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TC97-168

Case # 75

TC97-168

DOCKET NO.

In the Matter of IN THE MATTER OF THE APPLICATION OF ATLAS EQUITY, INC. D/B/A PERFORMANCE TELECOM FOR A CERTIFICATE OF AUTHORITY TO PROVIDE TELECOMMUNICATIONS SERVICES IN SOUTH DAKOTA

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
9/16/97	Received Application.
10/23/97	Receipt Check;
12/17/97	Packeted
12/30/97	In Fax Filing
12/1/97	Received Application
1/7/98	Order Meeting COA
1/7/98	Packet Closed

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**COMMUNICATIONS CONSULTING SERVICES**

TC97-168

September 4, 1997

RECEIVED

SEP 16 1997

**South Dakota Public Utilities Commission**

State Capitol Building  
500 E. Capitol Ave.  
Pierre, S. D. 57501-5070

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Edwin Bowles  
Billing Analysis

Timothy Chandler  
Systems Analysis

Denise Grace  
Customer Service

Michael W. Milnar  
Legal & Regulatory Affairs  
Managing Partner

Allen Sciarillo  
Accounting & Finance

Robyn Shamblin  
Carrier Relations

V. Bill Thompson  
Technical Applications

Timo P. Voorn  
International Advisor

Re: Application of Atlas Equity, Inc., d/b/a Performance Telecom  
For Authority to Resell Long Distance Telecommunications Services

To the Commission:

Subject to the rules and regulations of the Commission, on behalf of Atlas Equity, Inc., d/b/a Performance Telecom I hereby submit the above-referenced Application. Also enclosed herewith is a check in the amount of \$250 representing the filing fee for Atlas Equity, Inc., d/b/a Performance Telecom, as required by SDCL 49-31-3.

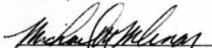
Atlas Equity, Inc., d/b/a Performance Telecom ("Performance") is a California corporation that offers inter- and intrastate interexchange telecommunications services. Concurrent with this filing, Performance has filed for foreign corporation status and will amend this filing with such authorization when received.

Performance will be providing both inter- and intraLATA services, as allowed by state law and regulation, but does not intend to provide operator services (hotels/motels, payphones, airports, prisons, etc.) to the public market.

Attached to this letter are the original and eleven copies of the Application. The additional copy of the Application has been included for your return of a file-stamped copy to me in the enclosed, postage-paid envelope.

Should there be any questions regarding the Atlas Equity, Inc., d/b/a Performance Telecom filing, please do not hesitate to contact me at your convenience.

Sincerely,



Michael W. Milnar  
Consultant to Atlas Equity, Inc., d/b/a Performance Telecom

Phone: (805) 565-3338

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Application of )  
Atlas Equity, Inc., d/b/a Performance Telecom )  
For Authority to Operate as a ) No. \_\_\_\_\_  
Reseller of Telecommunications Services )  
Within the State of South Dakota )

**APPLICATION FOR CERTIFICATE OF CONVENIENCE AND NECESSITY  
FOR ATLAS EQUITY, INC., D/B/A PERFORMANCE TELECOM**

Atlas Equity, Inc., d/b/a Performance Telecom, ("Applicant" or "Performance"), hereby respectfully applies to the South Dakota Public Utilities Commission for authority to operate as a telecommunications reseller within the State of South Dakota, in accordance with the applicable sections of law, rules and regulations. Applicant seeks statewide authority to provide intra- and interLATA interexchange telecommunications services

In support of this application Performance states as follows:

Applicant is a corporation, formed under the laws of the state of California in 1995 (Articles of Incorporation attached as Exhibit A) and has applied for foreign corporation status. (See Exhibit B. Applicant will amend this Application to include foreign corporation status upon receipt from the Secretary of State.) Applicant possesses the financial resources necessary to operate as an intrastate telecommunications services provider. (See Exhibit C) Further, Applicant maintains executive and operational personnel expertise concomitant professional operation as an intrastate telecommunications provider. (See Exhibit D)

The legal name and addresses of Applicant:

Atlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500  
Fax: (714) 789-1089

Questions, comments and notices concerning this application should be addressed to:

Mr. Michael W. Milnar  
Consultant to Atlas Equity, Inc., d/b/a Performance Telecom  
1374 Danielson Road  
Montecito, CA 93108  
Telephone and facsimile: (805) 565-3338

The only officer and director, and single shareholder of Applicant Performance Telecomm is:

Vincent E. Galewick, President  
Atlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500  
Fax: (714) 789-1089

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Applicant is filed with the Federal Communications Commission and is offering prepaid calling card service in all 48 continental United States. State applications are pending in the following states:

|            |            |                |
|------------|------------|----------------|
| Alabama    | Iowa       | Ohio           |
| Arizona    | Kansas     | Oklahoma       |
| Arkansas   | Louisiana  | Oregon         |
| California | Michigan   | Pennsylvania   |
| Colorado   | Missouri   | South Carolina |
| Florida    | Nevada     | Texas          |
| Georgia    | New Jersey | Utah           |
| Hawaii     | New Mexico | Virginia       |
| Illinois   | New York   | Washington     |

The application/filing process is underway, if not already filed, in the following states:

|                      |                |               |
|----------------------|----------------|---------------|
| Alaska               | Maryland       | North Dakota  |
| Connecticut          | Massachusetts  | Rhode Island  |
| Delaware             | Minnesota      | South Dakota  |
| District of Columbia | Mississippi    | Tennessee     |
| Idaho                | Montana        | Vermont       |
| Indiana              | Nebraska       | West Virginia |
| Kentucky             | New Hampshire  | Wisconsin     |
| Maine                | North Carolina | Wyoming       |

The operations in all states are as further described herein.

The Applicant has not created construction, maintenance, engineering or financial plans for services intended to be provided in South Dakota.

Applicant is a switchless reseller and does not maintain facilities, either leased or owned, in South Dakota. MCI will be Applicant's underlying carrier.

Brief description of Applicant's proposed service and charges:

Applicant intends to provide interexchange intrastate voice message telephone services. Applicant operates strictly as a reseller, relying exclusively on the resold services of underlying carriers. Applicant neither owns nor operates any facilities in this jurisdiction. Applicant maintains a highly qualified customer service staff located in Oakland, California and is otherwise technically qualified to provide the services which it proposes to offer. The call processing time involved and the level of technical service quality is within established industry standards. In addition, due to exceptionally attractive bulk service arrangements between Applicant and its underlying carriers, Applicant is able to maintain service levels equal to industry standards at rate levels always at or below AT&T's. Applicant's general pricing policy is to price its services at a discount to AT&T's charges for comparable services. Applicant rates calls in six second increments; does not charge for incomplete call attempts; requires no service deposits; and uses V&H rate center coordinates for determining mileage distance between the rate center of the true call point of origin and the rate center of the point of termination for rating calls.

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**DESCRIPTION OF SERVICE**

(See Exhibit E - Proposed Tariff)

**APPLICANT'S FINANCIAL ABILITY:**

Evidence of Applicant's financial ability is attached as Exhibit C.

**APPLICANT'S PROPOSED INTRASTATE TARIFF:**

A draft of Applicant's proposed intrastate tariff is enclosed as Exhibit E. Applicant will revise its tariff as needed to conform to the Commission's prescribed format and any required special conditions of service.

**TECHNICAL INFORMATION:**

Performance will not construct any facilities within the state. Performance will acquire transport facilities from underlying facilities-based carriers and route end use calls over those transport facilities either to the Performance enhanced services platform located in Oakland, CA for ultimate call completion to the point of termination (calls initiated via the prepaid or preauthorized card), or directly to the point of termination (for presubscribed customers).

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#### **STATEMENT OF PUBLIC INTEREST :**

Applicant submits that a grant of authority will serve the public interest in the following additional respects:

The convenience of low cost long distance privileges will be extended to customers who otherwise might not enjoy low cost access to such services;

End users of Applicant's intrastate, interstate and international calls services will enjoy rates for equal service at price levels below those of AT&T.

Applicant submits that, as evidenced by its ability to offer services of comparable or superior quality to those of AT&T and at rate levels equal to or less than AT&T, Applicant's service configuration, state-of-the-art network switches and transmission facilities (as provided by underlying network vendors) represents an efficient and cost effective use of existing over abundance of national network transmission capacity available for use by applications such as described herein. Applicant submits that its entry will stimulate further competition and possibly still lower rates for the type of services which it seeks to offer.

#### **DEPOSITS**

**Requirements:** Where quantifiable evidence exists that applicant or customer payment of valid bills has been less than timely by industry standards, Performance may require, as a condition precedent to Performance providing new service or additional services, an applicant or existing customer to provide a deposit as security for payment of charges. Performance reserves the right to review applicant or customer credit history at anytime to determine if a deposit is required.

**Nondiscrimination:** Deposits will not be required by Performance based on race, sex, creed, national origin, marital status, age, number of dependents, condition of physical handicap, source of income, or geographical area of business.

**Amount:** The amount of deposit shall not exceed the charges for one month of service based on the customer's average bills during the previous twelve months. The amount of the deposit may be estimated from past toll usage, customer-estimated anticipated usage, or Performance network average toll usage considering the type and nature of the customer's service. The carrier will compute interest on deposits as prescribed by state law, rule or regulation, except no interest will be paid if deposit is held less than a full month.

**Refund or Credit Upon Discontinuance:** Upon discontinuance or termination of the service, Performance will credit the deposit to the charges stated on the final bill. The balance, if any, will be returned to the customer within 21 days of rendition of such final bill.

**Refund or credit After Satisfactory Payment:** After prompt and timely payment of all charges for twelve consecutive billing periods, within 30 days, Performance will credit the deposit against charges stated on subsequent bills and refund any balance. Payment of a charge is satisfactory if received prior to the date that the charge becomes delinquent, provided that it is not returned for insufficient funds or closed account. Performance may withhold a refund of a deposit pending resolution of any dispute with respect to charges secured by such deposit.

#### **METHOD OF SERVICE OF NOTICES**

Unless otherwise provided by these Rules, any notice by the Carrier to the customer may be given either verbally to the customer or to the customer's authorized representative, or by written notice mailed to the customer's last known address.

Unless otherwise provided by these Rules, any notice by the customer or Performance authorized representative may be given verbally to the Carrier at the Carrier's business office or by written notice mailed to the Carrier's Business office. Cancellation of service must be by written notice.

## **RENDERING AND PAYMENT OF BILLS**

Customer bills are issued monthly. The customer will receive its bill on or about the same day of each month. Months are presumed to have 30 days. The billing date is dependent on the billing cycle assigned to the customer. Each bill contains monthly recurring charges billed in advance, usage charges billed in arrears, and the last date for timely payment.

Bills are due and payable as specified on the bill. Bills may be paid by mail or in person at the business office of the Carrier or an agency authorized to receive such payment. All charges for service are payable only in United States currency. Payment may be made by cash, check, money order, or cashier's check.

Customer payments are considered prompt when received by Performance or its agent by the due date on the bill. The due date is 21 days after the bill is rendered and is designated by the due date on the customer's bill. The customer shall have at least 21 days from the rendition of a bill to timely pay the charges stated.

If a customer's service has been discontinued within the past 12 months or if the customer incurs usage charges during a billing period which are equal to at least 200% of the amount of the customers deposit or guarantee, payment may be demanded for the usage charges by a telephone call to the customer followed by written notification of such demand sent by first class mail. If the usage charges remain unpaid for five days from the rendition of written notification or a mutually established late payment arrangement date or 30 days from the date of the bill, the usage charge will be deemed delinquent. Charges deemed delinquent may be subject to the lesser of either a late payment charge of 1-1/2% per month or such other amount allowed by law. This amount will be assessed from the date payment was due.

A bill shall not include any previously unbilled charge for service furnished prior to three months immediately preceding the date of the bill, except charges for collect calls, credit card calls, third party calls and "Error file" calls (those which cannot be billed, due to the unavailability of complete billing information to the company) which shall have a six (6) month backbilling period. In cases of toll fraud, a backbilling period of no more than three years is applicable.

Late payment charge - Interest charges of 1 1/2% per month may be assessed on all unpaid balances more than thirty days old.

Return check charges - A minimum return check charge of \$10.00 shall be assessed for checks returned unpaid for any reason.

Restoration of service following payment related disconnection - Company may charge disconnected customers a \$25.00 reconnection fee per occurrence, plus company may flow through to customer any related fees assessed on Company associated with reestablishing customer's service. (e.g., local exchange carrier fees for reestablishing dedicated access.)

### **Disputed Bills**

Any disputed charge must be brought promptly to the attention of Performance by written notification. If such notification is received within thirty (30) days of the customer's receipt of the bill upon which the disputed charge appears, Performance will apply a conditional credit to customer's bill in the amount of the dispute, with the conditional credit continuing pending resolution of the dispute and bearing no late fees. Disputes received beyond 30 days of the bill upon which the disputed charge appears will continue as amounts due and continue to accrue late fees as provided herein. Any disputed amount determined valid will not be assessed late fees.

In the case of a billing dispute between the customer and the carrier which cannot be settled to the mutual satisfaction of the parties, the undisputed portion and subsequent bills must be paid on a timely basis, as described in Rule 9, or the service may be subject to disconnection.

The customer may request an in-depth investigation into the disputed amount and a review by a

Performance manager within 30 days of the disputed bill's billing date.

If, after the procedures discussed above, the customer and Performance continue in disagreement about the disputed amount, the customer may appeal to the Commission for its investigation and decision. If a customer initiates such an investigation, the customer must submit the disputed portion to the Commission pending completion of the Commission's investigation. The address of the South Dakota Public Utilities Commission is:

South Dakota Public Utilities Commission  
State Capitol Building  
Pierre, South Dakota 57501-5070  
Phone: (605) 773-3201

## **DISCONTINUANCE AND RESTORATION OF SERVICE**

### Discontinuance by Customer

A customer may have service discontinued upon ten (10) days written notice to the Carrier. Notices will be deemed received upon actual receipt by the Carrier. Customer remains responsible for payment of all bills for services furnished.

If a customer cancels his order for service before the service begins, a charge will be levied upon the customer for the nonrecoverable portions of expenditures or liabilities incurred expressly on behalf of the customer by the Carrier.

No minimum or termination charge will apply if service is terminated because of condemnation, destruction, or damage to the property by fire or other causes beyond the control of the customer.

Upon termination, pre-subscribed customers may be held responsible for charges thereafter if the customer has not selected an alternative long distance carrier, or the local exchange carrier has not transferred service to the alternative carrier because such customer may continue to receive service from Performance.

Discontinuance by Performance - Performance may discontinue service under the following circumstances:

Nonpayment of any sum due to Performance for service more than 30 days beyond the date of the invoice for such service. In the event Performance terminates service for nonpayment, the customer will be liable for all reasonable costs of collection, including, without limitation, court costs, expenses, and actual attorney fees.

A violation of, or failure to comply with, any regulation governing the furnishing of service.

An order from a court or from another government authority having jurisdiction which prohibits Performance from furnishing service.

Failure to post a required deposit or guarantee.

In the event that the customer supplied false or inaccurate information of a material nature in order to obtain service.

Incurring charges not covered by a deposit or guarantee, and evidencing an intent not to pay such charges when due.

Any violation of the conditions governing the furnishing of service.



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For lack of use by the customer for three (3) full billing cycles .

Service may be refused or disconnected in the event of illegal use. Performance may disconnect service for this reason after sending written notice by certified mail, return receipt requested, to the customer's last known mailing address.

Notice for Disconnection - Written notice of the pending disconnection by Performance will be rendered not less than 5 days prior to the disconnection. Notice shall be deemed given upon deposit, first class postage prepaid, in the U.S mail to the customer's last known address. Service may be discontinued during business hours on or after the date specified in the notice of discontinuance. Service will not be discontinued on a day when the offices of Performance are not available to facilitate reconnection of service or on a day immediately preceding such a day.

Restoration of Service - The customer may restore service by full payment in any reasonable manner, including by personal check. However, Performance may refuse to accept a personal check if a customer's check for payment of service has been dishonored, excepting bank error, within the last twelve months. There is a charge for restoration of service after disconnection. If any equipment has been removed or disconnected the customer will be responsible for a new installation charge to restore service.

Overpayment - The carrier shall not be obligated to refund any overpayment by a customer unless a written claim for such overpayment, together with substantiating evidence which will allow the Carrier to verify such claim, is submitted within one year of the alleged overpayment.

Credit allowance for interruption of service not due to the Company's testing, adjusting or negligence of the Company, or due to customer acts and/or omissions or to the failure of channels or equipment provided by the customer, are subject to the general liability provisions set forth herein. It shall be the obligation of the customer to notify the company immediately of any interruption in service; particularly for an interruption for which a credit allowance is desired. Before giving such notice, the customer shall ascertain that the trouble is not being caused by any action or omission by the customer within the customer's control, or due to customer-provided facilities and/or equipment.

No credit shall be allowed for an interruption of a continuous duration of less than two hours.

The customer shall be credited for an interruption of two hours or more at the rate of 1/720th of the monthly charge for the facilities affected for each hour or major fraction thereof that the interruption continues.

Credit Formula:

Credit = A/720 x B

"A" - outage time in hours

"B" - total monthly charge for affected facility

**TIMING OF CALLS**

The customer's long distance usage charge is based on the actual usage of Performance's network. Usage begins when the called party picks up the receiver (i.e., when 2-way communication is possible). When the called party picks up is determined by hardware answer supervision in which the local telephone company sends a signal to the switch or the software utilizing audio tone detection. When software answer supervision is employed, up to 60 seconds of ringing is allowed before it is billed as usage of the network. A call is terminated when the calling or called party hangs up.

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**BILLING INCREMENTS**

Unless otherwise specified in this tariff, the minimum call duration for billing purposes is 30 seconds for a connected call. Calls are thereafter billed in 6 second increments.

Per Call Billing Charges - Billing will be rounded up to the nearest penny for each call.

Uncompleted Calls - There shall be no charges for uncompleted calls.

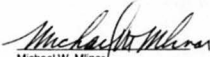
**TAXES AND SURCHARGES**

In addition to the charges specifically pertaining to Performance services, certain federal, state, and municipal surcharges, taxes, and fees will be applied as separate line items on the customer's bill. These surcharges, taxes and fees are calculated based upon the amount billed to the end user for Performance's intrastate services. Performance shall collect and remit the appropriate taxes assessments and surcharges as required by law, rule and/or regulation.

Accordingly, and as evidenced by the foregoing statements and Exhibits, Applicant submits that the necessary technical, managerial, and financial resources, and ability to offer its services and conduct its business for the benefit of the public, is satisfactorily demonstrated by this filing.

