

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**IN THE MATTER OF THE APPLICATION      Docket No. 08-00044  
OF AFG, INC., INC. FOR A CERTIFICATE  
TO PROVIDE COMPETING LOCAL  
TELECOMMUNICATION SERVICES**

**APPLICATION FOR CERTIFICATE TO PROVIDE  
COMPETING LOCAL TELECOMMUNICATIONS SERVICES**

Pursuant to applicable Tennessee Statutes and the Rules and Regulations of the Tennessee Regulatory Authority and Section 253 of the Federal Telecommunications Act of 1996 ("Act"), Access Fiber Group, Inc. ("AFG") respectfully requests that the Tennessee Regulatory Authority ("TRA") grant to AFG, Inc. authority to provide competing local telecommunications services, including exchange access telecommunications services, within the State of Tennessee. AFG, Inc. is willing and able to comply with all applicable rules and regulations in Tennessee pertaining to the provision of competing local telecommunications services. TCA 65-4-201.

In support of its Application, AFG, INC. submits the following:

1. The full name and address of the Applicant is:

Access Fiber Group, Inc.  
201 Summit Parkway  
Birmingham, Alabama 35209  
Telephone: (205) 492-8328

Questions regarding this application should be directed to:

Janine K. Moses - Regulatory Affairs  
Access Fiber Group, Inc.  
Post Office Box 3250  
Oxford, Alabama 36203  
Telephone: (256) 405-0613  
Facsimile: (866) 708-3062

Contact name and address at the Company is:

Dan Moore  
President/CEO  
201 Summit Parkway  
Birmingham, Alabama 35209  
Telephone: (205) 492-8328  
Facsimile: (205) 940-9067

2. Organizational Chart of Corporate Structure: Include any pertinent acquisition or merger information.

See **Exhibit A**

3. Corporate information:

AFG, Inc. was incorporated in the state of Delaware on September 6, 2007. A copy of AFG, Inc.'s Articles of Incorporation and amendments are provided in **Exhibit B**. A copy of AFG, Inc.'s Authority to transact business in the State of Tennessee is provided in **Exhibit C**. The names and addresses of the principal corporate officers are in **Exhibit D**. There are no officers in Tennessee.

The biographies of the principal officers and any other key technical staff are in **Exhibit E**.

4. AFG, INC. possesses the managerial, technical, and financial ability to provide local telecommunications service in the State of Tennessee as demonstrated below:

A. Financial Qualifications:

In support of our financial qualifications, Access Fiber Group, Inc. submits **Exhibit F** (sealed and marked "Confidential") to demonstrate the existing and proposed Customer Base. AFG, Inc. has contracts in place with Verizon Business and Stewart Family Foundation DBA: Anniston Fiber Networks with proposals in place to expand these business relationships. Pages 3 and 4 of **Exhibit F** reflect the assumptions for Income for years 2008, 2009, 2010 and 2011.

**Exhibit F- part 2** contained herein reflects an Irrevocable Standby Letter of Credit issued to the Tennessee Regulatory Authority. ***This Exhibit is a copy – the original will be mailed directly to TRA.***

**Exhibit G** (sealed and marked "Confidential") is a conservative Cash Flow report for Access Fiber Group, Inc. for years 2008, 2009, 2010 and 2011.

B. Managerial Ability:

As shown in **Exhibit E** to this Application, AFG, INC. has the managerial expertise to successfully operate a telecommunications enterprise in Tennessee. As described in the attached biographical information, AFG, Inc.'s management team has extensive management and business experience in telecommunications.

C. Technical Qualifications:

AFG, Inc. services will satisfy the minimum standards established by the TRA. The company will file and maintain tariffs in the manner prescribed by the TRA and will meet minimum basic local standards, including quality of service and billing standards required of all LEC'S regulated by the TRA. AFG, Inc. will be providing dark fiber to customers and terminating in a fiber optic panel. The customer will be installing equipment for the use of the "lighting" the fiber. AFG, Inc. will not require customers to purchase CPE, which cannot be used with the Incumbent Local Exchange Carrier's systems. As noted in the biographies **Exhibit E** of the principal officers, there are more than two officers with network planning and engineering backgrounds and several years of telecommunications expertise. Thus, AFG, INC. is certainly technically qualified to provide dark fiber service in Tennessee.

5. Proposed Service Area:

AFG, Inc. is also requesting authorizing to provide telecommunications services in Alabama and North Carolina. Access Fiber Group, Inc. proposes to offer its services throughout the State of Tennessee. AFG, Inc. will not be deploying switches as we intend only to offer dark fiber services based upon client contracts.

6. Types of Local Exchange Service to be provided:

AFG, INC. expects to supply dark fiber services terminating to a fiber optic patch panel at customer locations, as indicated in Indefeasible Right of Use (IRU) Agreements with customers.

7. Repair and Maintenance:

Access Fiber Group, Inc. understands the importance of effective customer service. Customers may contact AFG, Inc. by dialing 205-271-2477 or faxing 205-940-9067 or email at [larry.coker@accessfiber.com](mailto:larry.coker@accessfiber.com).

A toll free number is being established and will be printed on the customer's monthly billing statements and the customers IRU. The Tennessee contact person knowledgeable about providers operations is Janine K. Moses - Regulatory Affairs, reference (1.) above.

Grant of the Application will further the goals of the Tennessee Legislature and further the public interest by expanding the availability of competitive telecommunications services in the State of Tennessee. In addition, intrastate offering of these services is in the public interest because the services will provide Tennessee customers increased efficiencies and cost savings. Authorizing AFG, INC. to provide local exchange telecommunications services will enhance materially the telecommunications infrastructure in the State of Tennessee and will facilitate economic development.

The public will benefit indirectly, because AFG, Inc.'s presence in Tennessee will increase the incentives for other telecommunications providers to operate more efficiently, offer more innovative services, reduce their prices, and improve their quality of service. Grant of this Application will further enhance the service options available to Tennessee citizens for the reasons set forth above.

8. Small and Minority-Owned Telecommunications Business Participation Plan: (65-5-112): **Exhibit H**

9. Toll Dialing Parity Plan: **Access Fiber Group, Inc. will not be providing toll/switched local services. AFG, Inc. requests authorization to provide dark fiber service offerings only.**

10. Access Fiber Group, Inc. has served notice of this application to the eighteen (18) incumbent local exchange telephone companies in Tennessee with a statement regarding AFG, Inc's intention of providing dark fiber within the state of Tennessee. See **Exhibit I** for the list and sample letter.

11. Numbering Issues: **(Not applicable for this application)**

12. Tennessee Specific Operational Issues: **(Not applicable for this application)**

13. Miscellaneous:

A. Sworn Pre-filed testimony: **Exhibit J**


B. A copy of our tariff is enclosed **Exhibit K**



**CONCLUSION:**

AFG, INC. respectfully requests that the TRA enter an order granting it a certificate of convenience and necessity to operate as a competing telecommunications service provider and authority to provide dark fiber in urban and rural areas throughout the State of Tennessee in the service areas of Bell South, GTE and Sprint and any other ILEC that does not enjoy a rural exemption under Section 251(f) of the Telecommunications Act of 1996. For the reasons stated above, AFG, Inc.'s provision of these services would promote the public interest by providing high-quality service at competitive prices and by creating greater economic incentives for the development and improvement for all competing providers.

Respectfully submitted this 17<sup>th</sup> day of March, 2008.



Dan Moore, President/CEO



# Access Fiber Group Inc.

Dan Moore  
President/CEO

Michael Boughtman  
Chief Financial  
Officer

Larry Coker  
Vice President -  
Construction

Janine K. Moses  
Vice President -  
Regulatory

# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "ACCESS FIBER GROUP, INC.", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF JUNE, A.D. 2007, AT 4:32 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

4363797 8100

070764445



*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5805711

DATE: 06-29-07

**CERTIFICATE OF INCORPORATION**

**OF**

**ACCESS FIBER GROUP, INC.**

**FIRST**

The name of this Corporation is ACCESS FIBER GROUP, INC.

**SECOND**

The name and address of its registered office and registered agent in the State of Delaware is Ferry, Joseph & Pearce, P.A., 824 Market Street, Suite 904, Wilmington, New Castle County, Delaware, 19801.

**THIRD**

The nature of the business and the objects and purposes to be transacted, promoted, and carried on are:

To engage in any lawful act or activities for which corporations may be organized under the General Corporation Law of Delaware.

**FOURTH**

The total number of shares of stock which this corporation is authorized to issue is Ten Thousand Shares (10,000) of voting common stock, all of which shares will be of no par value.

**FIFTH**

The name and mailing address of the incorporator is as follows:

Michael B. Joseph, Esquire  
824 Market Street, Suite 904  
P.O. Box 1351  
Wilmington, Delaware 19899-1351

**SIXTH**

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to make, alter, amend, and repeal the By-Laws.

This corporation may in its By-Laws confer powers additional to the foregoing upon the directors, in addition to the powers and authorities expressly conferred upon them by law.

The Directors shall have the power to alter or amend by resolution the rights, amounts, limitations or restrictions, etc. of any class of stock.

## **SEVENTH**

Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware, may, on the application in a summary way of this corporation or any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 291 of Title 8 of the Delaware Code, or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as consequences of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the Court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

## **EIGHTH**

Meeting of stockholders may be held outside of the state of Delaware, if the By-Laws so provide. The book of the corporation may be kept (subject to any provisions contained in the statutes) outside of Delaware at such place or places as may be designated from time to time by the board of directors or in the By-Laws of the corporation. Election of directors need not be by ballot unless the By-Laws of the corporation shall so provide.

## **NINTH**

No contract or other transaction between the corporation and any other corporation shall be ineffective or invalidated by the fact that any one or more of the directors of this corporation is, or are interested in, or is a director or officer, or are directors or officers, of such corporation, and any director or directors individually or jointly may be a party or parties to or may be interested in any contract or transaction of this corporation or in which this corporation is interested; and no contract, act, or transaction of this corporation with any person or persons, firms, or corporations shall be ineffective or invalidated by the fact that any director or directors in this corporation is a party, or are parties to or interested in such contract, act or transaction, or in any way connected with such persons, firms, or corporation, and every person who may become a director of this corporation is hereby relieved from any liability that might otherwise exist from contracting with the corporation for the benefit of himself or any firm or corporation in which he may be in anywise interested.

## **TENTH**

No directors of the corporation shall be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; provided, however, that the foregoing clause shall not apply to any liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts, or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived an improper personal benefit. The directors shall have the power to adopt a By-Law granting indemnification to directors of the corporation.

**ELEVENTH**

Until such time as the corporation shall in its By-Laws adopt another inscription for a corporate seal, the corporate seal of the corporation shall have inscribed thereon only the words "Corporate Seal".

I, the undersigned, being the incorporator hereinabove named for the purpose of forming a corporation, in pursuance of an Act of the Legislature of the State of Delaware entitled "An Act Providing a General Corporation Law" (approved March 10, 1989) as codified and re-enacted as Title 8, Delaware Code of 1953, and the acts amendatory thereof and supplemental thereto, do make and file this Certificate of Incorporation and acknowledging the penalty for perjury, hereby declaring and certifying that the facts herein stated are true, pursuant to 8 Delaware Code Section 103(b)(2) and accordingly hereunto have set my hand this 29<sup>th</sup> day of June, A.D., 2007.

IN THE PRESENCE OF:

Judith L. Cullum

[Signature]  
Incorporator

**BYLAWS**  
**OF**  
**Access Fiber Group, Inc.**  
**(A DELAWARE CORPORATION)**

**ARTICLE I**  
**OFFICES**

**Section 1. Registered Office.** The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle. (Del. Code Ann., tit. 8, § 131)

**Section 2. Other Offices.** The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require. (Del. Code Ann., tit. 8, § 122(8))

**ARTICLE II**  
**CORPORATE SEAL**

**Section 3. Corporate Seal.** The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. (Del. Code Ann., tit. 8, § 122(3))

**ARTICLE III**  
**STOCKHOLDERS' MEETINGS**

**Section 4. Place of Meetings.** Meetings of the stockholders of the corporation shall be held at such place, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors, or, if not so designated, then at the office of the corporation required to be maintained pursuant to Section 2 hereof. (Del. Code Ann., tit. 8, § 211(a)).

## **Section 5. Annual Meeting.**

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of Directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. (Del. Code Ann., tit. 8, § 211(b))

## **Section 6. Special Meetings.**

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board, (ii) the President, (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption), or (iv) by the holders of shares entitled to cast not less than ten percent (10%) of the votes at the meeting, and shall be held at such place, on such date, and at such time as they or he shall fix.

(b) If a special meeting is called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the Chairman of the Board, the President, any Vice President, or the Secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The officer receiving the request shall cause notice to be promptly given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws, that a meeting will be held not less than thirty-five (35) nor more than sixty (60) days after the receipt of the request. If the notice is not given within twenty (20) days after the receipt of the request, the person or persons requesting the meeting may give the notice. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

**Section 7. Notice of Meetings.** Except as otherwise provided by law or the Certificate of Incorporation, written notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, date and hour and purpose or purposes of the meeting. Notice of the time, place and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given. (Del. Code Ann., tit. 8, §§ 222, 229)

**Section 8. Quorum.** At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person or



by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. Any shares, the voting of which at said meeting has been enjoined, or which for any reason cannot be lawfully voted at such meeting, shall not be counted to determine a quorum at such meeting. In the absence of a quorum any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the voting power represented at any meeting at which a quorum is present shall be valid and binding upon the corporation; provided, however, that Directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of Directors. Where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority (plurality, in the case of the election of Directors) of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class. (Del. Code Ann., tit. 8, § 216)

**Section 9. Adjournment and Notice of Adjourned Meetings.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares represented thereat. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. (Del. Code Ann., tit. 8, § 222(c))

#### **Section 10. Voting Rights.**

(a) For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Except as may be otherwise provided in the Certificate of Incorporation or these Bylaws, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent, which proxy shall be filed with the Secretary at or before the meeting at which it is to be used. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period. All elections of Directors shall be by written ballot, unless otherwise provided in the Certificate of Incorporation. (Del. Code Ann., tit. 8, §§ 211(e), 212(b))

## **Section 11. Beneficial Owners of Stock.**

**(a)** If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the General Corporation Law of Delaware, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even split for the purpose of this subsection (c) shall be a majority or even split in interest. (Del. Code Ann., tit. 8, § 217(b))

**(b)** Persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held. Persons whose stock is pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he has expressly empowered the pledgee to vote thereon, in which case only the pledgee, or his proxy, may represent such stock and vote thereon. (Del. Code Ann., tit. 8, § 217(a))

**Section 12. List of Stockholders.** The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not specified, at the place where the meeting is to be held. The list shall be produced and kept at the time and place of meeting during the whole time thereof, and may be inspected by any stockholder who is present. (Del. Code Ann., tit. 8, § 219(a))

## **Section 13. Action without Meeting.**

**(a)** Any action required by statute to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, are signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted.

