

Silicon Business System, Inc d/b/a Potato and PING AN  
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**Silicon Business System, Inc**  
d/b/a Potato and PING AN

REGULATIONS and SCHEDULE of ACCESS CHARGES  
APPLYING to COMMUNICATIONS SERVICES WITHIN  
THE STATE of NEW YORK

Applicable in New York State

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EXPLANATION of NOTES

- (C) Indicates Changed Regulation
- (D) Indicates Discontinued Rate or Regulation
- (I) Indicates Rate Increase
- (M) Indicates Move in Location of Text
- (N) Indicates New Rate or Regulation
- (R) Indicates Rate Reduction
- (T) Indicates Change of Text Only

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## **RULE 1. APPLICATION OF TARIFF**

### **1.1 General**

This Tariff sets forth the regulations, rates and charges for the provision of intrastate Access Services and facilities (hereinafter "Services") by Silicon Business System, Inc. The rates for the Services described herein are set at the rates that mirror those of Verizon, both intrastate and interstate, the incumbent carrier in the localities where the Company provides Service.

#### **1.1.1 No Waiver**

No term or provision in this Tariff shall be waived, unless such waiver or consent is in writing and signed by the Company and the Buyer to which it is attributed. No consent by the Company or Buyer, as applicable, to, or waiver of, a breach or default by the other, whether express or implied, shall constitute a consent to or waiver of, any subsequent breach or default.

#### **1.1.2 Partial Invalidity**

If any provision of this Tariff shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render the terms of this Tariff unenforceable, but rather this Tariff shall be construed as if not containing the invalid or unenforceable provision.

#### **1.1.3 Title or Ownership Rights**

The payment of rates and charges by Buyers for the Services offered under the provisions of this Tariff does not assign, confer, or transfer leasehold, title, or ownership rights to proposals, equipment, or facilities developed or utilized respectively by the Company in provision of such Services.

## **RULE 2. UNDERTAKING OF THE COMPANY**

### **2.1 Scope**

The Company undertakes to provide the Service(s), subject to the availability of necessary facilities. The Company is responsible only for the installation, operation, and maintenance of the Services and facilities it provides. The Company does not warrant that its services and facilities meet standards other than those expressly set forth in this Tariff.

2.1.1 If any Buyer makes use of any Service, the Buyer shall be deemed to have made a Constructive Order for the Service, and the failure to enter into a written or oral service agreement will not eliminate any payment obligation under this Tariff.

2.1.2 The Buyer shall be solely responsible for message content.

2.1.3 The Company will, for maintenance purposes, test its service to the extent necessary to detect and/or clear troubles.

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2.1.4 Service may be terminated by the Company on written notice to the Buyer if the Buyer is using the service in violation of the Tariff or if the Buyer is using the service in violation of the law.

2.1.5 Assignment or Transfer of Services

(a) The Buyer may assign or transfer the use of Service(s) provided under this Tariff only if approved by Company in writing and only if assignee or transferee assumes any and all outstanding indebtedness for such Services, and any applicable unexpired portion of a minimum period and/or any termination liability applicable to such Service(s).

(b) The assignment or transfer of Services does not relieve or discharge the assignor or transferor from remaining jointly or severally liable with the assignee or transferee for any obligations existing at the time of the assignment or transfer.

### **RULE 3. LIMITATIONS**

#### **3.1 Provisioning Sequence**

The Services offered herein will be provided to Buyers on a first-come, first-served basis.

#### **3.2 Liability**

(a) With respect to any and all claims or suits, regardless of the theory of liability, the liability of the Company for damages arising out of the installation, provision, furnishing, termination, maintenance, repair, or restoration of its Services and Facilities, including but not limited to mistakes, omissions, interruptions, delays, or errors or other defects, representations, or use of these services or arising out of failure to furnish the Service, whether caused by acts or omission, shall be limited to an amount which shall not exceed an amount equal to the proportionate charge for the period during which the Service was affected. The grant of such an amount for interruption shall be the sole remedy of the Buyer 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 Buyer as a result of any Company Service or equipment, or facilities, or the acts or omissions or negligence of the Company's employees, agents, or contractors.

(b) 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 unaffiliated third parties, acts of God, fire, flood, explosion, or other catastrophes; any law, order, regulation, direction, action, or request of the U. S. Government, 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 civil or military authority; national emergencies; insurrections, riots, wars; unavailability of rights-of-way or materials; or strikes, lockouts, work stoppages, or other labor difficulties.

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(c) The Company shall not be liable for: (a) any act or omission of any entity furnishing to the Company or to the Company's Buyer's facilities or equipment used for connection to or in connection with the Company's Services; or (b) the acts or omissions of other common carriers or warehousemen.

(d) The Company shall not be liable for any damages or losses due to the fault or negligence of the Buyer arising from or related to the failure or malfunction of Buyer-provided equipment or facilities.

(e) The Company does not guarantee nor make any warranty with respect to Services it provides for use in an explosive atmosphere. The Buyer shall indemnify, defend, and hold the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any loss, damage, or destruction of any property, whether owned by the Buyer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal or use of any Service so provided.

