

ORIGINAL

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

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(202) 955-9792

www.kelleydrye.com

DIRECT LINE (202) 955-9669

E-MAIL: kbarker@kelleydrye.com

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July 17, 2001

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010978-TX

VIA FEDERAL EXPRESS

Florida Public Service Commission  
Division of Records and Reporting  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Application of CityNet Telecom, Inc. for Authority to Provide  
Alternative Local Exchange Service

Dear Madam or Sir:

Enclosed for filing, please find an original and six (6) copies of CityNet Telecom, Inc.'s ("CityNet's") Application to provide Alternative Local Exchange Carrier ("ALEC") telecommunications service in the State of Florida. Also enclosed is a price list containing information regarding the terms, conditions and rates for CityNet's ALEC services in Florida, as well as a check in the amount of \$250.00 to cover the requisite filing fee.

Please note that *Exhibit B* contains confidential and proprietary financial information. CityNet respectfully requests that this information be filed under seal, and kept confidential. As per the instructions of Jacqueline Gilcrest of the Commission staff, two (2) sets of this confidential material are being filed with the Application.

Enclosed please also find a duplicate copy of this filing and a self-addressed, postage-paid envelope. Please date-stamp the duplicate and return it in the postage prepaid envelope provided.

This claim of confidentiality was filed by or on behalf of a "telco" for Confidential DN 08712-01. The document is in locked storage pending advice on handling. To access the material, your name must be on the CASR. If undocketed, your division director must obtain written EXD/Tech permission before you can access it.

Check received with filing and forwarded to Fiscal for deposit. Fiscal to forward a copy of check to RAR with proof of deposit.

Initials of person who forwards

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08713-01  
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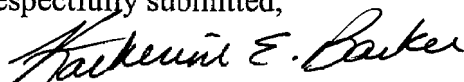
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July 17, 2001

Page Two

If you have any questions regarding this application, please do not hesitate to contact me at (202) 955-9669. Thank you for your anticipated cooperation.

Respectfully submitted,

A handwritten signature in black ink that reads "Katherine E. Barker". The signature is written in a cursive style with a large initial 'K'.

Katherine E. Barker\*

*\*Admitted, New York State Bar, Massachusetts State Bar, Not Admitted in the District of Columbia*

Enclosures

cc: Presley R. Reed, CityNet Telecom, Inc.  
Dorothy Dixon, CityNet Telecom, Inc.

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\$250.00  
MC

July 17, 2001

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DEPOSIT DATE  
D093 JUL 19 2001

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Enclosed please also find a duplicate copy of this filing and a self-addressed, postage-paid envelope. Please date-stamp the duplicate and return it in the postage prepaid envelope provided.

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forwarded to Fiscal for deposit.  
Fiscal to forward a copy of check  
to RAR with proof of deposit.

Initials of person who forwarded check:

APPLICATION

1. This is an application for  (check one):

010978-TX

Original certificate (new company).

Approval of transfer of existing certificate: Example, a non-certificated company purchases an existing company and desires to retain the original certificate of authority.

Approval of assignment of existing certificate: Example, a certificated company purchases an existing company and desires to retain the certificate of authority of that company.

Approval of transfer of control: Example, a company purchases 51% of a certificated company. The Commission must approve the new controlling entity.

2. Name of company:

CityNet Telecom, Inc.

3. Name under which the applicant will do business (fictitious name, etc.):

CityNet Telecom, Inc.

4. Official mailing address (including street name & number, post office box, city, state, zip code):

8403 Colesville Road, 14<sup>th</sup> Floor, Silver Spring, Maryland 20910

5. Florida address (including street name & number, post office box, city, state, zip code):

Corporation Service Company  
1201 Hayes Street  
Tallahassee, FL 32301

6. Structure of organization:

- |   |  |
|---|--|
| <input type="checkbox"/> Individual                     | <input type="checkbox"/> Corporation         |
| <input checked="" type="checkbox"/> Foreign Corporation | <input type="checkbox"/> Foreign Partnership |
| <input type="checkbox"/> General Partnership            | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Other _____                    |  |

7. If individual, provide:

Name: Not Applicable

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Internet E-Mail Address: \_\_\_\_\_

Internet Website Address: \_\_\_\_\_

8. If incorporated in Florida, provide proof of authority to operate in Florida:

(a) The Florida Secretary of State corporate registration number:

Not Applicable

9. **If foreign corporation, provide proof of authority to operate in Florida:**

(a) The Florida Secretary of State corporate registration number:

F 01000003254

10. **If using fictitious name-d/b/a, provide proof of compliance with fictitious name statute (Chapter 865.09, FS) to operate in Florida:**

(a) The Florida Secretary of State fictitious name registration number:

Not Applicable

11. **If a limited liability partnership, provide proof of registration to operate in Florida:**

(a) The Florida Secretary of State registration number:

Not Applicable

12. **If a partnership, provide name, title and address of all partners and a copy of the partnership agreement.**

Name: Not Applicable

Title: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Internet E-Mail Address: \_\_\_\_\_

Internet Website Address: \_\_\_\_\_

13. **If a foreign limited partnership, provide proof of compliance with the foreign limited partnership statute (Chapter 620.169, FS), if applicable.**

(a) The Florida registration number: Not Applicable

14. **Provide F.E.I. Number(if applicable): 52-2257565**

15. Indicate if any of the officers, directors, or any of the ten largest stockholders have previously been:

(a) adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings. Provide explanation.

No

(b) an officer, director, partner or stockholder in any other Florida certificated telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

No

16. Who will serve as liaison to the Commission with regard to the following?

(a) The application:

Name: Jonathan E. Canis, Katherine E. Barker

Title: Attorneys for CityNet Telecom, Inc.

Address: Kelley, Drye & Warren, LLP, 1200 19<sup>th</sup> Street, NW, Suite 500

City/State/Zip: Washington, DC 20036

Telephone No.: (202) 955-9600 Fax No.: (202) 955-9792

Internet E-Mail Address: kbarker@kelleydrye.com

Internet Website Address: www.kelleydrye.com

(b) Official point of contact for the ongoing operations of the company:

Name: Presley R. Reed

Title: Vice President, Regulatory, CityNet Telecom, Inc.

Address: 8403 Colesville Road, 14<sup>th</sup> Floor

City/State/Zip: Silver Spring, Maryland 20910

Telephone No.: (301) 608-2131 Fax No.: (301) 608-8121

Internet E-Mail Address: rreed@citynettelecom.com

Internet Website Address: www.citynettelecom.com

(c) Complaints/Inquiries from customers:

Name: Presley R. Reed

Title: Vice President, Regulatory

Address: 8403 Colesville Road, 14<sup>th</sup> Floor

City/State/Zip: Silver Spring, Maryland 20910

Telephone No.: (301) 608-2131 Fax No.: (301) 608-8121

Internet E-Mail Address: rreed@citynettelecom.com

Internet Website Address: www.citynettelecom.com

17. **List the states in which the applicant:**

(a) has operated as an alternative local exchange company.

None

(b) has applications pending to be certificated as an alternative local exchange company.

California, District of Columbia, Georgia, Maryland, Minnesota, and New Mexico

(c) is certificated to operate as an alternative local exchange company.

Arizona, Illinois, Louisiana, Michigan, Nebraska, New York, Oregon, Pennsylvania, Rhode Island, Texas and Washington

(d) has been denied authority to operate as an alternative local exchange company and the circumstances involved.

None

(e) has had regulatory penalties imposed for violations of telecommunications statutes and the circumstances involved.

None

(f) has been involved in civil court proceedings with an interexchange carrier, local exchange company or other telecommunications entity, and the



circumstances involved.

**None**

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**18. Submit the following:**

- A. Managerial capability: give resumes of employees/officers of the company that would indicate sufficient managerial experiences of each.**

**CityNet is well qualified managerially to provide the facilities-based alternative local exchange telecommunications services for which authority is requested in this Application.**

**Collectively, the members of CityNet's management team have designed, managed, and/or operated advanced telecommunications facilities throughout the United States. The members of CityNet's management team bring over 200 years of experience and a wealth of knowledge from being associated with a number of a highly successful companies in the telecommunications industry. Biographies of CityNet's management team are attached hereto as *Exhibit A*.**

- B. Technical capability: give resumes of employees/officers of the company that would indicate sufficient technical experiences or indicate what company has been contracted to conduct technical maintenance.**

**CityNet is technically qualified to provide its proposed services in Florida. As is evident from the information contained in *Exhibit A*, CityNet is managed by persons with substantial technical expertise in designing, constructing and operating telecommunications networks. CityNet executives have an extraordinary track record in developing, designing, engineering and deploying state-of-the-art local telecommunications networks and companies. They also have an extraordinary nationwide and international network of contacts and experience, on both the voice and data sides of local telecommunications. This wealth of experience will enable CityNet to provide its carrier customers with advanced, state-of-the-art network technology.**

**With such vast technical experience by the members of its management team, in addition to the outstanding team of engineers and network specialists it has employed, CityNet has the adequate technical experience and managerial capability to develop and maintain a successful local exchange operation in the State of Florida.**

### **C. Financial capability.**

The application **should contain** the applicant's audited financial statements for the most recent 3 years. If the applicant does not have audited financial statements, it shall so be stated.

The unaudited financial statements should be signed by the applicant's chief executive officer and chief financial officer **affirming that the financial statements are true and correct** and should include:

1. the balance sheet:
2. income statement: and
3. statement of retained earnings.

**NOTE:** *This documentation may include, but is not limited to, financial statements, a projected profit and loss statement, credit references, credit bureau reports, and descriptions of business relationships with financial institutions.*

Further, the following (which includes supporting documentation) should be provided:

1. **written explanation** that the applicant has sufficient financial capability to provide the requested service in the geographic area proposed to be served.
2. **written explanation** that the applicant has sufficient financial capability to maintain the requested service.
3. **written explanation** that the applicant has sufficient financial capability to meet its lease or ownership obligations.

***See Exhibit B, filed under seal.***

**THIS PAGE MUST BE COMPLETED AND SIGNED**

**APPLICANT ACKNOWLEDGMENT STATEMENT**

1. **REGULATORY ASSESSMENT FEE:** I understand that all telephone companies must pay a regulatory assessment fee in the amount of .15 of one percent of gross operating revenue derived from intrastate business. Regardless of the gross operating revenue of a company, a minimum annual assessment fee of \$50 is required.
2. **GROSS RECEIPTS TAX:** I understand that all telephone companies must pay a gross receipts tax of two and one-half percent on all intra and interstate business.
3. **SALES TAX:** I understand that a seven percent sales tax must be paid on intra and interstate revenues.
4. **APPLICATION FEE:** I understand that a non-refundable application fee of \$250.00 must be submitted with the application.

