

Issued: July 15, 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)21.39 Contract Tariff Option 38

(A) Scope

Contract Tariff Option 38 (**Option 38**) provides Billing Credits on certain services.

(B) Specific Terms

Unless otherwise defined in this Section 21.39, the following terms are used in this Option 38:

- (1) Alternative Tariff Arrangement shall mean collectively any other generally available tariff arrangement, contract tariff option, specialized service or arrangement, or Individual Case Basis ("ICB") tariff arrangement offered by the Telephone Company and available to Customer pursuant to this tariff, Tariff FCC No. 1 (FCC1), Tariff FCC No. 11 (FCC11) with respect to any of the Services covered by this Option 38.
- (2) Billed DS1 Service Revenue shall mean the Qualifying Monthly Recurring Charges (as defined in Section (F) following) billed under one of the customer ACNAs provided under Section (C)(1) following for Special Access DS1 Service and which are paid by the Customer.
- (3) Billed DS3 CLF Service Revenue shall mean the Qualifying Monthly Recurring Charges (as defined in Section (F) following) billed under one of the customer ACNAs provided under Section (C)(1) following for Special Access DS3 CLF Service and which are paid by the Customer.
- (4) Billed DS3 CLS Service Revenue shall mean the Qualifying Monthly Recurring Charges (as defined in Section (F) following) billed under one of the customer ACNAs provided under Section (C)(1) following for Special Access DS3 CLS Service and which are paid by the Customer.
- (5) Billed Qualifying TDM Service Revenue shall mean the sum of Billed DS1 Service Revenue, Billed DS3 CLF Service Revenue and Billed DS3 CLS Service Revenue.
- (6) Billing Credits shall mean the applicable TDM Shortfall Credits as described in Section (I) following.
- (7) Disputed Amounts 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.

(N)

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21. Contract Tariffs (Cont'd)21.39 Contract Tariff Option 38 (Cont'd)

(B) Specific Terms (Cont'd)

- (8) DS1 Equivalent Circuit shall mean Equivalent DS1 Channel Termination as defined in Section 23.1.4 of this tariff, FCC1 (Section 25.3.4(a)), FCC11 (Section 25.2.4), and FCC16 (Section 22.1.4).
- (9) Effective Date and the start of the Service Period shall be the first day following the date that the contract tariffs are deemed effective. The Telephone Company will inform the customer in writing upon filing of such contract tariffs.
- (10) Groom(s) shall mean a change in the connecting facility assignment ("CFA") or termination point of a DS3 Service, and shall include, without limitation, any of the following types of moves, rearrangements, re-terminations, and disconnection and subsequent reconnection, to the DS3 Service: (i) a change in the CFA or termination point within a single Telephone Company wire center; (ii) a change in the CFA or termination point from one Telephone Company wire center to CFA in another Telephone Company wire center (CFA can be a Telephone Company provided facility or a collocation).
- (11) Initial DS1 Equivalent Circuit Quantity shall mean the number of DS1 Equivalent Circuits that the Customer had in service as of February 28, 2015.
- (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 the date that is one day prior to the first anniversary of the Effective Date; (2) Plan Year 2 shall commence on the date that is the first anniversary of the Effective Date and end on the date that is one day prior to the second anniversary of the Effective Date; (3) Plan Year 3 shall commence on the date that is the second anniversary of the Effective Date and end on the date that is one day prior to the third anniversary of the Effective Date.
- (13) Qualifying Monthly Recurring Charges shall have the meaning as described in Section (F) following.
- (14) Qualifying TDM Service shall mean Special Access DS1 Service, Special Access DS3 CLF Service and Special Access DS3 CLS Service.