(f) The Company is not liable for any defacement of or damage to Buyer property resulting from the furnishing of Service(s) or equipment or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's employees, contractors, or agents.

(g) The Company shall be indemnified, defended and held harmless by the Buyer against any claim, loss or damage arising from the Buyer's use of Service(s), involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Buyer's own communications.

(h) The Company makes no warranties, express or implied either in fact or by operation or otherwise, including warranties of merchantability or fitness for a particular use.

#### **RULE 4. PROVISION OF SERVICES, EQUIPMENT AND FACILITIES**

4.1 The Company shall use reasonable efforts to make available Service(s) to a Buyer on or before a requested date, subject to the provisions of, and compliance by the Buyer with, the regulations contained in this Tariff, and subject to the availability of facilities and services, including those provided by other carriers relied upon by the Company for the provision of the Company's Service(s). The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing Service to any Buyer.

4.2 The Company shall use reasonable efforts to maintain Services, facilities and equipment that it may furnish to the Buyer. The Buyer may not, nor may Buyer permit others to rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the Services, facilities, or equipment installed by the Company, except upon written consent of the Company.

4.3 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 Buyer.

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4.4 Any equipment that the Company may provide or install on Buyer's property for use in connection with the Service(s) shall not be used for any purpose other than that for which the Company provided it.

4.5 The option exclusive to request a specific path or channel is not provided to the Buyer, but is within the purview of the Company.

4.6 The Company shall not be responsible for the installation, operation, or maintenance of any Buyer-provided communications equipment, unless approved by the Company. Where such equipment is connected to the facilities furnished pursuant to this Tariff, the responsibility of the Company shall be limited to the furnishing of facilities or Service(s) offered under this Tariff, and to the maintenance and operation of such facilities or Service(s). Subject to this responsibility, the Company shall not be responsible for:

(a) the transmission of signals by Buyer-provided equipment or for the quality of, or defects in, such transmission;

(b) the reception of signals by Buyer-provided Equipment.

#### 4.7 Services, Equipment, or Facilities

4.7.1 The Company reserves the right to limit or allocate the use of existing facilities, or of additional facilities offered, when necessary due to a lack of facilities or some other cause beyond the Company's control.

4.7.2 The Company may, where such action is reasonably required in the operation of its business, substitute, change or rearrange any facilities used in providing Service(s) under this Tariff. The Company shall not be responsible if any such substitution, change or rearrangement renders any Buyer-provided equipment, facilities, or Service(s) obsolete or requires modification or alteration thereof or otherwise affects the operating characteristics of the equipment, facility or service. The Company will provide reasonable notification of any such change in facilities described above to the Buyer in writing where reasonably possible. The Company will work cooperatively with the Buyer and provide reasonable time for any redesign and implementation required by the change in operating characteristics. The Company shall use reasonable efforts to maintain only the facilities and equipment that it furnishes to the Buyer. The Buyer may not, nor may the Buyer 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.

4.7.3 The Company shall not be responsible for the installation, operation, or maintenance of any Buyer-provided equipment, unless otherwise agreed to upon terms mutually acceptable to both the Company and the Buyer and evidenced by a signed written document. Where such equipment is connected to the facilities furnished under this Tariff, the responsibility of the Company shall be limited to the furnishing of Services and associated facilities and equipment offered under this Tariff and to the maintenance and operation of such Services. Subject to this responsibility, the Company shall not be responsible for:



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- (a) the transmission of signals by Buyer-provided equipment or for the quality of, or defects in, such transmission; or
- (b) the reception of signals by Buyer-provided equipment; or
- (c) network control signaling where such signaling is performed by Buyer-provided network control signaling equipment.

#### 4.8 Notification of Service-Affecting Activities

4.8.1 The Company will provide the Buyer reasonable notification of Service-affecting activities 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 preventive maintenance. No specific advance notice period is applicable to all Service activities. The Company will work cooperatively with the Buyer 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 Buyer might not be possible.

### **RULE 5. OBLIGATIONS OF THE BUYER**

#### 5.1 General Obligations

5.1.1 The Buyer will ensure that the characteristics and methods of operation of any circuits, facilities or equipment not provided by the Company and associated with the facilities utilized to provide Service(s) under this Tariff shall not interfere with or impair Service over facilities of the Company; cause damage to their plant; impair privacy or create hazards to employees or the public.

5.1.2 The Service provided under this Tariff must not be used for an unlawful purpose or used in an abusive manner which would reasonably be expected to frighten, abuse, torment or harass another or interfere with use of Service by one or more other Buyers.

5.1.3 The Buyer is responsible for damage to or loss of the Company's facilities or equipment caused by acts or omissions of the Buyer; or noncompliance by the Buyer; or by fire or theft or other casualty at the Buyer's location, unless caused by the negligence or willful misconduct of the Company's employees or agents.