WHEREFORE, on the basis of the information provided in this application and the Exhibits A-E appended hereto, Applicant respectfully requests that the Commission grant the authority requested herein.

Respectfully submitted,  
for Atlas Equity, Inc., d/b/a Performance Telecom



Michael W. Milnar  
Consultant for Atlas Equity, Inc., d/b/a Performance Telecom

Date: 9/4/97

BEFORE THE PUBLIC UTILITY COMMISSION  
FOR THE STATE OF SOUTH DAKOTA

In the Matter of the Application of )  
Atlas Equity Inc., d/b/a Performance Telecom )  
For Authority to Operate as a ) Application No.  
Reseller of Telecommunications Services )  
Within the State of South Dakota )

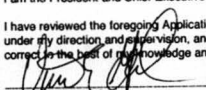
AFFIDAVIT OF APPLICANT

County of Orange )  
State of California ) cc:

I, Vincent E. Galewick, having been duly sworn and deposed, hereby states as follows:

I am the President and Chief Executive Officer of Applicant Atlas Equity, Inc., d/b/a Performance Telecom

I have reviewed the foregoing Application and have prepared the Exhibits thereto or had them prepared under my direction and close vision, and the information and representations contained therein are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Vincent E. Galewick

Signed in my presence this 27<sup>th</sup> day of July, 1997.

  
\_\_\_\_\_  
Notary Public

My commission expires: 02-02-01



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EXHIBIT A

**NEXT**

**DOCUMENT (S)**

**DISREGARD**

**BACKGROUND**



# State of California

## SECRETARY OF STATE

### CERTIFICATE OF STATUS DOMESTIC CORPORATION

I, BILL JONES, Secretary of State of the State of California, hereby certify:

That on the 1ST day of JUNE, 19 88,

ATLAS EQUITY, INC.

became incorporated under the laws of the State of California by filing its Articles of Incorporation in this office; and

That no record exists in this office of a certificate of dissolution of said corporation nor of a court order declaring dissolution thereof, nor of a merger or consolidation which terminated its existence; and

That said corporation's corporate powers, rights and privileges are not suspended on the records of this office; and

That according to the records of this office, the said corporation is authorized to exercise all its corporate powers, rights and privileges and is in good legal standing in the State of California; and

That no information is available in this office on the financial condition, business activity or practices of this corporation

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JUNE 4, 1997



*Bill Jones*

Secretary of State



State  
of  
California

OFFICE OF THE SECRETARY OF STATE

CORPORATION DIVISION

I, *MARCH FONG EU*, Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the corporate record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

IN WITNESS WHEREOF, I execute  
this certificate and affix the Great  
Seal of the State of California this

JUN 6 1968



*March Fong Eu*

Secretary of State

1437871

ENDORSED  
FILED  
in the office of the Secretary of State  
of the State of California

ARTICLES OF INCORPORATION  
OF  
ATLAS EQUITY, INC.

JUN 1 1988

MARCH FONG EU, Secretary of State

I

The name of this corporation is Atlas Equity, Inc.

II

The purpose of this corporation is to engage in any lawful act of activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The name and address in the State of California of this corporation's initial agent for service of process is:

Peter D. Knight

18881 Von Karman, Suite 1270, Irvine, California 92715

IV

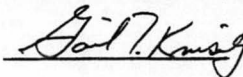
This corporation is authorized to issue only one class of shares of stock; And, the total number of shares which this corporation is authorized to issue is 100,000.

Dated: May 31, 1988

  
(Signature of incorporator)

GAIL T. KNISELY

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.







State  
of  
California

SECRETARY OF STATE'S OFFICE

A448184

CORPORATION DIVISION

I, *TONY MILLER*, Acting Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the corporate record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

IN WITNESS WHEREOF, I execute  
this certificate and affix the Great  
Seal of the State of California this

JUN 24 1994



*Tony Miller*

Acting Secretary of State

A448184

Restated Articles of Incorporation  
of Atlas Equity, Inc.ENDORSED  
FILED  
in the office of the Secretary of State  
of the State of California

JUN 13 1994

Vincent E. Galewick certifies:

TOMY MILLER, Acting Secretary of State

1. He is the President and Secretary of Atlas Equity, Inc., a California corporation.
2. The Articles of Incorporation of Atlas Equity, Inc., are amended and restated as follows:

## I. NAME

The name of the corporation is Atlas Equity, Inc.

## II. PURPOSE

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized pursuant to the General Corporation Law of California other than the banking business, the trust company business, or the practice of a profession permitted to be incorporated by the California Corporations Code.

## III. STOCK

The corporation is authorized to issue only one (1) class of shares, which shall be designated "common shares," having a total of one hundred thousand (100,000) shares.

## IV. LIMITATION ON DIRECTORS' LIABILITY

In any action for breach of directors' duties pursuant to Section 309 of the California Corporations Code, the liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible pursuant to California law.

## V. INDEMNIFICATION OF AGENTS

Corporate agents, as that term is defined by the provisions of Section 317 of the California Corporations Code, may be indemnified for breach of duty to the corporation and the corporation's stockholders by bylaw, agreement, or otherwise in excess of the indemnification permitted by the provisions of Section 317 of the California Corporations Code. There shall be no indemnification of any agent in circumstances expressly prohibited by the provisions of Section 317 of the California Corporations Code, or for any of the following acts, omissions, or transactions, from which a director may not be relieved of liability pursuant to the provisions of Section

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204(a)(10) of the California Corporations Code:

- (1) Acts or omissions that involve intentional misconduct or a knowing and culpable violation of law;
- (2) Acts or omissions that an agent believes to be contrary to the best interests of the corporation or the corporation's shareholders or that involve the absence of good faith on the part of that agent;
- (3) Any transaction from which an agent derived an improper personal benefit;
- (4) Acts or omissions that indicate a reckless disregard for an agent's duty to the corporation or the corporation's shareholders in circumstances in which that agent was aware or should have been aware, in the ordinary course of performing that agent's duties, of a risk of serious injury to the corporation or the corporation's shareholders;
- (5) Acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of an agent's duty to the corporation or the corporation's shareholders;
- (6) Transactions between corporation and directors that are prohibited by the provisions of Section 310 of the California Corporations Code;
- (7) Distributions, loans, and guaranties pursuant to the provisions of Section 316 of the California Corporations Code;
- (8) Acts or omissions that occurred prior to the date when the provisions become effective; or
- (9) Acts or omissions made by an officer in that capacity, notwithstanding that such officer is, also, a director or that such officer's actions, if negligent or improper, have been ratified by the directors of the corporation.

#### VI. NUMBER OF SHAREHOLDER

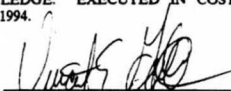
The corporation's issued and outstanding shares shall be held of record by not more than thirty-five (35) persons. The corporation is a "close" corporation.

3. The Articles of Incorporation of Atlas Equity, Inc., as amended and restated in this certificate, have been approved by a resolution of the Board of Directors of this corporation dated March 24, 1994.
4. The Restated Articles of Incorporation specified above have been approved

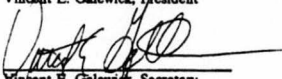
by the required shareholder vote in accordance with the provisions of Section 902 of the California Corporations Code. The corporation has one class of shares designated "common." The total number of outstanding shares entitled to vote with respect to the amendment and restatement of the Articles of Incorporation is ten (10). The percentage vote required entitled to vote is fifty-one percent (51%). The number of shares voting in favor of that amendment and restatement of the Articles of Incorporation was ten (10), which exceeded the vote required.

THE UNDERSIGNED DECLARES UNDER PENALTY OF PERJURY THAT THE MATTERS SET FORTH IN THE FOREGOING CERTIFICATE ARE TRUE OF HIS OWN KNOWLEDGE. EXECUTED IN COSTA MESA, CALIFORNIA ON MARCH 24, 1994.

Date: March 24, 1994

  
\_\_\_\_\_  
Vincent E. Galewick, President

Date: March 24, 1994

  
\_\_\_\_\_  
Vincent E. Galewick, Secretary

8144.520

EXHIBIT B

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1SECRETARY OF STATE  
STATE CAPITOL

## APPLICATION FOR CERTIFICATE OF AUTHORITY

Pursuant to the provisions of SDCL 47-8-7, the undersigned corporation hereby applies for a certificate of Authority to transact business in the State of South Dakota and for that purpose submits the following statement.

(1) The name of the corporation is Atlas Equity, Inc.  
(Exact corporate name)

(2) If the name of the corporation does not contain the word "corporation", "company", "incorporated" or "limited" or does not contain an abbreviation of one such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state is

(3) State where incorporated California Federal Taxpayer ID# 33-0296182

(4) The date of its incorporation is June 1, 1988 and the period of its duration is Perpetual

(5) The address of its principal office in the state or country under the laws of which it is incorporated  
4100 Newport Place, Suite 400, Newport Beach, CA Zip Code 92660

(6) The street address, or a statement that there is no street address, of its proposed registered office in the State of South Dakota is 503 South Pierre Street, Pierre, Zip 57501  
and the name of its proposed registered agent in the State of South Dakota at that address is

Corporation Service Company

(7) The purposes which it proposes to pursue in the transaction of business in the State of South Dakota are:  
Resale of long distance telecommunications services

(8) The names and respective addresses of its directors and officers are:

| Name                       | Officer Title             | Street Address  | City         | State | Zip |
|----------------------------|---------------------------|---|--------------|-------|-----|
| <u>Vincent E. Galewick</u> | <u>President/Director</u> | <u>4100 Newport Place, Suite 400, Newport Beach, CA</u> | <u>92660</u> |       |     |
| <u>Michael Cushing</u>     | <u>Vice President</u>     | <u>4100 Newport Place, Suite 400, Newport Beach, CA</u> | <u>92660</u> |       |     |
|                            |                           |   |              |       |     |
|                            |                           |   |              |       |     |
|                            |                           |   |              |       |     |

(9) The aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class is:

| Number of shares | Class         | Series | Par value per share or statement that shares are without par value |
|------------------|---------------|--------|--|
| <u>100,000</u>   | <u>Common</u> |        | <u>\$10</u>  |
|                  |               |        |  |
|                  |               |        |  |

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(10) The aggregate number of its issued shares, itemized by classes, par value of shares, shares without par value, and series if any, within a class, is:

| Number of shares | Class  | Series | Par value per share or statement that shares are \$10 without par value |
|------------------|--------|--------|---|
| 100,000          | Common |        |   |
|                  |        |        |   |
|                  |        |        |   |

(11) The amount of its stated capital is \$ 423,000.

(12) This application is accompanied by a CERTIFICATE OF FACT duly acknowledged by the secretary of state or other officer having custody of corporate records in the state or country under whose laws it is incorporated.

(13) That such corporation shall not directly or indirectly combine or make any contract with any incorporated company, foreign or domestic, through their stockholders or the trustees or assigns of such stockholders, or with any copartnership or association of persons, or in any manner whatever to fix the prices, limit the production or regulate the transportation of any product or commodity so as to prevent competition in such prices, production or transportation or to establish excessive prices therefor.

(14) That such corporation, as a consideration of its being permitted to begin or continue doing business within the State of South Dakota, will comply with all the laws of the said State with regard to foreign corporations.

The application must be signed by the chairman of the board of directors, or by the president or by another officer.

I DECLARE AND AFFIRM UNDER THE PENALTY OF PERJURY THAT THIS APPLICATION IS IN ALL THINGS, TRUE AND CORRECT.

Dated 4-28 19 97

*Vincent E. Galewick*  
(Signature)

Vincent E. Galewick  
President

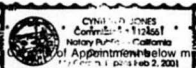
(Title)

State of California  
County of Franklin

On this 30th day of April, 19 97, before me Cynthia D. Jones personally appeared Vincent E. Galewick, known to me, or proved to me, to be the President of the corporation that is described in and that executed the within instrument and acknowledged to me that such corporation executed same.

My Commission Expires: 02-02-01

*Cynthia D. Jones*  
(Notary Public)

Notarial Seal:  The Commission of Appointment below must be signed by the registered agent listed in number six.

**CONSENT OF APPOINTMENT BY THE REGISTERED AGENT**

I, Lisa Mulligan hereby give my consent to serve as the (name of registered agent)

registered agent for Atlas Equity (corporate name)

Dated 6/20/97 19     

*Lisa G. Mulligan*  
(signature of registered agent)

EXHIBIT C



PERFORMANCE TELECOM  
 Income Statement  
 Period Ending 12/31/96

|  |                |                |                |
|--|----------------|----------------|----------------|
| <b>Revenue</b>                             |                |                |                |
| Calling Card Revenues                      | \$5,743,851.00 |                |                |
| Interest Income                            | \$19,196.00    |                |                |
| <b>Gross Revenue</b>                       |                | \$5,763,047.00 |                |
| <b>General and Administrative Expenses</b> |                |                |                |
| Cost of Sales                              | \$733,027.00   |                |                |
| Payroll and Related                        | \$3,475.00     |                |                |
| Legal and Professional                     | \$205,219.00   |                |                |
| General & Administrative                   | \$1,507,311.00 |                |                |
| <b>Total General &amp; Admin</b>           |                | \$2,449,032.00 |                |
| <b>Net Income Before Taxes</b>             |                |                | \$3,314,015.00 |
| <b>Taxes and Extraordinary</b>             |                |                |                |
| Income Tax Expense                         | \$800.00       |                |                |
| Gain/(Loss) on Sale of Assets              | \$5,182.00     |                |                |
| <b>Total Taxes and Extraordinary</b>       |                |                | \$5,982.00     |
| <b>Net Income (Loss)</b>                   |                |                | \$3,308,033.00 |

PERFORMANCE TELECOM  
Balance Sheet

December 31, 1996

| ASSETS  |             |             |
|---|-------------|-------------|
| Current Assets  |             |             |
| Cash and Cash Equivalents                                 | \$2,452,291 |             |
| Dues from Affiliates                                      | \$124,137   |             |
| Loan Receivable   | \$317,735   |             |
| Total Current Assets                                      |             | \$2,894,163 |
| Other Assets  |             |             |
| Furniture & Equipment, net<br>of accumulated depreciation | \$49,781    |             |
| Security deposits   | (\$45,424)  |             |
| Virtual Office Platform                                   | \$1,144,036 |             |
| Other assets  | \$14,006    |             |
| Total Other Assets  |             | \$1,162,399 |
| Total Assets  |             | \$4,056,562 |
| LIABILITIES AND SHAREHOLDERS'S EQUITY                     |             |             |
| Current Liabilities                                       |             |             |
| Accounts payable  | \$515,109   |             |
| Due to Affiliates   | \$57,950    |             |
| Loan Payable  | \$87,124    |             |
| Other Liabilities   | \$33,316    |             |
| Total Liabilities   |             | \$693,499   |
| Shareholder's Equity                                      |             |             |
| Common stock  | \$2,250     |             |
| Retained earnings   | \$3,360,813 |             |
| Total Shareholders Equity                                 |             | \$3,363,063 |
| Total Liabilities and Equity                              |             | \$4,056,562 |
| Quick Ratio   | 1.67613652  |             |
| Debt/Equity   | 0.20621053  |             |

For Internal Use Only

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EXHIBIT D

VIN. NO. 4428

Vincent E. Galewick, age 36, is the President, Secretary and Chief Financial Officer of the General Partner. Mr. Galewick is also the sole director and shareholder of the General Partner. Mr. Galewick has been successfully involved in the securities industry for over 9 years focusing on the investment banking aspects of the industry.

As the President and original shareholder of the General Partner, Mr. Galewick has been instrumental in the selection, negotiation and acquisition of 58 individual consumer loan portfolios with face values in excess of \$985,000,000.00. Those loan portfolios are collectively owned and managed by Performance Asset Management Fund, Ltd., A California Limited Partnership; Performance Asset Management Fund II, Ltd., A California Limited Partnership; Performance Asset Management Fund III, Ltd., A California Limited Partnership; Performance Asset Management Fund IV, Ltd., A California Limited Partnership; and Performance Asset Management Fund V, Ltd., A California Limited Partnership.

In January, 1989, Mr. Galewick became affiliated with Income Network Company, working as a Registered Principal. Mr. Galewick was soon promoted to a managing Registered Principal of Income Network Company. In March of 1992, Mr. Galewick purchased Income Network Company. Income Network Company is a member Broker/Dealer of the National Association of Securities Dealers, Inc. ("NASD") and has been such a member since March 14, 1988. Income Network Company is an Affiliate of the General Partner, Participating Broker/Dealer and is the Placement Manager for the Offering. Income Network Company specializes in direct participation programs. Mr. Galewick is the President and sole shareholder of Income Network Company. Additionally, Mr. Galewick is a Registered Principal of Income Network Company and holds Series 6, 22, 39 and 63 securities licenses. Since the acquisition of Income Network Company, Mr. Galewick has increased the number of Registered Representatives from 6 to, presently, more than 30.

During the period from 1978 to 1987, Mr. Galewick was active in all phases of the construction industry ranging from job site foreman to field superintendent. From February 1987, through January 1989, Mr. Galewick served as a Registered Representative in the securities industry, marketing numerous real estate and oil and gas direct participation programs.

The General Partner has purchased and maintains a \$2,000,000.00 Key-Man life insurance policy on Mr. Galewick.

0000 NUR 4408

Michael Cushing, age 36, is the Chief Financial Officer of Performance Telecom. Mr. Cushing has been affiliated with Performance Telecom since 1991. Mr. Cushing graduated from the University of California at Santa Barbara with a Bachelor of Arts in Business Economics. Mr. Cushing became licensed as a Certified Public Accountant in the State of California while employed by the accounting firm of Coopers and Lybrand. His clients, while at Coopers and Lybrand, included real estate, manufacturing, banking, service, and retail businesses.

From January of 1989 to November of 1991, Mr. Cushing served as Vice President of Real Estate and corporate Secretary for the Bay Plaza Company, a master developer of a planned 1.4 million square foot, \$240 million downtown redevelopment project for the city of St. Petersburg, Florida ("Downtown Redevelopment Project"). This company, also, was Facility Manager of a 1/4 mile retail and entertainment pier complex with a 42,000 seat domed stadium, 8,500 seat arena and 2,000 seat fine arts theater for the city of St. Petersburg, Florida. Mr. Cushing was responsible for all aspects of real estate operations including asset and property management, investment analysis, financing, acquisitions, dispositions, planning, and risk management. As corporate Secretary, Mr. Cushing was responsible for the maintenance of the company's books and records.

