolitan Telecommunications of Wisconsin, Inc. This agreement replaces the agreement filed in the above-referenced docket on July 7, 2010. Please note the change in the docket name above to reflect the change in the names of the parties.

I have been authorized by Metropolitan Telecommunications of Wisconsin, Inc. to submit this agreement for approval by the Public Service Commission of Wisconsin. I hereby certify that a copy of this filing has been served by mail on August 17, 2010 on:

David Aronow
President
MetTel
55 Water Street, 31st Floor
New York, NY 10041

If you have any questions, please give me a call at the number above.

Sincerely,

CULLEN WESTON PINES & BACH LLP

A handwritten signature in black ink that reads "Kira E. Loehr". The signature is written in a cursive style with a large initial "K" and a stylized "E".

Kira E. Loehr
Attorney for tw telecom of wisconsin l.p.

cc: Ken Barth, PSCW
Pamela Sherwood, tw telecom
Julie Mendenhall-Harris, tw telecom
David Aronow, MetTel

TRAFFIC EXCHANGE AGREEMENT

Dated as of April 1, 2010

By and Between

Metropolitan Telecommunications of Wisconsin, Inc.

And

tw telecom of wisconsin l.p.

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TRAFFIC EXCHANGE AGREEMENT

This Traffic Exchange Agreement (“Agreement”), by and between tw telecom of wisconsin l.p. with offices located at 10475 Park Meadows Drive, Littleton, CO 80124, (“TWTC”) and Metropolitan Telecommunications of Wisconsin, Inc., with offices located at 55 Water Street, 31st Floor, New York, New York 10041 (“MetTel”), (TWTC and MetTel being referred to collectively as the “Parties” and individually as “Party”) is effective as of this 1st day of April, 2010 (the “Effective Date”).

WHEREAS, the Parties are duly authorized carriers providing local exchange and other services in the State of Wisconsin; and

WHEREAS, the Parties wish to enter into an Agreement pursuant to which they may terminate calls originating on the other Party’s network, either directly or through a transiting arrangement with the Incumbent Local Exchange Carrier (“ILEC”).

WHEREAS the Parties are entering into this Agreement to set forth the respective obligations of the Parties and the terms and conditions under which the Parties will exchange traffic and compensate each other for the Transport and Termination of Local Traffic, EAS Traffic, ISP Traffic and any Intra-LATA Toll Traffic (as defined below).

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

1 DEFINITIONS.

Capitalized terms used in this Agreement shall have the meanings specified below in this Section or as specifically otherwise defined elsewhere within this Agreement.

- 1.1.** “Act” means the Communications Act of 1934 (47 U.S.C. § 151 et seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or the Commission having authority to interpret the Act within its state of jurisdiction.
- 1.2.** “Automatic Number Identification” (“ANI”) shall mean the process that identifies the telephone number of the line initiating a call in order to send this information to the automatic message accounting system.
- 1.3.** “Calling Party Number” (“CPN”) is a Common Channel Interoffice Signaling (“CCIS”) parameter which refers to the number transmitted through a network identifying the calling party.
- 1.4.** “Commission” means the applicable state administrative agency to which the state legislature has delegated the authority to regulate the operations of LECs within the state of Wisconsin.
- 1.5.** “Common Channel Interoffice Signaling” or “CCIS” means the signaling system, developed for use between switching systems with stored-program control, in which all of the signaling information for one or more groups of trunks is

transmitted over a dedicated high-speed data link rather than on a per-trunk basis and, unless otherwise agreed by the Parties, the CCIS used by the Parties shall be SS7.

- 1.6.** “Confidential Information” shall mean confidential or proprietary information (including without limitation technical and business plans, specifications, drawings, computer programs, network configurations, facilities deployment information, procedures, orders for services, usage information, Customer Service Records (“CSRs”), Customer account data, and CPNI) that one Party (“Owner”) may disclose to the other Party (“Recipient”) in connection with the performance of this Agreement and that is disclosed by an Owner to a Recipient in document or other tangible form (including on magnetic tape) or by oral, visual or other means, and that the Owner prominently and clearly designates as proprietary and confidential whether by legends or other means.
- 1.7.** Customer Proprietary Network Information (“CPNI”) as defined by 47 U.S.C. § 222 and the rules and regulations of the Federal Communications Commission.
- 1.8.** “Customer” or “End User” means a third-party residence or business that subscribes to Telecommunications Services provided by either of the Parties.
- 1.9.** “Exchange Message Interface” (“EMI”) means the standard used for exchange of Telecommunications message information among Telecommunications providers for billable, non-billable, sample, settlement and study data. EMI format is administered by Alliance for Telecommunications Industry Solutions (“ATIS”) or the Ordering and Billing forum (“OBF”).
- 1.10.** “Exchange Access” is as defined in the Act.
- 1.11.** “Exchange Area” means an area, defined by the Commission, for which a distinct local rate schedule is in effect.
- 1.12.** “Extended Area Service Traffic” (“EAS Traffic”) means those calls that fall within a type of calling arrangement as generally defined and specified in the general subscriber service tariff of the ILEC.
- 1.13.** “FCC” means the Federal Communications Commission.
- 1.14.** “Incumbent Local Exchange Carrier” (“ILEC”) is as defined in the Act.
- 1.15.** “Intellectual Property” means copyrights, patents, trademarks, trade secrets, mask works and all other intellectual property rights.
- 1.16.** “Intra-LATA Toll Traffic” means all intraLATA calls other than Local Traffic calls.
- 1.17.** “Internet Service Provider Traffic” (“ISP Traffic”) mean any traffic that is transmitted to or returned from the internet at any point during the duration of the transmission.
- 1.18.** “Local Access and Transport Area” (“LATA”) is as defined in the Act.
- 1.19.** “Local Exchange Carrier” (“LEC”) is as defined in the Act.

