

**Before the  
TENNESSEE REGULATORY AUTHORITY**

Application of LMDS Holdings, Inc.	)	
for Authority to To Provide	)	
Competitive Local Exchange and	)	Docket No. 06-00066
Interexchange Telecommunications	)	
Services in the State of	)	
Tennessee	)	

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**APPLICATION AMENDMENT**

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LMDS Holdings, Inc. ("Applicant" or "Company") by its attorneys ("Commission"), respectfully amends its Application for a Public Convenience and Necessity to provide facilities-based and resold local exchange and interexchange telecommunications services in the State of Tennessee. This Amendment reflects a name change of Applicant from "LMDS Holdings, Inc." to "Nextlink Wireless, Inc." Company filed its Application/Petition on March 10, 2006 and was assigned Docket No. 06-00066.

A copy of the Company's Amended Articles of Incorporation is attached as **Exhibit A**, and a copy of the Company's Amended Qualification to Do Business in Tennessee is attached as **Exhibit B**. A revised prospective tariff that reflects this name change is attached as **Exhibit C**. The tariff does not have any changes to the Company's rates, terms and/or conditions. The only change is to the Company's name.

In addition, Applicant wishes to amend its Application to reflect a change in its corporate structure. As noted in Footnote 1 of the Application, XO Holdings, Inc. ("XOH"), parent company of Applicant, completed a *pro forma* restructuring merger on February 28, 2006. As a result of the restructuring, XO Communications, Inc., the former parent company of the Applicant, was merged into XO Communications, LLC ("XO LLC") and removed from the ownership structure of XOH. The restructuring was intended to facilitate the sale of XO LLC to Elk Associates, LLC ("Elk") providing for the sale of XO's wireline telecommunications business to Elk for \$700 million, a transaction that was terminated by mutual consent of XOH

and Elk on March, 30, 2006. As a consequence of termination of this transaction, Applicant and XO Communications Services, Inc., will continue to operate as separate subsidiary business units of XOH.

The Company also has a new contact for all correspondence, notices, inquiries and orders relating to consumer issues, customer complaints, and billing issues should be sent to:


Thomas E. Purcell  
Vice President – Wireless Engineering  
11111 Sunset Hills Road  
Reston, VA 20190  
Telephone: (703) 547-2098  
Facsimile: (703) 547-2292  
E-mail: [thomas.e.purcell@xo.com](mailto:thomas.e.purcell@xo.com)

Tamie Whitefoot should be deleted as the Company contact for these items.

WHEREFORE, Applicant respectfully amends its Application for a Certificate of Public Convenience and Necessity to provide competitive local exchange and interexchange telecommunications services in the State of Tennessee.

Respectfully submitted,

**LMDS HOLDINGS, INC.**

By:   
H. LaDon Baltimore  
FARRAR & BATES, LLP  
211 Seventh Avenue North, Suite 420  
Nashville, Tennessee 37219  
Telephone: (615) 254-3060  
Facsimile: (615) 254-9835

and

Brad E. Mustchelknaus  
Katherine E. Barker Marshall  
KELLEY, DRYE AND WARREN, LLP  
3050 K Street NW, Suite 400  
Washington, D.C. 20007  
Phone: (202) 342-8519  
Fax: (202) 342-8451

*Its Counsel*

Dated: June 20, 2006

**EXHIBIT A**

**AMENDED ARTICLES OF INCORPORATION**

Secretary of State  
Division of Business Services  
312 Eighth Avenue North  
6th Floor, William R. Snodgrass Tower  
Nashville, Tennessee 37243

DATE: 06/14/06  
REQUEST NUMBER: 5805-1557  
TELEPHONE CONTACT: (615) 741-2286  
FILE DATE/TIME: 06/13/06 1451  
EFFECTIVE DATE/TIME: 06/13/06 1630  
CONTROL NUMBER: 0513365

TO:  
CSC  
2711 CENTERVILLE RD.  
SUITE 400  
WILMINGTON, DE 19808

RE:  
NEXTLINK WIRELESS, INC.  
APPLICATION FOR AMENDED CERTIFICATE OF  
AUTHORITY - FOR PROFIT

THIS WILL ACKNOWLEDGE THE FILING OF THE ATTACHED DOCUMENT WITH AN  
EFFECTIVE DATE AS INDICATED ABOVE.

WHEN CORRESPONDING WITH THIS OFFICE OR SUBMITTING DOCUMENTS FOR  
FILING, PLEASE REFER TO THE CORPORATION CONTROL NUMBER GIVEN ABOVE.

-----  
FOR: APPLICATION FOR AMENDED CERTIFICATE OF  
AUTHORITY - FOR PROFIT

ON DATE: 06/13/06

FROM:  
CSC (2711 CENTERVILLE RD)  
2711 CENTERVILLE RD.  
SUITE 400  
WILMINGTON, DE 19808-0000

	FEES	
RECEIVED:	\$20.00	\$0.00
TOTAL PAYMENT RECEIVED:		\$20.00

RECEIPT NUMBER: 00003983197  
ACCOUNT NUMBER: 00250881



*Riley C. Darnell*

RILEY C. DARNELL  
SECRETARY OF STATE

**EXHIBIT B**

**AMENDED QUALIFICATION TO DO BUSINESS**

RECEIVED

STATE OF TENNESSEE

State of Tennessee



Department of State  
Corporate Filings

312 Eighth Avenue North  
6<sup>th</sup> Floor, William R. Snodgrass Tower  
Nashville, TN 37243

RECEIVED  
STATE OF TEXAS

STATE OF TEXAS

# APPLICATION FOR AMENDED

# CERTIFICATE OF AUTHORITY

**(FOR PROFIT)**

RILEY DANIELL  
SECRETARY OF STATE

Pursuant to the provisions of Section 48-25-104 of the Tennessee Business Corporation Act, the undersigned corporation hereby applies for an amended certificate of authority to transact business in the State of Tennessee, and for that purpose sets forth:

1. The name of the corporation is LMDS Holdings, Inc.  
If different, the name under which the certificate of authority is to be obtained is Nextlink Wireless, Inc.

2. The state or country under whose law it is incorporated is Delaware

3. The date of its incorporation is Nov. 4, 2005 (must be month, day, and year), and the period of duration, if other than perpetual, is \_\_\_\_\_

4. The complete street address (including zip code) of its principal office is <u>11111 Sunset Hills Road</u> <u>Reston, VA 20190</u>			
Street	City	State/Country	Zip Code

5. The complete street address (including the county and the zip code) of its registered office in Tennessee is \_\_\_\_\_  
 2908 Poston Avenue, Nashville, TN 37203

Street	City	State/Country	Zip Code
2908 Poston Avenue	Nashville	TN	37203

Registered agent Corporation Service Company

6. The names and complete business addresses (including zip code) of its current officers are: (Attach separate sheet if necessary.)  
see attached officer rider

7. The names and complete business addresses (including zip code) of its current board of directors are: (Attach separate sheet if necessary.)  
see attached director rider

8. The corporation is a corporation for profit.

9. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is \_\_\_\_\_, \_\_\_\_\_ (date) \_\_\_\_\_ (time).