**(b)** Every written consent shall bear the date of signature of each stockholder who signs the consent, and no written consent shall be effective to take the corporate action



referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the Corporation in the manner herein required, written consents signed by a sufficient number of stockholders to take action are delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. (Del. Code Ann., tit. 8, § 228)

(c) Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. If the action which is consented to is such as would have required the filing of a certificate under any section of the General corporation Law of Delaware if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written notice and written consent have been given as provided in Section 228 of the General Corporation Law of Delaware.

#### **Section 14. Organization.**

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or, if the President is absent, the most senior Vice President present, or in the absence of any such officer, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies, and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. Unless, and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

## ARTICLE IV

### DIRECTORS

**Section 15. Number and Term of Office.** The authorized number of directors of the corporation shall be two (2), or as may be amended from time to time by approval of the Board of Directors. Directors need not be stockholders unless so required by the Certificate of Incorporation. (Del. Code Ann., tit. 8, §§ 141(b), 211(b), (c))

**Section 16. Powers.** The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation. (Del. Code Ann., tit. 8, § 141(a))

**Section 17. Vacancies.** Unless otherwise provided in the Certificate of Incorporation, vacancies and newly created directorships resulting from any increase in the authorized number of Directors may be filled by a majority of the Directors then in office, although less than a quorum, or by a sole remaining Director, and each Director so elected shall hold office for the unexpired portion of the term of the Director whose place shall be vacant and until his successor shall have been duly elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Section 17 in the case of the death, removal or resignation of any Director, or if the stockholders fail at any meeting of stockholders at which Directors are to be elected (including any meeting referred to in Section 19 below) to elect the number of Directors then constituting the whole Board of Directors. (Del. Code Ann., tit. 8, § 223(a), (b))

**Section 18. Resignation.** Any Director may resign at any time by delivering his written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more Directors shall resign from the Board of Directors, effective at a future date, a majority of the Directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified. (Del. Code Ann., tit. 8, §§ 141(b), 223(d))

**Section 19. Removal.** At a special meeting of stockholders called for the purpose in the manner hereinabove provided, subject to any limitations imposed by law or the Certificate of Incorporation, the Board of Directors, or any individual Director, may be removed from office, with or without cause, and a new Director or Directors elected by a vote of stockholders holding a majority of the outstanding shares entitled to vote at an election of Directors. (Del. Code Ann., tit. 8, § 141(k))

### **Section 20. Meetings.**

**(a) Annual Meetings.** The annual meeting of the Board of Directors shall be held immediately after the annual meeting of stockholders and at the place where such meeting is held. No notice of an annual meeting of the Board of Directors shall be necessary and such



meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

**(b) Regular Meetings.** Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the office of the corporation required to be maintained pursuant to Section 2 hereof. Unless otherwise restricted by the Certificate of incorporation, regular meetings of the Board of Directors may also be held at any place within or without the State of Delaware which has been determined by the Board of Directors. (Del. Code Ann., tit. 8, § 141(g))

**(c) Special Meetings.** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the President or a majority of the Directors. (Del. Code Ann., tit. 8, § 141(g))

**(d) Telephone Meetings.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting. (Del. Code Ann., tit. 8, § 141(i))

**(e) Notice of Meetings.** Written notice of the time and place of all special meetings of the Board of Directors shall be given at least one (1) day before the date of the meeting. Notice of any meeting may be waived in writing at any time before or after the meeting and will be waived by any Director by attendance thereat, except when the Director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. (Del. Code Ann., tit. 8, § 229)

**(f) Waiver of Notice.** The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the Directors not present shall sign a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting. (Del. Code Ann., tit. 8, § 229)

## **Section 21. Quorum and Voting.**

**(a)** Unless the Certificate of Incorporation requires a greater number and except with respect to indemnification questions arising under Section 42 hereof, for which a quorum shall be one-third of the exact number of Directors fixed from time to time in accordance with Section 15 hereof, but not less than one (1), a quorum of the Board of Directors shall consist of a majority of the exact number of Directors fixed from time to time in accordance with Section 15 of these Bylaws, but not less than one (1); provided, however, at any meeting whether a quorum be present or otherwise, a majority of the Directors present may adjourn from time to

time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting. (Del. Code Ann., tit. 8, § 141(b))

(b) At each meeting of the Board of Directors at which a quorum is present all questions and business shall be determined by a vote of a majority of the Directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws. (Del. Code Ann., tit. 8, § 141(b))

**Section 22. Action without Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing, and such writing or writings are filed with the minutes of proceedings of the Board of Directors or committee. (Del. Code Ann., tit. 8, § 141(f))

**Section 23. Fees and Compensation.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any Director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor. (Del. Code Ann., tit. 8, § 141(h))

#### **Section 24. Committees.**

(a) **Executive Committee.** The Board of Directors may by resolution passed by a majority of the whole Board of Directors, appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and specifically granted by the Board of Directors, shall have and may exercise when the Board of Directors is not in session all powers of the Board of Directors in the management of the business and affairs of the corporation, including, without limitation, the power and authority to declare a dividend or to authorize the issuance of stock, except such committee shall not have the power or authority to amend the Certificate of Incorporation, to adopt an agreement of merger or consolidation, to recommend to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, to recommend to the stockholders of the corporation a dissolution of the corporation or a revocation of a dissolution or to amend these Bylaws. (Del. Code Ann., tit. 8, § 141(c))

(b) **Other Committees.** The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, from time to time appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors, and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall such committee have the powers denied to the Executive Committee in these Bylaws. (Del. Code Ann., tit. 8, § 141(c))



(c) **Term.** The members of all committees of the Board of Directors shall serve a term coexistent with that of the Board of Directors which shall have appointed such committee. The Board of Directors, subject to the provisions of subsections (a) or (b) of this Section 24, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. (Del. Code Ann., tit. 8, § 141(c))

(d) **Meetings.** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 24 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any Director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any Director by attendance thereat, except when the Director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee. (Del. Code Ann., tit. 8, § 141(c), 229)

**Section 25. Organization.** At every meeting of the Directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or if the President is absent, the most senior Vice President, or, in the absence of any such officer, a chairman of the meeting chosen by a majority of the Directors present, shall preside over the meeting. The Secretary, or in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

## ARTICLE V

### OFFICERS

**Section 26. Officers Designated.** The officers of the corporation shall be the Chairman of the Board of Directors, the President, the Secretary and the Chief Financial Officer or Treasurer, all of whom shall be elected at the annual organizational meeting of the Board of Directors. The order of the seniority of the Vice Presidents shall be in the order of their nomination, unless otherwise determined by the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers, and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors. (Del. Code Ann., tit. 8, §§ 122(5), 142(a), (b))

### **Section 27. Tenure and Duties of Officers.**

**(a) General.** All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. (Del. Code Ann., tit. 8, § 141(b), (e))

**(b) Duties of Chairman of the Board of Directors.** The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. If there is no President, then the Chairman of the Board of Directors shall also serve as the Chief Executive Officer of the corporation and shall have the powers and duties prescribed in paragraph (c) of this Section 27. (Del. Code Ann., tit. 8, § 142(a))

**(c) Duties of President.** The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. The President shall be the Chief Executive Officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

**(d) Duties of Secretary.** The Secretary shall attend all meetings of the stockholders and of the Board of Directors, and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders, and of all meetings of the Board of Directors and any



committee thereof requiring notice. The Secretary shall perform all other duties given him in these Bylaws and other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

**(e) Duties of Chief Financial Officer or Treasurer.** The Chief Financial Officer or Treasurer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner, and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer or Treasurer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer or Treasurer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct any Assistant Treasurer to assume and perform the duties of the Chief Financial Officer or Treasurer in the absence or disability of the Chief Financial Officer or Treasurer, and each Assistant Treasurer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. (Del. Code Ann., tit. 8, § 142(a))

**Section 28. Delegation of Authority.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

**Section 29. Resignations.** Any officer may resign at any time by giving written notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer. (Del. Code Ann., tit. 8, § 142(b))

**Section 30. Removal.** Any officer may be removed from office at any time, either with or without cause, by the vote or written consent of a majority of the Directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

## ARTICLE VI

### EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

**Section 31. Execution of Corporate Instruments.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation. (Del. Code Ann., tit. 8, §§ 103(a), 142(a), 158)

Unless otherwise specifically determined by the Board of Directors or otherwise required by law, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chairman of the Board of Directors, or the President, and by the Secretary or Chief Financial Officer or Treasurer or any Assistant Secretary or Assistant Treasurer. All other instruments and documents requiring the corporate signature, but not requiring the corporate seal, may be executed as aforesaid or in such other manner as may be directed by the Board of Directors. (Del. Code Ann., tit. 8, §§ 103(a), 142(a), 158)

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount. (Del. Code Ann., tit. 8, §§ 103(a), 142(a), 158)

**Section 32. Voting of Securities Owned by the Corporation.** All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the President, or any Vice President. (Del. Code Ann., tit. 8, § 123)

## ARTICLE VII

### SHARES OF STOCK

**Section 33. Form and Execution of Certificates.** Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation shall be entitled to have a certificate



signed by or in the name of the corporation by the Chairman of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Where such certificate is countersigned by a transfer agent other than the corporation or its employee, or by a registrar other than the corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. Each certificate shall state upon the face or back thereof, in full or in summary, all of the designations, preferences, limitations, restrictions on transfer and relative rights of the shares authorized to be issued. (Del. Code Ann., tit. 8, § 158)

**Section 34. Lost Certificates.** A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed. (Del. Code Ann., tit. 8, § 167)

**Section 35. Transfers.**

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and upon the surrender of a properly endorsed certificate or certificates for a like number of shares. (Del. Code Ann., tit. 8, § 201, tit. 6, § 8-401(1))

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the General Corporation Law of Delaware. (Del. Code Ann., tit. 8, § 160 (a))

**Section 36. Fixing Record Dates.**

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the

close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. (Del. Code Ann., tit. 8, § 213)

**Section 37. Registered Stockholders.** The corporation shall be entitled to recognize the exclusive right of a person registered on its books ' as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware. (Del. Code Ann., tit. 8, §§ 213(a), 219)

## ARTICLE VIII

### OTHER SECURITIES OF THE CORPORATION

**Section 38. Execution of Other Securities.** All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 33 above), may be



signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

## **ARTICLE IX**

### **DIVIDENDS**

**Section 39. Declaration of Dividends.** Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. (Del. Code Ann., tit. 8, §§ 170, 173)

**Section 40. Dividend Reserve.** Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created. (Del. Code Ann., tit. 8, § 171)

## **ARTICLE X**

### **FISCAL YEAR**

**Section 41. Fiscal Year.** The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

**ARTICLE XI**  
**INDEMNIFICATION**

**Section 42. Indemnification of Directors, Officers, Employees and Other Agents.**

(a) **Directors and Executive Officers.** The corporation shall indemnify its Directors and executive officers to the fullest extent not prohibited by the Delaware General Corporation Law; provided, however, that the corporation may limit the extent of such indemnification by individual contracts with its Directors and executive officers; and, provided, further, that the corporation shall not be required to indemnify any Director or executive officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the corporation or its Directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, or (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law.

(b) **Other Officers, Employees and Other Agents.** The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the Delaware General Corporation Law.

(c) **Good Faith.**

(1) For purposes of any determination under this Bylaw, a Director or executive officer shall be deemed to have acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, to have had no reasonable cause to believe that his conduct was unlawful, if his action is based on information, opinions, reports and statements, including financial statements and other financial data, in each case prepared or presented by:

(i) one or more officers or employees of the corporation whom the Director or executive officer believed to be reliable and competent in the matters presented;

(ii) counsel, independent accountants or other persons as to matters which the Director or executive officer believed to be within such person's professional competence; and

(iii) with respect to a Director, a committee of the Board upon which such Director does not serve, as to matters within such Committee's designated authority, which committee the Director believes to merit confidence; so long as, in each case, the Director or executive officer acts without knowledge that would cause such reliance to be unwarranted.

(2) The termination of any proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably



believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, that he had reasonable cause to believe that his conduct was unlawful.

(3) The provisions of this paragraph (c) shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth by the Delaware General Corporation Law.

**(d) Expenses.** The corporation shall advance, prior to the final disposition of any proceeding, promptly following request therefor, all expenses incurred by any Director or executive officer in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Bylaw or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Bylaw, no advance shall be made by the corporation if a determination is reasonably and promptly made (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to the proceeding, or (2) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

**(e) Enforcement.** Without the necessity of entering into an express contract, all rights to indemnification and advances to Directors and executive officers under this Bylaw shall be deemed to, be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the Director or executive officer. Any right to indemnification or advances granted by this Bylaw to a Director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting his claim. The corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

**(f) Non-Exclusivity of Rights.** The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire

under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its Directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the Delaware General Corporation Law.

(g) **Survival of Rights.** The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a Director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(h) **Insurance.** To the fullest extent permitted by the Delaware General Corporation Law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Bylaw.

