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21. Contract Tariffs (Cont'd)

21.40 Contract Tariff Option 39

(A) Scope

Contract Tariff Option 39 (**Option 39**) provides discounts, to be effected by the issuance of Quarterly Credits (as defined in Section (G) following) on certain services offered by the Telephone Company pursuant to its tariffs. In consideration for such discounts and credits, Customer agrees to abide by the requirements set forth in this Option 39. All references to amounts represented in dollars followed by the letter "M" shall refer to such number in millions (e.g., \$17.25M shall mean \$17,250,000).

(B) Definitions

The following terms are used in this Option 39:

- (1) **BANs** shall mean Billing Account Numbers of Customer.
- (2) **Billed Qualifying Service Revenue** has the meaning set forth in Section (E)(2) following (subject to the exclusions set forth in Section (E)(3) following).
- (3) **Disputed Amount** shall mean any amount (or portion thereof) billed by the Telephone Company and disputed and/or not paid when due by Customer.
- (4) **Grooms** shall mean a change in the connecting facility assignment (**CFA**) or termination point of a DS1 Service or a DS3 Service, and shall include, by way of example, any of the following types of moves, rearrangements, re-terminations, and disconnection and subsequent reconnection, to the DS1 Service or 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). Solely for the purposes of defining the term Groom(s) and using such term in Section (H) following: **DS1 Service** as used above includes (in addition to the services captured by the definitions of **DS1 Service** and **DS3 Service** set forth in Qualifying SPA Services following) Switched Transport DS1 Service as described in The Verizon Telephone Companies FCC Tariff No. 1 (FCC 1) (Section 6), The Verizon Telephone Companies FCC Tariff No. 11 (FCC 11) (Section 6), and The Verizon Telephone Companies FCC Tariff No. 14 (FCC 14) (Section 4) and **DS3 Service** as used above includes Switched Transport DS3 Service as described in the FCC 1 (Section 6), FCC 11 (Section 6), and FCC 14 (Section 4).

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FACILITIES FOR INTERSTATE ACCESS

21. Contract Tariffs (Cont'd)

21.40 Contract Tariff Option 39 (Cont'd)

(C) Eligibility (Cont'd)

- (4) To receive the Quarterly Credits described in Section (G) following without incurring Shortfall Payments, Customer must (a) continue to achieve Billed Qualifying Service Revenue of no less than the SPAMARC Amounts specified in Section (B)(5) preceding, and (b) comply with the subscription provisions under Section (C)(3) preceding.
- (5) Except for the Existing Plans and any FMS Services to which Customer subscribes as of the Effective Date, Customer may not concurrently subscribe to any other tariff arrangement, contract tariff option, special service arrangement, or Individual Case Basis (ICB) arrangement offered by the Telephone Company under this tariff, FCC 1, or FCC 11 and available to Customer either currently or at any time during the Service Period, which tariff arrangement, contract tariff option, special service arrangement, or ICB provides a discount, credit, or other reduction in rates or terms based on achievement of revenue or volume targets/levels by Customer for any of the Qualifying Services. For the avoidance of any doubt, this provision does not apply to services not covered by Option 39.
- (6) Except as set forth herein, nothing herein shall modify the terms and conditions of the tariffs, including by way of example under any Commitment Discount Plan (CDP) and/or Eight and Ten Year DS1 Term Volume Plan (ETTVP) plans.

(D) Service Period

- (1) Subject to the terms of Section (D)(2)-(3) following and all other applicable terms in this Option 39 (including, by way of example, terms regarding early termination of this Option 39), the Service Period for the purchase of all DS1 and DS3 Qualifying Services under this Option 39 shall commence on the Effective Date (as defined above) and end on December 31, 2019 (except that the Service Period shall include any extensions that take effect pursuant to Section (D)(2)-(3) following).
- (2) At the expiration of Plan Year 4, and unless this Option 39 is otherwise terminated, the Parties in their sole discretion might, but shall have no obligation to, mutually agree in writing to up to two (2) additional extensions of one (1) year each. If Customer wishes to request the Telephone Company's consent to such an extension(s), Customer must notify the Telephone Company in writing of such request at least ninety (90) calendar days prior to the date on which Option 39 will expire.
- (3) If FCC approval is required but not received for any extension described in Section (D)(2) preceding, this Option 39 shall terminate as of the expiration date that would apply in the absence of such extension.

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(This page filed under Transmittal No. xxx.)