[NOTE: A delayed effective date shall not be later than the 90th day after the date this document is filed by the Secretary of State.]

[**NOTE:** This application must be accompanied by a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated. The certificate shall not bear a date of more than two (2) months prior to the date the application is successfully filed in Tennessee.]

April 28 2006  
Signature Date

Vice President  
Signer's Capacity

LMDS Holdings, Inc.

Name of Corporation

Signature

Simone Wu  
Name (typed or printed)

Nextlink Wireless, Inc. f/k/a LMDS Holdings, Inc.

Officers and Directors

List of Officers:

**Name:** Carl J. Grivner **Title:** President  
**Bus. Addr.:** 11111 Sunset Hills Road, Reston, VA 20190

**Name:** Wayne Rehberger **Title:** Chief Operations Officer  
**Bus. Addr.:** 11111 Sunset Hills Road, Reston, VA 20190

**Name:** Bill Garrahan **Title:** Sr. Vice President, Corporate Development  
**Bus. Addr.:** 11111 Sunset Hills Road, Reston, VA 20190

**Name:** Simone Wu **Title:** Vice President, Acting Gen. Counsel & Secretary  
**Bus. Addr.:** 11111 Sunset Hills Road, Reston, VA 20190

**Name:** Robert Beran **Title:** Chief Executive Officer  
**Bus. Addr.:** 11111 Sunset Hills Road, Reston, VA 20190

**Name:** Gregory W. Freiberg **Title:** Vice President & Chief Financial Officer  
**Bus. Addr.:** 11111 Sunset Hills Road, Reston, VA 20190

**Name:** Heather Burnett Gold **Title:** Sr. Vice President, Government Relations  
**Bus. Addr.:** 11111 Sunset Hills Road, Reston, VA 20190

**Name:** Terri Burke **Title:** Vice President, Human Resources  
**Bus. Addr.:** 11111 Sunset Hills Road, Reston, VA 20190

**Name:** Rob Geller **Title:** Chief Information Officer  
**Bus. Addr.:** 11111 Sunset Hills Road, Reston, VA 20190

List of Directors

**Name:** Carl J. Grivner  
**Bus. Addr.:** 11111 Sunset Hills Road, Reston, VA 20190

**Name:** Wayne Rehberger  
**Bus. Addr.:** 11111 Sunset Hills Road, Reston, VA 20190

**Name:** Simone Wu  
**Bus. Addr.:** 11111 Sunset Hills Road, Reston, VA 20190

# Delaware

PAGE 1

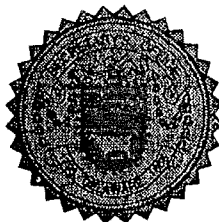
*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "NEXTLINK WIRELESS, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE ELEVENTH DAY OF MAY, A.D. 2006.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "NEXTLINK WIRELESS, INC." WAS INCORPORATED ON THE FOURTH DAY OF NOVEMBER, A.D. 2005.



4056099 8300

060447033

*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4738725

DATE: 05-11-06

5051-2006-11-06



**EXHIBIT C**  
**AMENDED PROPOSED TARIFF**

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**TITLE PAGE**

LOCAL EXCHANGE SERVICES

OF

**Nextlink Wireless, Inc.**

This Tariff contains the descriptions, regulations and rates applicable to the furnishing of local exchange services by Nextlink Wireless, Inc. ("Nextlink") hereinafter the "Company" with principal offices located at 11111 Sunset Hills Road, Reston, VA 20190. This Tariff is on file with the Tennessee Regulatory Authority and copies may be inspected, during normal business hours, at the Company's principal place of business.

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Issued: March xx, 2006

Effective: March xx, 2006

David LaFrance, Regulatory & External Affairs  
11111 Sunset Hills Road  
Reston, VA 20190

TNL0600

COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**CHECK SHEET**

Pages of this Tariff, as indicated below, are effective as of the date shown at the bottom of the respective pages. Original and revised pages, as named below, comprise all changes from the original Tariff and are currently in effect as of the date on the bottom of this page.

<b>PAGE</b>	<b>REVISION</b>		<b>PAGE</b>	<b>REVISION</b>		<b>PAGE</b>	<b>REVISION</b>
Title	Original	*	26	Original	*		
1	Original	*	27	Original	*		
2	Original	*	28	Original	*		
3	Original	*	29	Original	*		
4	Original	*	30	Original	*		
5	Original	*	31	Original	*		
6	Original	*	32	Original	*		
7	Original	*	33	Original	*		
8	Original	*	34	Original	*		
9	Original	*	35	Original	*		
10	Original	*	36	Original	*		
11	Original	*	37	Original	*		
12	Original	*	38	Original	*		
13	Original	*	39	Original	*		
14	Original	*	40	Original	*		
15	Original	*	41	Original	*		
16	Original	*	42	Original	*		
17	Original	*	43	Original	*		
18	Original	*	44	Original	*		
19	Original	*	45	Original	*		
20	Original	*	46	Original	*		
21	Original	*					
22	Original	*					
23	Original	*					
24	Original	*					
25	Original	*					

\* - indicates those pages included with this filing

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**EXPLANATION OF SYMBOLS**

When changes are made in any Tariff page, a revised page will be issued canceling the Tariff page affected. Changes will be identified on the revised pages(s) through the use of the above mentioned symbols.

