

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

ORIGINAL

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NEW YORK OFFICE  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174

November 16, 2000

VIA OVERNIGHT DELIVERY

Blanca S. Bayo  
Director  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0870

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 forwarded check:

001717-TX

Re: Application of American Fiber Systems, Inc. for Authority to Provide  
Alternative Local Exchange Service Within the State of Florida

Dear Ms. Bayo:

Enclosed for filing on behalf of American Fiber Systems, Inc. ("American Fiber"), please find an original and six (6) copies of American Fiber's application for authority to provide alternative local exchange service within the State of Florida. Please find enclosed a check in the amount of \$250.00 to cover the filing fee for the application. Also enclosed, please find a separate envelope submitted under seal and bearing the appropriate markings, which contains American Fiber's confidential financial information submitted in support of this application.

Please date-stamp the enclosed extra copy and return in the self-addressed, stamped envelope provided. Should you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Ronald W. Del Sesto, Jr.

Counsel for American Fiber Systems, Inc.

Enclosures

cc: Gita Ramachandran

DOCUMENT NUMBER-DATE

14880 NOV 17 8

FPSC-RECORDS/REPORTING

**\*\* FLORIDA PUBLIC SERVICE COMMISSION \*\***

**DIVISION OF REGULATORY OVERSIGHT**  
**CERTIFICATION SECTION**

**APPLICATION FORM**  
**for**  
**AUTHORITY TO PROVIDE**  
**ALTERNATIVE LOCAL EXCHANGE SERVICE**  
**WITHIN THE STATE OF FLORIDA**

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Instructions

- ◆ This form is used as an application for an original certificate and for approval of the assignment or transfer of an existing certificate. In the case of an assignment or transfer, the information provided shall be for the assignee or transferee (See Appendix A).
- ◆ Print or type all responses to each item requested in the application and appendices. If an item is not applicable, please explain why.
- ◆ Use a separate sheet for each answer which will not fit the allotted space.
- ◆ Once completed, submit the original and six (6) copies of this form along with a non-refundable application fee of **\$250.00** to:

**Florida Public Service Commission**  
**Division of Records and Reporting**  
**2540 Shumard Oak Blvd.**  
**Tallahassee, Florida 32399-0850**  
**(850) 413-6770**

- ◆ If you have questions about completing the form. contact:

**Florida Public Service Commission**  
**Division of Telecommunications**  
**Bureau of Certification and Service Evaluation**  
**2540 Shumard Oak Blvd.**  
**Tallahassee, Florida 32399-0850**  
**(850) 413-6480**

## APPLICATION

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

**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:

**American Fiber Systems, Inc. ("AFS" or "Applicant")**

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

**American Fiber Systems, Inc.**

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

**American Fiber Systems, Inc.**

**100 Meridian Centre, Suite 250, Rochester, NY 14618**

**Telephone: (716) 340-5400      Facsimile: (716) 340-5401**

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

**AFS does not presently have an office established in Florida. If AFS does establish a Florida office in the future, AFS will provide this information to the Commission, upon request. AFS's registered agent in Florida is CT Corporation System, 1200 South Pine Island Road, Plantation, FL 33324.**

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 copy of AFS's Certificate of Authority to transact business in Florida is attached hereto as Exhibit 1.**

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

**AFS's corporate registration number is F0000005142.** \_\_\_\_\_

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:**

**AFS will not use a fictitious name or d/b/a.** \_\_\_\_\_

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): **16-1584044**

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.

**None of AFS' officers, directors, nor any of the ten largest stockholders have previously been adjudged bankrupt, mentally incompetent, or found guilty of any felony or crime nor are any such proceedings pending.**

- (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.

**None of AFS' officers, directors, or ten largest stock holders are officers, directors, partners, or stockholders of any other Florida certificated telephone company.**

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

- (a) The application:

**Name:** Ronald W. Del Sesto, Jr.

**Title:** Counsel for the Applicant; Swidler Berlin Shereff Friedman, LLP

**Address:** 3000 K Street, N.W., Suite 300

**City/State/Zip:** Washington, DC 20007-5116

**Telephone No.:** (202) 945-6923 **Fax No.:** (202) 424-7643

**Internet E-Mail Address:** rwdelsesto@swidlaw.com

**Internet Website Address:** http://www.swidlaw.com

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

**Name:** Gita Ramachandran

**Title:** Chief Financial Officer

**Address:** 100 Meridian Centre, Suite 250

**City/State/Zip:** Rochester, NY 14618

**Telephone No.:** (716) 340-5400 **Fax No.:** (716) 340-5401

**Internet E-Mail Address:** gita@metrofiberusa.com

**Internet Website Address:** http://www.metrofiberusa.com

(c) Complaints/Inquiries from customers:

**Name:** David Danchak

**Title:** Vice President – Business Development

**Address:** 100 Meridian Centre, Suite 250

**City/State/Zip:** Rochester, NY 14618

**Telephone No.:** (716) 340-5400      **Fax No.:** (716) 340-5401

**Internet E-Mail Address:** ddanchak@metrofiberusa.com

**Internet Website Address:** http://www.metrofiberusa.com

17. List the states in which the applicant:

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

**Not applicable, as Applicant has not yet operated as an alternative local exchange company in any state.**

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

**Applicant is currently in the process of obtaining certification to provide local exchange services in Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.**

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

**Applicant is not currently certificated to operate as an alternative local exchange company in any state.**

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

**Applicant has not been denied authority to operate as an alternate local exchange company in any state.**

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

**Applicant has not had regulatory penalties imposed for violations of statutes in any state.**

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

**Applicant has not been involved in any civil court proceedings with an interexchange carrier, local exchange company or other telecommunications entity in any state.**

18. Submit the following:

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

**Please see Exhibit 2.**

- 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.

**Please see Exhibit 2.**

- 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.