From September of 1985 to January of 1989, Mr. Cushing was Senior Vice President of the Elcor Companies, a national commercial real estate company. This company served as an advisor and management company for Wespac Investors Trust, a publicly traded Over-The-Counter real estate investment trust (R.E.I.T.) with total assets in excess of \$160,000,000 and approximately 5,000 shareholders. In addition to servicing the R.E.I.T., the company acquired, owned and managed properties for its own accounts as well as other third parties. The company, also, owned 50% of the Downtown Redevelopment Project. Mr. Cushing's responsibilities included overseeing all property and corporate operations; performing all aspects of the disposition of R.E.I.T. assets; placing, negotiating, and closing all property financing and workouts; and overseeing the recovery of assets by bankruptcy and foreclosure proceedings.

From October of 1984 to September of 1985, Mr. Cushing was part of the real estate acquisition team of Wespac Advisors, a national real estate syndicator. His responsibilities included completion of acquisition and due diligence documentation, negotiation of acquisition terms, and research of markets and properties throughout the nation. This company provided the property management and acquisition services for 3 publicly traded real estate investment trusts with total assets in excess of \$300,000,000.

**Michael D. Metcalf**

32002 Lomita Drive, Rancho Cielo, CA 92679  
Vice President, Performance Telecom

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**Business Experience**

3/96 - current - **Vice President, Performance Telecom**

Responsible for technology development, business development and management of day to day operations including switching platform, sales, service, human resources and customer support.

1989-1995 - **President, Telwest Communications, Inc.**

Responsible for business development and management of day to day operations including sales and service of telecommunications hardware, software and long distance services.

1986 - 1988 - **President MZI Information Systems, Inc.**

Responsible for new business development, installation, sales and service of telecommunication's hardware and network design. Also responsible for system integration projects.

1984 - 1986 - **Sales Manager American General Communications, Inc.**

Created new telemarketing and direct sales departments for telecommunications hardware and network design. Directed marketing strategy and implementation. Responsible for 3.5 million in annual sales.

1983- 1984- **Telemarketing Manager Selectronics LTD, Inc.**

Responsible for the development of marketing strategy and lead generation operation. Managed 6 telemarketing staff and 3 outside salespeople.

1981 - 1982 - **Telemarketing Manager Energy Products Direct**

Management of 40 telemarketers. Responsible for scripting, appointment setting, confirmations and distribution of leads to qualified salespeople.

**Education**

1983 - 1984 **University of Irvine California**

Major Studies in Computer Science and Minor Studies in Business Administration

1981 - 1982 - **Saddleback College**

General education and emphasis on computer science and business administration.

1978 - 1981 - **Part Time Ski Instructor Mammoth Mountain - Full Time Student**

Attended Mammoth High and participated in all sports activities offered. Captain of the downhill race team. President of senior class.

84. N.S. 44-8

**Special Training**

Certified technician on: Mitel SX200, Telrad Digital, Compass Technologies, Active Voice. Computer programming skills in C, C++, Visual Basic, Visual Voice, Novell Netware, SQL, FoxPro and Clipper. Dale Carnegie sales training. Saddleback Church Training for the purpose driven life.

**Other work related experience:** Personally sold over 10 Million dollars of telephone equipment during three period. Personally sold over \$600,000 in monthly long distance service. Developed the 3-step telecom and office automation program. Consulted with over 2,000 businesses on organization and communications. Sold several hundred businesses on the 3-step telecom and office automation program. An expert in office automation and human resource efficiency. Dedicated to honesty, ethics and excellence.

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EXHIBIT E



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TITLE SHEETTELECOMMUNICATIONS TARIFF

This tariff contains all descriptions, regulations and effective rates, together with information relating and applicable to the furnishing of services and facilities for telecommunications services provided by Atlas Equity, Inc., d/b/a Performance Telecom ("Performance"). The principal offices for Performance are located at 4100 Newport Place, Suite 400 Newport Beach, CA 92660. This tariff applies to services furnished within the state and copies may be inspected, during normal business hours, at the Company's principal place of business.

Issued: September 18, 1997

Effective: \_\_\_\_\_

By:

Vincent E. Galewick  
PresidentAtlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

---

CHECK SHEET

The sheets listed below, which are inclusive of this tariff, are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date at the bottom of this page.

| <u>SHEET</u> | <u>REVISION</u> | <u>SHEET</u> | <u>REVISION</u> |
|--------------|-----------------|--------------|-----------------|
| 1            | Original        | 13           | Original        |
| 2            | Original        | 14           | Original        |
| 3            | Original        | 15           | Original        |
| 4            | Original        | 16           | Original        |
| 5            | Original        | 17           | Original        |
| 6            | Original        | 18           | Original        |
| 7            | Original        | 19           | Original        |
| 8            | Original        | 20           | Original        |
| 9            | Original        | 21           | Original        |
| 10           | Original        | 22           | Original        |
| 11           | Original        | 23           | Original        |
| 12           | Original        |              |                 |

Issued: September 18, 1997

Effective: \_\_\_\_\_

By: \_\_\_\_\_

Vincent E. Galewick  
PresidentAtlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

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TABLE OF CONTENTS

|   | <u>Sheet No.</u> |
|---|------------------|
| Cover Page                                    |                  |
| Title Sheet                                   | 1                |
| Check Sheet                                   | 2                |
| Table of Contents                             | 3                |
| Symbols Sheet                                 | 4                |
| Tariff Sheets Format                          | 5                |
| Section 1 - Technical Terms and Abbreviations | 6                |
| Section 2 - Rules and Regulations             | 8                |
| Section 3 - Descriptions of Service           | 22               |

Issued: September 18, 1997

Effective: \_\_\_\_\_

By:

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PresidentAtlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

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SYMBOLS USED IN THIS TARIFF

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

- (D) Delete or Discontinue
- (I) Change related to an increase to a customer's bill
- (M) Moved from another tariff location
- (N) New
- (R) Change resulting in a reduction to a customer's bill
- (T) Change in text or regulation but no change in rate or charge

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Issued: September 18, 1997

Effective: \_\_\_\_\_

By:

Vincent E. Galewick  
President

Atlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

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TARIFF SHEETS FORMAT

A. Sheet Numbering - Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be Sheet 14.1.

B. Sheet Revision Numbers - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current sheet version on file. For example, the 4th revised Sheet 14 cancels the 3rd revised Sheet 14.

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).1.  
2.1.1.A.1.(a).1.(1).  
2.1.1.A.1.(a).1.(1).(1).

D. Check Sheets - When a tariff filing is made, an updated check sheet accompanies the tariff filing. The check sheet lists the sheets contained in the tariff, with a cross reference to the current revision number. When new pages are added, the check sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some pages). The tariff user should refer to the latest check sheet to find out if a particular sheet is the most current on file.

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Issued: September 18, 1997

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Phone: (714) 752-3500

---

**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS**

**Accounting Code:** A multi-digit code which enables a customer to allocate long distance charges to its internal accounts.

**Authorization Code:** A multi-digit code which enables a customer to access Performance network and enables Performance to identify the customer's use for proper billing.

**Business Hours:** The phrase "business hours" means the time after 8:00 A.M. and before 5:00 P.M., Monday through Friday, excluding holidays.

**Carrier:** The term "Carrier" means Performance.

**Company:** The term "Company" means Performance.

**Customer:** See definition under "subscriber".

**Day:** The term "day" means 8:00 A.M. to, but not including, 5:00 P.M. local time at the originating city, Monday through Friday, excluding Company-specific holidays.

**Debit Calling Card:** The term "debit calling card" refers to a calling payment methodology wherein the customer has paid for the ability to make calls in advance of making the call.

**Delinquent or Delinquency:** The terms "delinquent" and "delinquency" mean an account for which payment has not been paid in full on or before the last day for timely payment.

**Exchange Area:** The term "exchange area" means a geographically defined area wherein the telephone industry, through the use of maps or legal descriptions, sets down specified areas where individual telephone exchange companies hold themselves out to provide communication services.

**Holiday:** The term "holiday" means all of the following Company-specific holidays:

- a. New Years Day;
- b. Memorial Day;
- c. Independence Day;
- d. Labor Day;
- e. Thanksgiving Day;
- f. Friday after Thanksgiving Day; and,
- g. Christmas Day.

**Local Access Transport Area ("LATA"):** The phrase "Local Access Transport Area" means a geographical area established by the U.S. District Court for the District of Columbia in Civil Action No. 17-49.

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Issued: September 18, 1997

Effective: \_\_\_\_\_

By: \_\_\_\_\_

Vincent E. Galewick  
President

Atlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

---

**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (continued)**

**Local Exchange Carrier/Local Exchange:** This term means a company exclusively providing telecommunications service within a local exchange or LATA.

**Night/Weekend:** The words "night/weekend" mean 11:00 P.M. to, but not including, 8:00 A.M. local time in the originating city, all day on Saturday, and all day Sunday, except from 5:00 P.M. to, but not including 11:00 P.M.

**Nonbusiness Hours:** The phrase "nonbusiness hours" means the time period after 5:00 P.M. and before 8:00 A.M., Monday through Friday, all day Saturday, Sunday, and on holidays.

**Non-day:** The term "non-day" means 5:00 P.M. to, but not including, 11:00 P.M. local time at the originating city, Sunday through Friday and on company-specified holidays except when a lower rate would normally apply.

**Off Peak:** Off Peak time is the time between 5 pm and 11 pm.

**Peak:** Peak time is the time between 8 am and 5 pm Monday through Friday.

**Prepaid Calling Card:** (See "debit calling card")

**Regular Billing:** The words "regular billing" means standard bill sent in the normal Performance billing cycle. This billing consists of one bill for each account assigned to a subscriber.

**Residential Service:** The phrase "residential service" means telecommunication services used primarily as nonbusiness service.

**Subscriber:** The term "subscriber" means the firm, company, corporation, or other entity which contracts for service under this tariff and which is responsible for the payment of charges as well as compliance with Company's regulations pursuant to this tariff. The term "customer" is synonymous with the term "subscriber."

**Switch:** The term "switch" means an electronic device which is used to provide circuit routing and control.

**Timely Payment:** The term "timely payment" means a payment on a customer's account made on or before the due date.

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Issued: September 18, 1997

Effective: \_\_\_\_\_

By:

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President

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Newport Beach, CA 92660  
Phone: (714) 752-3500

---

SECTION 2 - RULES AND REGULATIONS

2.1 Undertaking of Performance

2.1.1 Performance provides 24-hour interLATA and IntraLATA (as allowed) telephone services.

2.1.2 Businesses or residential households wishing to obtain presubscribed service are required to sign a completed service order. On Carrier's receipt of the signed form, under normal circumstances, Carrier will accept or reject the order within three business days. The customer will be provided with service, under normal circumstances, within fourteen (14) business days of Carrier's acceptance.

2.2 Establishment and Reestablishment of Credit

2.2.1 Performance reserves the right to examine the credit record and check the references of all applicants and customers.

2.2.2 Negotiations of customer's advance payment shall not itself obligate the Carrier to provide services or continue to provide service, if a later check of applicant's credit record is, in the opinion of the carrier, contrary to the best interest of the Carrier.

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Issued: September 18, 1997

Effective: \_\_\_\_\_

By:

Vincent E. Galewick  
President

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4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

304.251.4418



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**SECTION 2 - RULES AND REGULATIONS (continued)****2.3 Advance Payments, Deposits, and Guarantors**

2.3.1 Advance Payments - Performance's prepaid calling cards are the only form of prepayment accepted by Performance.

**2.3.2 Deposits - Presubscribed Services**

2.3.2.A **Requirements:** Where quantifiable evidence exists that applicant or customer payment of valid bills has been less than timely by industry standards, Performance may require, as a condition precedent to Performance providing new service or additional services, an applicant or existing customer to provide a deposit as security for payment of charges. Performance reserves the right to review applicant or customer credit history at anytime to determine if a deposit is required.

2.3.2.B. **Nondiscrimination:** Deposits will not be required by Performance based on race, sex, creed, national origin, marital status, age, number of dependents, condition of physical handicap, source of income, or geographical area of business.

2.3.2.C. **Amount:** The amount of deposit shall not exceed the charges for one month of service based on the customer's average bills during the previous twelve months. The amount of the deposit may be estimated from past toll usage, customer-estimated anticipated usage, or Performance network average toll usage considering the type and nature of the customer's service. The carrier will compute interest on deposits as prescribed by state law, rule or regulation, except no interest will be paid if deposit is held less than a full month.

2.3.2.D. **Refund or Credit Upon Discontinuance:** Upon discontinuance or termination of the service, Performance will credit the deposit to the charges stated on the final bill. The balance, if any, will be returned to the customer within 21 days of rendition of such final bill.

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Issued: September 18, 1997

Effective: \_\_\_\_\_

By:

Vincent E. Galewick

President

Atlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
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**SECTION 2 - RULES AND REGULATIONS** (continued)

2.3.2.E. Refund or credit After Satisfactory Payment. After prompt and timely payment of all charges for twelve consecutive billing periods, within 30 days, Performance will credit the deposit against charges stated on subsequent bills and refund any balance. Payment of a charge is satisfactory if received prior to the date that the charge becomes delinquent, provided that it is not returned for insufficient funds or closed account. Performance may withhold a refund of a deposit pending resolution of any dispute with respect to charges secured by such deposit.

**2.4. Method of Service of Notices**

2.4.1. Unless otherwise provided by these Rules, any notice by the Carrier to the customer may be given either verbally to the customer or to the customer's authorized representative, or by written notice mailed to the customer's last known address.

2.4.2. Unless otherwise provided by these Rules, any notice by the customer or Performance authorized representative may be given verbally to the Carrier at the Carrier's business office or by written notice mailed to the Carrier's Business office. Cancellation of service must be by written notice.

**2.5. Rendering and Payment of Bills**

2.5.1. Customer bills are issued monthly. The customer will receive its bill on or about the same day of each month. Months are presumed to have 30 days. The billing date is dependent on the billing cycle assigned to the customer. Each bill contains monthly recurring charges billed in advance, usage charges billed in arrears, and the last date for timely payment.

2.5.2. Bills are due and payable as specified on the bill. Bills may be paid by mail or in person at the business office of the Carrier or an agency authorized to receive such payment. All charges for service are payable only in United States currency. Payment may be made by cash, check, money order, or cashier's check.

2.5.3. Customer payments are considered prompt when received by Performance or its agent by the due date on the bill. The due date is 21 days after the bill is rendered and is designated by the due date on the customer's bill. The customer shall have at least 21 days from the rendition of a bill to timely pay the charges stated.

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**SECTION 2 - RULES AND REGULATIONS (continued)**

- 2.5.4. If a customer's service has been discontinued within the past 12 months or if the customer incurs usage charges during a billing period which are equal to at least 200% of the amount of the customer's deposit or guarantee, payment may be demanded for the usage charges by a telephone call to the customer followed by written notification of such demand sent by first class mail. If the usage charges remain unpaid for five days from the rendition of written notification or a mutually established late payment arrangement date or 30 days from the date of the bill, the usage charge will be deemed delinquent. Charges deemed delinquent may be subject to the lesser of either a late payment charge of 1-1/2% per month or such other amount allowed by law. This amount will be assessed from the date payment was due.
- 2.5.5. The Carrier is not responsible for local telephone charges incurred by the customer in gaining access to the carrier's network.
- 2.5.6. A bill shall not include any previously unbilled charge for service furnished prior to three months immediately preceding the date of the bill, except charges for collect calls, credit card calls, third party calls and "Error file" calls (those which cannot be billed, due to the unavailability of complete billing information to the company) which shall have a six (6) month backbilling period. In cases of toll fraud, a backbilling period of no more than three years is applicable.
- 2.5.7. Late payment charge - Interest charges of 1 1/2% per month may be assessed on all unpaid balances more than thirty days old.
- 2.5.8. Return check charges - A minimum return check charge of \$10.00 shall be assessed for checks returned unpaid for any reason.
- 2.5.9. Restoration of service following payment related disconnection - Company may charge disconnected customers a \$25.00 reconnection fee per occurrence, plus company may flow through to customer any related fees assessed on Company associated with reestablishing customer's service. (e.g., local exchange carrier fees for reestablishing dedicated access.)

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SECTION 2 - RULES AND REGULATIONS (continued)

2.6 Disputed Bills

- 2.6.1. Any disputed charge must be brought promptly to the attention of Performance by written notification. If such notification is received within thirty (30) days of the customer's receipt of the bill upon which the disputed charge appears, Performance will apply a conditional credit to customer's bill in the amount of the dispute, with the conditional credit continuing pending resolution of the dispute and bearing no late fees. Disputes received beyond 30 days of the bill upon which the disputed charge appears will continue as amounts due and continue to accrue late fees as provided herein. Any disputed amount determined valid will not be assessed late fees.
- 2.6.2. In the case of a billing dispute between the customer and the carrier which cannot be settled to the mutual satisfaction of the parties, the undisputed portion and subsequent bills must be paid on a timely basis, as described in Rule 9, or the service may be subject to disconnection.
- 2.6.3. The customer may request an in-depth investigation into the disputed amount and a review by a Performance manager within 30 days of the disputed bill's billing date.
- 2.6.4. If, after the procedures discussed above, the customer and Performance continue in disagreement about the disputed amount, the customer may appeal to the State or federal regulatory authority for its investigation and decision. If a customer initiates such an investigation, the customer must submit the disputed portion to the State or federal regulatory authority pending completion of the State or federal regulatory authority's investigation.

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**SECTION 2 - RULES AND REGULATIONS (continued)**

**2.7 Discontinuance and Restoration of Service**

**2.7.1. Discontinuance by Customer**

- 2.7.1.A. A customer may have service discontinued upon ten (10) days written notice to the Carrier. Notices will be deemed received upon actual receipt by the Carrier. Customer remains responsible for payment of all bills for services furnished.
- 2.7.1.B. If a customer cancels his order for service before the service begins, a charge will be levied upon the customer for the nonrecoverable portions of expenditures or liabilities incurred expressly on behalf of the customer by the Carrier.
- 2.7.1.C. No minimum or termination charge will apply if service is terminated because of condemnation, destruction, or damage to the property by fire or other causes beyond the control of the customer.
- 2.7.1.D. Upon termination, pre-subscribed customers may be held responsible for charges thereafter if the customer has not selected an alternative long distance carrier, or the local exchange carrier has not transferred service to the alternative carrier because such customer may continue to receive service from Performance.