**UTILITY OFFICIAL:**

Vicki S. Abernathy  
Print Name

Signature 

Senior Vice President, Chief Administrative Officer  
Title

Date 6/28/2001

(301) 608-2131  
Telephone No.

(301) 608-8121  
Fax No.

Address: 8403 Colesville Road, 14<sup>th</sup> Floor  
Silver Spring, Maryland 20910

**THIS PAGE MUST BE COMPLETED AND SIGNED**

## AFFIDAVIT

By my signature below, I, the undersigned officer, attest to the accuracy of the information contained in this application and attached documents and that the applicant has the technical expertise, managerial ability, and financial capability to provide alternative local exchange company service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I attest that I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules and orders.

Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083."

### UTILITY OFFICIAL:

Vicki S. Abernathy

Print Name

Signature



Senior Vice President, Chief Administrative Officer

Title

Date 6/28/2001

(301) 608-2131

Telephone No.

(301) 608-8121

Fax No.

Address: 8403 Colesville Road, 14<sup>th</sup> Floor

Silver Spring, Maryland 20910

**INTRASTATE NETWORK (if available)**

Chapter 25-24.825 (5), Florida Administrative Code, requires the company to make available to staff the alternative local exchange service areas only upon request.

1. **POP:** Addresses where located, and indicate if owned or leased.

1) _____	2) _____
_____	_____
3) _____	4) _____
_____	_____

2. **SWITCHES:** Address where located, by type of switch, and indicate if owned or leased.

1) _____	2) _____
_____	_____
3) _____	4) _____
_____	_____

3. **TRANSMISSION FACILITIES:** POP-to-POP facilities by type of facilities (microwave, fiber, copper, satellite, etc.) and indicate if owned or leased.

<u>POP-to-POP</u>	<u>OWNERSHIP</u>
1) _____	_____
2) _____	_____
3) _____	_____
4) _____	_____

**CityNet Telecom, Inc. has not yet established its network in Florida.**



## EXHIBIT A

### BIOGRAPHIES OF KEY MANAGEMENT PERSONNEL AND OFFICERS

CityNet Telecom, Inc. ("CityNet"), a Delaware corporation, is a wholly-owned subsidiary of CityNet Telecommunications, Inc. ("CityNet - Parent"), a privately-held Delaware corporation. CityNet is technically qualified to operate as a provider of facilities-based local exchange services and resold local exchange telecommunications services in the District of Columbia.

The following is a list of CityNet's management team:

Robert G. Berger	Chairman, Chief Executive Officer and President
Emilio Pardo	Senior Vice President, Chief Communications Officer
Debra R. Hoopes	Senior Vice President, Chief Financial Officer
Stephen L. Merrill	Senior Vice President, Engineering/Operations
Vicki S. Abernathy	Senior Vice President, Chief Administrative Officer
Steven L. Dodd	Senior Vice President, Chief Operating Officer
Cyrus Bamji	Vice President, Marketing and Communications

Collectively, the members of CityNet's management team have designed, managed, and/or operated advanced telecommunications facilities throughout the United States. The members of CityNet's management team bring many years of experience and a wealth of knowledge from being associated with a number of a highly successful companies in the telecommunications industry.

#### **Robert G. Berger, Chairman, Chief Executive Officer and President**

Immediately prior to forming *CityNet*, Mr. Berger served as Senior Vice President, Regulatory/Legal Affairs for WinStar. Commencing in March 1996, when he joined WinStar, Mr. Berger was responsible for all FCC and state regulatory matters, as well as federal and state legislative matters, dealing with local telecommunications and interconnection. In that capacity, he served as the Company's lead negotiator for interconnection arrangements, having successfully concluded more than forty separate agreements with each major incumbent local exchange carrier in the nation. He also routinely served as a strategic adviser to virtually every substantive discipline in the Company, including for example, marketing, sales, and engineering and operations, and regularly participated in corporate presentations to Wall Street analysts.

Since 1993, Mr. Berger also has served as a Commissioner, and is a former Chairman and Vice Chairman, of the Washington Suburban Sanitary Commission, the nation's seventh largest water and wastewater treatment utility, providing service to more than 1.5 million people in suburban Maryland. As of June 7, 2000, he was elected to a new term as Vice Chairman of the Commission. With his fellow Commissioners, he has responsibility for an annual combined operating and capital budget of more than \$650 million; of the multi-billion dollar budget for WSSC's rolling six-year Capital Improvements Program; as well as rate-setting responsibility. He also has served since 1987 as a Trustee of the WSSC's Employees Pension Fund, including several terms as Chairman. The Pension Fund, with assets of approximately \$550 million, is one of the top 1000 largest employees pension funds in the nation.

Prior to joining WinStar, Mr. Berger was Senior Attorney with the telecommunications practice group of Swidler & Berlin. In that capacity between 1991 and 1994, he served as Worldcom's lead national regulatory counsel on, among other things, all major acquisitions, including those involving ATC, Metromedia, and Resurgens, which resulted in Worldcom becoming the nation's fourth largest long distance carrier. He thereafter served in a similar capacity for Frontier. He also served as lead outside counsel for MFS in a majority of states nationally, and as the original lead outside counsel for several leading CLECs and CAPs, including, for example, GST and M H Lightnet.

Mr. Berger is an honors graduate of Brown University (Magna Cum Laude, Phi Beta Kappa) and of Harvard Law School (Cum Laude). He has served on the Operating Board of ALTS, the Association of Local Telecommunications Services, the national trade association of facilities-based CLECs; and as Vice Chairman of National Billing and Collection, Inc. (N Banc), the semi-private corporation charged by the FCC with collecting contributions from all telecommunications providers in North America and the Caribbean sufficient to underwrite the costs of the central office code administrator, Lockheed Martin.

### **Emilio Pardo, Senior Vice President, Chief Communications Officer**

Prior to joining *CityNet*, Mr. Pardo was Senior Partner and Senior Vice President of Fleishman-Hillard, the nation's largest public relations and marketing firm. Most recently he served as head of business development and founder of the technology practice for Fleishman-Hillard in Washington D.C. Mr. Pardo managed a team of 45 strategic communications professionals representing interests as diverse as SBC, America Online, TELMEX, and the White House National Anti-Drug Communications effort.

While building the technology practice, he also managed the "Baby Bell" coalition account through the period leading up to the passage of the Telecom Act of '96. Representing all seven RBOCs, Mr. Pardo was responsible for managing the national media outreach, grassroots coordination and third party development for the seven year long campaign. His technology expertise also includes new product launches, investor communications, and strategic market positioning for companies such as America Online, Excalibur Technologies, WorldSpace, Bell Atlantic, Sybase and CyberPatrol. He is currently a senior advisor to Fortune 500 companies on issues dealing with internet privacy, cyber-safety and e-commerce.

Mr. Pardo's International technology experience also includes the market positioning of AOL Japan, AOL Europe, Telmex, and Argentina's media/communications conglomerate Grupo Clarin. Previously, Mr. Pardo established and managed Fleishman-Hillard's Caribbean/South American regional operations and in that capacity served as adviser to the Government of Puerto Rico on issues dealing with Trade, Telecommunications, Economic Development and Crisis management.

Prior to joining Fleishman-Hillard in 1990, Mr. Pardo served for five years as the Press Secretary for the Senate Commerce Committee, Chaired then by, the Hon. Fritz Hollings (D-S.C.). As national spokesman, Mr. Pardo managed the media on issues such as Telecommunications Reform, Children's Television, Media Cross Ownership Rules, NASA's Shuttle program, and Airline de-regulation.

### **Steven L. Dodd, Senior Vice President, Chief Operating Officer and Director**

Steve Dodd leads CityNet's day-to-day operating teams. These teams are responsible for market planning, business development, sales, financial functions, regulatory functions, human resources management, and systems in the United States and in Europe. Mr. Dodd joined CityNet Telecommunications in this role in May, 2000, as its fifth employee.

Prior to coming to CityNet, Mr. Dodd spent more than four years at WinStar Communications. Most recently he held the position of Senior Vice President, Engineering and Network Provisioning. Mr. Dodd was the company's sixth employee, and held several other senior management positions over the years as WinStar's national network grew.

Between 1991 and 1996, Mr. Dodd held senior management positions in marketing and sales for Cincinnati Bell Information Systems (CBIS). These positions included business development responsibilities as well as P&L responsibility for some of CBIS's ongoing business relationships. In his last assignment, he managed CBIS's business with Rogers Cantel in Canada.

Between 1982 and 1991, Mr. Dodd worked for AT&T. He held management positions in AT&T Business Communications services marketing and at AT&T Bell Laboratories. At the latter, he developed expertise in voice networks, data networks, and integrated services networks, leading several multi-disciplinary teams in support of AT&T's businesses in these areas.

Mr. Dodd holds a BS in Mathematics from Davidson College. At North Carolina State University, he earned both an MS in Applied Mathematics and a PhD in Operations Research, which he received in 1982. He has published several technical papers, and he is a member of seven professional societies and honorary societies including INFORMS, Sigma Xi, and Phi Beta Kappa.

### **Debra R. Hoopes, Senior Vice President, Chief Financial Officer**

Ms. Hoopes – a C.P.A.- comes to *CityNet* from WinStar telecommunications where she served as Vice President of Financial Operations and Director of Business Analysis and Planning. Ms. Hoopes brings over 15 years of financial and strategic fiscal management to *CityNet*.

Most recently she developed and managed the business analysis, planning, carrier settlements and carrier relations functions from infancy to well establish and fully functioning areas for WinStar, yielding successful deployment of local, long distance and Internet services in over 30 markets. As a key member of the WinStar executive management team, Ms. Hoopes managed the company's financial operations including Business Analysis, Carrier Relations, Telco Planning, Accounts Payable, Payroll, Revenue Assurance, Billing Operations and Accounting.

Prior to joining WinStar, Ms. Hoopes amassed a wealth of experience with some of telecom's most powerful brands including Cable & Wireless, MCI Communications and National Telephone Services. At Cable & Wireless she was responsible for directing a financial and Customer Service team of 25



in the launch of wireless services to C&W's existing business customer. At MCI Ms. Hoopes was Sr. Manager of Investor Relations and Business Development where she assisted the executive management team with Wall Street presentations and ongoing analyst relations. She has a M.B.A. Finance from George Washington University and a B.S. in accounting from Virginia Tech.

