

**MILLER  
ISAR** INC.  
REGULATORY CONSULTANTS

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RECEIVED

JUN 16 2006

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

ANDREW O. ISAR

7901 SKANSIE AVENUE,  
SUITE 240  
GIG HARBOR, WA 98335  
TELEPHONE: 253.851.6700  
FACSIMILE: 253.851.6474  
HTTP://WWW.MILLERISAR.COM

Via Overnight Delivery

June 15, 2006

Ms. Pam Bonrud  
Executive Secretary  
South Dakota Public Utilities Commission  
State Capitol Building, 1st Floor  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RE: 360networks (USA) inc. Application for a Certificate of Public Convenience and Necessity

Dear Ms. Bonrud:

Enclosed for filing with the South Dakota Public Utilities Commission ("Commission"), are an original and three (3) copies of 360networks (USA) inc.'s ("360") *Application for a Certificate of Authority to Provide Facilities-Based Local Exchange Access Services* within the State of South Dakota ("Application") and proposed tariff. As the Application seeks local exchange authority, no filing fee is included.

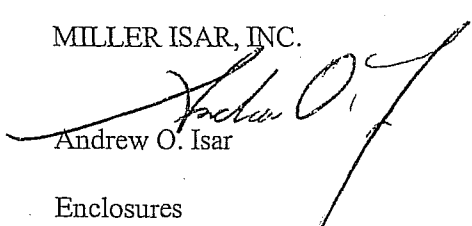
Exhibit G to the Application contains a copy of the financial statements as required by Commission rules in a sealed envelope, labeled "Confidential." The Company requests that the Commission treat the financials as confidential information, to be reviewed by Commission staff only in the performance of their governmental duties, and not released to the public.

Please acknowledge receipt of this filing by file-stamping and returning the copy of this transmittal letter in the self-addressed, postage-paid envelope provided for this purpose.

Thank you for your attention to this matter. Questions regarding this filing may be directed to the undersigned.

Sincerely,

MILLER ISAR, INC.

  
Andrew O. Isar

Enclosures

Regulatory Consultants to  
360networks (USA) inc.

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

JUN 16 2006

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

In the Matter of the Application )  
of 360networks (USA) inc. )  
for a Certificate of Authority to Provide )  
Facilities-Based )  
Local Exchange Access Services )  
in the State of South Dakota. )

Docket No. \_\_\_\_\_

APPLICATION

360networks (USA) inc., (“Applicant”), by its undersigned regulatory consultants, and pursuant to SDCL 49-31-3 and ARSD §20:10:32:03, hereby applies to the South Dakota Public Utilities Commission (“Commission”) for a Certificate of Authority to provide facilities-based and resold local exchange access service throughout the State of South Dakota. In support of its Application, Applicant states as follows:

(1) IDENTIFICATION OF APPLICANT

Applicant's name, address, telephone number facsimile number, E-mail address are:

360networks (USA) inc.  
867 Coal Creek Circle  
Suite 160  
Louisville, CO 90027  
Telephone: 303.854.5000  
Facsimile: 303.854.5100  
E-mail: Denver.reception2@360.net  
Web Address: www.360.net

Applicant is a privately-held corporation.

(2) OWNERSHIP INFORMATION

The full name and business address of each corporate officer and director are as follows:

Directors	Officers	Titles	Address
Rob Frasene	Rob Frasene	President	867 Coal Creek Circle/Suite 160/Louisville, CO 80027
	Chris Mueller	CFO	867 Coal Creek Circle/Suite 160/Louisville, CO 80027
	Tony Oswald	VP Finance	867 Coal Creek Circle/Suite 160/Louisville, CO 80027
	Gary Ray	VP, Co-GC, Secretary	867 Coal Creek Circle/Suite 160/Louisville, CO 80027
	Ron Gustafson	VP, Co-GC	2101 4th Avenue, Suite 2000, Seattle, WA 98121
	Liza Dennehy	VP Operations	130 N. Main St., Butte, MT 59701

(3) SERVICE NAME

Applicant will provide local exchange access services under its own name, 360networks (USA) inc., in the State of South Dakota.

(4) CORPORATE INFORMATION

(a) Applicant's will not retain a physical office in the State of South Dakota.

Applicant's Registered Agent in the State of South Dakota is:

CT Corporation  
319 South Coteau Street  
Pierre, SD 57501

(b) Applicant is a wholly owned subsidiary of 360networks holdings (USA) inc.

(c) Applicant is a privately-held corporation organized under the laws of the State of Nevada on June 12, 1998. A copy of Applicant's Articles of Incorporation are attached hereto at **Exhibit A**.

(d) Applicant is authorized to conduct business in South Dakota as a foreign corporation. A copy of Applicant's certificate of good standing from the South Dakota Secretary of State is attached hereto as **Exhibit B**.

(5) APPLICANT'S EXPERIENCE IN PROVIDING TELECOMMUNICATIONS SERVICE

Applicant has extensive telecommunications experience. Applicant has been authorized to provide interexchange service in 44 of the 50 states. Applicant currently provides facilities-based (private-line) long distance telecommunications services in Arizona, California, Colorado, Illinois, Indiana, Iowa, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming. Applicant is also authorized to offer facilities-based local exchange telecommunications services in the States or jurisdictions of Alabama, Connecticut, Colorado, Delaware, the District of Columbia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Applicant maintains resale local exchange authority in Florida and Michigan. A listing of certifications granted and the date of certification is attached hereto as **Exhibit C**. Please also refer to paragraph 9(a), *Infra*.

(6) APPLICANT'S AFFILIATES, SUBSIDIARIES, AND PARENT CORPORATIONS

Applicant is a wholly owned subsidiary of 360networks holdings (USA) inc. Applicant maintains two subsidiaries, 360networks (USA) of Virginia Inc., and 360networks LLC. Applicant's subsidiaries are state-specific entities. A corporate diagram is attached hereto at **Exhibit D**.

(7) APPLICANT'S PROPOSED SERVICES

(a) – (d) Applicant proposes to provide competitive local exchange access (network) services including switched access and transport, to commercial interconnecting carriers

throughout South Dakota. Applicant's services will be available to subscribers twenty-four hours per day, seven days per week, at rates, terms and conditions established by Applicant and reflected in Applicant's proposed tariff, attached hereto at Exhibit E. Services will be offered and provided in accordance with applicable South Dakota laws and all Commission rules and regulations.

Applicant plans to deploy a dedicated network facilities and switching equipment in the State of South Dakota consisting of high capacity broadband facilities and switching equipment. Such facilities and equipment are to be used exclusively for wholesale carriers who interconnect with Applicant's network and/or use Applicant's network for transporting data and communications on behalf of the subscribing carriers' end users. Applicant's network may be supplemented through resale of incumbent carrier services and/or leasing portions of incumbent networks where Applicant does not maintain, nor is deploying facilities, under commercial and interconnection agreements. Applicant is not currently providing any local exchange services within the State of South Dakota. Applicant is prepared to begin providing services upon grant of the instant Application.

(8) GEOGRAPHIC AREAS OF SERVICE

Applicant initially intends to provide local exchange access service in the service area currently served by Qwest Communications Corporation and subsequently throughout the State of South Dakota.

(9) TECHNICAL COMPETENCE

(a) Applicant maintains a high degree of technical competence and extensive experience in providing local exchange access services throughout the U.S. A description of the education and managerial and technical experience of Applicant's senior management personnel

who will oversee the proposed local exchange services is attached hereto at **Exhibit F**.

(b) An account manager is assigned to each carrier. The account manager assumes full responsibility for addressing carrier needs and issues, including billing issues. Applicant will bill customers directly for service. Otherwise, should Applicant's customer service representatives be contacted, upon contacting Applicant by telephone via Applicant's toll free number,<sup>1</sup> the Customer's first contact is with Applicant's Customer Service personnel, who are available twenty-four (24) hours per day. Customer Service representatives will review the customer's complaint or issue and attempt to resolve the problem to the Customer's satisfaction. Customer's account manager will also be contacted by the Customer Service representative to assist the Customer. If the Customer is not satisfied with the resolution, the Customer is connected with Applicant's Customer Service Manager.

Customer complaints may also be submitted in writing to Applicant's Customer Service Department at 867 Coal Creek Circle Suite 160, Louisville, CO 80027. Applicant endeavors to contact the Customer within one week of receipt of a written complaint and conduct its investigation as quickly as possible thereafter. Customers who are not satisfied with Applicant's suggested resolution may be directed to the Customer Service Manager, as set forth above, and are informed of their right to contact the Commission if they remain dissatisfied with Applicant's suggested resolution of the Customer's complaint.

Additional details regarding Applicant's customer complaint resolution process may be found in Applicant's tariff.

(10) ACCESS TO EMERGENCY SERVICES

Applicant's offerings are limited to the provision of network switching and transport for purposes of transmitting data and telecommunications for local exchange carrier subscribers.

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<sup>1</sup> 877.993.4237

Applicant's carrier subscribers will be responsible for the coordination of 911 access, end user presubscribed interexchange carrier routing, and the provision of directory assistance, operator services, and telecommunications relay service access. For purposes of transport of 911 emergency calls, Applicant has contracted with Intrado (<http://www.intrado.com>) a company which specializes in providing 911/E911 operations support and routing technology to local exchange carriers, to provide E911 service to Applicant's wholesale Customers. All end users will be required to provide the location from which a call is being made as a condition of service and to update such information in the event their location changes. All E911 calls received by 360 will be routed to the appropriate public switched access point, either automatically or, in the rare instance where location information is not available, manually through an emergency call relay center.

(11) FINANCIAL INFORMATION

(a), (b) Applicant's financial statements for the most recent 12 month period are attached hereto at **Exhibit F**. Applicant respectfully requests confidential treatment of its financial information and has filed this information under seal, accordingly. A copy of Applicant's parent corporation's most recent public financial statements are also attached hereto at Exhibit F.

(12) INTERCONNECTING CARRIERS

(a) Applicant has not yet identified interconnecting carriers. Applicant plans to interconnect with Qwest. Any local exchange carrier currently authorized by the Commission to provide local exchange services will be able to interconnect to Applicant's network. Such local exchange carriers are a matter of record with the Commission.

(b) Negotiations for interconnection of service have not yet been initiated. Applicant

anticipates negotiation of agreements within three months following a grant of the instant application.

(c) No request for interconnection with any local exchange carrier has been initiated.

(13) TARIFF

Applicant's proposed local exchange access service, including service rates terms, and conditions, is attached hereto at **Exhibit E**.

(14) COST SUPPORT

Applicant has calculated the cost of access based on a weighted composite average of Qwest local switching and transport rates as set forth in Qwest's South Dakota Access Service Tariff, based on projected traffic transported over Applicant's network.

(15) MARKETING PLAN

Applicant plans to market its services through direct contact with state carriers. Applicant will use in house sales professionals. Applicant does not engage sales agents. As network access is a highly specialized service that requires customer-specific network solutions, Applicant does not maintain generalized brochures.

(16) RURAL TELEPHONE SERVICE

Applicant will not provide retail local exchange services in rural telephone company areas. The provision of wholesale local exchange access network services to rural telephone companies and carriers duly authorized to operate in rural telephone company service areas should not subject Applicant to the provisions of §20:10:32:15.

(17) APPLICANT'S SERVICE IN OTHER STATES

Please refer to response in paragraph 5, *Supra*. Applicant has never been denied registration or certification and remains in good standing in each state where Applicant maintains



regulatory authority.

(18) APPLICANT'S CONTACT INFORMATION

Correspondence and communications regarding this Application may be directed to:

Andrew O. Isar  
Miller Isar, Inc.  
7901 Skansie Avenue, Suite 240  
Gig Harbor, Washington 98335  
Telephone: 253.851.6700  
Facsimile: 253.851.6474  
E-Mail: [aisar@millerisar.com](mailto:aisar@millerisar.com)

with a copy to:

Ron Gustafson  
360networks (USA) inc.  
2401 4th Avenue, 11th floor  
Seattle, Washington 98121  
Telephone: 206.239.4035  
Facsimile: 866.728.7703  
E-Mail: [Gustafson@360.net](mailto:Gustafson@360.net)

and to:

Charles Forst  
360networks (USA) inc.  
867 Coal Creek Circle/Suite 160  
Louisville, CO 80027  
Telephone 303.854.5210  
Facsimile: 303.854.5100  
Electronic Mail: [Charles.Forst@360.net](mailto:Charles.Forst@360.net)

Correspondence and communications concerning on-going regulatory matters including customer complaints should be directed to Mr. Forst.

(19) BILLING

Applicant renders monthly bills to interconnecting carrier in accordance with established company rates, as set forth in customer contracts. Bills are due upon receipt and considered delinquent and subject to service termination if not paid within 30 days. Applicant avers to generally follow the requirements for service termination pursuant to Commission rule

§20:10:32:13, to the extent applicable to its provision of exchange access services.

(20) SOLICITATION OF CUSTOMERS

Applicant proposes to provide local exchange access services to other carriers in South Dakota. Applicant will not serve presubscribed retail customers. The provisions of unauthorized account transfer regulations including 47 C.F.R. §64.1100 *et seq.* and relevant state regulations are inapplicable to Applicant's proposed services, accordingly.

(21) UNAUTHORIZED ACCOUNT SWITCHING AND CHARGE COMPLAINTS

Applicant has not been the subject of state or federal, commission complaints regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered.

(22) REQUEST FOR WAIVERS

Applicant proposes to provide exchange access services to interconnecting carriers exclusively. Rules governing the provision of retail services to include requirements for account verification, billing, and service termination applicable to retail subscribers, *e.g.* §§20:10:07 through 20:10:10 do not apply to the provision of Applicant's local exchange access service, accordingly. Applicant further requests waiver of §20:10:32:15 regarding the provision of service in rural areas. The Eligible Telecommunications Carrier obligations set forth therein are predicated on the provision of retail services, which Applicant will not provide. Applicant expressly acknowledges that waiver of rules applicable to the provision of retail local exchange services will apply exclusively to Applicant's provision of exchange access services. Applicant acknowledges further that the regulations which Applicant requests be waived would apply fully to Applicant, should Applicant ever elect to provide retail local exchange services.

(23) FEDERAL TAX IDENTIFICATION NUMBER

Applicant's federal tax identification number is 84-1496451.

(24) ADDITIONAL INFORMATION

Applicant submits the following reasons in support of its belief that the public interest will be served by the approval of this Application:

(1) Applicant's proposed services are developed to provide alternative network facilities for retail local exchange carriers.

(2) While providing its customers with cost advantages realized by the network access, Applicant's service will necessarily utilize existing carrier communications facilities more efficiently through increased usage and provide greater revenues for local exchange carriers by way of additional exchange access through other carriers.

(3) Commission approval of this Application will bring the following long-term benefits to the public:

- (a) greater value to customers through lower priced, better quality network services;
- (b) innovative network services and routing;
- (c) increased carrier choice in exchange access services utilizing advanced technology;
- (d) efficient use of existing telecommunications resources as well as increased diversification and reliability in South Dakota networks; and
- (e) an additional tax revenue source for the State of South Dakota.

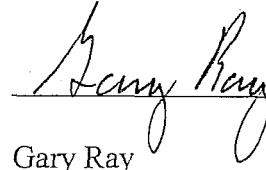
Wherefore, 360networks (USA) inc. respectfully requests that the Commission grant the instant Application, thereby conferring on 360networks (USA) inc. authority to provide facilities-based and resold local exchange access services in South Dakota.

(signature on following page)

Respectfully submitted, this 13 day of June, 2006.

360networks (USA) inc.

By:



Gary Ray

Vice President and General Counsel  
867 Coal Creek Circle, Suite 160  
Louisville, CO 80027  
Telephone: 303.854.5000

Andrew O. Isar  
Miller Isar, Inc.  
7901 Skansie Avenue, Suite 240  
Gig Harbor, WA 98335  
Telephone: 253.851.6700  
Facsimile: 253.851.6474  
E-Mail: [aisar@millerisar.com](mailto:aisar@millerisar.com)

Regulatory Consultants for  
360networks (USA) inc.

VERIFICATION OF APPLICANT

STATE OF COLORADO )  
 ) ss.  
COUNTY OF BOULDER )

I, Gary Ray, being first duly sworn and deposed, state that I am Vice President and General Counsel of 360networks (USA) inc., and am authorized to make this Verification on its behalf.

The statements in the foregoing Application are true of my own knowledge, except as to matters which are stated on information on belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 13 June, 2006 at Louisville, Colorado

By: Gary Ray

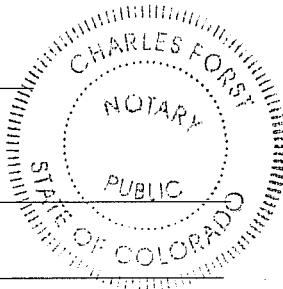
Gary Ray  
Vice President and General Counsel  
867 Coal Creek Circle, Suite 160,  
Louisville, CO 80027  
Telephone: 303.854.5000

Subscribed and sworn to before me this 13<sup>th</sup> day of June, 2006.