**Please see Exhibit 3.**

2. **written explanation** that the applicant has sufficient financial capability to maintain the requested service.

**Please see Exhibit 3.**

3. **written explanation** that the applicant has sufficient financial capability to meet its lease or ownership obligations.

**Please see Exhibit 3.**

## APPENDICES

<b>APPENDIX A</b>	Applicant Acknowledgment Statement
<b>APPENDIX B</b>	Affidavit
<b>APPENDIX C</b>	Intrastate Network (if available)
<b>APPENDIX D</b>	Certificate Sale, Transfer, or Assignment Statement

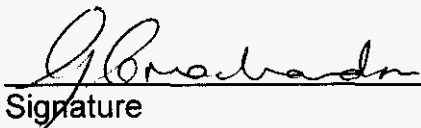
## EXHIBITS

<b>EXHIBIT 1</b>	Certificate of Authority to Transact Business in the State of Florida
<b>EXHIBIT 2</b>	Managerial and Technical Qualifications
<b>EXHIBIT 3</b>	Financial Qualifications Written Explanations and Financial Statements
<b>EXHIBIT 4</b>	Proposed Tariff

**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**

  
\_\_\_\_\_  
Signature

11/9/00  
\_\_\_\_\_  
Date

Chief Financial Officer  
\_\_\_\_\_  
Title

(716) 340-5400  
\_\_\_\_\_  
Telephone No.

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

(716) 340-5401  
\_\_\_\_\_  
Fax No.

100 Meridian Center, Suite 250  
\_\_\_\_\_

Rochester, NY 14618  
\_\_\_\_\_

**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:**

  
\_\_\_\_\_  
Signature

11/9/00  
\_\_\_\_\_  
Date

Chief Financial Officer  
\_\_\_\_\_  
Title

(716) 340-5400  
\_\_\_\_\_  
Telephone No.

Address:

(716) 340-5401  
\_\_\_\_\_  
Fax No.

100 Meridian Center, Suite 250  
\_\_\_\_\_

Rochester, NY 14618  
\_\_\_\_\_

**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) <u>To be determined</u>	2) _____
_____	_____
3) _____	4) _____
_____	_____

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

1) <u>To be determined</u>	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) <u>To be determined</u>	_____
2) _____	_____
3) _____	_____
4) _____	_____

**CERTIFICATE SALE, TRANSFER, OR ASSIGNMENT STATEMENT**

**\*\* NOT APPLICABLE. AMERICAN FIBER SYSTEMS, INC. IS APPLYING FOR ORIGINAL AUTHORITY.**

I, (Name) Not Applicable.

(Title) Not Applicable of \_\_\_\_\_

and current holder of Florida Public Service Commission Certificate Number # \_\_\_\_\_

have reviewed this application and join in the petitioner's request for a:

( ) sale

( ) transfer

( ) assignment

of the above-mentioned certificate.

**UTILITY OFFICIAL:**

Not Applicable.

Signature

\_\_\_\_\_ Date

Not Applicable

Title

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

Address: Not Applicable

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

\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT 1**

**CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS IN FLORIDA**



FLORIDA DEPARTMENT OF STATE

Katherine Harris  
Secretary of State

September 13, 2000

C T CORPORATION SYSTEM

TALLAHASSEE, FL

Qualification documents for AMERICAN FIBER SYSTEMS, INC. were filed on September 13, 2000 and assigned document number F00000005142. Please refer to this number whenever corresponding with this office.

Your corporation is now qualified and authorized to transact business in Florida as of the file date.

A corporation annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file date. A Federal Employer Identification (FEI) number will be required before this report can be filed. If you do not already have an FEI number, please apply NOW with the Internal Revenue by calling 1-800-829-3676 and requesting form SS-4.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have any questions regarding this matter, please telephone (850) 487-6051, the Foreign Qualification/Tax Lien Section.

Buck Kohr  
Corporate Specialist  
Division of Corporations

Letter Number 800A00048439

Division of Corporations - P.O. BOX 6327 -Tallahassee, Florida 32314



**APPLICATION BY FOREIGN CORPORATION FOR AUTHORIZATION TO TRANSACT BUSINESS IN FLORIDA**

*IN COMPLIANCE WITH SECTION 607.1503, FLORIDA STATUTES, THE FOLLOWING IS SUBMITTED TO REGISTER A FOREIGN CORPORATION TO TRANSACT BUSINESS IN THE STATE OF FLORIDA.*

1. American Fiber Systems, Inc.  
(Name of corporation; must include the word "INCORPORATED", "COMPANY", "CORPORATION" or words or abbreviations of like import in language as will clearly indicate that it is a corporation instead of a natural person or partnership if not so contained in the name at present.)
2. Delaware (State or country under the law of which it is incorporated)
3. 16-1584044 (FEI number, if applicable)
4. March 24, 2000 (Date of incorporation)
5. Perpetual (Duration: Year corp. will cease to exist or "perpetual")
6. Business will begin upon the successful filing of this application  
(Date first transacted business in Florida.) (SEE SECTIONS 607.1501, 607.1502 and 817.155, F.S.)
7. 100 Meridian Centre, Suite 250  
Rochester, New York 14623  
(Current mailing address)

DEPT. OF STATE  
 SECRETARIAT OF CORPORATIONS  
 00 SEP 13 PM 1:38

8. Deploy Fiber Optic Networks for use by wholesale telecommunication carriers and certain business customers.  
(Purpose(s) of corporation authorized in home state or country to be carried out in state of Florida)

9. Name and street address of Florida registered agent: (P.O. Box or Mail Drop Box **NOT** acceptable)

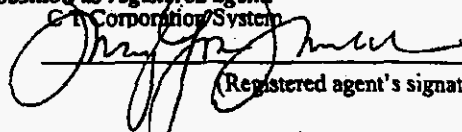
Name: C T Corporation System

Office Address: 1200 South Pine Island Road

Plantation, Florida, 33324  
(Zip code)

**10. Registered agent's acceptance:**

*Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this application, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.*

C T Corporation System  
  
(Registered agent's signature)

Mary Lou Mulkeen  
Assistant Secretary

11. Attached is a certificate of existence duly authenticated, not more than 90 days prior to delivery of this application to the Department of State, by the Secretary of State or other official having custody of corporate records in the jurisdiction under the law of which it is incorporated.