- 1.20.** “Local Traffic” means those calls that originate from an End User’s use of local or foreign exchange service in one exchange, that, originate in one exchange and terminate in either the same exchange, or, other calling area associated with the originating exchange, as generally defined and specified in the general subscriber service tariff of the ILEC.
- 1.21.** “Loss” or “Losses” means any and all losses, costs (including court costs), claims, damages (including fines, penalties, and criminal or civil judgments and settlements), injuries, liabilities and expenses (including reasonable attorneys’ fees), except incidental, consequential, indirect, and special losses or damages.
- 1.22.** “North American Numbering Plan” (“NANP”) means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.
- 1.23.** “NXX” means the 3-digit code that appears as the first 4-digits of a 7-digit telephone number.
- 1.24.** “Rate Center” means the specific geographic point that has been designated by a given LEC as being associated with a particular NPA-NXX code that has been assigned to the LEC for its provision of Telephone Exchange Service. The Rate Center is the finite geographic point identified by a specific Vertical and Horizontal (“V&H”) coordinate, which is used by that LEC to measure, for billing purposes, distance sensitive transmission services associated with the specific Rate Center; provided that a Rate Center cannot exceed the boundaries of an Exchange Area as defined by the Commission.
- 1.25.** “Routing Point” means a location that a LEC has designated on its own network as the homing (routing) point for inbound traffic to one or more of its NPA-NXX codes. The Routing Point is also used to calculate mileage measurements for the distance-sensitive transport element charges of Switched Exchange Access Services. Pursuant to Telecordia Technologies (formerly known as Bellcore) Practice BR 795-100-100 (the “RP Practice”), the Routing Point (referred to as the “Rating Point” in such RP Practice) may be an End Office Switch location, or a “LEC Consortium Point of Interconnection.”
- 1.26.** “SS7” means Signaling System 7.
- 1.27.** “Signaling Transfer Point” (“STP”) is as defined in the Act.
- 1.28.** “Switched Exchange Access Service” means the offering of transmission or switching services (other than dedicated access services) to Telecommunications Carriers for the purpose of originating or terminating telephone toll service. Switched Exchange Access Services include: Feature Group A, Feature Group B, Feature Group D, 8xx access and 900 access and their successor or similar Switched Exchange Access Services.
- 1.29.** “Tandem Office Switches” or “Tandems” which are used to connect and switch trunk circuits between and among other Central Office Switches.

- 1.30. "Tandem Provider" means any entity that provides Tandem Switching or transiting services. Each Party originating a call to be terminated to the other Party, is entitled to select the Tandem Provider of its own selection, provided that the Party terminating the call shall not incur any fee or charge from such Tandem Provider or be required to reimburse the Party originating a call for fees or charges for switching or transiting through such Tandem Provider or be required to modify its network to accept transit traffic from a Tandem Provider other than the LEC.
- 1.31. "Tandem Switching" is defined as the function that establishes a communications path between two switching offices through a third switching office through the provision of trunk side to trunk side switching
- 1.32. "Telecommunications" is as defined in the Act.
- 1.33. "Telecommunications Carrier" is as defined in the Act.
- 1.34. "Telecommunications Service" is as defined in the Act.
- 1.35. "Telephone Exchange Service" is as defined in the Act.
- 1.36. "Unbillable Calls" shall mean calls from which the End User account cannot be identified.

2 INTERPRETATION AND CONSTRUCTION

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 specifically otherwise requires. In the event of a conflict or discrepancy between the provisions of the body of this Agreement and the provisions of the Exhibits and Schedules, the provisions of this Agreement shall govern.

3 EXCHANGE OF TRAFFIC

- 3.1 The Parties each agree, in accordance with the terms of this Agreement, to terminate Local, EAS, ISP and intrastate Intra-LATA Toll Traffic originating on the other Party's network, that is destined for the terminating Party's subscribers, including without limitation, calls to internet service providers and other enhanced service providers.
- 3.2 The Parties understand that should traffic volumes for termination of the services covered hereunder constitute sufficient amounts to justify direct trunk connections between the Parties, the provisions of Section 4 will apply. Traffic measured as specified in Section 4.2 will govern direct trunk arrangements.
- 3.3 In consideration of sub-Section 3.2 above, the Parties agree that, except as set forth in Section 4 below, traffic shall be exchanged through a Tandem Provider, in accordance with the relevant transit traffic terms and conditions as agreed to individually, between a Party and its Tandem Provider. Such traffic exchange shall be routed to each Party's networks through the switches, as set forth in

Appendix 1.

- 3.4 Each Party shall be responsible for ensuring that it has adequate facilities in place to connect its network with its Tandem Provider to transit traffic, and, shall bear its own costs associated therewith.
- 3.5 The Parties hereby agree that the Party on whose network the call originated shall be responsible for payment of any transit charges (including without limitation, Tandem Switching and transport charges) assessed by the its Tandem Provider for use of the applicable Tandem.

4 DIRECT INTERCONNECTION

- 4.1 In the event that traffic exchanged by the Parties exceeds the Transit Traffic Threshold (as defined below), or, if the Parties mutually agree at any time prior to traffic exceeding the Transit Traffic Threshold, the Parties shall then evaluate the feasibility and economics of direct trunking for local exchange traffic arrangements to handle such volumes.
- 4.2 For the purposes of this Agreement, the Parties agree that the Transit Traffic 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.
- 4.3 In the event the Parties mutually agree it is economically and technically feasible to direct connect, an amendment to this agreement shall be negotiated in good faith.

5 SIGNALING

- 5.1 Common Channel Interoffice Signaling ("CCIS") shall be used by the Parties via SS7 to set up calls between the Parties' Telephone Exchange Service networks. Each Party shall supply, at a minimum, Automatic Number Identification ("ANI") and Calling Party Number ("CPN") within the SS7 signaling message as described in Section 5.3.
- 5.2 Each Party is responsible for ensuring that SS7 messages can be exchanged with the other Party's CCIS network.
- 5.3 The Parties will cooperate on the exchange of all appropriate SS7 messages for local, EAS and Intra-LATA call set-up signaling, including ISDN User Part ("ISUP") and Transactional Capabilities Application Part ("TCAP") messages to facilitate full interoperability of CCIS-based features between their respective networks, including all CLASS features and functions, to the extent each Party offers such features and functions to its Customers. All SS7 and CCIS signaling parameters will be provided, including CPN and ANI, Originating Line Information ("OLI"), calling party category and charge number. For terminating Exchange Access traffic, such information shall be passed by a Party to the extent

that such information is provided to such Party. Also included are all parameters relating to network signaling information, such as Carrier Information Parameter (“CIP”) and Jurisdictional Indicator Parameter (“JIP), wherever such information is needed for call routing or billing.