(i) **Amendments.** Any repeal or modification of this Bylaw shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(j) **Saving Clause.** If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each Director and executive officer to the full extent not prohibited by any applicable portion of this Bylaw that shall not have been invalidated, or by any other applicable law.

(k) **Certain Definitions.** For the purposes of this Bylaw, the following definitions shall apply:

(1) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(2) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(3) The term the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in



the same position under the provisions of this Bylaw with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(4) References to a "director," "officer," "employee," or "agent" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(5) References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Bylaw.

## ARTICLE XIII

### NOTICES

#### Section 43. Notices.

(a) **Notice to Stockholders.** Whenever, under any provisions of these Bylaws, notice is required to be given to any stockholder, it shall be given in writing, timely and duly deposited in the United States mail, postage prepaid, and addressed to his last known post office address as shown by the stock record of the corporation or its transfer agent. (Del. Code Ann., tit. 8, § 222)

(b) **Notice to Directors.** Any notice required to be given to any Director may be given by the method stated in subsection (a), or by facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such Director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such Director.

(c) **Address Unknown.** If no address of a stockholder or Director be known, notice may be sent to the office of the corporation required to be maintained pursuant to Section 2 hereof.

(d) **Affidavit of Mailing.** An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, or Director or Directors, to whom any such notice

or notices was or were given, and the time and method of giving the same, shall be conclusive evidence of the statements therein contained. (Del. Code Ann., tit. 8, § 222)

**(e) Time Notices Deemed Given.** All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing and all notices given by facsimile, telex or telegram shall be deemed to have been given as of the sending time recorded at time of transmission.

**(f) Methods of Notice.** It shall not be necessary that the same method of giving notice be employed in respect of all Directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

**(g) Failure to Receive Notice.** The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any Director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent him in the manner above provided, shall not be affected or extended in any manner by the failure of such stockholder or such Director to receive such notice.

**(h) Notice to Person with Whom Communication Is Unlawful.** Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

**(i) Notice to Person with Undeliverable Address.** Whenever notice is required to be given, under any provision of law or the Certificate of Incorporation or Bylaws of the corporation, to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve month period, have been mailed addressed to such person at his address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth his then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate need not state that notice was not given



to persons to whom notice was not required to be given pursuant to this paragraph. (Del. Code Ann, tit. 8, § 230)

## **ARTICLE XIII**

### **AMENDMENTS**

**Section 44. Amendments.** Except as otherwise set forth in paragraph (i) of Section 42 of these Bylaws, these Bylaws may be amended or repealed and new Bylaws adopted by the stockholders entitled to vote. The Board of Directors shall also have the power, if such power is conferred upon the Board of Directors by the Certificate of Incorporation, to adopt, amend or repeal Bylaws (including, without limitation, the amendment of any Bylaw setting forth the number of Directors who shall constitute the whole Board of Directors). (Del. Code Ann., tit. 8, §§ 109(a), 122(6))

## **ARTICLE XIV**

### **LOANS TO OFFICERS**

**Section 45. Loans to Officers.** The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in this Section 46 shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute. (Del. Code Ann., tit. 8, § 143)

State of Tennessee



## Department of State

Corporate Filings

312 Eighth Avenue North

6th Floor, William R. Snodgrass Tower

Nashville, TN 37243

APPLICATION FOR  
CERTIFICATE OF AUTHORITY  
(FOR PROFIT)

For Office Use Only  
RECEIVED  
STATE OF TENNESSEE  
2007 SEP 12 AM 8:48  
RILEY DARNELL  
SECRETARY OF STATE

Pursuant to the provisions of Section 48-25-103 of the Tennessee Business Corporation Act, the undersigned corporation hereby applies for a certificate of authority to transact business in the State of Tennessee, and for that purpose sets forth:

1. The name of the corporation is ACCESS FIBER GROUP, INC

\*If different, the name under which the certificate of authority is to be obtained is ACCESS FIBER GROUP, INC

[NOTES: The Secretary of State of the State of Tennessee may not issue a certificate of authority to a foreign corporation for profit if its name does not comply with the requirements of Section 48-14-101 of the Tennessee Business Corporation Act. \*If obtaining a certificate of authority under a different corporate name, an application for registration of an assumed corporate name must be filed pursuant to Section 48-14-101(d) with an additional \$20.00 fee.]

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

3. The date of its incorporation is 06/28/2007 (must be month, day, and year), and the period of duration, if other than perpetual, is PERPETUITY

4. The complete street address (including zip code) of its principal office is  
200 GLEN EAGLES CT, 14 B, CARROLLTON, GEORGIA, CARROLL COUNTY 30117  
Street City State/County Zip Code

5. The complete street address (including the county and the zip code) of its registered office in Tennessee and the name of its registered agent is  
800 S. Gay Street, Suite 2021 Knoxville, TN 37929  
Street City State/County Zip Code  
Registered Agent CT Corporation Systems

6. The names and complete business addresses (including zip code) of its current officers are: (Attach separate sheet if necessary.)  
DANIEL T. MOORE, PRES./ CEO, 200 GLEN EAGLES CT, 14B, CARROLLTON, GA. 30117  
ALLEN LEDBETTER, V.PRES/TR. 200 GLEN EAGLES CT, 14B, CARROLLTON, GA. 30117  
GREGG LEDBETTER, SECRETARY, 200 GLEN EAGLES CT, 14B, CARROLLTON, GA. 30117

7. The names and complete business addresses (including zip code) of its current board of directors are: (Attach separate sheet if necessary.)  
DANIEL T. MOORE, 200 GLEN EAGLES CT., 14 B, CARROLLTON, GA. 30117  
ALLEN LEDBETTER, 200 GLEN EAGLES CT., 14 B, CARROLLTON, GA. 30117  
GREGG LEDBETTER, 200 GLEN EAGLES CT., 14 B, CARROLLTON, GA. 30117

8. If the corporation commenced doing business in Tennessee prior to the approval of this application, the date of commencement (month, day and year) N/A

9. The corporation is a corporation for profit.

10. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is  
N/A, \_\_\_\_\_ (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 (for example, a certificate of good standing) 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 filed in this state.]

x [Signature] 9/10/07  
Signature Date

SECRETARY

Signer's Capacity

ACCESS FIBER GROUP, INC

Name of Corporation

[Signature]  
Signature

GREGG LEDBETTER

Name (typed or printed)



## **Names and Addresses** **Principal Corporate Officers**

**Daniel T. Moore**  
**President/CEO**

[Dan.moore@accessfiber.com](mailto:Dan.moore@accessfiber.com)

201 Summit Parkway  
Birmingham, Alabama 35209  
205-271-2477 (office)  
205-492-8328 (cell)

**Michael Baughtman**  
**Chief Financial Officer**

[michael.baughtman@accessfiber.com](mailto:michael.baughtman@accessfiber.com)

200 Glenn Eagles Court, Suite 9B  
Carrollton, Georgia 30117  
770-832-2243  
(866) 495-4175 (fax)

**Larry Coker**  
**Vice President – Construction**

[Larry.coker@accessfiber.com](mailto:Larry.coker@accessfiber.com)

1598 North  
Aiken, South Carolina 29801  
803-349-7085  
803-439-3004  
803-644-2423 (fax)

**Janine K. Moses**  
**Vice President – Regulatory**

[jkmoses@jkmconsultinginc.com](mailto:jkmoses@jkmconsultinginc.com)

Post Office Box 3250  
Oxford, Alabama 36203  
256-405-0613  
256-225-0600 (cell)  
866-708-3062 (fax)



# Access Fiber Group Inc.

## Company Officers

### **Dan Moore** **President & CEO**

Prior to founding Access Fiber Group, Mr. Moore co-founded Fiberlincs LLC, a regional CLEC / dark fiber provider, and served as managing partner through October, 2006. Prior to Fiberlincs, Mr. Moore served as the indirect sales manager for southeast markets for ICG Communications, a nationwide wholesale broadband and CLEC organization. Mr. Moore served as the primary marketing contact for all wholesale and agent sales organizations serving southeast markets. Prior to ICG, Mr. Moore served in various direct and indirect sales and marketing positions in the telecommunications industry spanning 8 years with KMC Telecom, BTI and Cable and Wireless covering southeast and mid Atlantic territories. Prior to entering the telecommunications industry in 1996, Mr. Moore served as an air traffic controller in the US Navy serving aboard the USS Roosevelt and FASFAC Vacapes, Oceanea VA. Mr. Moore holds a Bachelor of Science from the University of the State of New York, Cum Laude honors.

### **Bruce Clemment** **Chief Operating Officer**

Bruce Clemment Brings over 20 years experience in the Telecommunications industry. He owned Clemment construction from 1985 until 1999. Clemment Construction was sold to First South utility company in 1999. Bruce served as Vice President of First south until 2001, he became President in 2001 and served in this position until the company was sold in 2004.

Bruce has been involved in all phases of telephone construction, to include splicing, cutover, placement of fiber / copper, both aerial and buried, conduit / manhole systems, he was involved in right of way procurement, engineer and design He managed large construction operations for AT&T and Bellsouth



**Michael Baughtman**  
**Chief Financial Officer**

Michael Baughtman is a Certified Public Accountant with 11 years of public accounting experience. Prior to his position with Access Fiber Group, Inc., Mr. Baughtman was a Senior Tax Manager with Deloitte and Touche, LLP in Jacksonville, Florida. Mr. Baughtman also held positions with PricewaterhouseCoopers, LLP's energy practice in the central Asia and with KPMG, LLP in Houston Texas. Mr. Baughtman earned a Master in Professional Accounting degree at the University of Texas at Austin and a Bachelor of Business Administration – Accounting degree at the University of West Georgia.

**Larry Coker**  
**Vice President of Construction**

Mr. Coker has been building outside plant infrastructure for over 30 years. Mr. Coker founded and served as President for Cable-LA Inc. from 1977 to 2002. During his tenure at Cable-LA, a telecommunications outside plant contracting company, he serviced various master construction and maintenance contracts for top carriers including Qwest, Level III, Sprint and AT&T. Mr. Coker oversees all construction activities for Access Fiber and also serves as General Manager for ARW Construction, an underground utility contracting company based in Aiken SC. Mr. Coker holds a BS in Industrial Management from Clemson University.

**Janine K. Moses**  
**Vice President of Regulatory**

Janine K. Moses owns a Telecommunications Consulting firm. Mrs. Moses has served in various telecommunications management positions for over twenty years. Serving as Carrier Relations, Industry Relations and Regulatory Affairs for long distance telecommunications companies such as SouthernNet/Telecom\*USA/MCI and CLEC providers ITC^DeltaCom and ICG Communications. Mrs. Moses has a Network Planning and Project Management background representing telecommunications networks on committees under the Order and Billing Forum for Equal Access and 800 Number Portability.

Exhibit F  
(sealed envelope – Confidential)



# REGIONS SM

## BANK

417 NORTH 20TH STREET, 5TH FL, BIRMINGHAM, ALABAMA 35203  
PHONE (866) 828-6928 FAX (205) 801-5788  
S.W.I.F.T. UPNBUS44MIA TELEX 6737871 UPBMIA

IRREVOCABLE STANDBY LETTER OF CREDIT NO. 55102337  
DATE: MARCH 19, 2008

OPENER:  
ACCESS FIBER GROUP, INC.  
201 SUMMIT PY  
HOMEWOOD, AL 35209

BENEFICIARY:  
TENNESSEE REGULATORY AUTHORITY  
TELECOMMUNICATIONS DIVISION  
460 JAMES ROBERTSON PARKWAY  
NASHVILLE, TN 37243

AT THE REQUEST OF ACCESS FIBER GROUP, INC., WE HEREBY ISSUE OUR  
IRREVOCABLE STANDBY LETTER OF CREDIT REFERENCE NUMBER 55102337  
AVAILABLE BY THE BENEFICIARY'S DRAFT(S) AT SIGHT DRAWN ON REGIONS BANK  
BY PAYMENT EFFECTIVE MARCH 19, 2008 AND EXPIRING ON/AT OUR COUNTERS ON  
MARCH 03, 2009.

THIS CREDIT IS FOR AN AMOUNT OR AMOUNTS NOT TO EXCEED IN THE AGGREGATE  
USD\$20,000.00 (US DOLLARS TWENTY THOUSAND), AND SUBJECT TO THE  
FOLLOWING:

THIS LETTER OF CREDIT MAY BE SUCCESSIVELY TRANSFERRED IN FULL (BUT NOT  
IN PART) BY THE ISSUING BANK PROVIDED THAT YOU DELIVER TO US OUR  
WRITTEN FULL TRANSFER FORM ATTACHED HEREIN (EXHIBIT "A"). THE ORIGINAL  
LETTER OF CREDIT TOGETHER WITH ALL ORIGINAL AMENDMENTS (IF ANY) MUST BE  
RETURNED TO US FOR ENDORSEMENT WITH THE COMPLETED TRANSFER FORM AND  
PAYMENT OF OUR CUSTOMARY CHARGES OF 1/4 % WITH A MINIMUM OF \$200.00  
THESE CHARGES WILL BE FOR THE ACCOUNT OF THE APPLICANT. THIS LETTER OF  
CREDIT WILL NOT BE TRANSFERRED TO ANY PARTY PROHIBITED BY THE U.S.  
FOREIGN ASSETS CONTROL REGULATIONS.

WE HEREBY AGREE THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE  
TERMS OF THIS CREDIT WILL BE DULY HONORED ON DELIVERY OF DOCUMENTS AS  
SPECIFIED IF PRESENTED AT OUR COUNTERS ON OR BEFORE THE EXPIRATION DATE  
INDICATED ABOVE.

WHEN PRESENTING YOUR DRAFT(S) AND DOCUMENTS OR WHEN COMMUNICATING WITH  
US, PLEASE MAKE REFERENCE TO OUR NUMBER SHOWN ABOVE.