5.1.4 The Buyer will provide 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 that may be installed at the Buyer's location, and the level of heating and air conditioning necessary to maintain proper operating environment at such location.

5.1.5 Where applicable, the Buyer will obtain, maintain, and otherwise have full responsibility for

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all permissions, approvals, consents, licenses, permits, and rights-of-way and conduit necessary for installation of cables and associated equipment used to provide services to the Buyer from the building service entrance or property line to the location of the equipment space. Any costs associated with obtaining and maintaining the permissions, approvals, consents, licenses, permits, and rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be borne entirely by, or may be charged by the Company, to, the Buyer.

5.1.6 The Buyer will provide a safe place to work and will comply with all laws and regulations regarding the working conditions at the location at which the Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Buyer 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's employees or property might result from installation or maintenance by the Company. The Buyer shall be responsible for identifying, monitoring, removing, and disposing of any hazardous material (e.g., friable asbestos) prior to any construction or installation work.

5.1.7 The Company will comply with all laws and regulations applicable to, and will obtain all permissions, approvals, consents, licenses, and permits as may be required with respect to the location of Company facilities and equipment at any Buyer location or the rights-of-way for which Buyer is responsible, and will grant or obtain permission for Company agents or employees to enter such location of the Buyer at any time for the purpose of installing, inspecting, maintaining, testing, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company.

5.1.8 The Buyer must not create or allow to be placed, any liens or other encumbrances on the Company's equipment or facilities.

5.1.9 Buyers must use the Service provided by the Company in a manner, and at all times, consistent with the Tariff obligations identified herein and shall not utilize the Company's Service(s) in any manner that:

- (a) Interferes with or impairs the Services(s) of the Company, other carriers, or other Buyers;
- (b) Causes damage to Company-provided facilities;
- (c) Interferes with the privacy of communications;
- (d) Creates a hazard to the Company's employees, contractors, or agents or the public; or
- (e) Interferes, frightens, abuses, torments, harasses any person or entity or unreasonably interferes with the use of the Company's Service by others.

5.1.10 The Buyer shall be fully liable for payment of all applicable rates, charges and fees for any Service provided by the Company, if that Service is received by the Buyer. Buyer is liable for

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payment of all calls that originate on its network, including actual calls made by Buyer, Buyer's End Users, or unauthorized third parties (*e.g.*, fraudulent calls).

5.1.11 The Buyer shall reimburse the Company for damages to Company facilities utilized to provide services under this Tariff caused by the negligence or willful act of the Buyer, or resulting from improper use of the Company facilities, or due to malfunction of any facilities or equipment provided for or by the Buyer. Nothing in the foregoing provision shall be interpreted to hold one Buyer liable for another Buyer's actions. The Company will, upon reimbursement for damages, cooperate with the Buyer in prosecuting a claim against the person causing such damage, and the Buyer shall be subrogated to the right of recovery by the Company for the damages to the extent of such payment.

5.1.12 The Buyer shall be responsible for the payment of technician charges as set forth herein for visits by the Company's employees, contractors, or agents to the Buyer's location when a 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 Buyer.

## 5.2 Claims

With respect to any Service, facility, or equipment provided by the Company, Buyer shall indemnify, defend, and hold harmless the Company from and against all claims, actions, damages, liabilities, costs, and expenses for:

5.2.1 any loss, destruction, or damage to property of the Company or any third party, or the death or injury to persons, including, but not limited to, employees, or invitees of either party, arising out of any act or omission of the Buyer, its employees, agents, representatives, or invitees in the course of using the Services, facilities, or equipment provided under this Tariff; or

5.2.2 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 Buyer, including, without limitation, use of the Company's Service(s) and facilities in a manner not contemplated by the agreement between Buyer and Company.

## 5.3 Buyer Equipment and Channels

### 5.3.1 General

(a) A Buyer may transmit or receive information or signals via the facilities of the Company. The Company's Services are designed primarily, but not exclusively, for the transmission of voice grade telephonic signals, except as otherwise stated in this Tariff. The Company does not guarantee that its Service(s) will be suitable for any particular purposes other than as specifically and expressly stated in this Tariff.

### 5.3.2 Company Equipment

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(a) If any Company equipment is installed at the Buyer location, the Buyer is required to maintain such equipment in good working order at the expense of the Buyer. The Buyer shall provide electric power to such equipment at its own expense, unless otherwise agreed to by the Company in writing.

(b) The Buyer is responsible for ensuring that Buyer-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

#### 5.3.3 Interconnection of Facilities

(a) Service furnished by the Company may be interconnected with services or facilities of other authorized communications common carriers and with private systems, subject to technical limitations established from time to time by the Company. Service furnished by the Company is not part of a joint undertaking with such other common carriers or systems. Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Services and the channels, facilities, or equipment of others shall be provided at the Buyer's expense.

(b) If harm to the Company's network, personnel or services is imminent or is occurring due to interconnection with another carrier's services or use of unauthorized or malfunctioning Buyer equipment, the Company reserves the right to terminate Buyer's service immediately, with no prior notice required.