The following are the only symbols used for the purposes indicated below:

- (C) - To signify changed regulation.
- (D) - To signify discontinued rate or regulation.
- (I) - To signify increased rate.
- (M) - To signify a move in the location of text.
- (N) - To signify new rate or regulation.
- (R) - To signify reduced rate.
- (S) - To signify reissued matter.
- (T) - To signify a change in text but no change in rate or regulation.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**TARIFF FORMAT**

- A. Page Numbering** - Page numbers appear in the upper right corner of the page. Pages are numbered sequentially, however, new pages are occasionally added to the Tariff. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between pages 14 and 15 would be 14.1.
- B. Page Revision Numbers** - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the Tennessee Regulatory Authority. For example, the 4<sup>th</sup> Revised Page 14 cancels the 3<sup>rd</sup> Revised Page 14. Because of various suspension periods, deferrals, etc, the Tennessee Regulatory Authority follows in their Tariff approval process, the most current page number on file with the TRA is not always the Tariff page in effect. Consult the Check Sheet for the page currently in effect.
- C. Paragraph Numbering Sequence** - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:
- 2.
  - 2.1.
  - 2.1.1.
  - 2.1.1.A.
  - 2.1.1.A.1.
  - 2.1.1.A.1.(a).
  - 2.1.1.A.1.(a).I.
  - 2.1.1.A.1.(a).I.(i).
  - 2.1.1.A.1.(a).I.(i).(1).
- D. Check Sheets** - When a Tariff filing is made with the Tennessee Regulatory Authority, an updated Check Sheet accompanies the Tariff filing. The Check Sheet lists the pages contained in the Tariff, with a cross reference to the current revision number. When new pages are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some pages). The Tariff user should refer to the latest Check Sheet to find out if a particular page is the most current on file with the Tennessee Regulatory Authority.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 1 - DEFINITIONS**

**Advance Payment** - Part or all of a payment required before the start of service.

**Authorized User** - A person, firm or corporation which is authorized by the Customer or joint user to be connected to the service of the Customer or joint user.

**Broadband Wireless Service** - A high capacity broadband wireless service offered by the Company.

**Circuit** - A dedicated telecommunications path provided by the Company to connect a Customer Remote location with a Company Hub as specified by the Customer in a Service Order. Circuits come in different types depending on the speed and data rates provisioned over the physical facilities of the Circuit (i.e., DS1, DS3, OCx, 5 Mbps, 10 Mbps).

**Company** - Nextlink Wireless, Inc., the issuer of this Tariff, which is a Delaware corporation, or any of its affiliates which concur in this Tariff.

**Customer** - The person, firm or corporation which orders service and is responsible for the payment of charges and compliance with the Company's regulations.

**Hub** - A location at which the Company maintains facilities to aggregate customer traffic and/or to interconnect Customer traffic with the facilities of other telecommunications carriers. Transport of information from a Hub to Remotes and vice versa occurs via Links and/or Circuits. Transport is provided by line of sight technology which includes point to multipoint and point to point wireless technology.

**Individual Case Basis (ICB)** - A service arrangement in which the terms, conditions, rates and charges are developed based on the specific circumstances of the Customer's situation, and as further described in Section 3.1.2.

**Link** - A direct wireless connection between two physical locations using radio transmission and reception equipment at each end.

**Non-Recurring Charges** - The one-time initial charges for services or facilities, including but not limited to charges for construction, installation or special fees for which the Customer becomes liable at the time the Service Order is executed.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 1 – DEFINITIONS, (CONT'D.)**

**Point of Demarcation** – The point at the Remote Site at the Customer's premises at which the Company's responsibility to provide equipment and service ends and the Customer's responsibility for the information begins, as specified in a Service Order.

**Recurring Charges** - The monthly charges to the Customer for services, facilities and equipment which continue for the agreed upon duration of the service.

**Remote** - A Customer end point location that serves as the termination point for various Circuit types. Transport of information from a Remote to a Hub and vice versa occurs via Links and/or Circuits. Transport is provided by line of sight technology which includes point to multipoint or point to point wireless technology, or by terrestrial cable and wire facilities. If a site is used as an intermediate location in a chain of point to point services, both ends are defined as a Remote.

**Service Commencement Date** - The date on which the Company notifies the Customer that the services are installed or connected and available for use. The parties may mutually agree on a substitute Service Commencement Date.

**Service Order** - The written request for communications services executed by the Customer and the Company in the format devised by the Company. The signing of a Service Order by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this Tariff.

**Site** – A location from which radio transmission and reception equipment produces Links. A Site may be a Hub or, a Remote.

**United States** - The 48 contiguous states and the District of Columbia, Hawaii, Alaska, Puerto Rico, the US Virgin Islands, as well as the off-shore areas outside the boundaries of the coastal states of the 48 contiguous states to the extent that such areas appertain to and are subject to the jurisdiction and control of the United States.

**User or End User** - Any person or entity that obtains the Company's services provided under this Tariff, regardless of whether such person or entity is so authorized by the Customer.



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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS****2.1 Undertaking of the Company****2.1.1 Scope**

The Company undertakes to furnish communications service in connection with one-way and/or two-way information transmission between points within the State of Tennessee under the terms of this Tariff.

Customers may use services and facilities provided under this Tariff to obtain access to services offered by other service providers. The Company is responsible under this Tariff only for the services and facilities provided herein, and it assumes no responsibility for any service provided by any other entity that purchases access to the Company network in order to originate or terminate its own services, or to communicate with its own customers.

**2.1.2 Shortage of Equipment or Facilities**

The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.

The furnishing of service under this Tariff is subject to the availability on a continuing basis of all the necessary facilities, including facilities the Company may obtain from other carriers, to furnish service.

The provisioning and restoration of services in emergencies shall be in accordance with Part 64, Subpart D, Appendix A, of the Federal Communications Commission's Rules and Regulations, which specifies the priority system for such activities as further described in Section 2.1.10 below.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.1 Undertaking of the Company, (Cont'd.)****2.1.3 Terms and Conditions**

**2.1.3.1** Except as otherwise provided herein, service is provided on the basis of a minimum period of at least one month and shall continue to be provided until canceled by the Customer, in writing, on not less than 30 days notice. For the purpose of computing charges in this Tariff, a month is considered to have 30 days.

**2.1.3.2** Customers may be required to enter into written Service Orders which shall contain or reference the name of the Customer, a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this Tariff. Customers will also be required to execute any other documents as may be reasonably requested by the Company.

**2.1.3.3** At the expiration of the initial term specified in each Service Order, or in any extension thereof, service shall continue on a month to month basis at the then current rates unless terminated by either party upon 30 days written notice. Any termination shall not relieve the Customer of its obligation to pay any charges incurred under the service order and this Tariff prior to termination. The rights and obligations which, by their nature, extend beyond the termination of the term of the service order shall survive such termination.

**2.1.3.4** In any action between the parties to enforce any provision of this Tariff, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.

**2.1.3.5** This Tariff shall be interpreted and governed by the laws of the State of Tennessee without regard of the State's choice of laws provision.

**2.1.3.6** Service may be terminated upon written notice to the Customer if:

- (a) the Customer is using the service in violation of this Tariff, or
- (b) the Customer is using the service in violation of the law, or as set forth in Section 2.5.5 of this Tariff.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)**

**2.1 Undertaking of the Company, (Cont'd.)**

**2.1.3 Terms and Conditions, (cont'd.)**

**2.1.3.7** The Customer agrees to operate Company-provided equipment in accordance with instructions of the Company or its agents. Failure to do so will void Company liability for interruption of service and may make the Customer responsible for damage to equipment pursuant to Section 2.1.3.8 below.

