

ACCESS SERVICE
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32. Contract Tariffs (Cont'd)

32.14 Contract Tariff Option 13

(N)

(A) Scope

- (1) Contract Tariff Option 13 (Option 13) is offered for a service period of twelve (12) months and provides a customer with a one-time credit(s) when it achieves total billed revenue (TBR) during the service period of between \$49,000,000 (\$49M) and \$56,000,000 (\$56M) in qualifying services, as defined in (B) following.
- (2) Eligible customers who wish to subscribe to Option 13 must do so by submitting a written request, in a form prescribed by the Telephone Company and signed by an authorized representative of the customer, during the subscription period that begins **May XX, 2004 and ends July XX, 2004**. Eligibility for Option 13 is set forth in (B) following. The twelve month service period (service period) commences on the first day of the month following receipt of the customer's written authorization.

(B) Eligibility and Qualification for Option 13

All of the following apply in order to subscribe to Option 13.

- (1) The customer must achieve TBR for qualifying services, as defined in (2) following, that is between \$45,000,000 (\$45M) and \$56M during the service period. TBR for qualifying services is subject to (2) through (7) following.
- (2) TBR for qualifying services are comprised of (a) Special Access Voice Grade Services, Digital Data Services, High Capacity 1.544 Mbps Services, and High Capacity 44.736 Mbps Services and (b) Switched Access DS1 and DS3 Direct Trunked Transport services which the customer subscribes to in all operating territories under this tariff and under the Telephone Company's Tariff F.C.C. Nos. 1, 14, and 16. The customer may subscribe to these services under other term and commitment discount plans as they may be offered under general sections of this tariff and under the general sections of the other Telephone Company tariffs included in this Option 13. The customer's TBR shall be calculated using only monthly recurring charges billed by the Telephone Company to the customer for the qualifying services. Any reductions and discounts associated with other term and commitment plans for the qualifying services will be included in the total TBR for qualifying services under this Option 13.
- (3) The portion of the TBR for qualifying services attributable to the customer's Switched Access DS1 and DS3 Direct Trunked Transport services must be at least \$350,000 (\$350K), but may not exceed \$2,000,000 (\$2M).

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- (4) TBR for qualifying services does not include any revenue other than monthly billed recurring revenue as set forth in (2) above, including without limitation, any of the following: (N)
- nonrecurring charges
 - taxes or other charges (e.g., Federal Universal Service Fund) imposed by federal, state, local or other government entity
 - service or administrative fees or charges (e.g., interest penalty, late payment penalty)
 - other charges which are not applied on a recurring monthly basis
 - any other billed amount for which payment is being withheld by the customer
 - any billed amounts that are under dispute by the customer
 - revenues, credits or adjustments associated with services other than those specified in (2) preceding
 - credits or adjustments assessed by the Telephone Company that are associated with periods outside of the service period as defined in (1) preceding
 - shortfall or overage charges associated with other term or commitment plans
 - termination liabilities assessed under other term or commitment plans
- (5) Other than as set forth in (6) below, the customer may not concurrently subscribe to any other contract tariff option, special service arrangement, or Individual Case Basis (ICB) arrangement offered by the Telephone Company and available to the customer either currently or at any time during the Service Period which provides a discount, credit, or other reduction in rates or terms based on achievement of certain total billed revenue by the customer for the qualifying services in (2) preceding.
- (6) Provided that the customer meets all of the criteria set forth in this Option 13, the customer will be allowed to terminate this Option 13 and subscribe to a New Plan, as defined below, without paying the termination charges set forth in (E) following. A New Plan shall mean another contract tariff option, ICB arrangement, or special service arrangement for the qualifying services in (2) preceding and offered by the Telephone Company during the Service Period with identical or greater total billed revenue levels than those provided under this Option 13. If the customer elects to terminate this Option 13 in order to subscribe to a New Plan, then (1) the customer must so elect in writing; (2) the customer must subscribe to the New Plan concurrently with or prior to the termination date of this Option 13; and (3) the customer must independently qualify and be eligible for such new plan. The customer shall not be afforded any credit in the New Plan for any portion of the elapsed Service Period under this Option 13. (N)

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- (7) In the event the customer merges with another company, acquires another company, or acquires a portion of the business of another company, or is acquired by another company, either in whole or in part, the following regulations will apply:
- (a) The customer may not include in the calculation of TBR for the qualifying services any revenues of the merged or acquired company or assets for the purpose of obtaining the credit provided under this Option 13.
- (b) The customer may continue subscribing to this Option 13 for the duration of the service period based on its business with the Telephone Company as of the beginning of its subscription to this Option 13, without adding the revenues attributable to expansion of the customer's purchase of services from the Telephone Company through merger or acquisition action.
- (c) The Telephone Company reserves the right to terminate the customer's subscription to this Option 13 if the customer does not adhere to the provisions herein. Customer shall not be eligible for any credits in such event.