### **Stephen L. Merrill, Senior Vice President, Engineering and Operations**

Mr. Merrill began his career with Concord Electric Company in the early-70's, joining New England Telephone in 1978 where he served until 1992 as Operations Manager and Engineer. During his nearly fourteen years with New England Tel/NYNEX, he was responsible as project manager for the conversion of NET's interoffice network signaling from Multifrequency in band signaling to SS7 to support the first office introductions of Caller I.D. and other Custom Local Area Signaling Services (CLASS); negotiated and scheduled NET's first trunk side SS7 interconnection with an interexchange carrier (Sprint), a project which involved the interaction of DMS 100, DMS250, 4ESS, and 5ESS digital switches; and scheduled and coordinated the first rehome of SS7 signaling links from New York to New England. During his career at New England Tel Mr. Merrill also served as a Scheduling Engineer, responsible for outside plant construction for 19 exchanges; Assistant Staff Manager, where he prepared and administered capital and expense budgets for the New Hampshire Outside Plant Division; Outside Plant Engineer for both routine and specific engineering; and Project Engineer, responsible for digital switch implementation and deployment.

Following his tenure with New England Tel and prior to joining WinStar, Mr. Merrill joined DSC Communications as Applications Engineer, Access Sales Division, where he was actively involved with the NYNEX Staff and Field organizations supporting deployment of DSC's premiere Next Generation Digital Loop Carrier System, the Litespan 2000. In that capacity, his responsibilities included: Field Project Manager supporting the testing and introduction of the Litespan system operating to Telcordia's Generic Requirement, GR-303. This project included involvement with Telcordia while testing GR-303 compliance of the Litespan system with both the Lucent 5ESS and Nortel DMS 100 class five digital switches. Project milestones included the first multi-vendor GR-303 integration of live ISDN traffic in the United States. Mr. Merrill also represented DSC at all NYNEX Methods and Procedures meetings involved with addressing engineering, operations or operation support system issues associated with the deployment of DSC's Optical Network Units (Fiber in the Loop).

Mr. Merrill most recently served as Vice President, Regulatory Affairs for WinStar where he served as a senior member of the WinStar interconnection negotiating team, focusing on all engineering and technical aspects of such agreements. He also served as senior in-house consultant to virtually all the engineering and operations-related disciplines within the Company. Mr. Merrill's regulatory expertise was developed during his tenure post-NYNEX as senior engineering analyst for the New Hampshire Public Utilities Commission, during which time he developed recommendations for telecommunications policy, methods, planning, quality of service and prudence of network investment; and was a member of the State's E911 Technical Subcommittee, actively participating in the design and the Request for Proposal process leading to the current statewide E911 system.

### **Vicki S. Abernathy, Senior Vice President, Chief Administrative Officer**

Ms. Abernathy – an engineer by training – joins *CityNet* from The Gnome Group, a telecommunications design and construction organization, where she served as Vice President, Business Relations. Prior

to joining The Gnome Group, Ms. Abernathy served WinStar Telecommunications (WinStar's principal operating company) as Senior Director, Human Resources, where she had national responsibility for human resources activities.

Ms. Abernathy previously served as Senior Vice President, Business Resources for the National Rural Telecommunications Cooperative (NRTC), an organization owned by rural electric and telephone cooperatives to serve the telecommunications needs of the nation's 25 million rural consumers. In this role, Ms. Abernathy developed and implemented human resources and strategic management programs for NRTC.

**Cyrus E. Bamji, Vice President, Marketing and Communications, Assistant Secretary**

Mr. Bamji brings over fifteen years of strategic marketing, communications and public relations experience in the telecommunications and high-technology industries to CityNet. Over this period, he has worked with a diversity of large and small companies, from Bell South and Telefonos de Mexico (Telmex), to America Online and Yahoo!.

Over the years, he has gained the respect of CEO's and government officials alike, providing them counsel in the areas of marketing, strategic communications and corporate image/reputation management. His specific areas of expertise include telecommunications and high-tech communications, brand management and positioning, government/public affairs and corporate reputation/image management.

Mr. Bamji joined CityNet from Fleishman-Hillard International Communications, the largest strategic communications and public relations firm in the U.S., where he was, most recently, a Senior Vice President and Director of Business Development in the firm's second largest global office (26 worldwide) in Washington, DC.

Mr. Bamji joined FH in 1993, and was instrumental in opening the firm's first Latin American office in San Juan, Puerto Rico. He transferred to the firm's Washington, D.C., office in December 1994, and formally established the office's technology and telecommunications practice, which he spent four years managing, and rising to become a senior member of the firm's global technology practice. During this tenure, he worked with some of the leading telecom/tech organizations, and helped drive the firm to its current #1 ranking as the largest high-tech consultancy in the world.

Some of his telecommunications clients included large multinationals such as Telefonos de Mexico (Telmex), Mexico's largest telecom company, Nortel, e.spire (CLEC), Zaffire, Inc. (nextgen optical networking equipment), Bell Atlantic, Orion Network Systems (satellite services), Octel Communications Corporation (voice messaging systems), Worldspace Corporation (digital satellite radio), and CIBERNET (cellular billing systems). Mr. Bamji also worked with Internet, hardware and software companies such as America Online (AOL), where he managed international expansion communications activities, YAHOO!, IBM, Sybase, Novell, Footlocker.com, Wang Global, Convex Supercomputer Corp, Excalibur Technologies (enterprise software), Onesoft Corporation (e-commerce software), Microsystems Software (Internet filtering software), and the Consumer Electronics Manufacturers Association.

Mr. Bamji's tenure prior to joining FH was as Vice President and General Manager for the Charlotte, N.C. office of Alison Marketing Communications – a business-to-business public

relations, advertising and marketing agency – which he was responsible for opening in 1990. AMC originally recruited Mr. Bamji in to create the agency's first public relations division. Previous to AMC, Mr. Bamji spent time as a journalist and editorial director at Consensus magazine, a journal of minority political affairs.

Mr. Bamji obtained his Master's Degree in Public Relations from the School of Journalism and Mass Communications and his Bachelor's degree in international relations, both at the University of South Carolina, Columbia, S.C.

With such vast technical experience by the members of its management team, in addition to the outstanding team of engineers and network specialists it has employed, CityNet has the adequate technical experience and managerial capability to develop and maintain a successful local exchange operation in the State of Florida.

## **EXHIBIT B**

# **FINANCIAL QUALIFICATIONS OF CITYNET TELECOM, INC.**

### **CONFIDENTIAL AND PROPRIETARY – FILED UNDER SEAL**

CityNet has access to ample capital to compete effectively in the market to provide telecommunications services in the District of Columbia. Through its corporate parent, CityNet-Parent, CityNet has successfully raised sufficient capital to deploy its network facilities and services in the District of Columbia and in other markets. CityNet-Parent is committed to providing CityNet with financing sufficient for the build-out and continuing operation of its network. Further, CityNet-Parent has a demonstrated record of raising the capital necessary to deploy sophisticated telecommunications networks. CityNet-Parent has raised ample capital in private financing arrangements earlier this year, raising \$175 million in capital in its second round of equity. Subscribers to this private financing include notable large institutional investors and venture capital firms specializing in telecommunications ventures.

As a newly-formed and privately held corporation, CityNet does not have audited financial statements at this time. As demonstrated in CityNet's projected financial statements, CityNet's business model ensures that it will generate the necessary cash flow to fund the rapid deployment and continuous operation of its proposed telecommunications network facilities and services. CityNet's projected financial statements for the years 2001, 2002, and 2003 are attached hereto as part of this exhibit. CityNet also submits, under seal, a copy of its current balance sheet,

signed and certified by its CFO, Deborah Hoopes and its CEO, Robert Berger. In addition, please also find audited financial statements of CityNet-Parent for the year ending December 31, 2000, also filed under seal as part of this exhibit.

As both CityNet and CityNet-Parent are privately-held companies, these financial documents are filed under seal and are confidential and highly proprietary.

**CITYNET TELECOM, INC.**  
REGULATIONS GOVERNING THE PROVISION OF  
DATA ONLY DEDICATED SERVICES FOR CONNECTION TO PUBLIC  
AND PRIVATE COMMUNICATIONS FACILITIES  
WITHIN THE STATE OF FLORIDA

This price list contains the descriptions, regulations, and rates governing applicable to the provision of alternative local exchange telecommunications, dedicated and special services (including high capacity and other private line services) on a data only basis for connection to public and private communications facilities by CityNet Telecom, Inc., located at 8403 Colesville Road, 14<sup>th</sup> Floor, Silver Spring, Maryland 20901. This price list is applicable to services furnished within the State of Florida and is on file with the Florida State Public Service Commission. Copies of this price list may be inspected during normal business hours at the Company's principal place of business

**ILLUSTRATIVE PRICE LIST**

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**Issued: July 17, 2001**

**Effective: July 18, 2001**

**Presley R. Reed, Vice President, Regulatory  
CityNet Telecom, Inc.  
8403 Colesville Road, 14<sup>th</sup> Floor  
Silver Spring, Maryland 20910**

**CHECK SHEET**

The pages of this tariff are effective as of the date shown. The original and revised sheets named below contain all changes from the original tariff and are in effect on the date shown.

<b><u>SHEET</u></b>	<b><u>REVISION</u></b>	<b><u>SHEET</u></b>	<b><u>REVISION</u></b>	<b><u>SHEET</u></b>	<b><u>REVISION</u></b>
1	Original	31	Original	61	Original
2	Original	32	Original	62	Original
3	Original	33	Original	63	Original
4	Original	34	Original		
5	Original	35	Original		
6	Original	36	Original		
7	Original	37	Original		
8	Original	38	Original		
9	Original	39	Original		
10	Original	40	Original		
11	Original	41	Original		
12	Original	42	Original		
13	Original	43	Original		
14	Original	44	Original		
15	Original	45	Original		
16	Original	46	Original		
17	Original	47	Original		
18	Original	48	Original		
19	Original	49	Original		
20	Original	50	Original		
21	Original	51	Original		
22	Original	52	Original		
23	Original	53	Original		
24	Original	54	Original		
25	Original	55	Original		
26	Original	56	Original		
27	Original	57	Original		
28	Original	58	Original		
29	Original	59	Original		
30	Original	60	Original		

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**PRELIMINARY STATEMENT**

This tariff sets forth the service offering, rates, terms and conditions applicable to the furnishing of local services and special access services (including high capacity and other private line services) on a data-only basis by CityNet Telecom, Inc. in the State of Florida.

The rates, rules, terms and conditions herein apply for service provided throughout the service area of CityNet Telecom, Inc. as defined in this tariff.

The rates and rules contained herein are subject to change pursuant to the rules and regulations of the Florida Public Service Commission.

This tariff shall be maintained in its currently effective form and made available for inspection by any Customer at CityNet Telecom, Inc.'s business office, at 8403 Colesville Road, 14<sup>th</sup> Floor, Silver Spring, Maryland 20901. CityNet Telecom, Inc. shall hereinafter sometimes be referred to as the Company.

