

Issued: March 17, 2015

FACILITIES FOR INTERSTATE ACCESS

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Title Pages 1 to 3 and Pages 1 to 24-10 inclusive, of this tariff are effective as of the date shown. Original and revised pages as named below and Supplement Nos. 1, 2, 5, 6, 7, 8, and 10 contain all changes from the original tariff that are in effect on the date shown.

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21. Contract Tariffs (Cont'd)

21.38 Contract Tariff Option 37

(A) Scope

Contract Tariff Option 37 (Option 37) provides Billing Credits on certain services.

(B) Specific Terms

Unless otherwise defined in this Section 21.38, the following terms are used in this Option 37:

- (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) **Reserved**
- (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 37 for Special Access DS1 Services of 1.544 Mbps bandwidth as described in Section 5.3.6 of this tariff, Section 7.2.9 of Telephone Company FCC Tariff No. 1 (FCC 1), Section 7.2.9 of Telephone Company FCC Tariff No. 11 (FCC 11), 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.

(N)

(x)
(x)

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21. Contract Tariffs (Cont'd)

21.38 Contract Tariff Option 37 (Cont'd)

(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 1, FCC 11 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 FCC 1, Section 7.2.3 of FCC 11, Section 5.2.1 of this tariff, and Section 7.5 of FCC 16. (x)
- (18) Special Access DDS Services shall mean Digital Data Services as described in Section 7.2.8 of FCC 1, Sections 7.2.8 and 7.2.11 of FCC 11, Section 5.2.9 of this tariff, and Section 7.10 of FCC 16. (x)
- (19) Special Access DS1 Services shall mean DS1 Services of 1.544 Mbps bandwidth, as described in Section 7.2.9 of FCC 1, Section 7.2.9 of FCC 11, Section 5.3.6 of this tariff, and Section 7.11.1 of FCC 16. (x)
- (20) Special Access DS3 Services shall mean DS3 Services of 44.736 Mbps bandwidth, as described in Section 7.2.9 of FCC 1, Section 7.2.9 of FCC 11, Section 5.3.6 of this tariff,, and Section 7.11.1 of FCC 16. (x)
- (21) SWA Direct Trunked Transport Services shall mean transport services as described in Section 6.1.2(A)(2) of FCC 1, Section 6.1.3(A) of FCC 11, Section 4.2.3(C) of this tariff,, and Section 6.5.2(C) of FCC 16. (N)(x)

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21. Contract Tariffs (Cont'd)

21.38 Contract Tariff Option 37 (Cont'd)

(C) Eligibility for Benefits

Customer must meet all of the following criteria in order to be eligible for Option 37. In this Option 37, 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) The customer must subscribe to Option 37 in a manner designated by the Telephone Company no later than fifteen (15) days following the Effective Date. 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 37. Subscription to Option 37 shall be an automatic subscription to Option 68 of FCC 1 and Option 68 of FCC 11.
- (2) For the full calendar month prior to the Effective Date, the 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).
- (3) The percentage of revenues included in Eligibility Minimum Monthly Revenue billed to a subsidiary or Affiliate of the customer that is a provider of mobile wireless telecommunications services must be no more than fifty percent (50%).
- (4) 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 FCC 1 and FCC 11); the National Discount Plan (NDP) (Section 25.3 of FCC 1, Section 25.2 of FCC 11, Section 23.1 of this tariff, and Section 22.1 of FCC 16); Term Pricing Plan (TPP) (Section 7.4.17 of FCC 1 and Section 7.2.1(G) of FCC 16); and Term Volume Plan (TVP) (Section 5.6.14 of this tariff)(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.
- (5) Customer may not be subscribed, at any time during the Service Period, to any other contract tariff option contained in this tariff or in FCC 1 or FCC 11. Any contract tariff options to which customer is subscribed immediately prior to the Effective Date under this tariff, FCC 1 or FCC 11 shall be deemed terminated as of the day that is one day prior to the Effective Date, with no further action by either the customer or the Telephone Company to effectuate such termination.