(C) Serving Area

The serving area of Option 13 is comprised of all Telephone Company Phase 1 and Phase 2 Metropolitan Service Areas (MSAs).

Any additions or changes to the wire centers included in the MSAs described above that occur after **May xx, 2004** will apply and be included in Option 13.

(D) Application of Credits Under Option 13

The customer may receive a one-time credit under this Option 13 depending on the actual TBR for qualifying services achieved at the end of the service period. The one-time credit shall consist of a Billing Credit or a Billing Credit and an Incremental Credit, as described below. The actual TBR for qualifying services is determined in accordance with (B)(1) through (B)(7) preceding. Based on the actual TBR for qualifying services, the following applies.

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32.14 Contract Tariff Option 13 (Cont'd)

(D) Application of Credits Under Option 13 (Cont'd)

- (1) If the TBR for qualifying services for the service period was less than \$45M (i.e., the minimum TBR for qualifying services), a shortfall penalty equal to fifty percent (50%) of the difference between the minimum TBR for qualifying services and the actual TBR for qualifying services will apply. For example, if the customer achieved actual TBR for qualifying services of \$44,000,000 (\$44M), the shortfall penalty would be 50% of the difference between the minimum TBR for qualifying services (\$45M) and the actual TBR for qualifying services (\$44M) or \$500,000 in shortfall penalty. The shortfall penalty is due to the Telephone Company within sixty (60) days of the end of the service period. No Billing Credit or Incremental Credit will be applied under this Option 13 when the minimum TBR for qualifying services has not been met.
- (2) If the TBR for qualifying services for the service period was between \$45M and \$48,999,999.00, the customer is not eligible for a credit, and no shortfall penalty applies under this Option 13.
- (3) If the TBR for qualifying services for the service period was between \$49M and \$56M, a single Billing Credit of \$1,000,000 (\$1M) will apply under this Option 13. The Billing Credit for the qualifying services shall be provided in Phase 1 and Phase 2 MSAs. Credit will be applied to the customer's account(s) in accordance with (E)(1) following.
- (4) If the TBR for qualifying services for the service period was between \$51,000,000 (\$51M) and \$56M, the customer will also receive an Incremental Credit in addition to the Billing Credit specified in (D)(3) preceding. The Incremental Credit amount will be applied in the same manner as the Billing Credit. The amount of Incremental Credit is determined by the amount of TBR for qualifying services actually achieved as follows.

<u>TBR for Qualifying Services Achieved During Service Period</u>	<u>One-time Incremental Credit</u>
\$51,000,000 - \$52,000,000	\$ 250,000
\$52,000,001 - \$53,000,000	500,000
\$53,000,001 - \$54,000,000	1,000,000
\$54,000,001 - \$55,000,000	1,500,000
\$55,000,001 - \$56,000,000	2,000,000

- (5) If the TBR for qualifying services for the service period was in excess of \$56M, the customer is not eligible to receive a credit under this Option 13.

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32.14 Contract Tariff Option 13 (Cont'd)

(E) Terms and Conditions

- (1) Subject to the terms and conditions of this Option 13, if the customer is eligible for the Billing Credit or the Incremental Credit under (D)(3) or (D)(4) preceding, the Billing Credit or Incremental Credit will be credited to the customer's account within sixty (60) days after the end of the Service Period. The amount of the credit is contingent on (a) resolution of outstanding billing disputes related to qualifying services provided by the Telephone Company to the customer no later than the 60th day after the end of the Service Period; and (b) payment in full by the customer of all undisputed billed amounts for qualifying services. After the 61st day following the end of the Service Period, any amounts that remain disputed or are withheld by the customer (even if the amount is resolved in favor of the customer or paid by the customer at a later date) shall not be used in calculation of the TBR for qualifying services, the Billing Credit, or the Incremental Credit. The amount of the Billing Credit and the Incremental Credit shall not be subject to any interest penalty.
- (2) The customer may discontinue individual services during the service period subject to the terms and conditions, including any applicable termination or shortfall liabilities that may be applicable, for the specific service involved as set forth in the applicable sections of this tariff and of the other Telephone Company tariffs under which TBR for qualifying services is determined.
- (3) In the event that the customer cancels its subscription to this Option 13, cancellation penalty equal to one hundred percent (100%) of the difference between the minimum TBR for qualifying services (\$45M) and the actual TBR for qualifying services achieved by the customer at the time of cancellation shall apply. Cancellation penalty is due to the Telephone Company within sixty (60) days of the date of cancellation of Option 13. If the actual TBR for qualifying services on the date of cancellation is in excess of \$45M, the customer shall not be eligible for any credit(s) under this Option 13.

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