12. Names and addresses of officers and/or directors: (Street address ONLY - P.O. Box NOT acceptable)

FL019 - 9/2/99 C T System Online

See Attached Sheet

**EXHIBIT 2**

**MANAGERIAL AND TECHNICAL QUALIFICATIONS**

**MANAGERIAL AND TECHNICAL QUALIFICATIONS OF  
AMERICAN FIBER SYSTEMS, INC**

**AFS has assembled an outstanding and experienced team of industry professionals to achieve its mission of market leadership. The founding executive team has held key technical, marketing and financial positions at leading broadband and communications companies. The following summaries highlight management's extensive background:**

**David G. Rusin, President & CEO**

Mr. Rusin founded AFS in August 1999. Prior to AFS, he was a founder and Chief Marketing Officer with VoiceWeb Corporation, a provider of Voice over Internet Protocol platform technology linking the computer on-line world with the telephone. Prior to VoiceWeb, Mr. Rusin was President of Frontier Communications (now Global Crossing). While at Frontier Communications, he established the first Competitive Local Exchange Carrier in the United States in 1994. Before Frontier, Mr. Rusin was President & CEO for Edicon Systems, an Eastman Kodak subsidiary, which delivered digital imaging network solutions on a multinational basis. Prior to Eastman Kodak, Mr. Rusin held a host of executive positions with Nortel Networks ranging from marketing, product management and technology planning. Mr. Rusin has over 20 years of progressive telecommunications industry experience. Dave is a past author and speaker on various digital network topics in the United States and abroad.

**David M. Baxter, Vice President Operations and Engineering**

Mr. Baxter joined AFS in May 2000. He has over 28 years of Operations and Engineering experience with Citizens Communications. While at Citizens he oversaw the local service network and fiber network deployment in the operating company. Mr. Baxter was the Director of Acquisition Integration at Citizens while increasing their footprint to over 2,000,000 access lines. Prior to overseeing the Acquisition Integration, he developed the strategic planning model for acquisition integration. Mr. Baxter has a diverse executive background in all areas of telecommunications ranging from Regulatory, Planning, Customer Service and Networks.

**David N. Danchak, Vice President Business Development**

Mr. Danchak joined AFS in April 2000. He has more than 30 years of experience in the communications industry. Prior to AFS, Dave was a communications consultant, both wire-line and wireless, for Enterprises, RBOCs, and Consulting Companies. Previous to the consulting activities, he spent three years as VP Sales for Fujitsu focused on delivering platform solutions to the LECs and IXC's. Prior to Fujitsu, Mr. Danchak spent a number of years with a company acquired by Nortel Networks as VP Sales and VP Engineering with product lines in voice, directory, and network database solution sets.

**Robert J. DeRosa, Vice President Marketing**

Mr. DeRosa joined AFS in April 2000. He has over 25 years of marketing experience in growth companies or markets. Prior to AFS, Mr. DeRosa was a marketing consultant serving a wide variety of telecommunications, Internet and Fortune 100 companies. He has held various senior management positions in marketing and public relations with Frontier Communications (now Global Crossing), Saatchi & Saatchi, Rowland and Nortel Networks.

**Kevin Mullaney, Chief Engineer**

Mr. Mullaney joined AFS in May 2000. Mr. Mullaney has over 30 years of technical telecommunications experience. Prior to AFS, Mr. Mullaney was a private consultant designing digital networks for CLECs throughout the Northeast United States. He is formerly the Chief Engineer and design architect for Performance Telecommunications, a leading supplier of digital carrier and optical network solutions for ILEC central offices. Prior to Performance Telecommunications, Mr. Mullaney was Director of Engineering at Nortel Networks with overall design authority for T-Carrier network products and subsystems.

**Gita Ramachandran, Chief Financial Officer**

Gita Ramachandran, a certified public accountant with an MBA, brings two decades of financial experience to AFS. She comes to AFS from Global Crossing in Rochester, where she was Vice President of Corporate Audit. Prior to Global Crossing, Ms. Ramachandran served as VP of Finance for Ralin Medical in Chicago, was Division Controller at Baxter International in Chicago, and has public accounting experience with both Price Waterhouse Coopers in Chicago and Deloitte & Touche in Toronto.

**Jerry Vinette, Director of Sales**

Jerry Vinette has spent virtually his entire career in telecommunications sales, marketing and management. From 1976-93, he served in a variety of senior-management roles in both the U.S. and abroad for the company that invented computerized directory assistance, which later became Nortel Networks. He has also served as Regional VP of sales for Volt Delta Resources. Mr. Vinette's success in sales and sales management is largely attributable to his technical expertise and wide-ranging telecommunications experience.



**EXHIBIT 3**

**(Confidential Treatment Requested)**

**FINANCIAL QUALIFICATIONS**

**EXHIBIT 4**  
**PROPOSED TARIFF**

TITLE SHEET

FLORIDA TELECOMMUNICATIONS PRICE LIST

This price list contains the descriptions, regulations, and rates applicable to the furnishings of service and facilities for alternative local exchange telecommunications services provided by American Fiber Systems, Inc., with principal offices at 100 Meridian Centre, Suite 250, Rochester, New York 14618. This price list applies for services furnished within the state of Florida. This price list is on file with the Florida Public Service Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business.

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Issued:

Issued By: Gita Ramachandran, Chief Financial Officer  
100 Meridian Centre, Suite 250  
Rochester, NY 14618

Effective:

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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.

