

## ACCESS SERVICE

## RATES, RULES AND CHARGES

Title Page and Pages 1 to 22-45, inclusive of this tariff are effective as of the date shown. Original and revised pages as named below and Supplement No. 7 contains all changes from the original tariff that are in effect on the date hereof.

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\* New or Revised

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<sup>(1)</sup> Material in this Section has been de-tariffed as required by the Commission upon use of the forbearance relief pursuant to FCC Memorandum Opinion and Order No. 07-180, released October 12, 2007. Terms and Conditions associated with de-tariffed services are available at [www.att.com/guidebook](http://www.att.com/guidebook).

## ACCESS SERVICE

23. Pricing Flexibility Contract Offerings

(N)

23.31 Contract Offer No. 31 - Access Service Offer23.31.1 General Description

(N)

The Special Access Service Offer (Contract Offer No. 31) is a Minimum Annual Spend attainment plan for which concurrent subscription is required to this Contract Offer and the following Access Tariffs: Pacific Bell Telephone Company (PBTC) Tariff F.C.C. No. 1, Contract Offer No. 167, and Southwestern Bell Telephone Company (SWBT) Tariff F.C.C. No. 73, Contract Offer No. 187 (collectively, with this Contract Offer No. 31, referred to as the "Concurrently Subscribed Contract Offers"). PBTC and SWBT, together with the Telephone Company, shall be identified herein as the "Qualified Companies."

(Nx)

(Nx)

The Concurrently Subscribed Contract Offers allow the Customer to qualify for certain credits based on its attainment of a "Minimum Annual Spend" or "MAS," as described in Section 23.31.5, below. The MAS consists of certain recurring revenue from "Contributory Services," as defined in Section 23.31.2, below, that the Customer purchases from the Qualified Companies. Contract Offer No. 31 will be available for subscription only from May 17, 2014 through June 17, 2014. This Contract Offer is not renewable.

(N)

23.31.2 Subject and Non-Subject Services

Subject Services and Non-Subject Services will together be referred to in this Contract Offer as "Contributory Services." "Contributory Revenue" (as defined in Section 23.31.5, below) for all Contributory Services will be included for the purposes of determining the amount of the MAS and the Customer's attainment of the MAS.

(N)

(x) Issued under Authority of Special Permission No. 14-005 of the F.C.C.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.31 Contract Offer No. 31 - Access Service Offer (Cont'd)23.31.2 Subject and Non-Subject Services (Cont'd)(A) Subject Services

- (1) Subject Services are pricing flexibility qualified access services and associated rate elements, as identified in Table A, below.

Table A - Subject Services

Category	Services Included
Interstate Special Access Located in Pricing Flexibility Metropolitan Statistical Areas (MSAs)	Voice Grade (VG), DS0, DS1 and DS3, except for any rate elements not subject to pricing flexibility

- (2) Subject Services must be located in the Pricing Flexibility MSAs where the Telephone Company has been granted Phase II pricing flexibility, as listed in NBTC Tariff F.C.C. No. 1, Section 22, and those additional MSAs listed below. During the Term Period of this Contract Offer, if the Telephone Company is granted pricing flexibility relief in additional MSAs, the Customer may, at its option, include Subject Services in those additional MSAs as eligible for the discounts under this Contract Offer.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.31 Contract Offer No. 31 - Access Service Offer (Cont'd)23.31.2 Subject and Non-Subject Services (Cont'd)(B) Non-Subject Services

Non-Subject Services are listed in Table B, below.

TABLE B- **Non-Subject Services** will be included in calculations related to the "Minimum Annual Spend," as defined in Section 23.31.1, but are not otherwise subject to this Contract Offer.

