

TC00-100



VIA OVERNIGHT COURIER

June 16, 2000

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
State Capitol  
500 East Capitol Avenue  
Pierre, SD 57501-5071

ORIGINAL

RECEIVED

JUN 16 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

**Re: Registration of eVulkan, Inc.  
Authority to Provide Intrastate Telecommunications  
Services within the State of South Dakota**

Dear Mr. Bullard:

Enclosed herewith for filing with the South Dakota Public Utilities Commission (the "Commission"), on behalf of eVulkan, Inc. ("eVulkan"), are an original and ten (10) copies of the Company's Registration Application for Authority to Provide Intrastate Telecommunications Services within the State of South Dakota and Exhibits thereto. Also enclosed is a check in the amount of \$250.00 in satisfaction of the statutory filing fee associated with this Registration Application.

Please file/stamp the enclosed copy of this transmittal letter to acknowledge receipt of these materials by the Commission and return it to our offices in the enclosed addressed envelope.

Should you have any questions concerning this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

*Catherine M. Hannan*

Catherine M. Hannan

Enclosures

**BEFORE THE SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION**

ORIGINAL

Registration of )  
 eVulkan, Inc. )  
 for Authority to Provide Intrastate ) Docket No. \_\_\_\_\_  
 Telecommunications Services )  
 within the State of South Dakota )

Pursuant to Rule 20:10:24:02 of the Commission's Telecommunications Services Rules.

eVulkan, Inc. ("Applicant") submits the following registration information:

**1. The name, address and telephone number of the applicant.**

eVulkan, Inc.  
 100 Broadway, 21<sup>st</sup> Floor  
 New York, NJ 10005  
 Telephone: (201) 714-9943  
 Facsimile: (201) 714-9945

**2. The name under which the Applicant will provide these services if different than in subdivision (1) of this section:**

beMANY!

**3. If the Applicant is a Corporation:**

- (a) **The state in which it is incorporated, the date of incorporation and a copy of its certificate of incorporation or, if it is an out-of-state corporation, a copy of its certificate of authority.**

Applicant is a corporation formed under the laws of the State of Delaware on July 9, 1999. A copy of the Applicant's Certificate of Authority to transact business in the State of South Dakota is attached hereto as Exhibit 1. A copy of Applicant's Articles of Incorporation is attached hereto as Exhibit 2.

- (b) **The location of its principal office, if any, in this State and the name and address of its current registered Agent.**

Principal Office in South Dakota: None

Registered Agent: National Registered Agents, Inc.  
300 South Phillips Avenue  
Suite 300  
Sioux Falls, SD 57102

- (c) **The names and addresses of any corporation, association, partnership, cooperative, or individual holding a 20 percent or greater ownership or management interest in the applicant corporation. The amount and character of the ownership interest shall be indicated. A copy of any management agreement shall be attached:**

**Principal shareholder:**

George Jankovic	Equity Ownership
One River Court, Suite 1408	Interest: 100%
Jersey City, NJ 07310	Common Stock

Applicant has not entered into any management agreements.

4. **If the Applicant is a Partnership, the name, title and business address of each partner, both general and limited:**

Not applicable.

5. **A description of the telecommunications services the Applicant intends to offer:**

If authorized by the Commission, Applicant will offer toll telecommunications services to consumers in the State of South Dakota and will make available to its long distance customers a toll-free "800/888" customer service line to respond to customer inquiries and complaints, as well as 24-hour/365-day emergency toll free access to its network control center. Applicant intends to provide the following interexchange services on a resale basis within the State of South Dakota: intraLATA and interLATA switched and dedicated outbound interexchange services, and calling card services accessed via company-

provided "800/888" numbers. Applicant's services are described more fully in its proposed Telecommunications Services Tariff, attached hereto as Exhibit 4.

**6. A statement of the means by which the Applicant will provide its services:**

Applicant intends to provide the above-described telecommunications services on a resale basis. As a resale carrier, Applicant will neither own nor lease equipment or facilities for the transport of telecommunications in the State of South Dakota. Applicant will utilize the resold transmission services of other carriers.

**7. The geographic areas in which the services are, or will be, offered, including a map describing the service boundaries:**

Applicant intends to offer service throughout the entire state of South Dakota.

**8. Current financial statements, including a balance sheet, income statement and cash flow statement; a copy of the Applicant's latest annual report; a copy of the Applicant's report to stockholders; the terms and conditions of service; the access charges; and a copy of applicant's tariff book:**

Applicant has the financial capabilities to provide high quality local and interexchange telecommunications services within and throughout the State of South Dakota. As a newly-formed entity, Applicant does not possess historical financial statements. Because the Company will be providing service on a resale basis, capital outlays will be minimal; accordingly, eVulkan anticipates satisfying its cash flow obligations from revenues from its South Dakota operation.

Notwithstanding the self-supporting nature of its proposed operations, attached hereto as Exhibit 3 is the Company's most recently available balance sheet, for the quarter ending March 31, 2000, which demonstrates the possession of more than sufficient financial resources to provide resold local telecommunications services to residents of the State of

South Dakota. The terms, conditions and charges applicable to Applicant's proposed service offerings are set forth in Applicant's proposed Telecommunications Services Tariff, attached hereto as Exhibit 5.

**9. The names and addresses of the Applicant's representatives to whom all inquiries should be made regarding complaints and regulatory matters and a description of how the Applicant handles customer billings and customer service matters:**

For inquiries regarding this Application and Tariff and/or regulatory matters, contact:

Catherine M. Hannan  
Hunter Communications Law Group, P.C.  
1620 I Street, N.W., Suite 701  
Washington, D.C. 20006  
Telephone: (202) 293-2500  
Facsimile: (202) 293-2571

For inquiries regarding complaints, contact:

Richard E. Stubbs  
eVulkan, Inc.  
100 Broadway, 21<sup>st</sup> Floor  
New York, NJ 10005  
Telephone: (877) 289-7401  
Facsimile: (201) 714-9945

Customers may contact Applicant's customer service department twenty-four hours a day, seven days a week at (215) 547-8228. Customer service personnel are fully trained to handle calls efficiently and courteously. Applicant maintains a fully staffed customer service department and provides a toll-free telephone number, as well as a direct link on the Company's web site, which can be utilized by customers to register complaints, or to request refunds or bill adjustments. Additionally, Applicant has in place internal procedures for facilitating the processing and resolution of customer complaints. Applicant's customer service employees receive specific training in the efficient, prompt resolution of customer

complaints and are instructed to provide full contact information for state commission consumer complaint departments.

10. **A list of the States in which the Applicant is registered or certified to provide telecommunications services, whether the applicant has ever been denied registration or certification in any state and the reasons for any such denial, a statement as to whether or not the applicant is in good standing with the appropriate regulatory agency in the states where it is registered or certified, and a detailed explanation of why the applicant is not in good standing in a given state, if applicable.**

Applicant has been authorized by the Federal Communications Commission to provide interstate, domestic and international telecommunications services, and is also authorized to provide local and/or long distance telecommunications services in the States of Colorado, Indiana, Michigan, Montana, New Jersey, North Dakota, Texas and Wyoming. Applicant has never been denied registration or certification in any state and is in good standing with the regulatory commission of each jurisdiction where it is registered or certified.

11. **A description of how the Applicant intends to market its services, its target market, whether the Applicant engages in any multilevel marketing, and copies of any company brochures used to assist in the sale of services:**

Applicant does not intend to engage in telemarketing activities in the State of South Dakota. Application will utilize only in-house sales agents to market its services to both commercial and residential customers. Prior to commencing sales activities, the Company's employees will undergo training designed to educate them about their obligations pursuant to such rules and regulations as the Telephone Consumer Protection Act of 1991, the Federal Communications Commission's "Do Not Call" and "Slamming" rules, and the Federal Trade Commission's Telemarketing Sales Rules, among others. Employees will be required to periodically undergo refresher training courses. The Company does not intend to market



its services through non-profit organizations or through multi-level marketing programs and at present does not intend to utilize sales brochures within the State of South Dakota.

**12. Cost support for rates shown in the Company's Tariff for all noncompetitive or emerging competitive services:**

All services proposed to be offered by Applicant are fully competitive. Accordingly, no cost support data is provided herewith.

**13. Federal tax identification number:**

Applicant's Federal tax identification number is 23-3009155.

**14. The number and nature of complaints filed against the applicant with any state or federal regulatory commission regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered:**

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

**15. A written request for waiver of those rules the applicant believes to be inapplicable:**

Applicant does not request waiver of Commission rules at this time.

**16. Additional Information:**

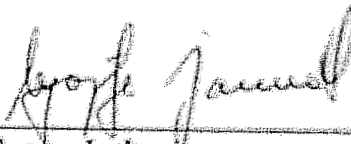
Applicant has the technical and managerial capability to provide high quality interexchange telecommunications services within and throughout the State of South Dakota. Applicant has developed a management team well-versed in addressing the service needs and concerns of its customer base. Profiles of key management personnel are attached as Exhibit 4.

The information contained in this Application and the Exhibits attached hereto fully describe Applicant's business and its ability to provide consumers within and throughout the State of South Dakota with a viable and economical alternative for the satisfaction of their telecommunications service needs. Grant of Authority to provide intrastate telecommunications services to eVulkan, Inc. will benefit the public interest by spurring greater competition in the provision of such services in the State of South Dakota, adding another substantial competitor to the market. Greater competition is known to generate downward pressure on rates and enhance product and service diversity and quality. Increased competition promotes the public interest by: (i) encouraging competitive pricing; (ii) discouraging unjust, unreasonable and unreasonably discriminatory carrier practices; (iii) reducing the need for detailed regulatory intervention, the expenditure of administrative costs and the potential for market distortions that may accompany such intervention; (iv) promoting innovation and the efficient deployment and use of telecommunications facilities; (v) improving carrier management and marketing; (vi) generating increased research and development; and (vi) positively affecting the growth of the market for telecommunications.