CLF  
Notary Public in and for the State  
of Colorado, residing at:  
1000 S. Logan

Denver, CO

Commission Expires 5/9/09



BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Application )  
of 360networks (USA) inc. )  
for a Certificate of Authority to Provide ) Docket No. \_\_\_\_\_  
Facilities-Based )  
Local Exchange Access Services )  
in the State of South Dakota. )

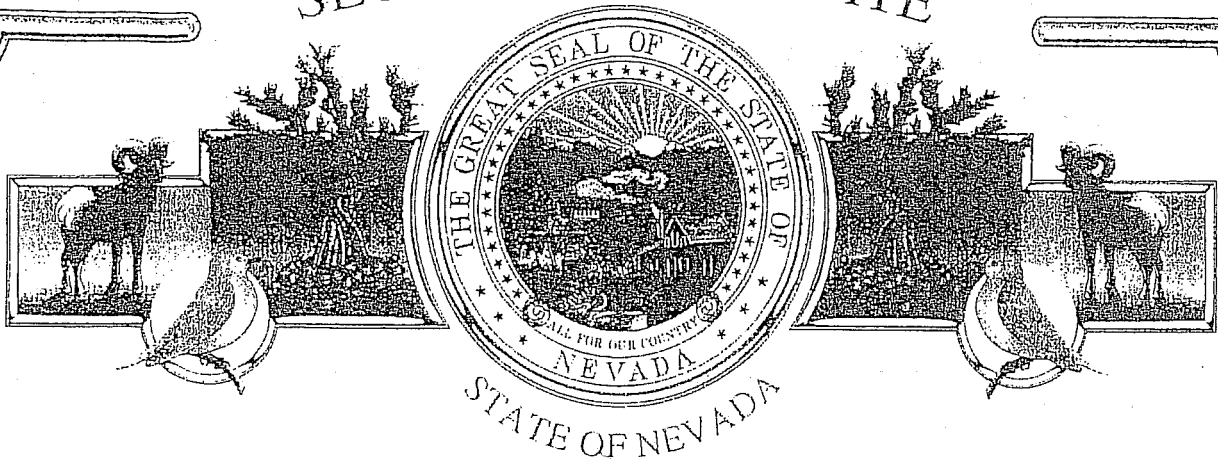
LIST OF EXHIBITS

EXHIBIT A	ARTICLES OF INCORPORATION
EXHIBIT B	SOUTH DAKOTA CERTIFICATE OF GOOD STANDING
EXHIBIT C	LISTING OF CURRENT REGULATORY AUTHORITIES
EXHIBIT D	CORPORATE STRUCTURE
EXHIBIT E	PROPOSED EXCHANGE ACCESS TARIFF
EXHIBIT F	MANAGEMENT BIOGRAPHIES
EXHIBIT G	CONFIDENTIAL FINANCIAL STATEMENTS

**EXHIBIT A**

**ARTICLES OF INCORPORATION**  
(Attached)

# SECRETARY OF STATE



## CERTIFICATE OF EXISTENCE (INCLUDING AMENDMENTS)

I, DEAN HELLER, the duly elected and qualified Nevada Secretary of State, do hereby certify that I am, by the laws of said State, the custodian of the records relating to filings by corporations, non-profit corporations, corporation soles, limited-liability companies, limited partnerships, limited-liability partnerships and business trusts pursuant to Title 7 of the Nevada Revised Statutes which are either presently in a status of good standing or were in good standing for a time period subsequent of 1976 and am the proper officer to execute this certificate.

I FURTHER CERTIFY, that the following is a list of all organizational documents on file in this office for

### 360NETWORKS (USA) INC.

Articles of Incorporation for PACIFIC FIBER LINK POR-SAC, INC. INC. filed June 12, 1998.

Articles of Merger and changing name to WORLDWIDE FIBER NETWORKS, INC. filed April 1, 1999.

Certificate of Amendment to Articles of Incorporation changing name to 360NETWORKS (USA) INC. filed June 7, 2000.

Articles of Merger filed December 28, 2000.



**FILED**  
IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

JUN 07 2000  
No. C. 13871-98

*Dean Heller*  
DEAN HELLER, SECRETARY OF STATE

CERTIFICATE OF AMENDMENT

OF

ARTICLES OF INCORPORATION

OF

WORLDWIDE FIBER NETWORKS, INC.

WORLDWIDE FIBER NETWORKS, INC., a corporation organized and existing under the laws of the State of Nevada, and its Articles of Incorporation originally filed with the Secretary of State for the State of Nevada on June 12, 1998, DOES HEREBY CERTIFY:

FIRST: That by written consent of the Board of Directors of Worldwide Fiber Networks, Inc., the following resolutions were duly adopted:

RESOLVED, that Article I of the Articles of Incorporation be amended as follows:

I. NAME

The name of the corporation is 360networks (USA) Inc.

SECOND: The total number of outstanding shares having voting power of the corporation is 200, and the total number of votes entitled to be cast by the holders of all of said outstanding shares is 200.

THIRD: The holders of all of the aforesaid total number of outstanding shares having voting power, to wit, shares, dispensed with the holding of a meeting of the stockholders and adopted the amendment herein certified by a consent in writing signed by all of them.

DATED this 25<sup>th</sup> day of May, 2000.

WORLDWIDE FIBER NETWORKS, INC.

By: *Jerry Tharp*  
Jerry Tharp, President

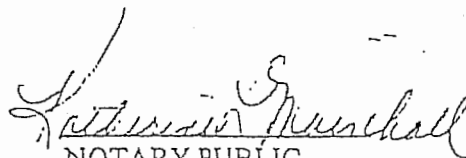
By: *Ron Stevenson*  
Ron Stevenson, Secretary

PROVINCE OF Colorado )  
CITY OF Denver )



My Comm. Expires 1-9-2001

On this 25 day of May, 2000, personally appeared before me, a Notary Public, JERRY THARP, who acknowledged to me that he executed the foregoing CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION OF WORLDWIDE FIBER NETWORKS, INC.

  
NOTARY PUBLIC

PROVINCE OF British Columbia )  
CITY OF Vancouver )

On this 25th day of May, 2000, personally appeared before me, a Notary Public, RON STEVENSON, who acknowledged to me that he executed the foregoing CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION OF WORLDWIDE FIBER NETWORKS, INC.

  
NOTARY PUBLIC

FILED 15:18  
IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

APR 01 1999

C 13871-98

ARTICLES OF MERGER

DEAN HELLER, SECRETARY OF STATE

These Articles of Merger were made this 23rd day of March, 1999, between Pacific Fiber Link Por-Sac, Inc., a Nevada corporation (sometimes referred to herein as the "Nevada Corporation" or the "Surviving Corporation") and Pacific Fiber Link, LLC, a Washington limited liability company (sometimes referred to herein as the "Washington LLC" or the "Merged Company").

RECITALS

A. The Nevada Corporation is a corporation duly organized and existing under the laws of the State of Nevada with its registered office located at 1575 Delucchi Lane, Ste. 224, Reno, Nevada 89502.

B. The Washington LLC is a limited liability company duly organized and existing under the laws of the State of Washington with its registered office located at 1420 Fifth Avenue, Ste. 3510, Seattle, Washington 98101-4031.

C. The Nevada Corporation and the Washington LLC deem it desirable and in their best interests that the Washington LLC be merged into the Nevada Corporation in accordance with the provisions of Chapter 92A of the Nevada Revised Statutes.

I.

An agreement and plan of merger has been approved and adopted by the Nevada Corporation, through its board of directors, and submitted and approved by its stockholders pursuant to Chapter 92A of the Nevada Revised Statutes as set forth below:

Designation of Shares:	Common
Number of Votes Entitled to be Cast:	100
Number of Votes for Plan:	100
Number of Votes Against Plan:	0

The number of votes of the stockholders for the plan was sufficient for approval.

II.

An agreement and plan of merger has been approved and adopted by the Washington LLC, through its managing member and management committee, and submitted and approved unanimously by its sole member possessing a 100% membership interest, pursuant to the laws of the State of Washington.

III.

The Articles of Incorporation of the Surviving Corporation shall continue to be its Articles of Incorporation, except that according to the agreement and plan of merger Article I is amended to read:

I. NAME

The name of the corporation is WORLDWIDE FIBER NETWORKS, INC.

IV.

The complete executed agreement and plan of merger is on file at the registered office of the Surviving Corporation, 1575 Delucchi Lane, Ste. 224, Reno, Nevada 89502.

V.

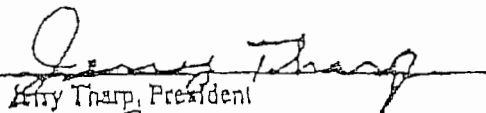
On the effective date of the merger, the separate existence of the Merged Company shall cease, and the Surviving Corporation shall succeed to all the rights, privileges, immunities, and franchises, and all the property, real, personal, and mixed, of the Merged Company, without the necessity for any separate transfer. The Surviving Corporation shall thereafter be responsible and liable for all liabilities and obligations of the Merged Company, and neither the rights of creditors nor any liens on the property of the Merged Company shall be impaired by the merger.

VI.

The merger takes effect upon the filing of these Articles of Merger.

PACIFIC FIBER LINK PDR-SAC, INC.

By:

  
Jerry Tharp, President


By:

  
Ron Stevenson, Secretary

STATE OF Colorado  
COUNTY OF Adams ) ss.

On this 26 day of March, 1999, personally appeared before me, a Notary Public, JERRY THARP, who acknowledged to me that he executed the foregoing ARTICLES OF MERGER.

[Signature]  
NOTARY PUBLIC

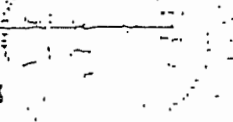


~~PAVONE~~  
STATE OF British Columbia  
COUNTY OF Vancouver ) ss.

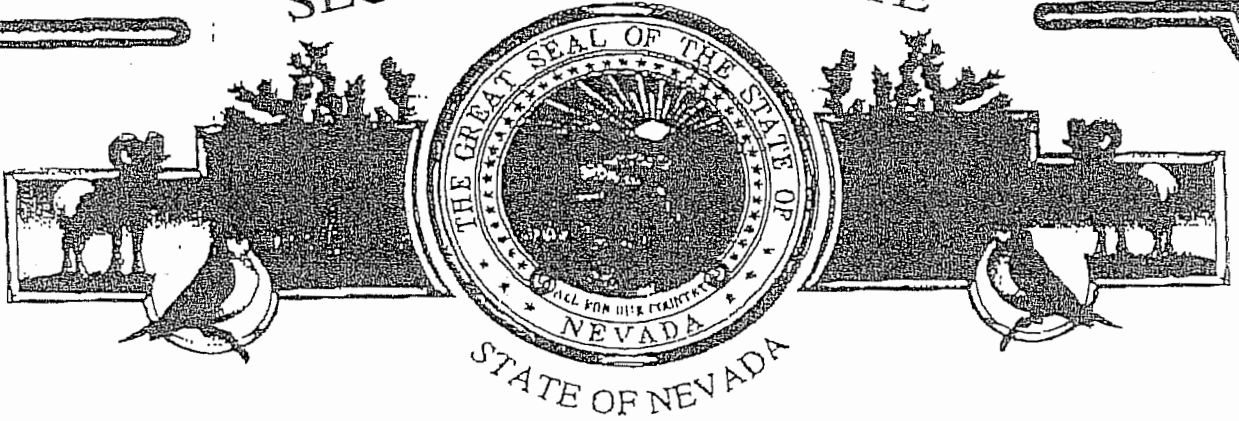
On this 27th day of March, 1999, personally appeared before me, a Notary Public, RON STEVENSON, who acknowledged to me that he executed the foregoing ARTICLES OF MERGER.

[Signature]  
NOTARY PUBLIC

BRUCE TATLER  
LAWYER & SOLICITOR  
COMPNEY & MURPHY  
P.O. Box 4500  
1111 WEST CHESTNUT STREET  
VANCOUVER, B.C. CANADA V7X 1E0



# SECRETARY OF STATE



## CORPORATE CHARTER

I, DEAN HELLER, the duly elected and qualified Nevada Secretary of State, do hereby certify that PACIFIC FIBER LINK POR-SAC, INC. did on June 12, 1998 file in this office the original Articles of Incorporation; that said Articles are now on file and of record in the office of the Secretary of State of the State of Nevada, and further, that said Articles contain all the provisions required by the law of said State of Nevada.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, on June 15, 1998.

*Dean Heller*

Secretary of State

By *Kelley R. Davenport*  
Certification Clerk



11/30/98 16:25 BSJCL → 604 688 0829

**FILED**  
IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

### ARTICLES OF INCORPORATION

OF

JUN 12 1998

No. 013871-98

*Dean Heller*  
DEAN HELLER, SECRETARY OF STATE

### PACIFIC FIBER LINK POR-SAC, INC.

That I, the undersigned, have this day voluntarily acted for the purpose of forming a corporation under the laws of the State of Nevada, and to that end, I do hereby certify:

#### I. NAME

The name of the corporation is PACIFIC FIBER LINK POR-SAC, INC.

#### II. AGENT FOR SERVICE OF PROCESS

The name and address of the initial Resident Agent and location of the Registered Office in this state is Beckley, Singleton, Jemison, Cobecaga & List, 1575 Delucchi Lane, Suite 224, Reno, Nevada 89502.

#### III. PURPOSE

The purpose of the corporation, and the nature of the business and objects proposed to be transacted and carried on by it are:

To engage in any lawful act or activity for which a corporation may be organized under the laws of the State of Nevada other than the banking business, the trust company business or the practice of a profession permitted to be incorporated under the laws of the State of Nevada.

#### IV. STOCK

The corporation is authorized to issue one class of shares, which shall be designated "common shares," having a total number of 25,000 shares. Each such

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share, when issued, shall have one (1) vote.

## V. NUMBER OF DIRECTORS

The members of the governing board of the corporation shall be styled "Directors," and the initial Board of Directors shall be one (1) in number.

The number of directors may, at any time or times, be increased or decreased by a duly adopted amendment to these Articles of Incorporation, or in such manner as shall be provided in the By-Laws of the corporation or by an amendment to the By-Laws of the corporation duly adopted by either the Board of Directors or the shareholders.

## VI. INITIAL DIRECTORS

The name and address of the First Board of Directors is as follows:

David Lede  
#1000 - 1066 West Hastings Street  
Vancouver, British Columbia  
Canada V6E 3X1

## VII. INCORPORATOR

The name and post office address of the incorporator signing these Articles of Incorporation is as follows:

Lance P. Maiss  
Beckley, Singleton, Jemison, Cobeaga & List  
1575 DeLucchi Lane, Suite 224  
Reno, Nevada 89502



## VIII. ASSESSABILITY OF SHARES

The capital stock of this corporation, after the amount of the subscription price has been paid, shall not be subject to assessment to pay the debts of the corporation, and no stock issued as fully paid shall be assessable or assessed, nor shall the private property of the stockholders, directors or officers of this corporation be subject to the payment of any corporate debts to any extent whatsoever, and in this particular, the Articles of Incorporation shall not be subject to amendment.

## IX. INDEMNIFICATION AND LIMITATION ON LIABILITY

Every person who was or is a party, or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she or a person of whom he or she is the legal representative, is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, or as its representative in a partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless to the fullest extent legally permissible under the laws of the State of Nevada, as amended, against all expenses, liability and loss (including attorneys' fees), judgments, fines and amounts paid in connection therewith. Such right of indemnification shall be a contract right which may be enforced in any manner desired by such person. Such right of indemnification shall not be exclusive of any other right which such directors, officers or representatives may have or hereafter acquire, and, without limiting the generality of such statement, they shall be entitled to their respective rights of indemnification under any By-Law, agreement, vote of

stockholders, provision of law, or otherwise, as well as their rights under this Article.

The personal liability of a director or officer of the corporation or its stockholders, shall be limited to the fullest extent provided by Nevada law, as amended, for damages for breach of fiduciary duty as an officer or director. This provision shall not eliminate the liability of a director or officer for acts or omissions which involved intentional misconduct, fraud, a knowing violation of the law or the payment of dividends in violation of NRS 78,300.

Expenses of directors and officers incurred in defending a civil or criminal action, suit or proceeding, must be paid by the corporation as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of and undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the corporation. This does not affect the rights to advancement of expenses which corporate personnel, other than directors or officers, may be entitled to under any contract or otherwise by law.

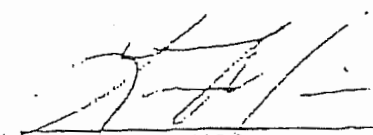
Without limiting the application of the foregoing, the Board of Directors may adopt By-Laws from time to time with respect to indemnification, to provide at all times the fullest indemnification permitted by the laws of the State of Nevada, and may cause the corporation to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, or as its representative in a partnership, joint venture, trust or other enterprise against any liability asserted

against such person and incurred in any such capacity or arising out of such status, whether or not the corporation would have the power to indemnify such person.

**X. RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS**

Unless otherwise determined by the Board of Directors, no holder of stock of the corporation shall be entitled as such, as a matter of right, to purchase or subscribe for any stock of any class which the corporation may issue or sell, whether or not exchangeable for any stock of the corporation of unissued shares authorized by the Articles of Incorporation of the corporation as originally filed or by any amendment thereof, or out of shares of stock of the corporation acquired by it after the issue thereof, and whether issued for cash, labor performed, personal property, real property, or leases thereof, nor shall he be entitled to any right of subscription to any thereof; nor, unless otherwise determined by the Board of Directors, shall any holder of any shares be entitled as such, as a matter of right, to purchase or subscribe for any obligation which the corporation may issue or sell that shall be convertible into or exchangeable for any shares of the stock of its capital stock of any class or classes.

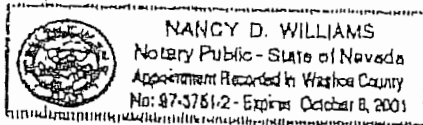
IN WITNESS WHEREOF, I have hereunto set my hand this 10<sup>th</sup> day of June, 1998, hereby declaring and certifying that the facts stated hereinabove are true.

  
\_\_\_\_\_  
LANCE P. MAISS

11/30/98 16:27 BSJCL → 604 688 0829

State of Nevada )  
 )ss:  
County of Washoe )

On June 7<sup>th</sup>, 1998, personally appeared before me, a Notary Public,  
Lance P. Maiss, who knowledged that he executed the above instrument.



*Lance P. Maiss*  
\_\_\_\_\_  
NOTARY

**EXHIBIT B**

SOUTH DAKOTA CERTIFICATE OF GOOD STANDING  
(Attached)

# State of South Dakota



## OFFICE OF THE SECRETARY OF STATE

### Certificate of Authorization Foreign Corporation

ORGANIZATIONAL ID #: FB023935

I, **Chris Nelson**, Secretary of State of the State of South Dakota, do hereby certify that **360NETWORKS (USA) INC. (NV)** was authorized to transact business in this state on **May 25, 2000**.

I, further certify that said corporation has complied with the South Dakota law governing foreign corporations transacting business in this state, and so far as the records of this office show, said corporation is in good standing and the annual report required by law has been filed. This certificate is not to be construed as an endorsement, recommendation or notice of approval of the corporation's financial condition or business activities and practices. Such information is not available from this office.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this May 31, 2006.