<u>Page</u>	<u>Revision</u>	<u>Page</u>	<u>Revision</u>
1	Original	29	Original
2	Original	30	Original
3	Original	31	Original
4	Original	32	Original
5	Original	33	Original
6	Original	34	Original
7	Original	35	Original
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9	Original	37	Original
10	Original	38	Original
11	Original	39	Original
12	Original	40	Original
13	Original	41	Original
14	Original	42	Original
15	Original	43	Original
16	Original	44	Original
17	Original	45	Original
18	Original	46	Original
19	Original	47	Original
20	Original	48	Original
21	Original	49	Original
22	Original	50	Original
23	Original	51	Original
24	Original		
25	Original		
26	Original		
27	Original		
28	Original		

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Issued:

Issued By: Gita Ramachandran, Chief Financial Officer  
100 Meridian Centre, Suite 250  
Rochester, NY 14618

Effective:



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Section 6 - Rates and Charges..... 47

Issued:

Issued By: Gita Ramachandran, Chief Financial Officer  
100 Meridian Centre, Suite 250  
Rochester, NY 14618

Effective:

SECTION 1- SYMBOL SHEET

The following symbols shall be used in this Tariff for the purpose indicated below:

- D - To signify discontinued rate or regulation.
- I - To signify increased rate.
- M - To signify a move in the location of text.
- N - To signify new rate or regulation.
- R - To signify reduced rate.
- T - To signify a change in text but no change in rate or regulation.

- A. **Check Sheets** – When a price list filing is made with the FPSC, an updated check accompanies the price list filing.
- B. **Sheet Numbering and Revision Levels** – Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the price list. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between existing sheets 14 and 15 would be 14.1. Revision levels also appear in the upper right corner of each page. These levels are used to determine the most current sheet version on file with the FPSC. For example, the 4<sup>th</sup> revised sheet 14 cancels the 3<sup>rd</sup> revised sheet 14.

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Issued:

Issued By: Gita Ramachandran, Chief Financial Officer  
100 Meridian Centre, Suite 250  
Rochester, NY 14618

Effective:

**SECTION 2 – TECHNICAL TERMS AND ABBREVIATIONS**

Certain terms used generally throughout this tariff are described below.

**Advance Payment**

Part or all of a payment required before the start of service.

**Access Services**

The Company's interstate telephone services offered pursuant to this tariff.

**Authorized User**

A person, firm or corporation which is authorized by the customer or joint user to be connected to the service of the customer or joint user, respectively.

**Commission**

The Florida Public Service Commission.

**Company or AFS**

The term "Company" denotes American Fiber Systems, Inc.

**Customer**

The person, firm or corporation which orders service and is responsible for the payment of charges and compliance with the Company's regulations.

**Dedicated or Private Line**

A facility or equipment system or subsystem set aside for the sole use of a specific customer.

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SECTION 2- TECHNICAL TERMS AND ABBREVIATIONS (cont'd)

End User or User

Any person or entity that obtains the Company's services provided under this Tariff, regardless of whether such person or entity is so authorized by the Customer.

ICB or Individual Case Basis

A service arrangement in which the regulation, rates and charges are developed based on the specific circumstances of the case.

LATA

A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc. Tariff F.C.C. No. 4.

Network

Refers to the Company's facilities, equipment, and services provided under this Tariff.

On-net

Telecommunications services which are transported exclusively over facilities installed by the Company rather than the facilities of another carrier.

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**SECTION 2 – TECHNICAL TERMS AND ABBREVIATIONS (cont'd)****Service Commencement Date**

The first date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order or this tariff, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and the Customer may mutually agree on a substitute Service Commencement Date. If the Company does not have an executed Service Order from a Customer, the Service Commencement Date will be the first date on which the service or facility was used by a Customer.

**Service Order**

The written request for dedicated services executed by the Customer and the Company in the format devised by the Company. The signing of a Service Order by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this tariff, but the duration of the service is calculated from the Service Commencement Date. Should a Customer use the Company's dedicated service without an executed Service Order, the Company will then request the Customer to submit a Service Order.

**Shared**

A facility or equipment system or subsystem that can be used simultaneously by several Customers.

**SONET or Synchronous Optical NETWORK**

A family of fiber-optic transmission rates from 51.84 Mbps to 13.22 Gbps. SONET is an optical interface standard that allows internetworking of transmission products from multiple vendors.

**User**

A customer, joint user, or any other person authorized by a customer to use service provided under this tariff.

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**SECTION 3 - APPLICATION OF PRICE LIST**

- 3.1 This price list contains the rates, regulations, and conditions applicable to alternative local exchange telecommunication services furnished by the Company to Subscribers within the State of Florida.

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**SECTION 4 - REGULATIONS****4.1 Undertaking of the Company****4.1.1. Scope**

The Company undertakes to furnish dedicated services in accordance with the terms and conditions set forth in this Tariff. The Company will ensure an industry standard blocking rate on greater than one (1) call per 100 calls.

**4.1.2 Shortage of Facilities**

All service is subject to the availability of suitable facilities. The Company reserves the right to limit the length of communications or to discontinue furnishing services when necessary because of the lack of transmission medium capacity or because of any causes beyond its control.

**4.1.3 Terms and Conditions**

- A) Service is provided on the basis of a minimum period of at least one month, 24-hours per day. For the purpose of computing charges in this Tariff, a month is considered to have 30 days.
- B) Customers may be required to enter into written Service Orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this Tariff. Customers will also be required to execute any other documents as may be reasonably requested by the Company.
- C) In any action between the parties to enforce any provision of this Tariff, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.

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**SECTION 4 - REGULATIONS (Cont'd)**

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

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

- D) This Tariff shall be interpreted and governed by the laws of the State of Florida regardless of its choice of laws provision.