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21. Contract Tariffs (Cont'd)21.39 Contract Tariff Option 38 (Cont'd)

(B) Specific Terms (Cont'd)

- (15) Qualifying TDM Services Annual Revenue Commitment shall mean the annual minimum required Billed Qualifying TDM Service Revenue for each Plan Year during the Service Period, and shall be equal to the aggregate amount of Qualifying Monthly Recurring Charges the Customer was billed for the Qualifying TDM Services during the twelve (12) month period commencing on January 1, 2014 and ending on December 31, 2014.
- (16) Service Plan Requirements shall mean the three (3) requirements (i.e., the Minimum Annual Revenue Commitment, the Minimum Average DS1 Equivalent Circuit Quantity and Grooms Limitations) set forth in Section (G) following.
- (17) Service Period shall have the meaning set forth in Section (D) following.
- (18) Special Access DS1 Service shall mean DS1 Service of 1.544 Mbps bandwidth, as described in this tariff (Section 5.3.6), FCC1 (Section 7.2.9), FCC11 (Section 7.2.9), and FCC16 (Section 7.11.1). (x)
- (19) Special Access DS3 CLF Service shall mean DS3 Service of 44.736 Mbps bandwidth, as described in this tariff (Section 5.3.6), FCC1 (Section 7.2.9), FCC11 (Section 7.2.9), and FCC16 (Section 7.11.1) which has a facilities formatted circuit identifier in accordance with the Common Language Circuit Identifier (CLCI) format administered by Telcordia (e.g., 968 T3Z PITBPADTHPE PITBPABTK18). (x)
- (20) Special Access DS3 CLS Service shall mean DS3 Service of 44.736 Mbps bandwidth, as described in this tariff (Section 5.3.6), FCC1 (Section 7.2.9), FCC11 (Section 7.2.9), and FCC16 (Section 7.11.1) which has a serial number formatted circuit identifier in accordance with the Common Language Circuit Identifier (CLCI) format administered by Telcordia (e.g., 94.HFGS.634783..NE). (x)
- (21) TDM Shortfall Credit Threshold shall mean seventy-five percent (75%) of Customer's total Initial DS1 Equivalent Circuit Quantity. (N)

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21. Contract Tariffs (Cont'd)21.39 Contract Tariff Option 38 (Cont'd)

(C) Eligibility for Benefits

Customer must meet all of the following criteria in order to be eligible for Option 38. In this Option 38, all references to amounts represented in dollars followed by the letter "M" shall refer to such number in millions (e.g., \$1M shall mean \$1,000,000), and all references to amounts represented in dollars followed by the letter "K" shall refer to such number in thousands (e.g., \$10K shall mean \$10,000.00).

- (1) The customer must subscribe to Option 38 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 38. Subscription to Option 38 shall be an automatic subscription to Option 70 of FCC 1 and Option 70 of FCC 11.
- (2) As of the Effective Date, customer must:
 - (a) During the twelve (12) month period commencing on January 1, 2014 and ending on December 31, 2014, Customer must have purchased from the Telephone Company a minimum of \$6M in aggregate Billed Qualifying TDM Service Revenue;
 - (b) be subscribed to the National Discount Plan at the Deluxe Commitment Level as defined in this tariff (Section 23.1), FCC1(Section 25.3), FCC11 (Section 25.2), and FCC16 (Section 22.1) ("Existing Plan"); and
 - (c) have been subscribed to the Existing Plan for at least the twelve (12) months immediately prior to the Effective Date.
- (3) Except for the Existing Plan, customer may not concurrently subscribe to an Alternative Tariff Arrangement which provides discounts, credits or other reductions in rates or terms based upon the achievement of total billed revenue. If customer wishes to subscribe to such an Alternative Tariff Arrangement, then customer shall not be eligible to receive any Billing Credits under this Option 38, and such subscription shall be considered a termination by customer of this Option 38, subject to Section (L) following.

(N)

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21. Contract Tariffs (Cont'd)21.39 Contract Tariff Option 38 (Cont'd)

(D) Service Period

The Service Period of Option 38 shall be the period commencing on the Effective Date and ending on the date that is one day prior to the third anniversary of the Effective Date, unless this Option 38 is earlier terminated.

