ACCESS SERVICE

RATES, RULES AND CHARGES

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ACCESS SERVICE

RATES, RULES AND CHARGES

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ACCESS SERVICE

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23. Pricing Flexibility Contract Offerings

23.2 Contract Offer No. 2 – Special Access Service Offer

23.2.1 General Description

(Nx)

The Special Access Service Offer (Contract Offer No. 2) is an access discount pricing plan requiring subscription from Customers under the following Access Tariffs: Ameritech Operating Companies Tariff F.C.C. No 2., Southwestern Bell Telephone Company Tariff F.C.C. No. 73, The Southern New England Telephone Company Tariff F.C.C. No. 39, Pacific Bell Telephone Company Tariff F.C.C. No. 1. and Nevada Bell Telephone Company Tariff F.C.C. No. 1. The plan requires Customers to maintain a Minimum Annual Revenue Commitment (MARC) for five (5) years. Contract Offer No. 2 is available to any Customer with at least $18.5 million in cumulative annual recurring revenue for qualified access services in the SBC Interstate Access Tariffs as identified above. The qualified access services for the Nevada Bell Telephone Company (NBTC) are listed in Section 23.2.3(B). The Customer must meet the Eligibility Criteria as described in Section 23.2.2 and the Terms and Conditions as described in Section 23.2.3.

(Nx)

The Customer must meet a Minimum Annual Revenue Commitment (MARC) for each year of the five (5) year term. In the event the Customer does not meet its MARC as of each anniversary date, the Customer will be required to remit a payment, via the Annual True-Up process described in Section 23.2.4(D), otherwise termination liability charges will apply. Contract Offer No. 2 will only be available November 17, 2004 through January 17, 2005.

23.2.2 Eligibility Criteria

The following Eligibility Criteria must be met in order to receive Contract Offer No. 2 discounts:

(A) Contract Offer No. 2 is only available for services located in the following Metropolitan Statistical Areas (MSAs): Reno, NV

If the Telephone Company receives pricing flexibility relief in additional MSAs, the Customer will be able to use services and/or revenue from those areas to meet MARC commitments upon adjustment of the MARC for those incremental revenues as defined in Section 23.2.4.

(B) The Customer cannot subscribe to this Contract Offer concurrently with SBC’s MVP offering in Section 22.

(C) The Customer must have a minimum of $18.5 million in cumulative annual recurring revenue for Voice Grade(VG), Digital Data (DS0), High Capacity (DS1 and DS3), Optical Carrier Network (OCN) Point-to-Point (PTP), and Gigabit Ethernet Metropolitan Area Network (GigaMAN) Services from this Contract Offer and the Contract Offers listed in Section 23.2.3 (A). (N)

(x)issued under Authority of Special Permission Authority No. 04-075 of F.C.C.

23. Pricing Flexibility Contract Offerings (Cont'd) (N)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.2 Eligibility Criteria (Cont'd)

(D) The Customer must maintain an Access Service Ratio, equal to or greater than 98%. The Access Service Ratio is defined in Section 23.2.3(H) and will be measured monthly.

23.2.3 Terms and Conditions (Nx)

(A) Concurrent Subscription

The Customer must concurrently subscribe to the parallel Contract Offers of Contract Offer No. 23 pursuant to the following tariffs:

(1) Pacific Bell, Tariff F.C.C No. 1, Section 33, Contract Offer No. 34.
(2) Ameritech Tariff F.C.C. No. 2, Section 22, Contract Offer No. 43.
(3) Southwestern Bell Tariff F.C.C. No. 73, Section 41, Contract Offer No. 31.
(4) The Southern New England Telephone Company Tariff F.C.C. No. 39, Section 25, Contract Offer No. 6. (Nx)

(B) Subject Services

Contract Offer No. 2 applies to pricing-flexibility-qualified access services (hereafter referred to as Subject Services) contained in the following tariff sections:

(1) VG/DS0 Services - NBTC Tariff F.C.C. No. 1, Sections 7.7.6, 7.10.5 for Phase I MSAs, and Sections 22.5.2.1, 22.5.2.4 for Phase II MSAs;
(2) DS1/DS3 Service - NBTC Tariff F.C.C. No. 1, Section 7.11.5.3 for Phase I MSAs and Section 22.5.2.5, 22.5.2.6, 22.5.2.11 for Phase II MSAs;
(3) OCN PTP OC48/OC48c/OC192 Service – NBTC Tariff F.C.C. No. 1, Section 21.3 and Section 22.5.2.10 for Phase II
(4) GigaMAN Service – NBTC Tariff F.C.C. No. 1 Section 7.3.12 for Phase I MSAs and Section 22.5.2.7 for Phase II MSAs.

All Terms and Conditions for the Subject Services listed above are governed by their respective tariff sections except as noted herein. Annual recurring revenue generated from these services will be used in the MARC calculations defined in Section 23.2.4. (N)

(x) issued under Authority of Special Permission Authority No. 04-075 of F.C.C.

(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.3 Terms and Conditions (Cont'd)

(C) Term Period

The contract term (Term Period) is five (5) years commencing on the date the Telephone Company receives a completed Letter of Authorization (LOA) from the Customer. Contract Offer No. 2 is not renewable.