**2.7.2. Discontinuance by Performance - Performance may discontinue service under the following circumstances:**

- 2.7.2.A. Nonpayment of any sum due to Performance for service more than 30 days beyond the date of the invoice for such service. In the event Performance terminates service for nonpayment, the customer will be liable for all reasonable costs of collection, including, without limitation, court costs, expenses, and actual attorney fees.

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**SECTION 2 - RULES AND REGULATIONS (continued)****2.7 Discontinuance and Restoration of Service (continued)****2.7.2. Discontinuance by Performance (continued)**

- 2.7.2.B. A violation of, or failure to comply with, any regulation governing the furnishing of service.
  - 2.7.2.C. An order from a court or from another government authority having jurisdiction which prohibits Performance from furnishing service.
  - 2.7.2.D. Failure to post a required deposit or guarantee.
  - 2.7.2.E. In the event that the customer supplied false or inaccurate information of a material nature in order to obtain service.
  - 2.7.2.F. Incurring charges not covered by a deposit or guarantee, and evidencing an intent not to pay such charges when due.
  - 2.7.2.G. Any violation of the conditions governing the furnishing of service.
  - 2.7.2.H. For lack of use by the customer for three (3) full billing cycles.
  - 2.7.2.I. Service may be refused or disconnected in the event of illegal use. Performance may disconnect service for this reason after sending written notice by certified mail, return receipt requested, to the customer's last known mailing address.
- 2.7.3. Notice for Disconnection - Written notice of the pending disconnection by Performance will be rendered not less than 5 days prior to the disconnection. Notice shall be deemed given upon deposit, first class postage prepaid, in the U.S. mail to the customer's last known address. Service may be discontinued during business hours on or after the date specified in the notice of discontinuance. Service will not be discontinued on a day when the offices of Performance are not available to facilitate reconnection of service or on a day immediately preceding such a day.

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**SECTION 2 - RULES AND REGULATIONS (continued)**

**2.7 Discontinuance and Restoration of Service (continued)**

2.7.4. Restoration of Service - The customer may restore service by full payment in any reasonable manner, including by personal check. However, Performance may refuse to accept a personal check if a customer's check for payment of service has been dishonored, excepting bank error, within the last twelve months. There is a charge for restoration of service after disconnection. If any equipment has been removed or disconnected the customer will be responsible for a new installation charge to restore service.

**2.8 Limitation of Liability**

2.8.1. Indemnification - The customer indemnifies and saves Performance harmless against all claims arising out of, including but not limited to, (a) acts or omissions of other companies when their facilities are used in connection with Performance's facilities to provide service; and, (b) claims for libel, slander, or infringement of copyright arising from the material claims for infringement of patents arising from, combining with, or using in connection with, facilities of the Company, apparatus and systems of the customer; and all other claims arising out of any act or omission of the customer in connection with facilities provided by the Company.

**2.8.2. Furnishing of Services**

2.8.2.A. The Company's obligation to furnish service is dependent upon its ability to secure and retain suitable facilities and rights for the provision of the service without unreasonable expense.

2.8.2.B. Service is furnished only as "Business Service." No "Residential Service" will be furnished by the Company. However, any customer, whether business or residential, may obtain service from the Company subject to the terms and conditions stated in the Company's tariffs.

2.8.3. Transmitting Messages - The Company does not undertake to transmit messages but offers the use of its facilities, where available, for communication between parties subject to the terms and conditions specified in this tariff.

2.8.4. Maintenance and Repair - All costs associated with the maintenance and repair of services furnished by the company will be borne by the Company.

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**SECTION 2 - RULES AND REGULATIONS (continued)****2.8 Limitation of Liability (continued)****2.8.5. Liability of Carrier**

- 2.8.5.A. The liability of the Carrier, if any, for damages arising out of mistake, omission, interruptions, delays, errors, or defects in transmission during the course of furnishing service shall, in no event, exceed an amount equivalent to the charge to the customer for the service during which such mistake, omission, interruption, delay, error, or defect in transmission occurred in excess of 48 hours after notification has been made. The Carrier will not be responsible for any lost profits, consequential damages, or incidental damages of the subscriber or any other party, or for any claim of damage by the subscriber or against the subscriber by any other party. Any mistake, omission, interruption, delay, error, or defect in transmission or service which are caused by or contributed to by the negligence or willful act of the customer, or which arise from facilities or equipment used by the customer, shall not result in the imposition of any liability upon the Carrier.
- 2.8.5.B. Performance shall not be liable for any act, omissions to act, negligence, or the quality of service of any local exchange carrier or other provider whose facilities are used in furnishing any portion of the service received by the customer.
- 2.8.5.C. Performance shall not be liable for any failure of Performance due to causes beyond its control, including but not limited to cable dig-up by third party, acts of God, civil disorder, actions of governmental authorities, actions of civil or military authority, labor problems, national emergency, insurrection, riot, war, fire, flood, and atmospheric conditions or other phenomena of nature, such as radiation. In addition, the Carrier shall not be liable for any failure of Performance due to necessary network reconfiguration, system modifications for technical upgrades, or regulations established by or actions taken by any court or government agency having jurisdiction over the Carrier.

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SECTION 2 - RULES AND REGULATIONS (continued)

2.8 Limitation of Liability (continued)

2.8.5. Liability of Carrier (continued)

- 2.8.5.D. Performance shall not be liable for any failure of Performance caused by or the result of, but not limited to, any act or omission by a customer or any entity other than Performance that is furnishing services, facilities, and equipment used in connection with Performance's services or facilities.
- 2.8.5.E. In no event shall the customer have any claims against the Carrier for any fraudulent usage over customer's PBX or other CPE equipment with Direct Inward System Access ("DISA") capability, by an outside caller or employees of the customer.
- 2.8.5.F. Overpayment - The carrier shall not be obligated to refund any overpayment by a customer unless a written claim for such overpayment, together with substantiating evidence which will allow the Carrier to verify such claim, is submitted within one year of the alleged overpayment.
- 2.8.5.G. Disclaimer of Warranties - Except as expressly provided in this tariff, the Carrier makes no expressed or implied understandings, agreements, representations or warranties, including any warranties regarding the merchantability or fitness for a particular purpose.

2.9 Use of Service for Unlawful Purposes - The services tariffed are furnished subject to the condition that they will not be used for any unlawful purposes. Service will not be furnished if any law enforcement agency, acting within its jurisdiction, advises that such services are being used or are likely to be used in violation of the law. If Performance receives other evidence giving reasonable cause to believe that such services are being or are likely to be so used, it will either discontinue or deny the service or refer the matter to the appropriate law enforcement agency.

2.10 Unauthorized Use - Any individual who uses or receives Performance service, other than under the provisions of an accepted application for service and a current customer relationship, shall be liable for both the tariffed cost of the service received and Performance's cost of investigation and collection.

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**SECTION 2 - RULES AND REGULATIONS (continued)****2.11 Interruption of Service**

- 2.11.1. Credit allowance for interruption of service not due to the Company's testing, adjusting or negligence of the Company, or due to customer acts and/or omissions or to the failure of channels or equipment provided by the customer, are subject to the general liability provisions set forth herein. It shall be the obligation of the customer to notify the company immediately of any interruption in service; particularly for an interruption for which a credit allowance is desired. Before giving such notice, the customer shall ascertain that the trouble is not being caused by any action or omission by the customer within the customer's control, or due to customer-provided facilities and/or equipment.
- 2.11.2. For purposes of credit computation, every month shall be considered to have 720 hours.
- 2.11.3. No credit shall be allowed for an interruption of a continuous duration of less than two hours.
- 2.11.4. The customer shall be credited for an interruption of two hours or more at the rate of 1/720th of the monthly charge for the facilities affected for each hour or major fraction thereof that the interruption continues.

Credit Formula:

$$\text{Credit} = A/720 \times B$$

"A" - outage time in hours

"B" - total monthly charge for affected facility

2.12 Information to be Provided to the Public - A copy of this tariff schedule and advice letters will be available for public inspection in the Carrier's business office during regular business hours. For a nominal cost to cover postage and copying fees, upon written request a copy of this tariff will be provided by Carrier's business office.

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SECTION 3 - DESCRIPTION OF SERVICE

3.1 Timing of Calls

3.1.1 When Billing Charges Begin and Terminate for Phone Calls

The customer's long distance usage charge is based on the actual usage of Performance's network. Usage begins when the called party picks up the receiver (i.e., when 2-way communication is possible). When the called party picks up is determined by hardware answer supervision in which the local telephone company sends a signal to the switch or the software utilizing audio tone detection. When software answer supervision is employed, up to 60 seconds of ringing is allowed before it is billed as usage of the network. A call is terminated when the calling or called party hangs up.

3.1.2 Billing Increments

Unless otherwise specified in this tariff, the minimum call duration for billing purposes is 30 seconds for a connected call. Calls are thereafter billed in 6 second increments.

3.1.3 Per Call Billing Charges

Billing will be rounded up to the nearest penny for each call.

3.1.4 Uncompleted Calls

There shall be no charges for uncompleted calls.

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SECTION 3 - DESCRIPTION OF SERVICE (continued)

3.2 Calculation of Distance

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.

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.

3.3 Minimum Call Completion Rate

A customer can expect a call completion rate (number of calls completed/number of calls attempted) of not less than 90% during peak use periods for all Feature Group D services ("1+" dialing).

3.4 TAXES AND SURCHARGES

In addition to the charges specifically pertaining to Performance services, certain federal, state, and municipal surcharges, taxes, and fees will be applied as separate line items on the customer's bill. These surcharges, taxes and fees are calculated based upon the amount billed to the end user for Performance's intrastate services.

3.5 Rates and Charges

3.5.1

Performance Telecomm offers interLATA 1+ and 800 services through presubscription of the Customers phone number to Performance's network.

3.5.2

Performance Telecomm offers intraLATA services through the 10XXX pattern, and by way of dialing patterns other than 1+.

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**SECTION 3 - DESCRIPTION OF SERVICE** (continued)**3.5.3 PT Flat Rate:**

- a. Dial 1, long distance, switched access, business and residential telephone service.
- b. Direct sales by agents or telemarketed.
- c. MRC: \$4.95 (waived if bundled with My Office Telecard, Voice Activated Telecard or Internet Enhanced Telecard)
- d. Interstate/Intrastate Rate (Continental U.S.): \$.119.
- e. Domestic (including AK, HI, PR and U<sup>C</sup>VI): 18 second minimum, 6 second billing.
- f. International: 30 second minimum, 6 second billing.
- g. Customer's ANI subscribed to IXC's CIC 948 or PT's CIC 5177.
- h. Customer's ANI to be subscribed on FG D circuits.
- i. Customer subscribed for IntraLATA service where available.
- j. All rates tariffed where required.
- k. All customer's ANI are subscribed to service with a signed LOA and/or independent third party verification.
- l. Customers may contact PT's customer service via a toll free 800 number (800) 843 6882.

**3.5.4 PT One Plus:**

- a. Dial 1, long distance, switched access, business and residential telephone service.
- b. Direct sales by agents or telemarketed.
- c. MRC: \$0.00.
- d. Interstate Rate: Off Peak \$.099, Peak \$.235
- e. Time of day: Off Peak = Evening and Night/Weekend; Peak = Daytime, as noted in Section 3.4 herein.
- f. Domestic (including AK, HI, PR and USVI): 18 second minimum, 6 second billing.
- g. International: 30 second minimum, 6 second billing.
- h. Customer's ANI subscribed to IXC's CIC 948 or PT's CIC 5177.
- i. Customer's ANI to be subscribed on FG D circuits.
- j. Customer subscribed for IntraLATA service where available.
- k. All rates tariffed where required.
- l. All customer's ANI are subscribed to service with a signed LOA and/or independent third party verification.
- m. Customers may contact PT's customer service via a toll free 800 number (800) 843 6882.

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**SECTION 3 - DESCRIPTION OF SERVICE** (continued)**3.5.5 PT Phone Plus:**

- a. Dial 1, long distance, switched access, business and residential telephone service.
- b. Direct sales by agents or telemarketed.
- c. MRC: \$0.00.
- d. Interstate Rate: Off Peak \$.139, Peak \$.239
- e. Time of day: Off Peak = Evening and Night/Weekend; Peak = Daytime, as noted in Section 3.4 herein.
- F Domestic (including AK, HI, PR and USVI): 1 minute minimum, 6 second billing.
- g. International: 1 minute minimum, 6 second billing.
- h. Customer's ANI subscribed to IXC's CIC 948 or PT's CIC 5177.
- i. Customer's ANI to be subscribed on FG D circuits.
- j. Customer subscribed for IntraLATA service where available.
- k. All rates tariffed where required.
- l. All customer's ANI are subscribed to service with a signed LOA and /or independent third party verification.
- m. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).

**3.5.6 PT 800 PIN:**

- a. Dedicated, 800/888 inbound service with a 4 digit PIN, business and residential telephone service.
- b. Direct sales by agents or telemarketed.
- c. MRC: \$3.50.
- d. Set up fee: \$ 1 0.00 (waived with Dial 1 service).
- e. Transportability Fee: Not Applicable
- f. Vanity Number Fee: Not Applicable
- g. Directory Listing Fee: \$15.00 a month
- h. Interstate Rate: Off Peak \$.170, Peak \$.220
- i. Time of day: Off Peak = Evening and Night/Weekend; Peak = Daytime, as noted in Section 3.4 herein.
- j. Domestic (including AK, HI, PR and USVI): 30 second minimum, 6 second billing.
- k. International origination is Canada only.
- l. Customer selects ANI (must be a Plain Old Telephone Service, POTS, number) for termination.
- m. The service is a shared 800/888 service. The number and pin are not transportable. Vanity numbers are not available.
- n. All rates tariffed where required.
- o. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- p. Not a stand alone product, must be ordered in conjunction with Dial 1 service.

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**SECTION 3 - DESCRIPTION OF SERVICE** (continued)**3.5.7 PT 800 Plus:**

- a. Dial 1, 800/888 inbound service, switched access, business and residential telephone service.
- b. Direct sales by agents or telemarketed.
- c. MRC: \$10.00.
- d. Setup fee: \$ 1 0. 00 (waived with Dial 1 service).
- e. Transportability Fee: \$ 1 0.00 (waived with Dial 1 service)
- f. Vanity Number Fee: \$50.00
- g. Directory Listing Fee: \$15.00 a month
- h. Interstate Rate: Off Peak \$.160 a minute, Peak \$.190 a minute
- i. Time of day: Off Peak = Evening and Night/Weekend; Peak = Daytime, as noted in Section 3.4 herein.
- j. Domestic (including AK, HI, PR and USVI): 30 second minimum, 6 second billing.
- k. International origination is Canada only.
- l. Customer selects ANI (must be a Plain Old Telephone Service, POTS, number) for termination.
- m. All rates tariffed where required.
- n. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).

**3.5.8 PT Standard Telecard:**

- a. Dedicated 800 access calling card billed to the customer's Dial account.
- b. MRC: \$0.00
- c. Interstate/Intrastate Rate (Continental U.S.): \$.250 a minute, \$.169 a minute from a ANI subscribed to PT's Dial 1 service.
- d. Service can originate from any telephone that allows 800/888 dialing.
- e. All rates tariffed where required.
- f. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- g. Voice Mail Box available from customer's ANI by having the LEC forward ring no answer and busy calls to Mail Box.
- h. Domestic and international: 1 minute minimum, 6 second billing.
- i. Not a stand alone product, must be ordered in conjunction with Dial 1 service.

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**SECTION 3 - DESCRIPTION OF SERVICE** (continued)**3.5.9 PT Enhanced Teletcard:**

- a. Dedicated, personalized, 800/888 plus PIN (4 digit) access calling card billed to the customer's Dial 1 account.
- b. MRC: \$10.00 with 800 PIN access
- c. Interstate/Intrastate Rate (Continental U.S.): \$.250 a minute, \$.169 a minute from a ANI subscribed to PT's Dial 1 service.
- d. Service can originate from any telephone that allows 800/888 dialing.
- e. All rates tariffed where required.
- f. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- g. Domestic and international: 1 minute minimum, 6 second billing.
- h. Features include: voice mail, subscriber finder, forward to pager, fax library and fax mail.

**3.5.10 PT Voice Teletcard:**

- a. Dedicated, personalized 800/888 plus PIN or 800/88 access, voice activated, calling card billed to the customer's Dial 1 account.
- b. MRC: \$15.00 with 800 PIN (4 digit) access, \$25.00 with 800/888 access.
- c. Interstate/Intrastate Rate (Continental U.S.): \$.230 a minute, \$.169 a minute from a ANI subscribed to PT's Dial 1 service.
- d. Service can originate from any telephone that allows 800/888 dialing. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- e. Domestic and international: 1 minute minimum, 6 second billing.
- f. Features include: Voice activated, personal telephone book, voice mail, group mail, subscriber follow me, forward to pager, fax library and fax mail.

**3.5.11 PT Internet Teletcard:**

- a. Dedicated, personalized 800/888 plus PIN or 800/888 access, voice activated, calling card billed to the customer's Dial 1 account.
- b. MRC: \$20.00 with 800 PIN (4 digit) access, \$30.00 with 800/888 access.
- c. Interstate/Intrastate Rate (Continental U.S.): \$.230 a minute, \$.169 a minute from a ANI subscribed to PT's Dial 1 service.
- d. Service can originate from any telephone that allows 800/888 dialing.
- e. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- f. Domestic and international: 1 minute minimum, 6 second billing.
- g. Features include: Voice activated, personal telephone book, voice mail, group mail, subscriber follow me, forward to pager, fax library, e-mail, e-mail to fax conversion, e-mail pager notification and fax mail.

Issued: September 18, 1997

Effective: \_\_\_\_\_

By: \_\_\_\_\_

Vincent E. Galewick  
PresidentAtlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500



---

**SECTION 3 - DESCRIPTION OF SERVICE** (continued)**3.5.12 PT Debit Card - Red:**

- a. Dedicated 800 access debit card paid in advance of usage.
- b. Interstate/Intrastate Rate (Continental U.S.): \$.170 a minute
- c. Service can originate from any telephone that allows 800/888 dialing.
- d. All rates tariffed where required.
- e. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- f. Domestic and international: 1 minute minimum, 6 second billing.
- g. Card must be used within one year of turn up. At one year the unused portion of the card will be will become an asset of PT.
- h. Retail price and cost per minute for Continental U.S. usage printed on each card.

**3.5.13 PT Debit Card - White:**

- a. Dedicated 800 access debit card paid in advance of usage.
- b. Interstate/Intrastate Rate (Continental U.S.): \$.250 a minute
- c. Service can originate from any telephone that allows 800/888 dialing.
- d. All rates tariffed where required.
- e. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- f. Domestic and international: 1 minute minimum, 6 second billing.
- g. Card must be used within one year of turn up. At one year the unused portion of the card will be will become an asset of PT.
- h. Retail price and cost per minute for Continental U.S. usage printed on each card.