(c) Upon request and in the sole discretion of Company, facilities furnished under this Tariff may be connected to Buyer-provided equipment. All such equipment shall be registered by the FCC pursuant to Part 68 of Title 47, Code of Federal Regulations; and all Buyer-provided wiring shall be installed and maintained in compliance with those regulations.

(d) The Buyer is responsible for taking all necessary legal steps for interconnecting Buyer-provided equipment or systems with Company's facilities. Buyer shall secure all licenses, permits, approvals, authorizations, consent, permissions, rights-of-way, and other arrangements necessary for such interconnection.

(e) Unless otherwise agreed by the Company, the Buyer shall ensure that the facilities or equipment provided by another carrier are properly interconnected with the facilities or equipment of the Company. The Company may require the use of protective equipment at the Buyer's expense.

#### 5.3.4 Inspections

(a) Upon notification to the Buyer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Buyer is complying with the requirements set forth in this Section.

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

#### 5.3.5 Prohibited Uses

(a) The Service(s) that the Company offers shall not be used for any unlawful purpose or for any use as to which the Buyer has not obtained all required governmental and other third-party approvals, authorization, licenses, consents, and/or permits.

(b) The Company may require applicants for Service who intend to use the Company's offerings for resale and/or shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws, and FCC regulations, policies, guidelines, orders and decisions.

(c) The Company may require a Buyer to immediately stop its transmission of signals if said transmission is believed to be causing interference to others.

## **RULE 6. PAYMENT AND BILLING**

### **6.1 Payment Arrangements**

#### **6.1.1 Payment for Service**

The Company will endeavor to bill on a current basis all charges incurred by and credits due to the Buyer under this Tariff attributable to Service(s) established or discontinued during the preceding billing period, as described in Section 6.1.2. The Buyer is responsible for the payment of all charges for Service(s) furnished by the Company. All bills are due within 30 days after the invoice date and are payable in immediately available funds. If such payment date would cause payment to become due on a Saturday, Sunday, or holiday (as recognized by the federal government or applicable state government), such payment shall be due on the next business day.

6.1.1.1 The Buyer is responsible for payment of appropriate 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 or based upon the provision, sale or use of the Company's Service(s), unless otherwise agreed to in writing, pursuant to an ICB contract, the terms of which are available to similarly situated Buyers and will be filed with the NY Public Service Commission.

6.1.1.2 Without limitation to the foregoing, the Buyer is responsible for any and all cost(s)

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incurred as the result of:

- (a) any delegation of authority resulting in the use of Buyer's communications equipment and/or network services which result in the placement of Calls via the Company;
- (b) any and all use of Company Services, including Calls which the Buyer did not individually authorize, including any and all fraudulent or allegedly fraudulent calls that originate on the Buyer's network;
- (c) any Calls placed by or through the Buyer's equipment via any remote access feature(s);
- (d) any use of the Company's Services and/or activities, whether or not accompanied by a written order.

#### 6.1.2 Billing and Collection of Charges

6.1.2.1 The Company will endeavor to bill usage charges monthly for the preceding billing period; however, the Company's failure to do so shall not affect the Buyer's liability for such charges irrespective of the length of delay between the date of usage and the Company's billing for such usage. Company is permitted to bill for usage within twenty-four (24) months of the date upon which service was provided, assuming that the Buyer was aware of the unbilled Services during the period the Services were unbilled.

6.1.2.2 Each bill will include industry standard descriptions of Service(s) rendered for the period covered, any known unbilled non-usage sensitive charges for prior periods and unbilled usage charges for any prior period.

- (a) Buyer's billing will begin upon delivery of Calls to, or receipt of Calls from the Company. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued and ceases to be used by Buyer.

6.1.2.3 A Nonrecurring Charge is due and payable within 30 days after the invoice date.

6.1.2.4 Charges based on measured usage will be included on the next invoice rendered following the end of the month in which the usage occurs.

6.1.2.5 When non-usage based 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-rated basis with every month considered to have 30 days.

6.1.2.6 If any portion of the Buyer's 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, then a Late Payment Fee shall be due to the Company. The Late Payment Fee shall be calculated at 1.5% of the unpaid undisputed balance per month or portion thereof for the period from the due date until the payment is received.

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6.1.2.7 In addition to other penalties or fees, the Buyer will be assessed a charge of twenty dollars (\$20) for each check submitted by the Buyer to the Company which a financial institution refuses to honor for insufficient funds or a non-existent account.

6.1.2.8 If Service is discontinued by the Company in accordance with Section 3.1.6 following, and later restored, restoration of Service will be subject to all applicable reconnection or reestablishment charges.

#### 6.1.3 Advance Payments

To safeguard its interests, the Company may require a Buyer to make an Advance Payment before Services are furnished. The Advance Payment will not exceed an amount equal to the Nonrecurring charge(s) and one month's charges for the Service. The Advance Payment will be credited to the Buyer's initial bill. An Advance Payment may be required in addition to a deposit.