**4.1.4 Limitations on Liability**

- A) Except as otherwise stated in this section, the liability of the Company for damages arising out of either: ( 1 ) the furnishing of its services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, misrepresentations, or use of these services or (2) the failure to furnish its service, whether caused by acts or omission, shall be limited to the extension of allowances to the Customer for interruptions in service as set forth in this Tariff.
- B) Except for the extension of allowances to the Customer for interruptions in service as set forth in this Tariff, the Company shall not be liable to a Customer or third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages, including, but not limited to, loss of revenue or profits, for any reason whatsoever, including, but not limited to, any act or omission, failure to perform, delay, interruption, failure to provide any service or any failure in or breakdown of facilities associated with the service.

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**SECTION 4 - REGULATIONS (Cont'd)**

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

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

- C) The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.
  
- D) The Company shall not be liable for any claims for loss or damages involving:
  - 1) Any act or omission of: (a) the Customer, (b) any other entity furnishing service, equipment or facilities for use in conjunction with services or facilities provided by the Company; or (c) common carriers or warehousemen;
  
  - 2) Any delay or failure of performance or equipment due to causes beyond the Company's control, including but not limited to, acts of God, fires, floods, earthquakes, hurricanes, or other catastrophes; national emergencies, insurrections, riots, wars or other civil commotions; strikes, lockouts, work stoppages or other labor difficulties; criminal actions taken against the Company; unavailability, failure or malfunction of equipment or facilities provided by the Customer or third parties; and any law, order, regulation or other action of any governing authority or agency thereof;

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**SECTION 4 - REGULATIONS (Cont'd)**

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

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

**D) (Cont'd)**

- 3) Any unlawful or unauthorized use of the Company's facilities and services;
- 4) Libel, slander, invasion of privacy or infringement of patents, trade secrets, or copyrights arising from or in connection with the transmission of communications by means of Company-provided facilities or services; or by means of the combination of Company-provided facilities or services with Customer-provided facilities or services;
- 5) Breach in the privacy or security of communications transmitted over the Company's facilities;
- 6) Changes in any of the facilities, operations or procedures of the Company that render any equipment, facilities or services provided by the Customer obsolete, or require modification or alteration of such equipment, facilities or services, or otherwise affect their use or performance, except where reasonable notice is required by the Company and is not provided to the Customer, in which event the Company's liability is limited as set forth in this Tariff.
- 7) Defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof;

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**SECTION 4 - REGULATIONS (Cont'd)**

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

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

**D) (Cont'd)**

- 8) Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected to the Company's facilities;
- 9) Any intentional, wrongful act of a Company employee when such act is not within the scope of the employee's responsibilities for the Company and/or is not authorized by the Company;
- 10) Any representations made by Company employees that do not comport, or that are inconsistent, with the provisions of this Tariff;
- 11) Any noncompletion of calls due to network busy conditions;
- 12) Any calls not actually attempted to be completed during any period that service is unavailable.

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**SECTION 4 - REGULATIONS (Cont'd)****4.1 Undertaking of the Company (Cont'd)****4.1.4 Limitations on Liability (Cont'd)**

- E) The Company shall be indemnified, defended and held harmless by the Customer or end user from and against any and all claims, loss, demands, suits, expense, or other action or any liability whatsoever, including attorney fees, whether suffered, made, instituted, or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any Company or Customer equipment or facilities or service provided by the Company.
- F) The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere. The Company shall be indemnified, defended and held harmless by the Customer from and against any and all claims, loss, demands, suits, or other action, or any liability whatsoever, including attorney fees, whether suffered, made, instituted or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any equipment or facilities or the service.

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**SECTION 4 - REGULATIONS (Cont'd)**

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

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

- G) The Company assumes no responsibility for the availability or performance of any cable or satellite systems or related facilities under the control of other entities, or for other facilities provided by other entities used for service to the Customer, even if the Company has acted as the Customer's agent in arranging for such facilities or services. Such facilities are provided subject to such degree of protection or nonpreemptibility as may be provided by the other entities.**
- H) Except as otherwise stated in this Tariff, any claim of whatever nature against the Company shall be deemed conclusively to have been waived unless presented in writing to the Company within thirty (30) days after the date of the occurrence that gave rise to the claim.**
- I) THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.**

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**SECTION 4 - REGULATIONS (Cont'd)****4.1 Undertaking of the Company (Cont'd)****4.1.5 Testing and Adjusting**

Upon suitable notice, the Company may make such tests, adjustments, and inspections as may be necessary to maintain the Company's facilities in satisfactory operating condition. No interruption allowance will be credited to the customer for the period during which the Company makes such tests, adjustments, or inspections.

**4.1.6 Provision of Equipment and Facilities**

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

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**SECTION 4 - REGULATIONS (Cont'd)**

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

**4.1.6 Provision of Equipment and Facilities (Cont'd)**

**B) (Cont'd)**

- 3) network control signaling where such signaling is performed by Customer-provided network control signaling equipment.**

**4.1.7 Special Construction**

Subject to the arrangement 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;**

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**SECTION 4 - REGULATIONS (Cont'd)**

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

**4.1.7 Special Construction (Cont'd)**

- (F) on a temporary basis until permanent facilities are available;
- (G) involving abnormal costs; or
- (H) in advance of its normal construction.

Special construction charges will be determined as described herein.