(E) Serving Area

The Billing Credits (if applicable) 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 19.1 of this tariff, Section 14.7 of FCC 1, and Section 15.3 of FCC 11. 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 38 will apply. For the avoidance of doubt, no Billing Credits will be provided in the operating territories of FCC 16.

(F) Qualifying Monthly Recurring Charges

Subject to the exclusions set forth following, as well as other terms of this Option 38 (including, by way of example, Section (L), Disputes, following), **Qualifying Monthly Recurring Charges** include total monthly recurring charges (**MRCs**) billed to Customer with respect to a particular Qualifying TDM Service for a particular Plan Year. 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) Charges for special construction;
- (2) Nonrecurring charges, surcharges, interest, late payment charges, credits (including any credits provided under this Option 38), fractional debit/credit amounts, adjustments or any other billings other than billed amounts that are applied on a recurring monthly basis for the applicable Plan Year of the Service Period;
- (3) Taxes, fees, surcharges, charges or other tax-like amounts imposed by a federal, state, local, or other governmental entity (e.g., Federal Universal Service Fund);
- (4) Service or administrative fees or charges (e.g., interest penalty, late payment penalty);

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

- (5) Any other billed amount for which payment is being withheld or under dispute by the customer or that is otherwise a Disputed Amount; 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 paid by the customer as a result of such resolution shall be included in Qualifying Monthly Recurring Charges in the month in which the customer pays such amount;
- (6) Shortfall or overage charges associated with term plan true-ups (e.g., charges assessed for failure to satisfy commitment levels); and
- (7) Any amounts associated with any service (or any portion of a service) that is not a Qualifying TDM Service.

(G) Service Plan Requirements

- (1) Customer must satisfy each of the three (3) following Service Plan Requirements during each of the Plan Years during the Service Period to continue to be eligible for the terms and conditions of Option 38 for each Plan Year.
 - (a) Qualifying Minimum Annual Service Revenue Commitment. Customer must for each Plan Year meet or exceed the Qualifying Minimum Annual Revenue Commitment, which is an amount equal to the aggregate amount of Qualifying Monthly Recurring Charges the Customer was billed for the Qualifying Services during the twelve (12) month period commencing on January 1, 2014 and ending on December 31, 2014.
 - (b) Minimum Average DS1 Equivalent Circuit Quantity
 - (i) Each Plan Year during the Term Customer must meet or exceed the "Minimum Average DS1 Equivalent Circuit Quantity" (as defined in the following sentence) for that Plan Year. The Telephone Company will calculate the Minimum Average DS1 Equivalent Circuit Quantity by taking the number of DS1 Equivalent Circuits Customer has in service as of the first day of the subject Plan Year and multiplying that number by 92%. The Telephone Company will then calculate the actual average DS1 Equivalent Circuit quantity for that Plan Year by adding the number of DS1 Equivalent Circuits in service at the end of each month during the twelve (12) month period of that Plan Year and dividing that total by twelve (12) (the "Actual Average DS1 Equivalent Circuit Quantity" for that Plan Year). The Actual Average DS1 Circuit Quantity for the subject Plan Year must meet or exceed the Minimum Average DS1 Equivalent Circuit Quantity for that Plan Year.

(N)

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21. Contract Tariffs (Cont'd)21.39 Contract Tariff Option 38 (Cont'd)

(G) Service Plan Requirements (Cont'd)

(1) (Cont'd)

(b) (Cont'd)

(ii) Example 1: Customer has 2,500 DS1 Equivalent Circuits in service at the beginning of Plan Year 1. The Minimum Average DS1 Equivalent Circuit Quantity for Plan Year 1 is 2,300 DS1 Equivalent Circuits (2,500 x 0.92). During Plan Year 1 Customer's Actual Average DS1 Equivalent Circuit Quantity is 2,400. Accordingly, Customer under this example would have exceeded the Minimum Average DS1 Equivalent Circuit Quantity for Plan Year 1.

