

Xchange Telecom LLC
PSC Tariff No. 4 – Telephone
Effective Date: October 12, 2018

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NEW YORK
TELECOMMUNICATIONS ACCESS SERVICES TARIFF
OF
XCHANGE TELECOM LLC

This rate sheet contains the descriptions, regulations and rates applicable to the furnishing of Local Transport and Termination of Local and Intra-Lata Calls received from Local Exchange Carriers, where calls originate from such Local Exchange Carriers' end users, within LATA 132. This tariff does not apply to traffic delivered to, or received from, interexchange carriers. This rate sheet is on file with the New York Department of Public Service. Copies may be inspected during normal business hours at the Company's principal place of business at 3611 14th Ave., Suite 550, Brooklyn, NY 11218.

This tariff supersedes in its entirety the prior PSC Tariff No. 4 filed August 1, 2008, and effective September 1, 2008, by Xchange's predecessor in interest Xchange Telecom Corp.

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SYMBOLS

The following are the only symbols used for the purposes indicated below:

- D Delete or discontinue.
- I Change resulting in an increase to a customer's bill.
- M Moved from another rate sheet location.
- N New.
- R Change resulting in a reduction to a customer's bill.
- T Change in text or regulation but no change in rate or charge.

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RATE SHEET FORMAT

A. Sheet Numbering - Sheet numbers appear in the upper right corner of the sheet. Sheets are numbered sequentially. However, new sheets are occasionally added to the rate sheet. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be 14.1.

B. Sheet Revision Numbers - Revision numbers also appear in the upper right corner of each sheet. These numbers are used to determine the most current sheet version on file with the Commission. For example, the 4th revised Sheet 14 cancels the 3rd revised Sheet 14. Because of various suspension periods, deferrals, etc. the Commission follows in its rate sheet approval process, the most current sheet number on file with the Commission is not always the sheet in effect. Consult the Check Sheet for the sheet currently in effect.

C. Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to the next higher level:

- 2.
- 2.1
- 2.1.1
- 2.1.1.A.
- 2.1.1.A.1.
- 2.1.1.A.1.(a)
- 2.1.1.A.1.(a).I.
- 2.1.1.A.1.(a).I.(i).
- 2.1.1.A.1.(a).I.(i).(1).

D. Check Sheets - When a rate sheet filing is made with the FCC, an updated Check Sheet accompanies the rate sheet filing. The Check Sheet lists the sheets contained in the rate sheet, with a cross-reference to the current revision number. When new sheets are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this sheet if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some sheets.) The rate sheet user should refer to the latest Check Sheet to find out if a particular sheet is the most current on file with the FCC.

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SECTION 1 – DEFINITIONS

Certain terms used generally throughout this rate sheet for the Access Services of this Company are defined below.

Access Tandem: An Exchange Carrier's switching system that provides a concentration and distribution function for originating or terminating traffic between local switching centers and Customers' premises.

Carrier or Common Carrier: See Interexchange Carrier or Exchange Carrier.

Commission: The New York Department of Public Service

Company: XCHANGE TELECOM LLC, or Xchange, issuer of this rate sheet

Constructive Order: Delivery of traffic or calls to the Company, directly, or indirectly through a third party, to be terminated by the Company to one of its end users constitutes a Constructive Order by the Customer to purchase terminating Services as described herein.

Customer: The person, firm, corporation or other entity which directly, or indirectly through a third party, delivers traffic to the Company to be terminated by the Company to one of its end users. Customer is responsible for the payment of charges and for compliance with the Company's tariff regulations. The Customer could be a telecommunications carrier or provider, an information service carrier or provider, a wireless carrier or provider, a VOIP carrier or provider or any other entity sending traffic to Company for termination. The term Customer also includes any entity, including a telecommunications carrier, which delivers traffic to Company originated on the network or facilities of any other entity, for termination by Company to its end users.

End User: Any individual, association, corporation, governmental agency or any other entity which constructively orders or subscribes to or utilizes any form of service provided by a Customer; or in the case of a Company End User, any individual, association, corporation, governmental agency or any other entity which orders or subscribes to or utilizes any form of service provided by Company.

Entrance Facility: A trunk facility connecting the Customer's point of presence with the local switching center.

Individual Case Basis: A service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer's situation.

Intra-Lata Traffic: Except in the case of a Wireless Provider, traffic carried solely by local exchange carriers which originates from, and terminates to, end users of local exchange carriers, located within the same LAT A. Under this tariff, intra-Lata traffic does not include traffic originated by an Xchange end-user and delivered directly or indirectly to the end-user's presubscribed IXC other than Xchange, or traffic delivered directly or indirectly by an IXC to the Company for termination to an end user of the Company. All such traffic delivered to or received from an IXC is intra-Lata toll traffic and is subject to switched access charges under the Company's PSC No. 3 Access Tariff.