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1. **EXPLANATION OF SYMBOLS, REFERENCE MARKS, AND ABBREVIATIONS OF TECHNICAL TERMS USED IN THIS TARIFF**

The following symbols shall be used in this tariff for the purposes indicated below:

- (C) To signify a changed regulation.
- (D) To signify discontinued rate or regulation.
- (I) To signify an increased rate.
- (M) To signify a move in the location of text.
- (N) To signify a new rate or regulation.
- (R) To signify a reduced rate.
- (K) To signify that material has been transferred to another sheet or place on the tariff.
- (T) To signify a change in text but no change in rate or regulation.
- (O) To signify no change.

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**2. DEFINITIONS**

Certain terms used generally throughout this tariff are described below.

Access Lines: A Telephone facility which permits access to and from both the Customer's premises and the telephone exchange or serving central office.

Add/Drop Multiplexing: A multiplexing function that allows lower level signals to be added or dropped from an Optical Carrier (OC) channel.

Agent: Business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between a CLC, its applicants or Customers.

Applicant: A person who applies for telecommunications service. Includes persons seeking reconnection of their service after Company-initiated termination.

Application: A request made orally or in writing for telecommunications service.

Auxiliary Line Service: Auxiliary line service is additional individual line service furnished to supplement the main individual line service of a Customer.

Building: A structure under one roof and of such a nature that it can in itself fulfill the requirements of a business or residence establishment, or both; or two or more structures that are connected by means of enclosed passageways (overhead bridges, subways, or a ground level) or common basements, permitting access from one building to the other, that are suitable for the routing, placing, and proper protection of inside cable and wire type facilities. In no case can conduit be considered an enclosed passageway.

Business Service: Determination as to whether or not Customer's service should be classified as Business Service will be based on the character or use to be made of the service. The practice of advertising a telephone number in newspapers, business cards, or on trucks shall be a contributing, but not an exclusive factor in determining the classification of service. Service will be classified as Business service where the use is primarily or substantially of a business, professional, institutional, or otherwise occupational nature.

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**2. DEFINITIONS (Cont'd)**

Central Office Area: The area within which Customers' lines are connected to the central office established by the Company to serve that area. More than one central office may be located in the same building.

Central Office: A switching unit in a telephone system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting Customer lines and trunks or trunks only. There may be more than one central office in a building or exchange.

Channel: A path (or paths) for electrical communication between two or more stations or telephone company offices and furnished in such a manner as the telephone company may elect.

Class of Service: The various categories of service generally available to the Customer, such as business, residential, public or semipublic service.

CLC: Competitive Local Exchange Carrier

Company: CityNet Telecom, Inc.

Commission: Florida Public Service Commission ("PSC" or "Commission")

Connecting Arrangement: The equipment provided by the Company to accomplish the direct connection of Customer-provided facilities with the facilities of the Company; or facilities of the Company with other facilities of the Company.

Cost: The cost of labor and materials, which includes appropriate amounts to cover the Company's general operating and administrative expenses.

Construction Charge: A separate nonrecurring charge made for the construction of facilities in excess of those contemplated under the rates quoted in this tariff.

Continuous Property: Continuous property is defined as plot of ground, together with any buildings thereon, occupied by the Customer; which is not separated by public thoroughfares or by property occupied by others.

Contract: The agreement between a Customer and the Company under which service and facilities are furnished in accordance with the applicable provisions of the tariffs.

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**2. DEFINITIONS (Cont'd)**

Customer: A person, firm or corporation which orders service and is responsible for the payment of charges and compliance with terms and conditions of this tariff.

Customer-Provided Equipment: All communications Systems, devices, apparatus and their associate wiring, provided by Customer.

Date of Presentation: Postmark date on billing envelope.

Disconnect Notice: The written notice sent to a Customer following billing, notifying him that his service will be discontinued if charges are no satisfied by the date specified on the notice.

Drop Wire: Wires between an open wire lead or aerial or underground cable terminal and the point of entrance to the premises in which the Customer's telecommunications service is located. The drop wire terminates in the protector or its equivalent.

End Office: The term "end office" denotes the LEC switching system office or serving wire center where Customer station loops are terminated for purposes of interconnection to each other and/or to trunks.

Entrance Facilities: Facilities extending from the point of entrance on private property to the premises on which service is furnished.

Facilities: Includes, in the aggregate or otherwise, but is not limited to, the following:

channels	lines
apparatus	devices
equipment	accessories
communications paths	systems

which are provided by the Company and utilized by it in the furnishing of telecommunications services or which are provided by a Customer and used for telecommunications purposes.

Facilities-Based CLC: A CLC which directly owns controls, operates, or manages conduits, ducts, poles, wires, cables, instruments, switches, appurtenances, or appliances in connection with or to facilitate communications within the local exchange portion of the public switched network.

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**2. DEFINITIONS (Cont'd)**

Fiber Optic Cable: A thin filament of glass with a protective outer coating through which a light beam carrying communications signals may be transmitted by means of multiple internal reflections to a receiver, which translates the message.

Individual Case Basis (ICB): A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the case.

Installation Charge: A nonrecurring charge made at the time of installation of communications service which may apply in place of or in addition to service charges and other applicable charges for service or equipment.

Interface: The term "Interface" denotes that point on the premises of the Customer at which provision is made for connection of other than Company provided facilities to facilities provided by the Company.

Interface Equipment: Equipment provided by the Company at the interface location to accomplish the direct electrical connection of facilities provided by the Company with facilities provided by other than the Company.

Interface Jack: A connecting device provided for use as a point of demarcation between network access service and Customer-owned equipment.

Kbps: Kilobits per second, denotes thousands of bits per second.

LEC: LEC (local exchange carrier) refers to the dominant local exchange carrier in an area also served by the Company.

Maintenance Visit Charge: A charge applied when the location of reported trouble is found to be in Customer-provided equipment.

Mbps: Megabits per second, denotes millions of bits per second.

Mileage: The measurement upon which charges are computed for line extensions.

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**2. DEFINITIONS (Cont'd)**

Minimum Contract Period: The minimum length of time for which a Customer is obligated to pay for service, facilities and equipment whether or not retained by the Customer for such minimum length of time.

Node: Any Company or Customer location that is capable of performing Add/Drop. Multiplexing.

Nonfacilities-Based CLC: A CLC which does not directly own, control, operate, or manage conduits, ducts, poles, wires, cables, instruments, switches, appurtenances, or appliances in connection with or to facilitate communications within the local exchange portion of the public switched network.

Nonrecurring Charge: A one-time charge associated with a specific item of equipment or service. This charge applies to installation and to subsequent modifications.

NSF Check: Any negotiable instrument returned by a bank, savings institution or other eligible institution which is returned by that institution with one of the following instructions: non-sufficient funds, uncollectible funds, account closed, account frozen, no account.

Person: A natural person, firm partnership, corporation, association, municipality, cooperative, organization, government agency, real estate trust, or other legal entity.

Point of Demarcation: A point in a Customer's circuit to which the Company is responsible for service and beyond which the Customer is responsible for service.

Port: A facility or equipment systems or subsystem set aside for the sole use of a specific Customer.

Premises: The space occupied by a Customer or authorized user in a building or buildings on continuous property.

Price List: The rates, charges, rules and regulations adopted and filed by the Company with the Commission.

Recurring Charge: A monthly charge to the Customer for services, facilities and equipment, which continues for the duration of the service.

Registered Equipment: Equipment which complies with and has been approved within the registration provisions of Part 68 of the Federal Communications Commission's Rules and Regulations.

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**2. DEFINITIONS (Cont'd)**

Residence Service: Service where the business use, if any, is merely incidental and where the major use is of a social or domestic nature.

Service Connection Charge: The nonrecurring charge a Customer is required to pay at the time of the establishment of telecommunications service or subsequent additions to that service.

Service Order: The written request for the Company's services executed by the Customer and the Company in a format devised by the Company. The signing of a Service Order form by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this tariff.

Serving Wire Center: A serving wire center denotes the wire center from which the Customer designated premises would normally obtain dial tone from the Company.

Standard Network Interface: The point where Company network services or facilities terminate and the Company's responsibility for installing and maintaining such services or facilities ends.

Termination: Permanent disconnection of telecommunications service.

Termination Charge: A charge applied under certain conditions when the Customer before the expiration of the minimum contract period terminates a contract for service.

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### 3. REGULATIONS

#### 3.1 Undertaking of the Company

##### 3.1.1 Scope

The Company undertakes to furnish data communications service pursuant to the terms of this tariff in connection with one-way and/or two-way information transmission between points within the State of Florida.

Customers and users may use services and facilities provided under this tariff to obtain access to services offered by other service providers. The Company is responsible under this tariff only for the services and facilities provided hereunder, and it assumes no responsibility for any service provided by any other entity that purchases access to the Company network in order to originate or terminate its own services, or to communicate with its own customers.

##### 3.1.2 Shortage of Equipment or Facilities

- A) The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of a lack of facilities, or due to any other cause beyond the Company's control.
- B) The Company will provide service within 300 feet from the area abutting its transmission facilities as defined within.
- C) The furnishing of all other service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

##### 3.1.3 Terms and Conditions

- A) Service is provided on a monthly basis, 24-hours per day. For the purpose of computing charges in this tariff, a month is considered to have 30 days.
- B) Persons desiring to obtain the Company's service may do so by completing the Company's standard Service Order form or forms or by oral agreement.

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3. **REGULATIONS** (Cont'd)

3.1 **Undertaking of the Company** (Cont'd)

3.1.3 **Terms and Conditions** (Cont'd)

- C) An Applicant for service must pay all previous indebtedness to the Company for telecommunications services before service will be furnished.
- D) An application for service becomes a contract upon the signing of the Company's Service Order form or by oral mutual agreement. Neither the contract nor any rights acquired thereunder may be assigned or in any manner transferred.
- E) Except as otherwise provided, the initial (or minimum) period for all services and facilities is one (1) month at the same location. Customers may terminate service at any time by providing the Company notice, and all recurring charges shall be prorated to the date of disconnection of service.

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**3. REGULATIONS (Cont'd)****3.1 Undertaking of the Company (Cont'd)****3.1.4 Limitations on Liability**

- A) The provisions of this rule do not apply to errors and omissions caused by willful misconduct, fraudulent conduct or violations of law.
- B) The Company will not provide a credit allowance for interruptions of service caused by the customer's facilities, equipment, or systems.
- C) The following allowances are provided for interruptions in service, as specified for particular services furnished solely by the Company.
  - a. The Company shall allow, for interruptions in service of 24 hours or more not due to conduct of the customer, an amount equal to the pro rata charges for each 24-hour period, or major fraction thereof after the initial period or interruption in the following services:
    - (1) Private line services and channels, as follows:
      - Private line telecommunications service.<sup>1</sup>
      - Channels for data transmission.<sup>1</sup>
      - Channels for remote metering, supervisory control and miscellaneous signaling purposes.<sup>1</sup>
  - b. The Company shall allow for interruptions in exchange telecommunications service of 24 hours or more not due to conduct of the customer an amount equal to the fixed monthly charges for exchange service multiplied by the ratio of the days of interruption to thirty days. When interruptions continue beyond 24 hours, credit allowance will be given in successive 24-hour multiples.