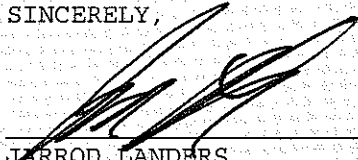
DRAFTS DRAWN UNDER THIS CREDIT MUST BE ENDORSED, MUST CONTAIN THE  
CLAUSE 'DRAWN UNDER REGIONS BANK LETTER OF CREDIT NO. 55102337 DATED  
3/19/2008' AND MUST BE ACCOMPANIED BY THE DOCUMENTS SPECIFIED IN THIS  
CREDIT AND THE ORIGINAL OF THIS CREDIT.

ALL DOCUMENTS TO BE PRESENTED TO REGIONS BANK AT ADDRESS SHOWN ABOVE.

EXCEPT SO FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF  
CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY

CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION  
NO. 600.

SINCERELY,



JARROD LANDERS  
AUTHORIZED SIGNATURE



Exhibit G  
(sealed envelope – Confidential)

## EXHIBIT H

# SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN AFG, INC.

Pursuant to T.C.A. §65-5-112, as amended, AFG, INC., Inc. (“AFG, INC.”) submits this small and minority-owned Telecommunications business participation plan (the “Plan”) along with its Application for a Certificate of Public Convenience and Necessity to provide competing intrastate and local exchange services in Tennessee.

## I. PURPOSE

The purpose of §65-5-112 is to provide opportunities for small and minority-owned businesses to provide goods and services to Telecommunications service providers. AFG, INC. is committed to the goals of §65-5-112 and to taking steps to support the participation of small and minority-owned Telecommunications businesses in the Telecommunications industry. AFG, INC. will endeavor to provide opportunities for small and minority-owned Telecommunications businesses to compete for contracts and subcontracts for goods and services. As part of its procurement process, AFG, INC. will make efforts to identify and inform minority-owned and small businesses that are qualified and capable of providing goods and services to AFG, INC. of such opportunities. AFG, INC.’s representatives have already contacted the Department of Economic and Community Development, the administrator of the small and minority-owned Telecommunications assistance program, to obtain a list of qualified vendors. Moreover, Access Fiber Group, Inc. will seek to increase awareness of such opportunities so that companies not otherwise identified will have sufficient information to participate in the procurement process.

## II. DEFINITIONS

As defined in §65-5-112.

**Minority-Owned Business.** Minority-owned business shall mean a business which is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls daily operations of such business, and who is impeded from normal entry into the economic mainstream because of race, religion, sex or national origin and such business has annual gross receipts of less than four million dollars (\$4,000,000).

**Small Business.** Small Business shall mean a business with annual gross receipts of less than four million dollars (\$4,000,000).

### **III. ADMINISTRATION**

AFG, INC.'s Plan will be overseen and administered by the individual named below, hereinafter referred to as the Administrator, who will be responsible for carrying out and promoting AFG, INC.'s full efforts to provide equal opportunities for small and minority-owned businesses. The Administrator of the Plan will be:

Daniel T. Moore  
Access Fiber Group, Inc.  
201 Summit Parkway  
Birmingham, Alabama  
Telephone: 205-492-8328  
Facsimile: 205-940-9067

The Administrator's responsibilities will include:

- (1) Maintaining an updated Plan in full compliance with §65-5-112 and the rules and orders of the Tennessee Regulatory Authority.
- (2) Establishing and developing policies and procedures necessary for the successful implementation of the Plan.
- (3) Preparing and submitting such forms as may be required by the Tennessee Regulatory Authority, including the filing of required annual updates.
- (4) Serving as the primary liaison to and cooperate with the Tennessee Regulatory Authority, other agencies of the State of Tennessee, and small and minority-owned businesses to locate and use qualified small and minority-owned businesses as defined in §65-5-112.
- (5) Searching for and developing opportunities to use small and minority-owned businesses and encouraging such businesses to participate in and bid on contracts and subcontracts.
- (6) Providing records and reports and cooperating in any authorized surveys as required by the Tennessee Regulatory Authority.
- (7) Establishing a record-keeping system to track qualified small and minority-owned businesses and efforts to use such businesses.

(8) Providing information and educational activities to persons within AFG, INC. and training such persons to seek out, encourage, and promote the use of small and minority-owned businesses. In performance of these duties, the Administrator will utilize a number of resources, including:

Chambers of Commerce

The Tennessee Department of Economic and Community Development

The United States Department of Commerce

Small Business Administration

Office of Minority Business

The National Minority Supplier Development Counsel

The National Association of Women Business Owners

The National Association of Minority Contractors

Historically Black Colleges, Universities, and Minority Institutions

The efforts to promote and ensure equal opportunities for small and minority-owned businesses are primarily spelled out in the Administrator's duties above. Additional efforts to provide opportunities to small and minority-owned businesses will include offering, where appropriate and feasible, small and minority-owned businesses assistance with technical, insurance, bonding, licensing, production, and deadline requirements.

#### **IV. RECORDS AND COMPLIANCE REPORTS**

AFG, INC. will maintain records of qualified small and minority-owned business and efforts to use the goods and services of such businesses. In addition, AFG, INC. will maintain records of educational and training activities conducted or attended and of the internal procurement procedures adopted to support this plan.

AFG, INC. will submit records and reports required by the Tennessee Regulatory Authority concerning the Plan. Moreover, AFG, INC. will cooperate fully with any surveys and studies required by the Tennessee Regulatory Authority.

AFG, INC., Inc.

By: 

Dan Moore

President/CEO

Dated: March 17, 2008.

EXHIBIT I

**1) Ardmore Telephone Company, Inc.**

P.O. Box 549  
517 Ardmore Avenue  
Ardmore, TN 38449  
(205) 423-2131  
(205) 423-2208 (Fax)

**2) BellSouth**

333 Commerce Street  
Nashville, TN 37201-3300  
(615) 214-3800  
(615) 214-8820 (Fax)

**3) Century Telephone of Adamsville**

P.O. Box 405  
116 N. Oak Street  
Adamsville, TN 38310  
(901) 632-3311  
(901) 632-0232 (Fax)

**4) Century Telephone of Claiborne**

P.O. Box 100  
507 Main Street  
New Tazewell, TN 37825  
(423) 626-4242  
(423) 626-5224 (Fax)

**5) Century Telephone of Ooltewah-Collegedale, Inc.**

P.O. Box 782  
5616 Main Street  
Ooltewah, TN 37363  
(423) 238-4102  
(423) 238-5699 (Fax)

**6) Citizens Communications Company of Tennessee**

P.O. Box 770  
300 Bland Street  
Bluefield, WV 24701

**7) Citizens Communications Company Of The Volunteer State**

P.O. Box 770  
300 Bland Street  
Bluefield, WV 24701

**8) Loretto Telephone Company, Inc.**

P.O. Box 130  
Loretto, TN 38469  
(931) 853-4351  
(931) 853-4329 (Fax)

**9) Millington Telephone Company, Inc.**

P.O. Box 429  
4880 Navy Road  
Millington, TN 38083-0429  
(901) 872-3311  
(901) 873-0022 (Fax)

**10) Sprint-United**

112 Sixth Street  
Bristol, TN 37620  
(423) 968-8161  
(423) 968-3148 (Fax)

**11) TDS Telecom-Concord Telephone Exchange, Inc. (A Tennessee Telephone Company)**

P.O. Box 22995  
Knoxville, Tennessee 37933  
(865) 671-4753  
(865) 675-3881 (Fax)

**12) TDS Telecom-Humphreys County Telephone Company (A Tennessee Telephone Company)**

P.O. Box 22995  
Knoxville, Tennessee 37933  
(865) 671-4753  
(865) 675-3881 (Fax)

**13) TDS Telecom-Tellico Telephone Company, Inc. ( A Tennessee Telephone Company)**

P.O. Box 22995  
Knoxville, Tennessee 37933  
(865) 671-4753  
(865) 675-3881 (fax)

**14) TDS Telecom-Tennessee Telephone Company (A Tennessee Telephone Company)**

P.O. Box 22995  
Knoxville, TN 37933  
(865) 671-4753  
(865) 675-3881 (Fax)



**15) TEC-Crockett Telephone Company, Inc.**

P.O. Box 7  
Friendship, TN 38034  
(901) 677-8181

**16) TEC-People's Telephone Company, Inc.**

P.O. Box 310  
Erin, TN 37061  
(931) 289-4221  
(931) 289-4220 (Fax)

**17) TEC-West Tennessee Telephone Company, Inc.**

P.O. Box 10  
244 E. Main Street  
Bradford, TN 38316  
(901) 742-2211  
(901) 742-2212 (Fax)

**18) United Telephone Company**

P.O. Box 38  
120 Taylor Street  
Chapel Hill, TN 37034  
(931) 364-2289  
(931) 364-7202 (Fax)



# Access Fiber Group Inc.

## BEFORE THE TENNESSEE REGULATORY AUTHORITY

### IN THE MATTER OF THE APPLICATION OF CLEC A, INC. FOR A CERTIFICATE TO PROVIDE COMPETING LOCAL TELECOMMUNICATIONS SERVICES

#### NOTICE OF FILING

#### TO: ALL INCUMBENT LOCAL EXCHANGE CARRIERS (ILECS)

PLEASE TAKE NOTICE, that in accordance with the Tennessee Regulatory Authority Rules for the Provision of Competitive Intrastate Telecommunications Services, you are hereby given notice that on February 22, 2008 AFG, Inc. filed an Application for a Certificate of Public Convenience and Necessity to Provide Competing Local Telecommunications Services. Access Fiber Group, Inc. will be offering dark fiber services only.

This 17<sup>th</sup> day of March, 2008.

Access Fiber Group, Inc.

BY: 

**Sworn Pre-Filed Testimony**

**Before The Tennessee Regulatory Authority  
Nashville, Tennessee**

**Application of Access Fiber Group, Inc.  
For A Certificate To Provide Competing  
Local Telephone Services**

**Pre-Filed Testimony Of Dan Moore**

I, Dan Moore, do hereby testify as follows in support of the application of Access Fiber Group, Inc. for a Certificate of convenience and necessity as a competing telecommunications services provider to provide telecommunication services throughout the State of Tennessee.

Q: Please state your full name, business address, and position.

A: Dan Moore, 201 Summit Parkway, Birmingham, Al. 35209, President & CEO.

Q: Please briefly describe your duties.

A: I am responsible for all business functions and activities of Access Fiber Group, Inc.

Q: Please describe your business experience and educational background.

A: Prior to founding Access Fiber Group, I co-founded Fiberlincs LLC, a regional clec / dark fiber provider, and served as managing partner through October, 2006. Prior to Fiberlincs, I served as the indirect sales manager for southeast markets for ICG Communications, a nationwide wholesale broadband and Clec organization. I served as the primary marketing contact for wholesale and agent sales organizations serving southeast markets. Prior to ICG, I served in various direct and indirect sales and marketing positions in the telecommunications industry spanning 8 years with KMC Telecom, BTI and Cable and Wireless covering southeast and mid Atlantic territories. Prior to entering the telecommunications industry in 1996, I served as an air traffic controller in the US Navy serving aboard the USS Roosevelt and FASFAC Vacapes, Oceanea VA. I hold a Bachelor of Science from the University of the State of New York, Cum Laude honors.

Q: Are all statements in Access Fiber Group, Inc.'s application true and correct to the best of your knowledge, information and belief?

A: Yes.

Q: Please describe the current corporate structure of Access Fiber Group, Inc.?

A: Access Fiber Group, Inc. is a Delaware Inc. with certificates of authority to do business authorized by the Secretary of State in Tennessee and Alabama.

Q: Does Access Fiber Group, Inc. possess the requisite managerial, financial, and technical abilities to provide the services for which it has applied for authority?

A: Yes. As demonstrated in our application, Access Fiber Group Inc.'s managerial and technical staff have decades of experience constructing and maintaining telecommunications networks dating back to the divestiture of the Bell operating companies. As indicated in our application, Access Fiber Group, Inc. is supported financially with credit facilities provided by a top Venture fund owned and operated by telecommunications industry veterans who also function as financial and operational advisors.

Q: Please describe Access Fiber Group, Inc.'s financial qualifications.

A: Access Fiber Group, Inc. is primarily self funded by the stock holders and supplemented with credit facilities from a top venture fund. Most projects are funded by our customers and ongoing maintenance of our fiber networks is also funded by our customers. We utilize existing credit facilities for project funding when necessary.

Q: Please describe Access Fiber Group Inc.'s managerial and technical qualifications.

A: Access Fiber Group Inc.'s executive staff has over 55 years of telecommunications industry experience specifically relating to building and maintaining telecommunications outside plant networks.

Q: What services will Access Fiber Group, Inc. offer?

A: Access Fiber Group, Inc. will offer one product – dark fiber.

Q: Will Access Fiber Group, Inc. offer service to all consumers within its service area?

A: When Access Fiber Group, Inc. receives the appropriate regulatory authority, we intend to offer our dark fiber service to all consumers within our footprint but our primary focus is wholesale to other service providers.

Q: Does Access Fiber Group, Inc. plan to offer local exchange telecommunications services in areas served by any incumbent local exchange telephone company with fewer than 100,000 total access lines?

A: Access Fiber Group, Inc. plans to offer dark fiber service in major metropolitan areas. We have no plans to offer service in areas where the incumbent services fewer than 100,000 total access lines or the local population is under 300,000. However, we intend to explore dark fiber opportunities in any region in the state where one of our customers requests a specific solution. It would not be prudent to completely rule out opportunities where the incumbent services fewer than 100,000 access lines, but this scenario is highly unlikely.

Q: Will the granting of a certificate of convenience and necessity to Access Fiber Group, Inc. serve the public interest?

A: We believe granting a certificate of convenience and public necessity to Access Fiber Group, Inc. significantly serves the public interest. Not only will large corporate, education and service provider entities benefit from a truly diverse, competitive physical topology for private networking purposes but the entire business community will benefit



from increased competition. Access to our fiber networks will be open to all providers enabling competitive fiber based access to thousands of business prospects for lit service providers large and small. Without access to a fiber network, service providers are limited to buying a lit, managed services owned and controlled by another service provider. By providing access to our fiber network, smaller service providers can compete with the large providers by operating their own switched network over our fiber with no limitations. We believe the end result will be lower rates and more diverse options for the business community.