As evidenced by the foregoing Application, eVulkan is fully qualified to offer and provide long distance service within the State of South Dakota. Therefore, eVulkan respectfully requests that the Commission grant eVulkan's application for authority to provide intrastate telecommunications services at its earliest convenience.

Dated this 15th day of June 2000.

Respectfully submitted,



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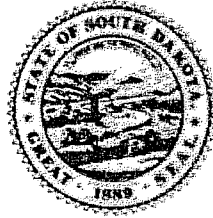
George Jankovic  
President and Chief Executive Officer  
eVulkan, Inc.

**EXHIBIT I**

eVulkan, Inc.

**CERTIFICATE OF AUTHORITY TO  
TRANSACT BUSINESS IN SOUTH DAKOTA**

# State of South Dakota



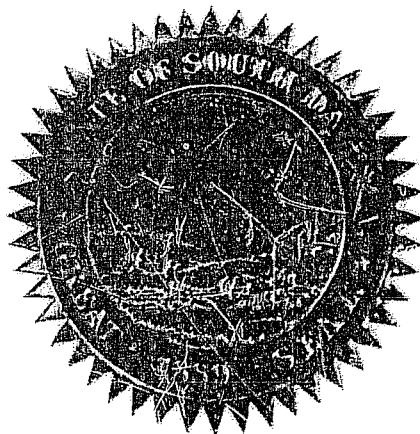
## OFFICE OF THE SECRETARY OF STATE

### Certificate of Authority

I, **JOYCE HAZELTINE**, Secretary of State of the State of South Dakota, hereby certify that the Application for a Certificate of Authority of **eVulkan, Inc. (DE)** to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Corporation Acts, have been received in this office and are found to conform to law.

**ACCORDINGLY** and by virtue of the authority vested in me by law, I hereby issue this Certificate of Authority and attach hereto a duplicate of the application to transact business in this state.

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 April 28, 2000.



*Joyce Hazeltine*

Joyce Hazeltine  
Secretary of State



Secretary of State  
 State Capitol  
 500 E. Capitol Ave.  
 Pierre SD 57501  
 Phone 605-773-4845  
 Fax 605-773-4550

FILE NO. \_\_\_\_\_ RECEIVED  
 RECEIPT NO. \_\_\_\_\_ APR 28 2000  
 S.D. SEC. OF STATE

### Application for Certificate of Authority

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

(1) The name of the corporation is eVulkan, Inc.  
(exact corporate name)

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

(3) State where incorporated Delaware Federal Taxpayer ID# 23-3009155

(4) The date of its incorporation is July 9, 1999 and the period of its duration, which may be perpetual, is perpetual

(5) The address of its principal office in the state or country under the laws of which it is incorporated is c/o United Corporate Services, Inc., 15 East North Street, Dover, DE Zip Code \_\_\_\_\_  
 mailing address if different from above is:

9071 Mill Creek Road, Apartment 1702, Levittown, PA Zip Code 19054

(6) The street address, or a statement that there is no street address, of its proposed registered office in the State of South Dakota is 300 South Phillips Avenue, Suite 300, Sioux Falls, SD Zip Code 57102  
 and the name of its proposed registered agent in the State of South Dakota at that address is National Registered Agents, Inc.

(7) The purposes which it proposes to pursue in the transaction of business in the State of South Dakota are: (state specific purpose)  
Telecommunications services provided.

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

Name	Officer Title	Street Address	City	State	Zip
<u>Please see attached addendum.</u>					

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

Number of shares	Class	Series	Par value per share or statement that shares are without par value
<u>7,500,000</u>	<u>Preferred</u>	<u>A</u>	<u>\$0.001</u>
<u>23,000,000</u>	<u>Common</u>		<u>\$0.001</u>

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

Number of shares	Class	Series	Par value per share or statement that shares are without par value
7,324,322	Preferred	A	\$0.001
8,564,500	Common		\$0.001

(11) The amount of its stated capital is \$ 15,324.32  
Shares issued times par value equals stated capital. In the case of no par value stock, stated capital is the consideration received for the issued shares.

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

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

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

The application must be signed, in the presence of a notary public, by the chairman of the board of directors, or by the president or by another officer.

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

Dated APRIL 10 ~~th~~ 2000

George Jankovic  
(Signature)  
George Jankovic, President  
(Title)

STATE OF Pennsylvania  
COUNTY OF Bucks

I, \_\_\_\_\_, a notary public, do hereby certify that on this 10 day of April 2000 personally appeared before me George Jankovic who, being by me first duly sworn, declared that he/she is the President of evulkan, inc. and he/she signed the foregoing document as officer of the corporation, and the statements therein contained are true.

June 15, 2004  
My Commission Expires

[Signature]  
(Notary Public)

Notarial Seal  
NOTARY PUBLIC  
PENNSYLVANIA  
My Commission Expires June 15, 2004

The Consent of Appointment below must be signed by the registered agent listed in number six.

## Consent of Appointment by the Registered Agent

I, National Registered Agents, Inc., hereby give my consent to serve as the registered agent for eVulkan, Inc.  
(name of registered agent)  
(corporate name)

Dated April 20 19 2000

Tina Iceland  
Tina Iceland, (Signature of Registered Agent) Secretary

Secretary for National Registered Agents,  
Make checks payable to the Secretary of State.

The proper filing fee must accompany the application. Make checks payable to the Secretary of State.

### FEE SCHEDULE

Authorized capital stock of	25,000	or less	\$ 90
Over \$25,000 and not exceeding	100,000		110
Over \$100,000 and not exceeding	500,000		130
Over \$500,000 and not exceeding	1,000,000		150
Over \$1,000,000 and not exceeding	1,500,000		200
Over \$1,500,000 and not exceeding	2,000,000		250
Over \$2,000,000 and not exceeding	2,500,000		300
Over \$2,500,000 and not exceeding	3,000,000		350
Over \$3,000,000 and not exceeding	3,500,000		400
Over \$3,500,000 and not exceeding	4,000,000		450
Over \$4,000,000 and not exceeding	4,500,000		500
Over \$4,500,000 and not exceeding	5,000,000		550

For each additional \$500,000, \$40 in addition to \$550.

For purposes only of computing fees under this section, the dollar value of each authorized share having a par value shall be equal to par value and the value of each authorized share having no par value shall be equal to one hundred dollars per share. The maximum amount charged under this subdivision may not exceed sixteen thousand dollars.

### FILING INSTRUCTIONS:

The application must be signed, in the presence of a notary public, by the chairman of the board of directors, or its president, or any other officer. One original and one photocopy of the application must be submitted.

The application must be accompanied by an original, currently dated, **CERTIFICATE OF FACT** or a **CERTIFICATE OF GOOD STANDING** from the Secretary of State in the state where incorporated. A photocopy of a certificate is not acceptable. It should be dated within ninety (90) days of submitting it to our office.

South Dakota law requires every corporation to continuously maintain a resident of this state as the registered agent (number six on the application). The registered agent's address is considered the registered office address of the corporation in South Dakota. A complete street address must be listed for service of process.

The Consent of Registered Agent portion must be signed by the South Dakota registered agent.

Mail the application, certificate, and filing fee to the Secretary of State, Corporate Division, 500 E. Capitol Avenue, Pierre, SD 57501-5070. The duplicate and a Certificate of Authority will be returned for your records.



**ADDENDUM TO FILING  
OF  
EVULKAN, INC.**

**OFFICERS:**

President	George Jankovic	9071 Mill Creek Rd., Apt. 1702 Levittown, PA 19054
Vice President	Mircea Mihaesca	3100 Steeles Ave. West, #403 Concord, Ontario L4K 3R1 Canada
Secretary	George Jankovic	9071 Mill Creek Rd., Apt. 1702 Levittown, PA 19054
Treasurer	George Jankovic	9071 Mill Creek Rd., Apt. 1702 Levittown, PA 19054

**DIRECTORS:**

Chairperson	George Jankovic	9071 Mill Creek Rd., Apt. 1702 Levittown, PA 19054
Director	Mircea Mihaesca	3100 Steeles Ave. West, #403 Concord, Ontario L4K 3R1 Canada
Director	Virginia Bonker	230 Lackawanna Drive Andover, NJ 07821-4113
Director	Michael Hagan	c/o VerticalNet, Inc. 700 Dresher Road Horsham, PA 19044
Director	Bradley A. Feld	c/o Softbank Venture Capital P.O. Box E Eldorado Springs, CO 80025

**EXHIBIT 2**

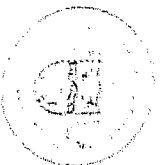
eVulkan, Inc.

**ARTICLES OF INCORPORATION**

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "EVOLKMAN, INC.", FILED IN THIS OFFICE ON THE NINTH DAY OF FEBRUARY, A.D. 2000, AT 1:15 O'CLOCK P.M.

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



*Edward J. Freel*  
Edward J. Freel, Secretary of State

AUTHENTICATION

024771

DATE

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**NEXT**

**DOCUMENT (S)**

**BEST IMAGE**

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RESTATED CERTIFICATE OF INCORPORATION  
OF  
eVulcan, Inc.

Djordje Jankovic hereby certifies that:

ONE: The date of filing the original Certificate of Incorporation of this corporation with the Secretary of State of the State of Delaware was July 9, 1999.

TWO: He is the duly elected and acting President of eVulcan, Inc., a Delaware corporation.

THREE: The Certificate of Incorporation of this corporation is hereby amended and restated to read as follows:

I.

The name of the corporation is EVULCAN, INC. (the "Corporation" or the "Company").

II.

The address of the registered office of the Corporation in the State of Delaware is 15 East North Street, City of Dover, County of Kent.

The name of the Corporation's registered agent at said address is United Corporate Services, Inc.

III.

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware.

IV.

A. This Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock". The total number of shares which the Corporation is authorized to issue is 30,500,000 shares, 25,000,000 shares of which shall be Common Stock (the "Common Stock") and 7,500,000 shares of which shall be Preferred Stock (the "Preferred Stock"). The Preferred Stock shall have a par value of \$0.001 per share and the Common Stock shall have a par value of \$0.001 per share.

B. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation (voting together on an as-if-converted basis).

C. All of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "Series Preferred").

D. The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

#### 1. DIVIDEND RIGHTS.

(a) Holders of Series Preferred, in preference to the holders of any other stock of the Company ("Junior Stock"), shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of 8% of the Original Issue Price (as defined below) per annum on each outstanding share of Series Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The "Original Issue Price" of the Series Preferred shall be \$1.85. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

(b) So long as any shares of Series Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Junior Stock, nor shall any shares of any Junior Stock of the Company be purchased, redeemed or otherwise acquired for value by the Company (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 1(a) above) on the Series Preferred shall have been paid or declared and set apart. In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of Series Preferred in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock. The provisions of this Section 1(b) shall not, however, apply to (i) a dividend payable in Common Stock, (ii) the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock or (iii) any repurchase of any outstanding securities of the Company that is approved by the Company's Board of Directors.

#### 2. VOTING RIGHTS.

(a) General Rights. Except as otherwise provided herein or as required by law, the Series Preferred shall be voted equally with the shares of the Common Stock of the Company and not as a separate class, at any annual or special meeting of stockholders of the Company, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series Preferred shall be entitled to such number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series Preferred are convertible (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

(b) **Separate Vote of Series Preferred.** For so long as any shares of Series Preferred remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series Preferred shall be necessary for effecting or validating the following actions:

(i) Any amendment, alteration, repeal or waiver of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation) that alters or changes the voting or other powers, preferences or other special rights, privileges or restrictions of the Series Preferred;

(ii) Any increase or decrease in the authorized number of shares of Common Stock or Preferred Stock or Series Preferred;

(iii) Any authorization or any designation, whether by reclassification or otherwise, of any new class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Series Preferred in right of redemption, liquidation preference, voting or dividends or any increase in the authorized or designated number of any such new class or series;

(iv) Any redemption, repurchase, payment of dividends or other distributions with respect to Junior Stock (except for acquisitions of Common Stock by the Company pursuant to agreements which permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer);

(v) Any agreement by the Company or its stockholders regarding an Asset Transfer or Acquisition (each as defined in Section 3(c));

(vi) Any action that results in the payment or declaration of a dividend on any shares of Common Stock or Preferred Stock;

(vii) Any voluntary dissolution or liquidation of the Company;

(viii) Any increase or decrease in the authorized number of members of the Company's Board of Directors; or

(ix) Any incurrence of debt in excess of \$100,000.

(c) **Election of Board of Directors.** For so long as at least 1,000,000 shares of Series Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series Preferred) (i) the holders of Series Preferred, voting as a separate class, shall be entitled to elect two members of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancies caused by the resignation, death or removal of such directors, (ii) the holders of Common Stock, voting as a separate class, shall be entitled to elect two members of the Board of Directors at each meeting or

pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; and (iii) the holders of Common Stock and Series Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors.

### 3. LIQUIDATION RIGHTS.

(a) Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Junior Stock, the holders of Series Preferred shall be entitled to be paid out of the assets of the Company an amount per share of Series Preferred equal to the Original Issue Price plus any declared but unpaid dividends on the Series Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series Preferred held by them. If upon any such liquidation, distribution or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series Preferred of the liquidation preference set forth in this Section 3(a), then such assets shall be distributed among the holders of Series Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

(b) After the payment of the full liquidation preference of the Series Preferred as set forth in Section 3(a) above, the assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and Series Preferred on an as-if-converted to Common Stock basis until such time as the holders of Series Preferred have received pursuant to Section 3(a) above and this Section 3(b) an aggregate amount per share of Series Preferred equal to five times the Original Issue Price (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) plus any declared but unpaid dividends on the Series Preferred; thereafter, the remaining assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock.

(c) The following events shall be considered a liquidation under this Section:

(1) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization own less than 50% of the Company's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions in which the Company is a party in which in excess of 50% of the Company's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Company (an "Acquisition"), or



(ii) a sale, lease or other disposition of all or substantially all of the assets of the Company (an "Asset Transfer").

(iii) In any of such events, if the consideration received by this corporation is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability, covered by (B) below:

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the 30 day period ending three days prior to the closing.

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the 30 day period ending three days prior to the closing; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined by the Board of Directors (including the consent of all directors designated by the Series Preferred).

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a shareholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined by the Board of Directors (including the consent of all directors designated by the Series Preferred).

#### 4. CONVERSION RIGHTS.

The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the "Conversion Rights"):

(a) **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4, any shares of Series Preferred may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Common Stock. The number of shares of Common Stock to which a holder of Series Preferred shall be entitled upon conversion shall be the product obtained by multiplying the "Series Preferred Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series Preferred being converted.

(b) **Series Preferred Conversion Rate.** The conversion rate in effect at any time for conversion of the Series Preferred (the "Series Preferred Conversion Rate") shall

be the quotient obtained by dividing the Original Issue Price of the Series Preferred by the "Series Preferred Conversion Price," calculated as provided in Section 4(c).

(c) **Series Preferred Conversion Price.** The conversion price for the Series Preferred shall initially be the Original Issue Price of the Series Preferred (the "Series Preferred Conversion Price"). Such initial Series Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 4. All references to the Series Preferred Conversion Price herein shall mean the Series Preferred Conversion Price as so adjusted.

(d) **Mechanics of Conversion.** Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Series Preferred being converted and (ii) in cash (at the Common Stock's fair market value determined by the Board of Directors as of the date of conversion) the value of any fractional share of Common Stock otherwise payable to any holder of Series Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(e) **Adjustment for Stock Splits and Combinations.** If the Company shall at any time or from time to time after the date that the first share of Series Preferred is issued (the "Original Issue Date") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the Series Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Company shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the Series Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(c) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(f) **Adjustment for Common Stock Dividends and Distributions.** If the Company at any time or from time to time after the Original Issue Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Series Preferred Conversion Price that is then in effect shall be decreased as of the date of such dividend

or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series Preferred Conversion Price then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series Preferred Conversion Price shall be adjusted pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

(g) **Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Series Preferred is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section 3(c) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Series Preferred shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series Preferred could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(h) **Reorganizations, Mergers or Consolidations.** If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Common Stock or the merger or consolidation of the Company with or into another corporation or another entity or person (other than an Acquisition or Asset Transfer as defined in Section 3(c) or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization, provision shall be made so that the holders of the Series Preferred shall thereafter be entitled to receive upon conversion of the Series Preferred the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Series Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

(i) Sale of Shares Below Series Preferred Conversion Price.

(i) If at any time or from time to time after the Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this subsection (i) to have issued or sold, Additional Shares of Common Stock (as defined in subsection (i)(ii) below) other than as a dividend or other distribution on any class of stock as provided in Section 4(d) above, and other than a subdivision or combination of shares of Common Stock as provided in Section 4(e) above, for an Effective Price (as defined in subsection (i)(iv) below) less than the then effective Series Preferred Conversion Price, then and in each such case the then existing Series Preferred Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series Preferred Conversion Price by a fraction (i) the numerator of which shall be (A) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale, plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection (i)(ii)) by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Series Preferred Conversion Price, and (ii) the denominator of which shall be the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale plus the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of (A) the number of shares of Common Stock actually outstanding, (B) the number of shares of Common Stock later which the then outstanding shares of Series Preferred could be converted if fully converted on the day immediately preceding the given date and (C) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date.

(ii) For the purpose of making any adjustment required under this Section 4(i), the consideration received by the Company for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but without deduction of any expenses payable by the Company, (B) to the extent it consists of property other than cash, be computed at the fair value of that property as determined in good faith by the Board of Directors and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in subsection (i)(ii)) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities are issued or sold together with other stock or securities or other assets of the Company for a consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 4(i), if the Company issues or sells (i) stock or other securities convertible into Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "Convertible Securities") or (ii) rights or options for the purchase of Additional Shares of

Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Series Preferred Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares an amount equal to the total amount of the consideration, if any, received by the Company for the issuance of such rights or options or Convertible Securities, plus, in the case of such rights or options, the minimum amounts of consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof, provided that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amount of consideration without reference to such clauses; provided further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; provided further that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, plus the consideration, if any, actually received by the Company for the granting of all such rights or options, whether or not exercised, plus the consideration received for issuing or selling the Convertible Securities actually converted, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion of such Convertible Securities, provided that such readjustment shall not apply to prior conversions of Series Preferred.

(iv) "Additional Shares of Common Stock" shall mean all Shares of Common Stock issued by the Company or deemed to be received pursuant to this Section 4(b), whether or not subsequently reacquired or retired by the Company, which then

(A) shares of Common Stock issued upon conversion of the Series Preferred; (B) up to 2,000,000 (or any greater number with the consent of the Board, including the consent of both directors designated by holders of the Series Preferred) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) after the Original Issue Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board; (C) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Original Issue Date; (D) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights issued for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination approved by the Board and the holders of two-thirds of the Series Preferred and (E) shares of Common Stock issued pursuant to any equipment leasing arrangement or debt financing from a bank or similar financial institution, or any other transaction, if approved by the Board and the holders of two-thirds of the Series Preferred. References to Common Stock in the subsections of this clause (iv) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(i). The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company under this Section 4(i), by the aggregate consideration received, or deemed to have been received by the Company for such issue under this Section 4(i), for such Additional Shares of Common Stock.

(j) Certificate of Adjustment. In each case of an adjustment or readjustment of the Series Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series Preferred, if the Series Preferred is then convertible pursuant to this Section 4, the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions hereof and prepare a certificate showing such adjustment or readjustment, and shall mail such certificate, by first class mail, postage prepaid, to each registered holder of Series Preferred at the holder's address as shown in the Company's books. The certificate shall set forth such adjustment or readjustment, showing in detail the facts upon which such adjustment or readjustment is based, including a statement of (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold; (ii) the Series Preferred Conversion Price at the time in effect; (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series Preferred.