**3.5.14 PT Debit Card - Blue:**

- a. Dedicated 800 access debit card paid in advance of usage.
- b. Interstate/Intrastate Rate (Continental U.S.): \$.330 a minute
- c. Service can originate from any telephone that allows 800/888 dialing.
- d. All rates tariffed where required.
- e. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- f. Domestic and international: 1 minute minimum, 6 second billing.
- g. Card must be used within one year of turn up. At one year the unused portion of the card will be will become an asset of PT.
- h. Retail price and cost per minute for Continental U.S. usage printed on each card.

Issued: September 18, 1997

Effective: \_\_\_\_\_

By: \_\_\_\_\_

Vincent E. Galewick  
PresidentAtlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

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# South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



## \*FACSIMILE TRANSMISSION\*

October 8, 1997

**TO:** Michael W. Mlinar

**WITH:** Communications Consulting Services

**FAX#:** (805) 565-1547

**FROM:** Delaine Kolbo  
South Dakota Public Utilities Commission

This is page 1 of 1

**RE:** Atlas Equity, Inc., d/b/a Performance Telecom

**This is just a reminder that we have not received the \$250.00 filing fee with reference to the above captioned company. We cannot open a file for this company until the filing fee is received.**

If there is a problem receiving this document, please contact our office at **(605) 773-3201.**

**THIS COMMUNICATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW.**

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If you received this communication in error, please notify us immediately at **(605) 773-3201.**

Capitol Office  
Telephone (605) 773-3201  
FAX (605) 773-3809

Transportation/  
Warehouse Division  
Telephone (605) 773-5280  
FAX (605) 773-3225

Consumer Hotline  
1-800-332-1782

TTY Through  
Relay South Dakota  
1-800-877-1113

Internet  
billb@puc.state.sd.us

Jim Burg  
Chairman  
Pam Nelson  
Vice-Chairman  
Laska Schoenfelder  
Commissioner

William Bullard Jr.  
Executive Director

Edward R. Anderson  
Harlan Best  
Martin C. Bettmann  
Charlie Bolle  
Sue Cichos  
Karen E. Cremer  
Marlene Fischbach  
Shirleen Fugitt  
Lewis Hammond

Leni Healy  
Carson Honeck  
Dave Jacobson  
Bob Knadle  
Delaine Kolbo  
Terri J. Lesmeister  
Jeffrey P. Lorensen  
Terry Norum  
Gregory A. Risley  
Tammi Stangobr  
Steven M. Wegman  
Rolayne Aita Wiest

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*COMMUNICATIONS CONSULTING SERVICES*

1374 Danielson Road  
Montecito, California 93108  
Phone: (805) 565-3338  
Fax: (805) 565-1547

RECEIVED  
OCT 23 1997  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

October 21, 1997

South Dakota Public Utilities Commission  
Attn: Ms. Delaine Kolbo  
500 E. Capitol  
Pierre, South Dakota 57501

Re: Atlas Equity, Inc., d/b/a Performance Telecom  
FILING FEE - \$250.00

Dear Ms. Kolbo:

Thank you very much for your patience. Enclosed is the filing fee for Atlas Equity, Inc., d/b/a Performance Telecom.

Sincerely,



Michael W. Mlinar

900. N5. 44118

**NEXT**

**DOCUMENT (S)**

**DISREGARD**

**BACKGROUND**

MICHAEL W. MLINAR  
LIC. #50091544  
1374 DANIELSON ROAD • 385-465-3339  
MONTECITO, CA 95035

DATE *10/25/08* 408

PAY TO THE ORDER OF *Donald Debra & Bill White Co. Inc.* \$ *1550.00*  
*Donald Debra & Bill White Co. Inc.* DOLLARS

Montecito Bank & Trust  
11888 CASTELLANO ROAD • SANTA BARBARA, CALIFORNIA 93101

*Michael W. Mlinar*

⑆ 42223478310408 ⑆ 91 ⑆ 69348 ⑆

South Dakota  
Public Utilities Commission  
State Capitol 500 E. Capitol  
Pierre, SD 57501-5070  
Phone: (800) 332-1782  
Fax: (605) 773-3809

## TELECOMMUNICATIONS SERVICE FILINGS

These are the telecommunications service filings that the Commission has received for the period of:

**10/17/97 through 10/30/97**

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five days of this filing.

| DOCKET NUMBER                               | TITLE/STAFF/SYNOPSIS  | DATE FILED | INTERVENTION DEADLINE |
|---|---|------------|-----------------------|
| <b>REQUEST FOR CERTIFICATE OF AUTHORITY</b> |   |            |                       |
| TC97-166                                    | Application by Atlas Equity, Inc. d/b/a Performance Telecom for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/CH) "Applicant seeks statewide authority to provide intra- and interLATA interexchange telecommunications services. Applicant intends to provide interexchange intrastate voice message telephone services."   | 10/27/97   | 11/14/97              |
| TC97-170                                    | Application by iTELSA (USA), Inc. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/CH) "The Applicant will provide interexchange services as a non-facilities-based reseller. Applicant proposes to offer 1+ and prepaid phone card services to both business and residential users."   | 10/27/97   | 11/14/97              |
| TC97-171                                    | Application by New Media Telecommunications, Inc. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/KC) "New Media, proposes to provide intrastate long distance service in conjunction with its interstate long distance service."  | 10/27/97   | 11/14/97              |
| TC97-172                                    | Application by Long Distance of Michigan, Inc. d/b/a LDMI Long Distance for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: DJ/KC) "LDMI offers outbound telecommunications services to residential and business customers, utilizing switched access. Switched access service is available on a presubscription basis from equal access originating end offices. LDMI will also offer travel card and inbound toll-free services. Service is offered as an add-on to LDMI's interstate service."   | 10/27/97   | 11/14/97              |
| <b>FORMAL COMPLAINT FILED</b>               |   |            |                       |
| TC97-169                                    | Avery and Dixie Thompson vs U S WEST Communications, Inc. On October 24, 1997, the Commission received a complaint filed by Avery and Dixie Thompson, Complainants, Reliance, SD, against U S WEST Communications, Inc. (Respondent) regarding delays in the provisioning of new services. According to the complaint, Complainants contacted Respondent in April of 1997, requesting phone service at a new location. Complainants state they were informed by Respondent that they should call the Respondent two weeks prior to the date they wanted service. Complainants indicate that their service at the new residence was needed on September 12, 1997. Complainants contacted Respondent on September 12, 1997, and were informed that Respondent did not have adequate facilities at the Complainants' new location. On or about September 23, 1997, Complainants were told by Respondent that services would not be provisioned until late October, 1997. Respondent provisioned services to Complainants in late October but the complaint does not indicate whether those services are working as of the date of the complaint. Complainants are asking that Respondent provision the services requested, that Respondent reimburse Complainants for certain expenses relating to the delayed service, and that Respondent compensate Complainants for the inconvenience caused by the delay in provisioning service. | 10/24/97   | NA                    |

Important Notice: The Commission is compiling a list of internet addresses. If you have an internet address please notify the Commission by E-mailing it to Terry Neumum at: [terryn@uc.state.sd.us](mailto:terryn@uc.state.sd.us). Faxing the address to the Commission at: 605-773-3809.

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**COMMUNICATIONS CONSULTING SERVICES**  
MICHAEL W. MLINAR, Sole Proprietor

---

November 25, 1997

South Dakota Public Utilities Commission  
Attn: Ms. Tammi Stangohr  
State Capitol Building  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

RECEIVED  
DEC 01 1997  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Re: Application of Atlas Equity, Inc., d/b/a Performance Telecom

**Docket No. TC 97-168**

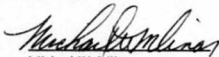
Dear Ms. Stangohr:

In response to your November 3, 1997 correspondence, enclosed is the original and 11 copies of the revised Application for Atlas Equity, Inc., d/b/a Performance Telecom ("Performance"). I have directly addressed all matters as set forth in ARSD 20:10:24:02.

Please return the additional copy to me in the enclosed, postage-paid return envelope.

Thank you.

Sincerely,



Michael W. Mlinar  
Consultant for Atlas Equity, Inc.

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Application of )  
Atlas Equity, Inc., d/b/a Performance Telecom )  
For Authority to Operate as a ) No. TC 97-168  
Reseller of Telecommunications Services )  
Within the State of South Dakota )

APPLICATION FOR CERTIFICATE OF AUTHORITY  
FOR ATLAS EQUITY, INC., D/B/A PERFORMANCE TELECOM

Atlas Equity, Inc., d/b/a Performance Telecom, ("Applicant" or "Performance"), hereby respectfully applies to the South Dakota Public Utilities Commission for authority to operate as a telecommunications reseller within the State of South Dakota, in accordance with ARSD 20:10:24:02. Applicant seeks statewide authority to provide intra- and interLATA interexchange telecommunications services.

In support of this application Performance provides the following information:

ARSD 20:10:24:02

- (1) The legal name and addresses of Applicant:

Atlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500  
Fax: (714) 789-1089

- (2) Performance Telecom

(3)(a) Applicant is a corporation, formed under the laws of the state of California in 1988. (Articles of Incorporation attached as Exhibit A) Applicant has applied for foreign corporation status. (See Exhibit B. Applicant will amend this Application to include foreign corporation status upon receipt from the Secretary of State.)

- (3)(b) Applicant has no office in the State. Applicant's registered agent is:

Corporation Service Company  
503 South Pierre Street  
Pierre, South Dakota 57501



- (3)(c) The only entity holding 20% or greater ownership is:

Vincent E. Galewick  
President, Chairman and Secretary  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660

Amount of ownership - 25%  
Character of ownership - Common stock

- (3)(d) None

- (4) Not applicable.

- (5) Description of telecommunications services intended to be offered:

1. **PT Flat Rate:**

- a. Dial 1, long distance, switched access, business and residential telephone service.
- b. Direct sales by agents or telemarketed.
- c. MRC: \$4.95 (waived if bundled with My Office Telecard, Voice Activated Telecard or Internet Enhanced Telecard)
- d. Interstate/Intrastate Rate (Continental U.S.): \$ 119.
- e. Domestic (including AK, HI, PR and USVI): 18 second minimum, 6 second billing.
- f. International: 30 second minimum, 6 second billing.
- g. Customer's ANI subscribed to IXC's CIC 948 or PT's CIC 5177.
- h. Customer's ANI to be subscribed on FG D circuits.
- i. Customer subscribed for IntraLATA service where available.
- j. All rates tariffed where required.
- k. All customer's ANI are subscribed to service with a signed LOA and /or independent third party verification.
1. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).

2. **PT One Plus:**

- a. Dial 1, long distance, switched access, business and residential telephone service.
- H Direct sales by agents or telemarketed.
- c. MRC: \$0.00.
- d. Interstate Rate: Off Peak \$.099, Peak \$.235
- e. Peak Time: Weekdays (Monday through Friday), 7:00.00 AM to 6:59.59 PM, Off Peak Time: Weekdays (Monday through Friday) 7:00.00 PM to 6:59.59 AM and Weekends.
- f. Domestic (including AK, HI, PR and USVI): 18 second minimum, 6 second billing.
- g. International: 30 second minimum, 6 second billing.
- h. Customer's ANI subscribed to IXC's CIC 948 or PT's CIC 5177.
- i. Customer's ANI to be subscribed on FG D circuits.
- j. Customer subscribed for IntraLATA service where available.
- k. All rates tariffed where required.
1. All customer's ANI are subscribed to service with a signed LOA and /or independent third party verification.
- m. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).

3. **PT Phone Plus:**
- Dial 1, long distance, switched access, business and residential telephone service.
  - Direct sales by agents or telemarketed.
  - MRC: \$0.00.
  - Interstate Rate: Off Peak \$ .139, Peak \$ 2.39
  - Peak Time: Weekdays (Monday through Friday), 7:00.00 AM to 6:59.59 PM, Off Peak Time: Weekdays (Monday through Friday) 7:00.00 PM to 6:59.59 AM and Weekends.
  - Domestic (including AK, HI, PR and USVI): 1 minute minimum, 6 second billing.
  - International: 1 minute minimum, 6 second billing.
  - Customer's ANI subscribed to IXC's CIC 948 or PT's CIC 5177.
  - Customer's ANI to be subscribed on FG D circuits.
  - Customer subscribed for IntraLATA service where available.
  - All rates tariffed where required.
  - All customer's ANI are subscribed to service with a signed LOA and/or independent third party verification.
  - Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
4. **PT 800 PIN:**
- Dedicated, 800/888 inbound service with a 4 digit PIN, business and residential telephone service.
  - Direct sales by agents or telemarketed.
  - MRC: \$3.50.
  - Set up fee: \$ 1 0.00 (waived with Dial 1 service).
  - Transportability Fee: Not Applicable
  - Vanity Number Fee: Not Applicable
  - Directory Listing Fee: \$15.00 a month
  - Interstate Rate: Off Peak \$ .170, Peak \$ 2.20
  - Peak Time: Weekdays (Monday through Friday), 7:00.00 AM to 6:59.59 PM, Off Peak Time: Weekdays (Monday through Friday) 7:00.00 PM to 6:59.59 AM and Weekends.
  - Domestic (including AK, HI, PR and USVI): 30 second minimum, 6 second billing.
  - International origination is Canada only.
  - Customer selects ANI (must be a Plain Old Telephone Service, POTS, number) for termination.
  - The service is a shared 800/888 service. The number and pin are not transportable. Vanity numbers are not available.
  - All rates tariffed where required.
  - Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
  - Not a stand alone product, must be ordered in conjunction with Dial 1 service.
5. **PT 800 Plus:**
- Dial 1 800/888 inbound service, switched access, business and residential telephone service.
  - Direct sales by agents or telemarketed.
  - MRC: \$10.00.
  - Setup fee: \$ 1 0. 00 (waived with Dial 1 service).
  - Transportability Fee: \$ 1 0.00 (waived with Dial 1 service)
  - Vanity Number Fee: \$50.00
  - Directory Listing Fee: \$15.00 a month
  - Interstate Rate: Off Peak \$ .160 a minute, Peak \$ .190 a minute
  - Peak Time: Weekdays (Monday through Friday), 7:00.00 AM to 6:59.59 PM, Off Peak Time: Weekdays (Monday through Friday) 7:00.00 PM to 6:59.59 AM and Weekends.
  - Domestic (including AK, HI, PR and USVI): 30 second minimum, 6 second billing.
  - International origination is Canada only.
  - Customer selects ANI (must be a Plain Old Telephone Service, POTS, number) for termination.
  - All rates tariffed where required.
  - Customers may contact PT's customer service via a toll free 800 number (800 843 6882).

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**6 PT Standard Telecard:**

- a. Dedicated 800 access calling card billed to the customer's Dial account.
- b. MRC: \$0.00
- c. Interstate/Intrastate Rate (Continental U.S.): \$.250 a minute, \$.169 a minute from a ANI subscribed to PT's Dial 1 service.
- d. Service can originate from any telephone that allows 800/888 dialing.
- e. All rates tarified where required.
- f. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- g. Voice Mail Box available from customer's ANI by having the LEC forward ring no answer and busy calls to Mail Box.
- h. Domestic and international: 1 minute minimum, 6 second billing.
- i. Not a stand alone product, must be ordered in conjunction with Dial I service.

**7. PT Enhanced Telecard:**

- a. Dedicated, personalized, 800/888 plus PIN (4 digit) access calling card billed to the customer's Dial 1 account.
- h. MRC: \$10.00 with 800 PIN access
- c. Interstate/Intrastate Rate (Continental U.S.): \$.250 a minute, \$.169 a minute from a ANI subscribed to PT's Dial I service.
- d. Service can originate from any telephone that allows 800/888 dialing.
- e. All rates tarified where required.
- f. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- g. Domestic and international: 1 minute minimum, 6 second billing.
- h. Features include: voice mail, subscriber finder, forward to pager, fax library and fax mail.

**8. PT Voice Telecard:**

- a. Dedicated, personalized 800/888 plus PIN or 800/88 access, voice activated, calling card billed to the customer's Dial I account.
- b. MRC: \$15.00 with 800 PIN (4 digit) access, \$25.00 with 800/888 access.
- c. Interstate/Intrastate Rate (Continental U.S.): \$.230 a minute, \$.169 a minute from a ANI subscribed to PT's Dial 1 service.
- d. Service can originate from any telephone that allows 800/888 dialing.
- e. All rates tarified where required.  
Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- g. Domestic and international: 1 minute minimum, 6 second billing.
- h. Features include: Voice activated, personal telephone book, voice mail, group mail, subscriber follow me, forward to pager, fax library and fax mail.

9. **PT Internet Telecard:**

- a. Dedicated, personalized 800/888 plus PIN or 800/888 access, voice activated, calling card billed to the customer's Dial I account.
- b. MRC: \$20.00 with 800 PIN (4 digit) access, \$30.00 with 800/888 access.
- c. Interstate/Intrastate Rate (Continental U.S.): \$230 a minute, \$169 a minute from a ANI subscribed to PT's Dial I service.
- d. Service can originate from any telephone that allows 800/888 dialing.
- e. All rates tariffed where required.
- f. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- g. Domestic and international: 1 minute minimum, 6 second billing.
- h. Features include: Voice activated, personal telephone book, voice mail, group mail, subscriber follow me, forward to pager, fax library, e-mail, e-mail to fax conversion, e-mail pager notification and fax mail.

10. **PT Debit Card - Red:**

- a. Dedicated 800 access debit card paid in advance of usage.
- b. Interstate/Intrastate Rate (Continental U.S.): \$170 a minute
- c. Service can originate from any telephone that allows 800/888 dialing.
- d. All rates tariffed where required.
- e. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- f. Domestic and international: 1 minute minimum, 6 second billing.
- g. Card must be used within one year of turn up. At one year the unused portion of the card will be will become an asset of PT.
- h. Retail price and cost per minute for Continental U.S. usage printed on each card.

11. **PT Debit Card - White:**

- a. Dedicated 800 access debit card paid in advance of usage.
- b. Interstate/Intrastate Rate (Continental U.S.): \$250 a minute
- c. Service can originate from any telephone that allows 800/888 dialing.
- d. All rates tariffed where required.
- e. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- f. Domestic and international: 1 minute minimum, 6 second billing.
- g. Card must be used within one year of turn up. At one year the unused portion of the card will be will become an asset of PT.
- h. Retail price and cost per minute for Continental U.S. usage printed on each card.