NOTE 1: The allowance applies only to service within the same exchange area.

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3. **REGULATIONS** (Cont'd)

3.1 **Undertaking of the Company** (Cont'd)

3.1.4 **Limitations on Liability** (Cont'd)

c. The Company shall allow for interruptions of 30 minutes or more not due to conduct of the customer (including authorized users) an amount equal to the pro rata charges in half-hour multiples for each 30-minute period or major fraction thereof after the initial period, of interruption in the following private line services and channels:

- (1) Private Line telecommunications service.
- (2) Channels for data transmission.
- (3) Channels for remote metering, supervisory control and miscellaneous signaling purposes.
- (4) Continuous Time Announcement Service.

The allowance on (1) preceding applies only to full period service. The allowance on Items (1) through (4) preceding applies only to service between separate exchange areas.

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**3. REGULATIONS (Cont'd)****3.1 Undertaking of the Company (Cont'd)****3.1.4 Limitations on Liability (Cont'd)**

- d. The Company shall allow for interruptions of short period private line telecommunications service which aggregate one-sixth or more of the daily contract service not due to conduct of the customer (including authorized users) an amount equal to the pro rata charges for the period of interruption (excluding lost time made up later in the same day at the customer's request).
- e. The Company shall allow an amount calculated as shown in (2) below, for interruptions in Digital Service based on the Average Station Value, as defined in (1) below, and the length of the interruption, not due to conduct of the customer or authorized user or failure of facilities provided by the customer or authorized user or due to the failure of the customer to authorize replacement of any element of special construction. The period during which no credit allowance will be made shall begin on the seventh day after the customer receives the Company's notification of the need for such replacement and shall end on the day after the Company receives the customer's authorization for such replacement.

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3. **REGULATIONS** (Cont'd)

3.1 Undertaking of the Company (Cont'd)

3.1.4 Limitations on Liability (Cont'd)

(1) Average Station Value

The average station value is calculated by dividing the total monthly charge for a service by the total number of stations on the service. The total monthly charge shall be comprised of all charges associated with the service, including charges for all equipment assigned to all Digital Station Terminals on the service.

(2) Credit Allowances for Interruptions

For the purpose of determining the amount of allowance every month is considered to have 30 days and only those stations on the interrupted portions of a service shall be considered in determining the number of stations affected.

- An interruption credit allowance is determined by (i) calculating the Average Station Value for one full day (Average Station Value divided by 30 (days)) (ii) multiplying the result of (i) by the "credit" as specified following then (iii) multiplying the result of (ii) by the number of stations affected.

- Interruptions of 24 Hours or Less

Length of Interruption	Credit
Less than 30 minutes	None
30 minutes up to but not including 3 hours	1/10 day
3 hours up to but not including 6 hours	1/5 day
6 hours up to but not including 9 hours	2/5 day
9 hours up to but not including 12 hours	3/5 day
12 hours up to but not including 15 hours	4/5 day
15 hours up to 24 hours inclusive	One day

Two or more interruptions of 30 minutes or more during any period up to but not including 3 hours, shall be considered as an interruption.

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3. **REGULATIONS** (Cont'd)

3.1 Undertaking of the Company (Cont'd)

3.1.5 Limitations on Liability (Cont'd)

-Interruptions Over 24 Hours

Credit will be allowed in 1/5 day multiples for each 3 hour period of interruption or fraction thereof. No more than one full day's credit will be allowed for any period of 24 hours.

f. For purposes of these regulations, an interruption is deemed to exist from the time it is reported to or detected by the Company.

D) Temporary Suspension for Repairs - The Company shall have the right to make necessary repairs or changes in its facilities at any time and will have the right to suspend or interrupt service temporarily for the purpose of making the necessary repairs or changes in its system. When such suspension or interruption of service for any appreciable period is necessary, the Company will give the customers who may be affected as reasonable notice thereof as circumstances will permit, and will prosecute the work with reasonable diligence, and if practicable at times that will cause the least inconvenience.

When the Company is repairing or changing its facilities, it shall take appropriate precautions to avoid unnecessary interruptions of conversations or customer's service.

These allowances are not to be construed as exclusive remedies.

3.1.5 Provision of Equipment and Facilities

A) Except as otherwise indicated, customer-provided station equipment at the Customer's premises for use in connection with this service shall be so constructed, maintained and operated as to work satisfactorily with the facilities of the Company.

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**3. REGULATIONS (Cont'd)****3.1 Undertaking of the Company (Cont'd)****3.1.5 Provision of Equipment and Facilities (Cont'd)**

B) The Company shall not be responsible for the installation, operation or maintenance of any Customer-provided communications equipment. Where such equipment is connected to service furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of services under this tariff and to the maintenance and operation of such services in the proper manner. Subject to this responsibility, the Company shall not be responsible for:

- 1) the through transmission of signals generated by Customer-provided equipment or for the quality of, or defects in, such transmission; or
- 2) the reception of signals by Customer-provided equipment; or
- 3) network control signaling where such signaling is performed by Customer-provided network control signaling equipment.

**3.1.6 Non-Routine Installation**

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in hazardous locations. In such cases, charged based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charged may apply.

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**3. REGULATIONS (Cont'd)****3.1 Undertaking of the Company (Cont'd)****3.1.7 Special Construction**

Subject to the agreement of the Company and to all of the regulations contained in this tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken:

- A) where facilities are not presently available, and there is no other requirement for the facilities so constructed;
- B) of a type other than that which the Company would normally utilize in the furnishing of its services;
- C) over a route other than that which the Company would normally utilize in the furnishing of its services;
- D) in a quantity greater than that which the Company would normally construct;
- E) on an expedited basis;
- F) on a temporary basis until permanent facilities are available;
- G) involving abnormal costs; or
- H) in advance of its normal construction.

**3.1.8 Ownership of Facilities**

Title to all facilities provided in accordance with this tariff remains in the Company, its agents or contractors. The Customer shall not have, nor shall it assert, any right, title or interest in all the fiber optic or other facilities and associated equipment provided by the Company hereunder.

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**3. REGULATIONS (Cont'd)****3.2 Prohibited Uses**

- 3.2.1 The services the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all governmental approvals, authorizations, licenses, consents and permits required to be obtained by the Customer with respect thereto.
- 3.2.2 The Company may, without obtaining any further consent from the Customer, assign any rights, privileges, or obligations under this tariff. The Customer shall not, without prior written consent of the Company, which consent shall not be unreasonably withheld, assign, transfer, or in any other manner dispose of, any of its rights, privileges, or obligations under this tariff, and any attempt to make such an assignment, transfer, disposition without consent shall be null and void.
- 3.2.3 A Customer may not use the services so as to interfere with or impair service over any facilities and associated equipment, or so as to impair the privacy of any communications over such facilities and associated equipment. The Company may require a Customer to shut down its transmission of signals individually if said transmission is causing interference to others.
- 3.2.4 Customer use of any resold service obtained from other service providers shall also be subject to any applicable restrictions in the underlying providers' publicly available tariffs.
- 3.2.5 A Customer or authorized user shall not represent that its services are provided by the Company, or otherwise indicate to its Customers that its provision of services is jointly with the Company, without the written consent of the Company. The relationship between the Company and Customer shall not be that of partners or agents for one or the other, and shall not be deemed to constitute a partnership or agency agreement.

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**3. REGULATIONS (Cont'd)****3.3 Obligations of the Customer**

The Customer shall be responsible for:

- A) The payment of all applicable charges as set forth in this tariff.
- B) Damage or loss of the Company's facilities or equipment caused by the acts or omissions of the Customer or authorized user, the noncompliance by the Customer or authorized user with these regulations; or by fire or theft or other casualty on the premises of the Customer or authorized user unless caused by the negligence or willful misconduct of the employee or agents of the Company.
- C) Providing as specified from time to time by the Company any needed personnel, equipment, space and power to operate Company facilities and equipment installed on the premises of the Customer or authorized user and the level of heating and air conditioning necessary to maintain the proper environment on such premises.
- D) Obtaining, maintaining, and otherwise having full responsibility for all rights of way and conduit necessary for installation of facilities and associated equipment used to provide Service to the Customer or authorized user from the point of entry to the termination point of the Customer's premises. Any and all costs associated with the obtaining and maintaining of the rights of way described herein, including the costs of altering the structure to permit installation of the Company provided facilities, shall be borne entirely by, or may be charged by, the Company to the Customer. The Company may require the Customer to demonstrate its compliance with this section prior to accepting an order for service.

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**3. REGULATIONS (Cont'd)****3.3 Obligations of the Customer (Cont'd)**

- E) Providing a safe place to work and complying with all laws and regulations regarding the working conditions on the premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if harm to the Company's employees or property might result from installation or maintenance by the Company.
- F) Complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to, the location of Company facilities and equipment in any Customer premises or the rights-of-way for which the Customer is responsible, and obtaining permission for Company agents or employees to enter the premises of the Customer or authorized user at any reasonable hour for the purpose of installing, inspecting, repairing, or, upon termination of service as stated herein, removing the facilities or equipment of the Company.
- G) Making Company facilities and equipment available periodically for maintenance purposes at a time agreeable to both the Company and the Customer. No allowance will be made for the period during which service is interrupted for such purposes.
- H) Keeping the Company's equipment and facilities located on the Customer's premises or rights-of-way obtained by the Customer free and clear of any liens or encumbrances relating to the Customer's use of the Company's services or from the locations of such equipment and facilities.

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**3. REGULATIONS (Cont'd)****3.3 Obligations of the Customer (Cont'd)****3.3.1 Liability of the Customer**

- A) The Customer will be liable for damages to the facilities of the Company and for all incidental and consequential damages caused by the negligent or intentional acts or omissions of the Customer, its officers, employees, agents, invitees, or contractors where such acts or omissions are not the direct result of the Company's negligence or intentional misconduct.
- B) To the extent caused by any negligent or intentional act of the Customer as described in (A), preceding, the Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorney's fees, for (1) any loss, destruction or damage to property of any third party, and (2) any liability incurred by the Company to any third party pursuant to this or any other tariff of the Company, or otherwise, for any interruption of, interference to, or other defect in any service provided by the Company to such third party.
- C) The Customer shall not assert any claim against any other customer or user of the Company's services for damages resulting in whole or in part from or arising in connection with the furnishing of service under this tariff including but not limited to mistakes, omissions, interruptions, delays, errors or other defects or misrepresentations, whether or not such other customer or user contributed in any way to the occurrence of the damages, unless such damages were caused solely by the negligent or intentional act or omission of the other customer or user and not by any act or omission of the Company. Nothing in this tariff is intended either to limit or to expand Customer's right to assert any claims against third parties for damages of any nature other than those described in the preceding sentence.