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21. Contract Tariffs (Cont'd)

21.40 Contract Tariff Option 39 (Cont'd)

(E) Qualifying Services

(1) The following Special Access services are Qualifying Services under this Option 39:

- (a) Special Access DS1 Services (collectively, DS1 Services) of 1.544 Mbps bandwidth, as described in this tariff (Section 5.3.6, FCC 1 (Section 7.2.9), FCC 11 (Section 7.2.9), and FCC 16 (Section 7.11.1));
- (b) Special Access DS3 Services (collectively, DS3 Services) of 44.736 Mbps bandwidth, as described in this tariff (Section 5.3.6), FCC 1, (Section 7.2.9), FCC 11 (Section 7.2.9), and FCC 16 (Section 7.11.1);
- (c) Special Access Facilities Management Service (DS1 (only bandwidth of 1.544 Mbps) and DS3 (only bandwidth of 44.736 Mbps)), as described in this tariff (Section 7.2.13) and FCC 11 (Section 7.2.16) (collectively, FMS Services); and
- (d) IntelliLight Entrance Facilities Service (only DS3 (bandwidth of 44.736 Mbps) as described in this tariff (Section 20.4), FCC 1 (Section 7.2.15), FCC 11 (Section 26.1.4), and FCC 16 (Section 20.4) (collectively, IEF Services).

Any services other than the services explicitly listed above (including, by way of example, any SONET entrance facility service provided by the Telephone Company pursuant to an agreement or arrangement other than the tariffs) are not included herein as a Qualifying Service. Qualifying Services do not include any Switched Access services.

The tariffs are as amended from time to time, and such amended rates, terms and conditions for the Qualifying Services shall apply to this Option 39 upon the effectiveness of such change to the tariff(s) except as set forth in this Option 39, and subject to any termination of Option 39 (and/or customer's subscription thereto).

For purposes of this Option 39: (i) all Qualifying Service volumes and revenues are quantified according to three categories (DS1, DS3 CLF, and DS3 CLS) as described further following; and (ii) subject to Section (E)(2)(b)(iii) and Section (E)(5) following, the CoS-USOC combinations set forth in Section (E)(2) following reflect the entire list of CoS-USOC combinations included in the definition of Qualifying Services and counted as contributory toward Billed Qualifying Service Revenue.

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21. Contract Tariffs (Cont'd)

21.40 Contract Tariff Option 39 (Cont'd)

(E) Qualifying Services (Cont'd)

(4) Disputed Amounts (Cont'd)

(b) Example (Cont'd)

further that in March of Plan Year 2, the Telephone Company and Customer agree that such billing was partially in error; and the dispute is resolved by Customer paying \$1,800,000 and the Telephone Company issuing Customer a credit of \$200,000 for the applicable Qualifying Services in March of Plan Year 2. For purposes of the Plan Year 2 true-up under Section (G)(2) following, the \$1,800,000 payment by Customer would be included in Customer's Billed Qualifying Service Revenue for Plan Year 2, but the \$200,000 credit by the Telephone Company would not be included in Customer's Billed Qualifying Service Revenue for Plan Year 2 or any other Plan Year in the Service Period.

(c) Claim Period. To the extent that Customer disputes any amount billed for any Special Access services that are Qualifying Services as defined in Section (E)(1) preceding (or any portion of such a billed amount), Customer must submit such disputes to the Telephone Company no later than three hundred sixty five (365) days after the date of the invoice on which the Disputed Amount first appeared (such 365-day period, the Claim Period). Each dispute must be submitted on a claim description form as provided by the Telephone Company, must describe in detail Customer's basis for the dispute, and must clearly state next to the circuit ID and amount under dispute the following: "Dispute Associated with 2016 Contract Tariff." For the avoidance of any doubt, the Telephone Company shall not be required to consider any dispute regarding any Disputed Amount not submitted within the Claim Period, and Customer shall be deemed to waive any disputes not submitted prior to the end of the Claim Period. Customer (using a Claim Description Form or otherwise) may not: (i) retroactively dispute any amounts that first appeared on an invoice more than three hundred sixty five (365) days prior to the date on which Customer submits the dispute to the Telephone Company or (ii) prospectively dispute amounts to be billed in future invoices. Customer shall pay, on or before the due date that applies under the tariffs, all amounts that are not subject to a bona fide dispute that Customer has submitted in accordance with the terms of this Section (E)(4). To the extent that the terms of FCC 16 conflict with the Claim Period terms set forth in this Section (E)(4)(c) with respect to amounts billed for Qualifying Services under FCC 16, the terms of FCC 16 shall apply instead of the conflicting term(s) of this Section (E)(4)(c).

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21. Contract Tariffs (Cont'd)

21.40 Contract Tariff Option 39 (Cont'd)

(E) Qualifying Services (Cont'd)

(4) Disputed Amounts (Cont'd)

(g) In the event that Customer withholds payment of any amounts billed for Qualifying Services, then, except as otherwise agreed in writing by the parties, the Telephone Company shall offset (i.e., withhold) such amounts from any Quarterly Credits owed to Customer until such time as Customer pays the disputed amount or the dispute is resolved in Customer's favor. For the avoidance of any doubt, Customer shall be liable for late payment charges as set forth in the tariffs with respect to any billed amounts that Customer does not pay by the date on which payment is due.