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(x)

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21. Contract Tariffs (Cont'd)

21.38 Contract Tariff Option 37 (Cont'd)

(F) Qualifying Monthly Recurring Charges (Cont'd)

- (4) Any amount that appears in the "Other Charges and Credits" section of the Telephone Company's invoice (other than a backbilled MRC of greater than \$50,000 on a particular invoice) for which the billed charges would have been Qualifying Monthly Recurring Charges had the charges been billed in the appropriate billing period within the Service Period. For the purposes of this Section (F)(4), the term "invoice" shall mean the aggregate of all billing in invoices issued by the Telephone Company to Customer for Qualifying TDM Base Credit Services under the ACNAs included with Customer's subscription to this Option 37 in any calendar month;
- (5) Any amount for which payment is being withheld by Customer or that is otherwise a Disputed Charge; provided, however, that if an amount would have been included in Qualifying Monthly Recurring Charges but for the fact that it was disputed, and if such dispute is then resolved in favor of the Telephone Company, then the amount credited to Customer as a result of such resolution shall be included in Qualifying Monthly Recurring Charges in the Quarter in which the Telephone Company issues such credit; and
- (6) Shortfall or overage charges associated with term plan true-ups (e.g., for failure to satisfy commitment levels).

(G) Price Flex Base Credit

Provided that Customer has satisfied all applicable eligibility requirements and subject to all other terms set forth in this Option 37, at the end of each Quarter of the Service Period, the Telephone Company will determine whether Customer qualifies to receive a Price Flex Base Credit based on Steps 1 through 3 set forth following. If Customer satisfies all applicable requirements to receive the Price Flex Base Credit for a particular Quarter, then the Telephone Company will apply such credit to one or more of Customer's applicable special access billing accounts within ninety (90) days after the end of the applicable Quarter. All calculations under this Section (G) shall take account of any adjustments resulting from Section (L)(3) (Treatment of Remedial Billing Credits) following.

(Step 1) The Telephone Company will calculate the Qualifying TDM Base Credit Revenues for the Quarter.

(Step 2) Using the Price Flex Base Credit Table 1 following, the Telephone Company will determine which TDM Base Credit Percentage corresponds to the Qualifying TDM Base Credit Revenues that Customer achieved for that Quarter.

(N)

(N)

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21. Contract Tariffs (Cont'd)

21.38 Contract Tariff Option 37 (Cont'd)

(G) Price Flex Base Credit (Cont'd)

Price Flex Base Credit Table 1

Minimum Qualifying TDM Base Credit Revenue	Maximum Qualifying TDM Base Credit Revenue	TDM Base Credit Percentage
\$0	\$32.99M	0.0%
\$33.00M	\$33.89M	1.0%
\$33.90M	\$34.79M	2.0%
\$34.80M	\$35.39M	3.0%
\$35.40M	\$35.99M	3.7%
\$36.00M	\$36.59M	4.4%
\$36.60M	\$37.19M	5.1%
\$37.20M	\$37.79M	5.8%
\$37.80M	\$38.39M	7.00%
\$38.40M	\$38.99M	8.00%
\$39.00M	\$39.59M	9.00%
\$39.60M	\$40.19M	10.00%
\$40.20M	+	11.00%

(Step 3) The Price Flex Base Credit shall be equal to the Qualifying TDM Base Credit Percentage identified in Step 2 times the TDM Base Credit Revenues for the applicable Quarter.

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

Provided that Customer has satisfied all applicable eligibility requirements and subject to all other terms set forth in this Option 37, at the end of each Quarter of the Service Period, the Telephone Company will determine whether Customer qualifies to receive a volume discount, applied using the SPA DS1 Flat Rate Credit, based on the following provisions, subject to the annual true-up described following. For the avoidance of any doubt, before reaching a determination of whether Customer qualifies for the SPA DS1 Flat Rate Credit under Sections (H)(1), (H)(2) and (H)(3) following, Customer must first satisfy the threshold requirements set forth in Section (H)(4) following. All calculations under Section (H) shall take account of any adjustments resulting from Section (L)(3) (Treatment of Remedial Billing Credits) following.