6 MEASUREMENT AND BILLING FOR COMPENSABLE TRAFFIC

6.1 Local, EAS and ISP Traffic

- 6.1.1 Each Party will bill its End Users for Local, EAS and ISP Traffic. Initially, each Party will be entitled to retain all revenues from such traffic without payment of further compensation to the other Party (a “Bill & Keep”).
- 6.1.2 However, the Parties agree to initiate billing for and payment of reciprocal compensation for the termination of Local, EAS and ISP Traffic at the rate specified in Section 6.1.4, at such time when both of the following conditions are satisfied:
- i. the total minutes of use representing Local, EAS and ISP Traffic terminating to either Party within the LATA is more than ten percent (10%) greater than the total of such minutes of use terminating to the other party for three (3) consecutive months; and
 - ii. applying the rates specified in Section 6.1.4 below, the net amount that would be billable by the party with the greater amount of minutes of use terminating to it for Local, EAS and ISP Traffic within the LATA from the other Party would exceed a sum of one thousand dollars (\$1000) in any billing month during the three (3) month period referred to above.
- 6.1.3 Subject to the conditions in Section 6.1.2 above, compensation for Local, EAS and ISP Traffic may be initiated by written notice from either Party to the other Party, provided that the Party providing such written notice is able to support its decision to commence billing if requested to do so. Further, the Parties agree to allow either Party to conduct a traffic analysis of the other Party’s traffic, in accordance with the audit provision in Section. 6.3.2, prior to the commencement of billing for Local, EAS and ISP Traffic.
- 6.1.4 Subject to Section 6.1.1 and Section 6.1.2 above, Local, EAS and ISP Traffic originating from one Party for termination on the other Party’s network shall be compensated at \$0.0007 per Minute of Use (“MOU”).

- 6.1.5 Local, EAS and ISP Traffic originating from one Party for termination on the other Party's network shall be compensated at the terminating Party's rate specified in Exhibit A per Minute of Use ("MOU").
- 6.1.6 For as long as the ILEC allows TWTC to collect reciprocal compensation generated from MetTel UNE-P accounts or its successor product, TWTC will waive the reciprocal compensation rate in Exhibit A.
- 6.1.7 The Parties can mutually agree to renegotiate the billing arrangement in this Section 6.1.

6.2 Intra-LATA Toll Traffic and Switched Exchange Access Traffic

- 6.2.1 Each Parties Intra-LATA Toll Traffic will be governed by the terms, rates, and conditions of the terminating Party's applicable tariff or price lists.
- 6.2.2 Switched Exchange Access Traffic, if applicable, is compensable in accordance with Multiple Exchange Carrier Access Billing ("MECAB") Guidelines and at either Party's applicable switched access tariffed rates.

6.3 Traffic Recording, Exchange of Necessary Factors and Audits

- 6.3.1 The Parties shall each perform traffic recording and identification functions necessary to provide the services contemplated hereunder. Notwithstanding the foregoing, in order to accurately bill traffic exchanged, the Parties agree to exchange Percent Local Usage ("PLU") and Percent Interstate Usage ("PIU") factors as necessary ("Necessary Factors"), on an agreed to basis (usually quarterly). Such discussion and agreement on the exchange of the Necessary Factors shall be made between MetTel and TWTC's authorized billing representative, who shall be identified by each Party prior to the execution of this Agreement. Each Party will re-evaluate its Necessary Factors every three (3) months and provide its new factor, if needed, to the other Party within twenty (20) calendar days after the end of each quarter. The Necessary Factors shall be applied to usage for the following quarter. If a Necessary Factor is not provided, the one already in effect stays in effect, or, the Necessary Factor in the Party's current tariff shall apply. When billing the other Party, a Party may classify traffic as either Local Traffic or IntraLATA Toll Traffic by using such Necessary factors, or if actual jurisdiction can be identified, the Necessary Factor shall only be applied to the traffic where jurisdiction cannot be identified.
- 6.3.2 Audits. On thirty (30) days written notice, each Party must provide the other the ability and opportunity to conduct an audit to ensure the proper billing of traffic. The auditing Party may review records of call detail and supporting network information relevant to the exchange of traffic under this Agreement and request that such network information include switch translations for call routing data, which can be used to determine the jurisdiction in which the call originated. If such a request for switch translation verification is made, the audited Party must submit the

necessary information, or, allow the audit to be accomplished on the audited Party's premises within a reasonable time period. The audit must be accomplished during normal business hours. Audit requests may not be submitted more frequently than once per calendar year. Statistical sampling methods may be employed in order to extrapolate over or underpayments across the population of transactions during the audit period. The Parties will agree upon the sampling method used in advance. A mutually acceptable independent auditor paid for by the Party requesting the audit may perform audits. The Parties agree to work together cooperatively to resolve any problems uncovered as the result of an audit performed in accordance with this Section 6.3.2. If it is determined that the auditing Party has overpaid the audited Party, the audited Party must refund the overpaid amount to the auditing Party within thirty (30) days of such determination. If it is determined that the auditing Party has underpaid the audited Party, the auditing Party must reimburse the audited Party the difference between the amount paid and the amount which should have been paid within thirty (30) days of such determination. If the Parties are unable to agree on the results of the audit, then either or both Parties may pursue such disputes under the dispute resolution process described in Section 7. TWTC and MetTel must retain records of call detail and other information subject to audit under this Section for a minimum of twelve (12) months from the date the records are established, from which the Necessary Factors can be ascertained.

- 6.4** Each Party agrees that it will use best efforts to accurately capture and report the actual usage interchanged between them for calculating the necessary compensation under this Agreement. Should actual traffic information (measured in minutes of use) not be available, the Parties will mutually agree on a suitable alternative basis for calculating compensation that most closely approximates the actual interchanged usage. Each Party shall prepare and provide the other Party monthly statements regarding the termination of the other Party traffic.