Q: Does Access Fiber Group, Inc. intend to comply with all TRA rules, statutes, and orders pertaining to the provision of telecommunications services in Tennessee, including those for disconnection and reconnection of service?

A: Yes.

Q: Has any state ever denied Access Fiber Group, Inc. or one of its affiliates authorization to provide intrastate service?

A: No.

Q: Has any state ever revoked the certification of Access Fiber Group, Inc. or one of its affiliates?

A: No.

Q: Has Access Fiber Group, Inc. or one of its affiliates ever been investigated or sanctioned by any regulatory authority for service or billing irregularities?

A: No.

Q: Who is knowledgeable about Access Fiber Group, Inc.'s operations and will serve as Access Fiber Group, Inc.'s regulatory and customer service contact?

A: Janine Moses, VP of Regulatory Affairs, will serve as the primary contact for regulatory issues. However, all executives of Access Fiber Group, Inc. are available to speak with all customers regarding customer service issues. All customers are provided with contact info not only for their specific account team but also the appropriate executive personnel including the President and CEO's cell phone number.

Q: Please explain in detail Access Fiber Group, Inc.'s proposed procedures for responding to information requests from the TRA and its staff.

A: All requests should be routed to Janine Moses, VP of Regulatory Affairs via email, phone or fax and / or Dan Moore, President & CEO via email or phone. All information requests will receive a response no later than 24 hours and in most cases the same business day.

Q: Does this conclude your testimony?

A: Yes.

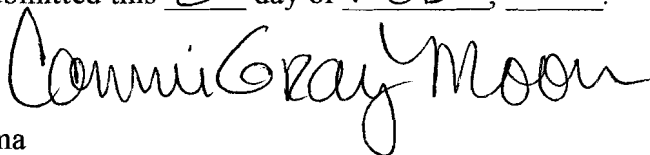
I swear that the foregoing testimony is true and correct to the best of my knowledge.



Dan Moore  
President & CEO  
Access Fiber Group, Inc.

Respectfully submitted this 8 day of Feb, 2008

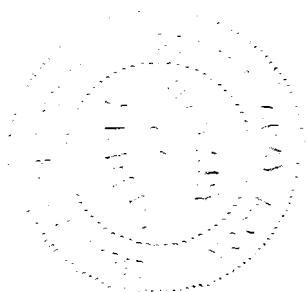
Notary Public



State of Alabama

County of Shelby

My commission expires My Commission Expires Nov. 26, 2011



ACCESS FIBER GROUP, INC

Tennessee Regulatory Authority Tariff No. 1  
Cover  
Original Page 1

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**TITLE SHEET**

**RULES, REGULATIONS, AND  
SCHEDULE OF RATES AND CHARGES  
APPLICABLE TO END USERS  
WITHIN THE STATE OF TENNESSEE**

**TENNESSEE REGULATORY AUTHORITY  
TELECOMMUNICATIONS TARIFF**

**FURNISHED BY  
ACCESS FIBER GROUP, INC.**

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Issued By:

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**CONCURRING, CONNECTING OR  
OTHER PARTICIPATING CARRIERS**

1. **Concurring Carriers** - None
2. **Connecting Carriers** - None
3. **Other Participating Carriers** - None

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**CHECK PAGE**

Each page of this Tariff is effective as of the date shown at the bottom of the page. The revised pages listed comprise all changes from the original Tariff that are in effect as of the date shown.

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## SYMBOLS

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

- C - to signify change in regulation
- D - to signify a deletion
- I - to signify a rate increase
- L - to signify material relocated in the tariff
- N - to signify a new rate or regulation
- R - to signify a rate reduction
- T - to signify a change in text, but no change in rate or regulation

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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 Commission. For example, the 4th Revised Page 14 cancels the 3rd Revised Page 14. Because of various suspension periods, deferrals, etc. the Commission follows in their tariff approval process, the most current sheet number on file with the Commission is not always the tariff page 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 Page - When a filing is made with the Commission, an updated Check Page accompanies the filing. The Check Page lists the pages contained in the Tariff, with a cross reference to the current revision number. When new pages are added, the Check Page 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 the check sheet if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on the same pages). The tariff user should refer to the latest check sheet to find out if a particular sheet is the most current on file with the Commission.

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SECTION 1 –TECHNICAL TERMS AND ABBREVIATIONS**1.1 Definition**

For the purposes of this Tariff, the following technical terms and abbreviations will apply.

**Access Coordination:** Access Coordination provides for the design, ordering, installation coordination, pre-service testing, service turn-up and ongoing maintenance coordination of testing and trouble resolution on all Company-provided local access channels. In the case of Customer-provided local access channels, it provides for the maintenance, ongoing coordination of testing, and trouble resolution from the local access channels.

**Access Line:** A transmission line used to transmit voice and/or data calls from the Customer's Premises to a telephone company serving wire center or a Company-designated POP or from a telephone company serving wire center or a Company-designated POP to the Customer's Premises.

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

**ADSL:** ADSL stands for Asymmetric Digital Subscriber Line.

**Airline Mileage:** The distance in mileage between two Rate Centers whose position is specified by industry standards.

**Alternate Access:** Alternate Access is a form of Local Access except that the provider of the service is an entity, other than the Local Exchange Carrier, authorized or permitted to provide such service. The charges for Alternate Access may be subject to private agreement rather than published or special Tariff rates if permitted by applicable governmental rules.

**Ancillary Charges:** Ancillary Charges are charges for supplemental Services or optional features as set forth herein which may consist of both nonrecurring and monthly recurring charges.

**Applicant:** Any entity or individual who applies for Service under this Tariff.

**Application for Service:** The Application for Service is the standard Company order form which includes all pertinent billing, technical, and other descriptive information which will enable the Company to provide a communication Service(s) as required.

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SECTION 1 –TECHNICAL TERMS AND ABBREVIATIONS

**Authorized User:** A person, firm, corporation or other entity (including Customer) that 1) is authorized by the Customer to be connected to and utilize the Company's Services under the terms and regulations of this Tariff or 2) either is authorized by the Customer to act as the Customer in matters of ordering, changing or canceling Service or is placed in a position by the Customer, either through acts or omissions, to act as Customer in such matters. Such actions by an Authorized User shall be binding on Customer and shall subject Customer to any associated charges.

**Billing Record Change:** Billing Record Change is a change in Customer's billing address.

**Building:** A Building is a structure under one roof, or two or more structures where such structures adjoin, connect or are occupied as follows:

- The structures directly adjoin each other, being separated only by a Building wall.
- The structures are connected by a completely enclosed passageway designed for and used primarily as the regular route for foot travel between the structures and is also suitable for the installation and maintenance of interior telephone facilities.
- The major portion of the structure is occupied by the same Customer.

**Business Customer:** A Business Customer is a Customer who subscribes to the Company's Service(s) and whose primary use of the Service is of a business, professional, institutional, or otherwise occupational nature.

**Business Service:** A class of service provided to individuals engaged in business, firms, partnerships, corporations, agencies, shops, works, tenants of office buildings, and individuals practicing a profession or operating a business who have no offices other than their residences and where the use of the service is primarily or substantially of a business, professional or occupational nature.

**Central Office:** Central Office is a switching unit in a telephone system, providing service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting lines. More than one Central Office may be located in the same Building.

**Central Office Building:** Central Office Building is a Building containing one or more Central Offices. There may be more than one Central Office Building in an Exchange and one Central Office Building may serve more than one Exchange.

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SECTION 1 –TECHNICAL TERMS AND ABBREVIATIONS

**Channel:** Channel refers to an electrical path furnished by the Company between two or more points suitable for the purpose furnished and derived in a manner elected by the Company. A single pair of wires may be used to provide more than one Channel. A Channel may be provided in whole or in part by cable, wire, or radio.

**Circuit:** As generally used herein, a Circuit is a Channel.

**CIC:** CIC stands for Carrier Identification Code which is a numeric code consisting of three numbers used by end-users or customers to reach the networks of the COMPANYS through equal access arrangements.

**CLEC:** CLEC stands for Competitive Local Exchange Carrier which is any carrier or reseller offering local exchange telecommunications services other than the incumbent LEC.

**CO:** CO stands for Central Office.

**Commission:** Commission refers to the Tennessee Regulatory Authority or any succeeding agency.

**Communications Systems:** Communications Systems are Dedicated Channels and other facilities; (e.g., private microwave, analog/digital carrier, or cable), furnished by a Customer or an other common carrier for communication between premises. These communications systems are not subject to Part 68 of the Federal Communications Commission's rules and regulations.

**Company:** Company refers to **Access Fiber Group**, unless otherwise clearly indicated by the context.

**Company-Provided:** The switching, transmission, and other related telecommunications equipment/facilities provided by the Company or by any combination of the Company, the LEC, or other authorized Third Party Vendors contracted by the Company.

**CPE:** CPE stands for Customer-Provided Equipment which is terminal equipment connected to the telephone network which is owned by the Customer or leased by the Customer from a supplier.

**CPNIP:** Customer Premises Network Interface Points.

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SECTION 1 –TECHNICAL TERMS AND ABBREVIATIONS

**CSPP:** Customer Service Payment Plan.

**Customer:** A Customer is the person, firm, corporation, governmental unit, including and not limited to, educational entity or other entity which orders Service - either for its own use, as a resale carrier, or as a non-profit manager of a sharing group - and which is responsible for the payment of charges and for compliance with this Tariff.

**Customer/End User:** The terms "Customer/End User" refer to any person, firm, corporation, partnership or other entity which uses the services of the Company under the provisions and regulations of this Tariff. The Customer/End User is responsible for payment unless the charges for the services utilized are accepted and paid by another Customer or party.

**Customer Association:** A Customer Association is a pre-existing group of Customers (i) having a cognizable commonality of interest apart from their desire to purchase Services from the Company and (ii) engaging in activities as a group apart from the purchasing of Services from the Company.

**Customer Commitment Date:** The date in which the Company receives a firm commitment from a Customer for the provision of one of the Company's Data Service offerings.

**Customer Premises/Customer's Premises:** Location(s) designated by a Customer where Service is originated/terminated whether for its own communications needs or for the use of its Resellers. In the case of non-profit sharing groups, this term includes space at each sharer's place or places of business, as well as space at Customer's place of business.

**Dark Fiber Service:** Dark Fiber Service is service provided by the Company for the maintenance of optical fiber transmission capacity between customer locations in which the light for the fiber is provided by the Customer rather than the Company.

**Dedicated Access:** Where Customer's Premises has a non-switched connection to the POP selected by the Company for origination and or termination of calls. When the Dedicated Access is used for Switched Services, the Dedicated Access is referred to as a Dedicated Access line. When Dedicated Access is used to provide Data Services, the Dedicated Access is referred to as local loop.

**Defects or Defective Service:** A shortcoming or an imperfection in Data Service(s) as a result of mistakes, accidents, errors, omissions, interruption or delay in Service.

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SECTION 1 –TECHNICAL TERMS AND ABBREVIATIONS

**Deposit:** Refers to a cash or equivalent of cash security held as a guarantee for payment of the charges.

**DID:** Direct Inward Dial.

**Disconnect:** To render inoperable or to disable circuitry thus preventing outgoing and incoming toll communications service.

**Diversity:** Diversity is Customer-designated routing which indicates a Customer designated departure from the Company's primary route.

**Employees:** The term Employees refers to the active and retired employees of the Company and all subsidiaries, affiliates, and any other groups designated by the Company.

**End User:** The person or legal entity which uses the Service provided by the Company (also referenced as Customer/End User).

**Equal Access:** Enables the Customer to place long distance calls without the need to first dial a special code.

**Exchange Access Line:** An Exchange Access Line includes the serving Central Office line equipment and all Company plant facilities up to and including the Company provided network interface.

**ICB:** Individual Case Basis. A Service provided involving a nonstandard arrangement. The nature of such Service requirements makes it difficult or impossible to establish general Tariff provisions for such circumstances.

**IDSL:** IDSL stands for ISDN Digital Subscriber Line.

**Initial and Additional Period:** The Initial Period denotes the interval of time allowed at the rate specified for a connection between given service points. The Additional Period denotes the interval of time used for measuring and charging time in excess of the Initial Period.

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SECTION 1 –TECHNICAL TERMS AND ABBREVIATIONS

**Installation:** Installation means the connection of a Circuit, Dedicated Access line, or Port, for new, changed or additional Service.

**Interface:** An Interface is the point at the premises of the Customer, authorized user, joint user, or patron of a sharer of Service at which provision is made for connection of other than Company provided facilities to facilities provided by the Company.

**IXC:** Interexchange Carrier.

**Joint User:** A corporation, association, partnership, or individual that is permitted to use a Customer's Service by mutual agreement between the Customer and the Joint User in accordance with the terms and conditions of this Tariff.

**LATA:** Local Access Transport Area. A geographically defined regulatory boundary established by the Modification of Final Judgment in Civil Action No. 82-0192; or any other area designated as LATA in the NECA Tariff FCC No. 4.

**LEC:** LEC stands for Local Exchange Company.

**Monthly Recurring Charge ("MRC"):** The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

**Message, Local:** A Local Message is a message between telephones where the called telephone is within the unlimited, message unit, or primary calling area of the calling telephone.

**Minimum Service Period:** The Minimum Service Period is a stated length of time that a Customer is required to retain Service at a specific location.

**Move:** A Move is the relocation of equipment and wiring associated with a Customer's Service.

**Non-recurring Charge ("NRC"):** The initial charge, usually assessed on a one-time basis, to initiate and establish service. NRC may also apply to a service enhancement or change.

**POP:** Point-of-Presence. A physical place at which the local telephone company terminates subscriber Circuits for long distance dial-up or leased-line communications or a Company-designated location where a facility is maintained for the purpose of providing access to the Company's Service.