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21. Contract Tariffs (Cont'd)

21.38 Contract Tariff Option 37 (Cont'd)

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

- (1) After each Quarter, the Telephone Company shall determine the DS1 Billed Revenue and DS1 Billed Units that Customer achieved for that Quarter. The SPA DS1 Flat Rate Credit will be in an amount equal to the applicable DS1 Billed Revenues for the applicable Quarter minus the applicable flat rate revenue (i.e., "applicable flat rate revenue" means the applicable DS1 Billed Units multiplied by the applicable flat rate for the Plan Year from Table 2 following. If Customer satisfies all applicable requirements to receive the SPA DS1 Flat Rate Credit for a particular Quarter, the Telephone Company shall apply such credit to one or more of Customer's applicable special access billing accounts within ninety (90) days after the end of the applicable Quarter.

SPA DS1 Flat Rate Table 2

Credit Tier	Plan Year 1 SPA DS1 Flat Rate	Plan Year 2 SPA DS1 Flat Rate	Plan Year 3 SPA DS1 Flat Rate
Tier 1	\$173.00	\$173.00	\$173.00
Tier 2	\$162.00	\$161.00	\$160.00

(N)

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21. Contract Tariffs (Cont'd)

21.38 Contract Tariff Option 37 (Cont'd)

(I) TDM Shortfall Credit (Cont'd)

(3) If Customer did not meet the applicable TDM Shortfall Credit Threshold with respect to each Quarter of 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 thirty-five thousand (35,000) 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 Three Million Seven-Hundred Fifty Thousand and 00/100 U.S. Dollars (\$3,750,000) (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 37, Option 68 of FCC 1, and Option 68 of FCC 11 (i.e., Customer may not receive a One-Time DS1 Performance Credit under more than one of the three Options).

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

(N)

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21. Contract Tariffs (Cont'd)

21.38 Contract Tariff Option 37 (Cont'd)

(K) Excessive DS1 Mileage Surcharge (Cont'd)

(N)

Table 3 DS1 Mileage Surcharge Table

Minimum Baseline DS1 Mileage Ratio	Maximum Baseline DS1 Mileage Ratio	DS1 Mileage Surcharge Percent
0	1.39	0.00%
1.40	1.59	10.00%
1.60	1.79	15.00%
1.80	1.99	20.00%
2.00	+	25.00%

(Step 4) The Excessive DS1 Mileage Surcharge for the Quarter shall be calculated by multiplying (i) the SPA DS1 Flat Rate Credit earned during that Quarter under Section (H) preceding times (ii) the DS1 Mileage Surcharge Percent identified in Step 3.

(Step 5) If the Excessive DS1 Mileage Surcharge is greater than \$0, the Telephone Company, within ninety (90) days after the Quarter for which the Excessive DS1 Mileage Surcharge is owed, will apply the Excessive DS1 Mileage Surcharge by issuing a debit(s) (Excessive DS1 Mileage Surcharge Debits) to one or more of Customer's applicable special access billing accounts.

Example 1: Assume that Customer's DS1 Average Mileage achieved for Quarter 2 of Plan Year 1 is 4.9 miles and the SPA DS1 Flat Rate Credit achieved for that same Quarter is \$1.30M. The Baseline DS1 Mileage Ratio is 1.02. The Excessive DS1 Mileage Surcharge is \$0 ($\$1.3M \times 0.00\% = \0).

Example 2: Assume that Customer's DS1 Average Mileage achieved for Quarter 3 of Plan Year 2 is 7.0 miles and the SPA DS1 Flat Rate Credit achieved for that same Quarter is \$1.60M. The Baseline DS1 Mileage Ratio is 1.46. The Excessive DS1 Mileage Surcharge is \$0.16M ($\$1.6M \times 10.00\% = \$0.16M$).

