

ACCESS SERVICE

21. Contract Tariffs (Cont'd)21.65 Contract Tariff Option 64

(N)

(A) Scope

Contract Tariff Option 64 (**Option 64**) provides Billing Credits on certain services.

(B) Specific Terms

Unless otherwise defined in this Section 21.65, the following terms are used in this Option 64:

- (1) **Affiliate** shall mean an individual, partnership, association, joint-stock company, trust, or corporation that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, Customer. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10 percent.
- (2) **Baseline DS1 Average Mileage** shall mean DS1 Average Mileage of 4.8 miles.
- (3) **Baseline DS1 Billed Units** shall mean (i) for the first Quarter of the Service Period, DS1 Billed Units in a minimum total amount of forty-eight thousand four hundred (48,400), and (ii) for all other Quarters during the Service Period, DS1 Billed Units in a minimum total amount of one hundred forty-one thousand five hundred (141,500).
- (4) **Billing Credits** shall mean, collectively, the Price Flex Base Credit, the SPA DS1 Flat Rate Credit, the TDM Shortfall Credit, and the One-Time DS1 Performance Credit.
- (5) **Disputed Charges** shall mean Qualifying Monthly Recurring Charge amounts billed for any time period during the Service Period that are under dispute, regardless of whether the amounts have been paid in full by Customer.
- (6) **DS1 Average Mileage** shall mean the total DS1 Mileage billed to Customer for a given time period divided by the DS1 Billed Units with charges for DS1 Mileage for that same time period.
- (7) **DS1 Billed Revenues** shall mean Qualifying Monthly Recurring Charges billed to Customer, under the ACNAs included with the Customer's subscription to this Option 64 for Special Access DS1 Services of 1.544 Mbps bandwidth as described in Section 7.2.9 of this tariff, Section 7.2.9 of Telephone Company FCC Tariff No. 11 (**FCC 11**), Section 5.3.6 of Telephone Company FCC Tariff No. 14 (**FCC 14**), and Section 7.11.1 of Telephone Company FCC Tariff No. 16 (**FCC 16**) with respect to a particular time period for purposes of determining whether Customer qualified for a Price Flex Base Credit and calculating any such credit earned and for purposes of calculating any SPA DS1 Flat Rate Credit that Customer may earn.

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21. Contract Tariffs (Cont'd)21.65 Contract Tariff Option 64 (Cont'd)

(N)

(B) Specific Terms (Cont'd)

- (8) **DS1 Billed Unit** shall mean, with respect to each month during the Service Period, a DS1 Unit for which the Telephone Company billed Qualifying Monthly Recurring Charges to Customer under the ACNAs included with the Customer's subscription to this Option 64 for that month.
- (9) **DS1 Mileage** shall mean the channel mileage for DS1 Services (as described in Section 7.1.2(B) of this tariff and Section 7.1.2(B) of FCC 11), special transport for DS1 Services (as described in Section 5.1.1(B) of FCC 14), and circuit mileage for DS1 Services (as described in Section 7.2.1(B) of FCC 16). (x)
(x)
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(x)
- (10) **DS1 Unit** shall mean Special Access DS1 Services that meet the following definitions: (i) a DS1 "Channel Termination" as defined in Section 7.1.2(A) of this tariff, (ii) a DS1 "Channel Termination" as defined in FCC 11, Section 7.1.2(A), (iii) a DS1 "Special Access Line" as defined in FCC 14, Section 5.1.1(C), (iv) a DS1 "Circuit Termination" as defined in FCC 16, Section 7.2.1(A), (v) a DS1 to Voice "Central Office Multiplexing" as defined in Section 7.2.9(D)(3)(c) of this tariff, (vi) a DS1 to Voice "Central Office Multiplexing BSE" as defined in FCC 11, Section 7.2.9(D)(3)(c) and (d), (vii) a DS1 to Voice "Multiplexing Arrangement" as defined in FCC 14, Section 5.5(D), and (viii) a DS1 to Voice "Central Office Multiplexing" as defined in FCC 16, Section 7.11.4(3)(e). (x)
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- (11) **Effective Date** and the start of the Service Period shall be the first day of the calendar month following February 28, 2013.
- (12) **Plan Year** shall mean each of the following periods during the Service Period: (1) Plan Year 1 shall commence on the Effective Date and end on June 30, 2013; (2) Plan Year 2 shall commence on July 1, 2013 and end on June 30, 2014; (3) Plan Year 3 shall commence on July 1, 2014 and end on June 30, 2015; (4) Plan Year 4 shall commence on July 1, 2015 and end on June 30, 2016; and (5) Plan Year 5 shall begin on July 1, 2016 and end on June 30, 2017.
- (13) **Quarter** shall mean either of the following periods, as applicable: (i) the first (1st) Quarter of each Plan Year is the period beginning with the first date of the applicable Plan Year and ending on the last calendar day of the second month after the month in which the first date occurs (i.e., approximately 90 days thereafter), except for Quarter 1 of Plan Year 1 which shall commence on the Effective Date and end on March 31, 2013; or (ii) each consecutive three (3) month period thereafter commencing on the first day of the calendar month following the end of the prior Quarter and ending on the last calendar day of the second month after the month in which the first day occurs. (x)
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21. Contract Tariffs (Cont'd)21.65 Contract Tariff Option 64 (Cont'd)