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Intra-MTA Traffic: Traffic originated by a Wireless Provider's end user within the Wireless Major Trading Area (MTA) established by the Federal Communications Commission which includes the City of New York, and delivered to the Company for termination to a Company end user located in the same MTA. For purposes of this tariff, Intra-MTA Traffic is deemed, and treated as, Intra-Lata Traffic.

Interexchange Carrier (IXC) or Interexchange Common Carrier: Any individual, partnership, association, joint stock company, trust, governmental entity or corporation engaged in state or foreign communication for hire by wire or radio, between two or more exchanges.

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 for the provision and administration of communications services.

Local Exchange Carrier shall have the meaning set forth in 47 USC§ 153(26).

Local Switching Center: The switching center where telephone exchange service Customer station Channels are terminated for purposes of interconnection to each other and to interoffice Trunks.

Local Traffic: Traffic is "Local Traffic" where: (i) the call originates and terminates in the same exchange area; or (ii) the call originates and terminates within different Xchange Exchanges that share a common mandatory local calling area, e.g., a mandatory Extended Local Calling Service (ELCS) or Extended Area Service areas (EAS) or other like types of mandatory local calling scopes.

Mobile Telephone Switching Office: Location where the wireless Customer maintains a facility for purposes of interconnecting to the Company's Network.

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Network Services: The Company's telecommunications Services offered on the Company's Network.

Non-Recurring Charges: The one-time initial charges for services or facilities, including but not limited to charges for construction, installation, or special fees, for which the Customer becomes liable at the time the Service Order is executed.

Off-Hook: The active condition of Switched Access or a telephone exchange service line.

On-Hook: The idle condition of switched access or a telephone exchange service line.

Out of Band Signaling: An exchange access signaling feature which allows customers to exchange call control and signaling information over a communications path which is separate from the message path.

Point of Presence: Location where the Customer maintains a facility for purposes of interconnecting to the Company's Network.

Premises: The space occupied by a Customer or Authorized User in a building or buildings or on contiguous property (except railroad rights-of-way, etc.).

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Recurring Charges: The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

Service Order: The written request for Services executed by the Customer and the Company in a format devised by the Company; or, in the alternative, the submission of a Service Request by the Customer in the manner specified in this rate sheet.

Service(s): The Company's telecommunications Local Transport and Termination Services offered on the Company's Network, also referred to as terminating service, Terminating Service, or "Service". Service involves terminating traffic from Customers received directly or indirectly by Company, to the Company's end users.

Signaling Point of Interface: The Customer designated location where the SS7 signaling information is exchanged between the Company and the Customer.

Signaling System 7 (SS7): The common Channel Out of Band Signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI).

Telecommunications Carrier shall have the meaning set forth in 47 USC§ 153(44); shall have the same meaning as the term "telecommunications provider"; and shall include VOiP providers and Mobile Service (as defined in 47 USC§ 153(27) providers, also known as CMRS providers and CMRS carriers, and also known as Wireless Providers.

Telephone Exchange Service shall have the meaning set forth in 47 USC § 153(47).

Traffic: Any electronic or light pulse transmissions, signals, messages, calls, or data in any form and using any medium, using any technology, including but not limited to electromagnetic, radio wave, or fiber optic transmission, containing information services or telecommunications services, or any other form of content or intelligence, delivered directly or indirectly to Company, by any entity, for termination by Company to its end user. Without limitation, such term includes all telecommunications traffic; traffic to or from the Internet; Voice Over Internet Protocol (VOIP) traffic; and traffic from Mobile Service Providers.

Trunk: A communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

VOIP Provider: Any entity which provides its customers with the ability to communicate any form of message, data, information, content, or other form of intelligence to any other person or entity, using in whole or in part, Voice Over Internet Protocol signaling or technology, or which in whole or part traverses the public internet or a private internet. This term also includes an entity defined or described by the Federal Communications Commission as a VOIP provider or carrier.

Wireless Provider: Any carrier authorized to operate as a provider of cellular, personal communications, paging or any other form of wireless transmission, also referred to as a CMRS Provider or CMRS Carrier.

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SECTION 2 - RULES AND REGULATIONS