12. **PT Debit Card - Blue:**

- a. Dedicated 800 access debit card paid in advance of usage.
- b. Interstate/Intrastate Rate (Continental U.S.): \$330 a minute
- c. Service can originate from any telephone that allows 800/888 dialing.
- d. All rates tariffed where required.
- e. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- f. Domestic and international: 1 minute minimum, 6 second billing.
- g. Card must be used within one year of turn up. At one year the unused portion of the card will be will become an asset of PT.
- h. Retail price and cost per minute for Continental U.S. usage printed on each card.

(6) Performance will not construct any facilities within the state. Performance will acquire transport facilities from underlying facilities-based carriers and route end use calls over those transport facilities either to the Performance enhanced services platform located in Newport Beach, CA for ultimate call completion to the point of termination (calls initiated via the prepaid or preauthorized card), or directly to the point of termination (for presubscribed customers).

(7) Services will be offered statewide. Service area map - See Attachment C.

- (8) Current financial statements - See Attachment D.

Applicant is not a publicly traded company and therefore does not have annual reports or reports to shareholders.

Applicant's tariff - See Attachment E.

- (9) Questions, comments and notices concerning this application should be addressed to:

Ms. Judy Dobrei  
Atlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3533  
Fax: (714) 789-1030

#### **Rendering and Payment of Bills**

Customer bills are issued monthly. The customer will receive its bill on or about the same day of each month. Months are presumed to have 30 days. The billing date is dependent on the billing cycle assigned to the customer. Each bill contains monthly recurring charges billed in advance, usage charges billed in arrears, and the last date for timely payment.

Bills are due and payable as specified on the bill. Bills may be paid by mail or in person at the business office of the Carrier or an agency authorized to receive such payment. All charges for service are payable only in United States currency. Payment may be made by cash, check, money order, or cashier's check.

Customer payments are considered prompt when received by Performance or its agent by the due date on the bill. The due date is 21 days after the bill is rendered and is designated by the due date on the customer's bill. The customer shall have at least 21 days from the rendition of a bill to timely pay the charges stated.

If a customer's service has been discontinued within the past 12 months or if the customer incurs usage charges during a billing period which are equal to at least 200% of the amount of the customer's deposit or guarantee, payment may be demanded for the usage charges by a telephone call to the customer, followed by written notification of such demand sent by first class mail.

If the usage charges remain unpaid: (i) for five days from the rendition of written notification; or, (ii) after a mutually established late payment arrangement date; or, (iii) 30 days from the date of the bill, the usage charge will be deemed delinquent.

Such charges deemed delinquent may be subject to the lesser of either a late payment charge of 1-1/2% per month, or such other amount allowed by law. This amount will be assessed from the date payment was due.

The Carrier is not responsible for local telephone charges incurred by the customer in gaining access to the carrier's network.

A bill shall not include any previously unbilled charge for service furnished prior to three months immediately preceding the date of the bill, except charges for collect calls, credit card calls, third party calls and "Error file" calls (those which cannot be billed, due to the unavailability of complete billing information to the company) which shall have a six (6) month backbilling period. Backbilling in excess of 12 months will only occur after Commission approval.

Late payment charge - Interest charges of 1 1/2% per month may be assessed on all unpaid balances more than thirty days old.

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Return check charges - A maximum return check charge of \$25.00 shall be assessed for checks returned unpaid for any reason.

Restoration of service following payment related disconnection - Company may charge disconnected customers a \$25.00 reconnection fee per occurrence, plus company may flow through to customer any related fees assessed on Company associated with reestablishing customer's service. (e.g., local exchange carrier fees for reestablishing dedicated access.)

**Customer Service**

Customer access to Applicant's customer service department is via toll free phone line - (800) 843-6882. Customer service is available 24 hours a day, 7 days a week, including holidays. Customers reach an Automated Call Distribution (ACD) system that facilitates timely handling of the customer's inquiry. The customer enters the customer's phone number and then is directed to choose from a varied menu (billing inquiry, service problem, etc.) that allows either automated response (e.g., in the matter of a bill balance) or access to customer service assistance.

- (10) Applicant is filed with the Federal Communications Commission and is offering interstate prepaid calling card service in all 48 continental United States.

Applicant is certified or registered in the following states:

|            |            |          |
|------------|------------|----------|
| California | Kentucky   | New York |
| Colorado   | Michigan   | Ohio     |
| Florida    | Nevada     | Oregon   |
| Hawaii     | New Jersey | Texas    |
| Illinois   | New Mexico | Virginia |

Applicant has not been denied authorization in any jurisdiction.

- (11) Applicant will market its products via the independent agent sales channel and will target small to medium commercial accounts. Service will also be available to residential. Applicant uses no multilevel marketing.
- (12) All of Applicant's services are competitive.

Accordingly, and as evidenced by the foregoing statements and Exhibits, Applicant submits that the necessary technical, managerial, and financial resources, and ability to offer its services and conduct its business for the benefit of the public, is satisfactorily demonstrated by this filing.

WHEREFORE, on the basis of the information provided in this application and the Exhibits A-E appended hereto, Applicant respectfully requests that the Commission grant the authority requested herein.

Respectfully submitted,  
for Atlas Equity, Inc., d/b/a Performance Telecom

Michael W. Minar  
Consultant for Atlas Equity, Inc., d/b/a Performance Telecom

Dated: November 25, 1997

ATTACHMENT A

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# State of California

## SECRETARY OF STATE

### CERTIFICATE OF STATUS DOMESTIC CORPORATION

I, *BILL JONES*, Secretary of State of the State of California, hereby certify:

That on the 1ST day of JUNE, 19 88,

ATLAS EQUITY, INC.

became incorporated under the laws of the State of California by filing its Articles of Incorporation in this office; and

That no record exists in this office of a certificate of dissolution of said corporation nor of a court order declaring dissolution thereof, nor of a merger or consolidation which terminated its existence; and

That said corporation's corporate powers, rights and privileges are not suspended on the records of this office; and

That according to the records of this office, the said corporation is authorized to exercise all its corporate powers, rights and privileges and is in good legal standing in the State of California; and

That no information is available in this office on the financial condition, business activity or practices of this corporation.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JUNE 4, 1997



*Bill Jones*

Secretary of State



11448  
22225

1437871

ENDORSED  
FILED  
in the office of the Secretary of State  
of the State of California

ARTICLES OF INCORPORATION  
OF  
ATLAS EQUITY, INC.

JUN 1 1988

MARCH FONG EU, Secretary of State

I

The name of this corporation is Atlas Equity, Inc.

II

The purpose of this corporation is to engage in any lawful act of activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

The name and address in the State of California of this corporation's initial agent for service of process is:

Peter D. Knight

18881 Von Karman, Suite 1270, Irvine, California 92715

IV

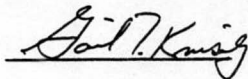
This corporation is authorized to issue only one class of shares of stock; And, the total number of shares which this corporation is authorized to issue is 100,000.

Dated: May 31, 1988

  
(Signature of incorporator)

GAIL T. KNISELY

I hereby declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.



0144-5273



State  
of  
California  
SECRETARY OF STATE'S OFFICE

A448184

CORPORATION DIVISION

I, *TONY MILLER*, Acting Secretary of State of the State of California, hereby certify:

That the annexed transcript has been compared with the corporate record on file in this office, of which it purports to be a copy, and that same is full, true and correct.

IN WITNESS WHEREOF, I execute  
this certificate and affix the Great  
Seal of the State of California this

JUN 2 4 1994



*Tony Miller*  
Acting Secretary of State

01445274

204(a)(10) of the California Corporations Code:

- (1) Acts or omissions that involve intentional misconduct or a knowing and culpable violation of law;
- (2) Acts or omissions that an agent believes to be contrary to the best interests of the corporation or the corporation's shareholders or that involve the absence of good faith on the part of that agent;
- (3) Any transaction from which an agent derived an improper personal benefit;
- (4) Acts or omissions that indicate a reckless disregard for an agent's duty to the corporation or the corporation's shareholders in circumstances in which that agent was aware or should have been aware, in the ordinary course of performing that agent's duties, of a risk of serious injury to the corporation or the corporation's shareholders;
- (5) Acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of an agent's duty to the corporation or the corporation's shareholders;
- (6) Transactions between corporation and directors that are prohibited by the provisions of Section 310 of the California Corporations Code;
- (7) Distributions, loans, and guaranties pursuant to the provisions of Section 316 of the California Corporations Code;
- (8) Acts or omissions that occurred prior to the date when the provisions become effective; or
- (9) Acts or omissions made by an officer in that capacity, notwithstanding that such officer is, also, a director or that such officer's actions, if negligent or improper, have been ratified by the directors of the corporation.

VI. NUMBER OF SHAREHOLDER

The corporation's issued and outstanding shares shall be held of record by not more than thirty-five (35) persons. The corporation is a "close" corporation.

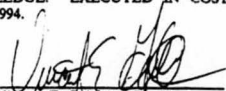
3. The Articles of Incorporation of Atlas Equity, Inc., as amended and restated in this certificate, have been approved by a resolution of the Board of Directors of this corporation dated March 24, 1994.
4. The Restated Articles of Incorporation specified above have been approved

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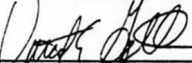
by the required shareholder vote in accordance with the provisions of Section 902 of the California Corporations Code. The corporation has one class of shares designated "common." The total number of outstanding shares entitled to vote with respect to the amendment and restatement of the Articles of Incorporation is ten (10). The percentage vote required entitled to vote is fifty-one percent (51%). The number of shares voting in favor of that amendment and restatement of the Articles of Incorporation was ten (10), which exceeded the vote required.

THE UNDERSIGNED DECLARES UNDER PENALTY OF PERJURY THAT THE MATTERS SET FORTH IN THE FOREGOING CERTIFICATE ARE TRUE OF HIS OWN KNOWLEDGE. EXECUTED IN COSTA MESA, CALIFORNIA ON MARCH 24, 1994.

Date: March 24, 1994

  
\_\_\_\_\_  
Vincent E. Galewick, President

Date: March 24, 1994

  
\_\_\_\_\_  
Vincent E. Galewick, Secretary

67-251-A45B

ATTACHMENT B

SECRETARY OF STATE  
STATE CAPITOL

APPLICATION FOR CERTIFICATE OF AUTHORITY

Pursuant to the provisions of SDCL 47-9-7, the undersigned corporation hereby applies for a certificate of Authority to transact business in the State of South Dakota and for that purpose submits the following statement:

(1) The name of the corporation is Atlas Equity, Inc.  
(Exact corporate name)

(2) If the name of the corporation does not contain the word "corporation", "company", "incorporated" or "limited" or does not contain an abbreviation of one such word, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state is

(3) State where incorporated California Federal Taxpayer ID# 33-0296182

(4) The date of its incorporation is June 1, 1988 and the period of its duration is Perpetual

(5) The address of its principal office in the state or country under the laws of which it is incorporated  
4100 Newport Place, Suite 400, Newport Beach, CA Zip Code 92660

(6) The street address, or a statement that there is no street address, of its proposed registered office in the State of South Dakota is 503 South Pierre Street, Pierre, Zip 57501

and the name of its proposed registered agent in the State of South Dakota at that address is

Corporation Service Company

(7) The purposes which it proposes to pursue in the transaction of business in the State of South Dakota are:  
Resale of long distance telecommunications services

(8) The names and respective addresses of its directors and officers are:

| Name                       | Officer Title             | Street Address  | City         | State     | Zip          |
|----------------------------|---------------------------|---|--------------|-----------|--------------|
| <u>Vincent F. Galewick</u> | <u>President/Director</u> | <u>4100 Newport Place, Suite 400, Newport Beach, CA</u> | <u>92660</u> | <u>CA</u> | <u>92660</u> |
| <u>Michael Cushing</u>     | <u>Vice President</u>     | <u>4100 Newport Place, Suite 400, Newport Beach, CA</u> | <u>92660</u> | <u>CA</u> | <u>92660</u> |
| _____                      | _____                     | _____   | _____        | _____     | _____        |
| _____                      | _____                     | _____   | _____        | _____     | _____        |
| _____                      | _____                     | _____   | _____        | _____     | _____        |
| _____                      | _____                     | _____   | _____        | _____     | _____        |

(9) The aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class is:

| Number of shares | Class         | Series | Par value per share or statement that shares are without par value |
|------------------|---------------|--------|--|
| <u>100,000</u>   | <u>Common</u> | _____  | <u>\$10</u>  |
| _____            | _____         | _____  | _____  |
| _____            | _____         | _____  | _____  |

(10) The aggregate number of its issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class, is:

| Number of shares | Class         | Series | Par value per share or statement that shares are |
|------------------|---------------|--------|--|
| <u>100,000</u>   | <u>Common</u> |        | <u>\$10 without par value</u>                    |
| _____            | _____         | _____  | _____  |
| _____            | _____         | _____  | _____  |

(11) The amount of its stated capital is \$ 423,000

(12) This application is accompanied by a CERTIFICATE OF FACT duly acknowledged by the secretary of state or other officer having custody of corporate records in the state or country under whose laws it is incorporated.

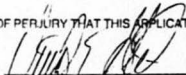
(13) That such corporation shall not directly or indirectly combine or make any contract with any incorporated company, foreign or domestic, through their stockholders or the trustees or assigns of such stockholders, or with any copartnership or association of persons, or in any manner whatever to fix the prices, limit the production or regulate the transportation of any product or commodity so as to prevent competition in such prices, production or transportation or to establish excessive prices therefor.

(14) That such corporation, as a consideration of its being permitted to begin or continue doing business within the State of South Dakota, will comply with all the laws of the said State with regard to foreign corporations.

The application must be signed by the chairman of the board of directors, or by the president or by another officer.

I DECLARE AND AFFIRM UNDER THE PENALTY OF PERJURY THAT THIS APPLICATION IS IN ALL THINGS, TRUE AND CORRECT.

Dated 4-25 1997



(Signature) Vincent E. Galewick

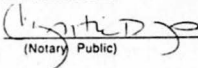
President

(Title)

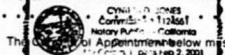
State of California  
County of Orange

On this 30th day of April, 1997, before me Cynthia D. Jones personally appeared Vincent E. Galewick, known to me, or proved to me, to be the President of the corporation that is described in and that executed the within instrument and acknowledged to me that such corporation executed same.

My Commission Expires: 02-02-01

  
(Notary Public)

Notarial Seal



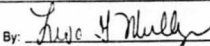
The Notary Public Appointment below must be signed by the registered agent listed in number six.

### CONSENT OF APPOINTMENT BY THE REGISTERED AGENT

I, Lisa Mulligan hereby give my consent to serve as the  
(name of registered agent)

registered agent for Atlas Equity  
(corporate name)

Dated 6/20/97 1997

By:   
(signature of registered agent)

97. 201. 4418.

**ATTACHMENT C**



0144.52.88

PERFORMANCE TELECOM  
 Income Statement  
 Period Ending 12/31/96

|  |                |                       |
|--|----------------|-----------------------|
| <b>Revenue</b>                             |                |                       |
| Calling Card Revenues                      | \$5,743,851.00 |                       |
| Interest Income                            | \$19,196.00    |                       |
| <b>Gross Revenue</b>                       |                | <b>\$5,763,047.00</b> |
| <b>General and Administrative Expenses</b> |                |                       |
| Cost of Sales                              | \$733,027.00   |                       |
| Payroll and Related                        | \$3,475.00     |                       |
| Legal and Professional                     | \$205,219.00   |                       |
| General & Administrative                   | \$1,507,311.00 |                       |
| <b>Total General &amp; Admin</b>           |                | <b>\$2,449,032.00</b> |
| <b>Net Income Before Taxes</b>             |                | <b>\$3,314,015.00</b> |
| <b>Taxes and Extraordinary</b>             |                |                       |
| Income Tax Expense                         | \$800.00       |                       |
| Gain/(Loss) on Sale of Assets              | \$5,182.00     |                       |
| <b>Total Taxes and Extraordinary</b>       |                | <b>\$5,982.00</b>     |
| <b>Net Income (Loss)</b>                   |                | <b>\$3,308,033.00</b> |

For Internal Use Only

PERFORMANCE TELECOM  
Balance Sheet

December 31, 1996

| ASSETS  |             |             |
|---|-------------|-------------|
| Current Assets  |             |             |
| Cash and Cash Equivalents                                 | \$2,452,291 |             |
| Dues from Affiliates                                      | \$124,137   |             |
| Loan Receivable   | \$317,735   |             |
| Total Current Assets                                      |             | \$2,894,163 |
| Other Assets  |             |             |
| Furniture & Equipment, net<br>of accumulated depreciation | \$49,781    |             |
| Security deposits   | (\$45,424)  |             |
| Virtual Office Platform                                   | \$1,144,036 |             |
| Other assets  | \$14,006    |             |
| Total Other Assets  |             | \$1,162,399 |
| Total Assets  |             | \$4,056,562 |
| LIABILITIES AND SHAREHOLDERS'S EQUITY                     |             |             |
| Current Liabilities                                       |             |             |
| Accounts payable  | \$515,109   |             |
| Due to Affiliates   | \$57,950    |             |
| Loan Payable  | \$87,124    |             |
| Other Liabilities   | \$33,316    |             |
| Total Liabilities   |             | \$693,499   |
| Shareholder's Equity                                      |             |             |
| Common stock  | \$2,250     |             |
| Retained earnings   | \$3,360,813 |             |
| Total Shareholders Equity                                 |             | \$3,363,063 |
| Total Liabilities and Equity                              |             | \$4,056,562 |
| Quick Ratio   | 1.67613652  |             |
| Debt/Equity   | 0.20621053  |             |

For Internal Use Only

0144.52.82

**ATTACHMENT D**

ATTACHMENT E

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TITLE SHEETTELECOMMUNICATIONS TARIFF

This tariff contains all descriptions, regulations and effective rates, together with information relating and applicable to the furnishing of services and facilities for telecommunications services provided by Atlas Equity, Inc., d/b/a Performance Telecom ("Performance"). The principal offices for Performance are located at 4100 Newport Place, Suite 400 Newport Beach, CA 92660. This tariff applies to services furnished within the state and copies may be inspected, during normal business hours, at the Company's principal place of business.