Subject Services to which the Customer already subscribes as of the commencement of the Term Period, or any Subsequently Added Services to which Customer subscribes after commencement of the Term Period in accordance with the terms set forth herein, must be on five (5) year term payment plans or converted to five (5) year term payment plans (where available) in order to receive discounts pursuant to this Contract Offer. If five (5) year term is not available, the Customer must select from the longest term plan available for the service. The Customer may select from any term plan available for purchases of new Subject Services.

(D) Discounts

Discounts will be applied 60 days after the close of each quarter beginning with the first three months after contract commencement. Discounts will be applied each quarter that the Customer complies with MARC requirements, all Eligibility Criteria, and all Terms and Conditions. MARC calculations are discussed in Section 23.2.4 and the application of discounts is detailed in Section 23.2.5.

(E) General

Services are subject to certain rates, charges, and general terms and conditions in other sections of F.C.C. Tariff No. 1, as set forth in Sections 2-General Regulations, 5-Ordering Options for Switched & Special Access Service, and 13-Additional Engineering, Additional Labor & Miscellaneous Services. Such terms and conditions may be modified through the filing of tariff changes at any time during the Term Period. Such tariff modifications will not change the Terms and Conditions described in this Contract Offer.

(N)

(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 - DS1, DS3, SONET Service Offer (Cont'd)

23.2.3 Terms and Conditions (Cont'd)

(F) Contract Termination

If the Customer should terminate this Contract Offer during the Term Period, termination liability charges will apply in accordance with Section 23.2.8.

If the Customer fails to maintain any of the Terms and Conditions detailed in Section 23.2.3, the Telephone Company will notify the Customer in writing. The Customer will have 60 days to return to compliance. Failure to comply within 60 days will constitute a default and the Telephone Company shall have the right to terminate this contract. In the event of termination by Telephone Company, termination liability charges will apply as set forth in Section 23.2.8.

(G) Minimum Annual Revenue Commitment (MARC)

Customer must maintain a MARC (as described in Section 23.2.4) for each year in the Term Period of this Contract Offer.

(H) Access Service Ratio

As referenced in Section 23.2.2(D), the Customer and its affiliates must maintain an Access Service Ratio of 98% or greater. The ratio, calculated monthly, is the Access Revenue divided by Access Revenue plus Wholesale Revenue. To maintain compliance with this Contract Offer, the ratio must be greater than or equal to 98%. The 98% ratio is calculated as follows:

$$\frac{\text{Access Revenue}}{\text{Access Revenue + Wholesale Revenue}}$$

(1) Access Revenue is the Customer's and its affiliates interstate recurring billed revenue associated with the rate elements, as defined in Table A:

TABLE A:

Service	General/Basic Description
Voice Grade	7.7.1-5
DS0, DS1, DS3 Services	7.10.1-4, 7.11.1-5
OCN PTP	21.1, 21.2
GigaMAN	7.13.1-11

(2) Wholesale Revenue is the Customer's and its affiliates recurring billed revenue for associated rate elements, as defined in Table B, not included in the interstate tariff(s).

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd) (N)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.3 Terms and Conditions (Cont'd)

(H) Access Service Ratio (Cont'd)

TABLE B:

Service Level	**Associated Rate Elements Not Included in Interstate Tariff**
DS1/LT1	**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/LT3	**DS3 Loop DS3 Entrance Facilities DS3 Interoffice Transport DS3 Cross Connects DS1/DS3 Multiplexing All DS3 non-tariffed Committed Information Rate Broadband Services**
OC-3 OC-12 OC-48	**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 Transport Products	**Dark Fiber – Interoffice Dark Fiber – Loop Dark Fiber – Subloop Dark Fiber Cross Connects Unbundled Dedicated Transport**

(N)

(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.3 Terms and Conditions (Cont'd)

(H) Access Service Ratio (Cont'd)

(3) As new rate elements are introduced to Table A in this section, all recurring revenues associated with the new rate elements will automatically be added to the Customer's Access Revenue, as defined in this section, for calculation of the Access Service Ratio.

(4) As new rate elements are introduced to Table B in this section, all recurring revenues associated with the new rate elements will automatically be added to the Customer's Wholesale Revenue, as defined in this section, for calculation of the Access Service Ratio.

(5) If the Customer fails to meet the Access Service Ratio in any given month of the term, upon notification from the Telephone Company, the Customer has ten (10) business days to notify the Telephone Company in writing that it will meet or exceed the 98% Access Services Ratio within 60 days. Failure to achieve compliance in 60 days will constitute a default and the Telephone Company shall have the right to terminate this Contract Offer. In the event of a termination by the Telephone Company, termination liability charges will apply as set forth in Section 23.2.8.

(6) Credits will not be issued until the Customer has met the 98% Access Services Ratio.

(I) The Customer will not be able to subscribe to any future Contract Offerings in Section 23 in conjunction with this Contract Offer or that might be offered by the Telephone Company for Subject Services covered under this Contract Offer.

(J) The Customer must pay billed charges in full for the Term Period of the contract, excluding amounts being disputed. The Telephone Company will provide Customer written notice of a non-compliance situation. Customer will have ten (10) business days from receipt of the written notice to comply. If the Customer does not comply, the Telephone Company shall have the right to terminate this Contract Offer. In the event of termination by the Telephone Company, termination liability charges as set forth in Section 23.2.8 will apply. Credits will not be issued until the Customer has paid all billed charges (excluding disputes).