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FACILITIES FOR INTERSTATE ACCESS

21. Contract Tariffs (Cont'd)21.38 Contract Tariff Option 37 (Cont'd)

(L) Disputes

Notwithstanding any other provision of this Option 37, the Telephone Company's calculation of the Billing Credits and Excessive DS1 Mileage Surcharges under this Option 37 shall be subject to the following additional requirements (as well as all other terms of this Option 37):

- (1) For the purposes of calculating the Price Flex Base Credit and the SPA DS1 Flat Rate Credit, the Telephone Company shall not include any credits or debits for Services provided during any periods prior to the Effective Date (regardless of whether such credits or debits were the result of a valid dispute by Customer or were the result of a billing error by the Telephone Company).
- (2) Customer agrees to undertake a good faith effort to review, within forty-five (45) calendar days of receipt, each bill from the Telephone Company that includes amounts to be included in Qualifying Monthly Recurring Charges and, at such time that Customer determines there is a dispute, to promptly raise the dispute with the Telephone Company. For the avoidance of any doubt, Customer is not obligated or required to raise billing disputes within forty-five (45) calendar days of receipt of a bill.
- (3) Treatment of Remedial Billing Credits
 - (a) In the event that (i) Customer disputes charges that it believes were improperly billed for Services billed in prior Quarters, (ii) any such disputed charges were included as Qualifying Monthly Recurring Charges for purposes of calculating any Price Flex Base Credits or SPA DS1 Flat Rate Credits under this Option 37, and (iii) the Telephone Company honors all or a portion of the dispute in favor of Customer, then any billing credit issued by the Telephone Company to remedy the dispute (Remedial Billing Credit) shall be included as an offset to Qualifying Monthly Recurring Charges for the purpose of calculating the Price Flex Base Credits and SPA DS1 Flat Rate Credits for the Quarter in which such Remedial Billing Credit is issued by the Telephone Company. For the avoidance of any doubt, if a Remedial Billing Credit results in Customer falling below the Minimum Qualifying TDM Base Credit Revenue necessary to qualify for a Price Flex Base Credit, but for which Customer would have otherwise qualified for a Price Flex Base Credit for each Quarter to which the underlying dispute is attributable, Customer will still qualify for the SPA DS1 Flat Rate Credit if all other requirements have been met to do so for the Quarter in which the Remedial Billing Credit is offset against Qualifying Monthly Recurring Charges; provided, however that any

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FACILITIES FOR INTERSTATE ACCESS

21. Contract Tariffs (Cont'd)

21.38 Contract Tariff Option 37 (Cont'd)

(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 adjustment pursuant to Section (L)(3) preceding; or (ii) 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 37 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 37 of this tariff, or Option 68 of FCC 1, or Option 68 of FCC 11) 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:
 - (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 37; and
 - (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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FACILITIES FOR INTERSTATE ACCESS

21. Contract Tariffs (Cont'd)

21.38 Contract Tariff Option 37 (Cont'd)

(M) Termination and Termination Liability (Cont'd)

(2) (Cont'd)

(b) Termination During Plan Year 3:

- (i) Customer shall receive Price Flex Base Credits and SPA DS1 Flat Rate Credits of zero dollars (\$0) for Plan Year 3 (including, by way of example, that Customer must repay to the Telephone Company any Price Flex Base Credits and SPA DS1 Flat Rate Credits already received in that Plan Year);
- (ii) Customer must return fifty percent (50%) of any Price Flex Base Credits and SPA DS1 Flat Rate Credits received for Plan Year 2;
- (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.

Any termination liability payment owed by Customer under any of the preceding provisions shall be due and payable by Customer to the Telephone Company no later than sixty (60) days after the termination date.

- (3) The Customer and the Telephone Company, by mutual written agreement in their sole discretion, may terminate this Option 37. Except as otherwise mutually agreed in writing by Customer and the Telephone Company: (i) any termination under this Section (M)(3) in Plan Year 1 shall be effective as of the Effective Date, and Customer shall not be eligible for any Billing Credits, including the One-Time DS1 Performance Credit, for Plan Year 1; (ii) if the termination under this Section (M)(3) is in Plan Years 2 through 3, such termination shall be effective as of the end of the Plan Year preceding the termination, and the Customer shall be entitled to all Billing Credits earned for the Plan Year preceding the termination, but shall not be eligible for any Billing Credits for any period of time after the end of such Plan Year; and (iii) regardless of the Plan Year in which the termination occurs, 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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FACILITIES FOR INTERSTATE ACCESS