Category	Service <sup>1</sup>
Interstate Special Access Services	Optical Carrier Network (OCN) Point to Point Service, Dedicated SONET Ring Service (DSRS), Gigabit Ethernet Metropolitan Access Network (GigaMAN®) Service, Multi-service Optical Network (MON) Ring Service, Optical Ethernet Metropolitan Area Network (OPT-E-MAN®), DecaMAN®, and Wavelength Metropolitan Area Network (WaveMAN <sup>SM</sup> ), AT&T Switched Ethernet <sup>SM</sup> (ASE), and Video Services (SCVS, AVS270, High Def, MMC)
Intrastate Special Access and/or Equivalent Non-Switched Exchange Services (Excluding Private Line Services)	Voice Grade (VG), DS0, DS1, DS3, Optical Carrier Network (OCN) Point to Point Service, Dedicated SONET Ring Service (DSRS), Gigabit Ethernet Metropolitan Access Network (GigaMAN®) Service, Multi-service Optical Network (MON) Ring Service, Optical Ethernet Metropolitan Area Network (OPT-E-MAN®), DecaMAN®, and Wavelength Metropolitan Area Network (WaveMAN <sup>SM</sup> ), AT&T Switched Ethernet (ASE) <sup>SM</sup>
Interstate Switched Access	Dedicated Switched Transport (excluding such service provided by BellSouth Telecommunications, LLC)
AT&T Mobility	Corporate Responsibility Users (CRU)
AT&T Corp.	AT&T Network Connection Service (ANC) and AT&T Voice Over IP Connect Service (AVOICS)*  Domestic Long Distance Private Line (DS1, DS3, OCN, EPLS WAN)  Local Private Line Service Data Center Collocation

<sup>1</sup> Interstate OCN PTP, DSRS, MON, GigaMAN,® DecaMAN,® Opt-E-MAN®, AT&T Switched Ethernet, Serial Component Video (SCVS) and High Definition Video Transport (HDVT) services are now provided on a contractual basis outside of the tariff, including all terms and conditions. As required by the Commission, to allow the Telephone Company to take advantage of the relief granted in the Commission's Memorandum Opinion and Order No. 07-180 released October 12, 2007, services have been de-tariffed by the Telephone Company. Rates, terms and conditions associated with de-tariffed services are available at [www.att.com/guidebook](http://www.att.com/guidebook).

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.31 Contract Offer No. 31 - Access Service Offer (Cont'd)23.31.2 Subject and Non-Subject Services (Cont'd)

- (C) All terms and conditions for those Subject Services and Non-Subject Services that are tariffed are governed by their respective tariff sections, except as noted in this Contract Offer with respect to Subject Services. All terms and conditions for those Non-Subject Services that are not tariffed are governed by the applicable guidebooks, service guides or contracts.
- (D) Subject Services and Non-Subject Services shall also include any similar or successor services which are provided by the Qualified Companies and which were not available as of the effective date of this Contract Offer.

23.31.3 Eligibility Criteria

The following Eligibility Criteria apply to this Contract Offer:

- (A) The Customer must have a minimum of 30,000 interstate special access DS1 circuits in service with the Qualified Companies, as of the effective date of this Contract Offer.
- (B) The Customer must have purchased interstate special access services from the Qualified Companies for which aggregate monthly recurring charges were not less than \$90,000,000 (net of any applicable discounts and credits) for the twelve (12) month period immediately prior to the effective date of this Contract Offer.
- (C) The Customer may not be a party to any other broadband agreement or pricing flexibility contract tariff that contains any revenue or volume commitment or attainment level, as of the effective date of the Contract Offer (Commitment Agreement), unless the Commitment Agreement expressly allows the Customer to participate in both the Commitment Agreement and the Concurrently Subscribed Contract Offers.
- (D) As of the Subscription Date of this Contract Offer, the Customer must have an Access Service Ratio, as defined in Section 23.31.7, below, of ninety-two percent (92%) or greater.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd) (N)
- 23.31 Contract Offer No. 31 - Access Service Offer (Cont'd) (N)
- 23.31.3 Eligibility Criteria (Cont'd) (N)
- (E) The Customer must concurrently subscribe to the following Contract Offers: (Nx)
- (1) PBTC Tariff F.C.C. No. 1, Contract Offer No. 167;  
(2) NBTC Tariff F.C.C. No. 1, Contract Offer No. 31; and  
(3) SWBT Tariff F.C.C. No. 73, Contract Offer No. 187. (Nx)
- 23.31.4 General Terms and Conditions (N)
- The following General Terms and Conditions apply to this Contract Offer No. 31:
- (A) Subscription To subscribe to Contract Offer, the Customer must submit Letters of Subscription (LOS) to the Qualified Companies. The Customer must provide, at the time of subscription, all Access Customer Name Abbreviations (ACNAs) that the Customer designates for inclusion in the Concurrently Subscribed Contract Offers for itself and any of its "Affiliates" that may purchase service pursuant to the Concurrently Subscribed Contract Offers (hereafter referred to as "Eligible ACNAs"). Services ordered or purchased under other ACNAs may not be transferred to, or converted for inclusion under, the Concurrently Subscribed Contract Offers, unless otherwise agreed in writing by the parties.
- (B) Term Period The term of this Contract Offer (Term Period) will begin on the first day of the first calendar month following the date the Qualified Companies receive signed Letters of Subscription (LOS) from the Customer (that date to be referred to as the "Subscription Date"), and will continue for thirty-six (36) months, subject to two (2) one (1) year extensions, which may be initiated at the Customer's option. If the Customer wishes to initiate an extension, the Customer must inform the Qualified Companies to that effect, in writing, no later than ninety (90) days prior to the expiration of the then-effective Term Period. Each twelve (12) month period of the Term Period, beginning from the Subscription Date, shall be referred to as a Term Year. Upon expiration of the Term Period or any extensions, Subject Services will be provided at the prevailing month-to-month rates as provided in Nevada Bell Tariff F.C.C. No. 1, Section 7 or 22, or if there are no month-to-month rates, then at the rates applicable to the shortest available term, unless the Customer disconnects the services or chooses another applicable rate. Notwithstanding anything to the contrary in this Section 23.31.4(B), all Service Terms are subject to termination pursuant to Section 23.31.4(E), below.
- (x) Issued under Authority of Special Permission No. 14-005 of the F.C.C. (N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.31 Contract Offer No. 31 - Access Service Offer (Cont'd)23.31.4 General Terms and Conditions (Cont'd)(C) Grandfathering or Sunsetting of Subject Services

Nothing in this Contract Offer shall prevent the Qualified Companies from limiting or precluding new purchases or reconfigurations of Subject Services, or from terminating the provision of Subject Services entirely, prior to the end of the Term Period, to the extent permitted by applicable law.

- (D) Any termination liability charges that would otherwise apply to any DS3 Subject Service as a result of their conversion to AT&T Switched Ethernet Service<sup>1</sup> will be waived, or credits will be issued to offset one hundred percent (100%) of such termination liability charges, if and to the extent all of the following conditions are met for the relevant DS3 Subject Service(s):

- (1) Any disconnected DS3 Subject Service(s) must be replaced by AT&T Switched Ethernet Service<sup>1</sup> with a Customer Port Connection at the same Customer location or Customer-designated location as the disconnected DS3 Subject Service(s), which may include Customer collocation (such AT&T Switched Ethernet Service<sup>1</sup> to be referred to as a "Replacement Service");
- (2) The Replacement Service must be ordered no later than thirty (30) days after any associated DS3 Subject Services are disconnected, and the order(s) for the Replacement Service must have a Customer Desired Due Date of no more than one hundred and twenty (120) days after the disconnect order for any DS3 Subject Service(s) have been issued;
- (3) The total Committed Information Rate of the Customer Port Connection(s) of the Replacement Service must be no less than the total bandwidth of all DS3 Subject Services disconnected at the same Customer location or Customer-designated location;