(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.3 Terms and Conditions (Cont'd)

(K) Any disputed billing amounts that have been resolved in favor of the Telephone Company are due and payable as described in Section 2.5 and Section 23.2.3 (J) above.

(L) The Customer must provide, at the time of subscription, all of the Access Customer Name Abbreviation (ACNA), Other Company Name (OCN) and/or Tiecodes (collectively " Company Code(s)") that the Customer designates for inclusion in this Contract Offer. Company Code(s) may be added by the Customer after initial subscription but are subject to revenue and calculation requirements discussed in Section 23.2.4 (B). Customer shall not incur any termination liability under the relevant tariffs as a result of adding any such Company Code(s).

23.2.4 Minimum Annual Revenue Commitment (MARC)

(A) Calculation of the MARC

Under Contract Offer No. 2, the Customer must establish and maintain a MARC. The MARC will be calculated as outlined in this section. The MARC for the first year will be established when the Telephone Company receives the Letter Of Authorization (LOA) from the Customer and the Customer identifies the Company Code(s) that will be included in this Contract Offer pursuant to Section 23.2.3 (L).

The Customer's MARC for Year 1 is calculated based on the total of the previous three (3) months recurring revenue (recalculated to five-year term rates where applicable pursuant to Section 23.2.3 (C)) for all Subject Services identified in Section 23.2.3 (B) from the SBC Tariffs identified in Section 23.2.3 (A) in eligible pricing flexibility MSAs, multiplied by four (4):

(Prior 3 months recurring revenue) x 4 = Year 1 MARC. The MARC for years 2 through 5 will be recalculated at each annual contract anniversary date.

Example for Year 1 MARC Establishment:
The Customer's prior 3 months recurring revenue (re-rated to 5 year term rates) is $5M. The Customer's Year 1 MARC would be $20M. ($5M X 4).

The MARC for years 2 through 5 will be recalculated at each annual contract anniversary date as follows:

Total of the prior three (3) months recurring revenue for all Subject Services multiplied by four (4).
If the recalculated MARC is greater than the previous year's MARC, the newly recalculated MARC will apply. If the recalculated MARC is less than the previous year's MARC, the previous year's MARC will carryover for the new year.

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd) (N)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)

(A) Calculation of the MARC (Cont'd)

Example for Year 2 MARC Establishment:

The Customer's prior 3 months recurring revenue is $4M. The Customer's Year 2 MARC is $20M. ($4M X 4 = $16M < $20M). In this example the Customer's prior 3 months recurring revenue multiplied by 4 is less than the Year 1 MARC.

If the Value is less than the Year 1 MARC, then the Year 1 MARC will be used for Year 2.

If the Value calculated is greater than the Year 1 MARC, then the newly calculated MARC will be used as the Year 2 MARC.

If the Telephone Company receives additional pricing flexibility relief for MSAs that are not listed in Section 23.2.2, the Telephone Company will recalculate the MARC to incorporate recurring revenues from those areas and will include those revenues in the calculations discussed in Section 23.2.4 (B).

(B) Calculations to Achieve the MARC

Recurring revenue will be counted to determine whether the Customer achieves its MARC based on the following criteria:

Revenue from Existing Services:

(1) Recurring revenue from Subject Services to which the Customer subscribes as of the commencement of the Term Period and which are billed under the specific Company Code(s) provided by the Customer pursuant to Section 23.2.3 (L) will be included in the calculation used to achieve the MARC effective upon the commencement of the Term Period. (N)

N)

23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)

(B) Calculations to Achieve the MARC (Cont'd)

(2) Revenue from Subsequently Added Services:

Recurring revenue from Subject Services to which the Customer does not subscribe as of the commencement of the Contract Term Period will not be included in the calculations used to achieve the MARC except as specifically allowed in this subsection. Subject Services ordered prior to, and/or purchased after subscription to this Contract Offer and not subscribed to by the Customer as of the commencement of the Contract Term Period will be considered Subsequently Added Services.

Subsequently Added Services will be recalculated to five (5) year term payment plans in accordance with Section 3.2.3(C). Recurring revenue generated from these Subsequently Added Services may only be used in the calculations used to achieve the MARC after (1) the Telephone Company issues a completed service order, (2) the Customer has been billed for the Subsequently Added Services, and (3) the Subsequently Added Services are qualified under one of the following provisions:

(a) First Six (6) Months After Contract Subscription

Within the first six (6) months of subscribing to this Contract Offer, the Customer can add one or more of its existing Company Code(s) (with its corresponding recurring revenue) not previously included by the Customer on the LOA at the time of subscription pursuant to this provision. The Customer must notify the Telephone Company in writing of its desire to include additional Company Code(s) and specify the Company Code(s) to be added. The recurring revenue from Subject Services of these Company Code(s) (recalculated to five (5) year term payment plans where applicable pursuant to Section 23.2.3(C)) shall be eligible for the MARC discounts as detailed in Section 23.2.5 (A)(1). The recurring revenues from Subject Services of these added Company Code(s) are not eligible for above the MARC discounts detailed in Section 23.2.5 (A)(2) or win-back credits detailed in Section 23.2.5 (E). (N)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)

(B) Calculations to Achieve the MARC (Cont'd)

(2) Revenue from Subsequently Added Services (Cont'd)

(b) After the first six (6) Months of Contract Subscription

After the first six (6) months of subscribing to this Contract Offer, the Customer can add one or more of its existing Company Code(s) (with its corresponding recurring revenue) not previously included by the Customer on the LOA at the time of subscription pursuant to this provision.