#### 6.1.4 Jurisdictional Reporting Requirements

6.1.4.1 For those circumstances in which the Company cannot determine the jurisdictional nature of Buyer traffic, the Company may require the Buyer to provide a projected estimate of its traffic, expressed as a percent of interstate use factor ("the PIU Factor") for the split between interstate and intrastate jurisdictions.

6.1.4.2 If a PIU Factor is required, unless otherwise agreed to in writing, the Company will rely exclusively on the PIU Factor. Company has no obligation to – and will not – verify or guarantee the correctness of Buyer's estimate. The Company reserves the right to audit a Buyer's traffic.

#### 6.1.5 Deposits

6.1.5.1 To safeguard its interests, the Company may require a Buyer to make a deposit to be held as a guarantee for the payment of charges. A deposit may be requested prior to providing Service(s) or at any time after the provision of a Service to the Buyer. A deposit does not relieve the Buyer of the responsibility for the prompt payment of bills as provided for in this Tariff.

The deposit will not exceed an amount equal to:

- (a) two months' charges for a Service or facility which has a minimum payment period of one month; or
- (b) the charges that would apply for the minimum payment period for a Service or facility which has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.

6.1.5.2 A deposit may be required in addition to an Advance Payment.

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6.1.5.3 When a Service is discontinued, the amount of a deposit, if any, will be applied to the Buyer's account and any credit balance remaining will be refunded. Before the Service is discontinued, the Company may, at its option, return the deposit or credit it to the Buyer's account.

6.1.5.4 Simple Interest shall accrue on a deposit and shall be paid at the time the deposit is either refunded or applied to the Buyer's final bill for service. Simple Interest will be applied for the month or portion of a month from the date the Buyer deposit is received by the Company to and including the date such deposit is credited to the Buyer's account or the date the deposit is refunded by the Company.

6.1.5.5 Such a deposit may be refunded or credited to the Buyer's account after a one-year, prompt-payment record is established.

6.1.5.6 In the event the provision of all service to the Buyer is terminated and the Company maintains a cash deposit from the Buyer, the deposit and any accrued, uncredited Simple Interest will be applied to any outstanding sums owed to the Company, and any remaining balance will be returned to the Buyer. If the amount of the deposit is insufficient to cover the balance due to the Buyer's account, the Company retains the right to collect any amounts owed after the deposit has been applied plus any costs related to the collection of any remaining balance.

(a) The Buyer will receive Simple Interest for each month or portion thereof that a deposit is held.

#### 6.1.6 Discontinuance of Service

6.1.6.1 Upon nonpayment of any amounts owing to the Company, the Company may by giving 7 days' prior written notice to the Buyer, discontinue or suspend Service without incurring any liability.

6.1.6.2 In the Company's sole discretion, upon violation of any of the other material terms or conditions for furnishing Service, the Company may, by giving 10 days prior written notice if personally served or 20 days prior notice if mailed or 10 days after a registered letter is refused, discontinue or suspend Service without incurring any liability. Other shorter notice may be provided elsewhere in the tariff.

6.1.6.3 Upon condemnation of any material portion of the facilities used by the Company to provide Service to a Buyer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by giving notice to the Buyer, may discontinue or suspend Service without incurring any liability.

6.1.6.4 Upon any governmental prohibition or required alteration of the Service(s) to be provided or any violation of any applicable law or regulation, the Company may immediately discontinue Service without incurring any liability.

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6.1.6.5 Upon the Company's discontinuance of Service to the Buyer under the terms of this Tariff, 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 Buyer during the remainder of the term for which such Service(s) would have otherwise been provided to the Buyer to be immediately due and payable.

#### 6.1.7 Billing Disputes

##### 6.1.7.1 General

The Company will be the sole judge of whether any bill dispute has merit. If the Company does not respond to the Buyer's notice of dispute within 60 days after receiving such notice, the dispute will be deemed rejected. Buyer has the right to pursue any and all legal remedies if dissatisfied with Company's determination.

##### 6.1.7.2 Late Payment Fee

All portions of the bill, if undisputed, must be paid by the payment due date to avoid assessment of a Late Payment Fee.

##### 6.1.7.3 Adjustments or Refunds to the Buyer

(a) In the event that the Company resolves the billing dispute in favor of a Buyer who has paid the total amount of the disputed bill as required by this Tariff, the Company will credit the Buyer's account for any overpayment by the Buyer, together with Simple Interest, in the billing period following the resolution of the dispute.

(b) In the event that the Company resolves the billing dispute in favor of a Buyer who has paid the total amount of the disputed bill as required by this Tariff, but canceled the service, the Company will issue a refund of any overpayment by the Buyer, together with Simple Interest.

(c) All adjustments or refunds provided by the Company to the Buyer at the Buyer's request, or provided by the Company to the Buyer by way of compromise of a billing dispute, and which are accepted by the Buyer, are final and constitute full satisfaction, settlement, and/or compromise of all of the Buyer's claims for the billing period for which the adjustment or refund was issued.