(k) Notices of Record Date. Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution or (ii) any Acquisition (as defined in Section 3(c)) or other capital reorganization of the Company, any recapitalization or reorganization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section 3(c)),

or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series Preferred at least 10 days prior to the record date specified therein (or such shorter period approved by a majority of the outstanding Series Preferred) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective and (C) the date, if any, that is to be fixed as to when the holder of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(l) Automatic Conversion.

(i) Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series Preferred Conversion Price, (A) at any time upon the affirmative election of the holder of at least a majority of the outstanding shares of the Series Preferred or (B) immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least five times the Original Issue Price (as adjusted for stock splits, dividends, recapitalizations and the like) and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$25,000,000. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(ii) Upon the occurrence of either of the events specified in Section 4(l)(i) above, the outstanding shares of Series Preferred shall be converted automatically without any further action by the holder of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent, provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series Preferred are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series Preferred, the holder of Series Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series Preferred. Thereupon, there shall be issued and delivered to each holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(m) **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series Preferred by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If, after the aforementioned aggregation, the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of conversion.

(n) **Reservation of Stock Issuable Upon Conversion.** The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series Preferred, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series Preferred. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series Preferred, the Company will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(o) **Notices.** Any notice required by the provisions of this Section 4 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(p) **Payment of Taxes.** The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series Preferred, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the shares of Series Preferred so converted were registered.

(q) **No Dilution or Impairment.** Without the consent of the holders of then outstanding Series Preferred as required under Section 7(b), the Company shall not amend its Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times act in good faith and in carrying out all such action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series Preferred against dilution or other impairment.



## 5. REDEMPTION.

(a) The Company shall be obligated to redeem the Series Preferred as follows:

(i) The holders of at least a majority of the then outstanding shares of Series Preferred, voting together as a separate class, may require the Company, to the extent it may lawfully do so, to redeem the Series Preferred in three equal annual installments beginning on the fifth anniversary of the Original Issue Date, and ending on the date two years from such first redemption date (each a "Redemption Date"). The Company shall effect such redemptions on the applicable Redemption Date by paying in cash in exchange for the shares of Series Preferred to be redeemed a sum equal to the Original Issue Price per share of Series Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) plus declared and unpaid dividends with respect to such shares. The total amount to be paid for the Series Preferred is hereinafter referred to as the "Redemption Price." The number of shares of Series Preferred that the Company shall be required to redeem on any one Redemption Date shall be equal to the amount determined by dividing (A) the aggregate number of shares of Series Preferred outstanding immediately prior to the Redemption Date by (B) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). Shares subject to redemption pursuant to this Section 5(a) shall be redeemed from each holder of Series Preferred on a pro rata basis.

(ii) At least 30 days but no more than 60 days prior to the first Redemption Date, the Company shall send a notice (a "Redemption Notice") to all holders of Series Preferred to be redeemed setting forth (A) the Redemption Price for the shares to be redeemed, and (B) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. If the Company does not have sufficient funds legally available to redeem all shares to be redeemed at the Redemption Date, then it shall redeem such shares pro rata (based on the portion of the aggregate Redemption Price payable to them) to the extent possible and shall redeem the remaining shares to be redeemed as soon as sufficient funds are legally available.

(b) On or prior to the Redemption Date, the Company shall deposit the Redemption Price of all shares to be redeemed with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after each Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any money deposited by the Company pursuant to this Section 5(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 4 hereof no later than the fifth day preceding the Redemption Date shall be returned to the Company forthwith upon such conversion. The balance of any funds deposited by the Company pursuant to this Section 5(b) remaining unclaimed at the expiration of one year following each Redemption Date shall be returned to the Company promptly upon its written request.

(c) On or after such Redemption Date, each holder of shares of Series Preferred to be redeemed shall surrender such holder's certificate representing such shares to the Company in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Company is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Series Preferred (except the right to receive the Redemption Price without interest upon surrender of their certificates), shall cease and terminate with respect to such shares; provided that in the event that shares of Series Preferred are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Series Preferred shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

(d) In the event of a call for redemption of any shares of Series Preferred, the Conversion Rights (as defined in Section 4) for such Series Preferred shall terminate as to the shares designated for redemption at the close of business on the fifth day preceding the Redemption Date, unless default is made in payment of the Redemption Price.

## V.

A. The corporation shall indemnify any director or officer of the corporation and may indemnify any other person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

B. Any repeal or modification of this Article V shall only be prospective and shall not affect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation and regulation of the powers of the Corporation, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Restated Certificate.

B. Subject to the indemnification provisions in the Bylaws, the Board of Directors may from time to time make, amend, supplement or repeal the Bylaws; provided, however, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of holders of capital stock as provided therein; and, provided further, that no amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.

C. The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

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FOUR: This Restated Certificate of Incorporation has been duly approved by the Board of Directors of this Corporation.

FIVE: This Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 228, 242 and 243 of the General Corporation Law of the State of Delaware by the Board of Directors and the stockholders of the Corporation. A majority of the outstanding shares of Common Stock approved this Restated Certificate of Incorporation by written consent in accordance with Section 228 of the General Corporation Law of the State of Delaware and written notice of such was given by the Corporation in accordance with said Section 228.

IN WITNESS WHEREOF, VULCAN, INC. has caused this Restated Certificate of Incorporation to be signed by its President this 9th day of February 2000.

VULCAN, INC.

By: Djordje Jankovic

Name: Djordje Jankovic

Its: President

ATTEST:

By: Djordje Jankovic

Name: Djordje Jankovic

Its: Secretary

State of Delaware  
Office of the Secretary of State PAGE 1

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "EVULKAN, INC.", FILED IN THIS OFFICE ON THE NINTH DAY OF JULY, A.D. 1999, AT 9 O'CLOCK A.M.

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



*Edward J. Freel*

Edward J. Freel, Secretary of State

2107723 6100

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AUTENTICATED

9856082

1999

07-09-99

CERTIFICATE OF INCORPORATION

OF

eVULKAN, INC.

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Under Section 102 of the  
General Corporation Law

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The undersigned, for the purpose of forming a corporation pursuant to the provisions of the General Corporation Law of the State of Delaware (the "GCL"), does hereby certify as follows:

FIRST: The name of the corporation is eVulkan, Inc.

SECOND: The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the GCL.

THIRD: The name and address in the State of Delaware of the corporation's agent for service of process is: United Corporate Services, Inc., 15 East North Street, City of Dover, County of Kent.

FOURTH: The name and mailing address of the sole incorporator is:

Djordje Jankovic  
9071 Mill Creek Road, Apt. 1702  
Levittown, PA 19054

FIFTH: The total number of shares of all classes of stock which the corporation has authority to issue is Ten Million (10,000,000) shares of Common Stock, par value \$0.001 per share.

SIXTH: In furtherance and not in limitation of the objects, purposes and powers conferred by statute, the Board of Directors is expressly authorized to make, after or repeal the By-laws of the corporation.

SEVENTH: The corporation shall indemnify any director or officer of the corporation and may indemnify any other person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was acting at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees),

judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

EIGHTH: The directors of the corporation shall incur no personal liability to the corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, provided, however, that the directors of the corporation shall continue to be subject to liability (i) for any breach of their duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the GCL or (iv) for any transaction from which the directors derived an improper benefit. If the GCL is amended after the date of incorporation of the corporation to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the GCL, as so amended. Any repeal or modification of the foregoing paragraph by the stockholders of the corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director of the corporation existing at the time of such repeal or modification.

NINTH: The corporation reserves the right to amend, alter, change or repeal any provisions contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

TENTH: Elections of directors need not be by written ballot unless the By-laws of the corporation shall so provide.

ELEVENTH: Meetings of stockholders may be held within or without the State of Delaware, as the By-laws may provide. The books of the corporation may be kept (subject to any provision contained in the statutes) outside the State of Delaware at such place or places as may be designated from time to time by the board of directors or in the By-laws of the corporation.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this 8th day of July, 1999.

*Miroslav Janovic*  
Miroslav Janovic  
Incorporator

eVulkan, Inc.

FOREIGN CORPORATION REGISTRATION

EXHIBIT 2



**EXHIBIT 3**

eVulkan, Inc.

**FINANCIAL DOCUMENTATION**

## ASSETS

## Current Assets

## Checking/Savings

Temp Inv Fund	10,200,000
US Bank Accounts	577,757
Canadian Bank Accounts	<u>-111,367</u>
Total Checking/Savings	<u>10,666,390</u>

Total Current Assets 10,666,390

## Fixed Assets

Computer Equipment	267,302
Office Furniture	7,401
Patent	430
Web Site	<u>28,566</u>
Total Fixed Assets	<u>303,699</u>

## Other Assets

Security Deposit	1,800,000
Organizational Costs	<u>10,000</u>
Total Other Assets	<u>1,810,000</u>

TOTAL ASSETS 12,780,089

## LIABILITIES &amp; EQUITY

## Liabilities

## Current Liabilities

## Other Current Liabilities

Employee Reimbursements	23,596
Payroll Liabilities	<u>472</u>
Total Other Current Liabilities	<u>24,068</u>

Total Current Liabilities 24,068

Total Liabilities 24,068

## Equity

Common Stock	8,000
Additional Paid In Cap. Common	2,000
Preferred Stock	7,324
Add'l Paid in Cap. Preferred	13,542,671
Retained Earnings	231,988
Net Income	<u>-571,988</u>
Total Equity	<u>12,756,014</u>

TOTAL LIABILITIES & EQUITY 12,780,087

**EXHIBIT 4**

eVulkan, Inc.

**PROFILES OF KEY MANAGEMENT PERSONNEL**

## **eVulkan, Inc.**

### **TECHNICAL QUALIFICATIONS/MANAGEMENT EXPERIENCE**

---

The Company has assembled a highly skilled management team, which brings a wealth of experience and expertise to the Company's interexchange telecommunications services venture. Together, the Company's executives provide it with the depth and breadth of management, operational and technical capabilities necessary to facilitate its provision of high quality, affordable interexchange telecommunications services.