**4.1.8 Ownership of Facilities**

Title to all facilities provided in accordance with this Tariff remains in the Company, its agents, contractors or suppliers.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.2 Prohibited Uses**

- A) The services the Company offers shall not be used for any unlawful purpose or for any use for which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- B) The Company may require applicants for service who intend to use the Company's offering for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offering complies with relevant laws and regulations, policies, orders, and decisions.
- C) The Company may require a Customer to immediately shut down its transmission if such transmission is causing interference to others.
- D) A Customer, joint user, or authorized user may not assign, or transfer in any manner, the service or any rights associated with the service without the written consent of the Company. The Company will permit a Customer to transfer its existing service to another entity if the existing Customer has paid all charges owed to the Company for regulated Access Services. Such a transfer will be treated as a disconnection of existing service and installation of new service, and non-recurring installation charges as stated in this Tariff will apply.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.3 Obligations of the Customer**

**4.3.1 Customer Premises Provisions**

- A) The Customer shall provide the personnel, power and space required to operate all facilities and associated equipment installed on the premises of the Customer.
- B) The Customer shall be responsible for providing Company personnel access to premises of the Customer at any reasonable hour for the purpose of testing the facilities or equipment of the Company.

**4.3.2 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 attorneys' fees, for (1) any loss, destruction or damage to property of any third party, (2) the death of or injury to persons, including, but not limited to, employees or invitees of either party, and (3) 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.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.3 Obligations of the Customer (Cont'd)**

**4.3.2 Liability of the Customer (Cont'd)**

- 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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**SECTION 4 - REGULATIONS (Cont'd)**

**4.4 Customer Equipment and Channels**

**4.4.1 Interconnection of Facilities**

- A) In order to protect the Company's facilities and personnel and the services furnished to other Customers by the Company from potentially harmful effects, the signals applied to the Company's service shall be such as not to cause damage to the facilities of the Company. Any special interface equipment necessary to achieve the compatibility between facilities of the Company and the channels or facilities of others shall be provided at the Customer's expense.

**4.4.2 Inspections**

- A) The Company may, upon notification to the Customer, at a reasonable time, make such tests and inspections as may be necessary to determine that the requirements regarding the equipment and interconnections are being complied with in respect to the installation, operation and maintenance of Customer-provided equipment and in the wiring of the connection of Customer channels to Company-owned facilities.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.4 Customer Equipment and Channels (Cont'd)**

**4.4.2 Inspections (Cont'd)**

- B) If the protective requirements in connections with Customer provided equipment are not being complied with, the Company may take such action as necessary to protect its facilities and personnel and will promptly notify the Customer by registered mail in writing of the need for protective action. In the event that the Customer fails to advise the Company within 10 days after such notice is received or within the time specified in the notice that corrective action has been taken, the Company may take whatever additional action is deemed necessary, including canceling service, to protect its facilities and personnel from harm. The Company will upon request 24 hours in advance provide Customer with a statement of technical parameters that the Customer's equipment must meet.

**4.4.3 Station Equipment**

- A) Customer-provided terminal equipment on the premises of the Customer or other 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, authorized user, or joint user.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.4 Customer Equipment and Channels (Cont'd)**

**4.4.3 Station Equipment (Cont'd)**

- B) The Customer or other 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.

**4.4.4 Interconnection Provisions**

Facilities furnished under this Price List may be connected to Customer-provided terminal equipment in accordance with the provisions of this Price List..

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.5 Customer Deposits and Advance Payments**

**4.5.1 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.

**4.5.2 Deposits**

- A) To safeguard its interests, the Company may require the Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
- 1) two (2) months' charges for a service or facility which has a minimum payment period of one month.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.5 Customer Deposits and Advance Payments (Cont'd)**

**4.5.2 Deposits (Cont'd)**

- B) A deposit may be required in addition to an Advance Payment.
- C) When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account. If the amount of the deposit is insufficient to cover the balance due to the Customer's account, the Company retains the right to collect any amounts owing after the deposit has been applied plus any costs related to the collection of any remaining balance.
- D) Deposits held will accrue interest at a rate specified by the Commission without deductions for any taxes on such deposits. The Company will pay interest on deposits held longer than 90 days, to accrue from the date the deposit is made until it has been refunded, or until a reasonable effort has been made to effect refund.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.6 Payment Arrangements**

**4.6.1 Payment for Service**

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

**A) Taxes**

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

**4.6.2 Billing and Collection of Charges**

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

A) Non-recurring charges are due and payable within 30 days after the date of the invoice.

B) The Company shall present invoices for Recurring Charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within 30 days after the date of the invoice. When billing is based upon Customer usage, usage charges will be billed monthly for the preceding billing period.

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SECTION 4 - REGULATIONS (Cont'd)

4.6 Payment Arrangements (Cont'd)

4.6.2 Billing and Collection of Charges (Cont'd)

- C) When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.
  
- D) Billing of the Customer by the Company will begin on the Service Commencement Date, which is the day on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this Tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.

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**SECTION 4 - REGULATIONS (Cont'd)**

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

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

- E) If any portion of the payment is received by the Company after the date due, or if any portion of the payment is received by the Company in funds which are not immediately available upon presentment, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the date due, multiplied by a late factor. The late factor shall be the lesser of:
  - 1) a rate of 1.5 percent per month; or
  - 2) the highest interest rate which may be applied under state law for commercial transactions.
  
- F) The Customer will be assessed a charge of twenty-five dollars (\$25.00) for each check submitted by the Customer to the Company which a financial institution refuses to honor.
  
- G) If service is disconnected by the Company in accordance with Section 4.6.4 following and later reinstalled, service will be subject to all applicable installation charges. If service is suspended by the Company and later restored, service will be subject to all applicable restoration charges.

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**SECTION 4 - REGULATIONS (Cont'd)****4.6 Payment Arrangements (Cont'd)****4.6.3 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 within 90 days (commencing 5 days after such bills have been mailed or otherwise rendered per the Company's normal course of business). For the purposes of this section, "notice" is defined as written notice 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 items on the bill being disputed.

**B) Late Payment Charge**

- 1) 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 as provided in this Tariff.
- 2) In the event that a billing dispute is resolved by the Company in favor of the Customer, any disputed amount withheld pending resolution of the billing dispute shall not be subject to the late payment charge.
- 3) In the event that a billing dispute is resolved in favor of the Company, the Customer shall pay the late payment charge.