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**3. REGULATIONS (Cont'd)****3.4 Customer Equipment and Channels****3.4.1 General**

A User may transmit or receive information or signals via the facilities of the Company. The Company's services are designed primarily for the transmission of data communications. A User may transmit any of signal that is compatible with the Company's equipment, but the Company does not guarantee that its services will be suitable for purposes other than data communications except as specifically stated in this tariff.

**3.4.2 Station Equipment**

- A) Customer provided terminal equipment on the premises of the Customer or authorized user, the operating personnel there, and the electric power consumed by such equipment shall be provided by and maintained at the expense of the Customer or authorized user. Conformance of Customer-provided station equipment with Part 68 of the FCC Rules is the responsibility of the Customer.
- B) The Customer or authorized user is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.

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**3. REGULATIONS (Cont'd)****3.4 Customer Equipment and Channels (Cont'd)****3.4.3 Interconnection of Facilities**

- A) Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Communications Services and the channels, facilities, or equipment of others shall be provided at the Customer's expense.
- B) Communications Services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections.
- C) Facilities furnished under this tariff may be connected to customer provided terminal equipment in accordance with the provisions of this tariff. All such equipment shall be registered by the Federal Communications Commission pursuant to Part 68 of Title 47, Code of Federal Regulations; and all User-provided wiring shall be installed and maintained in compliance with those regulations.
- D) Users may interconnect communications facilities that are used in whole or in part for intrastate communications to services provided under this tariff only to the extent that the user is an "end user" as defined in Section 69.2(m), Title 47, Code of Federal Regulations (1992 edition).

**3.4.4 Inspections**

- A) Upon suitable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Customer, authorized user, or joint user is complying with the requirements set forth above for the installation, operation and maintenance of Customer-provided facilities, equipment, and wiring in the connection of Customer-provided facilities and equipment to Company owned facilities and equipment.

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**3. REGULATIONS (Cont'd)****3.4 Customer Equipment and Channels (Cont'd)****3.4.4 Inspections (Cont'd)**

- B) If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action, as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within (10) days of receiving this notice, the Customer must take such action. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment, and personnel from harm.

**3.4.5 Advance Payments**

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount up to two months of estimated monthly usage charges. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

**3.4.6 Deposits**

The Company may require a deposit payment to provide service.

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3. **REGULATIONS** (Cont'd)

3.5 **Payment Arrangements**

3.5.1 **Payments for Service**

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer.

3.5.2 **Billing and Collection of Charges**

The Customer is responsible for payment of all charges for facilities and services furnished, including charges for services originated, or charges accepted, at such facilities. This Customer responsibility also includes charges associated with the fraudulent use of facilities and services by the Customer or any end users of the Customers service. All bills are payable at the Company's business offices. All bills will contain the Company's toll free number, (888) 248-9184, for billing inquiries.

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3. **REGULATIONS** (Cont'd)

3.5 **Payment Arrangements** (Cont'd)

3.5.2 **Billing and Collection of Charges** (Cont'd)

- A) Bills are due and payable on the date of presentation. A late payment charge, as described below, will be applied if payment is not received by the utility on or before the late payment date which date will be prominently displayed on the Customer's bill.
- B) Checks presented in payment for services and subsequently returned to the Company of the Customer's financial institution for "Non-Sufficient Funds" or other reasons will incur a nonrecurring charge per Customer, per check: \$25.00.

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**3. REGULATIONS (Cont'd)****3.5 Payment Arrangements (Cont'd)****3.5.3 Billing Disputes****A) General**

All bills are presumed accurate, and shall be binding on the Customer unless notice of the disputed charge(s) is received by the Company. For the purposes of this section, "notice" is defined as written statement or verbal statement to the Company, containing sufficient documentation to investigate the dispute, including the account number under which the bill has been rendered, the date of the bill, and the specific terms on the bill being disputed within 30 days of generation of the bill.

**B) Late Payment Charges**

The undisputed portions of the bill must be paid by the payment due date to avoid assessment of a late payment charge on the undisputed amount.

**C) Adjustments or Refunds to the Customer**

- a. In the event that the Company resolves a billing dispute in favor of the Customer who has withheld payment of the disputed amount pending resolution of the disputed bill, the Company will credit the Customer's account for the disputed amount in the billing period following the resolution of the dispute.
- b. In the event that the Company resolves the billing dispute in the favor of a Customer who has paid the total amount of the disputed bill, the Company will credit the Customer's account for any overpayment by the Customer in the billing period following the resolution of the dispute.
- c. In the event that the Company resolves the billing dispute in favor of a Customer who has paid the total amount of the disputed bill but cancels the service, the Company will issue a refund of any overpayment by the Customer.

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**3. REGULATIONS (Cont'd)****3.5 Payment Arrangements (Cont'd)****3.5.3 Billing Disputes (Cont'd)****D) Unresolved Billing Disputes**

- a. In the case of a billing dispute between a Customer and Company for service furnished to the Customer, which cannot be settled to the mutual satisfaction of the Customer and the Company, the Customer should request the Company to provide an in-depth review of the disputed amount.
- b. If, after investigation and review by the Company, a disagreement remains as to the disputed amount, the Customer may file an appropriate complaint with:

Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399

**3.5.4 Discontinuance of Service for Cause**

The Company shall, upon reasonable notice, when it can be reasonably given, have the right to suspend or curtail or discontinue service for the following reasons:

- A) For the purpose of making permanent or temporary repairs, changes or improvements in any part of its system;
- B) For compliance in good faith with any governmental order or directive notwithstanding such order or directive subsequently may be held to be invalid;
- C) For any of the following acts of omissions on the part of the Customer:
  - a. Nonpayment of a valid bill due for service furnished at a present or previous location. The customer(s) of record whose name(s) appear on the bill shall be held responsible for utility service rendered. However, nonpayment for business service shall not be a reason for discontinuance of residential service, except in cases of diversion of service, and service shall not be discontinued for nonpayment of repair charges, merchandise charges, installation of conservation measures and other non-tariff contracted service charges between the customer and the

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**3. REGULATIONS (Cont'd)****3.5 Payment Arrangements (Cont'd)****3.5.4 Discontinuance of Service for Cause (Cont'd)**

- Company, nor shall notice threatening such discontinuance be given;
- b. Tampering with the facility of the Company;
  - c. Fraudulent representation in relation to the use of service;
  - d. Customer moving from the premises, unless the customer requests that the service be continued;
  - e. Providing a Company's service to others without approval of the Company;
  - f. Failure to make or increase an advance payment or deposit as provided for in these rules or the Company's tariff;
  - g. Refusal to contract for service where such contract is required;
  - h. Connecting and operating in such manner as to produce disturbing effects on the service of the Company or other customers;
  - i. Failure of the customer to comply with any reasonable standard terms and conditions contained in the Company's tariff;
  - j. Where the condition of the customer's installation presents a hazard to life or property;
  - k. Failure of customer to repair any faulty facility of the customer.
  - l. Nonpayment of a past due bill not in dispute.

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**3. REGULATIONS (Cont'd)****3.5 Payment Arrangements (Cont'd)****3.5.4 Discontinuance of Service for Cause (Cont'd)**

D) For refusal of reasonable access to customer's premises for necessary purposes in connection with rendering of service, including meter installation, reading or testing, or the maintenance or removal of the Company's property.

3.5.5 Notice of the proposed discontinuance is provided pursuant to the rules listed within.

3.5.6 Service is not initially discontinued on any Saturday, Sunday, legal holiday, or any other day Company representatives are not available to serve Customers.

**3.5.7 Notice of Discontinuance**

The Customer shall be given a period of at least fifteen (15) days for payment after the postmark date indicated on the envelope in which the bill was transmitted. In the absence of a postmark, the burden of proving the date of mailing shall be upon the Company. When a customer mails any payment for the net amount of a bill for service, and such payment is received at the Company's office not more than two full business days after the due date printed on the bill, the Customer shall be deemed to have made timely payment. A public utility may discontinue service for non-payment of bills provided it gives the customer, at least ten (10) days written notice of its intention to discontinue. The notice of discontinuance shall not be served until the expiration of the said twenty (20) calendar day period. A new notice shall be served by the Company each time it intends to discontinue service for nonpayment of a bill except that no additional notice shall be required when, in response to a notice of discontinuance, payment by check is subsequently dishonored. However, in the case of fraud, illegal use, or when it is clearly indicated that the customer is preparing to leave, immediate payment of accounts may be required.

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**3. REGULATIONS (Cont'd)****3.5 Payment Arrangements (Cont'd)****3.5.8 Notice to Company for Cancellation of Service**

Customers desiring to terminate service shall provide Company proper notice of desire to terminate service. A customer wishing to discontinue service must give notice to that effect. Within 48 hours of said notice, the Company shall discontinue service or obtain a meter reading for the purpose of calculating a final bill. Where such notice is not received by the Company, the customer shall be liable for service until the final reading of the meter is taken. Notice to discontinue service will not relieve a customer from any minimum or guaranteed payment under any contract or rate.

**3.5.9 Cancellation of Application for Service**

- A) Applications for service may not be cancelled later than three (3) days after submission unless the Company otherwise agrees. Where the Company permits the Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.
- B) Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of service ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service begun (all discounted to present value at 6%).

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**3. REGULATIONS (Cont'd)****3.5.6 Cancellation of Application of Service (cont.)**

C) Where the Company incurs any expense in connection with special construction, or where special arrangements of facilities or equipment have begun, before the Company receives a cancellation notice, a charge equal to the costs incurred, less net salvage, applies. In such cases the charge will be based on such elements as the cost of the equipment, facilities, and material, the supervision, general and administrative expense, other provision for return on investment, and any other costs associated with the special construction or arrangements.

D) **Changes in Service Requested**

If the Customer makes or requests material changes in circuit engineering, equipment specifications, service parameters, premises locations, or otherwise materially modifies any provision of the application for service, the Customer's installation fee shall be adjusted accordingly.

**3.6 Allowances for Interruptions in Service****3.6.1 General**

- A) A credit allowance will be given when service is interrupted, except as specified in Section 3.6.2 following. A service is interrupted when it becomes inoperative to the Customer, e.g., the Customer is unable to transmit or receive, because of a failure of a component furnished by the Company under this tariff.
- B) An interruption period begins when the Customer reports a service, facility or circuit to be inoperative and, if necessary, releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.
- C) If the Customer reports a service, facility or circuit to be interrupted but declines to release it for testing and repair, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service, facility or circuit considered by the Company to be impaired.