6.5 Billing Of Minutes Of Use

- 6.5.1 Terminating calls will be measured by the Parties to determine the basis for chargeable traffic minutes. Measured minutes or fractions thereof (the exact value of the fraction being a function of the switch technology where the measurement is made) are accumulated daily or monthly, and are then rounded up to the nearest traffic minute. Measurement of traffic minutes shall be on conversation minutes of use.
- 6.5.2 For billing purposes, each Party shall pass ANI or CPN information on each call carried over the local/intraLATA trunks, whenever technically feasible.
- 6.5.3 Calls that originate on a Party's network that are exchanged without a CPN and ANI information, may be billed by the other Party as intrastate Intra-LATA Toll Traffic in accordance with Section 6.2.1 above, provided that such calls can be proved to have originated from the other

Party's network, and, the other Party has the ability to verify such bills.

- 6.5.4 Calls that originate on a Party's network that contain CPN and ANI information which indicate that the origination point is not within the same LATA as the termination point, shall be billed as Switched Exchange Access Traffic in accordance with Section 6.2.2 above, provided that such calls can be proved to have originated from the other Party's network, and, the other Party has the ability to verify such bills.
- 6.5.5 Calls that are carried over the local trunks for termination on either Party's network, which have originated from non-working telephone numbers on the other Party's network, may be billed by the terminating party as Intra-LATA Toll Traffic, in accordance with Section 6.2.1 above.
- 6.5.6 All compensation payable pursuant to this Agreement shall be payable within thirty (30) days of the bill date. Any amounts not paid when due shall accrue interest from the date such amounts were due at the rate of one and one-half percent (1.5%) monthly. Any billing disputes involving disputed amounts shall be resolved in accordance with the procedures set forth in Section 7 of this Agreement. If such bills are not received at least 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.

6.6 Alternate Billed Calls

- 6.6.1 Each Party will provide the other Party billing, collecting and remitting services on Alternate Billed Calls. Alternate Billed Calls are calls that require exchange of billing records between the Parties. These types of records include intrastate and/or intra-LATA toll service Alternate Billed Calls (e.g calling card, bill to third party and collect calls) carried as LECs. This does not include billing and collection services for inter-exchange long distance traffic.
- 6.6.2 Each Party will provide to the other Party standard formatted EMI records for billing of messages to their End Users at a minimum on a monthly basis.
- 6.6.3 Each Party shall exchange records and bill its own End Users on behalf of the other Party, for Alternately Billed Calls.
- 6.6.4 Unbillable Calls will be the responsibility and liability of the originating company. The billing company shall appropriately account for and return the Unbillable Calls to the originating company pursuant to EMI standard guidelines.
- 6.6.5 Uncollectible calls will be the responsibility and liability of the billing company.
- 6.6.6 The payments of revenues for these type of calls will be processed through Centralized Message Distribution System ("CMDS"), Calling

Card and Third Party Settlement (“CATS”) and Non-Intercompany Settlement (“NICS”) processes through each Party’s CMDS host.

6.7 Toll Free Services

6.7.1 For toll free services, the Party originating such traffic will bill the Party offering the toll free service. Each Party shall provide to the other Party, in a timely manner, billing records in standard EMI format. The compensation for origination of such traffic, the charges for which will include usage and query charges, shall be billed at the rate in that Party’s state switched access tariff, price list, or, in the absence of a tariffed or price listed rate, at a rate of \$0.025 per minute. Record provisioning charges shall be billed at the rate in the Party’s state switched access tariff, price list, or, in the absence of a tariff or price list, at a rate of \$0.03 per record. The records for these types of calls will be processed through the CMDS process through each Party’s Host or as otherwise negotiated.

6.8 UNE-P Traffic

- 6.8.1 The Parties understand that due to the nature of UNE-P traffic, billing and validation of bills for traffic terminating to and originating from customers served using UNE-P services (“UNE-P Customers”) cannot be equitably accomplished without Customer Detail Records (“CDRs”).
- 6.8.2 Should the ILEC not provide either Party with CDRs of UNE-P Customers, the Parties agree to mutually meet and discuss an appropriate, equitable method for the billing and validation of UNE-P traffic within thirty (30) days of the execution of this Agreement. The approved billing and validation method shall be reduced to writing in a letter agreement executed by both Parties.
- 6.8.3 Until such billing and validation method is achieved, bills for UNE-P traffic shall be accrued and held in dispute and neither Party shall be penalized for late payment or any other penalties imposed under Section 7 of this Agreement.
- 6.8.4 Should discussion and mutual agreement on a billing and validation method not be achieved within a reasonable time period, either Party may request escalation of the issues through the dispute resolution procedures set forth in this Agreement.
- 6.8.5 If any applicable industry group or regulatory body develops a billing and/or validation method for UNE-P traffic, the Parties agree that the change of law provisions contained in this Agreement will apply.
- 6.8.6 The Parties reserve the right to request the establishment of a mutually agreeable method of retroactive billing and settlement of bills for UNE-P traffic that could not be previously billed or validated prior to the establishing a mutually agreed upon billing and validation method.

6.9 Deposits

- 6.9.1 Requirement: Either Party (“Billing Party”) reserves the right to require the other Party (“Billed Party”) to post or pay a deposit as security unless satisfactory credit has already been established through twelve (12) consecutive months of current payments. The right to require a security deposit will arise in the event any undisputed amounts remain unpaid by the Billed Party for more than sixty (60) calendar days after the bill due date. In the event of such non-payment for more than sixty (60) calendar days, the Billed Party shall pay the deposit amount within five (5) calendar days of receipt of a written notice from the Billing Party specifying the deposit amount required.
- 6.9.2 Amount and Interest: The amount of the deposit will not exceed twice the estimated average monthly bill, unless a greater amount is allowed by state law or Commission rules. Interest on deposits will be paid at the greater of one percent (1%) per annum or the minimum rate required by state law or Commission rules. Interest is not payable unless and until the Billed Party’s billing relationship with the Billing Party has existed for at least twelve (12) consecutive months or such earlier time as is required by state law or Commission rules. The posting or payment of a deposit in no way relieves the Billed Party from complying with the requirement for the prompt payment of bills.
- 6.9.3 Refund: After the Billed Party has established a consecutive twelve (12) month history of prompt payment, or such shorter period of time as required by state law or Commission rules, the deposit, plus interest if applicable, will be returned or credited to the Billed Party's account. Upon termination of this Agreement, or if the Billed Party at any time fails to pay any amounts when due under the terms of this Agreement, any deposit held by the Billing Party on behalf of the Billed Party will be applied to the outstanding balance of the Billed Party's account. Any amount remaining after satisfaction of the Billed Party's outstanding balance upon termination will be returned to the Billed Party.
- 6.9.4 Additional Deposits: Subject to the requirements set forth in Section 6.9.1, above, the Billing Party retains the right to require additional cash deposit amounts when the amount of the current deposit does not cover two (2) months billing.