*Chris Nelson*

Chris Nelson  
Secretary of State

**EXHIBIT C**

**LISTING OF CURRENT REGULATORY AUTHORITIES**  
(Attached)

State	IXC	Docket/Order	Date	Facilities Based
AL	IXC	27286#2	2/10/2000	FB
AZ	IXC	62710	6/30/2000	FB
AR	IXC	00-319u	11/14/2000	FB
CA	IXC	98-06-026	7/20/1998	FB
CO	IXC	99A-332T	8/18/1999	FB
CT	IXC	99-10-11	11/17/2000	FB
DE	IXC	00-19	8/1/2000	FB per amend app
FL	IXC	991485-TI	12/28/1999	FB per tariff
GA	IXC	11398-U	7/5/2000	FB
ID	NO IXC REQUIRED			
IL	IXC	99-0372	8/25/1999	FB
IN	IXC	41571	1/19/2000	FB
IA	IXC	TCU-99-23	10/8/1999	FB per app
KS	IXC	01-360C-333-COC	11/8/2000	FB
KY	IXC	T61-1386	10/6/2000	FB per app
LA	IXC	#S244236	5/2/2000	FB
ME	IXC	2000-844	1/19/2001	FB
MA	IXC	NA	9/21/1999	FB per app
MI	IXC	U-12261	9/26/1999	FB
MN	IXC	5816/NA99-1233	6/7/2000	FB
MS	IXC	99-UA-0614	11/8/1999	FB
MO	IXC	TA-2000-207	11/17/1999	FB per app
		TO-2001-99	9/17/2000	See Annual Report 04
MT	IXC	ACKNOWLEDGED		FB
NE	IXC	C-2078	8/10/1999	FB
NV	IXC	99-8029	11/4/1999	FB
NH	IXC	DT-00-244	NA	No
NJ	IXC	TE-00040271	2/20/2001	FB
NM	IXC	3151	6/20/2000	FB per app
NY	IXC	99-C-1270	9/27/1999	FB
NC	IXC	P-888	4/10/2000	FB
ND	IXC	PU2410-00-526	10/25/2000	FB
OH	IXC	00-133-CT-ACE	4/26/2000	FB per tariff
OK	IXC	442614	7/7/2000	FB
OR	IXC	CP649	6/8/1999	FB
PA	IXC	A-310880	7/13/2000	FB
RI	IXC	3053	1/11/2000	FB
SC	IXC	2000-0286	3/27/2000	FB
SD	IXC	TC-00-079	8/25/2000	FB per amend app
TN	IXC	99-00556	12/3/1999	FB
TX	IXC	17475	NA	FB
UT	IXC	99-2289-01	6/26/2000	FB
VT	IXC	CPG519-R	2/10/2000	FB
VA	IXC	PUC990144	5/5/2000	FB
WA	IXC	UT-990858	7/14/1999	FB
WV	IXC	00-1510-T-CN	3/8/2001	FB
WI	IXC	6795-NC-100	12/30/1999	FB
WY	IXC	74482-TT-00-1	7/20/2000	FB per tariff

No DC, ID, MD, AK, HI

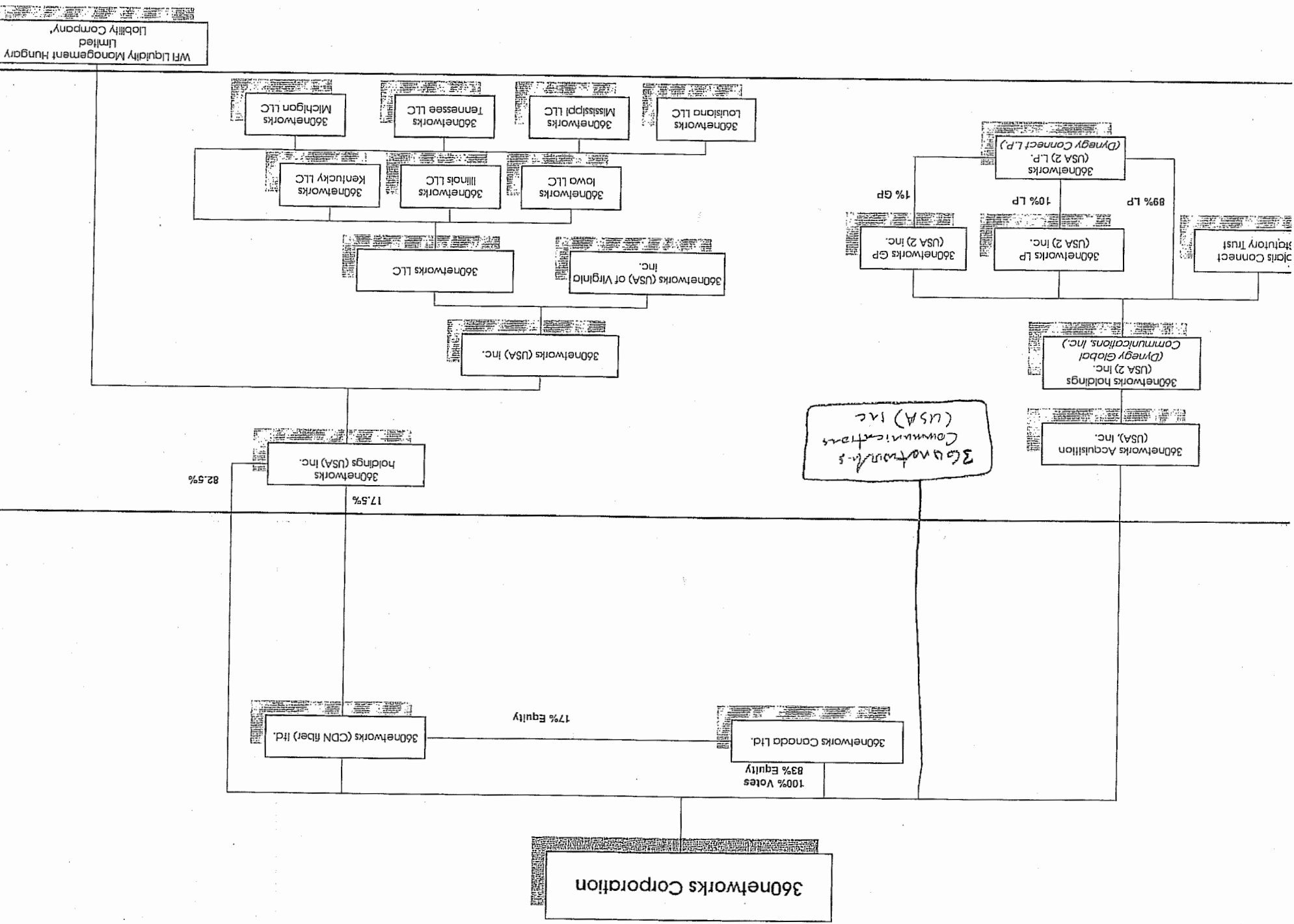


State	CLEC	Docket/Order	Date	Facilities Based
AL	CLEC	27286	1/11/2001	FB
CT	CLEC	00-19-19	1/17/2001	FB
CO	CLEC	05A-368T	9/29/2005	FB
DE	CLEC	5630	1/9/2001	FB per app
DC	CLEC	11812	10/12/2000	FB
FL	ALEC	001489TX	12/8/2000	No
ID	CLEC	29925 / Cert 453	12/6/2005	FB
IN	CLEC	41840	1/3/2001	FB
IA	CLEC	WRU99-28-3333	10/8/1999	FB per app
KS	CLEC	01-360T-060-COC	11/8/2000	FB
KY	CLEC	T61-1386	10/6/2000	FB per app
ME	CLEC	2000-844	1/19/2001	FB
MI	CLEC	U-12685	1/23/2001	No
MN	CLEC	P-5816/NA99-1233	6/7/2000	FB
MO	CLEC	TA-2001-281	3/16/2001	FB
MT	CLEC	Acknowledged		FB
NE	CLEC	C-2398	1/9/2001	FB
NV	CLEC	00-100043	12/15/2000	FB
NJ	CLEC	TE-00040271	2/20/2001	FB
NM	CLEC	3508		FB per app
NY	CLEC	99-C-1270	9/27/1999	FB
NC	CLEC	P-888, SUB 1	4/4/2001	FB per app
ND	CLEC	PU 2410-00-533	10/25/2000	FB
OH	CLEC	00-197-TP-ACE	1/17/2001	FB
OK	CLEC	2000-00565	5/2/2001	FB
OR	CLEC	CP 649	6/8/1999	FB
RI	CLEC	3053	1/11/2000	FB
SC	CLEC	2001-076	1/26/2001	FB
TX	CLEC	23214	3/20/2001	FB
UT	CLEC	99-2289-01	6/26/2000	FB
VT	CLEC	CPG 519-CR	1/3/2001	FB
VA	CLEC	PUC 010035	5/18/2001	FB per app
WA	CLEC	UT-990858	11/21/2000	FB
WV	CLEC	00-1510-T-CN	3/8/2001	FB
WI	CLEC	6795-NC-100	12/30/1999	FB
WY	CLEC	70075-TA-00-1	8/31/2000	FB

**EXHIBIT D**

**CORPORATE STRUCTURE**  
(Attached)

Sent by [unclear]



360networks Corporation

360networks Canada Ltd.  
100% Votes  
83% Equity

17% Equity

360networks (CDN fiber) ltd.

17.5%

360networks holdings (USA) Inc.

82.5%

360networks (USA) Inc.  
Communications (USA) Inc.

360networks Acq. (USA) Inc.

360networks holdings (USA) Inc.  
(Dyegy Global Communications, Inc.)

360networks LP (USA 2) Inc.  
360networks GP (USA 2) Inc.

360networks LP (USA 2) Inc.

360networks Acq. Trust

360networks (USA) of Virginia Inc.

360networks LLC

360networks Iowa LLC

360networks Illinois LLC

360networks Kentucky LLC

360networks Michigan LLC

360networks Tennessee LLC

360networks Mississippi LLC

360networks Louisiana LLC

WFI Liquidity Management Hungary Limited  
Lobby Company

**EXHIBIT E**

PROPOSED EXCHANGE ACCESS TARIFF  
(Attached)

**Illustrative Tariff Schedule Applicable To**  
**SWITCHED EXCHANGE ACCESS TELECOMMUNICATION SERVICES**

Within the State of

SOUTH DAKOTA

**360NETWORKS (USA) INC.**

867 Coal Creek Circle  
Suite 160  
Louisville, CO 80027  
877.993.4237

This Tariff contains the descriptions, regulations and rates applicable to the furnishing of switched exchange access telecommunications services provided by 360networks (USA) inc. ("Company") within the State of South Dakota. This Tariff is on file with the South Dakota Public Utilities Commission ("Commission"). Copies may be inspected during normal business hours at the Company's principal place of business: 867 Coal Creek Circle/Suite 160, Louisville, CO 80027.

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Issued: June 16, 2006

Issued By:

Gary Ray  
Vice President and Co-General Counsel  
867 Coal Creek Circle, Suite 160  
Louisville, CO 80027

Effective:

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CHECK SHEET

The sheets of this Tariff are effective as of the date shown. The original and revised sheets named below contain all changes from the original Tariff and are in effect on the date shown.

<u>Sheet</u>	<u>Revision</u>	<u>Sheet</u>	<u>Revision</u>	<u>Sheet</u>	<u>Revision</u>	<u>Sheet</u>	<u>Revision</u>
1	Original	30	Original				
2	Original	31	Original				
3	Original	32	Original				
4	Original	33	Original				
5	Original	34	Original				
6	Original	35	Original				
7	Original	36	Original				
8	Original	37	Original				
9	Original	38	Original				
10	Original	39	Original				
11	Original	40	Original				
12	Original	41	Original				
13	Original	42	Original				
14	Original	43	Original				
15	Original	44	Original				
16	Original	45	Original				
17	Original	46	Original				
18	Original	47	Original				
19	Original	48	Original				
20	Original	49	Original				
21	Original	50	Original				
22	Original	51	Original				
23	Original	52	Original				
24	Original	53	Original				
25	Original	54	Original				
26	Original	55	Original				
27	Original						
28	Original						
29	Original						

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 Issued: June 16, 2006

Issued By:

Effective:

Gary Ray  
 Vice President and Co-General Counsel  
 867 Coal Creek Circle, Suite 160  
 Louisville, CO 80027

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Vice President and Co-General Counsel  
867 Coal Creek Circle, Suite 160  
Louisville, CO 80027

Effective:

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Vice President and Co-General Counsel  
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Louisville, CO 80027

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EXPLANATION OF SYMBOLS, REFERENCE  
MARKS. AND ABBREVIATIONS OF TECHNICAL  
TERMS USED IN THIS TARIFF

The following symbols shall be used in this Tariff for the purpose indicated below:

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

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Vice President and Co-General Counsel  
867 Coal Creek Circle, Suite 160  
Louisville, CO 80027

Effective:

DEFINITIONS

Certain terms used generally throughout this Tariff are described below.

Advance Payment

Part or all of a payment required before the start of service

Access Services

The Company's intrastate switched exchange access services offered pursuant to this Tariff.

Busy Hour Minutes of Capacity (BHMC)

The term "Busy Hour Minutes of Capacity (BHMC)" denotes the Customer specified maximum amount of Switched Access Service and/or Directory Assistance Service access minutes the Customer expects to be handled in an End Office during any hour in an 8:00 a.m. to 11:00 p.m. period for the Feature Group and/or Directory Assistance Service ordered. This Customer specified BHMC quantity is the input data the Company uses to determine the number of transmission paths for the Feature Group and/or Directory Assistance Service ordered.

Carrier or Common Carrier

See Interexchange Carrier.

Commission

The South Dakota Public Utilities Commission

Company or 360networks

360networks (USA) inc., the issuer of this Tariff.

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Issued: June 16, 2006

Effective:

Issued By:

Gary Ray  
Vice President and Co-General Counsel  
867 Coal Creek Circle, Suite 160  
Louisville, CO 80027

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DEFINITIONS (cont'd)Customer

Any individual, person, firm, partnership, association, joint-stock company, trust, governmental entity, corporation or other entity that directly or indirectly orders access service. A customer is deemed responsible for the payment of charges and compliance with the Company's regulations. An Interexchange Carrier is deemed a Customer of the Company if any of the Interexchange Carrier directly or indirectly sends traffic to or receives traffic from a central office code (NPA-NXX) assigned to the Company. The use of the Company's access service constitutes an order for such service and requires compliance with the obligates, rates, and charges as set forth in this Tariff, regardless of whether the Customer has affirmatively requested service or has an executed service order.

End Office

With respect to each NPA-NXX code prefix assigned to the Company, the location of the Company's "End Office" for purposes of this Tariff shall be the point of interconnection associated with that NPA-NXX code in the Local Exchange Routing Guide, issued by Telcordia.

End User or User

The term "End User" denotes any customer of an interstate or foreign telecommunications service that is not a carrier, except that a carrier other than a telephone company shall be deemed to be an "End User" when such carrier uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an "End User" if all resale transmission offered by such reseller originate on the premises of such reseller.

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Issued: June 16, 2006  
Issued By:

Gary Ray  
Vice President and Co-General Counsel  
867 Coal Creek Circle, Suite 160  
Louisville, CO 80027

Effective:

DEFINITIONS (cont'd)

Exchange Telephone Company

Denotes any individual, partnership, association, joint-stock company, trust, or corporation engaged in providing switched communication within an exchange.

Incidental Service

Denotes service provided to a Customer under this Tariff that is not provided through a written agreement with Customer and will be held to have been constructively ordered.

Individual Case Basis (ICB):

A service arrangement in which the regulations rates and charges are developed based on the specific circumstances of the case, unless otherwise prohibited by law or regulation.

Interexchange Carrier (IXC) or Interexchange Common Carrier

The terms "Interexchange Carrier" (IXC) or "Interexchange Common Carrier" denotes any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in intrastate, interstate or foreign communication by wire or radio, between two or more exchanges.

Intrastate Switched Access Service

Provides for a switched two-point communications path between a Customer's premises or a collocated interconnection location and an End User's premises for originating and terminating calls within the state.

LATA

A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc. Tariff F.C.C. No. 4.

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Issued: June 16, 2006

Effective:

Issued By:

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Vice President and Co-General Counsel  
867 Coal Creek Circle, Suite 160  
Louisville, CO 80027

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DEFINITIONS (cont'd)

Network

Refers to the Company's facilities, equipment, and services provided under this Tariff.

Recurring Charge

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

Service Commencement Date

The first date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service, which does not conform to standards set forth in a written agreement or this Tariff, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and the Customer may mutually agree on a substitute Service Commencement Date. If the Company does not have an executed agreement from a Customer or is providing an Incidental Service, the Service Commencement Date will be the first date on which the service or facility was used by a Customer.

Serving Wire Center

The term "Serving Wire Center" denotes the wire center from which the Customer designated premises would normally obtain dial tone.

Shared

A facility or equipment system or subsystem that can be used simultaneously by several Customers.

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Issued: June 16, 2006

Effective:

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Vice President and Co-General Counsel  
867 Coal Creek Circle, Suite 160  
Louisville, CO 80027

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Application )  
of 360networks (USA) inc. )  
for a Certificate of Authority to Provide ) Docket No. \_\_\_\_\_  
Facilities-Based )  
Local Exchange Access Services )  
in the State of South Dakota. )

APPLICATION

360networks (USA) inc., (“Applicant”), by its undersigned regulatory consultants, and pursuant to SDCL 49-31-3 and ARSD §20:10:32:03, hereby applies to the South Dakota Public Utilities Commission (“Commission”) for a Certificate of Authority to provide facilities-based and resold local exchange access service throughout the State of South Dakota. In support of its Application, Applicant states as follows:

(1) IDENTIFICATION OF APPLICANT

Applicant's name, address, telephone number facsimile number, E-mail address are:

360networks (USA) inc.  
867 Coal Creek Circle  
Suite 160  
Louisville, CO 90027  
Telephone: 303.854.5000  
Facsimile: 303.854.5100  
E-mail: Denver.reception2@360.net  
Web Address: www.360.net

Applicant is a privately-held corporation.

(2) OWNERSHIP INFORMATION

The full name and business address of each corporate officer and director are as follows:

Directors	Officers	Titles	Address
Rob Frasene	Rob Frasene	President	867 Coal Creek Circle/Suite 160/Louisville, CO 80027
	Chris Mueller	CFO	867 Coal Creek Circle/Suite 160/Louisville, CO 80027
	Tony Oswald	VP Finance	867 Coal Creek Circle/Suite 160/Louisville, CO 80027
	Gary Ray	VP, Co-GC, Secretary	867 Coal Creek Circle/Suite 160/Louisville, CO 80027
	Ron Gustafson	VP, Co-GC	2101 4th Avenue, Suite 2000, Seattle, WA 98121
	Liza Dennehy	VP Operations	130 N. Main St., Butte, MT 59701

(3) SERVICE NAME

Applicant will provide local exchange access services under its own name, 360networks (USA) inc., in the State of South Dakota.