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**3. REGULATIONS (Cont'd)****3.6 Allowances for Interruptions of Services (Cont'd)****3.6.2 Limitations of Allowances**

No credit allowance will be made for any interruption in service:

- A) due to the negligence of or noncompliance with the provisions of this tariff by any person or entity other than the Company, including but not limited to the Customer or other common carriers connected to the service of the Company;
- B) due to the failure of power, equipment, Systems, connections or services not provided by the Company;
- C) due to circumstances or causes beyond the control of the Company (including, but not limited to, civil disorder, fire, flood, storm or other natural or man-made disasters or elements, or labor problems) except that the Company shall make adjustments and refunds to its affected Customers if service is not restored within forty-eight (48) hours;
- D) during any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting interruptions;
- E) during any period in which the Customer continues to use the service on an impaired basis;
- F) during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- G) that occurs or continues due to the Customer's failure to authorize replacement of any element of special construction.

**3.6.3 Use of Another Means of Communications**

If the Customer elects to use another means of communications during the period of interruption, the Customer must pay the charges for the alternative service used.

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3. **REGULATIONS** (Cont'd)

3.6 Allowances for Interruptions of Services (Cont'd)

3.6.4 Application of Credits for Interruptions in Service

- A) Credits for interruptions in service that is provided and billed on a flat rate basis for a minimum period of at least one month, beginning on the date that billing becomes effective, shall in no event exceed an amount equivalent to the proportionate charge to the Customer for the period of service during which the event that gave rise to the claim for a credit occurred. A credit allowance is applied on a pro rate basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.
- B) For calculating credit allowances, every month is considered to have thirty (30) days.
- C) A credit allowance will be given for interruptions in service of 15 minutes or more. Two or more interruptions of 15 minutes or more during any one twenty-four (24) hour period shall be considered as one interruption.
- D) Interruptions of Twenty-Four (24) Hours or Less - Portion of Daily Per-Line Charge

Two or more service interruptions of the same type to the same line/equipment of two (2) hours or more during any one twenty-four (24) hour period shall be considered as one interruption. In no event shall such interruption credits for any one line/equipment exceed one (1) day's fixed recurring charges for such line/equipment in any twenty-four (24)-hour period.

<u>Length of Service Interruption</u>	<u>Credit</u>
Less than 4 hours	None
4 hours up to but not including 8 hours	1/3 of day
8 hours up to but not including 12 hours	1/2 of day

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**3. REGULATIONS (Cont'd)****3.6 Allowances for Interruptions of Services (Cont'd)****3.6.4 Application of Credits for Interruptions in Service (Cont'd)**

12 hours up to but not  
including 16 hours

2/3 of day

16 hours up to but not including 24

One day hours

**E) Interruptions over Twenty-Four (24) Hours**

Service interruptions over twenty-four (24) hours will be credited four (4) hours for each four (4)-hour period or fraction thereof. No more than one (1) full day's credit will be allowed for any period of twenty-four (24) hours.

**3.6.5 Cancellation for Service Interruption**

Cancellation or termination for service interruption is permitted only if any circuit experiences a single continuous outage of 8 hours or more or a cumulative service credits equaling 16 hours in a continuous 12-month period. The right to cancel service under this provision applies only to the single circuit which has been subject to the outage or cumulative service credits.

**3.7 Cancellation of Service/Termination Liability**

If a customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a service interruption (as defined in Section 3.6.1), Customer agrees to pay Company termination liability charges, which are defined below. These charges shall become due and owing as of the effective date of the cancellation or termination and be payable within the period set forth in Section 3.5.3.

**3.7.1 Termination Liability**

Customer's termination liability for cancellation of service shall be equal to:

- A) all unpaid Non-recurring charges reasonably expended by Company to establish service to Customer; plus
- B) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer; plus

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**3. REGULATIONS (Cont'd)****3.8 Customer Liability for Unauthorized Use of Network****3.7.1 Termination Liability (cont.)**

- C) all Recurring Charges specified in the applicable Service Order for the balance of the then current term discounted at a rate determined by the New York Public Utilities Commission;
- D) minus a reasonable allowance for costs avoided by the Company as a direct result of Customer's cancellation.

**3.8.1 Unauthorized Use of the Network**

- A) Unauthorized use of the Network occurs when: (1) a person or entity that does not have actual, apparent, or implied authority to use the Network, obtains the Company's services provided under this tariff; or (2) a person or entity that otherwise has actual, apparent, or implied authority to use the Network, makes fraudulent use of the Network to obtain the Company's services provided under this tariff, or uses specific services that are not authorized.
- B) The following activities constitute fraudulent use:
  - a. using the Network to transmit a message, locate a person, or otherwise give or obtain information, without payment for the service;
  - b. using or attempting to use the Network with the intent to avoid payment, either in whole or part, of any of the Company's tariffed charges by either rearranging, tampering with, or making connections not authorized by this tariff to any service components used to furnish the Company's services or using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices;

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**3. REGULATIONS (Cont'd)****3.8 Customer Liability for Unauthorized Use of Network (Cont'd)****3.8.1 Unauthorized Use of the Network (Cont'd)**

- c. toll Free callers using the Network with the intent of gaining access to a Customer's outbound calling capabilities on an unauthorized basis; and
  - d. using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices to defraud or mislead callers.
- C) Customers are advised that use of telecommunications equipment and services, including that provided under this tariff, carries a risk of various forms of telecommunications fraud (including, but not limited to, toll and fraud perpetrated by Users who gain access to a Customer's facilities, account numbers, security or authorized codes, etc.). Customers should take all necessary steps to restrict access to their facilities, including the equipment and services provided hereunder, and to detect and prevent unauthorized use of the equipment and services provided by the Company under this tariff.

**3.8.2 Liability for Unauthorized Use**

- A) Except as provided for elsewhere in this tariff, the Customer is responsible for payment of all charges for services provided under this tariff furnished to the Customer or User. This responsibility is not changed due to any use, misuse, or abuse of the Customer's service or Customer-provided equipment by Users or other third parties, the Customer's employees, or the public.
- B) The Customer is responsible for payment of any charges related to the suspension and/or termination of service, and any charges for reconnection of service, incurred as a result of unauthorized use of the Network.

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**3. REGULATIONS (Cont'd)****3.9 Use of Customer's Service by Others****3.9.1 Resale and Sharing**

Customer is not permitted to resell or share service provided under this tariff without the written consent of the Company. Customer will hold ultimate responsibility for the payment of any charges billed for services rendered to a third party under a resale agreement or sharing agreement.

**3.9.2 Joint Use Arrangements**

Joint use arrangements will be permitted for all services provided under this tariff. From each joint use arrangement, one member will be designated as the Customer responsible for the manner in which the joint use of the service will be allocated. The Company will accept orders to start, rearrange, relocate, or discontinue service only from the Customer. Without affecting the Customer's ultimate responsibility for payment of all charges for the service, each joint user shall be responsible for the payment of the charges billed to it.

**3.10 Transfers and Assignments**

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that that Company may assign its rights and duties (a) to any subsidiary, parent company or affiliate of the Company; (b) pursuant to any sale or transfer of substantially all the assets of the Company; or (c) pursuant to any financing, merger or reorganization of the Company.

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**4. SERVICE DESCRIPTIONS AND TECHNICAL STANDARDS****4.1 General**

Local and HI-CAP, Private Line and Dedicated Services consist of any of the services offered pursuant to this tariff, either individually or in combination. Each service is offered independent of the others, unless otherwise noted.

Hi-Capacity (digital services affording bandwidth as specified), Private Line (including the full range of point to point transmissions), and Special Access (customer premise to carrier) services, (hereinafter, collectively, "Dedicated Services") are offered pursuant to the terms set forth herein. Each service is provided independently of the others. Services is offered by the company via its own facilities and/or the facilities of other carriers. Services are offered as one-way or two-way communications services, as specified. Special construction charges may apply in each case. Services may not be available to all customers. Such services are not accompanied by 411, 911 or other voice services. In addition to the charges specified for each service, additional charges may apply for transfers of data per month or at certain times in excess of certain thresholds.

**4.2 Service Descriptions and Technical Specifications**

The following Dedicated Access Services are offered in this tariff:

DS3 Service	(44.736 Mbps)
DS1 Service	(1.5 Mbps)
DS0 Service	(Up to 64 Kbps)

Other services, including fractional point-to-point high speed digital point to point services, may be provided by the Company on an Individual Case Basis (ICB), depending on such factors as length of loops involved, quality of loops and other factors. Fractional Services may be provided using a variety of digital transmission technologies, including as a part of technology and market trials. The availability of a service using a particular technology may be limited in accordance with the Company's policies and practices, which shall not be unreasonably discriminatory. During its trials, Company may provide such services to its employees or the general public or to limited categories of customers.

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**5. RATES AND CHARGES****5.1 Rate Categories**

Non-recurring and monthly recurring rates apply for each Dedicated Service furnished by the Company. Monthly recurring rates vary according to the time period for which the Customer commits to take the service. Unless otherwise noted, three standard rate elements are used in calculating the monthly recurring rate for each service:

- A) Local Distribution Channel (LDC): This rate element applies to each endpoint of a digital channel provided to a Customer.
- B) Interoffice Channel Mileage-Fixed: This rate element applies per digital channel whenever there is mileage associated with the channel; a digital channel has mileage associated with it when the endpoints of the channel are located in geographic areas normally served out of separate LEC end offices. This rate element applies per circuit endpoint.
- C) Interoffice Channel Mileage-Per Mile: This rate element applies whenever there is mileage associated with the digital channel. The unit rate is multiplied by the number of miles (Interoffice Mileage) between the two LEC end offices serving the geographic areas in which the end points of the channel are located. Interoffice Mileage is determined according to the V&H coordinates method set forth in the NATIONAL EXCHANGE CARRIER ASSOCIATION, INC. TARIFF F.C.C. No. 4. Fractions of a mile are rounded up to the next whole mile before rates are applied.

**5.2 Basic and Mixed Vendor Services**

DS3, DS1 and DS0 Service may be provided as either Basic or Mixed Vendor Services, depending upon the availability of facilities. Basic Service rates apply when both endpoints of the channel are served by the Company's network. Mixed Vendor Service rates when one endpoint of the transmission channel is served by a local exchange carrier's network (Mixed vendor Services are provided via a combination of the Company's facilities and local exchange carrier facilities).