(iii) Example 2: Customer has 2,400 DS1 Equivalent Circuits in service at the beginning of Plan Year 2. The Minimum Average DS1 Equivalent Circuit Quantity for Plan Year 2 is 2,208 DS1 Equivalent Circuits (2,400 x 0.92). During Plan Year 2 Customer's Actual Average DS1 Equivalent Circuit Quantity is 2,150. Accordingly, Customer under this example would not have met the Minimum Average DS1 Equivalent Circuit Quantity for Plan Year 2.

(c) Grooms Limitation

During each Plan Year, subject to the exceptions listed below, Customer may not order more than twelve (12) Grooms of Special Access CLF DS3 Services per Plan Year ("Maximum Annual Grooms"). The following types of Grooms shall not be included in the Maximum Annual Grooms and shall be performed by the Telephone Company in accordance with its normal business practices:

- (i) Any Groom initiated by the Telephone Company and not requested by Customer;
- (ii) Any Grooms where a DS3 Service rides a Telephone Company optical service provided to Customer, which optical service terminates at or, originates from, a Customer Point-of-Presence (PoP);
- (iii) A disconnection of a multiplexed DS3 Service that does not (at the time of the Groom) have any DS1 riders on such DS3 Service; and
- (iv) Any other Grooms that the Parties mutually agree in writing to not include in the count of Maximum Annual Grooms, which may include Grooms associated with the elimination or decommissioning of a Customer POP.

(N)

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21. Contract Tariffs (Cont'd)21.39 Contract Tariff Option 38 (Cont'd)

(H) Annual Review

- (1) Within ninety (90) days of the end of each Plan Year, the Telephone Company shall determine whether customer has met or exceeded the Service Plan Requirements set forth in Section (G) preceding, i.e., the Minimum Annual Revenue Commitment, the Minimum Average DS1 Equivalent Circuit Quantity and Grooms Limitations.
- (2) Notwithstanding any other provisions of this Option 38, the Telephone Company's calculation of the customer's Billed Qualifying TDM Service Revenue under this Option 38 shall not include any amounts which are unpaid and/or disputed by Customer as of the forty-fifth (45th) day following end of the applicable Plan Year.
- (3) If customer has satisfied each of the Service Plan Requirements for a given Plan Year, then subject to the terms of this Option 38, customer shall remain in Option 38 for the following Plan Year (subject to this Option 38 terminating by its terms at the end of Plan Year 3).
- (4) If the customer does not satisfy the Service Plan Requirements, then the Telephone Company may terminate Option 38 in accordance with Section (L) following.

(N)

(N)

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FACILITIES FOR INTERSTATE ACCESS

21. Contract Tariffs (Cont'd)21.39 Contract Tariff Option 38 (Cont'd)

(I) TDM Shortfall Credit

Provided that customer has satisfied all applicable eligibility requirements and subject to all other applicable terms set forth in this Option 38, at the end of each Plan Year of the Service Period, customer shall 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, for each month during the subject Plan Year, customer achieved the TDM Shortfall Credit Threshold.
- (2) If, for a given Plan Year, customer has met the TDM Shortfall Credit Threshold with respect to each month of that Plan Year, 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 and DS3 Services under customer's Existing Plan pursuant to this tariff (Section 23.1), FCC1 (Section 25.3), FCC11 (Section 25.2, and FCC16 (Section 22.1) (the "Total Annual Shortfall Payment"), and the Telephone Company will issue a credit ("TDM Shortfall Credit") in an amount equal to the Total Annual Shortfall Payment that customer paid to the Telephone Company during that just-completed Plan Year. For example, if the customer met the TDM Shortfall Credit Threshold with respect to each month of Plan Year 2, and the customer incurred and paid to the Telephone Company a shortfall payment for Special Access DS1 and DS3 Services with respect to the "Plan Year" under customer's Existing Plan that ended on January 31 of Plan Year 2, then the Telephone Company will issue a TDM Shortfall Credit in an amount equal to the Total Annual Shortfall Payment that customer paid to the Telephone Company with respect to the "Plan Year" under customer's Existing Plan that ended on January 31 of Plan Year 2.
- (3) If customer did not meet the TDM Shortfall Credit Threshold with respect to each month of a given Plan Year, or did not pay any NDP 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.
- (4) 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.