(5) USOC Updates

If, during the Service Period of this Option 39, a tariff is revised to include a USOC that is a replacement or substitution, in part or in whole, for one of the USOCs set forth in Section (E)(2) preceding or to include a USOC that was inadvertently omitted from such tariff, then (effective as of the date on which such revision to the tariff becomes effective) such new USOC shall be included in the definition of the applicable Qualifying Service(s) and such new USOC, provided it otherwise qualifies to be contributory under Sections (E)(2) and (E)(3) preceding and all other terms of this Option 39, will be counted as contributory towards Billed Qualifying Service Revenue.

(F) Serving Area

Notwithstanding any other provision of this Option 39, any Quarterly Credits 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 tariff) that occur during the Service Period will apply. For the avoidance of doubt, no Quarterly Credits will be provided in the operating territories of FCC 16.

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21. Contract Tariffs (Cont'd)

21.40 Contract Tariff Option 39 (Cont'd)

(G) Quarterly Credits and Annual True-up

(1) Quarterly Credits

(a) If Customer satisfies the eligibility criteria set forth in Section (C) preceding, and subject to the annual true-up described in Section (G)(2) following and any withholding by the Telephone Company under Section (E)(4)(f) preceding (and subject further to any termination of this Option 39), Customer shall receive quarterly billing credits in amounts to be calculated as set forth in Table 1 below (**Quarterly Credits**). The Telephone Company will provide the Quarterly Credits on Customer's bills within one hundred twenty (120) calendar days after the end of the applicable Quarter. The Quarterly Credits are calculated using the formulas set forth in Table 1 following based on the **Quarterly Credit Revenue Basis**, which is defined as the amount of Billed Qualifying Service Revenue, as defined in Sections (E)(2) and (E)(3) preceding, but excluding revenue for DS1 Services as defined in Section (E)(2)(a), that Customer achieved during the period from (and including) July 2014 through June 2015. . The Quarterly Credits are provided for Customer's collective subscription to this Option 39, Option 71 of FCC 1, and Option 71 of FCC 11 (i.e., Customer may not receive Quarterly Credits under more than one of the three Options).

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Table 1					
Plan Year 1 – Per Quarter	Plan Year 2 – Per Quarter	Plan Year 3 – Per Quarter	Plan Year 4 – Per Quarter	Plan Year 5 – Per Quarter*	Plan Year 6 – Per Quarter*
Quarterly Credit Revenue Basis multiplied by 9.68%.	Quarterly Credit Revenue Basis multiplied by 8.34%.	Quarterly Credit Revenue Basis multiplied by 6.85%.	Quarterly Credit Revenue Basis multiplied by 4.25%.	Quarterly Credit Revenue Basis multiplied by 1.31%.	Quarterly Credit Revenue Basis multiplied by 1.31%.

* Plan Years 5 and 6 will occur only upon mutual agreement by the parties pursuant to Section (D)(2) preceding.

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21. Contract Tariffs (Cont'd)

21.40 Contract Tariff Option 39 (Cont'd)

(L) Termination

(1) Mutual Agreement

The Parties, by mutual written agreement in their sole discretion or as otherwise set forth herein, may terminate this Option 39 (and/or Customer's subscription thereto). Termination of Option 39 shall be deemed to be an automatic termination of Option 71 in FCC 1 and Option 71 in FCC 11. Except as otherwise mutually agreed in writing by the Parties or as set forth herein, any termination under this Section (L)(1) shall be effective as of the date of termination (**Termination Date**). Upon any such termination, (i) the Telephone Company, as set forth in Section (L)(1)(a) following, will calculate and issue to Customer a Quarterly Termination Credit in lieu of the Quarterly Credit that would otherwise have applied for the Quarter in which the termination occurred (**Termination Quarter**), and (ii) the Telephone Company will perform a true-up in accordance with the steps set forth in Section (L)(1)(b) following (**Termination True-Up**):

(a) Termination Credit

The credit that Customer will receive under Section (G)(1) preceding for the Termination Quarter shall be determined according to the following steps:

Step 1H: Divide by three hundred sixty-five (365) the sum total of all Quarterly Credits that would apply under Section (G)(1) preceding for the Plan Year in which the termination occurred (**Termination Year**) to arrive at a daily dollar amount.

Step 2H: Multiply the dollar amount determined in Step 1H by the number of days that elapsed prior to the Termination Date within the Termination Year. The resulting amount may be referred to as the **Annual Termination Credit** to be used for purposes of the calculation in Step 3H below.

Step 3H: Reduce the Annual Termination Credit amount calculated in Step 2H by the sum total of all credits due in previous Quarters prior to the Termination Quarter (but within the Termination Year) to arrive at the Quarterly Termination Credit. Customer will receive no further Quarterly Credits under this Option 39.

Step 4H: The Telephone Company will issue the Quarterly Termination Credit on Customer's bill(s) within one hundred twenty (120) calendar days after the Termination Date upon Customer's written approval of the Quarterly Termination Credit to be issued. Once the Quarterly Termination Credit has been issued after Customer's approval of the amount, Customer may not thereafter dispute or seek adjustment to the Quarterly Termination Credit.

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