---

Issued: September 18, 1997

Effective: \_\_\_\_\_

By:

Vincent E. Galewick  
PresidentAtlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

CHECK SHEET

The sheets listed below, which are inclusive of this tariff, are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original tariff and are currently in effect as of the date at the bottom of this page.

| <u>SHEET</u> | <u>REVISION</u> | <u>SHEET</u> | <u>REVISION</u> |
|--------------|-----------------|--------------|-----------------|
| 1            | Original        | 13           | Original        |
| 2            | Original        | 14           | Original        |
| 3            | Original        | 15           | Original        |
| 4            | Original        | 16           | Original        |
| 5            | Original        | 17           | Original        |
| 6            | Original        | 18           | Original        |
| 7            | Original        | 19           | Original        |
| 8            | Original        | 20           | Original        |
| 9            | Original        | 21           | Original        |
| 10           | Original        | 22           | Original        |
| 11           | Original        | 23           | Original        |
| 12           | Original        |              |                 |

Issued: September 18, 1997

Effective: \_\_\_\_\_

By:

Vincent E. Galewick  
PresidentAtlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

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TABLE OF CONTENTS

|   | <u>Sheet No.</u> |
|---|------------------|
| Cover Page                                    |                  |
| Title Sheet                                   | 1                |
| Check Sheet                                   | 2                |
| Table of Contents                             | 3                |
| Symbols Sheet                                 | 4                |
| Tariff Sheets Format                          | 5                |
| Section 1 - Technical Terms and Abbreviations | 6                |
| Section 2 - Rules and Regulations             | 8                |
| Section 3 - Descriptions of Service           | 22               |

Issued: September 18, 1997

Effective: \_\_\_\_\_

By:

Vincent E. Galewick  
PresidentAtlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

---

SYMBOLS USED IN THIS TARIFF

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

- (D) Delete or Discontinue
- (I) Change related to an increase to a customer's bill
- (M) Moved from another tariff location
- (N) New
- (R) Change resulting in a reduction to a customer's bill
- (T) Change in text or regulation but no change in rate or charge

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Issued: September 18, 1997

Effective: \_\_\_\_\_

By:

Vincent E. Galewick  
President

Atlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500



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TARIFF SHEETS FORMAT

A. Sheet Numbering - Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be Sheet 14.1.

B. Sheet Revision Numbers - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current sheet version on file. For example, the 4th revised Sheet 14 cancels the 3rd revised Sheet 14.

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).1.
- 2.1.1.A.1.(a).1.(1).
- 2.1.1.A.1.(a).1.(1).(1).

D. Check Sheets - When a tariff filing is made, an updated check sheet accompanies the tariff filing. The check sheet lists the sheets contained in the tariff, with a cross reference to the current revision number. When new pages are added, the check sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some pages). The tariff user should refer to the latest check sheet to find out if a particular sheet is the most current on file.

---

Issued: September 18, 1997

Effective: \_\_\_\_\_

By:

Vincent E. Galewick  
President

Atlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

---

**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS**

**Accounting Code:** A multi-digit code which enables a customer to allocate long distance charges to its internal accounts.

**Authorization Code:** A multi-digit code which enables a customer to access Performance network and enables Performance to identify the customer's use for proper billing.

**Business Hours:** The phrase "business hours" means the time after 8:00 A.M. and before 5:00 P.M., Monday through Friday, excluding holidays.

**Carrier:** The term "Carrier" means Performance.

**Company:** The term "Company" means Performance.

**Customer:** See definition under "subscriber".

**Day:** The term "day" means 8:00 A.M. to, but not including, 5:00 P.M. local time at the originating city, Monday through Friday, excluding Company-specific holidays.

**Debit Calling Card:** The term "debit calling card" refers to a calling payment methodology wherein the customer has paid for the ability to make calls in advance of making the call.

**Delinquent or Delinquency:** The terms "delinquent" and "delinquency" mean an account for which payment has not been paid in full on or before the last day for timely payment.

**Exchange Area:** The term "exchange area" means a geographically defined area wherein the telephone industry, through the use of maps or legal descriptions, sets down specified areas where individual telephone exchange companies hold themselves out to provide communication services.

**Holiday:** The term "holiday" means all of the following Company-specific holidays:

- a. New Years Day;
- b. Memorial Day;
- c. Independence Day;
- d. Labor Day;
- e. Thanksgiving Day;
- f. Friday after Thanksgiving Day; and,
- g. Christmas Day.

**Local Access Transport Area ("LATA"):** The phrase "Local Access Transport Area" means a geographical area established by the U.S. District Court for the District of Columbia In Civil Action No. 17-49.

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Issued: September 18, 1997

Effective: \_\_\_\_\_

By:

Vincent E. Galewick  
President

Atlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

---

**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (continued)**

**Local Exchange Carrier/Local Exchange:** This term means a company exclusively providing telecommunications service within a local exchange or LATA.

**Night/Weekend:** The words "night/weekend" mean 11:00 P.M. to, but not including, 8:00 A.M. local time in the originating city, all day on Saturday, and all day Sunday, except from 5:00 P.M. to, but not including 11:00 P.M.

**Nonbusiness Hours:** The phrase "nonbusiness hours" means the time period after 5:00 P.M. and before 8:00 A.M., Monday through Friday, all day Saturday, Sunday, and on holidays.

**Non-day:** The term "non-day" means 5:00 P.M. to, but not including, 11:00 P.M. local time at the originating city, Sunday through Friday and on company-specified holidays except when a lower rate would normally apply.

**Off Peak:** Off Peak time is the time between 5 pm and 11 pm.

**Peak:** Peak time is the time between 8 am and 5 pm Monday through Friday.

**Prepaid Calling Card:** (See "debit calling card")

**Regular Billing:** The words "regular billing" means standard bill sent in the normal Performance billing cycle. This billing consists of one bill for each account assigned to a subscriber.

**Residential Service:** The phrase "residential service" means telecommunication services used primarily as nonbusiness service.

**Subscriber:** The term "subscriber" means the firm, company, corporation, or other entity which contracts for service under this tariff and which is responsible for the payment of charges as well as compliance with Company's regulations pursuant to this tariff. The term "customer" is synonymous with the term "subscriber."

**Switch:** The term "switch" means an electronic device which is used to provide circuit routing and control.

**Timely Payment:** The term "timely payment" means a payment on a customer's account made on or before the due date.

---

issued: September 18, 1997

Effective: \_\_\_\_\_

By:

Vincent E. Galewick  
President

Atlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

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SECTION 2 - RULES AND REGULATIONS

2.1 Undertaking of Performance

2.1.1 Performance provides 24-hour interLATA and IntraLATA (as allowed) telephone services.

2.1.2 Businesses or residential households wishing to obtain presubscribed service are required to sign a completed service order. On Carrier's receipt of the signed form, under normal circumstances, Carrier will accept or reject the order within three business days. The customer will be provided with service, under normal circumstances, within fourteen (14) business days of Carrier's acceptance.

2.2 Establishment and Reestablishment of Credit

2.2.1 Performance reserves the right to examine the credit record and check the references of all applicants and customers.

2.2.2 Negotiations of customer's advance payment shall not itself obligate the Carrier to provide services or continue to provide service, if a later check of applicant's credit record is, in the opinion of the carrier, contrary to the best interest of the Carrier.

---

Issued: September 18, 1997

Effective: \_\_\_\_\_

By:

Vincent E. Galewick  
President

Atlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

---

**SECTION 2 - RULES AND REGULATIONS (continued)****2.3 Advance Payments, Deposits, and Guarantors**

2.3.1 Advance Payments - Performance's prepaid calling cards are the only form of prepayment accepted by Performance.

**2.3.2 Deposits - Presubscribed Services**

2.3.2.A **Requirements:** Where quantifiable evidence exists that applicant or customer payment of valid bills has been less than timely by industry standards, Performance may require, as a condition precedent to Performance providing new service or additional services, an applicant or existing customer to provide a deposit as security for payment of charges. Performance reserves the right to review applicant or customer credit history at anytime to determine if a deposit is required.

2.3.2.B. **Nondiscrimination:** Deposits will not be required by Performance based on race, sex, creed, national origin, marital status, age, number of dependents, condition of physical handicap, source of income, or geographical area of business.

2.3.2.C. **Amount:** The amount of deposit shall not exceed the charges for one month of service based on the customer's average bills during the previous twelve months. The amount of the deposit may be estimated from past toll usage, customer-estimated anticipated usage, or Performance network average toll usage considering the type and nature of the customer's service. The carrier will compute interest on deposits as prescribed by state law, rule or regulation, except no interest will be paid if deposit is held less than a full month.

2.3.2.D. **Refund or Credit Upon Discontinuance:** Upon discontinuance or termination of the service, Performance will credit the deposit to the charges stated on the final bill. The balance, if any, will be returned to the customer within 21 days of rendition of such final bill.

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**SECTION 2 - RULES AND REGULATIONS (continued)**

- 2.3.2.E. Refund or credit After Satisfactory Payment: After prompt and timely payment of all charges for twelve consecutive billing periods, within 30 days, Performance will credit the deposit against charges stated on subsequent bills and refund any balance. Payment of a charge is satisfactory if received prior to the date that the charge becomes delinquent, provided that it is not returned for insufficient funds or closed account. Performance may withhold a refund of a deposit pending resolution of any dispute with respect to charges secured by such deposit.
- 2.4. Method of Service of Notices
- 2.4.1. Unless otherwise provided by these Rules, any notice by the Carrier to the customer may be given either verbally to the customer or to the customer's authorized representative, or by written notice mailed to the customer's last known address.
- 2.4.2. Unless otherwise provided by these Rules, any notice by the customer or Performance authorized representative may be given verbally to the Carrier at the Carrier's business office or by written notice mailed to the Carrier's Business office. Cancellation of service must be by written notice.
- 2.5. Rendering and Payment of Bills
- 2.5.1. Customer bills are issued monthly. The customer will receive its bill on or about the same day of each month. Months are presumed to have 30 days. The billing date is dependent on the billing cycle assigned to the customer. Each bill contains monthly recurring charges billed in advance, usage charges billed in arrears, and the last date for timely payment.
- 2.5.2. Bills are due and payable as specified on the bill. Bills may be paid by mail or in person at the business office of the Carrier or an agency authorized to receive such payment. All charges for service are payable only in United States currency. Payment may be made by cash, check, money order, or cashier's check.
- 2.5.3 Customer payments are considered prompt when received by Performance or its agent by the due date on the bill. The due date is 21 days after the bill is rendered and is designated by the due date on the customer's bill. The customer shall have at least 21 days from the rendition of a bill to timely pay the charges stated.

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**SECTION 2 - RULES AND REGULATIONS (continued)**

- 2.5.4. If a customer's service has been discontinued within the past 12 months or if the customer incurs usage charges during a billing period which are equal to at least 200% of the amount of the customers deposit or guarantee, payment may be demanded for the usage charges by a telephone call to the customer followed by written notification of such demand sent by first class mail. If the usage charges remain unpaid for five days from the rendition of written notification or a mutually established late payment arrangement date or 30 days from the date of the bill, the usage charge will be deemed delinquent. Charges deemed delinquent may be subject to the lesser of either a late payment charge of 1-1/2% per month or such other amount allowed by law. This amount will be assessed from the date payment was due.
- 2.5.5. The Carrier is not responsible for local telephone charges incurred by the customer in gaining access to the carrier's network.
- 2.5.6. A bill shall not include any previously unbilled charge for service furnished prior to three months immediately preceding the date of the bill, except charges for collect calls, credit card calls, third party calls and "Error file" calls (those which cannot be billed, due to the unavailability of complete billing information to the company) which shall have a six (6) month backbilling period. In cases of toll fraud, a backbilling period of no more than three years is applicable.
- 2.5.7. Late payment charge - Interest charges of 1 1/2% per month may be assessed on all unpaid balances more than thirty days old.
- 2.5.8. Return check charges - A minimum return check charge of \$10.00 shall be assessed for checks returned unpaid for any reason.
- 2.5.9. Restoration of service following payment related disconnection - Company may charge disconnected customers a \$25.00 reconnection fee per occurrence, plus company may flow through to customer any related fees assessed on Company associated with reestablishing customer's service. (e.g., local exchange carrier fees for reestablishing dedicated access.)

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**SECTION 2 - RULES AND REGULATIONS (continued)****2.6 Disputed Bills**

- 2.6.1. Any disputed charge must be brought promptly to the attention of Performance by written notification. If such notification is received within thirty (30) days of the customer's receipt of the bill upon which the disputed charge appears, Performance will apply a conditional credit to customer's bill in the amount of the dispute, with the conditional credit continuing pending resolution of the dispute and bearing no late fees. Disputes received beyond 30 days of the bill upon which the disputed charge appears will continue as amounts due and continue to accrue late fees as provided herein. Any disputed amount determined valid will not be assessed late fees.
- 2.6.2. In the case of a billing dispute between the customer and the carrier which cannot be settled to the mutual satisfaction of the parties, the undisputed portion and subsequent bills must be paid on a timely basis, as described in Rule 9, or the service may be subject to disconnection.
- 2.6.3. The customer may request an in-depth investigation into the disputed amount and a review by a Performance manager within 30 days of the disputed bill's billing date.
- 2.6.4. If, after the procedures discussed above, the customer and Performance continue in disagreement about the disputed amount, the customer may appeal to the State or federal regulatory authority for its investigation and decision. If a customer initiates such an investigation, the customer must submit the disputed portion to the State or federal regulatory authority pending completion of the State or federal regulatory authority's investigation.

A consumer may, at any time, contact the South Dakota Public Utilities Commission on any matter regarding company operations. The South Dakota Public Utilities Commission may be contacted, as follows:

South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

Consumer Hotline - (800) 332-1782

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**SECTION 2 - RULES AND REGULATIONS** (continued)

**2.7 Discontinuance and Restoration of Service**

**2.7.1. Discontinuance by Customer**

- 2.7.1.A. A customer may have service discontinued upon ten (10) days written notice to the Carrier. Notices will be deemed received upon actual receipt by the Carrier. Customer remains responsible for payment of all bills for services furnished.
- 2.7.1.B. If a customer cancels his order for service before the service begins, a charge will be levied upon the customer for the nonrecoverable portions of expenditures or liabilities incurred expressly on behalf of the customer by the Carrier.
- 2.7.1.C. No minimum or termination charge will apply if service is terminated because of condemnation, destruction, or damage to the property by fire or other causes beyond the control of the customer.
- 2.7.1.D. Upon termination, pre-subscribed customers may be held responsible for charges thereafter if the customer has not selected an alternative long distance carrier, or the local exchange carrier has not transferred service to the alternative carrier because such customer may continue to receive service from Performance.

**2.7.2. Discontinuance by Performance - Performance may discontinue service under the following circumstances:**

- 2.7.2.A. Nonpayment of any sum due to Performance for service more than 30 days beyond the date of the invoice for such service. In the event Performance terminates service for nonpayment, the customer will be liable for all reasonable costs of collection, including, without limitation, court costs, expenses, and actual attorney fees.

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SECTION 2 - RULES AND REGULATIONS (continued)

2.7 Discontinuance and Restoration of Service (continued)

2.7.2. Discontinuance by Performance (continued)

- 2.7.2.B. A violation of, or failure to comply with, any regulation governing the furnishing of service.
- 2.7.2.C. An order from a court or from another government authority having jurisdiction which prohibits Performance from furnishing service.
- 2.7.2.D. Failure to post a required deposit or guarantee.
- 2.7.2.E. In the event that the customer supplied false or inaccurate information of a material nature in order to obtain service.
- 2.7.2.F. Incurring charges not covered by a deposit or guarantee, and evidencing an intent not to pay such charges when due.
- 2.7.2.G. Any violation of the conditions governing the furnishing of service.
- 2.7.2.H. For lack of use by the customer for three (3) full billing cycles .
- 2.7.2.I. Service may be refused or disconnected in the event of illegal use. Performance may disconnect service for this reason after sending written notice by certified mail, return receipt requested, to the customer's last known mailing address.

2.7.3. Notice for Disconnection - Written notice of the pending disconnection by Performance will be rendered not less than 5 days prior to the disconnection. Notice shall be deemed given upon deposit, first class postage prepaid, in the U.S mail to the customer's last known address. Service may be discontinued during business hours on or after the date specified in the notice of discontinuance. Service will not be discontinued on a day when the offices of Performance are not available to facilitate reconnection of service or on a day immediately preceding such a day.

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SECTION 2 - RULES AND REGULATIONS (continued)

2.7 Discontinuance and Restoration of Service (continued)

2.7.4. Restoration of Service - The customer may restore service by full payment in any reasonable manner, including by personal check. However, Performance may refuse to accept a personal check if a customer's check for payment of service has been dishonored, excepting bank error, within the last twelve months. There is a charge for restoration of service after disconnection. If any equipment has been removed or disconnected the customer will be responsible for a new installation charge to restore service.

2.8 Limitation of Liability

2.8.1. Indemnification - The customer indemnifies and saves Performance harmless against all claims arising out of, including but not limited to, (a) acts or omissions of other companies when their facilities are used in connection with Performance's facilities to provide service; and, (b) claims for libel, slander, or infringement of copyright arising from the material claims for infringement of patents arising from, combining with, or using in connection with, facilities of the Company, apparatus and systems of the customer; and all other claims arising out of any act or omission of the customer in connection with facilities provided by the Company.

2.8.2. Furnishing of Services

2.8.2.A. The Company's obligation to furnish service is dependent upon its ability to secure and retain suitable facilities and rights for the provision of the service without unreasonable expense.

2.8.2.B. Service is furnished only as "Business Service." No "Residential Service" will be furnished by the Company. However, any customer, whether business or residential, may obtain service from the Company subject to the terms and conditions stated in the Company's tariffs.

2.8.3. Transmitting Messages - The Company does not undertake to transmit messages but offers the use of its facilities, where available, for communication between parties subject to the terms and conditions specified in this tariff.

2.8.4. Maintenance and Repair - All costs associated with the maintenance and repair of services furnished by the company will be borne by the Company.