2.1 Undertaking of XCHANGE TELECOM LLC

2.1.1 Scope

- (a) Xchange's services offered pursuant to this Rate Sheet is the termination of intra-LATA traffic delivered by Local Exchange Carriers to the Company where traffic originates from the end users of such Local Exchange Carriers, and is terminated by the Company to the Company's end users. Xchange may offer these services over its own or resold facilities.
- (b) Xchange installs, operates, and maintains the communications services provided herein in accordance with the terms and conditions set forth under this Tariff. Xchange may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities as required in the Board's rules and orders, when authorized by the Customer, to allow connection of a Customer's location to the Xchange network. The Customer shall be responsible for all charges due for such service agreement.
- (c) The Company's services and facilities are provided on a monthly basis unless otherwise indicated, and are available twenty-four hours per day, seven days per week.
- (d) The Customer directly delivering intra-Lata traffic to the Company for termination must, at its own cost and expense, deliver or arrange for delivery of such traffic to the Company's switching vehicle located at 470 Vanderbilt Avenue, Brooklyn, New York. In the event such entity indirectly connects to Customer through use of any network or facility of another entity to connect to Company's switch (such as, by way of example the transit or transport services of a telecommunications carrier, or the local or access tandem switch of a telecommunications carrier), Customer shall be solely responsible for all costs, expenses, and charges of such other entity, including but not limited to any tandem transit or access charges.
- (e) This Tariff does not apply to traffic delivered by Company directly or indirectly to an Interexchange Carrier, or received by Company directly or indirectly from an Interexchange Carrier where such Interexchange Carrier is not also the originating end user's Local Exchange Carrier. All such traffic will be subject to, and charged under, the Company's PSC No. 3 - Access Tariff.

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2.1 Undertaking of XCHANGE TELECOM LLC (Cont'd.)

2.1.1 Scope (cont'd)

- (f) Any Customer delivering traffic to the Company for termination shall be liable for the rates and charges for termination, regardless of whether the traffic originated on the network or facilities of, or from an end user of, the Customer delivering such traffic. The Customer on whose network end users originated such traffic will be primarily liable to Company for payment, and Company will initially issue bills to such Customer. If such Customer does not make all payments due to Company, Company shall issue bills to the Customer which actually delivers traffic to Company (i.e., the intermediate Customer, usually the provider of tandem transit service to the entity originating the traffic). Such intermediate Customer shall be fully liable to Company for all charges associated with traffic it delivers to Company, even if such traffic originated from another entity. If such intermediate Customer believes the entity on whose network or facilities the traffic originated should be liable for the termination charges imposed on the intermediate Customer, the intermediate Customer shall, if it so chooses, seek to be reimbursed for such charges by the entity on whose network or facilities the traffic originated. The Company shall have no obligation to look solely to the entity originating such traffic for the applicable charges hereunder, and may look to the intermediate Customer delivering such traffic for payment. The intermediate Customer is liable to the Company for all charges whether or not the intermediate Customer is reimbursed by the entity on whose networks or facilities the traffic originated.
- (g) The charges for Service are due from Customer to the Company for traffic delivered to Company for termination regardless of whether the traffic is received at the Company's switching vehicle (for termination to Company's facilities-based end users) or received by Verizon New York as provider of Advantage® Wholesale Service (formerly known as UNE-P service) to Company.

2.1.2 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 lack of facilities or due to some other cause beyond the Company's control.
- B. The furnishing of service under this rate sheet 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 from time to time, to furnish service as required at the sole discretion of the Company.
- C. The provisioning and restoration of service in emergencies shall be in accordance with Part 64, Subpart D, Appendix A of the Federal Communications Commission's Rules and Regulations, which specifies the priority system for such activities.

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2.1 Undertaking of XCHANGE TELECOM LLC (Cont'd.)

2.1.3 Terms and Conditions

- A. Except as otherwise provided herein, service is provided and billed on the basis of a minutes-of-use of traffic received for termination and shall continue to be provided until Customer ceases to deliver traffic to the Company for termination. Unless otherwise specified herein, for the purpose of computing charges in this tariff, a month is considered to have 30 days. Unless otherwise specified herein, for the purpose of computing charges in this rate sheet, a month is considered to have 30 days.
- B. Customers seeking to cancel service have an affirmative obligation to block traffic originating from or terminating to the Company's network. By originating traffic from or originating traffic to the Company's network, the Customer will have constructively ordered the Company's switched access service.
- C. The charges set forth in this tariff apply to, and shall be paid to the Company by any telecommunications carrier, Information Services Provider, CMRS Provider, VOIP Provider, or other entity which directly or indirectly through another entity, delivers traffic of any nature from any source to the Company for termination to the Company's end users. A carrier which delivers traffic to the Company under the circumstances described above, will be liable for all charges applicable to a Customer under this tariff whether or not such carrier affirmatively orders service from the Company, unless it affirmatively blocks the delivery of traffic to the Company. These obligations apply to traffic of any nature whatsoever, from any provider, entity, or carrier whatsoever, whether considered telecommunications traffic, internet traffic, VOiP traffic, data traffic, information services traffic, or enhanced service traffic, or Mobile Service traffic. Accordingly, any references in this tariff to the duty or obligation of a Customer, including but not limited to the obligation to pay the rates and charges set forth in this tariff, shall apply equally to any telecommunications carrier, Information Service Provider, CMRS Provider, VOiP Provider, Wireless Provider, or other entity.
- D. Intra-Lata traffic delivered to Company by Customer, directly or indirectly, shall be routed over facilities designated by Company solely for Intra-Lata traffic. Customer shall not send any traffic over such designated facilities except Intra-Lata traffic. Switched Access traffic must be delivered to Company over separate facilities, and will be charged at Company's Switched Access Service rates.