If the Customer chooses to include any of its additional existing Company Code(s) after the first six (6) months of subscription to this Contract Offer, the Customer must notify the Telephone Company in writing of its desire to include additional Company Code (s) and specify the Company Code(s) added at which time the MARC developed pursuant to Section 23.2.4 (A) will be re-calculated and increased to reflect the additional Company Codes (recalculated to five (5) year term payment plans where applicable pursuant to Section 23.2.3(C)). The recurring revenue from Subject Services of these Company Codes shall be eligible for the MARC discounts detailed in Section 23.2.5 (A),the above the MARC discounts detailed in Section 23.2.5 (A)(2) and the win-back credits detailed in Section 23.2.5 (E). (N)

(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)

(B) Calculations to Achieve the MARC (Cont'd)

(3) Mergers and Acquisitions

If, after subscribing to this Contract Offer, the Customer merges with, acquires, is acquired by, sells all or substantially all its stock or assets to any other entity, or purchases all stock or substantially all stock or assets of another company (the foregoing generally referred to herein as a merger or acquisition) or establishes joint marketing arrangements with another company for Subject Services (including services currently or previously provided through the Telephone Company's network under any Company Code(s)), the Mergers and Acquisition provisions discussed in Section 23.2.7 will apply.

(C) MARC Adjustments

The Customer shall have the right to adjust the MARC downward by 10% or 20%. This adjustment can only be made one time during the life of the Contract Term Period anytime after the first 12 months of the Contract Term Period. If the Customer exercises this option, reduced discounts (as specified in Table E Section 23.2.5(B) shall apply for the remainder of the Contract Term Period, discounts previously provided during that contract year will be re-rated retroactively to reflect the reduced discount level, and certain provisions will no longer apply as detailed in Section 23.2.5(B). If the Customer uses the MARC adjustment option in conjunction with any of the Merger and Acquisition options outlined in Section 23.2.7, reduced discounts will remain for the life of the Contract Term Period, and discounts previously received during that contract year will not be re-rated provided the Eligibility Criteria in Section 23.2.2, Terms and Conditions in Section 23.2.3 and the quarterly MARC schedule in Table D Section 23.2.5 have been met prior to the MARC adjustment, and certain provisions will no longer apply as detailed in Section 23.2.5. (N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)

(D) Failure to Achieve the MARC

If the Customer fails to achieve the annual MARC commitment as of the anniversary dates, the Customer will be notified by the Telephone Company.

The Customer must remit an Annual True-Up amount calculated as the difference between the annual MARC for the current plan year and the actual annual recurring revenue for the Subject Services.

If the Telephone Company does not receive the Annual True-Up amount within 30 days of the Customer's receipt of its notification, the Customer is deemed to have terminated this Contract Offer and termination liability charges will apply as set forth in Section 23.2.8.

(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.5 Discounts and Other Credits

(A) Discount Schedule and Application

Table C contains the level of discounts for this Contract Offer.

TABLE C:

Year	MARC Discount	Discount on Recurring Revenue above the MARC
1	7%	20%
2	9%	20%
3	10%	20%
4	11%	20%
5	12%	20%

Example for Year 1:

Customer's MARC = $20M
Customer's actual annual recurring revenues for Subject Services = $25M
Customer will receive a 7% discount on $20M (issued quarterly in accordance with subsection (1) below) and a 20% discount on $5M (issued annually in accordance with subsection (2))

(1) The Customer will receive MARC discounts quarterly on recurring revenues for all Subject Services up to the MARC. The discount will be applied 60 days after the close of the quarter. Recurring revenue above the MARC is subject to discounts discussed in Section 23.2.5 (A)(2) below. Recurring revenue from Company Codes added pursuant to Section 23.2.3 (L) will receive quarterly discounts described below at the time the codes are added.

The Customer will receive the quarterly discounts as long as the following percentages of the MARC have been achieved by the close of the quarter per Table D. Discounts will be withheld if the Customer does not meet the percentage requirements in any given quarter and discounts will not be issued until the Customer is in compliance with the MARC percentage schedule as outlined below.

Table D:

Quarter	% of MARC
1st	25%
2nd	50%
3rd	75%
4th	100%

(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd) (N)

23.2.5 Discounts and Other Credits (Cont'd)

(A) Discount Schedule and Application (Cont'd)

(1) (Cont'd)

For example, if the Customer has achieved 25% of the MARC by the close of the 1st quarter and is in compliance with all Terms and Conditions of this Contract Offer, discounts will be issued. If in the second quarter the Customer only achieves 40% of the MARC and all Terms and Conditions are met, discounts will be withheld. If by the 3rd quarter the Customer has achieved 75% of the MARC and is in compliance with all Terms and Conditions, discounts previously withheld in the 2nd quarter will be issued as well as discounts due for the 3rd quarter.