(4) CORPORATE INFORMATION

(a) Applicant's will not retain a physical office in the State of South Dakota.

Applicant's Registered Agent in the State of South Dakota is:

CT Corporation  
319 South Coteau Street  
Pierre, SD 57501

(b) Applicant is a wholly owned subsidiary of 360networks holdings (USA) inc.

(c) Applicant is a privately-held corporation organized under the laws of the State of Nevada on June 12, 1998. A copy of Applicant's Articles of Incorporation are attached hereto at **Exhibit A**.

(d) Applicant is authorized to conduct business in South Dakota as a foreign corporation. A copy of Applicant's certificate of good standing from the South Dakota Secretary of State is attached hereto as **Exhibit B**.

(5) APPLICANT'S EXPERIENCE IN PROVIDING TELECOMMUNICATIONS SERVICE

Applicant has extensive telecommunications experience. Applicant has been authorized to provide interexchange service in 44 of the 50 states. Applicant currently provides facilities-based (private-line) long distance telecommunications services in Arizona, California, Colorado, Illinois, Indiana, Iowa, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming. Applicant is also authorized to offer facilities-based local exchange telecommunications services in the States or jurisdictions of Alabama, Connecticut, Colorado, Delaware, the District of Columbia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Applicant maintains resale local exchange authority in Florida and Michigan. A listing of certifications granted and the date of certification is attached hereto as **Exhibit C**. Please also refer to paragraph 9(a), *Infra*.

(6) APPLICANT'S AFFILIATES, SUBSIDIARIES, AND PARENT CORPORATIONS

Applicant is a wholly owned subsidiary of 360networks holdings (USA) inc. Applicant maintains two subsidiaries, 360networks (USA) of Virginia Inc., and 360networks LLC. Applicant's subsidiaries are state-specific entities. A corporate diagram is attached hereto at **Exhibit D**.

(7) APPLICANT'S PROPOSED SERVICES

(a) – (d) Applicant proposes to provide competitive local exchange access (network) services including switched access and transport, to commercial interconnecting carriers



throughout South Dakota. Applicant's services will be available to subscribers twenty-four hours per day, seven days per week, at rates, terms and conditions established by Applicant and reflected in Applicant's proposed tariff, attached hereto at Exhibit E. Services will be offered and provided in accordance with applicable South Dakota laws and all Commission rules and regulations.

Applicant plans to deploy a dedicated network facilities and switching equipment in the State of South Dakota consisting of high capacity broadband facilities and switching equipment. Such facilities and equipment are to be used exclusively for wholesale carriers who interconnect with Applicant's network and/or use Applicant's network for transporting data and communications on behalf of the subscribing carriers' end users. Applicant's network may be supplemented through resale of incumbent carrier services and/or leasing portions of incumbent networks where Applicant does not maintain, nor is deploying facilities, under commercial and interconnection agreements. Applicant is not currently providing any local exchange services within the State of South Dakota. Applicant is prepared to begin providing services upon grant of the instant Application.

(8) GEOGRAPHIC AREAS OF SERVICE

Applicant initially intends to provide local exchange access service in the service area currently served by Qwest Communications Corporation and subsequently throughout the State of South Dakota.

(9) TECHNICAL COMPETENCE

(a) Applicant maintains a high degree of technical competence and extensive experience in providing local exchange access services throughout the U.S. A description of the education and managerial and technical experience of Applicant's senior management personnel

who will oversee the proposed local exchange services is attached hereto at **Exhibit F**.

(b) An account manager is assigned to each carrier. The account manager assumes full responsibility for addressing carrier needs and issues, including billing issues. Applicant will bill customers directly for service. Otherwise, should Applicant's customer service representatives be contacted, upon contacting Applicant by telephone via Applicant's toll free number,<sup>1</sup> the Customer's first contact is with Applicant's Customer Service personnel, who are available twenty-four (24) hours per day. Customer Service representatives will review the customer's complaint or issue and attempt to resolve the problem to the Customer's satisfaction. Customer's account manager will also be contacted by the Customer Service representative to assist the Customer. If the Customer is not satisfied with the resolution, the Customer is connected with Applicant's Customer Service Manager.

Customer complaints may also be submitted in writing to Applicant's Customer Service Department at 867 Coal Creek Circle Suite 160, Louisville, CO 80027. Applicant endeavors to contact the Customer within one week of receipt of a written complaint and conduct its investigation as quickly as possible thereafter. Customers who are not satisfied with Applicant's suggested resolution may be directed to the Customer Service Manager, as set forth above, and are informed of their right to contact the Commission if they remain dissatisfied with Applicant's suggested resolution of the Customer's complaint.

Additional details regarding Applicant's customer complaint resolution process may be found in Applicant's tariff.

(10) ACCESS TO EMERGENCY SERVICES

Applicant's offerings are limited to the provision of network switching and transport for purposes of transmitting data and telecommunications for local exchange carrier subscribers.

---

<sup>1</sup> 877.993.4237

Applicant's carrier subscribers will be responsible for the coordination of 911 access, end user presubscribed interexchange carrier routing, and the provision of directory assistance, operator services, and telecommunications relay service access. For purposes of transport of 911 emergency calls, Applicant has contracted with Intrado (<http://www.intrado.com>) a company which specializes in providing 911/E911 operations support and routing technology to local exchange carriers, to provide E911 service to Applicant's wholesale Customers. All end users will be required to provide the location from which a call is being made as a condition of service and to update such information in the event their location changes. All E911 calls received by 360 will be routed to the appropriate public switched access point, either automatically or, in the rare instance where location information is not available, manually through an emergency call relay center.

(11) FINANCIAL INFORMATION

(a), (b) Applicant's financial statements for the most recent 12 month period are attached hereto at **Exhibit F**. Applicant respectfully requests confidential treatment of its financial information and has filed this information under seal, accordingly. A copy of Applicant's parent corporation's most recent public financial statements are also attached hereto at Exhibit F.

(12) INTERCONNECTING CARRIERS

(a) Applicant has not yet identified interconnecting carriers. Applicant plans to interconnect with Qwest. Any local exchange carrier currently authorized by the Commission to provide local exchange services will be able to interconnect to Applicant's network. Such local exchange carriers are a matter of record with the Commission.

(b) Negotiations for interconnection of service have not yet been initiated. Applicant

anticipates negotiation of agreements within three months following a grant of the instant application.

(c) No request for interconnection with any local exchange carrier has been initiated.

(13) TARIFF

Applicant's proposed local exchange access service, including service rates terms, and conditions, is attached hereto at **Exhibit E**.

(14) COST SUPPORT

Applicant has calculated the cost of access based on a weighted composite average of Qwest local switching and transport rates as set forth in Qwest's South Dakota Access Service Tariff, based on projected traffic transported over Applicant's network.

(15) MARKETING PLAN

Applicant plans to market its services through direct contact with state carriers. Applicant will use in house sales professionals. Applicant does not engage sales agents. As network access is a highly specialized service that requires customer-specific network solutions, Applicant does not maintain generalized brochures.

(16) RURAL TELEPHONE SERVICE

Applicant will not provide retail local exchange services in rural telephone company areas. The provision of wholesale local exchange access network services to rural telephone companies and carriers duly authorized to operate in rural telephone company service areas should not subject Applicant to the provisions of §20:10:32:15.

(17) APPLICANT'S SERVICE IN OTHER STATES

Please refer to response in paragraph 5, *Supra*. Applicant has never been denied registration or certification and remains in good standing in each state where Applicant maintains

regulatory authority.

(18) APPLICANT'S CONTACT INFORMATION

Correspondence and communications regarding this Application may be directed to:

Andrew O. Isar  
Miller Isar, Inc.  
7901 Skansie Avenue, Suite 240  
Gig Harbor, Washington 98335  
Telephone: 253.851.6700  
Facsimile: 253.851.6474  
E-Mail: [aisar@millerisar.com](mailto:aisar@millerisar.com)

with a copy to:

Ron Gustafson  
360networks (USA) inc.  
2401 4th Avenue, 11th floor  
Seattle, Washington 98121  
Telephone: 206.239.4035  
Facsimile: 866.728.7703  
E-Mail: [Gustafson@360.net](mailto:Gustafson@360.net)

and to:

Charles Forst  
360networks (USA) inc.  
867 Coal Creek Circle/Suite 160  
Louisville, CO 80027  
Telephone 303.854.5210  
Facsimile: 303.854.5100  
Electronic Mail: [Charles.Forst@360.net](mailto:Charles.Forst@360.net)

Correspondence and communications concerning on-going regulatory matters including customer complaints should be directed to Mr. Forst.

(19) BILLING

Applicant renders monthly bills to interconnecting carrier in accordance with established company rates, as set forth in customer contracts. Bills are due upon receipt and considered delinquent and subject to service termination if not paid within 30 days. Applicant avers to generally follow the requirements for service termination pursuant to Commission rule

§20:10:32:13, to the extent applicable to its provision of exchange access services.

(20) SOLICITATION OF CUSTOMERS

Applicant proposes to provide local exchange access services to other carriers in South Dakota. Applicant will not serve presubscribed retail customers. The provisions of unauthorized account transfer regulations including 47 C.F.R. §64.1100 *et seq.* and relevant state regulations are inapplicable to Applicant's proposed services, accordingly.

(21) UNAUTHORIZED ACCOUNT SWITCHING AND CHARGE COMPLAINTS

Applicant has not been the subject of state or federal, commission complaints regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered.

(22) REQUEST FOR WAIVERS

Applicant proposes to provide exchange access services to interconnecting carriers exclusively. Rules governing the provision of retail services to include requirements for account verification, billing, and service termination applicable to retail subscribers, *e.g.* §§20:10:07 through 20:10:10 do not apply to the provision of Applicant's local exchange access service, accordingly. Applicant further requests waiver of §20:10:32:15 regarding the provision of service in rural areas. The Eligible Telecommunications Carrier obligations set forth therein are predicated on the provision of retail services, which Applicant will not provide. Applicant expressly acknowledges that waiver of rules applicable to the provision of retail local exchange services will apply exclusively to Applicant's provision of exchange access services. Applicant acknowledges further that the regulations which Applicant requests be waived would apply fully to Applicant, should Applicant ever elect to provide retail local exchange services.

(23) FEDERAL TAX IDENTIFICATION NUMBER

Applicant's federal tax identification number is 84-1496451.

(24) ADDITIONAL INFORMATION

Applicant submits the following reasons in support of its belief that the public interest will be served by the approval of this Application:

(1) Applicant's proposed services are developed to provide alternative network facilities for retail local exchange carriers.

(2) While providing its customers with cost advantages realized by the network access, Applicant's service will necessarily utilize existing carrier communications facilities more efficiently through increased usage and provide greater revenues for local exchange carriers by way of additional exchange access through other carriers.

(3) Commission approval of this Application will bring the following long-term benefits to the public:

(a) greater value to customers through lower priced, better quality network services;

(b) innovative network services and routing;

(c) increased carrier choice in exchange access services utilizing advanced technology;

(d) efficient use of existing telecommunications resources as well as increased diversification and reliability in South Dakota networks; and

(e) an additional tax revenue source for the State of South Dakota.

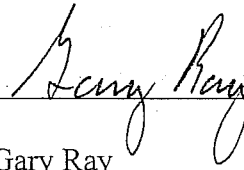
Wherefore, 360networks (USA) inc. respectfully requests that the Commission grant the instant Application, thereby conferring on 360networks (USA) inc. authority to provide facilities-based and resold local exchange access services in South Dakota.

(signature on following page)

Respectfully submitted, this 13 day of June, 2006.

360networks (USA) inc.

By:



Gary Ray  
Vice President and General Counsel  
867 Coal Creek Circle, Suite 160  
Louisville, CO 80027  
Telephone: 303.854.5000

Andrew O. Isar  
Miller Isar, Inc.  
7901 Skansie Avenue, Suite 240  
Gig Harbor, WA 98335  
Telephone: 253.851.6700  
Facsimile: 253.851.6474  
E-Mail: [aisar@millerisar.com](mailto:aisar@millerisar.com)

Regulatory Consultants for  
360networks (USA) inc.



VERIFICATION OF APPLICANT

STATE OF COLORADO )  
 ) ss.  
COUNTY OF BOULDER )

I, Gary Ray, being first duly sworn and deposed, state that I am Vice President and General Counsel of 360networks (USA) inc., and am authorized to make this Verification on its behalf.

The statements in the foregoing Application are true of my own knowledge, except as to matters which are stated on information on belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

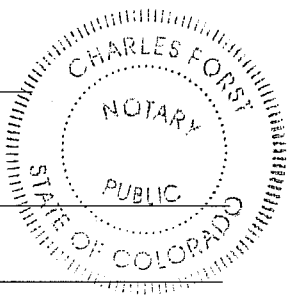
Executed on 13 June, 2006 at Louisville, Colorado

By: Gary Ray

Gary Ray  
Vice President and General Counsel  
867 Coal Creek Circle, Suite 160,  
Louisville, CO 80027  
Telephone: 303.854.5000

Subscribed and sworn to before me this 13<sup>th</sup> day of June, 2006.

CLF  
Notary Public in and for the State  
of Colorado, residing at:  
1000 S. Logan  
Denver, CO



Commission Expires 5/9/09

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Application )  
of 360networks (USA) inc. )  
for a Certificate of Authority to Provide )  
Facilities-Based )  
Local Exchange Access Services )  
in the State of South Dakota. )

Docket No. \_\_\_\_\_

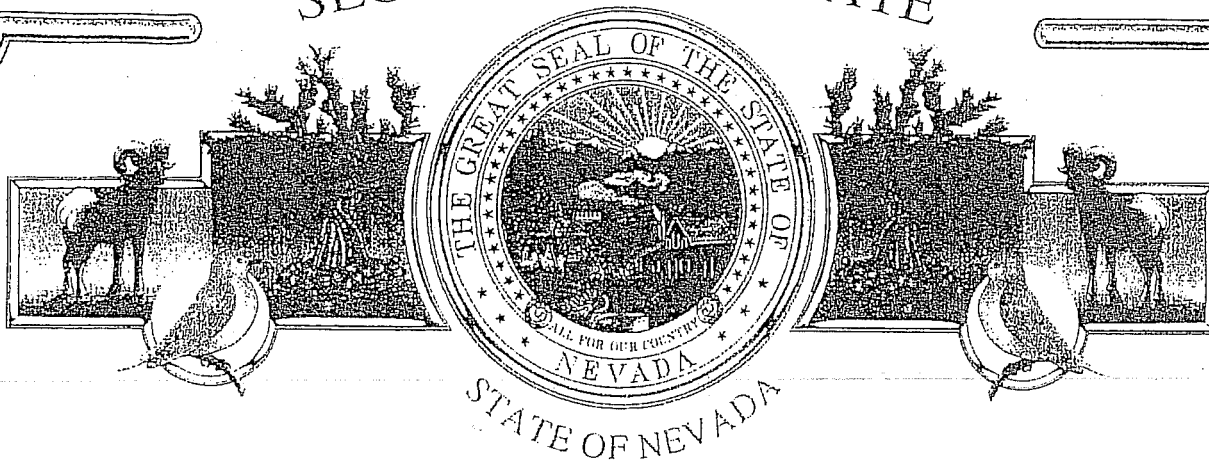
LIST OF EXHIBITS

EXHIBIT A	ARTICLES OF INCORPORATION
EXHIBIT B	SOUTH DAKOTA CERTIFICATE OF GOOD STANDING
EXHIBIT C	LISTING OF CURRENT REGULATORY AUTHORITIES
EXHIBIT D	CORPORATE STRUCTURE
EXHIBIT E	PROPOSED EXCHANGE ACCESS TARIFF
EXHIBIT F	MANAGEMENT BIOGRAPHIES
EXHIBIT G	CONFIDENTIAL FINANCIAL STATEMENTS

**EXHIBIT A**

ARTICLES OF INCORPORATION  
(Attached)

# SECRETARY OF STATE



## CERTIFICATE OF EXISTENCE (INCLUDING AMENDMENTS)

I, DEAN HELLER, the duly elected and qualified Nevada Secretary of State, do hereby certify that I am, by the laws of said State, the custodian of the records relating to filings by corporations, non-profit corporations, corporation soles, limited-liability companies, limited partnerships, limited-liability partnerships and business trusts pursuant to Title 7 of the Nevada Revised Statutes which are either presently in a status of good standing or were in good standing for a time period subsequent of 1976 and am the proper officer to execute this certificate.

I FURTHER CERTIFY, that the following is a list of all organizational documents on file in this office for

### 360NETWORKS (USA) INC.

Articles of Incorporation for PACIFIC FIBER LINK POR-SAC, INC. INC. filed June 12, 1998.

Articles of Merger and changing name to WORLDWIDE FIBER NETWORKS, INC. filed April 1, 1999.

Certificate of Amendment to Articles of Incorporation changing name to 360NETWORKS (USA) INC. filed June 7, 2000.

Articles of Merger filed December 28, 2000.

**FILED**  
IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

CERTIFICATE OF AMENDMENT

OF

ARTICLES OF INCORPORATION

OF

WORLDWIDE FIBER NETWORKS, INC.

JUN 07 2000  
No. C. 13871-98  
*Dean Heller*  
DEAN HELLER, SECRETARY OF STATE

WORLDWIDE FIBER NETWORKS, INC., a corporation organized and existing under the laws of the State of Nevada, and its Articles of Incorporation originally filed with the Secretary of State for the State of Nevada on June 12, 1998, DOES HEREBY CERTIFY:

FIRST: That by written consent of the Board of Directors of Worldwide Fiber Networks, Inc., the following resolutions were duly adopted:

RESOLVED, that Article I of the Articles of Incorporation be amended as follows:

I. NAME

The name of the corporation is ~~360networks~~ (USA) Inc.

SECOND: The total number of outstanding shares having voting power of the corporation is 200, and the total number of votes entitled to be cast by the holders of all of said outstanding shares is 200.

THIRD: The holders of all of the aforesaid total number of outstanding shares having voting power, to wit, shares, dispensed with the holding of a meeting of the stockholders and adopted the amendment herein certified by a consent in writing signed by all of them.