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2.1 Undertaking of XCHANGE TELECOM LLC (Cont'd.)

2.1.4 Liability of the Company

- A. In the absence of gross negligence, or willful misconduct, the liability of the Company for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, errors, other defects, or representations by the Company, or use of these services or damages arising out of the failure to furnish the service whether caused by act or omission, shall be limited to the extension of allowances for interruption as set forth in 2.5 below. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- B. With respect to any other claim or suit, by a Customer or by any others, for damages associated with the ordering (including the reservation of any specific number for use with a service), installation (including delays thereof), provision, termination, maintenance, repair interruption or restoration of any service or facilities offered under this rate sheet, and subject to the provisions of the Company's liability, if any, shall be limited as provided herein.
- C. The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction action, or request of The United States government or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any military authority; preemption of existing service in compliance with national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lockouts work stoppages, or other labor difficulties.
- D. The Company shall not be liable for (a) any act or omission of any entity furnishing the Company or the Company's Customers facilities or equipment used for the interconnection with Access Services; or (b) for the acts or omissions of other Common Carriers.

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.1 Undertaking of XCHANGE TELECOM LLC (Cont'd.)

2.1.4 Liability of the Company (cont'd.)

- E. The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- F. The Customer shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits, or other actions, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, condition, location, or use of any installation or equipment provided by the Company. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this Section 2.1.4.F as a condition precedent to such installations.
- G. The Company shall not be liable for any defacement of or damage to Customers Premises resulting from the furnishing of services or equipment on such Premises or the installation or removal thereof, unless such defacement or damage is caused by the gross negligence or willful misconduct of the Company's agents or employees. No agents or employees of other participating Carriers shall be deemed to be agents or employees of the Company.
- H. Notwithstanding the Customer's obligations as set forth in Section 2.3 below, the Company shall be indemnified, defended and held harmless by the Customer, or by others authorized by it to use the Service, against any claim, loss or damage arising from Customer's use of Services furnished under this tariff, including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the material, data, information, or other content transmitted via the Company's Service; and patent infringement claims arising from combining or connecting the Service offered by the Company with apparatus and systems of the Customer or others; all other claims arising out of any act or omission of the Customer or others, in connection with any Service provided by the Company pursuant to this tariff.

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.1 Undertaking of XCHANGE TELECOM LLC (Cont'd.)

2.1.4 Liability of the Company (cont'd.)

- I. The Company shall be indemnified and held harmless by the End User against any claim, loss or damage arising from the End User's use of services offered under this rate sheet including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the End User's own communications; patent infringement claims arising from the End User's combining or connecting the service offered by the Company with facilities or equipment furnished by the End User of another Interexchange Carrier; or all other claims arising out of any act or omission of the End User in connection with any service provided pursuant to this rate sheet.
- J. The entire liability of the Company for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid to the Company by the Customer for the specific services giving rise to the claim, and no action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- K. The Company makes no warranties or representation, express or implied, including warranties of merchantability or fitness for a particular use, except those expressly set forth herein.
- L. The Company shall not be liable for any act or omission of any other company or companies furnishing a portion of the service, or for damages associated with service, Channels, or equipment which result from the operation of Customer-provided systems, equipment, facilities or service which are interconnected with Company services.

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.1 Undertaking of XCHANGE TELECOM LLC (Cont'd.)

2.1.4 Liability of the Company (cont'd.)

- M. The Company does not guarantee nor make any warranty with respect to service installations at locations at which there is present an atmosphere that is explosive, prone to fire, dangerous or otherwise unsuitable for such installations. The Customer and End User shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits or other actions, or any liability whatsoever, 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, or for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, locations or use of service furnished by the Company at such locations.
- N. The Company shall not be liable for the Customer's failure to fulfill its obligations to take all necessary steps including, without limitation, obtaining, installing and maintaining all necessary equipment, materials and supplies, for interconnecting the terminal equipment or communications system of the Customer, or any third party acting as its agent, to the Company's Network. The Customer shall secure all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In addition, the Customer shall ensure that its equipment and/or system or that of its agent is properly interfaced with the Company's service, that the signals emitted into the Company's Network are of the proper mode, band-width, power, data speed, and signal level for the intended use of the Customer and in compliance with the criteria set forth in Section 2.1.6 following, and that the signals do not damage Company equipment, injure its personnel or degrade service to other Customers. If the Customer or its agent fails to maintain and operate its equipment and/or system or that of its agent properly, with resulting imminent harm to Company equipment, personnel, or the quality of service to other Customers, the Company, may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notice, terminate the Customer's service without liability.

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.1 Undertaking of XCHANGE TELECOM LLC (Cont'd.)