(2) The Customer will receive the 20% discount on recurring revenues above the MARC annually. The discount will be applied 60 days after each contract anniversary. Recurring revenue generated from services of Company Code(s) not identified at the time of subscription are not eligible for above the MARC discounts unless added pursuant to Section 23.2.3 (L) or Section 23.2.7. (N)

23. Pricing Flexibility Contract Offerings (Cont'd) (N)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.5 Discounts and Other Credits (Cont'd)

(B) MARC adjustments Discount Schedule and Application

Table E outlines discounts that the Customer will be eligible to receive depending on the MARC adjustment percentage chosen pursuant to Section 23.2.4 (C)

TABLE E:

MARC Adjustment	10%	20%
Discounts	Year 2 – 3% Year 3 – 4% Year 4 – 5% Year 5 – 6%	Year 2 – 2% Year 3 – 2% Year 4 – 3% Year 5 – 3%
Above MARC discount	Will only apply to revenue above the MARC used as the basis of the adjustment or the recurring revenue from the previous 3 months multiplied by 4, whichever is lower.	Will only apply to revenue above the MARC used as the basis of the adjustment or the recurring revenue from the previous 3 months multiplied by 4, whichever is lower.

For example, the Customer's year 1 MARC is $17M. The Customer's year 2 MARC is $18M (calculated as revenue from the last quarter in year 1 x 4). On the anniversary date at the end of year 2, the Customer's year 2 recurring revenue is $15M. The Customer elects to invoke the MARC adjustment option and adjust the MARC downward by 20%. The Customer's year 3 recalculated MARC is therefore $14.4M = ($18M x 80%).

The Customer's discounts (including any previously withheld) for year 2 will be recalculated to reflect levels as set forth in Table E and would total $300K ($15M x 2%). Any discounts that have been applied to the Customer's bill during year 2 in excess of $300K will be back-billed. The discount amount for year 3 is also 2% as set forth in Table E.

Discounts, on a going forward basis, will be based on the re-calculated MARC and will be subject to percentages as detailed in Table E.

(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd) (N)

23.2.5 Discounts and Other Credits (Cont'd)

(C) Non-Recurring Charges

The Telephone Company will waive Non-recurring charges associated with the purchase of VG, DS0, DS1, DS3, OCN PTP, and GigaMan Services. In the event that these non-recurring charges are billed, The Telephone Company will credit these charges quarterly. Access Order and Special Construction charges will apply where applicable. Non-recurring charges will be credited quarterly as long as the Customer is in compliance with the Eligibility Criteria in Section 23.2.2 and the Terms and Conditions of this Contract Offer as specified in Section 23.2.3. If the Customer fails to meet the MARC on a contract anniversary date pursuant to Section 23.2.4 (A) and fails to pay the Annual True-Up as defined in Section 23.2.4(D), the Customer will be back-billed the previous 12-months non-recurring charges previously waived or credited.

(D) Portability

The Telephone Company will waive termination liability charges for moves and/or disconnection of DS1, DS3, and OCN PTP Services. In the event that termination liability charges for these moves and/or disconnections are assessed, the Telephone Company will credit these charges quarterly provided the following criteria are met, and provided the Eligibility Criteria in Section 23.2.2, and Terms and Conditions in Section 23.2.3 have been met. If the Customer fails to meet the MARC on each contract anniversary date pursuant to Section 23.2.4 (A) and fails to pay the Annual True-Up as defined in Section 23.2.4 (D), the Customer will be back-billed the previous 12-months charges that were waived or credited for termination liability charges.

(1) The move, disconnect, and/or new service may be from any SBC Tariff as described in Section 23.2.1.

(2) DS1 Services

The Telephone Company will credit the Customer, quarterly, any termination liability charges assessed and not disputed for the move and/or disconnection of DS1s throughout the term of this Contract Offer No. 23, provided that the Eligibility Criteria in Section 23.2.2, and Terms and Conditions in Section 23.2.3 have been met. (N)

(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.5 Discounts and Other Credits (Cont'd)

(D) Portability (Cont'd)

(3) DS3, OC3 and OC12 Point to Point Services

The Telephone Company will credit the Customer, quarterly, for any termination liability charges assessed and not disputed for the move and/or disconnection of DS3s, OC3 PTP, and OC12 PTP services throughout the Contract Term Period as long as the DS3, OC3 PTP or OC12 PTP has been in service for a minimum of one (1) year from the original installation date, and provided that the Eligibility Criteria in Section 23.2.2 and Terms and Conditions in Section 23.2.3 have been met.

(4) OC48 and OC192 PTP Services

The Telephone Company will credit the Customer, quarterly, for any termination liability charges assessed and not disputed for the move and/or disconnection of OC48 or OC192 Point to Point (PTP) throughout the Contract Term Period as long as the OC48 PTP or OC192 PTP has been in service for a minimum of three (3) years from the original installation date, and provided that the Eligibility Criteria in Section 23.2.2 and Terms and Conditions in Section 23.2.3 have been met.

(E) Winback

Winback credits will be calculated and applied on each contract anniversary date, and shall be in addition to all other discounts and credits set forth in this Contract Offer. Recurring revenue generated from services of Company Code(s) not identified at the time of subscription are not eligible for win-back credits described below.

(1) The Customer will receive a 20% discount for the first 12 months of service for any DS1 or DS3 services moved to the Telephone Company's network that were previously provided by another company as long as the service is on the Telephone company's network for at least one year.