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SECTION 1 –TECHNICAL TERMS AND ABBREVIATIONS

**Port:** The physical or electrical interface through which access to the communications network is obtained.

**Premise:** A building or buildings on contiguous property.

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

**Registered Equipment:** Registered Equipment is equipment that complies with and has been approved within the registration provisions of Part 68 of the FCC's Rules and Regulations.

**Reseller:** A Customer that resells the Company's Service(s) with the Company's authorization.

**Residence or Residential:** A class of service furnished to a Customer at a place of dwelling where the actual or obvious use is for domestic purposes.

**Service:** Service consists of any Local Exchange Service provided by the Company pursuant to this Tariff.

**Service Commitment Period:** The Service Commitment Period is the period selected by the Customer, agreed to by the Company, and stated on the relevant Application for Service during which the Company will provide and Customer will accept and pay for the Service described therein.

**Service Order:** The written request for services executed by the Customer and the Company in the format devised by the Company. The signing of an 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, but the duration of the services is calculated from the Service Commitment Period.

**State:** State refers to the State of Tennessee.

**Switched Access:** The Customer gains entry to the Company's services by a transmission line that is switched through the local exchange carrier to reach the Company's point of presence.

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**SECTION 1 –TECHNICAL TERMS AND ABBREVIATIONS**

**T-1 Digital Service:** T-1 Digital Service, also called T-1, is a digital link between two points. This link typically transmits at speeds of 1.544 megabits per second. In most cases, this service allows twenty-four access paths between any two points.

**Telecommunications:** The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**Terminal Equipment:** Devices, apparatus, and their associated wiring provided by a Customer which do not constitute a Multi-Line Terminating System and which, when connected to the communications path of the telephone system are so connected either electrically, acoustically, or inductively are referred to as Terminal Equipment.

**Transmission Speed:** For the purposes of this Tariff, Transmission Speed denotes the line speed in Bits or Baud per seconds (bps).

**Underlying Carrier:** Underlying Carrier refers to any Local Exchange Carrier certified by the Commission that provides Local Exchange Services resold by the Company pursuant to this Tariff.

**User or End User:** A Customer, Joint User, or any other person authorized by a Customer to use service provided under this tariff.

**V&H:** Vertical and Horizontal geographic coordinates.

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SECTION 2 – RULES AND REGULATIONS**2.1 Undertaking of the Company**

This tariff contains the regulations and rates applicable to intrastate interexchange telecommunications services provided by the Company for telecommunications between points within the State of Alabama. Services are furnished subject to the availability of facilities and subject to the terms and conditions of this tariff in compliance with limitations set forth in the Commission's rules. The Company's services are provided on a statewide basis and are not intended to be limited geographically. The Company offers service to all those who desire to purchase service from the Company consistent with all of the provisions of this tariff. Customers interested in the Company's services shall file a service application with the Company which fully identifies the Customer, the services requested and other information requested by the company. The Company may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities when authorized by the Customer, to allow connection of a Customer's location to a service provided by the Company. The Customer shall be responsible for all charges due for such service arrangement.

- 2.1.1 The services provided by the Company are not part of a joint undertaking with any other entity providing telecommunications channels, facilities, or services, but may involve the resale of the Message Toll Services (MTS) and Wide Area Telecommunications Services (WATS) of underlying common carriers subject to the jurisdiction of this Commission.
- 2.1.2 The rates and regulations contained in this tariff apply only to the services furnished by the Company and do not apply, unless otherwise specified, to the lines, facilities, or services provided by a local exchange telephone company or other common carriers for use in accessing the services of the Company.
- 2.1.3. The Company reserves the right to limit the length of communications, to discontinue furnishing services, or limit the use of services necessitated by conditions beyond its control, including, without limitation: lack of satellite or other transmission medium capacity; the revision, alteration or repricing of the Underlying Carrier's tarified offerings; or when the use of service becomes or is in violation of the law or the provisions of this tariff.

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**SECTION 2 – RULES AND REGULATIONS****2.2 Limitations of Services**

- 2.2.1 The Company's services may be used for any lawful purpose consistent with the transmission and switching parameters of the telecommunications facilities utilized in the provision of services, subject to any limitations set forth in this Section 2.2.
- 2.2.2 The use of the Company's services to make calls which might reasonably be expected to frighten, abuse, torment, or harass another or in such a way as to unreasonably interfere with use by others is prohibited.
- 2.2.3 The use of the Company's services without payment for service or attempting to avoid payment for service by fraudulent means or devices, schemes, false or invalid numbers, or false calling or credit cards is prohibited.
- 2.2.4 The Company's services are available for use twenty-four hours per day, seven days per week.
- 2.2.5 The Company may rely on third parties to provide a portion of the Company's Service. The selection of the Third Party Vendors is made by the Company. The Company reserves the right to change Third Party Vendors at any time.
- 2.2.6 The Company reserves the right, without incurring liability, to refuse to provide Service to or from any location where the necessary facilities and/or equipment are not available.
- 2.2.7 The Company does not transmit messages, but the services may be used for that purpose.
- 2.2.8 The Company's services may be denied for nonpayment of charges or for other violations of this tariff.
- 2.2.9 Customers shall not use the service provided under this tariff for any unlawful purpose.
- 2.2.10 The Customer is responsible for notifying the Company immediately of any unauthorized use of services.

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SECTION 2 – RULES AND REGULATIONS**2.3 Liabilities of the Company**

- 2.3.1 The Company shall not be liable for any claim, loss, expense or damage for any interruption, delay, error, omission, or defect in any service, facility or transmission provided under this tariff, if caused by the Underlying Carrier, an act of God, fire, war, civil disturbance, act of government, or due to any other causes beyond the Company's control.
- 2.3.2 The Company shall not be liable for, and shall be fully indemnified and held harmless by the Customer against any claim, loss, expense, or damage for defamation, libel, slander, invasion, infringement of copyright or patent, unauthorized use of any trademark, trade name or service mark, proprietary or creative right, or any other injury to any person, property or entity arising out of the material, data or information transmitted.
- 2.3.3 No agent or employee of any other carrier or entity shall be deemed to be an agent or employee of the Company.
- 2.3.4 The Company's liability for damages, resulting in whole or in part from or arising in connection with the furnishing of service under this tariff, including but not limited to mistakes, omissions, interruptions, delays, errors, or other defects or misrepresentations shall not exceed an amount equal to the charges provided for under this tariff for the long distance call for the period during which the call was affected. No other liability in any event shall attach to the Company.
- 2.3.5 The Company shall not be liable for and shall be indemnified and saved harmless by any Customer or by any other entity from any and all loss, claims, demands, suits, or other action or any liability whatsoever, whether suffered, made, instituted, or asserted by any persons, and for any loss, damage, defacement or destruction of the premises of any Customer or any other entity or any other property whether owned or controlled by the Customer or others.
- 2.3.6 The Company shall not be liable for any indirect, special, incidental, or consequential damages under this tariff including, but not limited to, loss of revenue or profits, for any reason whatsoever, including the breakdown of facilities associated with the service, or for any mistakes, omissions, delays, errors, or defects in transmission occurring during the course of furnishing service.

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**SECTION 2 – RULES AND REGULATIONS****2.3 Liabilities of the Company (continued)**

- 2.3.7 The remedies set forth herein are exclusive and in lieu of all other warranties and remedies, whether express, implied, or statutory, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 2.3.8 The Company does not guarantee or make any warranty with respect to Service installation or use at locations where there is present an atmosphere that is explosive, prone to fire, dangerous, or otherwise unsuitable. The Customer will indemnify and hold the Company harmless from any and all loss, claims, demands, suits or other action, 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(s), 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, locations or use of Service furnished by the Company at such locations.
- 2.3.9 The entire liability for any claim, loss, damage, or expense from any cause whatsoever will in no event exceed sums actually paid the Company by the Customer for the specific Services giving rise to the claim. No action or proceeding against the Company will be commenced more than one year after the Service is rendered.
- 2.3.10 The Company will have the right to make necessary repairs or changes in its facilities at any time and will have the right to suspend or interrupt Service temporarily for the purpose of making the necessary repairs or changes in its system. The work will be performed with reasonable diligence, and, if practicable, at times that will cause the Customer the least inconvenience.
- 2.3.11 If the Company's failure of performance is thirty-five (35) days or less, Service shall not be subject to cancellation. Rather, an appropriate percentage of charges for the directly affected Service shall be abated for such Service interruption. If the Company's failure of performance is for more than thirty-five (35) days, then the directly affected Service may be canceled by either the Company or the Customer without liability other than the Customer's liability for payment for said Service provided prior to cancellation.

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SECTION 2 – RULES AND REGULATIONS

2.3.12 The Customer is responsible for taking all necessary legal steps for interconnecting the Customer-provided terminal equipment with Company-designated facilities. The Customer is responsible for taking all necessary legal steps for interconnecting the Customer-provided terminal equipment with Local Access. In addition, the Customer shall comply with applicable Local Access Provider's signal power limitations and requirements.

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SECTION 2 – RULES AND REGULATIONS**2.4 Use of Service**

2.4.1 The Services offered herein may be used for any lawful purpose, including residential, business, governmental, or other use. There are no restrictions on sharing or resale of Services. However, the Customer remains liable for all obligations under this Tariff notwithstanding such sharing or resale and regardless of the Company's knowledge of same. The Company shall have no liability to any person or entity other than the Customer and only as set forth herein. The Customer shall not use nor permit others to use the Service in a manner that could interfere with Services provided to others or that could harm the facilities of the Company or others.

2.4.2 Service furnished by the Company may be arranged for joint use or authorized use. The joint user or authorized user shall be permitted to use such Service in the same manner as the Customer, but subject to the following:

- (A) One joint user or authorized user must be designated as the Customer. The designated Customer does not necessarily have to have communications requirements of its own. The Customer must specifically name all joint users or authorized users in the application for Service. Service orders which involve the start, rearrangement or discontinuance of joint use or authorized use Service will be accepted by the Company only from that Customer and will be subject to all regulations of this Tariff.
- (B) All charges for the Service will be computed as if the Service were to be billed to one Customer. The joint user or authorized user which has been designated as the Customer will be billed for all components of the Service and will be responsible for all payments to the Company. In the event that the designated Customer fails to pay the Company, each joint user or authorized user shall be liable to the Company for all charges incurred as a result of its use of the Company's Service. Each joint or authorized user must submit to the designated Customer a letter accepting contingent liability for its portion of all charges billed by the Company to the designated Customer. This letter must also specify that the joint or authorized user understands that the Company will receive a copy of the guaranty from the designated Customer. The Customer shall be responsible for allocating charges to each joint user or authorized user.

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SECTION 2 – RULES AND REGULATIONS**2.4 Use of Service (continued)**

- 2.4.3 In addition to the other provisions in this Tariff, Customers reselling Company Services shall be responsible for all interaction and interface with their own subscribers or customers. The provision of the Service will not create a partnership or joint venture between the Company and the Customer nor result in a joint communications Service offering to the Customers of either the Company or the Customer.
- 2.4.4 Service furnished by the Company shall not be used for any unlawful or fraudulent purposes such as:
- (A) use of electronic devices, invalid numbers, and false credit devices to avoid payment for Services contained in this Tariff either in whole or in part; and
  - (B) to make Calls which might reasonably be expected to frighten, abuse, torment, or harass another.
- 2.4.5 Nor shall Service be used for any purpose for which any payment or other compensation is received by the Customer except when the Customer is a communications common carrier, a resale common carrier, an enhanced or electronic Service provider who has subscribed to the Company's Services. However, this provision does not preclude an agreement between the Customer, authorized user, or joint user to share the cost of the Service as long as this arrangement generates no profit for anyone participating in a joint use or authorized use arrangement.

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**SECTION 2 – RULES AND REGULATIONS****2.5 Obligations of the Customer**

- 2.5.1 The Customer is responsible for placing any necessary orders and complying with tariff regulations. The Customer is also responsible for the payment of charges for services provided under this tariff.
- 2.5.2 The Customer is responsible for charges incurred for special construction and/or special facilities which the Customer requests and which are ordered by the Company on the Customer's behalf.
- 2.5.3 If required for the provision of the Company's services, the Customer must provide any equipment space, supporting structure, conduit and electrical power without charge to the Company.
- 2.5.4 The Customer is responsible for arranging access to its premises at times mutually agreeable to the Company and the Customer when required for the Company personnel to install, repair, maintain, program, inspect or remove equipment associated with the provision of the Company's services.
- 2.5.5 The Customer shall cause the temperature and relative humidity in the equipment space provided by Customer for the installation of the Company's equipment to be maintained within the range normally provided for the operation of microcomputers.

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SECTION 2 – RULES AND REGULATIONS**2.5 Obligations of the Customer (continued)**

- 2.5.6 The Customer shall ensure that the equipment and/or system is properly interfaced with the Company's facilities or services, that the signals emitted into the Company's network are of the proper mode, bandwidth, power and signal level for the intended use of the subscriber and in compliance with criteria set forth in this tariff, and that the signals do not damage equipment, injure personnel, or degrade service to other Customers. If the Federal Communications Commission or some other appropriate certifying body certifies terminal equipment as being technically acceptable for direct electrical connection with communications service, the Company will permit such equipment to be connected with its channels without the use of protective interface devices. If the Customer fails to maintain the equipment and/or the system properly, with resulting imminent harm to the Company equipment, personnel or the quality of service to other Customers, the Company may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notice, terminate the Customer's service.
- 2.5.7 The Customer must pay the Company for replacement or repair of damage to the equipment or facilities of the Company caused by negligence or willful act of the Customer or others, by improper use of the services, or by use of equipment provided by Customer or others.
- 2.5.8 The Customer must pay for the loss through theft of any Company equipment installed at the Customer's premise.
- 2.5.9 If the Company installs equipment at the Customer's premises, the Customer shall be responsible for payment of any applicable installation charges.
- 2.5.10 The Customer must use the services offered in this tariff in a manner consistent with the terms of this tariff and the policies and regulations of all state, federal and local authorities having jurisdiction over the service.