2.1.5 Notification of Service-Affecting Activities

The Company will provide the Customer reasonable notification of service-affecting activities within its control that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable, notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

2.1.6 Provisions of Equipment and Facilities

- A. The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in this rate sheet. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.
- B. The Company shall use reasonable efforts to maintain facilities and equipment that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- C. The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided the Customer.
- D. Equipment the Company provides or installs at the Customer Premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the Company provided it.
- E. The Customer shall be responsible for the payment of service charges imposed on the Company by another entity, for visits to the Customer Premises when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

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2.1 Undertaking of XCHANGE TELECOM LLC (Cont'd.)

2.1.6 Provisions of Equipment and Facilities (cont'd.)

- F. The Company shall not be responsible for the installation, operation, or maintenance of any Customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this rate sheet, the responsibility of the Company shall be limited to the furnishing of facilities offered under this rate sheet and to the maintenance and operation of such facilities. Notwithstanding the above, the Company shall not be responsible for:
1. the transmission of signals by Customer-provided equipment or for the quality of, or defects in, such transmission;
 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.
- G. The Company intends to work cooperatively with the Customer to develop network contingency plans in order to maintain maximum network capability following natural or man-made disasters which affect telecommunications services.

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.1 Undertaking of XCHANGE TELECOM LLC (Cont'd.)

2.1.7 Non-routine Installation

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in unusual locations. In such cases, charges 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 charges may apply.

2.1.8 Special Construction

Subject to the arrangement of the Company and to all of the regulations contained in this rate sheet, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken and characterized by one or more of the following:

- 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. where facilities are to be installed over a route other than that which the Company would normally utilize in the furnishing of its services;
- D. where facilities are requested in a quantity greater than that which the Company would normally construct;
- E. where installation is on an expedited basis;

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.1 Undertaking of XCHANGE TELECOM LLC (Cont'd.)

2.1.8 Special Construction (cont'd.)

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

Special construction charges for Switched Access Service will be determined on an individual use basis.

2.1.9 Ownership of Facilities

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

2.2 Prohibited Uses

- 2.2.1 The services the Company offers shall not be used for any unlawful purposes or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.2.2 The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming their use of the Company's offerings complies with relevant laws and applicable state regulations, policies, orders, and decisions; and if the Reseller intends to provide intrastate services, is certified with the appropriate state entity.
- 2.2.3 The Company may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.3 Obligations of the Customer

2.3.1 The Customer shall be responsible for:

- A. the payment of all applicable charges pursuant to this rate sheet;
- B. reimbursing the Company for damage to, or loss of, the Company's facilities or equipment caused by the acts or omissions of the Customer; or the noncompliance by the Customer with these regulations; or by fire or theft or other casualty on the Customer Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company. The Company will, upon reimbursement for damages to its facilities or equipment, cooperate with the Customer in prosecuting a claim against the person causing such damage and the Customer shall be subjugated in the Company's right of recovery of damages to the extent of such payment;
- C. providing at no charge, 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 Customer Premises, and the level of heating and air conditioning necessary to maintain the proper operating environment on such Premises;
- D. obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduit necessary for installation of fiber optic cable and associated equipment used to provide Access Services to the Customer from the cable building entrance or property line to the location of the equipment space described in 2.3.1.C above. Any costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be owned entirely by, or may be charged by the Company to, the Customer. The Company may require the Customer to demonstrate its compliance with this subsection prior to accepting an order for service;

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.3 Obligations of the Customer, (Cont'd.)

2.3.1 The Customer shall be responsible for (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, in the Company's opinion, injury or damage to the Company employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing, and disposing of any hazardous material (e.g. friable asbestos) prior to any construction or installation work;
- 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 Customer is responsible obtaining under Section 2.3.1.D above; and granting or obtaining permission for Company agents or employees to enter the Customer Premises at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company; and
- G. not creating or allowing to be placed or maintained any liens or other encumbrances on the Company's equipment or facilities.

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.3 Obligations of the Customer, (Cont'd.)

2.3.2 Claims

With respect to any service or facility provided by the Company, Customer shall indemnify, defend and hold harmless the Company from all claims, actions, damages, liabilities, costs, and expenses, including reasonable attorneys' fees for:

- A. any loss, destruction or damage to property of the Company or any third party, or the death of or injury to persons, including, but not limited to employees or invitees of either the Company or the Customer, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees;
- B. any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.3 Obligations of the Customer (Cont'd.)