**2.1.3.8** The Customer agrees to return to the Company all Company-provided equipment delivered to the Customer within five (5) days of termination of the service in connection with which the equipment was used. Said equipment shall be in the same condition as when delivered to the Customer, except for normal wear and tear.

Customer agrees to reimburse the Company, upon demand, for any reasonable costs incurred by the Company due to the Customer's failure to comply with this provision.

**2.1.3.9** Another telephone company must not interfere with the right of any person or entity to obtain service directly from the Company.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.1 Undertaking of the Company, (Cont'd.)****2.1.4 Liability of the Company**

**2.1.4.1** The liability of the Company for damages arising out of the furnishing of its services, including but not limited to mistakes, omissions, interruptions, delays, errors, or other defects, representations, or use of these services, or arising out of the failure to furnish the service, whether caused by acts of omission, shall be limited to the extension of allowances for interruption as set forth in Section 2.6. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts, omissions or negligence of the Company's employees or agents.

**2.1.4.2** Except for the extension of allowances to the Customer for interruption in service as set forth in Section 2.6, the Company shall not be liable to a Customer or third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages, including, but not limited to, loss of revenue or profits, for any reason whatsoever, including, but not limited to, any act or omission, failure to perform, delay, interruption, failure to provide any service or any failure in or breakdown of facilities associated with the service.

**2.1.4.3** The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other state or local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lockouts, work stoppages, or other labor difficulties.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)**

**2.1 Undertaking of the Company, (Cont'd.)**

**2.1.4 Liability of the Company, (cont'd.)**

- 2.1.4.4** The Company shall not be liable for any claims for loss or damages involving any act or omission of (a) any entity furnishing to the Company or to the Company's Customers' facilities or equipment used in conjunction with services or facilities provided by the Company; or (b) common carriers or warehousemen.
- 2.1.4.5** The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- 2.1.4.6** The Customer shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, including attorney fees, whether suffered, made, instituted, or asserted by the Customer or any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this section as a condition precedent to such installations.
- 2.1.4.7** The Company is not liable for any defacement of, or damage to, Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.1 Undertaking of the Company, (Cont'd.)****2.1.4 Liability of the Company, (cont'd.)**

**2.1.4.8** Notwithstanding the Customer's obligations as set forth in Section 2.3 below, the Company shall be indemnified, defended and held harmless by the Customer, or by others authorized by it to use the service, against any claim, loss or damage arising from Customer's use of services furnished under this Tariff, including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the material, data, information, or other content transmitted via the Company's service; patent infringement claims arising from combining or connecting the service offered by the Company with apparatus and systems of the Customer or others; and all other claims arising out of any act or omission of the Customer or others, in connection with any service provided by the Company pursuant to this Tariff.

**2.1.4.9** The entire liability of the Company for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid by Customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than thirty (30) days after the date of the occurrence that gave rise to the claim.

**2.1.4.10** The Company shall be indemnified and held harmless by the End User against any claim, loss or damage arising from the End User's use of services offered under this Tariff including: claims for libel, slander, invasion of privacy or infringement of copyright arising from the End User's own communications; patent infringement claims arising from the End User's combining or connecting the service offered by the Company with facilities or equipment furnished by the End User of another carrier; and all other claims arising out of any act or omission of the End User in connection with any service provided pursuant to this Tariff.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)**

**2.1 Undertaking of the Company, (Cont'd.)**

**2.1.4 Liability of the Company, (cont'd.)**

**2.1.4.11** The Company does not guarantee or make any warranty with respect to service installations at locations at which there is present an atmosphere that is explosive, prone to fire, dangerous or otherwise unsuitable for such installations. The Customer and End User shall indemnify and hold the Company harmless from any and all loss, claims, demands, suits or other actions, or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party, for any personal injury to, or death of, any person, or persons, or for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, location or use of service furnished by the Company at such locations.

**2.1.4.12** The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.1 Undertaking of the Company, (Cont'd.)****2.1.4 Liability of the Company, (cont'd.)**

**2.1.4.13** The Company assumes no responsibility for the availability or performance of any cable or satellite systems or related facilities under the control of other entities, or for other facilities provided by other entities used for service to the Customer, even if the Company has acted as the Customer's agent in arranging for such facilities or services. Such facilities are provided subject to such degree of protection or non-preemptability as may be provided by the other entities.

**2.1.4.14** The Company makes no warranties or representations, express or implied either in fact or by operation of law, statutory or otherwise, including warranties of merchantability or fitness for a particular use, except those expressly set forth herein.

**2.1.5 Notification of Service-Affecting Activities**

The Company will provide the Customer reasonable notification of service-affecting activities that may occur. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.



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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.1 Undertaking of the Company, (Cont'd.)****2.1.6 Provision of Equipment and Facilities**

- 2.1.6.1** The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of, and compliance by the Customer with, the regulations contained in this Tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.
- 2.1.6.2** The Company shall use reasonable efforts to maintain facilities and equipment that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- 2.1.6.3** The Company may substitute, change or rearrange any equipment or facility at any time, but shall not thereby alter the technical parameters of the service provided to the Customer.
- 2.1.6.4** Equipment the Company provides or installs at the Customer premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the Company provided it.
- 2.1.6.5** The Company shall not be responsible for the installation, operation, or maintenance of any Customer-provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this Tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this Tariff and to the maintenance and operation of such facilities. Subject to this responsibility, the Company shall not be responsible for:
- (a) the transmission of signals by Customer-provided equipment or for the quality of, or defects in, such transmission; or
  - (b) the reception of signals by Customer-provided equipment; or
  - (c) network control signaling where such signaling is performed by Customer-provided network control signaling equipment.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.1 Undertaking of the Company, (Cont'd.)****2.1.7 Special Construction**

Subject to the arrangement of the Company and to all of the regulations contained in this Tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken:

- (a) where Company facilities are not presently available, and Company agrees to construct those facilities;
- (b) of a type other than that which the Company would normally utilize in the furnishing of its services;
- (c) over a transmission link other than that which the Company would normally utilize in the furnishing of its services;
- (d) in a quantity greater than that which the Company would normally construct;
- (e) on an expedited basis;
- (f) on a temporary basis until permanent facilities are available;
- (g) involving abnormal costs; or
- (h) in advance of its normal construction.

Special construction may be assessed for point to point to point or point to multipoint radio transmission and reception facilities. Such facilities may include, but are not limited to, radio transmission equipment, transmit and receive antennae, circuit equipment, and professional engineering services for design and construction of Hub and/or Remote terminal equipment including mounting of antennae, masts, and installation of transmission cable. Special construction charges will be determined on a case by case basis.