##### 6.1.7.4 Attorneys' Fees

In an action in a court to collect or attempt to collect any charges or other amounts due to Company under this tariff, if the Company asks the Court to award attorneys' fees, the Court may award the party which substantially prevails in the action (Company or Customer) any attorneys' fees and expenses reasonably incurred in that action, provided however, that

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attorneys' fees and expenses may not be awarded against a party under this provision if the court finds that the position taken by that party had an objectively reasonable, good faith basis and was not inconsistent with established principles of law.

## 6.2 Access Billing

### 6.2.1 Billing Standards

6.2.1.1 The Company may produce Access bills in general conformance with accepted industry standards.

6.2.1.2 An Access bill is comprised of one or more billing elements, including usage sensitive charges, distance sensitive charges, flat-rated charges, individual-case-based (ICB) charges, and Nonrecurring or special miscellaneous charges that may be appropriate.

### 6.2.2 Distance Charges

6.2.2.1 Where charges for an Access Service are based on distance, the distance between two points is measured as airline distance between the Company's Points of Presence as listed in the National Exchange Carrier Association FCC No. 4, Wire Center Tariff or Local Exchange Routing Guide (LERG) issued by Telcordia.

6.2.2.2 The airline distance between any two Points of Presence is determined as follows:

- (a) Obtain the "V" (vertical) and "H" (horizontal coordinates for each POP from the above referenced document(s),
- (b) Compute the difference between the "V" coordinates of the two POPs; and the difference between the two "H" coordinates,
- (c) Square the difference obtained in (b) above,
- (d) Add the square of the "V" difference and the square of the "H" difference obtained in (c) above,
- (e) Divide the sum of the squares by 10. Round to the next higher whole number if any fraction is obtained,
- (f) Obtain the square root of the whole number result obtained in (e) above. Round to the next higher whole number if any fraction is obtained. This is the airline mileage applicable.

### 6.2.3 Suspension, Termination or Refusal of Service

6.2.3.1 Service may be suspended or terminated for nonpayment of any undisputed bill or deposit until such bill or deposit is paid. If Service is suspended or terminated for nonpayment,

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the Buyer must remit a connection charge as well as any payment due and any deposit requested by the Company prior to reconnection or reestablishment of Service.

6.2.3.2 When a Buyer refuses to pay bills rendered or deposits requested, the Company may refuse to process existing orders for Service(s) or to accept new orders for Service.

6.2.3.3 The Company reserves the right to suspend, terminate or refuse Service(s) in the event of unauthorized use of Service(s) or facilities received from the Company, where the Buyer is indebted to the Company for previously furnished Service(s) or facilities or where the use of Service(s) or facilities have been abandoned.

## **RULE 7. CONSTRUCTIVE ORDERING**

### **7.1 General**

By receiving from or handing off traffic to the Company's Network, the Buyer will have constructively ordered the Company's Switched Access Service and is responsible for all charges incurred in connection with the use of such Service.

#### **7.1.1 Constructive Ordering**

A Constructive Order is initiated when Calls are delivered to or accepted from the Company by a Buyer. By accepting Traffic from the Company or delivering Traffic to the Company's Network, the Buyer agrees that it has ordered, and will pay for, the Company's Services pursuant to this Tariff. Similarly, the selection of an IXC as a PIC constitutes a Constructive Order for Switched Access Service by that IXC.

## **RULE 8. SWITCHED ACCESS SERVICE**

### **8.1 General**

Switched Access Service provides for the use of switching and/or transport facilities or services to enable a Buyer to utilize the Company's Network to accept Calls or to deliver Calls. Switched Access Service may be provided via a variety of means and facilities, where available, to be determined by the Company at its sole discretion.

#### **8.1.1 Rate Categories and Descriptions**

The Company's Intrastate Switched Access Service rate elements include the following rate elements or their functional equivalents:

##### **8.1.1.1 Switching:**

(a) "Tandem Switching" denotes an intermediate switching function between the originating

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point of a Call and its final destination. This function can be provided by a tandem switch or functionally equivalent equipment.

(b) "Local Switching" denotes the switching functionality closest to the calling party or called party, as applicable. This function can be performed by a switch or functionally equivalent equipment. These switching functions are charged on a per-MOU basis, unless otherwise specified by the Company.

(c) "Information" services denote functions associated with the provision of directory assistance and call routing. Examples include Information/Intercept Surcharges.

8.1.1.2 Transport: Charges for the transmission of Calls. Transport rate categories consist of two elements: a Transport Termination per path per MOU charge (in some ILEC areas, the rate may be per termination), a Transport Facility rate per mile per MOU charge.

8.1.1.3 Network Charges: Charges that recover a portion of the costs of connecting the End User to the telephone network. Examples include the Primary Interexchange Carrier Charge and Transport Interconnection Charge.

8.1.1.4 800 Database Access Service: 800 Database Access Service is provided with Switched Access Service. When a 1+800 series+NXX-XXXX call is originated by an End User, the Company will utilize the Signaling System 7 (SS7) network to query an 800 database to perform the identification function. The call will then be routed to the identified End User over Switched Access. The 800 series includes the following service area codes: 800, 888, 877, 866, 855, 844, 833, and 822.