<sup>1</sup> Ethernet services are now provided on a contractual basis outside of the tariff, including all terms and conditions. As required by the Commission, to allow the Telephone Company to take advantage of the relief granted in the Commission's Memorandum Opinion and Order No. FCC 07-180, released October 12, 2007, such services have been de-tariffed by the Telephone Company. Rates, terms and conditions associated with specifically de-tariffed services are available at [www.att.com/guidebook](http://www.att.com/guidebook)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.31 Contract Offer No. 31 - Access Service Offer (Cont'd)23.31.4 General Terms and Conditions (Cont'd)

(E) (Cont'd)

(4) Any DS3 Subject Service ordered after the Subscription Date must be in service for a minimum of twelve (12) months prior to their disconnection; and

(5) The Customer must be in material compliance with all terms and conditions of this Contract Offer and any other applicable tariff provisions, including without limitation timely payment of all billed amounts other than those properly disputed.

23.31.5 Minimum Annual Spend

Credits under this Contract Offer are conditioned on the Customer's satisfaction of the MAS in each Term Year. Satisfaction of the MAS shall be determined according to "Contributory Revenue," which is defined as annual recurring revenue billed for service provided during the relevant Term Year, net of any applicable discounts, credits or adjustments issued as of the time of the applicable Annual True-up Process for, in the aggregate, Contributory Services as set forth in Section 23.31.2 of this Contract Offer, and the "Contributory Services" as set forth in the other Concurrently Subscribed Contract Offers provided, however, that any credits issued pursuant to the Concurrently Subscribed Contract Offers shall not be included in determining Contributory Revenue. For clarification, but not by way of limitation, Contributory Revenue shall exclude non-recurring charges, usage-based charges, taxes, surcharges, fees, temporary service charges, Unbundled Network Element (UNE) charges, charges for Switched Access Dedicated Transport, special construction, and cost recovery fees. Services included in the MAS will include both services ordered prior to the date upon which the Customer subscribes to the Contract Offer and services ordered during the Term Period.

The MAS will be equal to the greater of (i) eighty-five percent (85%) of the Customer's Contributory Revenue for the three (3) months prior to the Subscription Date, times four (4), or (ii) ninety million dollars (\$90,000,000).

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.31 Contract Offer No. 31 - Access Service Offer (Cont'd)23.31.6 Billing & Credits

- (A) **Monthly Credits:** Subject to Sections 23.31.6(B) and (C), below, the Qualified Companies, in the aggregate, will issue a Monthly Credit (MC) to the Customer in the amounts provided for each Term Year in Table C, below. The Qualified Companies will apply the MC to the Customer's bill(s) for Subject Services, no later than sixty (60) days after the end of the month to which the MC is applicable.

Table C

Term Year	Monthly Credit (MC)
1	\$750,000
2	\$500,000
3	\$300,000
Each Optional Year	\$200,000

- (B) **Quarterly Review.** The Qualified Companies will review the Customer's Contributory Revenue for each "Quarter" (as defined herein) and will provide the results of each review to the Customer within sixty (60) days after the end of each Quarter of each Term Year ("Quarterly Review"). "Quarter" means a consecutive, non-overlapping 3-month period, with the first such period beginning with the start of the first Term Year. If the Customer's Contributory Revenue for any Quarter is not equal to or greater than (i) the Quarterly Credit Percentage (as defined below) times (ii) one quarter of the MAS, the Qualified Companies will bill the Customer for, and the Customer shall pay, an amount equal to all MCs issued for that Quarter ("Credit Recapture Amount"), and the Qualified Companies will not issue additional MC until the Customer pays any Credit Recapture Amount. The Quarterly Credit Percentage will be twenty-five percent (25%) for the first Quarter of any Term Year, fifty percent (50%) for the second Quarter of any Term Year and seventy-five (75%) percent for the third Quarter of any Term Year.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.31 Contract Offer No. 31 - Access Service Offer (Cont'd)23.31.6 Billing & Credits (Cont'd)