**2.1.8 Ownership of Facilities**

Title to all facilities provided in accordance with this Tariff remains with the Company, its agents, contractors or suppliers.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.1 Undertaking of the Company, (Cont'd.)****2.1.9 Non-routine Installation**

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or at a hazardous location or Site. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

**2.1.10 Telecommunications Service Priority**

The Telecommunications Service Priority System is the regulatory, administrative and operational system authorizing and providing for priority treatment, to provide and restore National Security Emergency Preparedness Telecommunications service. Under the rules of the Telecommunications Service Priority System, The Company is authorized and required to provide and restore services with Telecommunications Service Priority assignments before services without such assignments. The provision and restoration of Telecommunications Service Priority System services shall be in compliance with Part 64, Appendix A, of the Federal Communications Commission's Rules and Regulations, the guidelines set forth in the Telecommunications Service Priority for National Security Emergency Preparedness Service User Manual and Service Vendor Handbook.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)**

**2.2 Use of Service**

Service is provided for use by the Customer and may be used by others, when so authorized by the Customer, provided that all such usage shall be subject to the provisions of this Tariff, and shall not affect the Customer's responsibility for all payments required under this Tariff.

**2.2.1 Prohibited Uses**

**2.2.1.1** The services the Company offers shall not be used for any unlawful purpose or for any use for which the Customer has not obtained all required governmental approvals, authorization, licenses, consents and permits.

**2.2.1.2** The Company may require a Customer to immediately shut down its transmission if such transmission is causing interference to others.

**2.2.1.3** The Customer may not use the services so as to interfere with or impair service over any facilities and associated equipment, or so as to impair the privacy of any communications over such facilities and associated equipment.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.3 Obligations of the Customer****2.3.1 Customer Responsibilities**

The Customer shall be responsible for:

- (a) the payment of all applicable charges pursuant to this Tariff;
- (b) damage to or loss of Company facilities or equipment caused by the acts or omissions of the Customer; by the noncompliance by the Customer with these regulations; or by fire or theft or other casualty on the Customer premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company;
- (c) providing at no charge, as specified from time to time by the Company, any needed personnel, equipment, space and power to operate Company facilities and equipment installed on the Customer premises, and the level of heating and air conditioning necessary to maintain the proper operating environment on such premises;
- (d) obtaining, maintaining, and otherwise having full responsibility for all rights-of-way including private or public easements, licenses, roof rights and conduit necessary for the installation and ongoing maintenance of wireless transmission and reception equipment including, but not limited to, roof top antennas, inside wiring and associated indoor equipment used to provide services to the Customer from the Company's designated Point of Demarcation to the location of the equipment space described in 2.3.1 (c). Any costs associated with the obtaining and maintaining of the rights-of-way described herein, including the costs of altering the structure to permit installation of Company-provided facilities, shall be borne entirely by, or may be charged by the Company to, the Customer;

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.3 Obligations of the Customer, (Cont'd.)****2.3.1 Customer Responsibilities, (cont'd.)**

- (e) providing a safe place to work and complying with all federal and state laws and regulations regarding the working conditions on any premises at which Company employees and agents shall be installing or maintaining Company facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to Company employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g. friable asbestos) prior to any construction or installation work;
- (f) complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to the location of Company facilities and equipment in or on any Customer premises or the right-of-way for which Customer is responsible under section 2.3.1(d); and granting or obtaining permission for Company agents or employees to enter the premises of the Customer at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company.
- (g) not creating or allowing to be placed or maintained any liens or other encumbrances on the Company's equipment or facilities; and
- (h) making Company facilities and equipment available periodically for maintenance purposes at a time agreeable to both the Company and the Customer. No allowance for interruptions in service will be made for the period during which service is interrupted for such purposes.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)**

**2.3 Obligations of the Customer, (Cont'd.)**

**2.3.2 Claims**

With respect to any service or facilities provided by the Company, the Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorney fees for:

- (a) any loss, destruction or damage to property of the Company or any third party, or the death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees; or
- (b) any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of Company services and facilities in a manner not contemplated by the agreement between Customer and the Company.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.4 Customer Equipment and Channels****2.4.1 In General**

A Customer may transmit or receive information or signals via the facilities of the Company.

**2.4.2 Station Equipment**

**2.4.2.1** Customer-provided terminal equipment on the Customer premises and the electric power consumed by such equipment shall be provided and maintained at the expense of the Customer.

**2.4.2.2** The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.

**2.4.3 Interconnection of Facilities**

**2.4.3.1** Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing service and the channels, facilities, or equipment of others may be provided at the Customer's expense.

**2.4.3.2** Service may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs, other official rates of the other communications carriers which are applicable to such connections.

**2.4.3.3** Facilities furnished under this Tariff may be connected to Customer provided terminal equipment in accordance with the provisions of this Tariff.



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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)**

**2.4 Customer Equipment and Channels, (Cont'd.)**

**2.4.4 Inspection and Testing**

**2.4.4.1** Upon suitable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in section 2.4.2.2 for the installation, operation, and maintenance of Customer-provided facilities, equipment, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment.

**2.4.4.2** If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice the customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm. The Company will, upon request 24 hours in advance, provide the Customer with a statement of technical parameters that the Customer's equipment must meet.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.5 Payment Arrangements****2.5.1 Payment for Service**

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer or to authorized or joint users. For the purposes of this Tariff, all rates are in U.S. dollars.

**2.5.1.1 Taxes and Regulatory Fees**

The Customer is responsible for the payment of any permissible sales, use, gross receipts, excise, access or other local, state and federal taxes, charges, fees or surcharges, including but not limited to any universal service assessments, however designated (excluding taxes on the Company's net income), imposed on or based upon the provision, sale or use of the Company's services. All such taxes or fees shall be separately designated on the Company's invoices to the extent required by law. If an entity other than the Company (e.g., another carrier or a supplier) imposes charges on the Company, in addition to its own internal costs, in connection with a service for which the Company's Non-recurring Charge is specified, those charges will be passed on to the Customer. It shall be the responsibility of the Customer to pay any such taxes, charges, fees or surcharges that subsequently become applicable retroactively.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.5 Payment Arrangements, (Cont'd.)****2.5.2 Billing and Collection of Charges**

The Customer is responsible for the payment of all charges incurred by the Customer or other users for services and facilities furnished to the Customer by the Company.

The Company shall bill on a month-to-month basis all charges incurred by, and credits due to, the Customer under this Tariff attributable to services established, provided, or discontinued.

**2.5.2.1** Non-Recurring Charges are due and payable within 30 days after the date an invoice is mailed to the Customer by the Company.