Brief summaries of the experience of key members of the Company's executive team are set forth below:

#### **GEORGE JANKOVIC** **President and** **Chief Executive Officer**

---

George Jankovic, President and Chief Executive officer of eVulkan, Inc., has been at the forefront of business-to-business Internet applications, focusing upon the provision of not only telecommunications services, but other utility services, to small to medium-sized businesses. Building upon his extensive "B-2-B" customer care and marketing expertise, Mr. Jankovic founded eVulkan in 1999 to create a forum within which individual business and residential consumers might benefit from access to a broad array of services, including telecommunications and various forms of energy services, at rates previously available only to much larger corporate or institutional customers.

Prior to founding eVulkan, Mr. Jankovic was a senior member of the executive management team of VerticalNet, Inc., a publicly-traded company which was at the time of Mr. Jankovic's association with the company, the largest Internet business-to-business company in operation. While part of VerticalNet's executive management team, Mr. Jankovic was extensively involved in all phases of the company's initial public offering, the ninth largest public offering to date. As Vice President of Product Development, Mr. Jankovic had primary responsibility for product strategy and definition, as well as prioritization, and oversaw the operations of three distinct product development teams.

Before joining VerticalNet, Mr. Jankovic was President and co-founder of RF GlobalNet, a business-to-business e-commerce company which was eventually acquired by VerticalNet and ultimately accounted for approximately one-quarter of VerticalNet's total revenues during 1998.

Mr. Jankovic has also served in the role of Director of Business Development and Marketing Manager of Ansoft Corporation, a technologies software company.

Mr. Jankovic holds a Masters Degree in Electrical Engineering from the University of Colorado at Boulder.

**WILLIAM ROBINSON**  
**Senior Vice President**  
**of Marketing**

---

William Robinson, Senior Vice President of Marketing for eVulkan, possesses well over a decade of marketing experience at the senior executive level. Well-versed in all critical areas of marketing functions both through educational background and significant real-world experience. Mr. Robinson has joined eVulkan following his association with Beneficial National Bank, USA, a leading issuer of private-label credit cards. Mr. Robinson held the position of Senior Vice President - Marketing and Planning for Beneficial National Bank, where he was responsible for the introduction of several innovative database marketing techniques which led to the development of numerous new Internet-based services utilizing proprietary technology.

Immediately prior to his position with Beneficial National Bank, Mr. Robinson spent nine years with American Express, where he held the position of Vice President - Marketing and Sales. In this capacity, Mr. Robinson, among other things, oversaw the totality of American Express' consumer credit card operations in Japan. His responsibilities encompassed not only all aspects of new customer acquisition, but also comprehensive advertising and marketing activities, the development of new cardholder service programs, and the management of American Express' Japanese national sales force. Mr. Robinson advanced to this position after having been brought on board by American Express to serve in the capacity of Vice President - Marketing for the company's Platinum Card program.

Earlier in his career, Mr. Robinson held both consumer and business marketing positions with such Fortune 500 companies as Procter and Gamble, Western Union International, and International Playtex.

Mr. Robinson received an MBA in Marketing and Finance from Columbia University.

**MIRCEA MIHAESCU**  
**Vice President and**  
**Chief Technology Officer**

---

Mircea Mihaescu, Vice President and Chief Technology Officer of eVulkan, Inc., brings to the Company a wealth of knowledge amassed over more than 15 years of active involvement, at the senior management level, in the software engineering field. Mr. Mihaescu is responsible for technology planning and architectural decisions for eVulkan and oversees and manages all stages of the developmental life cycle of the Company's financial, real-time, commercial and business software applications.

Mr. Mihaescu joined eVulkan following his tenure as Technology Head for the third largest bank in Canada, Bank of Montreal. For a period of five years, Mr. Mihaescu spearheaded the development and successful, often time-sensitive, implementation of large-scale software programs undertaken by Bank of Montreal's Global Treasury Group. Starting virtually anew, Mr. Mihaescu built the Global Treasury Group's IT Department to a staff of five managers and more than 40 developers.

Prior to joining Bank of Montreal, Mr. Mihaescu held various IT management and development positions and has acted as a consultant to companies in need of expert advice in achieving technology implementation goals.

**EXHIBIT 5**

eVulkan, Inc.

**PROPOSED TELECOMMUNICATIONS SERVICES TARIFF**

TARIFF  
OF  
**eVulkan, Inc.**

**LONG DISTANCE TELECOMMUNICATIONS SERVICE**

This Tariff, filed with the South Dakota Public Utilities Commission contains the rates, terms and conditions applicable to the Resale Telecommunications Services provided by eVulkan, Inc., d/b/a beMANY! within the State of South Dakota.



TELECOMMUNICATIONS SERVICES

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CHECK SHEET

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

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100 Broadway, 21<sup>st</sup> Floor  
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TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

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CONCURRING CARRIERS

No concurring carriers

CONNECTING CARRIERS

No connecting carriers

OTHER PARTICIPATING CARRIERS

No other participating carriers

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TELECOMMUNICATIONS SERVICES

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**EXPLANATION OF SYMBOLS**

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

- D - Delete or Discontinue
- I - Change Resulting in an Increase in Rates
- M - Moved from Another Tariff Location
- N - New Regulation, Term, or Condition or Rate
- R - Change Resulting in a Reduction in Rate
- T - Change in Text or Regulation But no Change in Rates

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TELECOMMUNICATIONS SERVICES

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## TARIFF FORMAT

**A. Page Numbering** - Page numbers appear in the upper right corner of the page. Pages are numbered sequentially. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between pages 14 and 15 would be 14.1.

**B. Page Revision Numbers** - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the South Dakota Public Utilities Commission. For example, the 4th revised Page 14 cancels the 3rd revised Page 14. Consult the Check Sheet for the page currently in effect.

**C. Paragraph Numbering Sequence** - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

- 2.
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- 2.1.1.
- 2.1.1.A.
- 2.1.1.A.1.
- 2.1.1.A.1.(a).
- 2.1.1.A.1.(a).I.
- 2.1.1.A.1.(a).I.(i).
- 2.1.1.A.1.(a).I.(i).(1).

**D. Check Sheets** - When a tariff filing is made with the South Dakota Public Utilities Commission, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the pages contained in the tariff, with a cross reference to the current revision number. When new pages are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some pages.)

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TELECOMMUNICATIONS SERVICES

SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS

- 1.1 **Access**: The connection between the Customer's location and an interexchange switching center.
- 1.2 **Access Line**: A transmission line from either an LEC central office or an IXC POP to the Customer's Premises used to process voice and limited speed data Calls.
- 1.3 **Account Code**: A numerical code, assigned to the Customer, to enable the Company to identify use of the Services by the Customer and to bill the use of the Services by the Customer. Multiple Account Codes may be assigned to the Customer to identify individual users or groups of users.
- 1.4 **Additional Period**: The minimum additional portion of a Calling Period after an Initial Period for which charges are incurred for completed Calls.
- 1.5 **Analog**: A transmission method employing a continuous (rather than a pulsed or digital) electrical signal that varies in amplitude or frequency in response to changes of sound, light, position, etc., impressed on a transducer in the sending device.
- 1.6 **Asynchronous**: Transmission in which each information character is individually synchronized usually by the use of start-stop elements. The gap between each character is not of a fixed length.

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## TELECOMMUNICATIONS SERVICES

SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)

- 1.7 **Authorization Code:** A predefined series of numbers to be dialed by the Customer or End User upon access to the Company's system to identify the caller and validate the caller's authorization to use the Services provided. All Authorization Codes shall be the sole property of the Company and no Customer or End User shall have any property or other right or interest in the use of any particular Authorization Code. The Customer is responsible for charges incurred through the use of its assigned Authorization Code. Automatic Numbering Identification (ANI) may be used as or in connection with the Authorization Code.
- 1.8 **Automatic Numbering Identification (ANI):** A type of signalling provided by an LEC which automatically identifies the Calling Station.
- 1.9 **Bit:** The smallest unit of information in the binary system of notation.
- 1.10 **Call:** A completed connection established between a Calling Station and one or more Called Stations.
- 1.11 **Called Station:** The terminating point of a Call (*i.e.*, the Called number).
- 1.12 **Calling Card:** A billing arrangement which bills the charge for an MTS Call to the Main Billing Number of a Customer.
- 1.13 **Calling Card Services:** The Services described in Section 3.3 of this Tariff.
- 1.14 **Calling Station:** The originating point of a Call (*i.e.*, the Calling number).
- 1.15 **Calling Unit:** The measured period of a Call which is either Initial or Additional.

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eVulkan, Inc.  
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New York, NJ 10005

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.16 **Commission:** South Dakota Public Utilities Commission.
- 1.17 **Common Carrier:** A company or entity providing telecommunications services to the public.
- 1.18 **Company:** eVulkan, Inc. d/b/a beMANY!
- 1.19 **Competitive Access Provider (CAP):** A Common Carrier engaged in the origination and/or termination of interstate, interexchange Calls.
- 1.20 **Competitive Local Exchange Carrier (CLEC):** A Common Carrier engaged in the provision of local dial tone and other local exchange services in competition with one or more LECs.
- 1.21 **Customer:** A Person who orders Services under this Tariff and who is responsible for payment of all charges therefor and for complying with the terms and conditions set forth in this Tariff.
- 1.22 **Customer Premises:** A location, on property owned, leased or otherwise controlled by the Customer, that is designated by the Customer for the provision of the Services to the Customer pursuant to this Tariff.
- 1.23 **Customer-Provided Equipment:** Telecommunications equipment provided by a Customer used to originate or terminate Calls at the Customer Premises.