7 PAYMENTS AND DISPUTES

7.1 Payment and Billing Disputes

- 7.1.1 Except as may be otherwise provided in this Agreement, each Party shall submit on a monthly basis a statement of charges incurred by the other Party during the preceding month for services rendered hereunder. Payment of billed amounts under this Agreement, whether billed on a

monthly basis or as otherwise provided herein, shall be due, in immediately available United States funds, within thirty (30) days of the date of such statement.

- 7.1.2 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 ninety (90) days after the request date.
- 7.1.3 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 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.
- 7.1.4 Neither Party shall bill for services in excess of one year from the time such services were rendered.
- 7.1.5 Neither Party shall dispute services billed and paid in excess of one year from the time such services were rendered.
- 7.1.6 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 and is withheld from payment, the Party billed (the "Billed Party") shall within thirty (30) days of the invoice date containing such disputed amount give notice to the Billing Party of the amount it disputes ("Disputed Amounts") and include in such notice the specific details, amounts and reasons for disputing each item. The Billed Party shall pay all undisputed amounts to the Billing Party when due.
- 7.1.7 If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within thirty (30) days after delivery to the Billing Party of notice of the Disputed Amounts, 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.
- 7.1.8 If the Parties are unable to resolve issues related to the Disputed Amounts within forty-five (45) days after the Parties' appointment of designated representatives pursuant to Section 7.1.7, then either Party may submit the dispute to mediation or arbitration before the Commission pursuant to the Commission's rules and practices for handling such disputes. In the event

there are no such Commission rules and practices for handling the mediation or arbitration of the disputes, the Parties shall submit dispute resolution procedures to the Commission for consideration and approval. The prevailing Party is entitled to be reimbursed by the losing Party for all costs expended under this Section 7.1.8, provided, however, in such circumstances where there is no clear and obvious prevailing Party, each Party shall bear its own costs and expenses unless otherwise determined by the mediation or arbitration decision. Neither Party is precluded from pursuing its rights and remedies under law or equity after first exhausting its administrative remedies.

7.1.9 Any Disputed Amounts not paid when due shall accrue interest from the date such amounts were due at one and one-half percent (1.5%) monthly, compounded daily for the number of days from the bill due date or date such overpayment was received until the date that payment or reimbursement, as the case may be, is actually received by the appropriate Party.

7.2 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 7.1.7 and 7.1.8 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.

8 GENERAL RESPONSIBILITIES OF THE PARTIES.

8.1 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.

8.2 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.

- 8.3** 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.

9 TERM AND TERMINATION OF AGREEMENT

- 9.1** The initial term of this Agreement shall commence on the Effective Date and shall continue thereafter for a period of two (2) years (the "Initial Term").
- 9.2** Following expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year terms unless either Party requests re-negotiation or gives notice of termination at least sixty (60) days prior to the expiration of the then-current term.
- 9.3** In the event that any requested re-negotiation does not conclude prior to expiration of the then-current term, this Agreement shall continue in full force and effect until replaced by a successor agreement. For purposes of clarification, the Parties agree that in this instance, each Party will continue to terminate the traffic originating from the other Party, and, that any charges associated with compensation for such traffic termination, if different from charges incurred under this Agreement, will be, if necessary, retroactively calculated from the effective date of the successor agreement.
- 9.4** The Parties shall use their best endeavours to resolve all outstanding issues in the re-negotiation process. However, if the Parties are unable to come to a resolution of certain issues during the re-negotiation process, either Party may at any time during the re-negotiation, request arbitration, mediation or assistance from the Commission or, if applicable, the FCC, to resolve the remaining issues in the re-negotiation process, in accordance with the Commission's or FCC's, as appropriate, prescribed procedures.
- 9.5** Payment - Upon Expiration or Termination. In the case of the expiration or termination of this Agreement for any reason, each of the Parties shall be entitled to payment for all services performed and expenses accrued or incurred prior to such expiration or termination, except to the extent that any such payments for service or expense are subject to a pending dispute resolution process under this Agreement or any administrative or judicial procedure, in which case the payment for such service or expense shall be handled and resolved in accordance with the applicable procedure.

10 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

10.1 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.

11 INDEMNIFICATION

11.1 Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party ("Indemnified Party") from and against all Losses arising out of any claims, demands or suits ("Claims") of a third party against the Indemnified Party to the extent arising out of any acts or omissions of the Indemnifying Party or out of the failure of the Indemnifying Party to perform, or cause to be performed, its obligations under this Agreement, including but not limited to, services furnished by the Indemnifying Party or by any of its subcontractors, under worker's compensation laws or similar statutes.

11.2 Each Party, as an Indemnifying Party, agrees to indemnify, defend, and hold harmless the other Party from any third party Claims that assert any infringement or invasion of privacy or confidentiality of any person or persons caused or claimed to be caused, directly or indirectly, by the Indemnifying Party's or its employees, agents and contractors, or by the Indemnifying Party's equipment, associated with the provision of any service provided under this Agreement. This provision includes but is not limited to Claims arising from unauthorized disclosure of the End User's name, address or telephone number, from third party Claims that the equipment provided by one Party to the other Party or the manner in which either Party configures its network violates any third party intellectual property right.