2.3.3 Jurisdictional Reporting

- A. Company measured minutes, or minutes measured by an ILEC or any other tandem provider, will be used to determine call jurisdiction and billable minutes where available. Only where such measured call detail is not available will the Customer reported usage be utilized to determine billing.
- B. B. The Customer shall keep records of call detail from which the jurisdictional nature and identity of the originator of traffic delivered to the Company for termination can be ascertained and, upon request of the Company, shall make the records available for inspection as reasonably necessary for purposes of verification. The Company reserves the right to conduct an audit at any time during the year upon reasonable notice to Customer. The Customer, as its own expense, has the right to retain an independent auditing firm.
- C. All traffic delivered directly or indirectly to the Company shall contain sufficient information in the data stream to enable the Company to determine regulatory jurisdiction of, and the entity originating, all traffic. If any traffic received directly or indirectly from Customer does not contain such information, the Company shall assign the higher of the applicable interstate or intrastate switched access rates to all such traffic not containing the information necessary to accurately determine the jurisdiction of the call. Traffic received by the Company without proper data stream information to identify such traffic as intra-Lata will be billable as switched access minutes under Company's intrastate or interstate switched access tariffs or rate schedules.
- D. Any traffic received by Company over facilities used for intra-Lata traffic, which is not Intra-Lata traffic, will be charged at Company's intrastate or interstate switched access charge rates.

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.4 Payment Arrangements

2.4.1 Payment for Service

The Customer is responsible for payment of all charges for services and facilities furnished by the Company to the Customer or its Joint or Authorized Users.

A. Taxes

In addition to charges for Services and facilities set forth in this tariff, the Customer is responsible for the payment of any sales, use, gross receipts, excise, access or other local, state and federal 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 Services. All such taxes shall be separately designated as taxes or surcharges on the Company's invoices.

1. **Surcharge for MTA and State Gross Income and Gross Earnings Taxes**
A monthly surcharge to recover the additional expense related to the State and MT A Gross Income and Gross Earnings Taxes, and Telecommunications Excise Tax, applies to the recurring and nonrecurring rates and charges for all Service except returned check charges and late payment charges. The applicable Surcharge rates are shown on Statement 1 which is at the end of this section. Any changes to these rates will be filed on 15 days' notice to customers and the Commission, and as directed by the Commission. Whenever the state levies a new tax on the Company's gross revenues, repeals such a tax, or changes the rate of such a tax, the Commission may approve new surcharge factors, and the Company will file a revised statement as directed or approved by the Commission.

2. **Village or Municipal Surcharge On Local Utility Gross Revenue Taxes**
In certain cities and villages a municipal surcharge related to the Local Utility Gross Revenue Taxes applies to the recurring and nonrecurring rates and charges for Service except returned check charges and late payment charges. The percentage rate of the surcharge in each locality where such a surcharge applies is equal to the following:

$$\frac{\text{statutory rate}}{1 - \text{statutory rate}}$$

3. The surcharge statement shall be filed at least fifteen business days before the effective date. The effective date of the statement shall not be prior to the effective date of the surcharge and no sooner than the date when the tax enactment is filed with the Secretary of State. The surcharge shall be applicable to bills subject to the tax enactment that are rendered on or after the effective date of the statement. If the tax enactment either ceases to be effective or is modified so as to reduce the tax rate, the surcharge will be changed accordingly within 5 business days.

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.4 Payment Arrangements (Cont'd.)

2.4.1 Taxes (Cont'd)

4. Introduction, cancellation, or modification of a surcharge will be effective on the date of the customer's first bill rendered after the effective date of the change.

5. All surcharge amounts collected with respect to State, MTA, and local gross revenue, gross earnings, and telecommunications excise taxes are themselves subject to such taxes, and will be grossed-up to reflect such compounding. In addition, all such gross-up amounts are subject to state and local sales taxes and federal excise taxes.

B. Non-Tax Surcharges

In addition to all taxes and tax surcharges set forth above, Customer will pay surcharges which Company is authorized by law to impose, including but not limited to surcharges to collect Universal Service Assessments and any other form of regulatory program or assessments.

2.4.2 Billing and Collection of Charges

Unless otherwise specified herein, bills are due and payable upon receipt.

The Company shall bill on a current basis all charges incurred by, and credits due to, the Customer under this Tariff attributable to services established, provided, or discontinued during the preceding billing period. Any known unbilled charges for prior periods and any known adjustments also will be applied to the current bill.

Non-Recurring Charges are due and payable within 30 days after the invoice date.

The Company shall present invoices for all Charges monthly to the Customer.

Amounts not paid within 30 days after the date of invoice will be considered past due. The Company will assess a late payment charge equal to 1.5% per month for any past due balance that exceeds 30 days. If the Company becomes concerned at any time about the ability of a Customer to pay its bills, the Company may require that the Customer pay its bills within a specified number of days and make such payments in cash or the equivalent of cash.

If a service is disconnected by the Company in accordance with Section 2.4.3 following and later restored, restoration of service will be subject to all applicable installation charges.

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.4 Payment Arrangements (Cont'd.)

2.4.2 Billing and Collection of Charges (cont'd.)

The Customer shall notify the Company of any disputed items on an invoice within 90 days of receipt of the invoice. If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the Commission in accordance with the Commission's rules of procedures.