21. Contract Tariffs (Cont'd)

21.38 Contract Tariff Option 37 (Cont'd)

(N) Mergers and Acquisitions of Customer

- (1) In the event that after the Effective Date, Customer or its direct or indirect parent company merges with another company, acquires a company or a portion of the business of another company (including, by way of example, acquisition of any ACNAs other than those submitted with Customer's subscription to Option 37), becomes an Affiliate of another company, or is acquired in whole or in part by another company, the terms and conditions set forth in this Section (N) will apply in addition to all other terms and conditions set forth in this Option 37. Customer may not combine or include any DS1 Billed Revenues, DS1 Billed Units, DS1 Mileage, DS1 Units, Qualifying TDM Base Credit Revenues, or Qualifying Monthly Recurring Charges from the merged, acquiring, or acquired company, or from the assets of such merged, acquiring, or acquired company, for any purposes hereunder.
- (2) Except where the Customer and the Telephone Company elect otherwise pursuant to Section (N)(3) following, Customer's DS1 Billed Revenues, DS1 Billed Units, DS1 Mileage, DS1 Units, Qualifying TDM Base Credit Revenues, and Qualifying Monthly Recurring Charges shall be calculated based on Customer's business and revenue with the Telephone Company using the ACNAs submitted with Customer's subscription to this Option 37, without adding any revenues, units, DS1 Mileage, and/or ACNAs attributable to expansion of Customer's purchase of any services from the Telephone Company through merger, transfer, assignment, or acquisition. If Customer violates the provisions of this Section (N)(2), then the Telephone Company may terminate Option 37 without liability upon written notice to Customer.

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FACILITIES FOR INTERSTATE ACCESS

21. Contract Tariffs (Cont'd)

21.38 Contract Tariff Option 37 (Cont'd)

(N) Mergers and Acquisitions of Customer (Cont'd)

- (3) In lieu of excluding the acquired business, revenue, DS1 Mileage, units, and the like as described in Section (N)(2) preceding, the Customer and the Telephone Company, in order to reflect the impact of mergers, acquisitions, divestitures or other transactions described in Section (N)(1) preceding, may in their sole discretion mutually agree in writing to make proportionate adjustments to Customer's Baseline DS1 Average Mileage, the amounts and/or percentages set forth in Table 1 (Price Flex Base Credit Table) in Section (G) preceding, and/or the volume of DS1 Billed Units required for Customer to receive the Tier 1 or Tier 2 rates set forth in Table 2 (SPA DS1 Flat Rate Table) of Section (H) preceding. For the avoidance of any doubt, no revenue, units or DS1 Mileage of the acquired business shall be included in the calculation of the Price Flex Base Credit or SPA DS1 Flat Rate Credit for any period prior to the effective date to which the parties mutually agree in writing.
- (4) Customer shall provide the Telephone Company written notice no later than twenty (20) business days after filing any request with the FCC for approval of a transaction that is the subject of Section (N)(1) and, to the extent provided in writing publicly by the date of such notice, shall include a good faith estimate of the expected close date so that Customer and the Telephone Company can assess and implement their associated rights and obligations under this Option 37. Once the transaction closes, Customer shall further notify the Telephone Company of such closing within thirty (30) days after such closing occurs. Under no circumstance shall this Section (N) require Customer to provide the Telephone Company written notice of mergers solely between Customer entities holding, as of the Effective Date, the ACNAs submitted with Customer's subscription to this Option 37, such as Customer's internal merging of legal entities. For the avoidance of any doubt, the above reference to notice following an FCC filing affects only the notice that Customer is required to provide under this Section (N)(4), and does not alter application of the substantive provisions set forth in Sections (N)(1) through (N)(3) (e.g., prohibition against including acquired business, revenue, units and the like as described in Sections (N)(1) and (N)(2)) to transactions that are not subject to an FCC filing.