DATED this 25<sup>th</sup> day of May, 2000.

WORLDWIDE FIBER NETWORKS, INC.

By: *Jerry Tharp*  
Jerry Tharp, President

By: *Ron Stevenson*  
Ron Stevenson, Secretary

PROVINCE OF Colorado )  
CITY OF Denver )



My Comm. Expires 1-9-2001

On this 25 day of May, 2000, personally appeared before me, a Notary Public, JERRY THARP, who acknowledged to me that he executed the foregoing CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION OF WORLDWIDE FIBER NETWORKS, INC.

  
NOTARY PUBLIC

PROVINCE OF British Columbia )  
CITY OF Vancouver )

On this 25th day of May, 2000, personally appeared before me, a Notary Public, RON STEVENSON, who acknowledged to me that he executed the foregoing CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION OF WORLDWIDE FIBER NETWORKS, INC.

  
NOTARY PUBLIC

FILED 15:18  
THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

APR 01 1999

C 13871-98

ARTICLES OF MERGER

*Dean Heller*  
DEAN HELLER, SECRETARY OF STATE

These Articles of Merger are made this 23rd day of March, 1999, between Pacific Fiber Link Por-Sac, Inc., a Nevada corporation (sometimes referred to herein as the "Nevada Corporation" or the "Surviving Corporation") and Pacific Fiber Link, LLC, a Washington limited liability company (sometimes referred to herein as the "Washington LLC" or the "Merged Company").

RECITALS

A. The Nevada Corporation is a corporation duly organized and existing under the laws of the State of Nevada. Its registered office is located at 1575 Delucchi Lane, Ste. 224, Reno, Nevada 89502.

B. The Washington LLC is a limited liability company duly organized and existing under the laws of the State of Washington with its registered office located at 1420 Fifth Avenue, Ste. 3510, Seattle, Washington 98101-4031.

C. The Nevada Corporation and the Washington LLC deem it desirable and in their best interests that the Washington LLC be merged into the Nevada Corporation in accordance with the provisions of Chapter 92A of the Nevada Revised Statutes.

I.

An agreement and plan of merger has been approved and adopted by the Nevada Corporation, through its board of directors, and submitted and approved by its stockholders pursuant to Chapter 92A of the Nevada Revised Statutes as set forth below:

Designation of Shares:	Common
Number of Votes Entitled to be Cast:	100
Number of Votes for Plan:	100
Number of Votes Against Plan:	0

The number of votes of the stockholders for the plan was sufficient for approval.

II.

An agreement and plan of merger has been approved and adopted by the Washington LLC, through its managing member and management committee, and submitted and approved unanimously by its sole member possessing a 100% membership interest, pursuant to the laws of the State of Washington.

III.

The Articles of Incorporation of the Surviving Corporation shall continue to be its Articles of Incorporation, except that according to the agreement and plan of merger Article I is amended to read:

I. NAME

The name of the corporation is WORLDWIDE FIBER NETWORKS, INC.

IV.

The complete executed agreement and plan of merger is on file at the registered office of the Surviving Corporation: 1675 Delucchi Lane, Ste. 224, Reno, Nevada 89502.

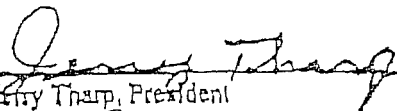
V.


On the effective date of the merger, the separate existence of the Merged Company shall cease, and the Surviving Corporation shall succeed to all the rights, privileges, immunities, and franchises, and all the property, real, personal, and mixed, of the Merged Company, without the necessity for any separate transfer. The Surviving Corporation shall thereafter be responsible and liable for all liabilities and obligations of the Merged Company, and neither the rights of creditors nor any liens on the property of the Merged Company shall be impaired by the merger.

VI.

The merger takes effect upon the filing of these Articles of Merger.

PACIFIC FIBER LINK PDR-SAC, INC.

By:   
Jerry Sharp, President

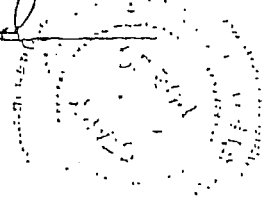
By:   
Ron Stevenson, Secretary



STATE OF Colorado  
COUNTY OF Adams ) ss.

On this 26 day of March, 1999, personally appeared before me, a Notary Public, JERRY THARP, who acknowledged to me that he executed the foregoing ARTICLES OF MERGER.

[Signature]  
NOTARY PUBLIC



~~PAVINE~~  
STATE OF Virginia ) ss.  
COUNTY OF Stafford

On this 27th day of March, 1999, personally appeared before me, a Notary Public, RON STEVENSON, who acknowledged to me that he executed the foregoing ARTICLES OF MERGER.

[Signature]  
NOTARY PUBLIC

BRUCE TATTELB  
COMMUNITY & MURPHY

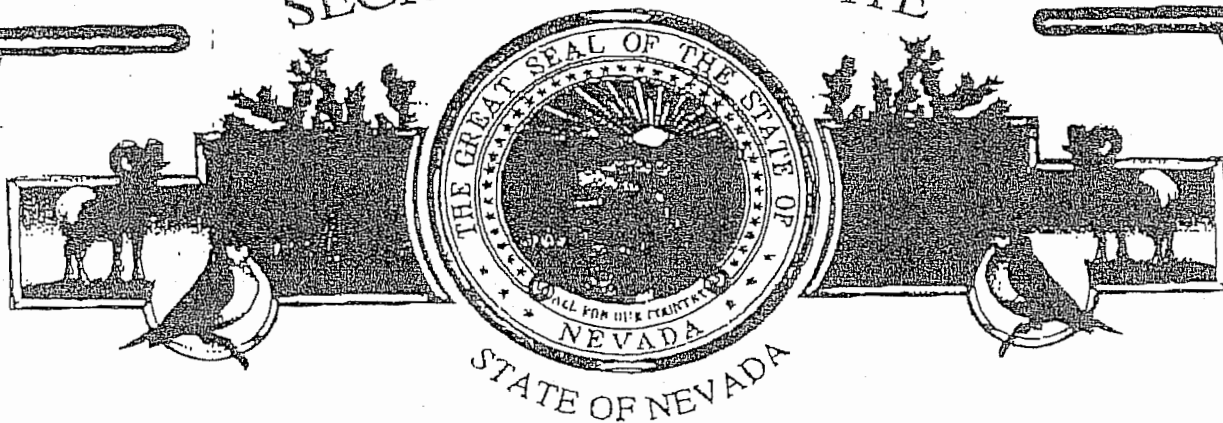
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1111 West Cherry Street  
VALENTIA, B.C. Canada V7L 1E9

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NO. 657 P003/00

# SECRETARY OF STATE



## CORPORATE CHARTER

I, DEAN HELLER, the duly elected and qualified Nevada Secretary of State, do hereby certify that **PACIFIC FIBER LINK POR-SAC, INC.** did on **June 12, 1998** file in this office the original Articles of Incorporation; that said Articles are now on file and of record in the office of the Secretary of State of the State of Nevada, and further, that said Articles contain all the provisions required by the law of said State of Nevada.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, on June 15, 1998.

*Dean Heller*

Secretary of State

By *Kelley R. Davenport*  
Certification Clerk



11/30/98 16:25

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NO.665 P008/013

**FILED**  
IN THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

**ARTICLES OF INCORPORATION**

**JUN 12 1998**

**OF**

No. C13871-98  
*Dean Heller*  
DEAN HELLER, SECRETARY OF STATE

**PACIFIC FIBER LINK POR-SAC, INC.**

That I, the undersigned, have this day voluntarily acted for the purpose of forming a corporation under the laws of the State of Nevada, and to that end, I do hereby certify:

**I. NAME**

The name of the corporation is **PACIFIC FIBER LINK POR-SAC, INC.**

**II. AGENT FOR SERVICE OF PROCESS**

The name and address of the initial Resident Agent and location of the Registered Office in this state is Beckley, Singleton, Jemison, Cobecaga & List, 1575 Delucchi Lane, Suite 224, Reno, Nevada 89502.

**III. PURPOSE**

The purpose of the corporation, and the nature of the business and objects proposed to be transacted and carried on by it are:

To engage in any lawful act or activity for which a corporation may be organized under the laws of the State of Nevada other than the banking business, the trust company business or the practice of a profession permitted to be incorporated under the laws of the State of Nevada.

**IV. STOCK**

The corporation is authorized to issue one class of shares, which shall be designated "common shares," having a total number of 25,000 shares. Each such

share, when issued, shall have one (1) vote.

## V. NUMBER OF DIRECTORS

The members of the governing board of the corporation shall be styled "Directors," and the initial Board of Directors shall be one (1) in number.

The number of directors may, at any time or times, be increased or decreased by a duly adopted amendment to these Articles of Incorporation, or in such manner as shall be provided in the By-Laws of the corporation or by an amendment to the By-Laws of the corporation duly adopted by either the Board of Directors or the shareholders.

## VI. INITIAL DIRECTORS

The name and address of the First Board of Directors is as follows:

David Lede  
#1000 - 11066 West Hastings Street  
Vancouver, British Columbia  
Canada V6E 3X1

## VII. INCORPORATOR

The name and post office address of the incorporator signing these Articles of Incorporation is as follows:

Lance P. Maiss  
Beckley, Singleton, Jemison, Cobear & List  
1575 Delucchi Lane, Suite 224  
Reno, Nevada 89502

## VIII. ASSESSABILITY OF SHARES

The capital stock of this corporation, after the amount of the subscription price has been paid, shall not be subject to assessment to pay the debts of the corporation, and no stock issued as fully paid shall be assessable or assessed, nor shall the private property of the stockholders, directors or officers of this corporation be subject to the payment of any corporate debts to any extent whatsoever, and in this particular, the Articles of Incorporation shall not be subject to amendment.

## IX. INDEMNIFICATION AND LIMITATION ON LIABILITY

Every person who was or is a party, or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she or a person of whom he or she is the legal representative, is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, or as its representative in a partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless to the fullest extent legally permissible under the laws of the State of Nevada, as amended, against all expenses, liability and loss (including attorneys' fees), judgments, fines and amounts paid in connection therewith. Such right of indemnification shall be a contract right which may be enforced in any manner desired by such person. Such right of indemnification shall not be exclusive of any other right which such directors, officers or representatives may have or hereafter acquire, and, without limiting the generality of such statement, they shall be entitled to their respective rights of indemnification under any By-Law, agreement, vote of

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stockholders, provision of law, or otherwise, as well as their rights under this Article.

The personal liability of a director or officer of the corporation or its stockholders, shall be limited to the fullest extent provided by Nevada law, as amended, for damages for breach of fiduciary duty as an officer or director. This provision shall not eliminate the liability of a director or officer for acts or omissions which involved intentional misconduct, fraud, a knowing violation of the law or the payment of dividends in violation of NRS 78,300.

Expenses of directors and officers incurred in defending a civil or criminal action, suit or proceeding, must be paid by the corporation as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of and undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the corporation. This does not affect the rights to advancement of expenses which corporate personnel, other than directors or officers, may be entitled to under any contract or otherwise by law.

Without limiting the application of the foregoing, the Board of Directors may adopt By-Laws from time to time with respect to indemnification, to provide at all times the fullest indemnification permitted by the laws of the State of Nevada, and may cause the corporation to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, or as its representative in a partnership, joint venture, trust or other enterprise against any liability asserted

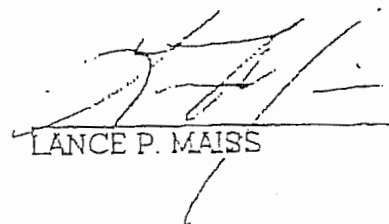
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against such person and incurred in any such capacity or arising out of such status, whether or not the corporation would have the power to indemnify such person.

**X. RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS**

Unless otherwise determined by the Board of Directors, no holder of stock of the corporation shall be entitled as such, as a matter of right, to purchase or subscribe for any stock of any class which the corporation may issue or sell, whether or not exchangeable for any stock of the corporation of unissued shares authorized by the Articles of Incorporation of the corporation as originally filed or by any amendment thereof, or out of shares of stock of the corporation acquired by it after the issue thereof, and whether issued for cash, labor performed, personal property, real property, or leases thereof, nor shall he be entitled to any right of subscription to any thereof; nor, unless otherwise determined by the Board of Directors, shall any holder of any shares be entitled as such, as a matter of right, to purchase or subscribe for any obligation which the corporation may issue or sell that shall be convertible into or exchangeable for any shares of the stock of its capital stock of any class or classes.

IN WITNESS WHEREOF, I have hereunto set my hand this 10<sup>th</sup> day of June, 1998, hereby declaring and certifying that the facts stated hereinabove are true.

  
\_\_\_\_\_  
LANCE P. MAISS


11/30/98 16:27

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State of Nevada )  
 )ss:  
County of Washoe )

On June 17<sup>th</sup>, 1998, personally appeared before me, a Notary Public,  
Lance P. Maiss, who knowledgeable that he executed the above instrument.

*[Handwritten Signature]*  
NOTARY

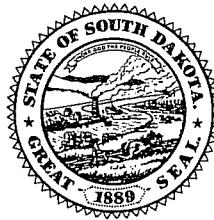
 NANCY D. WILLIAMS  
Notary Public - State of Nevada  
Appointment Recorded in Washoe County  
No: 97-5761-2 - Expires October 8, 2001



**EXHIBIT B**

SOUTH DAKOTA CERTIFICATE OF GOOD STANDING  
(Attached)

# State of South Dakota



## OFFICE OF THE SECRETARY OF STATE

### Certificate of Authorization Foreign Corporation

ORGANIZATIONAL ID #: FB023935

I, **Chris Nelson**, Secretary of State of the State of South Dakota, do hereby certify that **360NETWORKS (USA) INC. (NV)** was authorized to transact business in this state on **May 25, 2000**.

I, further certify that said corporation has complied with the South Dakota law governing foreign corporations transacting business in this state, and so far as the records of this office show, said corporation is in good standing and the annual report required by law has been filed. This certificate is not to be construed as an endorsement, recommendation or notice of approval of the corporation's financial condition or business activities and practices. Such information is not available from this office.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this May 31, 2006.

*Chris Nelson*

Chris Nelson  
Secretary of State

**EXHIBIT C**

**LISTING OF CURRENT REGULATORY AUTHORITIES**

(Attached)

State	IXC	Docket/Order	Date	Facilities Based
AL	IXC	27286#2	2/10/2000	FB
AZ	IXC	62710	6/30/2000	FB
AR	IXC	00-319u	11/14/2000	FB
CA	IXC	98-06-026	7/20/1998	FB
CO	IXC	99A-332T	8/18/1999	FB
CT	IXC	99-10-11	11/17/2000	FB
DE	IXC	00-19	8/1/2000	FB per amend app
FL	IXC	991485-TI	12/28/1999	FB per tariff
GA	IXC	11398-U	7/5/2000	FB
ID	NO IXC REQUIRED			
IL	IXC	99-0372	8/25/1999	FB
IN	IXC	41571	1/19/2000	FB
IA	IXC	TCU-99-23	10/8/1999	FB per app
KS	IXC	01-360C-333-COC	11/8/2000	FB
KY	IXC	T61-1386	10/6/2000	FB per app
LA	IXC	#S244236	5/2/2000	FB
ME	IXC	2000-844	1/19/2001	FB
MA	IXC	NA	9/21/1999	FB per app
MI	IXC	U-12261	9/26/1999	FB
MN	IXC	5816/NA99-1233	6/7/2000	FB
MS	IXC	99-UA-0614	11/8/1999	FB
MO	IXC	TA-2000-207	11/17/1999	FB per app
		TO-2001-99	9/17/2000	See Annual Report 04
MT	IXC	ACKNOWLEDGED		FB
NE	IXC	C-2078	8/10/1999	FB
NV	IXC	99-8029	11/4/1999	FB
NH	IXC	DT-00-244	NA	No
NJ	IXC	TE-00040271	2/20/2001	FB
NM	IXC	3151	6/20/2000	FB per app
NY	IXC	99-C-1270	9/27/1999	FB
NC	IXC	P-888	4/10/2000	FB
ND	IXC	PU2410-00-526	10/25/2000	FB
OH	IXC	00-133-CT-ACE	4/26/2000	FB per tariff
OK	IXC	442614	7/7/2000	FB
OR	IXC	CP649	6/8/1999	FB
PA	IXC	A-310880	7/13/2000	FB
RI	IXC	3053	1/11/2000	FB
SC	IXC	2000-0286	3/27/2000	FB
SD	IXC	TC-00-079	8/25/2000	FB per amend app
TN	IXC	99-00556	12/3/1999	FB
TX	IXC	17475	NA	FB
UT	IXC	99-2289-01	6/26/2000	FB
VT	IXC	CPG519-R	2/10/2000	FB
VA	IXC	PUC990144	5/5/2000	FB
WA	IXC	UT-990858	7/14/1999	FB
WV	IXC	00-1510-T-CN	3/8/2001	FB
WI	IXC	6795-NC-100	12/30/1999	FB
WY	IXC	74482-TT-00-1	7/20/2000	FB per tariff