(N)

(B) Specific Terms (Cont'd)

- (14) Qualifying TDM Base Credit Revenues shall mean Qualifying Monthly Recurring Charges, as defined in Section (F) following, billed to Customer under the ACNAs provided to the Telephone Company under Section (C) following, for Qualifying TDM Base Credit Services under this tariff and FCC 11, FCC 14 and FCC 16, with respect to a particular time period for purposes of determining whether Customer qualifies for the Price Flex Base Credit and calculating any such credit earned. (x)
- (15) Qualifying TDM Base Credit Services shall mean Special Access Voice Grade Services, Special Access DDS Services, Special Access DS1 Services, Special Access DS3 Services, and SwA Direct Trunked Transport Services.
- (16) Service Period shall have the meaning set forth in Section (D) following.
- (17) Special Access Voice Grade Services shall mean Voice Grade Services as described in Section 7.2.3 of this tariff, Section 7.2.3 of FCC 11, Section 5.2.1 of FCC 14 and Section 7.5 of FCC 16. (x)
(x)
- (18) Special Access DDS Services shall mean Digital Data Services as described in Section 7.2.8 of this tariff, Sections 7.2.8 and 7.2.11 of FCC 11, Section 5.2.9 of FCC 14, and Section 7.10 of FCC 16. (x)
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(x)
- (19) Special Access DS1 Services shall mean DS1 Services of 1.544 Mbps bandwidth, as described in Section 7.2.9 of this tariff, Section 7.2.9 of FCC 11, Section 5.3.6 of FCC 14, and Section 7.11.1 of FCC 16. (x)
(x)
- (20) Special Access DS3 Services shall mean DS3 Services of 44.736 Mbps bandwidth, as described in Section 7.2.9 of this tariff, Section 7.2.9 of FCC 11, Section 5.3.6 of FCC 14, and Section 7.11.1 of FCC 16. (x)
(x)
- (21) SwA Direct Trunked Transport Services shall mean transport services as described in Section 6.1.2(A)(2) of this tariff, Section 6.1.3(A) of FCC 11, Section 4.2.3(C) of FCC 14, and Section 6.5.2(C) of FCC 16. (x)
(N)(x)

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21. Contract Tariffs (Cont'd)21.65 Contract Tariff Option 64 (Cont'd)

(N)

(C) Eligibility for Benefits

Customer must meet all of the following criteria in order to be eligible for Option 64. In this Option 64, all references to amounts represented in dollars followed by the letter "M" shall refer to such number in millions (e.g., \$10M shall mean \$10,000,000).