Any disputed charges must be paid when due. After the dispute is settled, the Customer will be credited with any payments in excess of those actually due the Company. The Company will also remit interest for all such credited amounts. Interest will be paid at rate required by the Commission for customer deposits.

2.4.3 Refusal and Discontinuance of Service

- A. Upon nonpayment of any amounts owing to the Company, the Company may, by giving requisite prior written notice to the Customer 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 30 days' prior notice in writing to the Customer, 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 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 2 - RULES AND REGULATIONS, (Cont'd.)

2.4 Payment Arrangements (Cont'd.)

2.4.3 Refusal and Discontinuance of Service (cont'd.)

- E. Upon the Company's discontinuance of service to the Customer under Section 2.4.3.A or 2.4.3.B above, 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 rate sheet, 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.
- F. The Company may discontinue the furnishings of any and/or all service(s) to Customer, without incurring any liability:
 - 1. Immediately and without notice if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or services. The Company may discontinue service pursuant to this sub-section 2.4.3.F.1.(a-e), if
 - (a) The Customer refuses to furnish information to the Company regarding the Customer's credit-worthiness, its past or current use of Common Carrier communications services or its planned use of service(s); or
 - (b) The Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of Common Carrier communications services, or its planned use of the Company's service(s); or

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.4 Payment Arrangements (Cont'd.)

2.4.3 Refusal and Discontinuance of Service (cont'd.)

F. (cont'd)

1. (cont'd)

- (c) The Customer states that it will not comply with a request of the Company for security for the payment for service(s) in accordance with Section 2.4.3.A above; or
- (d) The Customer has been given written notice by the Company of any past due amount (which remains unpaid in whole or in part) for any of the Company's other Common Carrier communications services to which the Customer either subscribes or had subscribed or used; or
- (e) The Customer uses, or attempts or use, service with the intent to void the payment, either in whole or in part, of the rate sheet charges for the service by:
 - I. Using or attempting to use service by rearranging, tampering with, or making connections to the Company's service not authorized by this rate sheet, or
 - II. Using tricks, schemes, false or invalid numbers, false credit devices, electronic devices; or
 - III. By delivering calls to or accepting calls from the Company's End User locations over Company switched local exchange services; or
 - IV. Continuing to have Company End Users presubscribed to the Customer; or
 - V. Any other Fraudulent means or devices; or

2. Upon ten (10) days' written notice to the Customer of any sum thirty (30) days past due;

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.4 Payment Arrangements (Cont'd.)

2.4.3 Refusal and Discontinuance of Service (cont'd.)

F. (cont'd)

3. Upon ten (10) days' written notice to the Customer, after failure of the Customer to comply with a request made by the Company for security for the payment of service in accordance with Section 2.4.3.A, above; or
4. Seven (7) days after sending the Customer written notice of noncompliance with any provision of this rate sheet if the noncompliance is not corrected within that seven (7) day period. The discontinuance of service(s) by the Company pursuant to this Section does not relieve the Customer of any obligation to pay the Company for charges due and owing for service(s) furnished up to the time of discontinuance.

G. In the event the Company incurs fees or expenses, including attorney's fees, in collecting, or attempting to collect, any charges owed the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

H. As used in A-G above, the terms discontinuance and suspension include (a) the Company blocking any incoming traffic received directly or indirectly from Customer, and refusing to terminate such traffic to Company's end users, and/or (b) the Company blocking traffic from Company's end users to Customer or Customer's end users.

2.4.4 Cancellation of Application for Service

Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in 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 services ordered, including installation charges, and all charges others levy against the company that would have been chargeable to the Customer had service begun.

The special charges described will be calculated and applied on a case-by-case basis.

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.5 Allowances for Interruptions in Service

Interruptions in service which are not due to the negligence of or noncompliance with the provisions of this rate sheet by, the Customer or the operation or malfunction of the facilities, power, or equipment provided by the Customer, will be credited to the Customer as set forth in 2.5.1 for the part of the service that the interruption affects.

The credit allowance will be calculated by the Company after the Customer notifies the Company of service interruption. The amount of the allowance will depend on the length of the outage and the service impacted. Service Outage conditions are defined as complete loss of call origination and/or receipt capability. Credit Allowances, if any, will be deducted from the charges payable by the IXC and will be expressly indicated on the next invoice. A Service Outage begins when the IXC reports the outage to the Company.

A Service Outage ends when the affected circuit and/or associated Company equipment is fully operational in accordance with the technical specifications.

Credit allowances do not apply to outages (i) caused by the IXC or Customer or Customer's end-users; (ii) due to failure of equipment provided by the IXC or Customer or Customer's end-users; (iii) during any period in which the Company is not given access to the service premises; (iv) failures of LEC facilities or equipment which are carrying the failures resulting from the activities or negligence of LEC employees; (v) inability to gain access to the IXC's or Customer's or Customer's end-users' equipment; and (vii) due to mutually agreed upon maintenance and repair.

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SECTION 2 - RULES AND REGULATIONS, (Cont'd.)