(2) The Customer will receive a 30% discount for the first 12 months of service for any OC3, OC12, OC48, and/or OC192 Point to Point or Dedicated SONET Ring Service moved to the Telephone Company's network that were previously provided by another company as long as the service is on the Telephone Company's network for at least one year.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd) (N)

23.2.5 Discounts and Other Credits (Cont'd)

(E) Winback (Cont'd)

(3) The Customer must provide documentation to demonstrate that the Subject Services have been converted from another carrier to the Telephone Company's network. Documentation may include but is not limited to: circuit detail records, invoices, and coordinated orders to move the service. The Telephone Company is willing to review other documents that the Customer may deem appropriate to meet this criteria, however only to the extent that it does not result in breach of any non-disclosure agreements which may govern the distribution of such information.

23.2.6 Assignment and Transfer

If the Customer wishes to assign or transfer its use of services under this Contract Offer pursuant to F.C.C. No. 1, Section 2.1.2 of this Tariff, the Telephone Company will acknowledge such transfer or assignment pursuant to the terms of F.C.C. No. 1, Section 2.1.2, unless: (1) the proposed assignee or transferee demonstrates a lack of credit worthiness under one of the criteria in (A) or (B) below, or (2) if the proposed assignee or transferee or its parent company 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 50% 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 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 "fair" or below in a composite credit appraisal published by Dun and Bradstreet, or "high risk" in a Paydex score as published by Dun and Bradstreet. (N)

23. Pricing Flexibility Contract Offerings (Cont'd) (N)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.7 Mergers and Acquisitions

The Terms and Conditions of Contract Offer No. 2 shall continue in full force and in effect if the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all its stock or certain 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). During or after the merger or acquisition, if the other company involved in the merger or acquisition also purchases Subject Services from the Telephone Company, either directly or through any affiliates, then billed, recurring revenue for Subject Services of the other company involved in the merger or acquisition will not be used in Calculations of the MARC as discussed in Section 23.2.4 (A) or Calculations to Achieve the MARC discussed in Section 23.2.4 (B), except as permitted by one of the provisions in this subsection.

The Customer must be meeting MARC commitments and all Eligibility Criteria and Terms and Conditions outlined in Sections 23.2.2 and 23.2.3 in order to exercise the provisions in this subsection.

Recurring revenue from Subject Services from the other entity involved in the merger or acquisition can not be used for any incentives or discounts contained in this Contract Offer except as permitted by one of the provisions outlined in this subsection.

The Customer shall have four one-time choices (per merger or acquisition) to incorporate revenue from the other company or companies involved in the merger or acquisition. If the Customer does not exercise any of the provisions in this subsection by the times specified in relation to the Transaction Close Date, the Customer will not be permitted to use existing or future Special Access revenues from the other company or companies involved in the merger or acquisition in the Calculation of the MARC or Calculations to Achieve the MARC discussed in Section 23.2.4 (A) & (B).

The acquisition and/or merger Transaction Close Date will be used to measure the length of time the following provisions are available. 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.

If the Customer has selected but not yet fully implemented one of the provisions in this subsection, the MARC adjustment calculation as detailed in Section 23.2.4 will only apply to the Customer's original (pre-merger or acquisition) MARC and will not include revenue from the other company involved in the merger or acquisition. The Customer cannot combine any of the Merger and Acquisition provisions in this subsection. (N)

23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.7 Mergers and Acquisitions (Cont'd)

The Telephone Company will calculate Annual Total Special Access revenue of the other company or companies involved in the merger or acquisition on the date the Customer selects one of the provisions in this subsection. The Annual Total Special Access revenue will be determined by calculating the prior three (3) months recurring revenue for Subject Services of the other company involved in the merger or acquisition multiplied by four (4). Until the Customer has fully implemented one of the provisions in this subsection, the Customer will not be eligible to earn above the MARC discounts discussed in Section 23.2.5 (A) (2) for revenue from the other company involved in the merger or acquisition until after it exceeds the Annual Total Special Access revenue. After the Customer has fully implemented one of the provisions in this subsection, the Customer will be eligible for above the MARC discounts discussed in Section 23.2.5 (A) (2) for revenue above the new combined MARC. (N)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd) (N)

23.2.7 Mergers and Acquisitions (Cont'd)

23.2.7.1 Merger and Acquisition Provisions

(A) Mergers and Acquisitions – Access Services Ratio Impacting

If the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all its stock or certain assets to any other entity, or purchases all stock or substantially all stock or certain assets of another company and inclusion of the recurring revenue from Subject Services from the other company or companies involved in the merger or acquisition into this Contract Offer will cause the Customer to fall below Access Services Ratio Terms and Conditions as defined in Section 23.2.3 (H), the Customer must select from Option 1 or 2 below in order to receive incentives and discounts for the other company involved in the merger or acquisition under this Contract Offer.

The Customer must fully comply with the Access Services Ratio Terms and Conditions within 18 months of the Transaction Close Date and must comply with the Access Conversion Schedule outlined in Table F below. As long as the Customer is in compliance with the Access Conversion Schedule and the Customer's existing revenue complies with the Access Services Ratio in Section 23.2.4 (H), the MARC discounts will continue to apply and the Customer shall not be considered out of compliance with the Access Services Ratio Terms and Conditions as defined in Section 23.2.3 (H).