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FACILITIES FOR INTERSTATE ACCESS

21. Contract Tariffs (Cont'd)21.39 Contract Tariff Option 38 (Cont'd)

(J) Mergers and Acquisitions of Customer

If, after the Effective Date, customer 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 38), the company with which customer merges and the company or portion of the business thereof that customer acquires (including, by way of example, acquisition of any ACNAs other than those submitted with customer's subscription to Option 38) may be referred to collectively as the "Customer Acquired Properties", and such merger or acquisition may be referred to in either case as an "Acquisition", and the Telephone Company provides any Qualifying TDM Services in connection with such Customer Acquired Properties, then such Customer Acquired Properties shall not be included in calculations associated with the Service Plan Requirements or the TDM Shortfall Credit Threshold in this Option 38.

(K) Sale of Verizon Operating Telephone Company

If some or all of the assets or stock of a Verizon Operating Telephone Company that provides Qualifying TDM Services are acquired by an unaffiliated third party during the Service Period, effective with the closing of such transaction, the Telephone Company will proportionally adjust the Qualifying TDM Services Annual Revenue Commitment.

Illustrative Example:

Assume the following information for Plan Year 2:

- (1) The Qualifying TDM Services Annual Revenue Commitment is \$5.9M
- (2) The Telephone Company sells Verizon New York to a third-party at the end of month 8 of Plan Year 2;
- (3) During the three month period prior to the sale, Verizon New York accounted for \$900K in Billed Qualifying TDM Service Revenue.

Based on the above assumptions:

- (1) The average monthly Billed Qualifying TDM Service Revenue for Verizon New York is \$300K (\$900K / 3)
- (2) There are four (4) months remaining in Plan Year 2 (12 months – 8 months)
- (3) The Plan Year 2 Qualifying TDM Services Annual Revenue Commitment would be reduced by \$1.2M (\$300K * 4)
- (4) The adjusted Qualifying TDM Services Annual Revenue Commitment for Plan Year 2 is \$4.7M (\$5.9.0M - \$1.2M)
- (5) The Qualifying TDM Services Annual Revenue Commitment for the Plan Year 3 will be reduced by the \$3.6M (\$300K x 12) resulting in a revised Qualifying TDM Services Annual Revenue Commitment of \$2.3M (\$5.9M - \$3.6M)

(N)

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FACILITIES FOR INTERSTATE ACCESS

21. Contract Tariffs (Cont'd)21.39 Contract Tariff Option 38 (Cont'd)

(L) Termination of Option 38

If Customer fails to satisfy any of the Service Plan Requirements set forth in this Option 70 as determined by the Telephone Company in its sole discretion at the conclusion of an Annual Review conducted in accordance with Section (H) preceding, then the Telephone Company may immediately terminate this Option 70. The Telephone Company shall provide notice of its termination intent to terminate Option 70 within one hundred twenty (120) calendar days after the end of the applicable Plan Year. In the event of termination of Option 70 under this Section (L)(1), customer shall not be eligible to receive the TDM Shortfall Credit for the Plan Year in which Option 70 is terminated (e.g., if in Plan Year 2 customer fails to satisfy any of the Service Plan Requirements and the Telephone Company accordingly provides notice of termination under (L), then customer shall not receive any TDM Shortfall Credit for Plan Year 2 nor for Plan Year 3).

- (1) Termination of Option 38 shall be deemed to be an automatic termination of Option 70 of FCC1 and Option 70 of FCC11.

- (2) The benefits of Option 38 shall cease to apply upon its termination.

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