11.3 The Indemnified Party shall notify the Indemnifying Party promptly in writing of any Claim by third parties for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section 11. The Indemnified Party shall tender the defense of such Claim to the Indemnifying Party and shall cooperate in every reasonable manner with the defense or settlement of such Claim.

11.4 The Indemnifying Party shall, to the extent of its obligations to indemnify under this Agreement, defend with counsel of its choosing any Claim brought by a third party against the Indemnified Party. The Indemnifying Party shall keep the Indemnified Party reasonably and timely apprised of the status of the Claim. The Indemnified Party shall have 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 raise and direct such defenses, which shall be at the expense of the Indemnifying Party.

- 11.5** The Indemnifying Party shall not be liable under the indemnification provisions of this Agreement for a settlement or compromise of any Claim unless the Indemnifying Party has approved the settlement or compromise in advance. The Indemnifying Party shall not unreasonably withhold, condition or delay such approval. If the defense of a Claim has been tendered to the Indemnifying Party in writing and the Indemnifying Party has failed to promptly undertake the defense, then the Indemnifying Party shall be liable under the indemnification provisions of this Agreement for a settlement or compromise of such Claim by the Indemnified Party, regardless of whether the Indemnifying Party has approved such settlement or compromise.
- 11.6** The indemnification obligations of the Parties under this Section 11 shall survive the expiration or termination of this Agreement but not beyond any applicable statute of limitations period.

12 LIMITATION OF LIABILITY

- 12.1** 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.
- 12.2** 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 wilful 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.

13 COMPLIANCE

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

14 INDEPENDENT CONTRACTORS

14.1 No partnership, joint venture, fiduciary, employment or agency relationship is established by entering into this Agreement. Each Party shall perform services hereunder as an independent contractor and nothing herein shall be construed as creating any other relationship between the Parties.

15 FORCE MAJEURE

15.1 In no event shall either Party have any claim or right against the other Party for any delay or failure of performance by such other Party if such delay or failure of performance is caused by or is the result of causes beyond the reasonable control of such other Party and is without such Party's fault or negligence (a "Force Majeure Event"), including, but not limited to, acts of God, fire, flood, epidemic or other natural catastrophe; unusually severe weather; explosions, nuclear accidents or power blackouts; terrorist acts; laws, orders, rules, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter of this Agreement or any civil or military authority; the condemnation or taking by eminent domain of any of a Party's facilities used in connection with the provision of services to its subscribers; national emergency, insurrection, riot or war; labor difficulties or other similar occurrences.

15.2 In the event that a Force Majeure Event causes a Party to delay or fail to perform any obligation(s) under this Agreement, the delaying Party shall resume performance of its obligations as soon as practicable in a nondiscriminatory manner that does not favor its own provision of services over that of the non-delaying Party.

16 CONFIDENTIALITY

16.1 By virtue of this Agreement, TWTC and MetTel may have access to or exchange Confidential Information belonging to the other Party. A recipient of such Confidential Information shall not disclose any Confidential Information to any person or entity except recipient's employees, contractors and consultants who have a need to know and who agree in writing to be bound by this Section 16 to protect the received Confidential Information from unauthorized use or disclosure. Confidential Information shall not otherwise be disclosed to any third party without the prior written consent of the owner of the Confidential

Information. The recipient shall use Confidential Information only for the purpose of this Agreement and shall protect such Confidential Information from disclosure to others, using the same degree of care used to protect its own confidential or proprietary information, but in no event less than a reasonable degree of care.

- 16.2** The restrictions of this Section 16 shall not apply to information that: (i) was publicly known at the time of the owner's communication thereof to the recipient; (ii) becomes publicly known through no fault of the recipient subsequent to the time of the owner's communication thereof to the recipient; (iii) was in the recipient's possession free of any obligation of confidence at the time of the owner's communication thereof to the recipient, and, the recipient provides the owner with written documentation of such possession at the time the owner makes the disclosure; (iv) is developed by the recipient independently of and without reference to any of the owner's Confidential Information or other information that the owner disclosed in confidence to any third party; (v) is rightfully obtained by the recipient from third parties authorized to make such disclosure without restriction; or (vi) is identified in writing by the owner as no longer proprietary or confidential.
- 16.3** In the event the recipient is required by law, regulation or court order to disclose any of the owner's Confidential Information, the recipient will promptly notify the owner in writing prior to making any such disclosure in order to facilitate the owner seeking a protective order or other appropriate remedy from the proper authority to prevent or limit such disclosure. The recipient agrees to cooperate with the owner in seeking such order or other remedy. The recipient further agrees that if the owner is not successful in precluding or limiting the requesting legal body from requiring the disclosure of the Confidential Information, the recipient will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable written assurances that confidential treatment will be accorded the Confidential Information.
- 16.4** All Confidential Information disclosed in connection with this Agreement shall be and remain the property of the owner. All such information in tangible form shall be returned to the owner promptly upon written request and shall not thereafter be retained in any form by the recipient.
- 16.5** The Parties acknowledge that Confidential Information is unique and valuable, and that disclosure in breach of this Section 16 will result in irreparable injury to the owner for which monetary damages alone would not be an adequate remedy. Therefore, the Parties agree that in the event of a breach or threatened breach of confidentiality, the owner shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.
- 16.6** CPNI related to a Party's subscribers obtained by virtue of this Agreement shall be such Party's Confidential Information and may not be used by the other Party

for any purpose except performance of its obligations under this Agreement, and in connection with such performance, shall be disclosed only in accordance with this Section 16, unless the Party's subscriber expressly directs such Party in writing to disclose such information to the other Party pursuant to the requirements of 47 U.S.C. Section 222(c)(2). If the other Party seeks and obtains written approval to use or disclose such CPNI from the Party's subscribers, such approval shall be obtained only in compliance with Section 222(c)(2) and, in the event such authorization is obtained, the requesting Party may use or disclose only such information as the disclosing Party provides pursuant to such authorization and may not use information that the requesting Party has otherwise obtained, directly or indirectly, in connection with its performance under this Agreement.

16.7 Except as otherwise expressly provided in this Section 16, nothing herein shall be construed as limiting the rights of either Party with respect to its subscriber information under applicable law, including without limitation 47 U.S.C. Section 222.