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**SECTION 2 - RULES AND REGULATIONS (continued)****2.8 Limitation of Liability (continued)****2.8.5. Liability of Carrier**

- 2.8.5.A. The liability of the Carrier, if any, for damages arising out of mistake, omission, interruptions, delays, errors, or defects in transmission during the course of furnishing service shall, in no event, exceed an amount equivalent to the charge to the customer for the service during which such mistake, omission, interruption, delay, error, or defect in transmission occurred in excess of 48 hours after notification has been made. The Carrier will not be responsible for any lost profits, consequential damages, or incidental damages of the subscriber or any other party, or for any claim of damage by the subscriber or against the subscriber by any other party. Any mistake, omission, interruption, delay, error, or defect in transmission or service which are caused by or contributed to by the negligence or willful act of the customer, or which arise from facilities or equipment used by the customer, shall not result in the imposition of any liability upon the Carrier.
- 2.8.5.B. Performance shall not be liable for any act, omissions to act, negligence, or the quality of service of any local exchange carrier or other provider whose facilities are used in furnishing any portion of the service received by the customer.
- 2.8.5.C. Performance shall not be liable for any failure of Performance due to causes beyond its control, including but not limited to cable dig-up by third party, acts of God, civil disorder, actions of governmental authorities, actions of civil or military authority, labor problems, national emergency, insurrection, riot, war, fire, flood, and atmospheric conditions or other phenomena of nature, such as radiation. In addition, the Carrier shall not be liable for any failure of Performance due to necessary network reconfiguration, system modifications for technical upgrades, or regulations established by or actions taken by any court or government agency having jurisdiction over the Carrier.

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**SECTION 2 - RULES AND REGULATIONS (continued)****2.8 Limitation of Liability (continued)****2.8.5. Liability of Carrier (continued)**

- 2.8.5.D. Performance shall not be liable for any failure of Performance caused by or the result of, but not limited to, any act or omission by a customer or any entity other than Performance that is furnishing services, facilities, and equipment used in connection with Performance's services or facilities.
- 2.8.5.E. In no event shall the customer have any claims against the Carrier for any fraudulent usage over customer's PBX or other CPE equipment with Direct Inward System Access ("DISA") capability, by an outside caller or employees of the customer.
- 2.8.5.F. Overpayment - The carrier shall not be obligated to refund any overpayment by a customer unless a written claim for such overpayment, together with substantiating evidence which will allow the Carrier to verify such claim, is submitted within one year of the alleged overpayment.
- 2.8.5.G. Disclaimer of Warranties - Except as expressly provided in this tariff, the Carrier makes no expressed or implied understandings, agreements, representations or warranties, including any warranties regarding the merchantability or fitness for a particular purpose.

2.9 Use of Service for Unlawful Purposes - The services tariffed are furnished subject to the condition that they will not be used for any unlawful purposes. Service will not be furnished if any law enforcement agency, acting within its jurisdiction, advises that such services are being used or are likely to be used in violation of the law. If Performance receives other evidence giving reasonable cause to believe that such services are being or are likely to be so used, it will either discontinue or deny the service or refer the matter to the appropriate law enforcement agency.

2.10 Unauthorized Use - Any individual who uses or receives Performance service, other than under the provisions of an accepted application for service and a current customer relationship, shall be liable for both the tariffed cost of the service received and Performance's cost of investigation and collection.

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SECTION 2 - RULES AND REGULATIONS (continued)

## 2.11 Interruption of Service

- 2.11.1. Credit allowance for interruption of service not due to the Company's testing, adjusting or negligence of the Company, or due to customer acts and/or omissions or to the failure of channels or equipment provided by the customer, are subject to the general liability provisions set forth herein. It shall be the obligation of the customer to notify the company immediately of any interruption in service; particularly for an interruption for which a credit allowance is desired. Before giving such notice, the customer shall ascertain that the trouble is not being caused by any action or omission by the customer within the customer's control, or due to customer-provided facilities and/or equipment.
- 2.11.2. For purposes of credit computation, every month shall be considered to have 720 hours.
- 2.11.3. No credit shall be allowed for an interruption of a continuous duration of less than two hours.
- 2.11.4. The customer shall be credited for an interruption of two hours or more at the rate of 1/720th of the monthly charge for the facilities affected for each hour or major fraction thereof that the interruption continues.

Credit Formula:

$$\text{Credit} = A/720 \times B$$

"A" - outage time in hours

"B" - total monthly charge for affected facility

2.12 Information to be Provided to the Public - A copy of this tariff schedule and advice letters will be available for public inspection in the Carrier's business office during regular business hours. For a nominal cost to cover postage and copying fees, upon written request a copy of this tariff will be provided by Carrier's business office.

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SECTION 3 - DESCRIPTION OF SERVICE

## 3.1 Timing of Calls

## 3.1.1 When Billing Charges Begin and Terminate for Phone Calls

The customer's long distance usage charge is based on the actual usage of Performance's network. Usage begins when the called party picks up the receiver (i.e., when 2-way communication is possible). When the called party picks up is determined by hardware answer supervision in which the local telephone company sends a signal to the switch or the software utilizing audio tone detection. When software answer supervision is employed, up to 60 seconds of ringing is allowed before it is billed as usage of the network. A call is terminated when the calling or called party hangs up.

## 3.1.2 Billing Increments

Unless otherwise specified in this tariff, the minimum call duration for billing purposes is 30 seconds for a connected call. Calls are thereafter billed in 6 second increments.

## 3.1.3 Per Call Billing Charges

Billing will be rounded up to the nearest penny for each call.

## 3.1.4 Uncompleted Calls

There shall be no charges for uncompleted calls.

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SECTION 3 - DESCRIPTION OF SERVICE (continued)

3.2 Calculation of Distance

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.

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.

3.3 Minimum Call Completion Rate

A customer can expect a call completion rate (number of calls completed/number of calls attempted) of not less than 90% during peak use periods for all Feature Group D services ("1+" dialing).

3.4 TAXES AND SURCHARGES

In addition to the charges specifically pertaining to Performance services, certain federal, state, and municipal surcharges, taxes, and fees will be applied as separate line items on the customer's bill. These surcharges, taxes and fees are calculated based upon the amount billed to the end user for Performance's intrastate services.

3.5 Rates and Charges

3.5.1

Performance Telecomm offers interLATA 1+ and 800 services through presubscription of the Customers phone number to Performance's network.

3.5.2

Performance Telecomm offers intraLATA services through the 10XXX pattern, and by way of dialing patterns other than 1+.

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**SECTION 3 - DESCRIPTION OF SERVICE** (continued)**3.5.3 PT Flat Rate:**

- a. Dial 1, long distance, switched access, business and residential telephone service.
- b. Direct sales by agents or telemarketed.
- c. MRC: \$4.95 (waived if bundled with My Office Telecard, Voice Activated Telecard or Internet Enhanced Telecard)
- d. Interstate/Intrastate Rate (Continental U.S.): \$.119.
- e. Domestic (including AK, HI, PR and USVI): 18 second minimum, 6 second billing.
- f. International: 30 second minimum, 6 second billing.
- g. Customer's ANI subscribed to IXC's CIC 948 or PT's CIC 5177.
- h. Customer's ANI to be subscribed on FG D circuits.
- i. Customer subscribed for IntraLATA service where available.
- j. All rates tariffed where required.
- k. All customer's ANI are subscribed to service with a signed LOA and /or independent third party verification.
- l. Customers may contact PT's customer service via a toll free 800 number (800) 843 6882.

**3.5.4 PT One Plus:**

- a. Dial 1, long distance, switched access, business and residential telephone service.
- b. Direct sales by agents or telemarketed.
- c. MRC: \$0.00.
- d. Interstate Rate: Off Peak \$.099, Peak \$.235
- e. Time of day: Off Peak = Evening and Night/Weekend; Peak = Daytime, as noted in Section 3.4 herein.
- f. Domestic (including AK, HI, PR and USVI): 18 second minimum, 6 second billing.
- g. International: 30 second minimum, 6 second billing.
- h. Customer's ANI subscribed to IXC's CIC 948 or PT's CIC 5177.
- i. Customer's ANI to be subscribed on FG D circuits.
- j. Customer subscribed for IntraLATA service where available.
- k. All rates tariffed where required.
- l. All customer's ANI are subscribed to service with a signed LOA and /or independent third party verification.
- m. Customers may contact PT's customer service via a toll free 800 number (800) 843 6882.

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**SECTION 3 - DESCRIPTION OF SERVICE** (continued)**3.5.5 PT Phone Plus:**

- a. Dial 1, long distance, switched access, business and residential telephone service.
- b. Direct sales by agents or telemarketed.
- c. MRC: \$0.00.
- d. Interstate Rate: Off Peak \$.139, Peak \$.239
- e. Time of day: Off Peak = Evening and Night/Weekend; Peak = Daytime, as noted in Section 3.4 herein.
- f. Domestic (including AK, HI, PR and USVI): 1 minute minimum, 6 second billing.
- g. International: 1 minute minimum, 6 second billing.
- h. Customer's ANI subscribed to IXC's CIC 948 or PT's CIC 5177.
- i. Customer's ANI to be subscribed on FG D circuits.
- j. Customer subscribed for IntraLATA service where available.
- k. All rates tariffed where required.
- l. All customer's ANI are subscribed to service with a signed LOA and/or independent third party verification.
- m. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).

**3.5.6 PT 800 PIN:**

- a. Dedicated, 800/888 inbound service with a 4 digit PIN, business and residential telephone service.
- b. Direct sales by agents or telemarketed.
- c. MRC: \$3.50.
- d. Set up fee: \$ 1 0.00 (waived with Dial 1 service).
- e. Transportability Fee: Not Applicable
- f. Vanity Number Fee: Not Applicable
- g. Directory Listing Fee: \$15.00 a month
- h. Interstate Rate: Off Peak \$.170, Peak \$.220
- i. Time of day: Off Peak = Evening and Night/Weekend; Peak = Daytime, as noted in Section 3.4 herein.
- j. Domestic (including AK, HI, PR and USVI): 30 second minimum, 6 second billing.
- k. International origination is Canada only.
- l. Customer selects ANI (must be a Plain Old Telephone Service, POTS, number) for termination.
- m. The service is a shared 800/888 service. The number and pin are not transportable. Vanity numbers are not available.
- n. All rates tariffed where required.
- o. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- p. Not a stand alone product, must be ordered in conjunction with Dial 1 service.

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**SECTION 3 - DESCRIPTION OF SERVICE** (continued)**3.5.7 PT 800 Plus:**

- a. Dial 1, 800/888 inbound service, switched access, business and residential telephone service.
- b. Direct sales by agents or telemarketed.
- c. MRC: \$10.00.
- d. Setup fee: \$ 1 0.00 (waived with Dial 1 service).
- e. Transportability Fee: \$ 1 0.00 (waived with Dial 1 service)
- f. Vanity Number Fee: \$50.00
- g. Directory Listing Fee: \$15.00 a month
- h. Interstate Rate: Off Peak \$.160 a minute, Peak \$.190 a minute
- i. Time of day: Off Peak = Evening and Night/Weekend; Peak = Daytime, as noted in Section 3.4 herein.
- j. Domestic (including AK, HI, PR and USVI): 30 second minimum, 6 second billing.
- k. International origination is Canada only.
- l. Customer selects ANI (must be a Plain Old Telephone Service, POTS, number) for termination.
- m. All rates tariffed where required.
- n. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).

**3.5.8 PT Standard Telectrad:**

- a. Dedicated 800 access calling card billed to the customer's Dial account.
- b. MRC: \$0.00
- c. Interstate/Intrastate Rate (Continental U.S.): \$.250 a minute, \$.169 a minute from a ANI subscribed to PT's Dial 1 service.
- d. Service can originate from any telephone that allows 800/888 dialing.
- e. All rates tariffed where required.
- f. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- g. Voice Mail Box available from customer's ANI by having the LEC forward ring no answer and busy calls to Mail Box.
- h. Domestic and international: 1 minute minimum, 6 second billing.
- i. Not a stand alone product, must be ordered in conjunction with Dial 1 service.

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**SECTION 3 - DESCRIPTION OF SERVICE** (continued)**3.5.9 PT Enhanced Telecard:**

- a. Dedicated, personalized, 800/888 plus PIN (4 digit) access calling card billed to the customer's Dial 1 account.
- b. MRC: \$10.00 with 800 PIN access
- c. Interstate/Intrastate Rate (Continental U.S.): \$.250 a minute, \$.169 a minute from a ANI subscribed to PT's Dial 1 service.
- d. Service can originate from any telephone that allows 800/888 dialing.
- e. All rates tariffed where required.
- f. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- g. Domestic and international: 1 minute minimum, 6 second billing.
- h. Features include: voice mail, subscriber finder, forward to pager, fax library and fax mail.

**3.5.10 PT Voice Telecard:**

- a. Dedicated, personalized 800/888 plus PIN or 800/88 access, voice activated, calling card billed to the customer's Dial 1 account.
- b. MRC: \$15.00 with 800 PIN (4 digit) access, \$25.00 with 800/888 access.
- c. Interstate/Intrastate Rate (Continental U.S.): \$.230 a minute, \$.169 a minute from a ANI subscribed to PT's Dial 1 service.
- d. Service can originate from any telephone that allows 800/888 dialing. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- e. Domestic and international: 1 minute minimum, 6 second billing.
- f. Features include: Voice activated, personal telephone book, voice mail, group mail, subscriber follow me, forward to pager, fax library and fax mail.

**3.5.11 PT Internet Telecard:**

- a. Dedicated, personalized 800/888 plus PIN or 800/888 access, voice activated, calling card billed to the customer's Dial 1 account.
- b. MRC: \$20.00 with 800 PIN (4 digit) access, \$30.00 with 800/888 access.
- c. Interstate/Intrastate Rate (Continental U.S.): \$.230 a minute, \$.169 a minute from a ANI subscribed to PT's Dial 1 service.
- d. Service can originate from any telephone that allows 800/888 dialing.
- e. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- f. Domestic and international: 1 minute minimum, 6 second billing.
- g. Features include: Voice activated, personal telephone book, voice mail, group mail, subscriber follow me, forward to pager, fax library, e-mail, e-mail to fax conversion, e-mail pager notification and fax mail.

Issued: September 18, 1997

Effective: \_\_\_\_\_

By: \_\_\_\_\_

Vincent E. Galewick  
PresidentAtlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

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**SECTION 3 - DESCRIPTION OF SERVICE** (continued)**3.5.12 PT Debit Card - Red:**

- a. Dedicated 800 access debit card paid in advance of usage.
- b. Interstate/Intrastate Rate (Continental U.S.): \$.170 a minute
- c. Service can originate from any telephone that allows 800/888 dialing.
- d. All rates tariffed where required.
- e. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- f. Domestic and international: 1 minute minimum, 6 second billing.
- g. Card must be used within one year of turn up. At one year the unused portion of the card will be will become an asset of PT.
- h. Retail price and cost per minute for Continental U.S. usage printed on each card.

**3.5.13 PT Debit Card - White:**

- a. Dedicated 800 access debit card paid in advance of usage.
- b. Interstate/Intrastate Rate (Continental U.S.): \$.250 a minute
- c. Service can originate from any telephone that allows 800/888 dialing.
- d. All rates tariffed where required.
- e. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- f. Domestic and international: 1 minute minimum, 6 second billing.
- g. Card must be used within one year of turn up. At one year the unused portion of the card will be will become an asset of PT.
- h. Retail price and cost per minute for Continental U.S. usage printed on each card.

**3.5.14 PT Debit Card - Blue:**

- a. Dedicated 800 access debit card paid in advance of usage.
- b. Interstate/Intrastate Rate (Continental U.S.): \$.330 a minute
- c. Service can originate from any telephone that allows 800/888 dialing.
- d. All rates tariffed where required.
- e. Customers may contact PT's customer service via a toll free 800 number (800 843 6882).
- f. Domestic and international: 1 minute minimum, 6 second billing.
- g. Card must be used within one year of turn up. At one year the unused portion of the card will be will become an asset of PT.
- h. Retail price and cost per minute for Continental U.S. usage printed on each card.

Issued: September 18, 1997

Effective: \_\_\_\_\_

By: \_\_\_\_\_

Vincent E. Galewick  
PresidentAtlas Equity, Inc., d/b/a Performance Telecom  
4100 Newport Place, Suite 400  
Newport Beach, CA 92660  
Phone: (714) 752-3500

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF )  
ATLAS EQUITY, INC., D/B/A PERFORMANCE )  
TELECOM FOR A CERTIFICATE OF )  
AUTHORITY TO PROVIDE )  
TELECOMMUNICATIONS SERVICES IN )  
SOUTH DAKOTA )

ORDER GRANTING  
CERTIFICATE OF  
AUTHORITY  
  
TC97-168

On October 23, 1997, the Public Utilities Commission (Commission), in accordance with SDCL 49-31-3 and ARSD 20:10:24.02, received an application for a certificate of authority from Atlas Equity, Inc., d/b/a Performance Telecom (Atlas).

Atlas proposes to offer intra and interLATA interexchange telecommunications services as a reseller. Atlas does not own or operate any facilities in South Dakota. Services will also include inbound toll free service, phone cards and debit cards. A proposed tariff was filed by Atlas. The Commission has classified long distance service as fully competitive.

On October 30, 1997, the Commission electronically transmitted notice of the filing and the intervention deadline of November 14, 1997, to interested individuals and entities. No petitions to intervene or comments were filed and at its regularly scheduled December 18, 1997, meeting, the Commission considered Atlas' request for a certificate of authority. Commission Staff recommended granting a certificate of authority.

The Commission finds that it has jurisdiction over this matter pursuant to Chapter 49-31, specifically 49-31-3 and ARSD 20:10:24.02 and 20:10:24.03. The Commission finds that Atlas has met the legal requirements established for the granting of a certificate of authority. Atlas has, in accordance with SDCL 49-31-3, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. The Commission approves Atlas' application for a certificate of authority. As the Commission's final decision in this matter, it is therefore

ORDERED, that Atlas' application for a certificate of authority is hereby granted. It is

FURTHER ORDERED, that Atlas shall file informational copies of tariff changes with the Commission as the changes occur.

Dated at Pierre, South Dakota, this 7<sup>th</sup> day of January, 1998.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By Arlene Kalso

Date 1/9/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nilson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner

0144.52.110

## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

### CERTIFICATE OF AUTHORITY

To Conduct Business As A Telecommunications Company  
Within The State Of South Dakota

Authority was Granted December 18, 1997  
Docket No. TC97-168

*This is to certify that*

**ATLAS EQUITY, INC., D/B/A PERFORMANCE TELECOM**

*is authorized to provide telecommunications services in South Dakota.*

This certificate is issued in accordance with SDCL 49-31-3 and ARSD 20 10 24 02, and is subject to all of the conditions and limitations contained in the rules and statutes governing its conduct of offering telecommunications services

Dated at Pierre, South Dakota, this 7<sup>th</sup> day of January, 1998.

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION:**



*James A. Burg*  
\_\_\_\_\_  
JAMES A. BURG, Chairman

*Pam Nelson*  
\_\_\_\_\_  
PAM NELSON, Commissioner

*Laska Schoenfelder*  
\_\_\_\_\_  
LASKA SCHOENFELDER, Commissioner