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FACILITIES FOR INTERSTATE ACCESS

21. Contract Tariffs (Cont'd)

21.38 Contract Tariff Option 37 (Cont'd)

(O) Sale of Telephone Company Telephone Operating Company

- (1) If some or all of the assets or stock of a Telephone Company Operating Telephone Company that provides DS1 Units are acquired by an unaffiliated third party during the Service Period, then effective with the closing of such transaction, the Telephone Company will make proportionate adjustments to Customer's DS1 Billed Revenues, DS1 Billed Units, DS1 Units, Qualifying TDM Base Credit Revenues, Qualifying Monthly Recurring Charges, or Baseline DS1 Average Mileage, the amounts and/or percentages set forth in Table 1 (Price Flex Base Credit Table) in Section (G) preceding, and/or the volume of DS1 Billed Units required for Customer to receive the Tier 1 or Tier 2 rates set forth in Table 2 (SPA DS1 Flat Rate Table) of Section (H) preceding. For the avoidance of any doubt, no such adjustments shall apply to any period prior to the effective date of the closing of such acquisition transaction.
- (2) If the Telephone Company acquires another company (or portion thereof) that provides any services similar to DS1 Units, the Customer and the Telephone Company may mutually agree in writing to adjust any of the items described in Section (O)(1) preceding and DS1 Mileage on a proportionate basis to account for Customer's purchases from the acquired company (or portion thereof). For the avoidance of any doubt, no Customer purchases from the acquired company (or portion thereof) shall be included in DS1 Billed Revenues, DS1 Billed Units, DS1 Mileage, or Qualifying TDM Base Credit Revenues for any period prior to the effective date for such inclusion to which the Customer and the Telephone Company mutually agree in writing.

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FACILITIES FOR INTERSTATE ACCESS

21. Contract Tariffs (Cont'd)21.38 Contract Tariff Option 37 (Cont'd)

(P) Orders for Unbundled Network Elements

- (1) Customer, as a material condition of the Telephone Company's offering the Billing Credits described in this Option 37, agrees that during the Service Period it may not submit orders for any of the following unbundled network elements (UNEs) that the Telephone Company offers: (i) UNE DS1 loops; (ii) UNE DS1 dedicated transport; (iii) any combination of any of the foregoing UNEs (which combinations are sometimes referred to as Enhanced Extended Loops or EELs or (iv) any of the foregoing UNEs commingled with special access services or other services ((i), (ii), (iii) and (iv), collectively Prohibited UNEs). The foregoing prohibition includes both orders for new Prohibited UNEs as well as orders for the conversion of special access services to Prohibited UNEs (collectively, Prohibited UNE Orders).
- (2) Accordingly, the Telephone Company and Customer agree that if either the Telephone Company or Customer discovers any Prohibited UNE Orders submitted during the Service Period, then such discovering party shall notify the other party and Customer, no later than sixty (60) days after either the Telephone Company's or Customer's provision of such notice, shall promptly request conversion of such Prohibited UNEs to a Special Access service. The Telephone Company shall reasonably assist in this effort. The rates applicable to the Special Access service to which a Prohibited UNE is converted shall apply retroactively for the full period during which the Prohibited UNE was billed at UNE rates. For the avoidance of any doubt, no Billing Credits or Excessive DS1 Mileage Surcharge for any past Quarters or Plan Years shall be recalculated as a result of any such conversions of Prohibited UNEs to Special Access services. If Customer fails to submit an order to convert a Prohibited UNE to a Special Access service (Conversion Order) within sixty (60) days after notifying the Telephone Company of a Prohibited UNE Order (or, in cases where the Telephone Company discovers a Prohibited UNE Order and notifies Customer, within sixty (60) days after the date on which the Telephone Company provides such notice), then, without limiting Customer's continuing obligation to submit such Conversion Order, the Telephone Company shall have the right (but not the obligation) to submit such Conversion Order on Customer's behalf and take such other steps as necessary to complete the conversion. For the avoidance of any doubt, Customer shall bear the sole responsibility for monitoring its internal ordering processes to ensure that no Prohibited UNE Orders are submitted during the Service Period.

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