(C) **Annual Review.** The Qualified Companies will review the Customer's Contributory Revenue for each Term Year and will provide the results of each review to the Customer within sixty (60) days after the end of each Term Year ("Annual Review"). If the Customer's Contributory Revenue for any Term Year is not equal to or greater than the MAS, the Qualified Companies will bill the Customer for, and the Customer shall pay, an amount equal to all MCs issued for that Term Year, less any Credit Recapture Amount previously paid to the Qualified Companies for that Term Year. If the Customer's Contributory Revenue for any Term Year is equal to or greater than the MAS, the Qualified Companies will issue a "Final Credit" to the Customer equal to (i) twelve (12) times the MC applicable during that Term Year, (ii) minus any MCs previously issued for that Term Year, and (iii) plus any Credit Recapture Amounts paid by the Customer for that Term Year. The Qualified Companies will apply the Final Credit to the Customer's bill, if a Final Credit is applicable, no later than ninety (90) days after the end of the Term Year.

(D) **DS1 Plan Credits.** The Qualified Companies will issue credits, as described below, equal to any charges billed to the Customer by the Qualified Companies for failing to maintain the minimum "Commitment Level," as defined in the DS1 Term Payment Plan (DS1 TPP) with DS1 High Capacity Service Portability Commitment, Section 7.11.5.2(E), and equivalent portability plans offered by the other Qualified Companies (Portability Plans). Such charges will be referred to as "Plan Shortfall Charges". The Qualified Companies will bill the Plan Shortfall Charges as provided under the applicable tariff provisions. Thereafter, the Qualified Companies will issue credits in the amount of such charges billed to the Customer ("DS1 Plan Credits"). The Qualified Companies will calculate the amounts of any DS1 Plan Credits for each Quarter and will issue any DS1 Plan Credits within sixty (60) days after the end of the Quarter; provided however, that the Customer must satisfy the following conditions: (i) the Customer's Contributory Revenue for the Quarter must be equal to or greater than one quarter of the MAS; and (ii) the amount of the Customer's Contributory Revenue attributable to AT&T Switched Ethernet Service<sup>1</sup> for the Quarter must be equal to or greater than the reduction in Contributory Revenue attributable to interstate special access DS1 service during the Quarter. The amount of any DS1 Plan Credit(s) issued for any Quarter shall not exceed the amount of any Plan Shortfall Charges billed to the Customer for that Quarter.

<sup>1</sup> Ethernet services are now provided on a contractual basis outside of the tariff, including all terms and conditions. As required by the Commission, to allow the Telephone Company to take advantage of the relief granted in the Commission's Memorandum Opinion and Order No. 07-180 released October 12, 2007, services have been de-tariffed by the Telephone Company. Rates, terms and conditions associated with de-tariffed services are available at [www.att.com/guidebook](http://www.att.com/guidebook).

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23. Pricing Flexibility Contract Offerings (Cont'd)

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23.31 Contract Offer No. 31 - Access Service Offer (Cont'd)23.31.6 Billing & Credits (Cont'd)

(E) Notwithstanding anything to the contrary in this Contract Offer, any credits otherwise available under this Contract Offer will not be issued to the extent they duplicate any credits issued under any other tariff or agreement between the Customer and any or all of the Qualified Companies.

(F) Any credits issued under the Concurrently Subscribed Contract Offers shall be allocated between the Concurrently Subscribed Contract Offers in proportion to billing for Contributory Revenue during the relevant month. The credits will be applied to the Customer's bill no later than sixty (60) days after the period to which the credits apply.

(G) Credits shall not be issued if the Customer is in material breach of any of the Concurrently Subscribed Contract Offers, or in material breach of any other terms and conditions governing the Subject Services, including, without limitation, failure to pay any undisputed amount due for Subject Services, until such breach is cured or payment for undisputed amounts is made by the Customer.