If at any time the Customer does not comply with the Access Conversion Schedule outlined in Table F below, MARC discounts will be withheld and the Telephone Company will notify the Customer of non-compliance. The Customer will have 30 days to comply with the Access Conversion Schedule. If the Customer does not comply within 30 days, this Contract Offer will be considered in default, and the Telephone Company shall have the right to terminate this Contract Offer and termination liability charges will apply as detailed in Section 23.2.8. Notwithstanding the foregoing, if Telephone Company is primarily responsible for a delay in the Access Conversion Schedule, then the MARC discounts will continue to apply and the Customer shall not be considered out of compliance with the Access Services Ratio Terms and Conditions as defined in Section 23.2.3 (H) and the contract will not be considered in default, however, each party shall take all reasonable steps to comply as soon as possible.

(N)

(N)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.7 Mergers and Acquisitions (Cont'd)

23.2.7.1 Merger and Acquisition Provisions (Cont'd)

(A) Mergers and Acquisitions – Access Services Ratio Impacting (Cont'd)

Table F outlines the Unbundled Network Element (UNE) to Access conversion schedule that will be used to migrate the services.

Table F: Access Conversion Schedule

90 Day Period	Required Conversion Level
1st	10%
2nd	20%
3rd	50%
4th	75%
5th	85%
6th	100%

(N)

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One SBC Plaza, Dallas, Texas 75202

23. Pricing Flexibility Contract Offerings (Cont'd) (N)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.7 Mergers and Acquisitions (Cont'd)

23.2.7.1 Merger and Acquisition Provisions (Cont'd)

(A) Mergers and Acquisitions – Access Services Ratio Impacting (Cont'd)

(1) Option 1

(a) The Customer may establish a temporary MARC by adding 85% but no more than 100% (depending on the Customer's selection) of Special Access Services recurring revenue from the other company involved in the merger or acquisition for Subject Services billed by the Telephone Company to the Customer's existing MARC as outlined below for a period not to exceed 18 months from the Transaction Close Date.

(b) The Customer must exercise this option within 60 days following the Transaction Close Date.

(c) This option is not available in the 5th year of the Contract Term Period.

(d) The temporary MARC will be calculated by taking the last 3 months of applicable monthly recurring Special Access revenue for the other company involved in the merger or acquisition (from the date this option is selected) for Subject Services multiplied by four (4) multiplied by 85% to 100% (depending on the Customer's selection) and adding to that the Customer's existing MARC.

(e) A combined permanent MARC will be established no later than 18 months following the Transaction Close Date using the following calculation.

(i) The last 3 months (at the time of the calculation) of monthly recurring Special Access revenue for the other company involved in the merger or acquisition for Subject Services multiplied by four (4) and adding to that the Customer's existing MARC.

(ii) The permanent MARC must be at least 85% of temporary MARC as defined in Section 23.2.7.1 (A) (1) (d). (N)

23. Pricing Flexibility Contract Offerings (Cont'd) (N)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.7 Mergers and Acquisitions (Cont'd)

23.2.7.1 Merger and Acquisition Provisions (Cont'd)

(A) Mergers and Acquisitions – Access Services Ratio Impacting (Cont'd)

(2) Option 2

(a) The Customer must add at least 85% but no more than 100% (depending on the Customer's selection) of Special Access recurring revenue from the other company involved in the merger or acquisition for Subject Services billed by the Telephone Company to the Customer's existing MARC as outlined below for a period not to exceed 18 months from the Transaction Close Date.

(b) The Customer must exercise this option within 12 months following the Transaction Close Date

(c) This option is not available during the 5^{th} year of the Contract Term Period.

(d) The MARC will be set by taking the last 3 months of applicable monthly recurring Special Access revenue from the other company involved in the merger or acquisition (on the date this option is selected) for Subject Services multiplied by four (4) and multiplied by 85% to 100% (depending on the Customer's selection) and adding to that the Customer's existing MARC.

(B) Mergers and Acquisitions – Access Services Ratio Not Impacting

If the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all its stock or certain assets to any other entity, or purchases all stock or substantially all stock or certain assets of another company and inclusion of recurring revenue from Subject Services from the other company or companies involved in the merger or acquisition into this Contract Offer will not cause the Customer to fall below Access Services Ratio Terms and Conditions as defined in Section 23.2.3 (H), the Customer must select from Option 3 or 4 below in order to receive incentives and discounts for the other company involved in the merger or acquisition under this Contract Offer.

(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.7 Mergers and Acquisitions (Cont'd)

23.2.7.1 Merger and Acquisition Provisions (Cont'd)

(B) Mergers and Acquisitions – Access Services Ratio Not Impacting (Cont'd)

(1) Option 3

(a) The Customer may establish a temporary MARC by adding 90% to 100% (depending on the Customer's selection) of Special Access recurring revenue from the other company involved in the merger or acquisition for Subject Services used to calculate the MARC to the extent outlined below for a period not to exceed 12 months from the Transaction Close Date.

(b) The Customer must exercise this option within 60 days following the acquisition Transaction Close Date.

(c) This option is not available during the 5th year of the Contract Term Period.

(d) The temporary MARC will be established by taking the last 3 months of applicable monthly recurring Special Access revenue, for the other company involved in the merger or acquisition (from this date this option is selected) for Subject Services multiplied by four (4) and multiplied by 90% to 100% (depending on the Customer's selection). This amount will be added to the Customer's existing MARC.