No DC, ID, MD, AK, HI

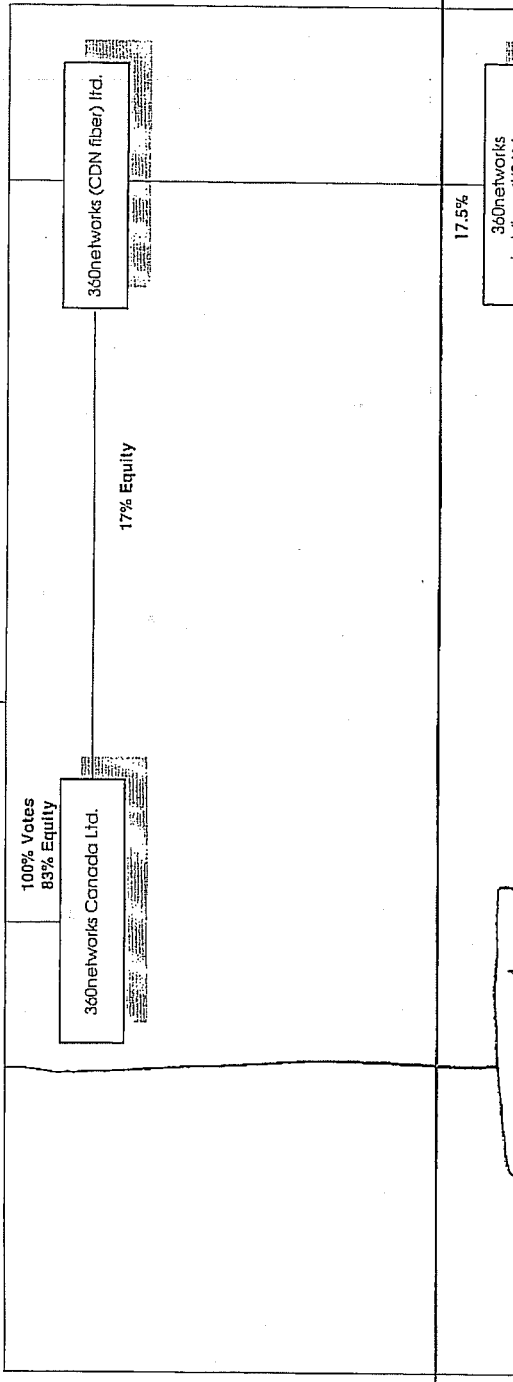
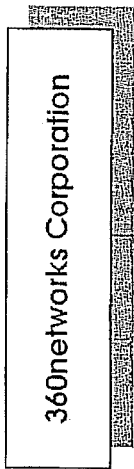
State	CLEC	Docket/Order	Date	Facilities Based
AL	CLEC	27286	1/11/2001	FB
CT	CLEC	00-19-19	1/17/2001	FB
CO	CLEC	05A-368T	9/29/2005	FB
DE	CLEC	5630	1/9/2001	FB per app
DC	CLEC	11812	10/12/2000	FB
FL	ALEC	001489TX	12/8/2000	No
ID	CLEC	29925 / Cert 453	12/6/2005	FB
IN	CLEC	41840	1/3/2001	FB
IA	CLEC	WRU99-28-3333	10/8/1999	FB per app
KS	CLEC	01-360T-060-COC	11/8/2000	FB
KY	CLEC	T61-1386	10/6/2000	FB per app
ME	CLEC	2000-844	1/19/2001	FB
MI	CLEC	U-12685	1/23/2001	No
MN	CLEC	P-5816/NA99-1233	6/7/2000	FB
MO	CLEC	TA-2001-281	3/16/2001	FB
MT	CLEC	Acknowledged		FB
NE	CLEC	C-2398	1/9/2001	FB
NV	CLEC	00-100043	12/15/2000	FB
NJ	CLEC	TE-00040271	2/20/2001	FB
NM	CLEC	3508		FB per app
NY	CLEC	99-C-1270	9/27/1999	FB
NC	CLEC	P-888, SUB 1	4/4/2001	FB per app
ND	CLEC	PU 2410-00-533	10/25/2000	FB
OH	CLEC	00-197-TP-ACE	1/17/2001	FB
OK	CLEC	2000-00565	5/2/2001	FB
OR	CLEC	CP 649	6/8/1999	FB
RI	CLEC	3053	1/11/2000	FB
SC	CLEC	2001-076	1/26/2001	FB
TX	CLEC	23214	3/20/2001	FB
UT	CLEC	99-2289-01	6/26/2000	FB
VT	CLEC	CPG 519-CR	1/3/2001	FB
VA	CLEC	PUC 010035	5/18/2001	FB per app
WA	CLEC	UT-990858	11/21/2000	FB
WV	CLEC	00-1510-T-CN	3/8/2001	FB
WI	CLEC	6795-NC-100	12/30/1999	FB
WY	CLEC	70075-TA-00-1	8/31/2000	FB

**EXHIBIT D**

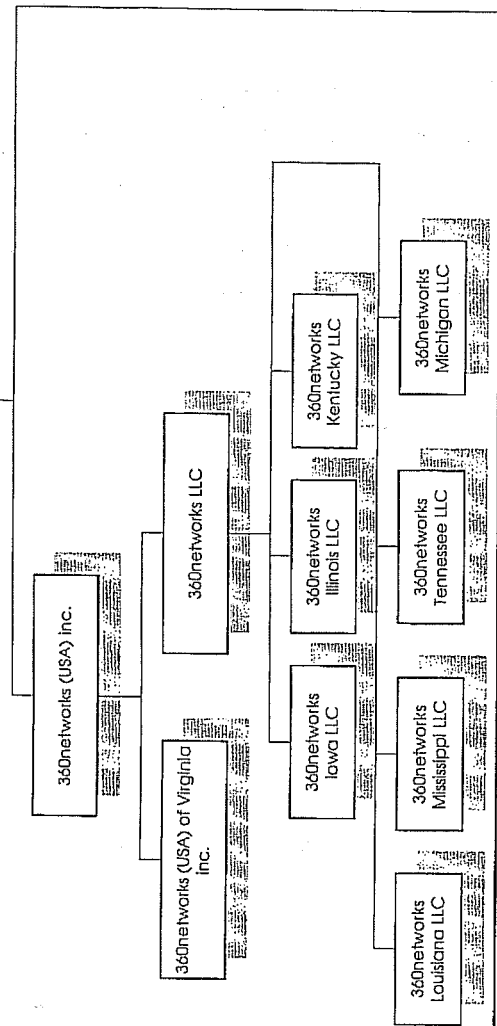
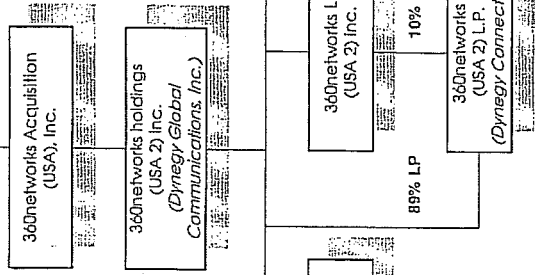
**CORPORATE STRUCTURE**  
(Attached)

Sent by [unclear]

Confidential



360networks U.S. Communications (USA) Inc.



WFI Liquidity Management Hungary Limited Liability Company\*

**EXHIBIT E**

**PROPOSED EXCHANGE ACCESS TARIFF**  
(Attached)



**Illustrative Tariff Schedule Applicable To**  
**SWITCHED EXCHANGE ACCESS TELECOMMUNICATION SERVICES**

Within the State of

SOUTH DAKOTA

**360NETWORKS (USA) INC.**

867 Coal Creek Circle  
Suite 160  
Louisville, CO 80027  
877.993.4237

This Tariff contains the descriptions, regulations and rates applicable to the furnishing of switched exchange access telecommunications services provided by 360networks (USA) inc. ("Company") within the State of South Dakota. This Tariff is on file with the South Dakota Public Utilities Commission ("Commission"). Copies may be inspected during normal business hours at the Company's principal place of business: 867 Coal Creek Circle/Suite 160, Louisville, CO 80027.

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Issued: June 16, 2006

Issued By:

Gary Ray  
Vice President and Co-General Counsel  
867 Coal Creek Circle, Suite 160  
Louisville, CO 80027

Effective:

CHECK SHEET

The sheets of this Tariff are effective as of the date shown. The original and revised sheets named below contain all changes from the original Tariff and are in effect on the date shown.

<u>Sheet</u>	<u>Revision</u>	<u>Sheet</u>	<u>Revision</u>	<u>Sheet</u>	<u>Revision</u>	<u>Sheet</u>	<u>Revision</u>
1	Original	30	Original				
2	Original	31	Original				
3	Original	32	Original				
4	Original	33	Original				
5	Original	34	Original				
6	Original	35	Original				
7	Original	36	Original				
8	Original	37	Original				
9	Original	38	Original				
10	Original	39	Original				
11	Original	40	Original				
12	Original	41	Original				
13	Original	42	Original				
14	Original	43	Original				
15	Original	44	Original				
16	Original	45	Original				
17	Original	46	Original				
18	Original	47	Original				
19	Original	48	Original				
20	Original	49	Original				
21	Original	50	Original				
22	Original	51	Original				
23	Original	52	Original				
24	Original	53	Original				
25	Original	54	Original				
26	Original	55	Original				
27	Original						
28	Original						
29	Original						

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EXPLANATION OF SYMBOLS, REFERENCE  
MARKS, AND ABBREVIATIONS OF TECHNICAL  
TERMS USED IN THIS TARIFF

The following symbols shall be used in this Tariff for the purpose indicated below:

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

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DEFINITIONS

Certain terms used generally throughout this Tariff are described below.

Advance Payment

Part or all of a payment required before the start of service

Access Services

The Company's intrastate switched exchange access services offered pursuant to this Tariff.

Busy Hour Minutes of Capacity (BHMC)

The term "Busy Hour Minutes of Capacity (BHMC)" denotes the Customer specified maximum amount of Switched Access Service and/or Directory Assistance Service access minutes the Customer expects to be handled in an End Office during any hour in an 8:00 a.m. to 11:00 p.m. period for the Feature Group and/or Directory Assistance Service ordered. This Customer specified BHMC quantity is the input data the Company uses to determine the number of transmission paths for the Feature Group and/or Directory Assistance Service ordered.

Carrier or Common Carrier

See Interexchange Carrier.

Commission

The South Dakota Public Utilities Commission

Company or 360networks

360networks (USA) inc., the issuer of this Tariff.

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DEFINITIONS (cont'd)Customer

Any individual, person, firm, partnership, association, joint-stock company, trust, governmental entity, corporation or other entity that directly or indirectly orders access service. A customer is deemed responsible for the payment of charges and compliance with the Company's regulations. An Interexchange Carrier is deemed a Customer of the Company if any of the Interexchange Carrier directly or indirectly sends traffic to or receives traffic from a central office code (NPA-NXX) assigned to the Company. The use of the Company's access service constitutes an order for such service and requires compliance with the obligates, rates, and charges as set forth in this Tariff, regardless of whether the Customer has affirmatively requested service or has an executed service order.

End Office

With respect to each NPA-NXX code prefix assigned to the Company, the location of the Company's "End Office" for purposes of this Tariff shall be the point of interconnection associated with that NPA-NXX code in the Local Exchange Routing Guide, issued by Telcordia.

End User or User

The term "End User" denotes any customer of an interstate or foreign telecommunications service that is not a carrier, except that a carrier other than a telephone company shall be deemed to be an "End User" when such carrier uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an "End User" if all resale transmission offered by such reseller originate on the premises of such reseller.

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DEFINITIONS (cont'd)

Exchange Telephone Company

Denotes any individual, partnership, association, joint-stock company, trust, or corporation engaged in providing switched communication within an exchange.

Incidental Service

Denotes service provided to a Customer under this Tariff that is not provided through a written agreement with Customer and will be held to have been constructively ordered.

Individual Case Basis (ICB):

A service arrangement in which the regulations rates and charges are developed based on the specific circumstances of the case, unless otherwise prohibited by law or regulation.

Interexchange Carrier (IXC) or Interexchange Common Carrier

The terms "Interexchange Carrier" (IXC) or "Interexchange Common Carrier" denotes any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged for hire in intrastate, interstate or foreign communication by wire or radio, between two or more exchanges.

Intrastate Switched Access Service

Provides for a switched two-point communications path between a Customer's premises or a collocated interconnection location and an End User's premises for originating and terminating calls within the state.

LATA

A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc. Tariff F.C.C. No. 4.

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DEFINITIONS (cont'd)

Network

Refers to the Company's facilities, equipment, and services provided under this Tariff.

Recurring Charge

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

Service Commencement Date

The first date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service, which does not conform to standards set forth in a written agreement or this Tariff, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and the Customer may mutually agree on a substitute Service Commencement Date. If the Company does not have an executed agreement from a Customer or is providing an Incidental Service, the Service Commencement Date will be the first date on which the service or facility was used by a Customer.

Serving Wire Center

The term "Serving Wire Center" denotes the wire center from which the Customer designated premises would normally obtain dial tone.

Shared

A facility or equipment system or subsystem that can be used simultaneously by several Customers.

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DEFINITIONS (cont'd)

Toll Free

A term to describe an inbound communications service which permits a call to be completed at a location without charge to the calling party. Access to the service is gained by dialing a ten (10) digit telephone number (e.g. NPA is 800, 888, etc.).

Universal Emergency Telephone Number (911) Service

Wherever feasible, the Company will provide a universal Central Office number "911" for the use of Public Safety Agencies having the responsibility to protect the safety and property of the general public. It is intended that use of 911 Service will provide the public with a means of simple and direct telephone access to a Public Safety Answering Point.

Wire Center

A building in which one or more central offices, used for the provision of Exchange Services, are located.

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APPLICATION

This Tariff applies to intrastate switched exchange access service supplied to Customers for origination and termination of traffic to and from Central Office codes directly assigned to 360 networks (USA) inc. in the State of South Dakota.

Company provides exchange access Services contained in this Tariff under a Multiple Bill-Multiple Tariff method, as set forth in the Alliance for Telecommunications Industry Solutions Inc. Ordering and Billing Forum Multiple Exchange Access Billing document, **ATIS/OBF-MECAB-08**, Issue 8 dated January 2003. This method allows one provider to bill for other providers within the Multiple Bill option when there are more than two companies providing the Service. The number of bills rendered is less than the total number of companies providing the Service. Each provider's Tariff or contract rates are applied and displayed separately for each company's portion of the service provided.

This Tariff applies only to the extent that facilities are available and services provided hereunder are used by a Customer for the purpose of originating or terminating intrastate communications.

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REGULATIONS

2.1 Undertaking of the Company

2.1.1 Scope

The Company undertakes to furnish Intrastate Switched Access Services in accordance with the terms and conditions set forth in this Tariff.

2.1.2 Shortage of Facilities

All Service is subject to the availability of suitable facilities. The Company reserves the right to limit the length of communications or to discontinue furnishing services when necessary because of the lack of transmission medium capacity or because of any causes beyond its control.

2.1.3 Terms and Conditions

- A) Service is provided on the basis of a minimum period of at least one month, 24-hours per day, unless otherwise deemed Incidental Service. For the purpose of computing charges in this Tariff, a month is considered to have 30 days.
- B) Customers may be required to enter into written service orders, which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this Tariff. Customers will also be required to execute any other documents as may be reasonably requested by the Company.
- C) In any action between the parties to enforce any provision of this Tariff, the prevailing party shall be able to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.

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REGULATIONS (cont'd)

2.1 Undertaking of the Company (cont'd)

2.1.3 Terms and Conditions (cont'd)

- D) This Tariff shall be interpreted and governed by the laws of South Dakota and Commission regulations regardless of choice of laws and regulation provisions.

2.1.4 Limitations on Liability

- A) Except as otherwise stated in this section, the liability of the Company for damages arising out of either: ( 1 ) the furnishing of its services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representatives, or use of these services or (2) the failure to furnish its service, whether caused by acts or omission, shall be limited to the extension of allowances to the Customer for interruptions in service as set forth in Section 2.7.
- B) Except for the extension of allowances to the Customer for interruptions in service as set forth in Section 2.7, the Company shall not be liable to a Customer or third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages, including, but not limited to, loss of revenue or profits, for any reason whatsoever, including, but not limited to, any act or omission, failure to perform, delay, interruption, failure to provide any service or any failure in or breakdown of facilities associated with the service.
- C) The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.

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REGULATIONS (cont'd)

2.1 Undertaking of the Company (cont'd)

2.1.4 Limitations on Liability (cont'd)

- D) The Company shall not be liable for any claims for loss or damages involving:
- 1) Any act or omission of: (a) the Customer, (b) any other entity furnishing service, equipment or facilities for use in conjunction with services or facilities provided by the Company; or (c) common carriers or warehousemen;
  - 2) Any delay or failure of performance or equipment due to causes beyond the Company's control, including but not limited to, acts of God, fires, floods, earthquakes, hurricanes, or other catastrophes; national emergencies, insurrections, riots, wars or other civil commotions; strikes, lockouts, work stoppages or other labor difficulties; criminal actions taken against the Company; unavailability, failure or malfunction of equipment or facilities provided by the Customer or third parties; and any law, order, regulation or other action of any governing authority or agency thereof;
  - 3) Any unlawful or unauthorized use of the Company's facilities and services;
  - 4) Libel, slander, invasion of privacy or infringement of patents, trade secrets, or copyrights arising from or in connection with the transmission of communications by means of Company-provided facilities or services; or by means of the combination of Company-provided facilities or services with Customer-provided facilities or services;

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867 Coal Creek Circle, Suite 160  
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REGULATIONS (cont'd)

2.1 Undertaking of the Company (cont'd)

2.1.4 Limitations on Liability (cont'd)

D) (cont'd)

- 5) Breach in the privacy or security of communications transmitted over the Company's facilities;
- 6) Changes in any of the facilities, operations or procedures of the Company that render any equipment, facilities or services provided by the Customer obsolete, or require modification or alteration of such equipment, facilities or services, or otherwise affect their use or performance, except where reasonable notice is required by the Company and is not provided to the Customer, in which event the Company's liability is limited as set forth in Section 2.1.4, preceding;
- 7) Defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof;
- 8) Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected to the Company's facilities;
- 9) Any intentional, wrongful act of a Company employee when such act is not within the scope of the employee's responsibilities for the Company and/or is not authorized by the Company;

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Louisville, CO 80027

Effective:

REGULATIONS (cont'd)

2.1 Undertaking of the Company (cont'd)

2.1.4 Limitations on Liability (cont'd)

D) (cont'd)

- 10) Any representations made by Company employees that do not comport, or that are inconsistent, with the provisions of this Tariff;
- 11) Any noncompletion of calls due to network busy conditions;
- 12) Any calls not actually attempted to be completed during any period that service is unavailable.

E) The Company shall be indemnified, defended and held harmless by the Customer or End User from and against any and all claims, loss, demands, suits, expense, or other action or any liability whatsoever, including attorney fees, whether suffered, made, instituted, or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any Company or Customer equipment or facilities or service provided by the Company.