When 800 Database Access Service originates at an end office equipped with Service Switching Point (SSP) capability for querying centralized data bases or at a non-SSP equipped end office that can accommodate direct trunking of originating 800 service Calls, all such service will be provisioned from that office.

When 800 Database Access Service originates at an end office not equipped with SSP End User identification capability, the 800 services Call will be delivered to the access tandem on which the end office is homed for 800 series service and which is equipped with SSP feature to query centralized databases.

When 800 Database Access Service originates at an end office equipped with SSP capability that is not capable of accommodating direct trunking of originating 800 series (other than the 800 service access codes) Call will be delivered to the access tandem on which the end office is homed and which is equipped with the SSP feature to query centralized data bases.

Query charges as set forth in following are in addition to those charges applicable for the Switched Access Service. Charges for this service are provided in Schedule 1.

#### 8.1.1.5 Intermediate Provider Access Service

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Intermediate Provider Access Service is the origination or termination by the Company of a call any portion of which has been associated with the services provided by an Intermediate Provider. An Intermediate Provider is a provider that:

- a) Is not the telecommunications carrier or Buyer who is either the originating End User or the terminating End User;
- b) Does not have a direct connection with the Company or a written agreement, executed by the Company, for the provision of such services; and,
- c) Seeks to levy any charge or fee, by tariff or otherwise, against the Company.

## 8.2 Switched Access Service Specifications – Company Requirements

### 8.2.1 Network Management

The Company maintains the right to apply protective controls in the provision of Switched Access Service. Generally protective controls would be taken as a result of occurrences such as failure or overload of Company or Buyer facilities, natural disasters, mass calling demands, or national security demands.

### 8.2.2 Transmission Specifications

Each Switched Access Service transmission path is provided with industry standard transmission for its type of service. The Company will work in cooperation with the Buyer to insure that those parameters are met. In the event the established specifications are not maintained, the Company may require immediate corrective action and may work independently or in cooperation with the Buyer to remedy the situation.

### 8.2.3 Testing

Acceptance Testing and Routine Testing shall be mutually arranged by the Company and the Buyer, as necessary.

### 8.2.4 Report Requirements

At the Company's request, the Buyer is responsible for providing reports to the Company, if applicable. Such reports include:

- (a) Jurisdictional Reports – may be required when Buyer orders Access Service with both intrastate and interstate use so that charges may be apportioned in accordance with those reports. Whether such jurisdictional reports are necessary will be determined at the sole discretion of the Company.

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(b) Buyer contact name(s) and telephone number(s) for order confirmation, order provisioning information, order negotiation, interactive engineering design, installation and billing.

### 8.3 Rate Regulations

This section contains a brief description and the general regulations governing the rates and charges that apply for Switched Access Service.

#### 8.3.1 Description and Application of Rates

Switched Access Service rates are generally of two types; Recurring Charges and Nonrecurring Charges. Recurring Charges include usage-based rates that are measured and billed on a per-minute of use (MOU) basis. Examples include the per-MOU Switched Access charges that are included in this Tariff. Recurring Charges also include “flat” rates that are charged one time per month, regardless of usage. Nonrecurring Charges are one-time charges that apply for a specific work activity. Examples would include charges for technician charges for maintenance and repair.

#### 8.3.2 Contracts and Individual Case Basis (ICB) Rates

In lieu of the rates terms and/or conditions otherwise set forth in this Tariff, the Company's services may be established and provided at negotiated rates on an Individual Case Basis (ICB), taking into account any factors the Company deems necessary or appropriate, including the nature of the facilities and services involved, the costs of construction and operation, the volume of traffic, the length of service commitment and use of facilities. Such ICB arrangements will be established solely at the Company's discretion. ICB rates, terms, conditions, services, or charges will be made available to similarly situated Buyers on a non-discriminatory basis.

In addition to any rate or charge established by the Company, the Buyer will be responsible for any Recurring or Nonrecurring Charges imposed by local exchange telephone companies incurred by or on behalf of the Buyer in establishing and maintaining service. Such charges may be billed by the Company or directly by the local exchange telephone company, at the Company's option.

ICB's will be filed with the Commission - ICB rates, terms, conditions, services, or charges will be made available to similarly situated Buyers on a non-discriminatory basis AND WILL BE FILED WITH THE NY PSC.

#### 8.3.3 Pass-Through of Taxes and Regulatory Fees

The Company may, in its discretion and on a non-discriminatory basis, assess fees and surcharges, including, but not limited to state and federal taxes and regulatory fees.

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## **RULE 9. MISCELLANEOUS SERVICES**

### **9.1 General**

Miscellaneous services may be provided by the Company at the request of a Buyer on an Individual Case Basis if such service arrangements are not offered under other sections of this Tariff and the service is available and within the Company's technical, personnel and capital resources. Charges may include Nonrecurring, Recurring and/or special rates and charges, or combinations thereof.