- (1) For the full calendar month prior to the Effective Date, Customer must have achieved a minimum of \$10M in aggregate monthly billed recurring charges for Special Access Voice Grade Services, Special Access DDS Services, Special Access DS1 Services, and Special Access DS3 Services purchased by Customer from Telephone Company (**Eligibility Minimum Monthly Revenue**).
- (2) The percentage of revenues included in Eligibility Minimum Monthly Revenue billed to a subsidiary or Affiliate of Customer that is a provider of mobile wireless telecommunications services must be no more than fifty percent (50%).
- (3) Customer must be concurrently subscribed as of the Effective Date to one or more of, and must remain concurrently subscribed during the Service Period, to one or more of, the following plans or their equivalents if these plans cease to be offered under the applicable tariffs: the Commitment Discount Plan (**CDP**) (Section 25.1 of this tariff and FCC 11); the National Discount Plan (**NDP**) (Section 25.3 of this tariff, Section 25.2 of FCC 11, Section 23.1 of FCC 14, and Section 22.1 of FCC 16); Term Pricing Plan (**TPP**) (Section 7.4.17 of this tariff and Section 7.2.1(G) of FCC 16); and Term Volume Plan (**TVP**) (Section 5.6.14 of FCC 14) (**Existing Plans**). For the avoidance of any doubt, at any time during the Service Period, Customer may elect to terminate its subscription to any of the Existing Plans and subscribe to a different Existing Plan.
- (4) Customer may not be subscribed, either immediately prior to the Effective Date or any time during the Service Period, to any other Contract Tariff Option contained in this tariff or in FCC 11 or FCC 14.
- (5) During the Service Period, in order to receive any Price Flex Base Credits, SPA DS1 Flat Rate Credits, or TDM Shortfall Credits, Customer must achieve the required amounts of Qualifying TDM Base Credit Revenues and DS1 Billed Units as defined in Section (B) preceding.

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21. Contract Tariffs (Cont'd)21.65 Contract Tariff Option 64 (Cont'd)

(N)

(C) Eligibility for Benefits (Cont'd)

- (6) The customer must subscribe to Option 64 in a manner designated by the Telephone Company during the thirty (30) day period beginning March 1, 2013 and ending March 30, 2013. Such subscription must include a list of the customer's access customer name abbreviations (**Customer ACNAs**) that the Telephone Company agrees to, in writing, for inclusion in this Option 64. Subscription to Option 64 shall be an automatic subscription to Option 63 of FCC 11 and Option 33 of FCC 14.

(x)

(D) Service Period

The Service Period of Option 64 shall be the period commencing on the Effective Date and ending on June 30, 2017.

(E) Serving Area

The Billing Credits (to the extent any are earned by Customer) will be provided only in the Metropolitan Statistical Areas (**MSAs**) that have achieved Phase I or Phase II pricing flexibility under the Telephone Company's tariffs in accordance with applicable law. Wire centers for the Phase II MSAs are listed in Section 14.7 of this tariff, Section 15.3 of FCC 11, and Section 19.1 of FCC 14. Any additions of, or changes to, the MSAs (including changes to wire centers or Level 1/Level 2 pricing status as described in the Tariffs) that occur during the Service Period of this Option 64 will automatically apply. For the avoidance of doubt, no Billing Credits will be provided in the operating territories of FCC 16.