**2.5.2.2** The Company shall present invoices for Recurring Charges monthly to the Customer in advance of the month in which service is provided. Recurring Charges shall be due and payable within 30 days after the invoice is mailed to the Customer by the Company.

**2.5.2.3** When service does not begin on the first day of the month, or end on the last day of the month, the charge for the portion of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.

**2.5.2.4** Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this Tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.

**2.5.2.5** If any portion of the payment is received by the Company after the date due, or if any portion of the payment is received by the Company in funds which are not immediately available, then a late payment penalty of 1.5% shall be due to the Company.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.5 Payment Arrangements, (Cont'd.)****2.5.3 Advance Payments**

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated Non-Recurring Charges for the special construction and Recurring Charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

**2.5.4 Deposits**

- (A) To safeguard its interests, the Company may require the Customer to make a deposit to be held as a guarantee for the payment of charges in accordance with Tennessee Public Service Commission Rule 515-12-1.05(4). A deposit may be required if the Customer's financial condition is not acceptable to the Company or is not a matter of general knowledge. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to two and one-half twelfths of the estimated charge for the service for the ensuing twelve months. A deposit may be required in addition to an advance payment.
- (B) Upon discontinuance of service, the Company shall promptly and automatically refund the Customer's deposit plus accrued interest, or the balance, if any, in excess of the unpaid bills including any penalties assessed for service furnished by the Company.
- (C) Deposits will accrue interest annually at the rate of 7% per annum in accordance with Tennessee Public Service Commission Rule 515-12-1.05(4)(b). Upon request of the Customer, accrued interest shall be annually credited to the Customer by deducting such interest from the amount of the next bill for service following the accrual date.
- (D) The Company shall annually and automatically refund the deposits of Customers who have paid bills for twelve consecutive months without having had service discontinued for nonpayment or had more than one occasion on which a bill was not paid within the period prescribed and are not then delinquent in payment.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)**

**2.5 Payment Arrangements, (Cont'd.)**

**2.5.5 Return Check Charge**

- A. A return check charge of \$25.00 will be assessed for checks returned for insufficient funds if the face value of the check does not exceed \$50.00.
- B. A return check charge of \$30.00 will be assessed for checks returned for insufficient funds if the face value of the check exceeds \$50.00 but does not exceed \$300.00.
- C. A return check charge of \$40.00 or 5% of the value of the check, whichever is greater, will be assessed for checks returned for insufficient funds if the face value of the check exceeds \$300.00.

**2.5.6 Disputed Bills**

The Customer shall notify the Company of any disputed items on a bill within 30 days of receipt of the bill. If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the Tennessee Regulatory Authority in accordance with the TRA's rules of procedure.

**2.5.6.1** The date of the dispute shall be the date the Company receives sufficient documentation to enable it to investigate the dispute.

**2.5.6.2** The date of the resolution is the date the Company completes its investigation and notifies the Customer of the disposition of the dispute.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)**

**2.5 Payment Arrangements, (Cont'd.)**

**2.5.5 Discontinuance of Service**

- 2.5.5.1** Upon nonpayment of any amount owing the Company, the Company may, by giving ten (10) days prior written notice to the Customer, discontinue or suspend service without incurring any liability.
- 2.5.5.2** Upon violation of any of the other material terms or conditions for furnishing service, the Company may, by giving 30 days prior written notice to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- 2.5.5.3** Upon condemnation of any material portion of the facilities used by the Company or its agents to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- 2.5.5.4** Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
- 2.5.5.5** Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- 2.5.5.6** Upon the Company's discontinuance of service to the Customer under Section 2.5.5.1 or 2.5.5.2, or 2.5.5.7 the Company, in addition to all other remedies that may be available to the Company by law or in equity or under any other provision of this Tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)**

**2.5 Payment Arrangements, (Cont'd.)**

**2.5.5 Discontinuance of Service, (cont'd.)**

**2.5.5.7** The Company may discontinue service pursuant to this sub-section 2.5.5.7 immediately and without notice, if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or services.

- (a) the Customer refuses to furnish information to the Company regarding the Customer's credit-worthiness, its past or current use of common carrier communications services or its planned use of service(s);
- (b) the Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of common carrier communications services, or its planned use of the Company's service(s);
- (c) the Customer states that it will not comply with, or fails to comply with, a request of the Company for security for the payment for service(s) in accordance with Section 2.5.4;
- (d) the Customer has been given written notice by the Company of any past due amount (which remains unpaid in whole or in part) for any of the Company's other common carrier communications services to which the Customer either subscribes or had subscribed or used;
- (e) the Customer uses service to transmit a message, locate a person or otherwise give or obtain information without payment for the service;

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.5 Payment Arrangements, (Cont'd.)****2.5.5 Discontinuance of Service, (cont'd.)****2.5.5.7 (continued)**

- (f) the Customer uses, or attempts to use, service with the intent to avoid the payment, either in whole or in part, of the Tariffed charges for the service by:
  - (1) using or attempting to use service by rearranging, tampering with, or making connections to the Company's service not authorized by this Tariff;
  - (2) using tricks, schemes, false credit devices, electronic devices; or
  - (3) any other fraudulent means or devices;
- (g) the Customer owes any sum thirty (30) days past due;
- (h) within five (5) business days of the date of written notice to the Customer that the Customer is not complying with any provision of this Tariff, the noncompliance is not corrected.

**2.5.5.8** The discontinuance of service(s) by the Company pursuant to this Section 2.5.5 does not relieve the Customer of any obligation to pay the Company for charges due and owing for service(s) furnished up to the time of discontinuance or for any applicable termination charges, reasonable attorneys' fees, or any other fees incurred by the Company in the collection of any amount due under this Tariff for services rendered or facilities provided, shall become due. Any attorneys' or other collection fees incurred by the Company after discontinuance of service shall become due immediately upon invoice of such fees to the customer. This is in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this Tariff.



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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.5 Payment Arrangements, (Cont'd.)****2.5.6 Cancellation of Application for Service**

**2.5.6.1** Applications for service cannot be canceled unless the Company otherwise agrees. Where the Company permits Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.

**2.5.6.2** Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less net salvage, shall apply. In such case, the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the construction or arrangements.

The special charges described in 2.5.6.2 will be calculated and applied on a case-by-case-basis.

**2.5.6.3** Upon cancellation of a Service Order by the Customer after execution of the Service Order but before the Service Commencement Date, all applicable charges, including but not limited to charges enumerated in Section 2.5.6.2, termination charges, reasonable attorneys' fees, or any other fees incurred by the Company in the collection of any amount due under this Tariff for services rendered or facilities provided, shall become due. Any attorneys' or other collection fees incurred by the Company after cancellation of service shall become due immediately upon invoice of such fees to the Customer. This is in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this Tariff.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.6 Allowances for Interruptions in Service**

Interruptions in service, which are not due to the negligence of, or noncompliance with the provisions of this Tariff by, the Customer or the operation or malfunction of the facilities, power or equipment provided by the Customer, will be credited to the Customer as set forth in 2.6.1 for the part of the service that the interruption affects.