#### **9.1.1 Presubscription**

Presubscription is the process by which an End User may select and designate an IXC for the provision of interstate telephone service. This IXC is referred to as the End User's Presubscribed Interexchange Carrier. If an unauthorized change takes place, the IXC that requested the change will be subject to an Unauthorized PIC Change Charge in addition to the normal PIC Change Charge.

#### **9.1.2 Maintenance of Service**

The Buyer shall be responsible for payment of a maintenance of service charge when the Company dispatches personnel to the Buyer's location and trouble is found to be with Buyer facilities or equipment. Such charge will be billed on a time and materials basis, reflecting hourly rates for the Company's technicians, and materials charges established on an ICB.

#### **9.1.3 International Blocking Service**

Upon request, the Company will provide International Blocking Service at appropriately equipped Company Points of Presence. On each line or trunk for which International Blocking Service is ordered, the Company will block all direct-dialed international Calls that use the call sequence of 011+ or appropriate access code dialing arrangements for international calling. Terms and pricing for such service will be established on an ICB basis.

#### **9.1.4 900 Blocking Service**

Upon request, the Company will provide 900 Blocking Service to End Users at appropriately equipped POPs. On each line or trunk for which 900 Blocking Service is ordered, the Company will block all direct dialed Calls placed to a 900 number. Terms and pricing for such service will be established on an ICB basis.

#### **9.1.5 Access Order Charge**

The Access Order Charge is applied to all Buyer requests for new Switched Access Service. In addition, the Access Order Charge is applicable to Buyer requests for additions, changes or rearrangements to existing Switched Access Service with the following exceptions:

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9.1.5.1 The Access Order Charge does not apply:

9.1.5.1.1 To administrative changes as set forth following.

9.1.5.1.2 When a change to a pending order does not result in the cancellation of the pending order and the issuance of a new order.

9.1.5.1.3 When the Interim NXX Translation charge is applicable.

9.1.5.1.4 When a Presubscription Charge is applicable.

9.1.5.1.5 When a Company initiated network reconfiguration requires a Buyer's existing Access Service to be reconfigured.

9.1.5.1.6 When a service with an ICE rate is converted to a similar service with a non-ICE tariff rate prior to the expiration of the ICB.

9.1.5.1.7 When a Billing Name and Address Order charge is applicable. When a 900 Blocking Service charge is applicable.

9.1.5.1.8 When Payphone Service Providers (PSPs) obtain Coin Supervision Additive Service in conjunction with local exchange service lines for the provision of pay telephone service.

The Access Order Charge will be applied on a per order basis to each order received by the Company or copy of an order received by the Company except by the Company applying the Interim NXX Translation charge, and is in addition to other applicable charges as set forth in this and other sections of this Tariff. The Access Order Charge will be applied on a per order basis for any change, rearrangement or addition to the delivery of signaling to an existing STP Port. The Access Order Charge will be applied on a per order basis for any change, rearrangement or addition of CICs to an existing trunk group.

## **SCHEDULE 1 – SWITCHED ACCESS SERVICE**

### **1.1 General**

Rates for Access Service and the other services listed in this Tariff will include usage charges for the rate elements, applicable Recurring Charges, Nonrecurring Charges, and miscellaneous charges or combinations of same and are identified herein.

Notwithstanding the maximum rate levels shown in this tariff, total combined charges for intrastate switched rates cannot exceed the average rate per-minute imposed by the largest carrier in the LATA, without a showing that higher rates are cost-based and in the public interest, pursuant to the Commission's Order in Cases 94-C-0095 and 28425 (Opinion 98-10, issued and effective June 2,

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## 1.2 Switched Access Service Rates

### 1.2.1 Recurring Rate Elements:

- (a) Local Switching, per MOU
- (b) Tandem Switching, per MOU
- (c) Tandem-Switched Transport - Facility, per MOU/mile
- (d) Tandem-Switched Transport - Termination, per MOU
- (f) Shared Trunk Port, per MOU

### 1.2.2 Rates mirror Tariffed Rates of Appropriate ILECs - Verizon New York Inc.

Company provides Access Service utilizing equivalent functionality for the following elements: Local Switching, Tandem Switched Termination (per termination) and Tandem Switched Facility (per mile).

Rates:

Originating Access: \$0.02085 Per Access Minute of Use

Terminating Access rates will mirror Verizon New York Inc.

Toll-Free 8XX Database Query:

- (A) Customer Identification Charge - per query \$0.0042
- (B) 800 to POTS Number Translation - per query 0.0016
- (C) Call Handling and Destination Feature - per query 0.0035

### 1.2.3 Intermediate Access Service Rates

Intermediate Access Service will be charged at the rates set forth in this Schedule 1.2 for the functional equivalent of services provided by the Company, as applicable.

## 1.3 Other Services

### 1.3.1 Technician Hourly Rates

- (a) Rate per hour/per technician: \$80.00 per hour or portion of an hour.

### 1.3.2 Access Order Charge \$130.00

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