23.31.7 Access Service Ratio

The Customer (including any of its Affiliates included in this Contract Offer) must maintain an Access Service Ratio of ninety-two percent (92%) or greater. The Access Service Ratio shall be calculated quarterly, based on data for the most recent month for which information is available at the time of the calculation. The Qualified Companies will calculate the Customer's Access Service Ratio as of the Subscription Date and for each Quarter thereafter, as follows:

Access Service Ratio = Access Revenue / (Access Revenue + Wholesale Revenue)

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The Access Service Ratio must be greater than or equal to 92% as of the Subscription Date and as of this Agreement and throughout the Term of the Agreement. If during the Term Period, any of the Qualified Companies offers additional ILEC access services or UNEs, such additional ILEC access services or UNEs shall also be included in the calculation of the Access Service Ratio. Recurring revenue, for purposes of calculating the Access Service Ratio, will be measured according to gross billed recurring revenue, after application of any discounts or credits applicable to that recurring revenue, plus any adjustments for overbilling, under-billing and billing dispute settlements. The calculation of recurring revenue will not include any DS1 Plan Credits issued pursuant to this Contract Offer.

If, upon the initial review or any quarterly review of the Customer's compliance with the Access Service Ratio, the Qualified Companies determines that the Customer has not complied with the Access Service Ratio, the Qualified Companies will so notify the Customer in writing. The Customer will have sixty (60) days after such notice to cure its noncompliance with the Access Service Ratio.

"Access Revenue" means the Qualified Companies' interstate recurring revenue from the Customer and its "Affiliates" associated with the services defined in Table D, below. An "Affiliate" of a party to this Contract Offer means any entity that controls, is controlled by, or is under common control with, such party.

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23. Pricing Flexibility Contract Offerings (Cont'd)

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23.31 Contract Offer No. 31 - Access Service Offer (Cont'd)23.31.7 Access Service Ratio (Cont'd)

Table D:

Service Type	Service <sup>1</sup>
Interstate Special Access	OCN (Optical Carrier Network) PTP
	Dedicated SONET Ring Service (DSRS)
	SONET Ring and Access Service (SRAS)
	GigaMAN (Gigabit Ethernet Metropolitan Area Network)
	Multi-Service Optical Network (MON) Ring Service
	OpteMAN (Optical Ethernet Metropolitan Area Network)
	DecaMAN (10 Gigabit Ethernet Metropolitan Area Network)
	AT&T Switched Ethernet Service (ASE)
	WaveMAN (Wavelength Metropolitan Area Network)
	Serial Component Video Service (SCVS)
	High Definition Video Transport (HDVT)
	AVS 270 Video Service
	Voice Grade
	DS0
	DS1
	DS3
	Switched Access Transport

<sup>1</sup> Interstate OCN PTP, DSRS, MON, GigaMAN,® DecaMAN,® Opt-E-MAN®, AT&T Switched Ethernet, Serial Component Video (SCVS) and High Definition Video Transport (HDVT) services are now provided on a contractual basis outside of the tariff, including all terms and conditions. As required by the Commission, to allow the Telephone Company to take advantage of the relief granted in the Commission's Memorandum Opinion and Order No. 07-180 released October 12, 2007, services have been de-tariffed by the Telephone Company. Rates, terms and conditions associated with de-tariffed services are available at [www.att.com/guidebook](http://www.att.com/guidebook).

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"Wholesale Revenue" means the Qualified Companies' recurring revenue from the Customer and its Affiliates for unbundled network elements and associated rate elements, as defined in Table E, below.

Table E

<b>Service Type-- Unbundled Network Elements and Associated Services or Rate Elements</b>	<b>Service or Network Element<sup>1</sup></b>
DS1	4-wire digital loop DS1 Entrance Facilities DS1 Interoffice Transport DS1 Cross Connects DS1 Multiplexing All DS1 non-tariffed Committed Information Rate Broadband Services
DS3	DS3 Loop DS3 Entrance Facilities DS3 Interoffice Transport DS3 Cross Connects DS1/DS3 Multiplexing All DS3 non-tariffed Committed Information Rate Broadband Services
OCN	OC-3 Entrance Facilities OC-3 Interoffice Transport OC-3 Cross Connects OC-3 Multiplexing OC-12 Entrance Facility OC-12 Interoffice Transport OC-12 Cross Connects OC-12 Multiplexing OC-48 Entrance Facilities OC-48 Interoffice Transport OC-48 Cross Connects OC-48 Multiplexing All OCN equivalent non-tariffed Committed Information Rate Broadband Service
Other	Dark Fiber - Interoffice Dark Fiber - Loop Dark Fiber - Subloop Dark Fiber Cross Connects Unbundled Dedicated Transport

