

**REGULATIONS, Continued****2.1 UNDERTAKING OF COMPANY, Continued****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 2.6 or as determined in accordance with SDCL 49-13-1, 49-13-1.1 and any other applicable law.
  
- B. Except for the extension of allowances to the Customer for interruptions in Service as set forth in Section 2.6, or as determined in accordance with SDCL 49-13-1, 49-13-1.1 and any other applicable law, 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.

**REGULATIONS, Continued****2.1 UNDERTAKING OF COMPANY, Continued****2.1.4 Limitations on Liability, Continued****D. Continued**

10. Any representations made by Company employees that do not comport, or that are inconsistent, with the provisions of this Tariff;
11. Any non-completion of calls due to network busy conditions;
12. Any calls not attempted when Service is unavailable.

**E.** Subject to the requirements of SDCL 49-13-1, SDCL 49-13-1-1 or other applicable law, 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 or for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by a third party.

**F.** 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 one hundred and twenty (120) calendar days after the date of the occurrence that gave rise to the claim.

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**REGULATIONS**, Continued**2.5 PAYMENT ARRANGEMENTS**, Continued**2.5.3 Billing Disputes**, Continued

## 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 in the billing period following 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.
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 the Customer's claims for the billing period for which the adjustment or refund was issued.
5. Limitations of Damages and of Period for Bringing Claims - The entire liability of Company for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid to Company by the Customer for the specific Services giving rise to the claim, or in accordance with SDCL 49-13-1, 49-13-1.1, and any other applicable law, and no action or proceeding against Company shall be commenced more than one (1) year after the Service related to the claim is rendered. Claims applicable to overbilling against Company shall be commenced no more than two (2) years after the Service related to the claim is rendered pursuant to Section 415, U.S. Code, 47 U.S.C. §415.

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**RATES, Continued****4.1 INTRASTATE SWITCHED EXCHANGE ACCESS SERVICE RATES****4.1.1 Switched Exchange Access**

Switched exchange access, per terminating minute	\$0.0117515	(R)(T)
Switched exchange access, per originating minute	\$0.0117515	(N)

**4.1.2 8XX Database Query Service**

Carrier Identification Charge, per call	\$0.003312
800 to POTS Number Translation, per call	\$0.003665
Call Handling & Destination Feature Charge, per query	\$0.000694

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**RATES, Continued****4.2. TOLL VoIP-PSTN TRAFFIC**

This section governs the identification, exchange and compensation for Toll VoIP-PSTN Traffic. It applies only to traffic identified pursuant to this section unless the Company and Customer have agreed in writing to other terms and conditions. Also, this section establishes the methodology for separating Toll VoIP-PSTN Traffic from the Customer's traditional intrastate access traffic.

**4.2.1.** Toll VoIP-PSTN traffic will be billed at the applicable, tariffed interstate access rates established in the Company's F.C.C. Tariff No. 1, as set forth in Section 4.4, below.

**4.2.2.** A Customer delivering traffic to the Company shall identify the percentage of that traffic that is Toll VoIP-PSTN Traffic ("Percentage VoIP Usage" or "PVU") and will provide as support for its PVU a traffic study, similar analysis, end-user customer certifications or other information acceptable to the Company.

- A. If the Customer does not furnish the Company with a PVU factor, the Company will utilize a PVU factor of zero. The Company's PVU factor is zero.;
- B. The PVU and the underlying support for establishing that factor are subject to audit. Each party shall bear their own costs associated with any audit. In no event may the Company or Customer request more than two audits within a calendar year.
- C. In the event an audit or other review does not support the PVU factor submitted by the Customer, the Company will implement the PVU supported by the data in the event the Customer and Company cannot agree upon a new PVU.

**4.2.3.** Customer will not modify its reported Percentage of Interstate Usage factor to account for Toll VoIP-PSTN traffic.