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**SECTION 4 - REGULATIONS (Cont'd)**

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

**4.6.3 Billing Disputes (Cont'd)**

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

- 1) In the event that the Company resolves the billing dispute in favor of a 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.
- 2) 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, the Company will credit the Customer's account for any overpayment by the Customer in the billing period following the resolution of the dispute.
- 3) 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 canceled the service, the Company will issue a refund of any overpayment by the Customer.
- 4) All adjustments or refunds provided by the Company to the Customer at the Customer's request, or provided by the Company to the Customer by way of compromise of a billing dispute, and which are accepted by the Customer, are final and constitute full satisfaction, settlement, and/or compromise of all of the Customer's claims for the billing period for which the adjustment or refund was issued.

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**SECTION 4 - REGULATIONS (Cont'd)**

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

**4.6.3 Billing Disputes (Cont'd)**

**D) Unresolved Billing Disputes**

In the case of a billing dispute between the Customer and the Company for service furnished to the Customer, which cannot be settled to the mutual satisfaction of the Customer and the Company, the Customer has up to 90 days (commencing 5 days after such bills have been mailed or otherwise rendered per the Company's normal course of business) to take the following course of action.

- 1) First, the Customer may request and the Company will provide an in-depth review of the disputed amount.
- 2) Second, 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 32399-0870  
(800) 342-3552

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**SECTION 4 - REGULATIONS (Cont'd)**

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

**4.6.4 Discontinuance of Service for Cause**

- A) Upon nonpayment of any amounts owing to the Company, the Company may, by giving (5) five days prior written notice to the Customer and the Authority, discontinue or suspend service without incurring any liability.
- B) Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving (5) five days prior notice in writing to the Customer and the Authority, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C) Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- D) Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
- E) Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.

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**SECTION 4 - REGULATIONS (Cont'd)**

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

**4.6.4 Discontinuance of Service for Cause (Cont'd)**

- F) In the event of fraudulent use of the Company's Network, the Company may without notice suspend or discontinue service. The Customer will be liable for all related costs. The Customer will also be responsible for payment of any reconnection charges.
  
- G) Upon the Company's discontinuance of service to the Customer under this section, the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this Tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).

**4.6.5 Notice to Company for Cancellation of Service**

Customers desiring to terminate service shall provide Company thirty (30) days written notice of desire to terminate service.

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**SECTION 4 - REGULATIONS (Cont'd)****4.6 Payment Arrangements (Cont'd)****4.6.6 Customer Overpayment**

The Company will pay interest on a Customer overpayment. Customer overpayment shall mean a payment to the Company in excess of the correct charges for service when caused by erroneous billing by the Company. The rate of interest shall be the unadjusted interest rate paid on Customer deposits or the late payment penalty rate, whichever is greater. Interest shall be paid from the date when the Customer overpayment was made, adjusted for any changes in the deposit interest rate or late payment penalty rate, and compounded monthly, until the date when the overpayment is refunded. No interest shall be paid on Customer overpayments that are refunded within thirty (30) days after such overpayment is received by the Company.

**4.6.7 Cancellation of Application for Service**

- (A) The Customer may cancel an application for service prior to installation of the equipment provided that the Customer immediately pay the Company any out of pocket expenses incurred by the Company plus a cancellation fee of two times the applicable monthly recurring service charge.
- (B) Out of pocket expenses include but are not limited to the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.7 Allowances for Interruptions in Service**

**4.7.1 General**

- A) A credit allowance will be given when service is interrupted, except as specified below. 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.

**4.7.2 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;

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.7 Allowances for Interruptions in Service (Cont'd)**

**4.7.2 Limitations of Allowances (Cont'd)**

- C) Due to circumstances or causes beyond the control of the Company;
- 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; and
- H) That was not reported to the Company within thirty (30) days of the date that service was affected.

**4.7.3 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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**SECTION 4 - REGULATIONS (Cont'd)**

**4.7 Allowances for Interruptions in Service (Cont'd)**

**4.7.4 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 rata 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 24-hour period shall be considered as one interruption.

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**SECTION 4 - REGULATIONS (Cont'd)****4.7 Allowances for Interruptions in Service (Cont'd)****4.7.4 Application of Credits for Interruptions in Service (Cont'd)****D) Interruptions of 24 Hours or Less**

<u>Length of Interruption</u>	<u>Interruption Period To Be Credited</u>
Less than 15 minutes	None
15 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 but not including 24 hours	One Day

**E) Continuous Interruption Over 24 Hours and Less Than 72 Hours.** Interruptions over 24 hours and less than 72 hours will be credited 1/5 day for each three-hour period or fraction thereof that occurs following the expiration of the initial 24-hour period. No more than one full day's credit will be allowed for any period of 24 hours.

**F) Interruptions Over 72 Hours.** Interruptions over 72 hours will be credited 2 days for each full 24-hour period that occurs following the expiration of the initial 72-hour period. No more than 30 days credit will be allowed for any one-month period.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.7 Allowances for Interruptions in Service (Cont'd)**

**4.7.5 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 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.

**4.7.6 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, Customer agrees to pay to 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 this Tariff.

**4.7.7 Termination Liability**

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

- 1) all unpaid Non-Recurring charges reasonably expended by Company to establish service to Customer, plus;

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.7 Allowances for Interruptions in Service (Cont'd)**

**4.7.7 Termination Liability (Cont'd)**

- 2) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer, plus;
- 3) all Recurring Charges specified in the applicable Service Order for the balance of the then current term discounted at the prime rate announced in the Wall Street Journal on the third business day following the date of cancellation;
- 4) minus a reasonable allowance for costs avoided by the Company as a direct result of Customer's cancellation.