**2.6.1 Credit for Interruptions**

**2.6.1.1** A credit allowance will be made when an interruption occurs because of a failure of any component furnished by the Company under this Tariff. An interruption period begins when a Customer reports a service, facility or circuit is interrupted and releases it for testing and repair. An interruption period ends when the service, facility or circuit is repaired or is inoperative but the Customer declines to release it for testing and repair.

**2.6.1.2** For calculating credit allowances, every month is considered to have 30 days. A credit allowance is applied on a pro rata basis against the rates specified thereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.6 Allowances for Interruptions in Service, (Cont'd.)****2.6.1 Credit for Interruptions, (cont'd.)**

**2.6.1.3** A credit allowance will be given for interruptions of 15 minutes or more. Credit allowances will be calculated as follows:

Interruptions of 24 hours or Less:

<b>Length of Period to be Credited</b>	<b>Interruption Credit</b>
Less than 15 minutes	None
15 minutes up to, but not including 3 hours	1/10 Day
3 hours up to, but not including 6 hours	1/5 Day
6 hours up to, but not including 9 hours	2/5 Day
9 hours up to, but not including 12 hours	3/5 Day
12 hours up to, but not including 15 hours	4/5 Day
15 hours up to, but not including 24 hours	One Day

Two or more interruptions of 15 minutes or more during any 24-hour period shall be considered as one interruption.

Interruptions Over 24 Hours and Less Than 72 Hours. Interruptions over 24 hours and less than 72 hours will be credited 1/5 day for each 3-hour period or fraction thereof. No more than one full day's credit will be allowed for any period of 24 hours.

Interruptions Over 72 Hours. Interruptions over 72 hours will be credited 2 days for each full 24-hour period. No more than 30 days credited will be allowed for any one month period.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.6 Allowances for Interruptions in Service, (Cont'd.)****2.6.2 Limitations on Allowances**

No credit allowance will be made for:

- (a) interruptions due to the negligence of, or noncompliance with the provisions of this Tariff by, the Customer, authorized user, joint user, or other common carrier providing service connected to the service of the Company;
- (b) interruptions due to the negligence of any person other than the Company, including but not limited to the Customer or other common carriers connected to the Company's facilities;
- (c) interruptions due to the failure or malfunction of non-Company equipment;
- (d) interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- (e) interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- (f) interruptions of service during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- (g) interruption of service due to circumstances or causes beyond the control of the Company;
- (h) interruptions of service not reported to the Company within thirty (30) days of the date that service was affected.

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)**

**2.6 Allowances for Interruptions in Service, (Cont'd.)**

**2.6.3 Use of an Alternative Service**

Should the Customer elect to use another means of communications during the period of interruption, the Customer must pay the charges for the alternative service used.

**2.6.4 Cancellation For Service Interruption**

Cancellation or termination for service interruption is permitted only if any circuit experiences a single continuous outage of 8 hours or more or cumulative service credits equaling 16 hours in a continuous 12-month period. The right to cancel service under this provision applies only to the single circuit which has been subject to the outage or cumulative service credits.

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)****2.7 Cancellation of Service**

If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a service interruption (as defined in 2.6.1 above), Customer agrees to pay to Company the following sums which shall become due and owing as of the effective date of the cancellation or termination and shall be payable within the period set forth in 2.5.2: 1) all Non-Recurring charges reasonably expended by the Company to establish service to Customer, plus 2) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by the Company on behalf of Customer, plus 3) all Recurring Charges specified in the applicable Service Order for the balance of the then current term.

**2.8 Transfers and Assignments**

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties (a) to any subsidiary, parent company or affiliate of the Company; (b) pursuant to any sale or transfer of substantially all the assets of the Company; or (c) pursuant to any financing, merger or reorganization of the Company.

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**SECTION 2 - GENERAL REGULATIONS, (CONT'D.)**

**2.9 Notices and Communications**

- 2.9.1** The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- 2.9.2** The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that Company may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.
- 2.9.3** All notices or other communications required to be given pursuant to this Tariff will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following placement of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 2.9.4** The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth in Section 2.9.3.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 3 - SERVICE DESCRIPTIONS****3.1 Broadband Wireless Service****3.1.1 Description of Service**

Broadband Wireless service is offered as a high capacity dedicated transmission facility available 24 hours per day, 7 days per week. Customers may commit to one, two or three year service terms. The minimum service period for Broadband Wireless Service is one year. Should the Customer terminate service prior to the end of the term commitment, the Customer will be billed a termination charge equal to the monthly recurring charge times the number of months remaining in the term.

Broadband Wireless Service provides dedicated wireless bandwidth between a Customer Remote and a Company Hub. Equipment at the Remote transmits and the Hub equipment receives a point-to-point or point-to-multipoint transmission utilizing radio frequencies in the Local Multipoint Distribution Service (LMDS) 27.5 to 31.225 GHz spectrum. The entire usable bandwidth of the transmission path is available and dedicated to the Customer for its exclusive use. Broadband Wireless Service provides line-of-sight transmission and will not penetrate trees, walls, glass or other path-obstructing materials. The use of time-division multiple access (TDMA) and FDMA (frequency DMA) technology allows multiple customers within a 3-7 mile coverage radius to share the same radio channel (multipoint).



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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 3 - SERVICE DESCRIPTIONS, (CONT'D.)****3.1 Broadband Wireless Service, (Cont'd.)****3.1.2 Limitations**

Service will be provided subject to availability and where technical capabilities permit. The following limitations will apply to the provision of all Broadband Wireless Services.

Broadband Wireless Service microwave equipment requires an unobstructed line-of-sight to a Company Hub. Actual data transmission rates depend on a number of factors, including, but not limited to, the distance from the Customer Remote Site to the Company Hub. The Customer shall be responsible for any and all costs associated with obtaining and maintaining rights-of-way at a Remote Site, including costs of altering a structure to permit installation of Company provided facilities. Customer shall bear all such costs which will be charged by the Company subject to Customer's prior approval. The Company may require the Customer to demonstrate compliance with this section prior to accepting an order for Broadband Wireless Service.