16.8 The provisions of this Section 16 shall survive the termination or expiration of this Agreement for a period of three (3) years.

17 GOVERNING LAW

17.1 This Agreement shall be governed by the laws of the State of Wisconsin, without giving effect to the principles of conflicts of law thereof, except that if federal law, including the Act, applies, federal shall control.

18 TRANSFER AND ASSIGNMENT

18.1 Neither Party may assign or transfer this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party, which consent shall not be unreasonably conditioned, withheld or delayed, provided however, either Party may assign this Agreement to a parent, subsidiary, affiliate, or to an entity that acquires all or substantially all the equity or assets by sale, merger or otherwise without the consent of the other Party, provided the assignee agrees in writing to be bound by the terms of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns. No assignment or delegation hereof should relieve the assignor of its obligations under this Agreement.

19 TAXES

19.1 With respect to the purchase of any Service under this Agreement, if any federal, state or local tax, fee, or surcharge, excluding any tax levied on property or income, (a "Tax") is required or permitted by applicable law to be collected from tw telecom by Provider, then (a) Provider shall , bill tw telecom for such Tax as a

separately stated item on the applicable invoice for the Service to which the Tax relates, (b) tw telecom shall timely remit such Tax to Provider, and (c) Provider shall timely remit such collected Tax to the applicable taxing authority. Each Party shall be responsible for any sales, lease, use, personal property, ad valorem or other similar taxes on property it owns or leases. Each Party is responsible for properly reporting owned property to the appropriate taxing authorities and neither Party will be responsible for either reporting or paying personal property or ad valorem taxes owed by the other Party. Provider shall be responsible for all sales, service, value-added, lease, use, personal property, excise, consumption, and other taxes and duties payable by Provider on any goods or services used or consumed by Provider in providing the Services to tw telecom. Provider shall not bill a Tax to tw telecom for Services under this Agreement which is, by law, not taxable. If a purchase hereunder is exempt from a Tax, then tw telecom will provide Provider with a valid exemption certificate or other evidence of exemption and Provider will not bill or collect such Tax from tw telecom from the time the Vendor receives a valid exemption certificate through the effective period of the exemption. If Provider properly bills tw telecom for any Tax and tw telecom fails to remit such Tax to Provider, then Tw telecom will be liable for such uncollected tax and any interest or penalty assessed thereon. If Provider fails to timely bill tw telecom for a Tax, or if Provider fails to timely or properly remit any Tax collected from tw telecom to the applicable taxing authorities, then tw telecom will not be liable for any penalty or interest assessed thereon. In the event either Party is audited by a taxing authority, the other Party agrees to cooperate fully with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and any resulting controversy may be resolved expeditiously.

20 NON-WAIVER

20.1 No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either Party unless in writing and executed by the other Party as the case may be. Neither the failure of either Party to insist upon a strict performance of any of this agreements, nor the acceptance of any payments from either Party with knowledge of a breach of this Agreement by the other Party in the performance of its obligations hereunder, shall be deemed a waiver of any rights or remedies.

21 NOTICES

21.1 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 nationally recognized overnight delivery service, (c) mailed by, certified US mail postage prepaid, return receipt requested to such other address as either Party shall designate by proper notice:

tw telecom:

Tina Davis
Sr. Vice President and Deputy General Counsel
tw telecom inc.
10475 Park Meadows Drive
Littleton, CO 80124
Tel : (303) 566-1279
Fax : (303) 566-1010

With a copy to :

Pamela Sherwood
Vice President, Regulatory
tw telecom.inc.
4625 W. 86th Street, Suite 500
Indianapolis, IN 42628
Tel : (317) 713-8977
Fax : (317) 713-8923

MetTel:

David Aronow
President
MetTel
55 Water Street, 31st Floor
New York, New York 10041
daro@mettel.net
(212) 607-2003
(917) 345-5310
(212) 701-8403

- 21.2** Notices will be deemed given as of the date of actual receipt or refusal to accept, as evidenced by the date set forth on the return receipt, confirmation, or other written delivery verification.

22 PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS

- 22.1** Neither Party nor its subcontractors or agents shall use the other Party's trademarks, service marks, logos or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent, which consent may be granted in such Party's sole discretion.

23 USE OF LICENSES

- 23.1** No license under patents, copyrights or any other intellectual property right (other

than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

24 INSURANCE

- 24.1** Both Parties shall maintain during the term of this Agreement (and for at least two years' beyond the termination of this agreement) all insurance and/or bonds required to satisfy its obligations under this Agreement and all insurance and/or bonds required by Applicable Law, including, without limitation, its obligations set forth in this Agreement. At a minimum and without limiting the foregoing covenant, both Parties shall maintain the following minimum insurance.
- a.) Commercial General Liability Insurance, on an occurrence basis, including but not limited to, premises, products/completed operations, contractual liability, and independent contractors coverage with limits of at least \$2,000,000 each occurrence.
 - b.) Commercial Automobile Liability with limits of at least \$1,000,000 combined single limit for each occurrence.
 - c.) Workers' Compensation insurance as required by Applicable Law and Employer's Liability Insurance with limits of not less than \$1,000,000 each person/each disease/policy limit.
 - d.) Errors and Omission Liability Insurance with a per claim limit of at least \$5,000,000.
- 24.2** Both Parties shall name the other Party as an additional insured on the general liability insurance. In addition, both Parties' Commercial General Liability and Workers' Compensation insurance shall provide for a waiver of subrogation. Any policy minimums may be met through a combination of underlying insurance and umbrella or excess liability insurance.
- 24.3** Both Parties shall, prior to the commencement of this agreement and throughout the term and any extensions thereof, furnish ACORD certificates or other acceptable proof of the foregoing insurance. The certificates or other proof of the foregoing insurance from tw telecom shall be sent to: MetTel. The certificates or other proof of the foregoing insurance from MetTel shall be sent to: Risk Management Dept, tw telecom, 10475 Park Meadows Drive, Littleton, CO 80124. In addition, both Parties shall require its agents, representatives, and contractors, if any, that may enter upon the premises of other Party or other Party's affiliated companies to maintain similar and appropriate insurance. Annual renewal certificates shall be provided to the certificate holder at least thirty (30) days prior to cancellation or any material decrease of the required insurance.