(e) A combined permanent MARC will be established no later than 12 months following the Transaction Close Date using the following calculation:

(i) The last three (3) months (at the time of the calculation) of monthly recurring Special Access revenues from the other company involved in the merger or acquisition for Subject Services multiplied by four (4) and adding to that the Customer's existing MARC.

(ii) The permanent MARC must be at least 85% of the temporary MARC as defined Section 23.2.7 (A) (4).

(N)

23. Pricing Flexibility Contract Offerings (Cont'd) (N)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.7 Mergers and Acquisitions (Cont'd)

23.2.7.1 Merger and Acquisition Provisions (Cont'd)

(B) Mergers and Acquisitions – Access Services Ratio Not Impacting (Cont'd)

(2) Option 4

(a) The Customer must add at least 90% but no more than 100% (depending on the Customer's selection) of Special Access recurring revenue from the other company involved in the merger or acquisition for Subject Services billed by the Telephone Company to the Customer's existing MARC to the extent outlined below for a period not to exceed 12 months from the Transaction Close Date.

(b) The Customer must exercise this option within 12 months of the Transaction Close Date.

(c) This option is not available during the 5th year of the Contract Term Period.

(d) The MARC will be set by taking the last 3 months of applicable monthly recurring Special Access revenue from the other company involved in the merger or acquisition (from the date this option is selected) for Subject Services multiplied by four (4) and multiplied by 90% to 100% (depending on the Customer's selection) and adding to that the Customer's existing MARC. (N)

(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd)

23.2.8 Termination Liability

(A) Termination Liability Charges

If the Customer terminates Contract Offer No. 2 before the completion of the term for any reason whatsoever (other than a material default by the Telephone Company), the Customer must pay the Telephone Company termination liability charges as described below. These charges shall become due as of the effective date of the cancellation or termination. The Customer must provide written notification 90 days prior to the desired date of termination to the Telephone Company. This notification must include the date upon which the Customer will terminate the Contract Offer.

If the Customer fails to meet any of the eligibility criteria in Section 23.2.2, or fails to meet any of the Terms and Conditions in Section 23.2.3, then the Telephone Company shall provide the Customer with written notification of such non-compliance and the Customer will have sixty (60) days to comply. If the Customer does not comply within such time period, the Customer will be deemed to have terminated its participation in Contract Offer No. 2 and termination liability charges will apply as stated below and will be payable pursuant to F.C.C. No. 1, Section 2.4.

The Customer's termination liability charge shall be equal to: 100% of all Discounts under Contract Offer No. 2 for the six (6) months immediately prior to the date of termination; plus the following schedule:

(1) If terminated in Year 1, 10.0% of the Base MARC for the remaining portion of Year 1, plus 10% of the Base MARC for the remaining years of the Contract Offer.

(2) If terminated in Year 2 , 12.5% of the Year 2 MARC for the remaining portion of Year 2, plus 12.5% of the Year 2 MARC for the remaining years of the Contract Offer.

(3) If terminated in Year 3 , 12.5% of the Year 3 MARC for the remaining portion of Year 3, plus 12.5% of the Year 3 MARC for the remaining years of the Contract Offer.

(4) If terminated in Year 4, 12.5% of the Year 4 MARC for the remaining portion of Year 4, plus 12.5% of the Year 4 MARC for year 5.

(5) If terminated in Year 5, 10.0% of the Year 5 MARC for the remaining portion of Year 5.

(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

23.2 Contract Offer No. 2 – Special Access Service Offer (Cont'd) (N)

23.2.8 Termination Liability (Cont'd)

(B) New Technology Termination

If the Customer wishes to move its services to new alternative technology (such as Broadband over power lines, Wi-MAX, DWDM, or optical switching technologies), the Customer shall qualify to reduce the MARC termination liability charges as detailed above by 50% in year 4 and/or 5 of this Contract Offer as long as the conditions in this subsection are met. The Customer shall have the right to move its services to new alternative technology and receive reduced termination liability as long as Eligibility Criteria in Section 23.2. 2 and all Terms and Conditions in Section 23.2.3 are met. The Customer must provide documentation that reasonably demonstrates that the new technology is an alternative to existing Subject Services.

For example, if the Customer wishes to terminate this Contract Offer due to a new technology in year 4 of the Contract Offer, the termination liability charge would be equal to 100% of discounts applied during the previous six-months as well as 6.25% of the Year 4 MARC for the remaining portion of year 4, plus 6.25% of the Year 4 MARC for year 5.

The Customer must notify SBC in writing at least 90 days prior to the start of year 4 if they wish to terminate in year 4 and invoke this provision or at least 90 days prior to the start of year 5 if they wish to terminate in year 5 and invoke this provision. This notification must include the date upon which the Customer will terminate the Contract Offer. Additionally, this provision is only available to the Customer if it has not exercised the 20% MARC adjustment option as detailed in Section 23.2.4 (C).

(C) This Section 23.2.8 sets forth the sole and exclusive remedies for termination of this Contract Offer No. 23, except for charges due and payable for Subject Services rendered prior to the date of termination and any non-recurring charges and/or termination liability charges that may become due and payable in accordance with Sections 23.2.5 (C) and (D). (N)