**4.8 Customer Liability for Unauthorized Use of the Network**

**4.8.1 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.

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.8 Customer Liability for Unauthorized Use of the Network (Cont'd)**

**4.8.1 Unauthorized Use of the Network (Cont'd)**

- B) The following activities constitute fraudulent use:**
- 1) Using the Network to transmit a message, locate a person, or otherwise give or obtain information, without payment for the service;**
  - 2) 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;**
  - 3) 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 PBX fraud perpetrated by Users who gain access to a Customer's facilities, account numbers, security or authorization 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.**

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**SECTION 4 - REGULATIONS (Cont'd)**

**4.8 Customer Liability for Unauthorized Use of the Network (Cont'd)**

**4.8.2 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 liable for all costs incurred as a result of unauthorized use of the Network, including service charges and any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive charges.
- C) 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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**SECTION 5 - SERVICE DESCRIPTIONS AND TECHNICAL STANDARDS**

**5.1 Digital Data**

**5.1.1 High Capacity Service - DS1**

A high capacity service is for the transmission of synchronous serial data at 1.544 Mbps or 2.048 Mbps. Intermediate Bit Rate channels in multiple increments of either 56 kbps or 64 kbps up to 1.544 Mbps are also available.

**5.1.2 Very High Capacity Service - DS3**

A very high capacity service is for transmission of synchronous serial data at 44.736 Mbps or higher.

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**SECTION 5 - SERVICE DESCRIPTIONS AND TECHNICAL STANDARDS (Cont'd)**

**5.2 Dark Fiber**

Dark Fiber facilities shall normally be installed using single mode, fiber optic facilities suitable for provisioning point-to-point communications, transmitting at Customer specified bandwidths. Multimode fiber, at the Customer's request, may be used depending upon facilities availability. These Dark Fiber facilities are available only where sufficient facilities are provided in Company's network, and charges will be provided on an ICB, as filed with the Commission. Dark Fiber will be offered in capacities of one strand and above, with the fiber terminating on a standard optical patch panel. As Company does not provide the electronics, Company cannot test and monitor the facilities. When available, pricing will be on a per strand per mile basis.

When provided, the type of facility and the route of the facility will be determined by Company. Company makes no guarantee or warranty of the suitability of Dark Fiber for purposes intended by the Customer.

**5.3 Telecommunications Relay Service**

For calls received from the relay service, the Company will when billing relay calls discount relay service calls by 50 percent off of the otherwise applicable rate for a voice non-relay call except that where either the calling or called party indicates that either party is both hearing and visually impaired, the call shall be discounted 60 percent off of the otherwise applicable rate for a voice non-relay call.

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**SECTION 5 – SERVICE DESCRIPTIONS AND TECHNICAL STANDARDS (Cont'd)**

**5.4 Promotional Offerings**

The Company will, from time to time, offer special promotions to its customers waiving certain charges. These promotions will be approved by the FPSC with specific starting and ending dates.

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SECTION 6 - RATES & CHARGES

6.1 Dedicated Access Services

6.1.1 High Capacity Service

<u>DS1</u>	<u>MONTHLY</u>	<u>NRC</u>
1.544 Mbps		\$450.00
1st 1/2/ Mile	\$120.00	
Each Add'l 1/2 Mile	\$ 60.00	

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SECTION 6 – RATES & CHARGES (cont'd)

6.1 Dedicated Access Services (Cont'd)

6.1.2 Very High Capacity Service

<u>DS3</u>	<u>MONTHLY</u>	<u>NRC</u>
44.736 Mbps Per system	\$3,500.00	\$3,750.00

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**SECTION 6 - RATES & CHARGES (Cont'd)**

**6.2 Nonrecurring Charge**

Nonrecurring charges will be charged on a time and materials basis.

**6.3 Special Construction**

**6.3.1 Basis for Rates and Charges**

Rates and charges for special construction will be based on the costs incurred by the Company and may include (1) nonrecurring type charges, (2) recurring type charges, (3) termination liabilities, or (4) combinations thereof.

**6.3.2 Basis for Cost Computation**

The costs referred to in 4.1.1 may include one or more of the following items to the extent that they are applicable:

- (a) cost installed of the facilities to be provided, including estimated costs for the rearrangements of existing facilities. Cost installed includes the cost of:
  - (1) equipment and materials provided or used,
  - (2) engineering, labor and supervision,
  - (3) transportation, and
  - (4) rights-of-way;
- (b) cost of maintenance;

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**SECTION 6 - RATES & CHARGES (Cont'd)**

**6.3.2 Basis for Cost Computation (Cont'd)**

- (c) depreciation on the estimated cost installed of any facilities provided, based on the anticipated useful service life of the facilities with an appropriate allowance for the estimated net salvage;
- (d) administration, taxes and uncollectible revenue on the basis of reasonable average costs for these items;
- (e) license preparation, processing and related fees;
- (f) tariff preparation, processing and related fees;
- (g) any other identifiable costs related to the facilities provided; or
- (h) an amount for return and contingencies.

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**SECTION 6 - RATES & CHARGES (Cont'd)**

**6.4 Service Calls**

When a Customer reports trouble to the Company for clearance and no trouble is found in the AFS facilities, the Customer may be responsible for payment of a charge calculated from the time AFS personnel are dispatched to the Customer Premise until the work is completed.

**Service Call Charge Rates**

- 1. Normal AFS business hours..... \$100.00  
for the first ½ hour  
\$50.00 each add'l ½ hour

(Monday to Saturday 7:00 a.m. to 7:00 p.m., except AFS holidays)

- 2. Off-Hour AFS business hours .....\$300.00  
for the first ½ hour  
\$75.00 each add'l ½ hour

(Monday to Saturday 7:00 p.m. to 7:00 a.m., except AFS holidays)

- 3. Sundays and Holiday AFS business hours ..... \$500.00  
for the first ½ hour  
\$125.00 each Add'l ½ hour

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