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Louisville, CO 80027



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REGULATIONS (cont'd)

2.1 Undertaking of the Company (cont'd)

2.1.4 Limitations on Liability (cont'd)

- F) The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere. The Company shall be indemnified, defended and held harmless by the Customer from and against any and all claims, loss, demands, suits, or other action, or any liability whatsoever, including attorney fees, whether suffered, made, instituted or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any equipment or facilities or the service.
- G) The Company assumes no responsibility for the availability or performance of any cable or satellite systems or related facilities under the control of other entities, or for other facilities provided by other entities used for service to the Customer, even if the Company has acted as the Customer's agent in arranging for such facilities or services. Such facilities are provided subject to such degree of protection or nonpreemptibility as may be provided by the other entities.
- H) Except as otherwise stated in this Tariff, any claim of whatever nature against the Company shall be deemed conclusively to have been waived unless presented in writing to the Company within thirty (30) days after the date of the occurrence that gave rise to the claim.

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REGULATIONS (cont'd)

2.1 Undertaking of the Company (cont'd)

2.1.4 Limitations on Liability (cont'd)

I) The Company will operate as specified in these and other applicable Tariffs. Due to the interdependence among telecommunications companies, and the interrelationship with non-Company processes, equipment, and systems, the Company is not responsible for failures caused by circumstances beyond its control including, but not limited to, failures caused by:

1. a local exchange carrier;
2. customer premise equipment; or
3. an End User or Customer.

In addition, the Company is not liable for any incompatibility between the Company's Services and any non-Company services used by a Customer or an End User.

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Vice President and Co-General Counsel  
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Effective:

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REGULATIONS (cont'd)

2.1 Undertaking of the Company (cont'd)

2.1.5 Provision of Equipment and Facilities

- A) Except as otherwise indicated, Customer-provided station equipment at the Customer's premises for use in conjunction with this service shall be so constructed, maintained and operated as to work satisfactorily with the facilities of the Company.
- B) The Company shall not be responsible for the installation, operation or maintenance of any Customer-provided communications equipment. Where such equipment is connected to service furnished pursuant to this Tariff, the responsibility of the Company shall be limited to the furnishing of services under this Tariff and to the maintenance and operation of such services in the proper manner. Subject to this responsibility, the Company shall not be responsible for:
- 1) the through transmission of signals generated by Customer-provided equipment or for the quality of, or defects in, such transmission; or
  - 2) the reception of signals by Customer-provided equipment; or
  - 3) network control signaling where such signaling is performed by Customer-provided network control signaling equipment.

2.1.6 Ownership of Facilities

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

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Issued: June 16, 2006

Issued By:

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REGULATIONS (cont'd)

2.2 Prohibited Uses

- A) The services the Company offers shall not be used for any unlawful purpose or for any use for which the Customer has not obtained all required governmental approvals, authorization, licenses, consents and permits.
- B) The Company may require applicants for service who intend to use the Company's offering for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and regulations, policies, orders, and decisions.
- C) The Company may require a Customer to immediately shut down its transmission if such transmission is causing interference to others.
- D) A Customer, joint user, or authorized user may not assign, or transfer in any manner, the service or any rights associated with the service without the written consent of the Company. The Company will permit a Customer to transfer its existing service to another entity if the existing Customer has paid all charges owed to the Company for regulated access services. Such a transfer will be treated as a disconnection of existing service and installation of new service, and non-recurring installation charges as stated in this Tariff will apply.

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Issued: June 16, 2006

Effective:

Issued By:

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REGULATIONS (cont'd)

2.3 Obligations of the Customer

2.3.1 Customer Premises Provisions

- A) The Customer shall provide the personnel, power and space required to operate all facilities and associated equipment installed on the premises of the Customer.
- B) The Customer shall be responsible for providing Company personnel access to premises of the Customer at any reasonable hour for the purpose of testing the facilities or equipment of the Company.

2.3.2 Liability of the Customer

- A) The Customer will be liable for damages to the facilities of the Company and for all incidental and consequential damages caused by the negligent or intentional acts or omissions of the Customer, its officers, employees, agents, invitees, or contractors where such acts or omissions are not the direct result of the Company's negligence or intentional misconduct.
- B) To the extent caused by any negligent or intentional act of the Customer as described in (A), preceding, the Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees, for (1) any loss, destruction or damage to property of any third party, (2) the death of or injury to persons, including, but not limited to, employees or invitees of either party, and (3) any liability incurred by the Company to any third party pursuant to this or any other Tariff of the Company, or otherwise, for any interruption of, interference to, or other defect in any service provided by the Company to such third party.

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Effective:

REGULATIONS (cont'd)

2.3 Obligations of the Customer (cont'd)

2.3.2 Liability of the Customer (cont'd)

- C) The Customer shall not assert any claim against any other customer or user of the Company's services for damages resulting in whole or in part from or arising in connection with the furnishing of service under this Tariff including but not limited to mistakes, omissions, interruptions, delays, errors or other defects or misrepresentations, whether or not such other customer or user contributed in any way to the occurrence of the damages, unless such damages were caused solely by the negligent or intentional act or omission of the other customer or user and not by any act or omission of the Company. Nothing in this Tariff is intended either to limit or to expand Customer's right to assert any claims against third parties for damages of any nature other than those described in the preceding sentence.

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REGULATIONS (cont'd)2.3 Obligations of the Customer (cont'd)2.3.3 Jurisdictional Report Requirements

- A) If Feature Group D Switched Access Service(s) is available and provided, the Company, where jurisdiction can be determined from the call detail, will determine the projected interstate percentage as follows. For originating access minutes, the projected interstate percentage will be developed on a monthly basis by End Office trunk group when the Feature Group D Switched Access Service access minutes are measured by dividing the measured interstate originating access minutes (the access minutes where the calling number is in one state and the called number is in another state) by the total originating access minutes when the call detail is adequate to determine the appropriate jurisdiction. For terminating access minutes, the Customer has the option to provide the Company with a projected PIU factor. Customers who provide a PIU factor shall supply the Company with an interstate percentage of the Feature Group D terminating access minutes for each account to which the Customer may terminate traffic.

Should the Customer not supply a terminating PIU Factor, the data used by the Company to develop the projected interstate percentage for originating access minutes will be used to develop projected interstate percentage for such terminating access minutes. When a Customer orders Feature Group D Switched Access Service, the Customer shall supply a projected interstate percentage of use for each End Office trunk group involved to be used in the event that originating call details are insufficient to determine the jurisdiction for the call. This percentage shall be used by the Company as the projected interstate percentage for such call detail. For purposes of developing the projected interstate percentage, the Customer shall utilize the same considerations as those set forth in Section 2.3.3(B) following.

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REGULATIONS (cont'd)

2.3 Obligations of the Customer (cont'd)

2.3.3 Jurisdictional Report Requirements (cont'd)

A) (cont'd)

The Company will designate the number obtained by subtracting the projected interstate percentage for originating and terminating access minutes from 100 (100 - projected interstate percentage = intrastate percentage) as the projected interstate percentage of use.

If the Customer has no originating traffic within the End Office for which sufficient call detail exists to develop a PIU factor, and the Customer has not supplied a PIU factor on either the quarterly update report or the Access Service Request, the Company will designate a PIU factor of 50% for Feature Group D terminating access minutes. For originating Toll Free access minutes, where the call detail is insufficient to determine the jurisdiction of the call, the Customer shall provide the Company with a projected PIU factor. If such a PIU has not been provided for Toll Free access minutes, the Company will designate the default PIU factor of 50%. This factor will be applied to the next billing cycle and continue until the Customer provides a PIU factor. When the Customer does provide the PIU factor, the Company will update the customer's PIU factors within fifteen (15) business days.

- B) For purposes of developing the projected interstate percentage, the Customer shall consider every call that enters the Customer's network at a point within the same state as the state where the called station is located to be intrastate and every call that enters the Customer's network at a point in a state different from the state in which the called station is located to be interstate.

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Issued: June 16, 2006  
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Effective:



REGULATIONS (cont'd)

2.3 Obligations of the Customer (cont'd)

2.3.3 Jurisdictional Report Requirements (cont'd)

- C) These whole number percentages will be used by the Company to apportion the use, rates, and/or nonrecurring charges between interstate and intrastate until a revised report is received.
- D) The projected interstate percentage of use will be used to determine the charges as follows:

The number of access minutes for a trunk group will be multiplied by the projected interstate percentage of use to determine the interstate access minutes (i.e., number of access minutes x projected interstate percentage of use = interstate access minutes). The number of interstate access minutes so determined will be subtracted from the total number of access minutes (i.e., number of access minutes - interstate access minutes = intrastate access minutes). The intrastate access minutes for the group will be billed as set forth in Section 5 following.

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Issued: June 16, 2006

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Effective:

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REGULATIONS (cont'd)

2.3 Obligations of the Customer (cont'd)

2.3.3 Jurisdictional Report Requirements (cont'd)

- E) Effective on the first of January, April, July and October of each year, the Customer may update the jurisdictional reports that require a projected interstate percentage. The Customer shall forward to the Company, to be received no later than 20 calendar days after the first of each such month, a revised report showing the interstate percentage of use for the past three months ending the last day of December, March, June and September, respectively, for each service arranged for interstate and intrastate use. Except as set forth in Section 2.3.3(A) preceding where jurisdiction can be determined from the recorded message detail, the revised report will serve as the basis for the next three months billing and will be effective on the bill date in the following month (i.e., February, May, August, and November) for that service. No prorating or back billing will be done based on the report. If the Customer does not supply the report, the Company will assume the percentage to be the same as that provided in the last quarterly report. For those cases in which a quarterly report has never been received from the Customer, the Company will assume the percentage to be the same as that provided in the order for service as set forth in Section 2.3.3(A) preceding.

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Effective:

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REGULATIONS (cont'd)

2.3 Obligations of the Customer (cont'd)

2.3.3 Jurisdictional Report Requirements (cont'd)

- F) The Customer reported projected interstate percentage of use as set forth in Section 2.3.3(A) preceding will be used for the apportionment of any monthly rates or nonrecurring charges associated with Feature Groups B or D Switched Access Service until the end of the quarter during which the service was activated. Thereafter, a projected interstate percentage for such apportionment will be developed quarterly by the Company based on the data used to develop the projected interstate percentage of use as set forth in Section 2.3.3(A) preceding. Where call detail is insufficient to make such a determination, the Customer will be requested to project a interstate percentage of use to be used by the Company for such apportionment.
- G) The Customer shall keep sufficient detail from which the percentage of interstate use can be ascertained and upon request of the Company make the records available for inspection. Such a request will be initiated by the Company no more than once per year. The Customer shall supply the data within 30 calendar days of the Company request.
- H) The terms and conditions described in Section 2.3.3 shall apply only in the event Company provides Feature Group D Switched Access Services.

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Effective:

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REGULATIONS (cont'd)

2.4 Customer Equipment and Channels

2.4.1 Interconnection of Facilities

- A) In order to protect the Company's facilities and personnel and the services furnished to other Customers by the Company from potentially harmful effects, the signals applied to the Company's service shall be such as not to cause damage to the facilities of the Company. Any special interface equipment necessary to achieve the compatibility between facilities of the Company and the channels or facilities of others shall be provided at the Customer's expense.

2.4.2 Inspections

- A) The Company may, upon notification to the Customer, at a reasonable time, make such tests and inspections as may be necessary to determine that the requirements regarding the equipment and interconnections are being complied with in respect to the installation, operation and maintenance of Customer-provided equipment and in the wiring of the connection of Customer channels to Company-owned facilities.
- B) If the protective requirements in connections with Customer provided equipment are not being complied with, the Company may take such action as necessary to protect its facilities and personnel and will promptly notify the Customer by registered mail in writing of the need for protective action. In the event that the Customer fails to advise the Company within 10 days after such notice is received or within the time specified in the notice that corrective action has been taken, the Company may take whatever additional action is deemed necessary, including canceling service, to protect its facilities and personnel from harm. The Company will upon request 24 hours in advance provide Customer with a statement of technical parameters that the Customer's equipment must meet.

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Issued: June 16, 2006

Effective:

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REGULATIONS (cont'd)

2.5 Customer Deposits and Advance Payments

2.5.1 Advance Payments

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount up to two months of estimated monthly usage charges. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

2.5.2 Deposits

- A) To safeguard its interests, the Company may require the Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
- 1) three months' charges for a service or facility which has a minimum payment period of one month; or
  - 2) the charges that would apply for the minimum payment period for a service or facility which has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.
- B) A deposit may be required in addition to an advance payment.

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REGULATIONS (cont'd)

2.5 Customer Deposits and Advance Payments (cont'd)

2.5.2 Deposits (cont'd)

- C) When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account. If the amount of the deposit is insufficient to cover the balance due to the Customer's account, the Company retains the right to collect any amounts owing after the deposit has been applied plus any costs related to the collection of any remaining balance.
  
- D) Deposits held will accrue interest at a rate specified by the Company without deductions for any taxes on such deposits. Interest will not accrue on any deposit after the date on which reasonable effort has been made to return it to the Customer.

2.6 Payment Arrangements

2.6.1 Payment for Service

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

A) Taxes

The Customer is responsible for payment of any sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however, designated) (excluding taxes on the Company's net income) imposed on or based upon the provision, sale or use of Network Services.

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Effective:

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REGULATIONS (cont'd)

2.6 Payment Arrangements (cont'd)

2.6.2 Billing and Collection of Charges

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

- A) Non-recurring charges are due and payable within 30 days after the date of the invoice.
- B) The Company shall present invoices for Recurring Charges monthly to the Customer, in advance of the month in which service is provided, and Recurring Charges shall be due and payable within 30 days after the date of the invoice. When billing is based upon customer usage, usage charges will be billed monthly for the preceding billing period.
- C) When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have 30 days.
- D) Billing of the Customer by the Company will begin on the Service Commencement Date. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.

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Issued: June 16, 2006

Effective:

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REGULATIONS (cont'd)

2.6 Payment Arrangements (cont'd)

2.6.2 Billing and Collection of Charges (cont'd)

- E) If any portion of the payment is received by the Company after the date due, or if any portion of the payment is received by the Company in funds which are not immediately available upon presentment, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the date due, multiplied by a late factor. The late factor shall be 1.5 percent per month.
- F) The Customer will be assessed a charge of twenty dollars (\$20.00) for each check submitted by the Customer to the Company which a financial institution refuses to honor.
- G) If service is disconnected by the Company in accordance with Section 2.6.4 following and later reinstalled, service will be subject to all applicable installation charges. If service is suspended by the Company and later restored, service will be subject to all applicable restoration charges.

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REGULATIONS (cont'd)2.6 Payment Arrangements (cont'd)2.6.3 Billing DisputesA) General

All bills are presumed accurate, and shall be binding on the Customer unless notice of the disputed charge(s) is received by the Company within 30 days (commencing 5 days after such bills have been mailed or otherwise rendered per the Company's normal course of business). For the purposes of this section, "notice" is defined as written notice to the Company, containing sufficient documentation to investigate the dispute, including the account number under which the bill has been rendered, the date of the bill, and the specific items on the bill being disputed.

B) Late Payment Charge

- 1) The undisputed portions of the bill must be paid by the payment due date to avoid assessment of a late payment charge on the undisputed amount under Section 2.6.2(E), preceding.
- 2) In the event that a billing dispute is resolved by the Company in favor of the Customer, any disputed amount withheld pending resolution of the billing dispute shall not be subject to the late payment charge.
- 3) In the event that a billing dispute is resolved in favor of the Company, the Customer shall pay the late payment charge.

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Issued: June 16, 2006

Effective:

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REGULATIONS (cont'd)

2.6 Payment Arrangements (cont'd)

2.6.3 Billing Disputes (cont'd)

C) Adjustments or Refunds to the Customer

- 1) In the event that the Company resolves the billing dispute in favor of a Customer who has withheld payment of the disputed amount pending resolution of the disputed bill, the Company will credit the Customer's account for the disputed amount in the billing period following the resolution of the dispute.
- 2) In the event that the Company resolves the billing dispute in favor of a Customer who has paid the total amount of the disputed bill, the Company will credit the Customer's account for any overpayment by the Customer in the billing period following the resolution of the dispute.
- 3) In the event that the Company resolves the billing dispute in favor of a Customer who has paid the total amount of the disputed bill but canceled the service, the Company will issue a refund or credit to the Customer's account of any overpayment by the Customer.
- 4) All adjustments or refunds provided by the Company to the Customer at the Customer's request, or provided by the Company to the Customer by way of compromise of a billing dispute, and which are accepted by the Customer, are final and constitute full satisfaction, settlement, and/or compromise of all of the Customer's claims for the billing period for which the adjustment or refund was issued.

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REGULATIONS (cont'd)

2.6 Payment Arrangements (cont'd)

2.6.3 Billing Disputes (cont'd)

D) Unresolved Billing Disputes

In the case of a billing dispute between the Customer and the Company for service furnished to the Customer, which cannot be settled to the mutual satisfaction of the Customer and the Company, the Customer has up to 90 days (commencing 5 days after such bills have been mailed or otherwise rendered per the Company's normal course of business) to take the following course of action: The Customer may request and the Company will provide an in-depth review of the disputed amount. The Customer may contact the Commission at any time regarding billing disputes.

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Issued: June 16, 2006

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Effective:

REGULATIONS (cont'd)

2.6 Payment Arrangements (cont'd)

2.6.4 Discontinuance of Service for Cause

- A) Upon nonpayment of any amounts owing to the Company, the Company may, by giving 5 days prior written notice to the Customer, discontinue or suspend Service without incurring any liability.
- B) Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving 10 days prior notice in writing to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- C) Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- D) Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
- E) Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- F) In the event of fraudulent use of the Company's network, the Company may without notice suspend or discontinue service. The Customer will be liable for all related costs. The Customer will also be responsible for payment of any reconnection charges.

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Issued: June 16, 2006  
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Effective:

REGULATIONS (cont'd)

2.6 Payment Arrangements (cont'd)

2.6.4 Discontinuance of Service for Cause (cont'd)

- G) Upon the Company's discontinuance of service to the Customer under Section 2.6.4(A) or 2.6.4(B), the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this Tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and.

2.6.5 Notice to Company for Cancellation of Service

Customers desiring to terminate service shall provide Company thirty (30) days written notice of desire to terminate service.

2.6.6 Changes in Service Requested

If the Customer makes or requests material changes in circuit engineering, equipment specifications, service parameters, premises locations, or otherwise materially modifies any provision of the application for service, the Customer's installation fees shall be adjusted according to the term and conditions set forth in 3.1.1(C) following, Access Order Modifications, unless by separate agreement.