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(F) Qualifying Monthly Recurring Charges

Subject to the exclusions set forth following, as well as other terms of this Option 64 (including Section (L), Disputes, following), **Qualifying Monthly Recurring Charges** include total monthly recurring charges (**MRCs**) billed to Customer with respect to a particular service for a particular timeframe. Qualifying Monthly Recurring Charges do not include any of the following (among other items that are not MRCs, the following list being illustrative only):

- (1) Any NRCs, surcharges, taxes, late payment charges, credits, fractional debit/credit amounts, adjustments, minimum period charges, termination liabilities, and any other billings other than billed amounts that are applied on a recurring monthly basis for the applicable Quarter or Plan Year of the Service Period;
- (2) Taxes, or other charges imposed by a federal, state, local, or other governmental entity (e.g., Federal Universal Service Fund);
- (3) Service or administrative fees or charges imposed by the Telephone Company (e.g., interest charges, late payment charges);

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21. Contract Tariffs (Cont'd)21.65 Contract Tariff Option 64 (Cont'd)

(N)

(H) DS1 Volume Discount Rates and Associated SPA DS1 Flat Rate Credit
(Cont'd)

(5) Annual True-up (Cont'd)

- (b) Plan Years 2-5. For Plan Years 2-5, if Customer's total annual DS1 Billed Units at the end of each Plan Year are not at least 4,800 greater than the DS1 Billed Units as of the end of the month immediately preceding the just-completed Plan Year being reviewed, then the Telephone Company will issue to Customer's applicable account(s) a debit equal to (i) the aggregate amount of any credits Customer received to apply the Tier 2 rates in Table 4 for that just-completed Plan Year minus (ii) the aggregate amount of credits that Customer would have received if the Tier 1 rates in Table 4 were applied for all Quarters of that just-completed Plan Year.

(I) TDM Shortfall Credit

Provided that Customer has satisfied all applicable eligibility requirements and subject to all other terms set forth in this Option 64, at the end of each Plan Year of the Service Period, Customer may qualify to receive a TDM Shortfall Credit as described in this Section (I).

- (1) After the end of each Plan Year, the Telephone Company will determine whether Customer's total annual DS1 Billed Units are (i) for Plan Year 1, at least 1,600 greater than the Baseline DS1 Billed Units for the first Quarter of the Service Period and (ii) for Plan Years 2-5, at least 4,800 greater than the Baseline DS1 Billed Units (the **TDM Shortfall Credit Thresholds**).

- (2) If, for a given Plan Year, Customer has met the applicable TDM Shortfall Credit Threshold set forth in Section (I)(1) preceding, then the Telephone Company will determine the total amount that Customer, during that just-completed Plan Year, paid to the Telephone Company in the form of shortfall payments for Special Access DS1 Services under Customer's Existing Plans for CDP, NDP and TVP pursuant to Sections 25.1 and 25.3 of this tariff, Sections 25.1 and 25.2 of FCC 11, and Sections 5.6.14 and 23.1 of FCC 14 (the **Total Annual Shortfall Payment**). The Telephone Company will issue a credit (**TDM Shortfall Credit**) in an amount equal to the lesser of: (i) the Total Annual Shortfall Payment and (ii) Two Million and 00/100 U.S. Dollars (\$2,000,000). The TDM Shortfall Credit is a single credit provided for Customer's collective subscription to this Option 64, Option 63 of FCC 11, and Option 33 of FCC 14 (i.e., Customer may not receive a TDM Shortfall Credit under more than one of the three Options).

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21. Contract Tariffs (Cont'd)21.65 Contract Tariff Option 64 (Cont'd)

(N)

(I) TDM Shortfall Credit (Cont'd)

- (3) If Customer did not meet the applicable TDM Shortfall Credit Threshold for a given Plan Year, or did not pay any CDP, NDP or TVP shortfall payments to the Telephone Company during that Plan Year as described in Section (I)(2) preceding, then Customer will not receive a TDM Shortfall Credit for that Plan Year. If Customer receives a TDM Shortfall Credit for a given Plan Year, Customer may not thereafter dispute or receive a refund of any shortfall payments that were paid during the Plan Year for which Customer received a TDM Shortfall Credit. Once the Telephone Company issues a TDM Shortfall Credit, Customer may not later dispute the amount of such credit.