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New York, NJ 10005



TELECOMMUNICATIONS SERVICES

**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.24 **Dedicated Access:** A non-switched circuit connecting a Customer Premises to an IXC POP with no intermediate switching functions.
- 1.25 **DS-0:** A form of Service offered at digital signal level 0 and providing a 64 Kbps signal.
- 1.26 **DS-1:** A form of private line Service offered at digital signal level 1 and providing a 1.544 Mbps signal.
- 1.27 **DS-3:** A form of private line Service at digital signal level 3 and providing digital signals at the speed of 44.736 Mbps.
- 1.28 **End User:** Any Person which uses the Services ordered by the Customer under this Tariff. If at any time the Customer fails to make timely payment for the Services, satisfaction of the Customer's payment obligations with respect to Services utilized by an End User shall become the direct responsibility of the End User and said End User shall make immediate payment directly to the Company of all associated overdue amounts. Notwithstanding the foregoing, the Customer shall not be relieved of its responsibility to fully satisfy its payment obligations under this Tariff.
- 1.29 **FCC:** Federal Communications Commission.

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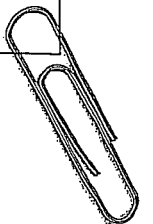
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**TELECOMMUNICATIONS SERVICES**

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.30 **Fractional Charges and Credits:** Each month is considered to have thirty (30) days for billing purposes. To determine charges or credits for portions of months, the days remaining in the billing period (including the thirty-first (31st) day of a thirty-one (31)-day month) are counted, starting with the day after the date on which the Services were furnished or discontinued; that figure is divided by thirty (30) days and the resultant fraction is multiplied by the Monthly Charge to arrive at the Fractional Charge or Credit.
- 1.31 **Inbound Services:** The Services described in Section 3.2 of this Tariff.
- 1.32 **Incomplete Call:** Any Call as to which voice transmission between the Calling and the Called Stations is not established (*i.e.*, busy, no answer).
- 1.33 **Incremental Call Unit:** The minimum additional period after an Initial Call Unit for which charges are incurred for completed Calls and, except as otherwise provided in this Tariff, equals six (6) seconds.
- 1.34 **Initial Call Unit:** The minimum period for which charges are incurred for a completed Call; unless otherwise specified herein, the Initial Call Unit for all services offered pursuant to this Tariff shall be eighteen (18) seconds.
- 1.35 **Installation Charge:** A fixed charge per unit which applies when certain Services are furnished.
- 1.36 **Interexchange Carrier (IXC):** A Common Carrier engaged in the transport of Calls and other telecommunications across LATA boundaries.

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TELECOMMUNICATIONS SERVICES

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.37 **Isochronous**: A characteristic of a periodic signal in which the time interval that separates any two corresponding significant instants or transitions of signal level is equal to the unit interval or to a multiple of the unit interval. No timing or clock lead is provided at the customer interface.
- 1.38 **KBPS**: Kilobits per second.
- 1.39 **KHZ**: Kilohertz.
- 1.40 **LATA**: Local Access and Transport Area.
- 1.10 **Local Exchange Carrier or LEC**: A Common Carrier that is, or once was, the exclusive provider of local dial tone and other local exchange services within its service areas.
- 1.42 **Main Billing Number**: A telephone number assigned to the Customer to which charges for the Services are billed.
- 1.43 **MBPS**: Megabits per second.
- 1.44 **MHZ**: Megahertz.
- 1.45 **Minimum Payment Period**: The Minimum Payment Period is the minimum period, if any, for which the Customer is required to make payment for the Services. The Minimum Payment Period for a given Service is specified in the section of this Tariff applicable to that Service. Charges applicable to the Minimum Payment Period include recurring charges plus any nonrecurring and/or special construction charge(s) that may apply.

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TELECOMMUNICATIONS SERVICES

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.46 **Monthly Charge/Monthly Recurring Charge:** A flat charge which applies for each month in which the Services are furnished to the Customer and which is prorated for a fractional month of Service.
- 1.47 **Move Charge:** A charge which applies when the physical location of the termination of an office connection or an office function is changed at the Customer's request. A move is considered to be the discontinuance of service at the old location and the reinstallation of the service at the new location. Installation charges apply only for the components that are moved. A new minimum payment period will be established.
- 1.48 **MTS:** Message Telecommunications Services.
- 1.49 **Nonrecurring Charges:** One-time charges payable to the Company including Installation Charges, Service Ordering Charges and Special Construction Charges. Charges may differ according to the work activity involved.
- 1.50 **NPA:** Numbering Plan Area, more commonly referred to as an area code.
- 1.51 **NPA Centroid:** The center of the area code, sometimes used to calculate mileage for inbound Calls where the NPA-NXX of the Calling Station is not available.
- 1.52 **NXX:** The first three digits of the Customer's telephone number. "N" is a number between 2 and 9. "X" is a number between 0 and 9.

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TELECOMMUNICATIONS SERVICES

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.53 **Outbound Services:** The Services described in Section 3.1 of this Tariff.
- 1.54 **Person:** A natural being, firm, organization, partnership, association, corporation, or entity.
- 1.55 **Point-of-Presence (POP):** The central switching office of an IXC where it interconnects with an LEC.
- 1.56 **Rate Center:** A group of central offices determined by NPA Centroid or NPA-NXX.
- 1.57 **Recognized National Holidays:** New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- 1.58 **Recurring Charge:** Monthly Charges and Usage Charges.
- 1.59 **Reseller:** Any Person which obtains Services under this Tariff for the purpose of reselling those Services to End Users. The Reseller shall be deemed to be the Customer of such resold services.

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## TELECOMMUNICATIONS SERVICES

SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)

- 1.60 **RespOrg:** The entity responsible for the management of, and which may access and modify, a subscriber's record in the SMS/800 database. A RespOrg must meet certain eligibility criteria established by the FCC.
- 1.61 **Service:** The telecommunications services provided by the Company pursuant to this Tariff as described in Section 3 of this Tariff.
- 1.62 **Service Order:** A Customer order for installation, move, or record change related to the Services.
- 1.63 **Special Construction Charge:** A charge associated with an installation of the Services requiring unique or additional equipment or facilities.
- 1.64 **Switched Access:** A switched circuit connecting a Customer Premises to an IXC POP with intermediate switching functions.
- 1.65 **Toll Call:** Any call extending beyond the local exchange of the originating caller which is rated on a toll schedule by the Company.
- 1.66 **Toll Service:** The Services provided by the Company in this Tariff.
- 1.67 **Underlying Carrier:** A facilities-based IXC which provides transport services that are resold by the Company.
- 1.68 **Usage Charge:** Charges stated as a function of, and which vary with, use (e.g. per connection or per unit of time); Usage Charges are set forth for each Service provided by the Company in Section 4 of this Tariff.

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TELECOMMUNICATIONS SERVICES

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SECTION 2 - RULES AND REGULATIONS

**2.1 Undertaking of the Company.**

- 2.1.1 Scope.** The Company undertakes to provide the Services in accordance with the terms and conditions set forth in this Tariff. The Services are furnished for communications originating at points within the State of South Dakota and terminating within the State of South Dakota.
- 2.1.2 Provision of Customer Equipment.** Customer-Provided Equipment may be used with the Services. The Company does not provide such equipment.
- 2.1.3 Agency.** The Company may act as an agent for the Customer in connection with the implementation and maintenance of the Services.
- 2.1.4 Routing.** The Company will maintain sole and absolute discretion over the routing of Calls originated by the Customer pursuant to this Tariff and the channels and/or service components used to provide the Services. The Company will maintain sole and absolute discretion over the selection of the Underlying Carrier over whose network Calls originated by the Customer pursuant to this Tariff will be carried and will be under no obligation to notify End Users of any change in the Underlying Carrier.
- 2.1.5 Minimum Call Completion Rate.** The Customer can expect a Call completion rate (e.g., number of Calls completed/number of Calls attempted) of not less than ninety-five percent (95%) during peak use periods.

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TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS**

**2.2 Limitations.**

**2.2.1 Availability of Services.** The Services are offered subject to the availability of facilities and under the terms and conditions contained in this Tariff. The Company's obligation to furnish the Services is dependent upon its ability to obtain, retain and maintain without unreasonable expense access to suitable facilities, including service arrangements with Underlying Carriers, and is subject to transmission, atmospheric and like limitations. The Services may be temporarily refused or limited due to limitations in system capacity or to other circumstances beyond the Company's control. The Services may be temporarily interrupted or curtailed due to equipment modifications, upgrades, relocations, repairs, or similar activities necessary for the proper or improved operation of the Services.

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## TELECOMMUNICATIONS SERVICES

SECTION 2 - RULES AND REGULATIONS (cont'd)**2.2 Limitations (cont'd).**

**2.2.2 Rights of the Company.** The Company reserves the right to refuse or limit the use of or suspend or discontinue (pursuant to Section 3.16) Service to the Customer without incurring liability:

- 1) For non-payment when due of any amount due and owing to the Company by the Customer.
- 2) For violation of, or failure to comply with, the terms and conditions of this Tariff by the Customer of either the provisions of this Tariff or for violation of any laws, rules, regulations, or policies of a governmental authority applicable to the Services and the Customer's use thereof.
- 3) By reason of an order or decision of a court or other governmental authority which prohibits the Company from furnishing the Services.
- 4) In the event that the Company's service arrangement with one or more Underlying Carriers is terminated and the Company is unable to secure another service arrangement without incurring unreasonable expense.
- 5) When necessitated by conditions beyond the Company's control. Conditions beyond the Company's control include, but are not limited to, the Customer generating Call volume or utilizing a Calling pattern that results, or may result, in network blockage or other service degradation which adversely affects the Service to other customers of the Company.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.2 Limitations (cont'd).****2.2.2 Rights of the Company (cont'd).**

- 6) For abuse or fraudulent use of the Services by the Customer or its End Users. Abuse of the Services includes, without limitation, the making of Calls which might reasonably be expected to frighten, abuse, torment or harass another or which in any way would interfere unreasonably with the use of the Service by others. Fraudulent use of the Services includes, without limitation: (1) use of the Services to transmit a message, locate a person or otherwise give or obtain information without payment for the Services; (2) use, or attempted use, of the Services with the intent to avoid payment therefor by rearranging, tampering with, or making connections not authorized by this Tariff to any service components or through use of fraudulent means, devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices; (3) use of an Inbound Service with the intent of gaining access to an out-bound calling capability on an unauthorized basis; or (4) use of fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices to defraud or mislead callers.