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Issued: June 16, 2006

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REGULATIONS (cont'd)

2.6 Payment Arrangements (cont'd)

2.6.7 Customer Overpayment

The Company will pay interest on a Customer overpayment. Customer overpayment shall mean a payment to the Company in excess of the correct charges for service when caused by erroneous billing by the Company. The rate of interest shall be the unadjusted interest rate paid on Customer deposits or the late payment penalty rate, whichever is greater. Interest shall be paid from the date when the Customer overpayment was made, adjusted for any changes in the deposit simple interest rate or late payment penalty rate, , until the date when the overpayment is credited to the Customer's account, unless the Customer requests a refund. No interest shall be paid on Customer overpayments that are credited (or refunded) within thirty (30) days after such overpayment is received by the Company. Unless otherwise agreed between the parties, the Company will credit the overpayment to the Customer's next monthly bill.

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Issued: June 16, 2006

Effective:

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REGULATIONS (cont'd)2.7 Allowances for Interruptions in Service2.7.1 General

- A) A credit allowance will be given when service is interrupted, except as specified in Section 2.7.2 following.
- B) An interruption period begins when the Company discovers that a service, facility or circuit is inoperative or when the Customer reports a service, facility or circuit to be inoperative, whichever occurs first. A service is considered to be interrupted when it becomes inoperative to the Customer, e.g., the Customer is unable to transmit or receive, because of a failure of a component furnished by the Company under this Tariff. The inoperative service, facility or circuit must be released to the Company for testing and repair. An interruption period ends when the service, facility or circuit is operative.
- C) If the Customer reports a service, facility or circuit to be interrupted but declines to release it for testing and repair, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service, facility or circuit considered by the Company to be impaired.

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Effective:

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REGULATIONS (cont'd)

2.7 Allowances for Interruptions in Service (cont'd)

2.7.2 Limitations of Allowances

No credit allowance will be made for any interruption in service:

- A) Due to the negligence of or noncompliance with the provisions of this Tariff by any person or entity other than the Company, including but not limited to the Customer or other common carriers connected to the service of the Company;
- B) Due to the failure of power, equipment, systems, connections or services not provided by the Company;
- C) Due to circumstances or causes beyond the control of the Company;
- D) During any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting interruptions;
- E) During any period in which the Customer continues to use the service on an impaired basis;
- F) During any period when the Customer has released service to the Company for maintenance purposes or immediately following, for implementation of a Customer order for a change in service arrangements;
- G) That occurs or continues due to the Customer's failure to authorize replacement of any element of special construction; and
- H) That was not reported to the Company within thirty (30) days of the date that service was affected.

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Issued: June 16, 2006

Effective:

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REGULATIONS (cont'd)

2.7 Allowances for Interruptions in Service (cont'd)

2.7.3 Use of Another Means of Communications

If the Customer elects to use another means of communications during the period of interruption, the Customer must pay the charges for the alternative service used and Company will have no liability for such charges.

2.7.4 Application of Credits for Interruptions in Service

- A) Credits for interruptions in service that is provided and billed on a flat rate basis for a minimum period of at least one month, beginning on the date that billing becomes effective, shall in no event exceed an amount equivalent to the proportionate charge to the Customer for the period of service during which the event that gave rise to the claim for a credit occurred. A credit allowance is applied on a pro rate basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.
- B) For calculating credit allowances, every month is considered to have thirty (30) days.
- C) A credit allowance of one days service will be given for all interruptions in service of 8 or more hours in a continuous twenty-four hour period.

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Issued: June 16, 2006

Issued By:

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Effective:

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REGULATIONS (cont'd)

2.7 Allowances for Interruptions in Service (cont'd)

2.7.5 Cancellation For Service Interruption

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

2.8 Cancellation of Service/Termination Liability

If a Customer cancels or terminates services before the completion of the term for any reason whatsoever other than multiple service interruptions (as defined in Section 2.7.1), Customer agrees to pay to Company termination liability charges, which are defined below. These charges shall become due and owing as of the effective date of the cancellation or termination and be payable within the period set forth in Section 2.6.2.

2.8.1 Termination Liability

Customer's termination liability for cancellation of service shall be equal to:

- 1) all unpaid Non-Recurring charges reasonably expended by Company to establish service to Customer, plus;

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Effective:

REGULATIONS (cont'd)

2.8 Cancellation of Service/Termination Liability (cont'd)

2.8.1 Termination Liability (cont'd)

- 2) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer, plus;
- 3) all Recurring Charges specified in any agreement for the balance of the then current term discounted at the prime rate announced in the Wall Street Journal on the third business day following the date of cancellation;

2.9 Customer Liability for Unauthorized Use of the Network

2.9.1 Unauthorized Use of the Network

- A) Unauthorized use of the Network occurs when: (1) a person or entity that does not have actual, apparent, or implied authority to use the Network, obtains the Company's services provided under this Tariff; or (2) a person or entity that otherwise has actual, apparent, or implied authority to use the Network, makes fraudulent use of the Network to obtain the Company's services provided under this Tariff, or uses specific services that are not authorized.

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Issued: June 16, 2006  
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REGULATIONS (cont'd)

2.9 Customer Liability for Unauthorized Use of the Network (cont'd)

2.9.1 Unauthorized Use of the Network (cont'd)

- B) The following activities constitute fraudulent use:
- 1) Using the Network to transmit a message, locate a person, or otherwise give or obtain information, without payment for the service;
  - 2) Using or attempting to use the Network with the intent to avoid payment, either in whole or part, of any of the Company's Tariffed charges by either rearranging, tampering with, or making connections not authorized by this Tariff to any service components used to furnish the Company's services or using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices;
  - 3) Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices to defraud or mislead callers.
- C) Customers are advised that use of telecommunications equipment and services, including that provided under this Tariff, carries a risk of various forms of telecommunications fraud (including, but not limited to, toll and PBX fraud perpetrated by Users who gain access to a Customer's facilities, account numbers, security or authorization codes, etc.). Customers should take all necessary steps to restrict access to their facilities, including the equipment and services provided hereunder, and to detect and prevent unauthorized use of the equipment and services provided by the Company under this Tariff.

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Issued: June 16, 2006

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Effective:

REGULATIONS (cont'd)

2.9 Customer Liability for Unauthorized Use of the Network (cont'd)

2.9.2 Liability for Unauthorized Use

- A) Except as provided for elsewhere in this Tariff, the Customer is responsible for payment of all charges for services provided under this Tariff furnished to the Customer or User. This responsibility is not changed due to any use, misuse, or abuse of the Customer's service or Customer-provided equipment by Users or other third parties, the Customer's employees, or the public.
- B) The Customer is liable for all costs incurred as a result of unauthorized use of the Network, including service charges and any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive charges.
- C) The Customer is responsible for payment of any charges related to the suspension and/or termination of service, and any charges for reconnection of service, incurred as a result of unauthorized use of the Network.

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Effective:

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REGULATIONS (cont'd)

2.10 Application of Rates

The regulations set forth in this section govern the application of rates for services contained in other sections of this Tariff.

2.10.1 Charges Based on Duration of Use

Customer traffic to End Offices will be measured (i.e., recorded or assumed) by the Company. Originating and terminating calls will be measured (i.e., recorded or assumed) by the Company to determine the basis for computing chargeable access minutes. In the event the Customer message detail is not available because the Company lost or damaged tapes or experienced recording system outages, the Company will estimate the volume of lost Customer access minutes of use based on previously known values.

For originating calls over Customer's Feature Group D, usage measurement begins when the originating Customer's Feature Group D switch receives the first wink supervisory signal forwarded from the Customer's point of termination.

The measurement of originating call usage ends when the Customer's originating Feature Group D switch receives disconnect supervision from either the Company's Network, indicating the originating End User has disconnected, or the Customer's point of termination, whichever is recognized first by the Company's Network.

For terminating calls over Customer's Feature Group D, the measurement of access minutes begins when the Customer's terminating Feature Group D switch receives answer supervision from the Company's Network, indicating the terminating End User has answered. For terminating calls over Customer's FGD Access Service, the measured minutes are chargeable access minutes. Where assumed minutes are used, the assumed minutes are the chargeable access minutes.

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Issued: June 16, 2006

Effective:

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REGULATIONS (cont'd)2.10 Application of Rates (cont'd)2.10.1 Charges Based on Duration of Use (cont'd)

The measurement of terminating call usage over Customer's Feature Group D ends when the Customer's terminating Feature Group D switch receives disconnect supervision from either the Company's Network, indicating the terminating End User has disconnected, or the Customer's point of termination, whichever is recognized first by the switch.

Customer's FGD access minutes or fractions thereof, the exact value of the fraction being a function of the Network technology where the measurement is made, are accumulated over the billing period for each End Office, and are then rounded up to the nearest access minute for each End Office.

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SERVICE DESCRIPTIONS

## 3.1 Switched Access Services

Switched Access Service, which is available to Customers for their use in furnishing their services to End Users, provides a two-point communications path between a Customer's premises and an End User's premises. It provides for the use of common terminating, switching and trunking facilities and/or functionalities. Switched Access Service provides for the ability to originate calls from an End User's premises to a Customer's premises (or a collocated interconnection location), and to terminate calls from a Customer's premises (or a collocated interconnection location) to an End User's premises in the LATA where it is provided. Switched Access Service must be ordered or provided as an Incidental Service separately for each LATA in which the Customer desires to originate or terminate calls.

Switched Access Service is provided in the following service categories, which are differentiated by their technical characteristics and the manner in which an End User or Customer accesses them when originating or terminating calls.

Terminating Switched Access provides trunk side-equivalent access to the Company's Network for the Customer's use in originating and terminating communications.

Toll Free Data Base Access Service, which is available to all Customers, provides trunk side-equivalent access to the Company's Network in the originating direction only, for the Customer's use in originating calls dialed by an End User to telephone numbers beginning with the prefix "800" or "888."

Customer's or its End User's use of any Incidental Service shall constitute Customer's agreement to all of the terms and conditions of this Tariff. Services provided on an incidental basis (Incidental Services) are billed to Customer on a monthly basis in accordance with Customer's recorded usage for each Service and the corresponding rates contained in the Rates Section, below.

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Issued: June 16, 2006

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Effective:



SERVICE DESCRIPTIONS (cont'd)

3.1 Access Services (cont'd)

3.1.1 Standard Rate Categories

The composite rate categories in this Section 3.1.2 apply to Switched Access Service and include the following combined categories.

A) Rate Regulations

1) Common Line

The Common Line rate category establishes the charges related to the use of Company-provided End User common lines by Customers and end-users for intrastate access.

2) End Office Switching

The Company combines traditional per minute switched access rate elements into a single composite per minute rate element. This element includes the following rate categories:

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Effective:

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SERVICE DESCRIPTIONS (cont'd)

3.1 Access Services (cont'd)

3.1.1 Standard Rate Categories (cont'd)

A) Rate Regulations (cont'd)

2) End Office Switching (cont'd)

a) Switched Transport

The Switched Transport rate category establishes the charges related to the provision by the Company's Network of transmission and tandem switching functionality between the Customer designated premises and the End Office(s) where the Customer's traffic is switched to originate or terminate the Customer's communications. The Switched Transport rate category also includes the functionality of transport between an End Office or equivalent within Company's Network that serves as host for a remote switching system or module.

b) End Office Switching

The End Office switching rate category establishes the charges related to the use of those portions of the Company's network that perform End Office switching functionality, the terminations in the End Office of End User lines and the termination of calls at intercept operators or recordings.

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Effective:

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SERVICE DESCRIPTIONS (cont'd)

3.1 Access Services (cont'd)

3.1.2 Other Rate Categories

A) Toll Free Data Base Access Service

Toll Free Data Base Access Service is a service offering utilizing originating trunk side Switched Access Service. The service provides for the forwarding of End User dialed Toll Free calls to a Company Service Switching Point which will initiate a query to the data base to perform the switching. Toll Free Data Base Access Service is not available as an Incidental Service.

Customer identification and delivery function. The call is forwarded to the appropriate Customer based on the dialed Toll Free number. Toll Free Data Base Access Service is comprised of the following elements:

1) Customer Identification Charge

The Toll Free Data Base Access Service Customer Identification Charge applies for the identification and delivery of Toll Free dialed traffic to the appropriate Customer. The charge is assessed to the Customer on a per query and per minute of use basis and may include an area of service which may range from a single NPA/NXX to an area consisting of all LATAs and NPAs within the operating territory of 360networks (USA) inc.. The Toll Free Carrier Identification Charge is set forth in 5.1.3. The per minute of use charges can be found with the Local Transport and Local Switching rates (Section 5.1.2).

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Effective:

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SERVICE DESCRIPTIONS (cont'd)

3.1 Access Services (cont'd)

3.1.3 Other Rate Categories

A) Toll Free Data Base Access Service (cont'd)

2) POTS Translation Charge

The POTS Translation provides the option of having the ten digit POTS number NPA + NXX-XXXX delivered instead of the Toll Free dialed number (e.g., 800 + NXX-XXXX) delivered to the service provider.

A POTS Translation Charge is assessed per query, in addition to the Toll Free Carrier Identification Charge. The charges can be found in Section 5.1.3.

3) Call Handling & Destination Feature Charge

The Toll Free Call Handling and Destination Features Package, available only with the Toll Free Data Base Access Service, provides feature functionality in addition to basic query. The feature package may include various destination options such as carrier selection, time of day routing, day of week routing, specific date routing, geographic routing, routing based on percent of allocation, and emergency routing profiles.

A Call Handling and Destination Feature Charge is assessed on a per-query basis, in addition to the Customer Identification Charge and the POTS Translation Charge as set forth in Section 5.1.3.

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Issued: June 16, 2006

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Effective:

RATES

4.1 Access Service

4.1.1 Composite Switched Access, All Times

A) Direct Access

Per Originating Minute	\$0.047324
Per Terminating Minute	\$0.047324

B) Tandem Switched Access

Per Originating Minute	\$0.055889
Per Terminating Minute	\$0.055889

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Effective:

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RATES (cont'd)4.1 Access Service (cont'd)4.1.2 Toll Free Data Base Access Service

- |    |  |            |
|----|--|------------|
| A) | 800 Carrier Identification Code, per call                  | \$0.003312 |
| B) | Vertical Features  |            |
| 1) | POTS Translation Charge, per call                          | \$0.003665 |
| 2) | Call Handling and Destination Feature Charge,<br>per query | \$0.000694 |

4.2 Miscellaneous Services4.2.1 Presubscription

- |    |   |        |
|----|---|--------|
| A) | Authorized PIC Change<br>-Per Telephone Exchange Service<br>Line or Trunk | \$5.00 |
|----|---|--------|

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Effective:

RATES (cont'd)

4.3. Individual Case Basis Arrangements

Individual Case Basis arrangements will be developed on a case-by-case basis in response to a bona fide Customer or prospective Customer request and based on specific Customer commitments, unless otherwise prohibited by law or regulation. ICB arrangement switched exchange access service rates will be available to any similarly situated Customer.

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Effective:

**EXHIBIT F**

**MANAGEMENT BIOGRAPHIES**  
(Attached)



**ROB FRASENE**  
**PRESIDENT**

Rob Frasene was appointed President on June 21, 2005. Prior to that, he held the positions of Senior Vice President, Operations of the Company in November 2004, Senior Vice President, Finance, in April 2003, and Vice President, Capital Planning of 360networks inc., (the Company's predecessor's parent company) in April 2001.

Mr. Frasene has over twenty years of experience in telecommunications. Prior to working for 360, Mr. Frasene was the Vice President of Network Services - Finance, of XO Communications Inc. supporting Network Operations and Capital Planning from July 1998 to February 2001.

From January 1996 to July 1998, Mr. Frasene was the Chief Financial Officer of the AT&T Wireless Local Loop business unit, responsible for manufacturing and deploying fixed wireless technology. Prior to that, he was the Director of Mergers and Acquisitions of AT&T Communications from 1993 to 1995. Mr. Frasene joined AT&T Communication in 1984 and held a variety of positions in the Finance organization. He has an undergraduate degree in Accounting and an MBA in Finance from Baruch College.

**CHRIS MUELLER**  
**CHIEF FINANCIAL OFFICER**

Chris Muller was appointed CFO on June 21, 2005. Prior to that, he was appointed the position of Senior Vice President of Strategic Finance of the Company in April, 2003. Mr. Mueller is responsible for the Company's Corporate Development, Treasury, Risk Management and Tax. Mr. Mueller recently assumed additional responsibility for Operational Finance in November 2004.

Previously Mr. Mueller was the Vice President, Corporate Development of the Company in November 2002. Prior to that, Mr. Mueller held various senior management positions with 360networks inc., (the Company's predecessor's parent company) since April 2000, including General Manager of Corporate Development.

Previously, Mr. Mueller was a Managing Director of Corporate Finance at Ragen MacKenzie, a regional Investment Bank in the Pacific Northwest. He has an undergraduate degree from Yale and an MBA from Wharton.

**LIZA DENNEHY**  
**VICE PRESIDENT, NETWORK OPERATIONS**

Liza Dennehy was appointed Vice President of Network Operations in late 2004. Prior to that, she held the position Vice President, Integration from the time she joined 360networks on December 23, 2003.

Ms. Dennehy has over fifteen years experience in telecommunications. Prior to working for 360, Ms. Dennehy held a variety of positions within Touch America, Inc. supporting both operations, business development, and finance. At the time the assets of Touch America were acquired by 360 in December, 2003, Ms. Dennehy held the position at Touch America of Treasurer.

Ms. Dennehy has an undergraduate degree in Computer Science from Montana Tech and an MBA from the University of Montana.

## EXHIBIT G

### CONFIDENTIAL FINANCIAL STATEMENTS (Attached)

Applicant considers its financial information to be proprietary and confidential. The data contained in these documents reveal the size, nature, and scope of Applicant's business and financial operations to competitors and potential competitors. Therefore, the Applicant requests that the Commission treat Applicant's Balance Sheets and Income Statements as proprietary, to maintain the confidentiality of the data contained therein. Applicant's financial information is submitted under protective seal, accordingly.

In lieu of audited financial statements, Applicant's financial statements are verified correct, under penalty of perjury, by Applicant. Applicant does not require audited financial statements to conduct its operations, nor have audited financial statements been required to conduct its operations in other jurisdictions. Applicant's South Dakota intrastate revenues and operating expenses are incremental in nature. Therefore, Applicant submits its Balance Sheets and Income Statements for all of its operations. Applicant requests that its verified financial statements be accepted for filing accordingly.