<sup>1</sup> Interstate OCN PTP, and Ethernet-based services are now provided on a contractual basis outside of the tariff, including all terms and conditions. As required by the Commission, to allow the Telephone Company to take advantage of the relief granted in the Commission's Memorandum Opinion and Order No. 07-180 released October 12, 2007, services have been de-tariffed by the Telephone Company. Rates, terms and conditions associated with de-tariffed services are available at [www.att.com/guidebook](http://www.att.com/guidebook).

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.31 Contract Offer No. 31 - Access Service Offer (Cont'd)23.31.8 Assignment/Transfer/Successors

If the Customer wishes to assign or transfer its use of services under this Contract Offer pursuant to NBTC, F.C.C. Tariff No. 1, Section 2.1.2, the Qualified Companies will acknowledge such transfer or assignment if the criteria in NBTC, F.C.C. Tariff No. 1, Section 2.1.2, are fulfilled, unless 1) the proposed assignee or transferee demonstrates a lack of credit worthiness under one of the criteria in (A), (B) or (C) below, or 2) if the proposed assignee or transferee or its parent has commenced a voluntary receivership or bankruptcy proceeding (or had a receivership or bankruptcy proceeding initiated against it).

- (A) Any debt securities of the proposed assignee or transferee or its parent (defined as an entity that owns directly or indirectly more than fifty (50) percent of the equity of the proposed assignee or transferee) are rated below investment grade, as defined by the Securities and Exchange Commission; or

If any debt securities of a proposed assignee or transferee or its parent are rated the lowest investment grade and have been placed on review by the rating organization for a possible downgrade,

- (B) The proposed assignee or transferee or its parent does not have any outstanding securities rated by credit rating agencies, e.g. Standard and Poor's, but does have a Dun and Bradstreet rating, and the proposed assignee or transferee is rated:

- (1) "fair" or below in a composite credit appraisal published by Dun and Bradstreet; or
- (2) "high risk" in a Paydex score as published by Dun and Bradstreet.

- (C) If the information required to review the assignee's or transferee's credit worthiness pursuant to either Subsection (A) or (B) of this Section 23.31.8 is not available, the Qualified Companies shall exercise its reasonable discretion in determining the credit worthiness of the assignee or transferee based on any information available.

- (D) Notwithstanding anything to the contrary in this Section 23.31.8, the Customer may, upon written notice to the Qualified Companies, assign in whole or relevant part its rights and obligations under this Agreement to an Affiliate of the Customer, but the Customer will remain financially responsible for the performance of such obligations.

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23. Pricing Flexibility Contract Offerings (Cont'd) (N)23.31 Contract Offer No. 31 - Access Service Offer (Cont'd)23.31.9 Mergers/Acquisitions and Sales/Divestitures

All provisions of this Contract Offer shall continue in full force and effect if the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all of its stock or assets to any other entity, or purchases all stock or substantially all stock or certain assets of another company (the foregoing generally referred to herein as a merger or acquisition). Upon the Transaction Close Date of the merger or acquisition, if the other company involved in the merger or acquisition also purchases Subject Services from the Qualified Companies, the Subject Services, as provided for in this Contract Offer, will continue to be provided at the same volume, rates, Terms and Conditions as outlined herein. The Transaction Close Date shall be defined as the date that the stock purchase is complete and/or the final date on which the assets of the acquired/merged company have been purchased.

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