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TELECOMMUNICATIONS SERVICES

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SECTION 2 - RULES AND REGULATIONS (cont'd)

2.2 Limitations (cont'd).

2.2.2 Rights of the Company (cont'd).

- 7) For submission or use by the Customer of insufficient or fraudulent billing information, invalid or unauthorized telephone numbers, or pre-arranged account code numbers.
- 8) If the Company deems such action necessary to protect itself or third parties against fraud or to otherwise protect its personnel, agents, or the Services.

2.2.3 Restoration of Service. The Company will provide or restore the Services when the Customer is in compliance with the provisions of this Tariff and all applicable laws, rules, regulations and policies of pertinent governmental authorities and the Company determines that the Services can be provided without undue risk to the Company or the Services provided to other Customers of the Company.

2.2.4 Fraud Prevention. In order to control fraud, the Company may refuse to accept Calling Card Calls or discontinue the use of Authorization Codes which it determines to be fraudulent or invalid and/or may limit the use of these billing options to or from certain areas, including any part of the State of South Dakota.

2.2.5 Emergency Conditions. The use and restoration of the Services during emergency conditions shall be in accordance with Part 64, Subpart D, Appendix A, of the FCC's Rules and Regulations, which specifies the priority system for such use and restoration.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.2 Limitations (cont'd).**

**2.2.6 Property Rights.** The Customer will obtain no property right or interest in the use of any specific type of facility, service connection, equipment, number, process or code. All right, title and interest to such items will remain, at all times, solely with the Company.

**2.3 Use of Service.**

**2.3.1 Authorized Use.** The Services may be used solely to transmit communications of the Customer or authorized End Users in a manner consistent with the terms and conditions of this Tariff and the policies and regulations of the Commission. The Services are furnished for the transmission of voice communications, but may also be used for data, facsimile, signaling, metering, or other similar communications, subject to the transmission capabilities of the Services and the laws, rules and regulations of the Commission.

**2.3.2 Limitations.** The Services are furnished subject to the condition that they will be used only for authorized and lawful purposes by the Customer. The Customer may not use the Services for any unauthorized or unlawful purpose.

**2.3.3 Compatibility.** The Customer's use of the Services shall not interfere with or impair the Company's ability to provide the Services to other customers, cause damage to the Company's equipment or resold equipment, impair the privacy of communications over the Company's system or create hazards to the employees of any company or the public.

**2.3.4 Modifications.** The Customer may not rearrange, disconnect, remove, modify or attempt to repair or permit others to rearrange, disconnect, remove, modify or attempt to repair any Company facility without the prior written consent of the Company.

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TELECOMMUNICATIONS SERVICES

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SECTION 2 - RULES AND REGULATIONS (cont'd)

**2.4 Liability of the Company.**

**2.4.1 General.** The Company's liability, if any, for damages associated with the ordering (including the reservation of any specific number for use with a Service), installation (including delays associated therewith), provisioning, termination, maintenance, repair or restoration of the Services or associated facilities offered under this Tariff, shall be limited as follows:

- 1) With respect to any Outbound or Inbound Service provided by the Company which involves Dedicated Access, shared interexchange transmission, and shared termination, the Company's liability shall not exceed an amount equal to the proportionate Monthly Recurring Charges, including any Service charges, minimum Monthly Charges, basic feature package charges, Monthly Charges for optional features, charges for Dedicated Access facilities, and any other Monthly Charges, for the period during which the Service was affected, or, if only a transmission using the shared interexchange facilities is interrupted, an amount equal to the charge applicable to a one-minute Call to the Called Station at the time the affected Call was made.

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TELECOMMUNICATIONS SERVICESSECTION 2 - RULES AND REGULATIONS (cont'd)2.4 Liability of the Company (cont'd).2.4.1 General (cont'd).

- 2) With respect to any Outbound or Inbound Service provided by the Company which involves Switched Access, shared interexchange transmission, and shared termination, the Company's liability shall not exceed an amount equal to charge applicable to a one minute Call to the Customer's station at the time, and over the range of the affected Call, taking account of the form of Service and type of termination the Customer had selected. The liabilities of the Company for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission occurring in the course of furnishing Service hereunder and not caused by the negligence or intentional act of the Customer shall in no event exceed an amount equivalent to the Initial Period charge to the Customer under this Tariff for the Call during which such mistake, omission, interruption, delay, error or defect in transmission occurs. Other than amounts that may be due the Customer under this Tariff as a credit allowance, the Company shall have no further liability for damages or losses arising out of mistakes, omissions, interruptions, delays, errors or defects in the provision of the Services and/or associated equipment and facilities.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.4 Liability of the Company (cont'd).**

**2.4.2 Other Carriers.** The Company shall not be liable for any act or omission of any other company or companies furnishing services to the Customer in conjunction with the Services, or for damages associated with services, channels or equipment which it does not furnish, or for damages which result from the operation of Customer-Provided Equipment or services furnished by other companies which are interconnected with the Company's Services. The liability of any Underlying Carrier to the Customer or any End-User shall be limited by the tariffs pursuant to which such carrier provides network services.

No agents or employees of connecting, concurring or other participating carriers or companies shall be deemed to be agents or employees of the Company without written authorization from the Company.

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TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.4 Liability of the Company (cont'd).**

**2.4.3 Consequential or Special Damages.** The Company's liability for its gross negligence or willful misconduct is not limited by this Tariff. Regardless of the form of action, whether in contract, indemnity, warranty, strict liability or tort, including, without limitation, negligence of any kind whether active or passive, the Company shall not be liable for any indirect, incidental, consequential, reliance, special or punitive damages, including, without limitation, damages for lost profits, of any kind or nature whatsoever, arising out of the provisions or interruption of the Services provided under this Tariff absent a determination of gross negligence or willful misconduct in a judicial or administrative proceeding.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.4 Liability of the Company (cont'd).**

**2.4.4 Customer Premises/Customer-Provided Equipment.** The Company shall not be liable for any defacement of, or damage to, the Customer's premises resulting from the furnishing of the Services or attachment of the Company's equipment and associated wiring on such premises, or from the installation or removal thereof, when such defacement or damage is not the result of the Company's negligence. The Customer shall indemnify and save harmless the Company from any claims of the owner of the Customer Premises or other third party claims for such damages.

The Company shall not be liable for the Customer's failure to fulfill its obligation to take all necessary steps, including, without limitation, obtaining, installing and maintaining all necessary equipment, materials and supplies, for interconnecting the terminal equipment or communications system of the Customer, or any third party acting as its agent, to the Company's network. The Customer shall secure all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In addition, the Customer shall ensure that its equipment and/or system or that of its agent is properly interfaced with the Company's Services, that the signals emitted into the Company's network are of the proper mode, band-width, power, data speed, and signal level for the intended use of the Customer and in compliance with the criteria set forth in the applicable subsections of this Tariff, and that the signals do not damage the Company's equipment, injure its personnel, or degrade service to other Customers.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.4 Liability of the Company (cont'd).****2.4.4 Customer Premises/Customer-Provided Equipment (cont'd).**

If the FCC or some other appropriate certifying body certifies terminal equipment as being technically acceptable for direct electrical connection with interstate communications service, the Company will permit such equipment to be connected with its channels without the use of protective interface devices. If the Customer or its agent fails to maintain and operate its equipment and/or system or that of its agent properly, with resulting imminent harm to the Company's equipment, personnel, or the quality of service to other Customers, the Company may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notice, terminate the Services to the Customer without liability.

The Company shall not be responsible for the installation, operation or maintenance of any Customer-Provided Equipment. Where Customer-Provided Equipment is used in conjunction with the Services, the responsibility of the Company shall be limited to the furnishing, and the maintenance and operation in the proper manner, of the Services, and shall not include responsibility for the quality of, or defects in, the signal that are caused by the Customer-Provided Equipment. Subject to the above, the Company shall not be responsible for the through transmission of signals generated by, the reception of signals by, or network control signalling where such signalling is performed by Customer-Provided Equipment.

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TELECOMMUNICATIONS SERVICES

SECTION 2 - RULES AND REGULATIONS (cont'd)

2.4 Liability of the Company (cont'd).

**2.4.5 Force Majeure.** The Company shall not liable for any failure of performance hereunder due to causes beyond its control, including, but not limited to: unavoidable interruption in the working of transmission facilities; acts of nature; storms, fire, flood or other catastrophes; any law, order, regulation, direction, action or request of the United States Government, or any other governmental entity having jurisdiction over the Company, or of any department, agency, commission, bureau, corporation or other instrumentality of any one or more of such governmental entities, or of any civil or military authority; national emergencies, insurrections, riots, rebellions, wars, strikes, lockouts, work stoppages, or other labor difficulties; or, notwithstanding anything in this Tariff to the contrary, the unlawful acts of individuals, including acts of the Company's agents and employees if committed beyond the scope of their employment.

**2.4.6 Notice.** Notwithstanding anything to the contrary set forth in this Section 3.3, the Company shall not be liable for damages or be obligated to provide any credit allowance unless the Customer has notified the Company of the basis of any claim for damages or credit allowance within thirty (30) calendar days after an invoice is rendered or a debit is effected by the Company for the Services or the Call giving rise to such claim. Any such notice must set forth sufficient facts to provide the Company with a reasonable basis upon which to evaluate the Customer's claim. Usage discounts will be adjusted based on total usage after all credits or adjustments have been applied.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.4 Liability of the Company (cont'd).**

**2.4.7 Unauthorized Use.** The Company shall not be liable for any damages, including Usage Charges, that the Customer may incur as a result of the unauthorized use of Customer-Provided Equipment. The unauthorized use of Customer-Provided Equipment includes, but is not limited to, the placement of Calls from the Customer Premises and the placement of Calls through Customer-controlled or Customer-provisioned equipment that are transmitted or carried over the Company's network Services without the authorization of the Customer. The Customer is responsible for controlling access to, and use of, its own communications equipment, and shall be fully liable for all such charges.