25 HAZARDOUS MATERIALS, SAFETY, HEALTH AND ACCIDENT REPORTING

- 25.1** The safety and health of employees and agents brought on any premises are and shall be the mutual responsibility of both Parties. Both Parties will ensure that their respective employees comply with all rules and regulations on premises. The Parties will report all accidents, injury-inducing occurrence arising from the performance of services immediately.
- 25.2** Both Parties are responsible for any governmental or quasi-governmental compliance concerning hazardous materials, safety, health and accident reporting of any kind, including but not limited to packaging, transporting, or installation. Either Party is entitled to receive, at its request, copies of any reports filed with either Party's insurer or others.
- 25.3** Both Parties shall furnish or present Material Safety Data Sheets that are consistent with and include information required by any governmental or quasi-governmental compliance, including but not limited to, the Occupational Safety and Health Act of 1970 (OSHA) and the Hazard Communication Standard (29 CFR 1910.1200), as the same may be amended or supplemented from time to time. Any violating Party shall indemnify and hold the other Party harmless for any claims, liabilities and damages, including but not limited to attorneys' fees, costs of defense, cleanup costs, response costs, costs of corrective action, costs of financial assurance, and/or natural resource damages, that may arise, be imposed on, be incurred by, be asserted against or be sustained by the other Party by reason of the violating Party's failure to comply with the terms of this Section.

26 SURVIVAL

- 26.1** Except as otherwise specifically stated, 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.

27 COUNTERPARTS

- 27.1** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

28 AUTHORITY

- 28.1** Each Party represents and warrants to the other that (a) it has full power and authority to enter into and perform this Agreement in accordance with its terms, (b) the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement, and (c) it has authority to do business in each of the jurisdictions in which it provides local exchange services to subscribers under this Agreement, and has obtained and will maintain

all licenses, approvals and other authorizations necessary to provide such services and to perform its obligations under this Agreement, and (d) it is an entity, duly organized, validly existing and in good standing under the laws of the state of its origin.

29 GENERAL

- 29.1** Amendment or Other Changes to the Act; Reservation of Rights. The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based in part on the text of the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date. In the event of any amendment to the Act, or any effective legislative, regulatory, judicial order, rule or regulation or other legal action that revises or reverses the Act, the FCC's First Report and Order in CC Docket Nos. 96-98 and 95-185, and CS Docket No. 96-166, or any applicable FCC or Commission rule, Local Service Guideline, order or arbitration award relating to the provisions of the Act applicable to this Agreement (individually and collectively, an "Amendment"), either Party may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate, in good faith, such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, either Party may request that the dispute be resolved in accordance with the dispute resolution procedures set forth in this Agreement. If any such amendment to this Agreement affects any rates or charges of the services provided hereunder, each Party reserves its rights and remedies with respect to the collection of such rates or charges; including the right to seek a surcharge before the applicable regulatory authority
- 29.2** Regulatory Changes. If any legislative, regulatory, judicial or other legal action (other than an Amendment, which is provided for in Section 29.1 above) materially affects the ability of a Party to perform any material obligation under this Agreement, a Party may, on thirty (30) days' written notice to the other Party (delivered not later than thirty (30) days following the date on which such action has become legally binding), require that the affected provision(s) be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new provision(s) as may be required; provided that such affected provisions shall not affect the validity of the remainder of this Agreement.
- 29.3** Remedies. In the event of a dispute between the Parties hereunder, unless specifically delineated in another Section of this Agreement, either Party may, at its option, exercise any remedies or rights it has at law or equity, including but not limited to, filing a complaint with the state commission, termination, of any service under this Agreement, or termination of this Agreement. No remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under applicable law or otherwise. However, any other rights or remedies now or hereafter existing under applicable law or otherwise shall continue to be available

only to the extent such right or remedy has not been excluded or modified by the terms of this Agreement.

- 29.4** Severability. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable, each Party agrees that such provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. However, the Parties shall negotiate in good faith to amend this Agreement to replace, with enforceable language that reflects such intent as closely as possible, the unenforceable language and any provision that would be materially affected by vacation of the unenforceable language.
- 29.5** No Third Party Beneficiary, No Agency Relationship. 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. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a joint venturer, partner, employee, 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.
- 29.6** Joint Work Product. This Agreement is the joint work product of TWTC and MetTel. Accordingly, in the event of ambiguity, no presumption shall be imposed against either Party by reason of document preparation.
- 29.7** Non-exclusive. This Agreement between TWTC and MetTel is non-exclusive. Nothing in this Agreement shall prevent either Party from entering into similar arrangements with any other entities.
- 29.8** Regulatory Filing. The Parties acknowledge that this Agreement, and any or all of the terms hereof, may be subject to filing with, and regulatory approval by, various state and/or federal agencies. Should such filing or approval be required from time to time, or at any time, the Parties shall cooperate, to the extent reasonable and lawful, in providing such information as is necessary in connection with such filing or approval.
- 29.9** Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter referred to herein and supersedes any and all prior or contemporaneous agreements, whether written or oral; provided, however, that unless otherwise expressly stated herein, nothing in this Agreement is intended to supersede the terms of any separate agreement between TWTC and MetTel for other services, including, without limitation, dedicated transport or switched access services. This Agreement does not in any way affect either Party's obligation to pay the other Party for any goods or services provided by the

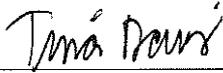
other Party pursuant to a separate agreement or under tariff.

29.10 Amendments. Unless otherwise expressly permitted herein, this Agreement cannot be modified except in writing signed by a duly authorized officer of both Parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the day and year first written above.

tw telecom of wisconsin l.p.

By: tw telecom holdings inc., its general partner



Signature

Tina Davis

Printed Name

Sr. Vice President and Deputy
General Counsel

Title

7/29/2010

Date

**Metropolitan Telecommunications of
Wisconsin, Inc.**



Signature

David Aronow

Typed Name

President

Title

8/16/10

Date

AECN# _____ OCN# _____ ACNA _____

(Facility Based – if applicable)