(J) One-Time DS1 Performance Credit

If, as of the Effective Date, Customer has achieved a total of forty-seven thousand, four hundred (47,400) DS1 Billed Units, then the Telephone Company, no later than sixty (60) days after the Effective Date, will provide Customer with a one-time billing credit equal to Two Million Five Hundred Thousand and 00/100 U.S. Dollars (\$2,500,000) (**One-Time DS1 Performance Credit**). Customer will determine and communicate to the Telephone Company within fifteen (15) days after the Effective Date the special access billing account on which Customer wishes the credit to appear. The One-Time DS1 Performance Credit is a single credit provided for Customer's collective subscription to this Option 64, Option 63 of FCC 11, and Option 33 of FCC 14 (i.e., Customer may not receive a One-Time DS1 Performance Credit under more than one of the three Options).

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(K) Excessive DS1 Mileage Surcharge

At the end of each Quarter of the Service Period, the Telephone Company will follow the steps set forth below to calculate the **Excessive DS1 Mileage Surcharge** that Customer will owe for that Quarter:

(**Step 1**) The Telephone Company will calculate the DS1 Average Mileage as defined in Section (B) preceding.

(**Step 2**) Divide the DS1 Average Mileage from Step 1 by the Baseline DS1 Average Mileage to determine the ratio of DS1 Average Mileage to the Baseline DS1 Average Mileage (**Baseline DS1 Mileage Ratio**).

(**Step 3**) Using Table 5 following, the Telephone Company will determine what DS1 Mileage Surcharge Percent applies based on the Baseline DS1 Mileage Ratio calculated in Step 2.

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21. Contract Tariffs (Cont'd)21.65 Contract Tariff Option 64 (Cont'd)

(N)

(L) Disputes (Cont'd)

- (4) The Price Flex Base Credits and SPA DS1 Flat Rate Credits, as determined by the Telephone Company and agreed to by Customer, and the Excessive DS1 Mileage Surcharge are not subject to dispute after being issued by the Telephone Company, regardless of the outcome of any Disputed Charges; provided, however, that the foregoing prohibition against disputes shall not be deemed (i) to preclude any debit issued pursuant to an annual true-up under Section (H)(5) preceding, (ii) to preclude any adjustment pursuant to Section (L)(3) preceding; or (iii) to apply in a situation where the Telephone Company applies a Price Flex Base Credit or SPA DS1 Flat Rate Credit that does not match the mutually agreed upon credit amount. For the avoidance of any doubt, the Telephone Company will not issue any Price Flex Base Credits or SPA DS1 Flat Rate Credits until the applicable credit amount is agreed to by Customer.
- (5) In no event shall the Telephone Company be subject to any late payment, interest or penalty with respect to any Billing Credits.

(M) Termination and Termination Liability

- (1) Subject to the terms set forth in this Section (M), Customer may terminate this Option 64 at any time during the Service Period. Customer must provide written notice of termination at least ninety (90) days prior to the requested date of termination. Termination of less than all of the Contract Tariff options (i.e., terminations of Option 64 of this tariff, or Option 63 of FCC 11, or Option 33 of FCC 14) shall be deemed to be an automatic termination of all contract tariff options. All obligations under the tariffs with respect to the Services shall continue to apply.
- (2) In the event of a termination by Customer under Section (M)(1) preceding, or a termination by the Telephone Company under Section (N)(2) following, Customer shall be liable for payment of termination liability to be calculated as follows:

(x)

(a) Termination During Plan Years 1 or 2:

- (i) Customer shall receive no further Billing Credits for the Plan Year in which termination occurs;
- (ii) Customer must return one hundred percent (100%) of all Billing Credits (which, for the avoidance of any doubt includes the One-Time DS1 Performance Credit) previously received at any time under Option 64;
- (iii) Customer shall not receive any refunds or credits with respect to any Excessive DS1 Mileage Surcharges owed for any previous Quarters, but Customer shall not be responsible for any Excessive DS1 Mileage Surcharge with respect to the Quarter in which termination occurs.

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