DS3, DS1 and DS0 channels where both endpoints are served by a local exchange carrier's network will be provided at the sole discretion of the Company, on an Individual Case Basis (ICB).

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**5. RATES AND CHARGES (Cont'd)**

**5.2 Basic and Mixed Vendor Services (Cont'd)**

Optional features and functions are also available on an Individual Case Basis, these are:

**Cross-Connection Charge:** This rate element applies for cross-connections within Company locations between one or more Customer services, or between the services of different Customers.

**Multiplexing Charge:** This rate element applies where the Customer requests that its services be multiplexed onto higher bandwidth facilities for delivery to the Customer.

**DEXCS Port Charge:** This rate element applies where the Customer requests that its services be connected to a DEXCS port.

**5.2.1 DS3 SERVICE (44.736 Mbps)**

This service consists of a DS3 (44.736 Mbps) capacity digital channel available on a 24 hour per day, 7 day per week basis between two points.

**TYPE I DS3 RATES**

RATES	MONTH TO MONTH	1 YR	3 YR	5 YR
Local Distribution Channel (Per Channel)				
Zone 1	\$3937.50	\$3937.50	\$2835.00	\$2520.00
Zone 2	\$3937.50	\$3937.50	\$2992.50	\$2677.50
Zone 3	\$3937.50	\$3937.50	\$3150.00	\$2835.00
Interoffice Channel Mileage (Fixed)				
Zone 1,2,3	\$1312.50	\$1312.50	\$1181.25	\$1050.00
Interoffice Channel Mileage (Per Mile)				
Zone 1,2,3	\$68.25	\$68.25	\$61.25	\$54.25
Installation Rate	\$4725.00 Per Local Distribution Channel			
Zone 1	\$5075.00 Per Local Distribution Channel			
Zone 2	\$5425.00 Per Local Distribution Channel			
Zone 3				

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5. RATES AND CHARGES (Cont'd)

5.2 Basic and Mixed Vendor Services (Cont'd)

DS3 SERVICE (Continued)

TYPE I DS3 RATES

RATES	MONTH TO MONTH	1 YR	3 YR	5 YR
Local Distribution Channel (Per Channel)	\$1890.00	\$1890.00	\$1163.75	\$1023.75
Interoffice Channel Mileage (Fixed)	\$945.00	\$945.00	\$850.50	\$756.00
Interoffice Channel Mileage (Per Mile)	\$94.50	\$94.50	\$87.50	\$75.25
Installation Rate	\$1400.00 Per Local Distribution Channel			

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5. RATES AND CHARGES (Cont'd)

5.2 Basic and Mixed Vendor Services (Cont'd)

RATES FOR DEDICATED ACCESS SERVICES  
DS3 SERVICE

TYPE II DS3 RATES

RATES	MONTH TO MONTH	1 YR	3 YR	5 YR
Local Distribution Channel (Per Channel)	\$1995.00	\$1995.00	\$1228.50	\$1081.50
Interoffice Channel Mileage (Fixed)	\$997.50	\$997.50	\$897.75	\$798.00
Interoffice Channel Mileage (Per Mile)	\$99.75	\$99.75	\$92.75	\$78.75
Installation Rate	\$1400.00 Per Local Distribution Channel			

VOLUME DISCOUNTS LOCAL DISTRIBUTION CHANNEL

# OF DS3'S	MONTH TO MONTH	1 YR.	3 YR.	5 YR
<u>3 DS3s</u>				
Zone 1	\$3669.75	\$3669.75	\$1995.00	\$1575.00
Zone 2	\$3669.75	\$3669.75	\$2047.50	\$1706.25
Zone 3	\$3669.75	\$3669.75	\$2100.00	\$1837.50
<u>12 DS3s</u>				
Zone 1	N/A	N/A	\$1443.75	\$1102.50
Zone 2	N/A	N/A	\$1477.00	\$1142.75
Zone 3	N/A	N/A	\$1510.25	\$1181.25

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**5. RATES AND CHARGES (Cont'd)**

5.2 Basic and Mixed Vendor Services (Cont'd)

NOTES:

- 1) IN ADD-ON TO THE ABOVE LOCAL DISTRIBUTION CHANNEL CHARGES, ADD THE STANDARD FIXED AND PER MILE RATES.
- 2) VOLUME DISCOUNTS WILL APPLY WHEN A CUSTOMER ORDERS TWO OR MORE DS3 CIRCUITS BETWEEN THE SAME LOCATIONS AT THE SAME TIME.

5.2.2 DS1 SERVICE (1.544 Mbps)

This service consists of a DS1(1.544 Mbps) capacity digital channel available on a 24 hour per day, 7 day per week basis between two points.

RATES FOR DEDICATED ACCESS SERVICES  
DS1 SERVICE

TYPE I DS1 RATES

RATES	MONTH TO MONTH	1 YR	3 YR	5 YR
Local Distribution Channel (Per Channel)	\$497.00	\$409.50	\$369.25	\$327.25
Interoffice Channel Mileage (Fixed)	\$94.50	\$94.50	\$85.75	\$75.25
Interoffice Channel Mileage (Per Mile)	\$24.50	\$24.50	\$22.75	\$19.25
Installation Rate	\$787.50 Per Local Distribution Channel			

When more than one circuit is purchased at the same time and between the same locations, each additional circuit receives 50% off the above LDC and the installation rate is \$65 per additional LDC

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5. **RATES AND CHARGES** (Cont'd)

5.2 **Basic and Mixed Vendor Services** (Cont'd)

**DS1 SERVICE (1.544 Mbps)**

**TYPE II DS1 RATES**

<b>RATES</b>	<b>MONTH TO MONTH</b>	<b>1 YR</b>	<b>3 YR</b>	<b>5 YR</b>
Local Distribution Channel (Per Channel)	\$432.25	\$432.25	\$390.25	\$246.25
Interoffice Channel Mileage (Fixed)	\$99.75	\$99.75	\$91.00	\$78.75
Interoffice Channel Mileage (Per Mile)	\$24.50	\$24.50	\$22.75	\$21.00
Installation Rate	\$787.50 Per Local Distribution Channel			

5.2.3 **Fanout DS1 Service**

This service consists of up to 28 DS1 (1.544 Mbps) digital channels, which are aggregated at a Company Node onto a standard DS3 circuit with Interoffice Mileage and a Local Distribution Channel at the terminating end.

Fanout DS 1's consist of 3 rate elements:

- 1) **DS1 Local Distribution Channels** - Rated as a standard DS1 Local Distribution Channel.
- 2) **Central Office Multiplexing** - Aggregates the 28 DS1's onto DS3 interoffice facilities.
- 3) **DS3 Interoffice Mileage Local Distribution Channel** - rated as a standard DS3 Circuit.

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5. **RATES AND CHARGES** (Cont'd)

5.2 **Basic and Mixed Vendor Services** (Cont'd)

**FANOUT DS1 SERVICE RATES**

SERVICE CONFIGURATIONS	NON-RECURRING		MONTH TO MONTH		MONTHLY RECURRING					
					1 YR		3 YR		5 YR	
DS3/1 Mux @ CC Node		\$700		\$770		\$770		\$691.25		\$612.50
DS3 Channel Between a Client Premises and a CC Node	Standard DS3 Rate Schedule (One Local Distribution Channel Charge applies)									
DS1 Fanout Channel	Standard DS1 Rate Schedule (One Local Distribution Channel Charge applies to each individual DS1 Fanned out from Node)									

5.2.4 **DS0 Service**

DS0 Service is a Digital Transmission Service furnished by the Company at transmission speeds of 2.4 kbps, 4.8 kbps, 9.6 kbps, 19.2 kbps, 56 kbps, 64 kbps, or in multiples of 56 kbps or 64 kbps up to 1.544 Mbps. Such channels will be configured by the Company to transmit digital data at specified data rates or analog signals converted to digital signals.

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5. RATES AND CHARGES (Cont'd)5.2 Basic and Mixed Vendor Services (Cont'd)STANDARD DS0 RATES

DS0 SERVICE	NON-RECURRING*	MONTHLY RECURRING	
		DS0 LOCAL DISTRIBUTION CHANNEL (EACH)	DS0 Mileage
2 wire voice grade	\$831.25	\$47.25	\$38.50 plus \$0.88 per mile
4 wire voice grade	\$831.25	\$73.50	\$38.50 plus \$0.88 per mile
2.4 to < 56 kbs	\$612.50	\$78.75	\$7.88 plus \$8.75 per mile
56 or 64 kbs	\$612.50	\$78.75	\$7.88 plus \$8.75 per mile
	\$437.50 x N with \$5250.00 MAX	\$63.00 x N	\$7.88 plus \$8.75 per mile X N

5.2.5 Fanout DS0 Service

This service consists of up to 24 DS0 digital channels, which are aggregated at a Company Node onto a standard DS1 circuit with Interoffice Mileage and a Local Distribution Channel at the terminating end. There is a minimum 90 day service period for each Hubbed DS0 Service.

Hubbed DS0's consist of 3 rate elements:

- 1) DS0 Local Distribution Channels - Rated as a standard DS0 Local Distribution Channel.
- 2) Central Office Multiplexing - Aggregates the 24 DS0's onto DS1 interoffice facilities.
- 3) DS1 Interoffice Mileage Local Distribution Channel - Rated as a standard DS1 Circuit.

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**5. RATES AND CHARGES (Cont'd)****5.2 Basic and Mixed Vendor Services (Cont'd)****DS0 FANOUT SERVICE**

STANDARD RATE ELEMENTS	NON RECURRING	MONTHLY RECURRING			
		MONTH TO MONTH	1YR	3 YR	5YR
DS1 Service	Apply Standard DS1 Non-Recurring Charge	Standard DS1 Rate Schedule			
DS1/0 MUX @ TC Node	\$0	\$434.00	\$434.00	\$392.50	\$346.50
DS0 Service	Apply Appropriate DS0 Non-Recurring Charge	Standard DS0 Rate Schedule			

**5.2.6 Individual Case Basis (ICB) Arrangements**

For special situations, rates for Dedicated Access Services and other specialized services will be determined on an Individual Case Basis (ICB) and specified by contract between the Company and the Customer.

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5. **RATES AND CHARGES** (Cont'd)

5.3 **Taxes and Surcharges**

5.3.1 **Customer Responsibility**

The Customer is responsible for the payment of any sales, use, excise, access or other local, state and federal taxes, charges or surcharges (excluding taxes on the Company's net income) imposed on or based upon the provision, sale, or use of Company's services.

All such taxes and surcharges shall be itemized on the Company's bills to the Customer.

5.3.2 **Sales, Use, and Excise Taxes**

In addition to all recurring, non-recurring, usage or special charges, Customer shall also be responsible for and shall pay all applicable federal, state, and local sales, use, and excise taxes.

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