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SECTION 2 – RULES AND REGULATIONS**2.6 Cancellation or Interruption of Services**

- 2.6.1 Without incurring liability, upon five (5) working days' (defined as any day on which the Company's business office is open and the U.S. Mail is delivered) written notice to the Customer, the Company may immediately discontinue services to a Customer or may withhold the provision of ordered or contracted services:
- 2.6.1.A For nonpayment of any regulated sum due the Company for more than thirty (30) days after issuance of the bill for the amount due,
- 2.6.1.B For violation of any of the provisions of this tariff,
- 2.6.1.C For violation of any law, rule, regulation, policy of any governing authority having jurisdiction over the Company's services, or
- 2.6.1.D By reason of any order or decision of a court, public service commission or federal regulatory body or other governing authority prohibiting the Company from furnishing its services.
- 2.6.2 Without incurring liability, the Company may interrupt the provision of services at any time in order to perform tests and inspections to assure compliance with tariff regulations and the proper installation and operation of Customer and the Company's equipment and facilities and may continue such interruption until any items of noncompliance or improper equipment operation so identified are rectified.
- 2.6.3 If the Customer terminates service, Customer will be liable for all usage on any of the Company's service offerings until the Customer actually leaves the service. Customer will continue to have Company usage until the Customer notifies its local exchange carrier and changes its long distance carrier. Until the Customer so notifies its local exchange carrier, it shall continue to generate and be responsible for long distance usage.

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SECTION 2 – RULES AND REGULATIONS

**2.7 Credit Allowances**

2.7.1 Credit shall not be issued for unavailability of long distance services.

**2.8 Restoration of Service**

The use and restoration of service shall be in accordance with the priority system specified in part 64, Subpart D of the Rules and Regulations of the Federal Communications Commission.

**2.9 Deposit**

The Company may require deposits to establish service for a Customer. All deposits will be handled in accordance with Commission Rule 8.

**2.10 Advance Payments**

The Company reserves the right to collect an advance payment from Customers in an amount not the exceed two (2) month's estimated charges as an advance payment for service. The Company does not pay interest on advance payments.

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SECTION 2 – RULES AND REGULATIONS**2.11 Payment Plans and Options for Contract Services****2.11.1 General**

- A The regulations specified herein are applicable to specific services as indicated in each service's respective section of this Tariff.
- B Services furnished under Customer Service Payment Plan (CSPP) are subject to all general regulations applicable to the provision of service by the Company as stated elsewhere in this Tariff except as noted herein.
- C The CSPP are payment plans which allow customers to pay fixed or variable rates for services provided over variable contractual payment periods. A specific monthly rate applies for the duration of each period. Payment periods for services provided under CSPP will be described in the services' specific tariff section. The following is an example of payment periods offered.
  - 1 Payment Plan A – payment periods may be selected from 13 months to 36 months in length.
  - 2 Payment Plan B – payment periods may be selected from 37 to 60 months in length.
- D When the customer extends service beyond the longest service period offered, then rates for the longest available service period will apply.
- E When the Customer orders service to be provided under a CSPP arrangement, the customer must designate to the Company the payment plan and the service period, e. g. Payment Plan B and forty eight (48) months.

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**SECTION 2 – RULES AND REGULATIONS****2.11 Payment Plans and Options for Contract Services (continued)****2.11.2 Application of Rates and Charges**

- A Rates stabilized under a CSPP arrangement are exempt from Company-initiated increases.
- B When customers renew or change the length of their payment period, the rates applicable for the new period are those currently in effect at the time of the renewal or change in the length of the payment period. A service charge will not be applicable for such renewals or changes to the payment period.
- C Recurring rates and installation, termination, service establishment, Service Connection and other nonrecurring charges apply according to the appropriate schedules for services offered as associated items to Contracted Services, and are filed elsewhere in this Tariff.
- D Customer requests for inside moves of service will not affect the contract period.
- E A change in jurisdiction will not constitute a disconnect of service provided the new CSPP arrangement is at least the minimum number of months allowable under Payment Plan A or equals/exceeds the remaining service period, whichever is greater, and provided the new CSPP arrangement is for the same customer at the same location for the same capacity service.

**2.11.3 Termination Liability Charge**

- A In the event that all or any part of a service is disconnected at a customer's request prior to expiration of any selected payment period of greater than one month's duration, the customer will be required to pay a termination charge of 100% of the monthly recurring charge times the number of remaining months, unless otherwise stated in that service's section of this Tariff.

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**SECTION 2 – RULES AND REGULATIONS****2.11 Payment Plans and Options for Contract Services (continued)****2.11.4 Additions**

- A Additions of services or rate elements, e.g. Ports, new local channels, interoffice channels, etc., must be under a new CSPP arrangement at rates and charges as specified in 2.11.2 preceding
- B Termination charges for premature disconnection of added contractual services will apply as set forth under Disconnects as stated in 2.11.5 following.

**2.11.5 Disconnects**

- A When a service or rate element, included under a CSPP arrangement, is disconnected prior to expiration of the selected service period, Termination Liability Charges apply as set forth in the rate regulations in this Tariff for such service. Remaining services or rate elements will not be affected by such disconnects.
- B When a tariff service under a CSPP arrangement is disconnected prior to the expiration of a selected service period as a result of a change of Tariff jurisdiction, Termination Liability Charges will not apply when:
  - the completed service period is twelve months ,or twenty-five percent of the length of the originally selected CSPP service period, whichever is greater, and
  - the service orders to install the new service and disconnect the old service are related together and there is no lapse in service between installation of the new service and disconnection of the existing service, and
  - the service orders are for the same customer at the same location.

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**SECTION 2 – RULES AND REGULATIONS****2.11 Payment Plans and Options for Contract Services (continued)****2.11.5 Disconnects (continued)**

- C If a Customer (1) orders Services requiring special facilities dedicated to the Customer's use or requests that the Company order special facilities as a agent of the Customer and (2) subsequently cancels its order before Service begins, before completion of the minimum service period or before completion of some other mutually agreed upon period, the Customer is responsible for all costs incurred expressly on behalf of the Customer by the Company, including those costs incurred as an agent of the Customer. If special construction has begun or been completed, the Customer is responsible for all construction costs incurred by the Company on the Customer's behalf.

**2.11.6 Moves of Equipment**

- A The appropriate nonrecurring charges for inside moves for items associated with contract services as specified in this and other Tariffs are applicable. This type movement will not affect the contract period.
- B Customer requests for moves of service(s) under CSPP, other than inside moves, will be subject to the conditions stated in 2.11.12 following.

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SECTION 2 – RULES AND REGULATIONS**2.11 Payment Plans and Options for Contract Services (continued)****2.11.7 Requests for Changes in Length of Optional Payment Period**

- A Subsequent to the establishment of a contract with a CSPP period, and prior to the completion of that period, the existing payment period may be replaced by:
- 1 A currently offered payment period at the current rates, with a length equal to or longer than the time remaining in the existing service agreement, subject to the following conditions:
    - (a) No credit will be given for payments made during the formerly selected period.
    - (b) The new payment period begins with the new CSPP effective date.
    - (c) No termination charge applies for the remaining portion of the former payment period.
    - (d) Nonrecurring charges will not be reapplied.
    - (e) A service charge will not apply.
  - 2 A currently offered payment period at the current rates, with a length shorter than the time remaining in the existing service agreement, subject to the following conditions:
    - (a) No credit will be given for payments made during the formerly selected period.
    - (b) The new payment period begins with the new CSPP effective date.
    - (c) No termination charge applies for the remaining portion of the former payment period.
    - (d) Nonrecurring charges will not be reapplied.
    - (e) A service charge will not apply.

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**SECTION 2 – RULES AND REGULATIONS****2.11 Payment Plans and Options for Contract Services (continued)****2.11.8 Renewal Options**

- A** The customer has the following renewal options:
- 1 Prior to completion of the current payment period, any period available under the CSPP may be selected at the rates in effect for new customers at the time of renewal. The customer will be charged the current rate for the newly selected payment period, commencing the day following completion of the prior payment period.
  - 2 Service may be continued on a month-to-month basis at the current rate for the one-month payment period, unless otherwise specified in this Tariff. The customer has no additional service commitment and, consequently, when service is terminated will not be subject to any termination charge. The one month service will be subject to Company-initiated rate adjustments when approved by the appropriate regulatory authority.
  - 3 If the customer does not elect an additional payment period or does not request discontinuance of service, service will be continued at the monthly rate currently in effect for the month-to-month payment rate, under the terms specified in B, preceding.
- B** Service charges are not applicable for services renewed under the CSPP. Any new rate elements added at the time of renewal will be subject to all appropriate service charges and other nonrecurring charges.
- C** The Company may discontinue or change any or all renewal options with approval of the appropriate regulatory authority.
- D** When a customer renews a CSPP arrangement, the rates and charges in effect on the first day of service of the renewal will apply.

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SECTION 2 – RULES AND REGULATIONS**2.11 Payment Plans and Options for Contract Services (continued)****2.11.8 Renewal Options (continued)**

- E** Recognition of previous service will be given to customers who renew an existing CSPP arrangement, for all associated rate elements at the same location(s), provided that the length of the new CSPP arrangement is at least the minimum number of months allowable under Payment Plan A or equals/exceeds the remaining service period of the original CSPP arrangement, whichever is greater.
- F** To determine the appropriate CSPP for the renewed arrangement, recognition of service will consist of the sum of months in service of the completed service arrangement and the sum of the months of the proposed service period of the CSPP arrangement. For example, a CSPP arrangement for a thirteen month service period under Payment Plan A is renewed for twenty-four months with no changes at the end of the thirteen month period. The sum of months for the completed and proposed service periods would equal thirty seven months and would be billed under Payment Plan B. Another example is a Month-to-Month customer, in service for twelve months, who wishes to convert to a forty month CSPP arrangement with no changes. The combined service period of the Month-to-Month arrangement and the CSPP arrangement is equal to fifty-two months, which would be billed under Payment Plan B.

**2.11.9 Transfer of Service**

- A** Service may be transferred to a new customer at the same location upon prior written concurrence by the new customer as specified in this Tariff. This does not constitute a disconnection of service or a discontinuance of an existing CSPP arrangement. The new customer will be subject to all provisions and equipment configurations currently in effect for the previous customer. Regulations concerning transfer of service between subscribers as state in other sections of this Tariff also apply under CSPP.

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**SECTION 2 – RULES AND REGULATIONS****2.11 Payment Plans and Options for Contract Services (continued)****2.11.10 Deferred Payment**

- A Payment of nonrecurring charges for services with contract payment plans which have been approved for deferred payments may be deferred over the length of the customer's payment period or shorter period (in annual increments) subject to the conditions specified in the Tariff for the contracted service as well as the conditions following:
- 1 The charges to be deferred must be the Installation, Service Establishment and/or other nonrecurring charges (including the applicable interest).
  - 2 The payment period must be longer than one month.
  - 3 The minimum amount deferrable shall be the minimum amount set forth in the specific tariff for the contracted service.
  - 4 Interest on deferred amounts will be calculated at the rate set forth in the deferred payment agreement concurred in by both the customer and the Company. The interest rate shall be reviewed periodically by the Company. If the Company determines that the maximum interest rate allowed by law is insufficient to cover the costs of providing the deferred payment option, the Company will suspend the availability of said option until such time as the costs of providing said option can be recovered through the application of an allowed interest rate specified by law. Suspension of the deferred payment option will not affect customers with existing deferred payment agreements that were made prior to the effective date of such suspension.
  - 5 The deferred charges (including interest) will be prorated on a monthly basis over the length of the selected deferral period.

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SECTION 2 – RULES AND REGULATIONS

**2.11 Payment Plans and Options for Contract Services (continued)**

**2.11.11 Deferred Payment (continued)**

- 6 All deferred charges must be paid in full when the customer:
  - (a) Disconnects service, for the system or service prior to expiration of the deferral period.
  - (b) Fails to pay a monthly amount within thirty days of its due date.
- 7 The customer may prepay only the total outstanding deferred charges at any time during the selected deferral period. The customer will be given a credit for the amount of unearned interest. The customer may not prepay less than the total of the outstanding deferred charges.

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SECTION 2 – RULES AND REGULATIONS**2.11 Payment Plans and Options for Contract Services (continued)****2.11.12 Prepayment**

The customer may prepay the total outstanding recurring, monthly rates for contracted services, approved for prepayment, for payment periods greater than one month. The prepayment of monthly rates in no way constitutes a purchase and the Company retains full ownership of all services covered by the prepayment. The following conditions apply:

- A Customers who prepay six months or more will have an allowance applied. The interest rate credit for prepayments shall be based on market interest rates that will change periodically, and will be calculated by the Company.
- B Monthly rates for all services covered by a single Letter of Election must be prepaid. Monthly rates must be prepaid for services added subsequently and placed on the same Letter of Election (i.e., customer-elected coterminous option) with a prepaid service.
- C Customers who change the length of a prepaid payment period will be credited any unused portion of the prepayment, subject to termination charges as specified preceding and/or in the Tariff for the contracted service.
- D Customers who prematurely disconnect will have termination or cancellation charges deducted from the prepaid amount and any balance credited to their account.

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SECTION 2 – RULES AND REGULATIONS**2.11 Payment Plans and Options for Contract Services (continued)****2.11.13 Moves of Service(s) under CSPP**

Termination Liability Charges will not apply to customer requests for moves of service under CSPP from one location to another location subject to the following:

- A** The original and new premises locations must be in Company territory within the same state.
- B** The move from the original location to the new location must be completed within thirty days of the original premises disconnect date.
- C** No lapse in billing will occur for moves of service under CSPP.
- D** Orders to disconnect the existing service and reestablish it at the new location must be related.
- E** Any rate elements from the original location that are not reestablished at the new location will be subject to applicable Termination Liability Charges.
- F** Any additions made at the new location will be treated as coterminous additions in accordance with 2.11.4 preceding.
- G** All regulations and charges for changes made to the service coincident to the move shall apply.
- H** All appropriate nonrecurring charges for moves of service as specified in this Tariff will apply.
- I** Moves of service that involve a change of jurisdiction, e.g., intraLATA to intrastate, intrastate to interstate, etc., will not be treated as a disconnect of service with regard to Termination Liability Charge application. The customer must subscribe to a payment arrangement offered in the appropriate interstate tariff which is at least the minimum number of months allowable under Payment Plan A or equals/exceeds the remaining contract period, whichever is greater.