2.5 Allowances for Interruptions in Service, (Cont'd.)

2.5.1 Limitations on Allowances

No credit allowance will be made for:

- A. interruptions due to the negligence of, or noncompliance with the provisions of this rate sheet by, the Customer, Authorized User, Joint-User, or other Common Carrier providing service connected to the service of Company;
- B. interruptions due to the negligence of any person other than the Company, including, but not limited to, the Customer or other Common Carriers connected to the Company's facilities;
- C. interruptions due to the failure or malfunction of non-Company equipment;
- D. interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- E. interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- F. interruptions of service 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. interruption of service due to circumstances or causes beyond the control of the Company.

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2.6 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 the 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 pursuant to any financing, merger or reorganization of the Company.

2.7 Notices and Communications

- 2.7.1 The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that the Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- 2.7.2 The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that the Company may designate a separate address, on each bill for service, to which the Customer shall mail payment on that bill.
- 2.7.3 All notices or other communications required to be given pursuant to this rate sheet shall be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following deposit of the notice, communication, or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 2.7.4 The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

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SECTION 3 - ORDERING OPTIONS FOR SERVICE

3.1 General

This section sets forth the regulations and order related charges for Service Requests for Services, as defined in this tariff. These charges are in addition to other applicable charges set forth in other sections of this tariff.

3.1.1 Ordering Conditions

Customer may order switched access through a Constructive Order, as defined herein, or through an Service.

The format and terms of the Service Request will be as specified by the Company

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SECTION 3 - ORDERING OPTIONS FOR SERVICE, (Cont'd.)

3.2 Miscellaneous Charges

Customer Requested Due Date Change ^{1,2}	\$50, per order
Customer Requested Expedite ²	\$250, per location, per order
Cancellation (after 3 business days from order placement) ²	Full NRCs + \$250, per order
Design Change, DS0/DS1 ²	\$150, per circuit
Design Change, DS3 and higher ²	\$300, per circuit
Administrative Processing ²	\$25, per order

¹ Company Due Date Change Policy - No due date change accepted at or after four (4) days prior to the current due date. If a Customer request is received during that time period, the supplemental charge will apply and, in addition, the billing will start on the current due date without exception.

² For services involving facilities leased from other telecommunications providers, Supplementary Charges will be priced on an Individual Case Basis, and will be based upon a pass-through of all charges assessed by other providers, and the Company's administrative costs.

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SECTION 4 - RATES

4.1 General

Customer will pay the following per minute rate for Intra-Lata traffic delivered to Company, directly or indirectly, for termination to or origination from Company's end users:

Per Minute Rate for traffic delivered to Customer by Company, directly or indirectly, for origination:
Per minute \$.002893

Per Minute Rate for traffic delivered to Company by Customer, directly or indirectly, for termination:
Rates as per Xchange Federal Tariff No. 1, on file with the FCC

All call lengths are rounded up to the next full minute.

Notwithstanding the above, where traffic from a Customer originated from its end users to Company in any month exceeds a ratio of 3: 1, (i.e., Intra-Lata traffic from Customer to Company exceeds three times the Intra-Lata traffic from Company to Customer), traffic from that Customer's end users in excess of such ratio shall be deemed Convergent Traffic. Convergent Traffic MOUs shall be billed at the per minute rate set forth in Xchange Federal Tariff No. 1, on file with the FCC.

All traffic from Customer to Company within the 3: 1 ratio shall be billed at the per minute rate of \$.002893. Where payment is made by an intermediate Customer, the rate set forth in Xchange Federal Tariff No. 1, on file with the FCC shall apply to all traffic delivered to Company by the intermediate Customer. The Company's Convergent Traffic rate is available only to an entity which applies the same convergent traffic rate to traffic from the Company to such entity above the 3: 1 ratio. If such entity does not apply the convergent traffic rate to Company, all traffic from such entity to Company (whether above or below the 3:1 ratio) will be charged at set forth in Xchange Federal Tariff No. 1, on file with the FCC ,per minute.

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SECTION 5 - CONTRACTS AND INDIVIDUAL CASE BASIS ARRANGEMENTS

5.1 Contracts

The Company may provide any of the services offered under this rate sheet, or combinations of services, to Customers on a contractual basis. The terms and conditions of each contract offering are subject to the agreement of both the Customer and Company. Such contract offerings will be made available to similarly situated Customers in substantially similar circumstances. Rates in other sections of this rate sheet do not apply to Customers who agree to contract arrangements, with respect to services within the scope of the contract.

Services provided under contract are not eligible for any promotional offerings which may be offered by the Company from time to time.

5.2 Individual Case Basis Arrangements

Arrangements will be developed on an individual case basis (ICB) in response to a bona fide special request from a Customer or prospective Customer to develop a competitive bid for a service. ICB rates will be offered to the Customer in writing and on a non-discriminatory basis.