Broadband Wireless Service is offered subject to the availability of necessary facilities or equipment, or both facilities and equipment, and subject to the provisions of this Tariff. The obligation of the Company to provide Broadband Wireless Service is dependent upon its ability to procure, construct, and maintain facilities that are required to meet the customer's order for service. The Company's provision of Broadband Wireless Service through its own facilities requires the use of microwave transmit/receive equipment. Such equipment must be attached to or located at the Customer's Remote Site, often on the roof of the building in which the customer premises is located. Broadband Wireless Service equipment cannot be installed on the rooftop without the consent of the building owner and/or property manager(s). In addition, Broadband Wireless Service equipment cannot be installed without access to the building's telecommunications closet(s), which may not be under the control of the Customer or the Company. Therefore, the Company's Broadband Wireless Service is subject to the availability of rooftop access and telecommunications closet access.

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**SECTION 3 - SERVICE DESCRIPTIONS, (CONT'D.)**

**3.1 Broadband Wireless Service, (Cont'd.)**

**3.1.2 Limitations, (cont'd.)**

The Company reserves the right to limit or to allocate the use of existing facilities when necessary due to lack of facilities, relevant resources, or causes beyond the Company's control.

The Company does not undertake to transmit messages, but offers the use of its facilities when available, and will not be liable for errors in transmission nor for failure to establish connections.

The Customer shall ensure that its equipment is properly interfaced with the Company's facilities or services used in providing Broadband Wireless Services; that the signals emitted into the Company's network are of the proper mode, bandwidth, power, signal level or other technical parameters for the intended use of the Customer and in compliance with the criteria set forth in this Tariff, and that the signals do not damage equipment, injure personnel or degrade service to other Customers.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 3 - SERVICE DESCRIPTIONS, (CONT'D.)****3.1 Broadband Wireless Service, (Cont'd.)****3.1.3 Wireless T-1**

Wireless T-1 is a Broadband Wireless Service offering that provides Customer a total turnkey transport product including: installation; 24 hour/7 day a week network monitoring, maintenance and network performance reporting; detailed billing; and, on-going post-sales support. A Customer purchases connectivity between a Company Hub and Customer designated Remote. The Company will confer with the Customer to about antenna design and propagation. A Broadband Wireless customer can purchase bandwidth on a point to point or point to multipoint basis in the following increments:

- 4 T-1s
- 6 T-1's
- 8 T-'s
- 10 T-1's
- 12 T-1's

**3.1.4 Wireless Ethernet**

Wireless Ethernet utilizes Broadband Wireless Service technology to deliver Layer-2, 10/100BaseT or faster metropolitan wireless Ethernet connections or Dedicated Internet Access (DIA). The Wireless Ethernet product can be used to deliver end-to-end wireless connectivity utilizing standardized 10Mbps or 100Mbps Ethernet interfaces. Customers can purchase a fixed amount of bandwidth and use the allocated bandwidth for any lawful purpose consistent with this Tariff. The Broadband Wireless Service Customer can purchase fixed bandwidth on a point to point or point to multipoint basis in the following increments:

**Wireless Ethernet**  
5 Mbps  
10 Mbps  
15 Mbps  
20 Mbps

**Dedicated Internet Access**  
5 Mbps  
10 Mbps  
20 Mbps

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**SECTION 3 - SERVICE DESCRIPTIONS, (CONT'D.)****3.1 Broadband Wireless Service, (Cont'd.)****3.1.5 Rates and Charges**

Rates and charges for Broadband Wireless Services are specified below. The Customer will be billed a fixed, flat Monthly Recurring Charge (MRC) for bandwidth in addition to a Non-Recurring Charge (NRC) for installation services provided at the same customer location. As set forth in section 2.5.1.1, additional Federal, State and Local taxes and Surcharges may also apply. Rates indicated below do not include sales, use, gross receipts, excise, access or other local, state and federal taxes, charges, user fees, or surcharges.

In addition to the rates and charges specified below, the Company may provide service on an Individual Case Basis. The Company may in response to competitive requests for proposal, develop a responsive individual case billing arrangement for services offered in this Tariff. Prices quoted in response to such requests may be different from those in effect in this Tariff. Such prices will also be available for similarly situated Customers. All individual case billing arrangement price quotes will be offered to the Customer for acceptance in writing. Such Individual Case Billing Arrangements will specify, among other things, the length of service, minimum volume of service required, and the rates and charges for the proposed service.

**A. Rate Elements**

1. **Air Link.** - A monthly recurring Air Link rate element provides for the dedicated transmission media between a Customer Remote and a Company Hub. One Link charge applies for each Link that comprises a Circuit.
2. **Port Charge** - A monthly recurring Port Charge rate element applies for each Wireless T1 or Wireless Ethernet port access connection to the Broadband Wireless Service network. The specified charge is billed per port per month for the dedicated bandwidth increments specified below. Data rates for Wireless Ethernet traffic may not exceed the dedicated bandwidth set out in the Service Order.

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COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 3 - SERVICE DESCRIPTIONS, (CONT'D.)****3.2 Terrestrial DS1 Service**

Terrestrial DS1 Service is a dedicated, high capacity, full duplex service with a line speed of 1.544 Mbps isochronous serial data having signal format of either Alternate Mark Inversion (AMI) or Bipolar 8 Zero Substitution (B8ZS) and either Super frame (D4) or Extended Super frame formats. DS1 Service has the equivalent capacity of 24 Voice Grade services or 24 DS0 services. AMI can support 24 56Kpbs channels and B8ZS can support 24 64Kbps channels.

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**SECTION 4- RATES AND CHARGES****4.1 Broadband Wireless Service****4.1.1 Wireless T1 Rates**

	Monthly Recurring Charges		Non Recurring Charges	
	Link	Port	Link	Port
4 T-1s	\$300	\$120	\$1,500	\$1,500
6 T-1's	\$450	\$180	\$1,500	\$1,500
8 T-'s	\$600	\$240	\$1,500	\$1,500
10 T-1's	\$750	\$300	\$1,500	\$1,500
12 T-1's	\$890	\$360	\$1,500	\$1,500

**4.1.2 Wireless Ethernet Rates**

	Monthly Recurring Charges		Non Recurring Charges	
	Link	Port	Link	Port
5 Mbps	\$400	\$200	\$750	\$750
10 Mbps	\$525	\$200	\$750	\$750
15 Mbps	\$850	\$200	\$750	\$750
20 Mbps	\$1,600	\$200	\$750	\$750

**4.1.3 Dedicated Internet Access Rates**

	Monthly Recurring Charges		Non Recurring Charges	
	Link	Port	Link	Port
5 Mbps	\$775	\$200	\$750	\$750
10 Mbps	\$1,300	\$200	\$750	\$750
20 Mbps	\$2,050	\$200	\$750	\$750

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**SECTION 4- RATES AND CHARGES, (CONT'D.)**

**4.2 Terrestrial DS1 Service**

Terrestrial DS1 voice loop monthly recurring charge	ICB
Terrestrial DS1 voice loop install charge	ICB