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**SECTION 2 – RULES AND REGULATIONS****2.12 Payment and Billing**

- 2.12.1** Service is provided and billed on a billing cycle basis, beginning on the date that service becomes effective. The due date shall be at least 15 days after the billing date. Interest at the rate of 1.5% per billing cycle, or the amount otherwise authorized by law, whichever is lower, will accrue upon any unpaid amount commencing 30 days after rendition of bills.
- 2.12.2** The customer is responsible for payment of all charges for services furnished to the Customer, as well as to all persons using the Customer's codes, exchange lines, facilities, or equipment, with or without the knowledge or consent of the Customer. The security of the Customer's Authorization Codes, presubscribed exchange lines, and direct connect facilities is the responsibility of the Customer. All usage will be billed to and must be paid by the Customer. Recurring charges and non-recurring charges are billed in advance. The initial billing may, at Company's option, also include one month's estimate usage billed in advance. Thereafter, charges based on actual usage during a month and any accrued interest will be billed monthly in arrears.
- 2.12.3** All bills are presumed accurate, and shall be binding on the customer unless objection is received by the Company within 30 days after such bills are rendered.

**2.13 Collection Cost**

In the event Company is required to initiate legal proceedings to collect any amounts due to Company for regulated or non-regulated services, equipment or facilities, or to enforce any judgment obtained against a Customer, or for the enforcement of any other provision of this tariff or applicable law, Customer shall, in addition to all amounts due, be liable to Company for all reasonable costs incurred by Company in such proceedings and enforcement actions, including reasonable attorneys' fees, collection agency fees or payments, and court costs. In any such proceeding, the amount of collection costs, including attorneys' fees, due to the Company, will be determined by the court.

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**SECTION 2 – RULES AND REGULATIONS****2.14 Taxes****2.14.1 General**

All federal, state and local taxes, assessments, surcharges, or fees, including sales taxes, use taxes, gross receipts taxes, and municipal utilities taxes, are billed as separate line items and are not included in the rates quoted herein.

**2.14.2 Tax Exemption Certificate**

In order to be granted tax exempt status, a Customer claiming tax exempt status must provide the Company with copies of all tax exemption certificates and documents required by the Company at the time Service is ordered. New Customers are required to provide the requested documentation at the time Service is ordered.

**2.15 Late Charge**

A late fee of 1.5% monthly or the amount otherwise authorized by law, whichever is lower, will be charged on any past due balances.

**2.16 Reconnection Fee**

Reconnection charges occur where service to an existing Customer has been discontinued for proper cause, and the Customer desires to resume service with the Company. Where a Customer desires reconnection, the Customer will be charged a fee to cover the cost to the Company of restoring service to the Customer. Payment of the reconnection fee and any other outstanding amounts will be due in full prior to reconnection of service.

**2.17 Return Check Charge**

If payment for Service is made by a check, draft, or similar instrument (collectively "Check") that is returned to the Company unpaid by a bank or another financial institution for any reason, the Company will bill the Customer a returned check charge. In addition, the Customer may be required to replace the returned Check with a payment in cash or equivalent to cash, such as a cashier's check, certified check or money order.

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SECTION 2 – RULES AND REGULATIONS

**2.18 Interruption of Service**

- 2.18.1 Without incurring liability, the Company may interrupt the provision of Services at any time in order for tests and inspections to be performed to assure compliance with Tariff regulations and the proper installation and operation of Customer's equipment and facilities and may continue such interruption until any items of non-compliance or improper equipment operation so identified are rectified.
- 2.18.2 No credit for recurring monthly charges will be issued for outages less than twenty-four consecutive hours in duration. For Customers with Service subject to a monthly recurring charge, Service interruptions of greater than twenty-four (24) consecutive hours' duration will receive a credit equal to the number of hours of Service interruption divided by 720 hours times the monthly recurring charge for the Service.

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SECTION 3 – DESCRIPTION OF SERVICES**3.1 Start of Billing**

For billing purposes, the start of service is the day following acceptance by the Customer of the Company's service or equipment, or another date mutually agreed-upon by the Customer and the Company. The end of service date is the last day of the minimum notification of cancellation or any portion of the last day, after receipt by the Company of notification of cancellation as described in Section 2 of this Tariff.

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### SECTION 3 – DESCRIPTION OF SERVICES

#### 3.2 Computation of Charges

3.2.1 Where applicable, usage charges for all mileage sensitive products are based on the airline distance between rate centers associated with the originating and terminating points of the call.

3.2.2 Where applicable, the airline mileage between rate centers is determined by applying the formula below to the vertical and horizontal coordinates associated with the rate centers involved. The Company uses the rate centers that are produced by Bell Communications Research in the NPA-NXX V&H Coordinates Tape and Bell's NECA Tariff No. 4

3.2.2.A The airline distance between any two (2) rate centers is determined as follows:

3.2.2.B Obtain the "V" (vertical) and "H" (horizontal) coordinates for each Rate Center from the above-referenced document.

3.2.2.B.1 Compute the difference between the "V" coordinates for the two (2) rate centers; and the difference between the two (2) "H" coordinates ( $X1-X2=V$ ;  $Y1-Y2=H$ ).

3.2.2.B.2 Square each difference obtained in step (B) above ( $V^2:H^2$ ).

3.2.2.B.3 Add the square of the "V" difference and the square of the "H" difference obtained in step C above ( $V^2+H^2=S$ ).

3.2.2.B.4 Divide the sum of the squares by 10 ( $S/10=M$ ).

3.2.2.B.5 Obtain the square root of the whole number result obtained above. Round to the next higher whole number if any fraction is obtained. This is the airline mileage.

FORMULA:

$$\sqrt{\frac{[(V1 - V2)^2 + (H1 - H2)^2]}{10}}$$

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**SECTION 3 – DESCRIPTION OF SERVICES****3.3 Customer Complaints and/or Billing Disputes**

Customer inquiries or complaints regarding service or accounting may be made in writing or by telephone or by fax to the Company at:

201 Summit Parkway  
Birmingham, Alabama 35203  
(205) 492-8328  
(205) 940-9067 fax

Any objection to the billed charges should be reported promptly to the Company. The Customer should notify the company of any disputed items on an invoice within thirty (30) days. In the event of a dispute between the Customer and the utility respecting any bill, the utility may require the Customer to pay the undisputed portion of the bill to avoid discontinuance of service for non-payment. The utility shall make such investigation as may be appropriate to the particular case and report the result thereof to the customer. In the event the dispute is not reconciled, either party may make application to the Commission for review and disposition of the matter.

Where over-billing of a subscriber occurs, due either to Company or subscriber error, no liability exists which will require the Company to pay any interest, dividend or other compensation on the amount over-billed.

**3.4 Level of Service**

A Customer can expect end to end network availability of not less than 99% at all times for all services unless otherwise state in that service's section of this Tariff.

**3.5 Billing Entity Conditions**

When billing functions on behalf of the company or its intermediary are performed by local exchange telephone companies or others, the payment of charge conditions and regulations of such companies and any regulations imposed upon these companies by regulatory bodies having jurisdiction apply. The Company's name and number will appear on the Customer's bill.

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SECTION 3 – DESCRIPTION OF SERVICES**3.6 Service Offerings****3.6.1 Specialized Pricing Arrangements**

Customized service packages and competitive pricing packages at negotiated rates may be furnished on a case-by-case basis in response to requests by Customers to the Company for proposals or for competitive bids. Service offered under this tariff provision will be provided to Customers pursuant to contract. Unless otherwise specified, the regulations for such arrangements are in addition to the applicable regulations and prices in other sections of this tariff. Specialized rates or charges will be made available to similarly situated Customers on a non-discriminatory basis. All specialized pricing arrangements are subject to Commission review.

**3.7 Miscellaneous Services****3.7.1 Order Change**

An Order Change is a change in the Customer's service requested subsequent to installation.

**3.8 Promotional Offerings**

The Company may, from time to time, make promotional offerings to enhance the marketing of its services. These offerings may be limited to certain dates, times and locations. The company will notify the Commission of such offerings as required by Commission rules and regulations.

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SECTION 3 – DESCRIPTION OF SERVICES

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**3.9 Individual Case Basis Pricing**

**3.9.1** Individual Case Basis (ICB) Pricing is a service arrangement in which the regulations, rates and charges are developed based on the specific circumstances of the Customer.

**3.9.2** Rates, terms or conditions for Services may be determined on an Individual Case Basis and determined by contract between the Company and the Customer.

**3.9.3** Customer-specific contracts may include, but are not limited to:

- (A)** Central Office-based Services;
- (B)** High Speed Private Line Services;
- (C)** Customized Services that are required because of size or configuration;
- (D)** Customer volume of revenue commitments for which the Company must meet competitive demand of the marketplace.
- (E)** Special construction Services;
- (F)** Any other Service for which the Company has authority to enter into Customer-specific contract pursuant to the Commission's rules.

**3.9.4** The Company will comply with the Commission's rules pertaining to ICB contracts.

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SECTION 4 – RESERVED FOR FUTURE USE

**4.1      RESERVED FOR FUTURE USE**

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SECTION 5 – RESERVED FOR FUTURE USE

**5.1 RESERVED FOR FUTURE USE**

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SECTION 6 – MISCELLANEOUS SERVICE/CHARGES**6.1 Special Service Arrangements**

Customer-specific service arrangements, which may include engineering, installation, construction facilities, assembly, and/or other special Services, may be furnished in addition to existing Tariff offerings. Rates, terms, and conditions plus any additional regulations, if applicable, for the special service arrangements will be developed upon Customer's request. Unless otherwise specified, the regulations for the special service arrangements are in addition to the applicable regulations specified in other sections of this Tariff.

**6.2 Miscellaneous Services**

The Customer may request changes in circuit engineering, equipment, service parameters, premise locations or other change requests. These changes, in addition to changes related to Customer negligence as set forth in Section 2 of this tariff, are subject to the following:

**6.2.1 Order Change**

Per Order Change: \$50.00

**6.2.2 Reconnect Charge**

Per account reconnection: \$50.00

**6.2.3 Bad Check Charge**

Per returned and/or bad check: \$30.00

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SECTION 7 – RESERVED FOR FUTURE USE

**7.1      RESERVED FOR FUTURE USE**

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**SECTION 8 – DARK FIBER****8.1 Dark Fiber – General**

Dark Fiber facilities shall normally be installed using single mode, fiber optic facilities suitable for provisioning point-to-point communications, transmitting at Customer specified bandwidths, Multimode fiber, at the Customer's request, may be used depending upon facilities availability. These Dark Fiber facilities are available only where sufficient facilities are provided in Company's network, and charges will be provided as referenced in 8.2 of this Tariff and/or on an Individual Case Basis (ICB), as filed with the Commission. Dark Fiber will be offered in increments of two (2) fiber strands per dark fiber network, with the initial minimum number of strands being four (4) dark fiber strands with each fiber strand terminating on a standard optical patch panel. As Company does not provide the electronics, Company cannot test and monitor the facilities. When available, pricing will be on a per strand per mile basis.

When provided, the type of facility and the route of the facility will be determined by Company. Company makes no guarantee or warranty of the suitability of Dark Fiber for purposes intended by the Customer. The Company does not provide any service level or guarantee on our dark fiber offering however, the Company will make best effort to restore service as timely as possible.

Access Fiber Group's Dark Fiber offering is provided on month-to-month term, Customer Service Payment Plan (CSPP) and via Access Fiber Group's Indefeasible Right of Use Term Agreement (IRU Agreement) for term plans greater than five (5) years.

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## SECTION 8 – DARK FIBER

**8.2 Dark Fiber – Rates and Charges****8.2.1 Dark Fiber**

Per each fiber strand facility terminated at end users designated serving wire center or Company maintained central office collocation arrangement

|          |   | Nonrecurring  | Monthly Recurring         |               |               |
|----------|---|---------------|---------------------------|---------------|---------------|
|          |   | <u>Charge</u> | <u>M-M Charge</u>         |               |               |
| <b>A</b> | per fiber strand per route mile or fraction thereof, four (4) fiber strand minimum.     | ICB           | \$170.00                  |               |               |
|          |   |               | Monthly Recurring Charges |               |               |
|          |   | Nonrecurring  | 13-36                     | 37-60         | >60           |
|          |   | <u>Charge</u> | <u>Months</u>             | <u>Months</u> | <u>Months</u> |
| <b>B</b> | per each fiber strand per route mile or fraction thereof, four (4) fiber strand minimum | ICB           | \$155.00                  | \$135.00      | ICB           |

**8.2.2 Dark Fiber Collocation Cross- Connect**

Per each fiber strand terminated at Company designated serving wire center.

|          |                             | Nonrecurring  | Monthly Recurring |
|----------|-----------------------------|---------------|-------------------|
|          |                             | <u>Charge</u> | <u>M-M Charge</u> |
| <b>A</b> | Per Fiber Strand Terminated | ICB           | \$50.00           |

**8.2.3 Dark Fiber Trouble Determination Charge**

The customer shall be responsible for payment of a Trouble Determination Charge for visits by the Company to the premises of the customer where the service difficulty or trouble report results from the use of equipment or facilities provided by the customer.

|          |   | Nonrecurring  |
|----------|---|---------------|
|          |   | <u>Charge</u> |
| <b>A</b> | Per Customer Request, per Occurrence Month-to-Month | \$300.00      |

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