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

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TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.4 Liability of the Company (cont'd).**

**2.4.9 Indemnification.** The Company shall be indemnified, defended and held harmless by the Customer against any and all loss, claims, demands, suits or other action, or any liability whatsoever, arising from the use of the Services furnished pursuant to this Tariff involving:

- 1) Claims for libel, slander, infringement of patent or copyright, or unauthorized use of any trademark, trade name or service mark arising out of the material, data, information, or other content transmitted by the Company; violations of any other literary, intellectual, artistic, dramatic, or musical right; violations of the right to privacy; or violations of any other rights whatsoever relating to or arising from message content or the transmission thereof.
- 2) Claims arising out of abuse of or fraudulent use of the Services by the Customer or its End Users.
- 3) All other claims arising out of any act or omission of the Customer in connection with the Services provided by the Company.

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## TELECOMMUNICATIONS SERVICES

SECTION 2 - RULES AND REGULATIONS (cont'd)**2.4 Liability of the Company (cont'd).****2.4.9 Indemnification (cont'd).**

The Company shall not be liable for, and the Customer shall indemnify and hold the Company harmless from, all losses, claims, demands, suits or other action, or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or any other Person, for any personal injury to, or death of, any Person, and for any loss, damage, defacement or destruction of the equipment or premises of the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, presence, condition, location, or use of equipment or wiring provided by the Company, when such installation, operation, failure to operate, maintenance, condition, use or location is not the direct result of the Company's gross negligence or willful misconduct.

**2.4.10 Independent Contractor.** The Company's relationship with any Underlying Carrier that may provide facilities to the Company for resale to the Customer is that of an independent contractor and the Company and any such Underlying Carrier shall not be deemed to be partners or joint venturers by virtue of this relationship. No agents or employees of other carriers shall be deemed to be agents or employees of the Company.

**2.4.11 Implied License.** No license under patents, copyrights, trademarks, or trade secrets is granted to the Customer by the Company, or shall be implied or arise by estoppel, with respect to the Services.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.5 Customer Deposits.**

The Company does not require deposits.

**2.6 Taxes.**

The Customer will be billed for and is liable for payment of all applicable federal, state and local taxes, surcharges, fees or other assessments, including such amounts as the Company may be authorized to pass through to the Customer. All taxes, surcharges, fees or other assessments are listed as separate line items and are not included in the quoted rates.

When utility or telecommunications assessments, franchise fees, or privilege, license, occupational, excise or other similar taxes or fees, based on intrastate receipts, are imposed by certain taxing jurisdictions upon the Company or upon any LEC and passed on to the Company through or with intrastate access charges, the amounts of such taxes or fees may be billed to the Customer in such a taxing jurisdiction on a prorated basis. The amount of charge that is prorated to each Customer's bill is determined by the intrastate telecommunications services provided to and billed to a Customer service location in such a taxing jurisdiction with the aggregate of such charges equal to the amount of the tax or fee imposed upon or passed on to the Company.

**2.7 Miscellaneous Rates and Charges**

The Company may adjust its rates and charges or impose additional rates and charges on its Customers in order to recover amounts it is required by governmental or quasi-governmental authorities to collect from or pay to others in support of statutory or regulatory programs. Examples of such programs include, but are not limited to, the Universal Service Fund, the Primary Interexchange Carrier Charge, and compensation to payphone service providers for the use of their payphones to access the Company's service.

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TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.8 Terminal Equipment**

The Company's facilities and service may be used with or terminated in Customer-provided terminal equipment or Customer-provided communications systems, such as a telephone set, PBX or key system. Such terminal equipment shall be furnished and maintained at the expense of the Customer, except as otherwise provided. The Customer is responsible for all costs at his or her premises, including personnel, wiring, electrical power, and the like, incurred in the use of the Company's service. When such terminal equipment is used, the equipment shall comply with the generally accepted minimum protective criteria standards of the telecommunications industry as endorsed by the Federal Communications Commission.

**2.9 Rendering and Payment of Bills.**

**2.9.1 General.** The Customer is ultimately responsible for payment of all charges for the Services provided by the Company to the Customer and its End Users, including, but not limited to, charges associated with Calls originated at the Customer's number(s), accepted at the Customer's number(s) or billed to the Customer's number(s) via Calling Cards, and the Services requested by the Customer.

**2.9.2 Billing Period.** The billing period is generally one calendar month; provided, however, that for purposes of billing Monthly Recurring Charges, each month is considered to have thirty (30) days. Usage Charges for the Services will be billed monthly in arrears; Monthly Recurring Charges will be billed monthly in advance; one-time fees will be billed upon completion of the associated Service. Monthly Charges start on the day after the Services are installed, but not before the due date of the order unless the Customer agrees to an earlier installation. Monthly Recurring Charges accrue through and include the day that the Services are discontinued.

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TELECOMMUNICATIONS SERVICES

SECTION 2 - RULES AND REGULATIONS (cont'd)

**2.9 Rendering and Payment of Bills (cont'd).**

**2.9.3 Rendering Bills.** Bills will generally be rendered on a monthly basis. Bills are sent via U.S. mail to the most recent billing address provided to the Company by the Customer. Some bills may be rendered by an LEC on behalf of the Company. Bills shall contain the following information:

Name and telephone number of identifying number under which service is billed.

Any previous balance due;

The ending date of the bill cycle or the invoice date;

The due date of the bill and the date on which a late payment charge will be imposed;

Itemization of the charges including any applicable taxes;

Name and a toll free telephone number of the Company's customer service representatives for billing inquiries.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.9 Rendering and Payment of Bills (cont'd).**

**2.9.4 Due Date.** The due date for payment of a monthly bill for service shall be no less than twenty (20) days from the date of mailing by the Company to the Customer after issuance. If the last day for payment should fall on a Saturday, Sunday, or bank holiday or other day when the offices of the Company are not open to the general public, the due date shall be extended to the next business day.

**2.9.5 Late Charge.** If any portion of a payment is still outstanding thirty (30) days following the invoice date, a late payment charge may be applied. The charge is determined by applying the maximum rate allowed by law to the unpaid balance for each month or fraction thereof that such balance remains unpaid.

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TELECOMMUNICATIONS SERVICES

SECTION 2 - RULES AND REGULATIONS (cont'd)

2.9 Rendering and Payment of Bills (cont'd).

**2.9.6 Billing Disputes.** Billing will be deemed to be correct and binding on the Customer unless the Customer notifies the Company in writing of any dispute within thirty (30) days of the date of the invoice on which the disputed charges appear. Billing disputes should be addressed in writing to eVulkan, Inc. d/b/a beMANY!, 100 Broadway, 21<sup>st</sup> Floor, New York, NJ 10005. Billing disputes may also be referred to the Company's Customer Service number, (877) 289-7401. Customer Service representatives are available to assist with billing inquiries Monday through Friday from 8:00 AM to 5:00 PM Eastern Time.

In the event of a dispute between a Customer and the Company regarding any bill for utility service, the company shall forthwith make such investigation as shall be required by the particular case, and report the results thereof to the Customer and, in the event the dispute is not resolved, shall inform the Customer of his or her right to file a complaint with the Commission. The South Dakota Public Utilities Commission can be reached at:

500 East Capitol  
Pierre, SD 57501-5070  
(605) 733-3201  
(800) 332-1782

Notwithstanding any other provision of this Tariff, the Customer shall not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the completion of the investigation of the dispute by the Company.

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TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.9 Rendering and Payment of Bills (cont'd).**

**2.9.7 Overbilling and Underbilling.** If billings for the Company's service are found to differ from Company's lawful rates for the services being purchased by the Customer, or if the Company fails to bill the Customer for such service, a billing adjustment shall be calculated by the Company.

**2.9.7.A Refunds for Overcharges.** If the Company has overbilled a Customer, the Company shall make a refund or billing credit in a subsequent billing cycle following discovery and computation of

**2.9.7.B Backbilling of Undercharges.** If the Customer was undercharged, the Company may back bill the Customer for the amount which was under billed. When the Company bills a Customer an amount correcting a previous underbilling, and it results in an undue hardship on a Customer, the Customer may call the Company and make special payment arrangements, unless the underbilling was caused by unauthorized or fraudulent use or procurement of service.

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## TELECOMMUNICATIONS SERVICES

SECTION 2 - RULES AND REGULATIONS (cont'd)**2.9 Rendering and Payment of Bills (cont'd).**

**2.9.8 Payment Arrangements.** A payment arrangement is any arrangement or agreement between the Company and a Customer in which an outstanding bill will be paid in installments that extend beyond the due date of the next bill. The company, through its employees, shall exercise good faith and fair judgment in attempting to enter into a reasonable payment agreement regarding undisputed amounts or to otherwise equitably resolve the matter. Factors to be taken into account when attempting to make a reasonable payment agreement shall include but not be limited to the size of the unpaid balance, the payment history of the Customer and the length of time over which the bill accumulated. The Company may not suspend service for an undisputed delinquent bill under the following circumstances: (1) while it is negotiating a payment agreement with the Customer; or (2) within twenty-four (24) hours after negotiating fails. In all other cases, the Company is encouraged to offer a payment arrangement to residential Customers.

**2.9.9 Notification of Alternate Payment Programs or Payment Assistance.** Any time a Customer contacts the Company to discuss their inability to pay a bill or to indicate that they are in need of assistance with their bill payment, a Company representative shall inform the Customer of all available alternative payment and any payment assistance programs that are available, such as payment arrangements, and of the eligibility requirements and procedures for applying for each.

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TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.9 Rendering and Payment of Bills (cont'd).**

**2.9.10 Returned Checks.** If payment for the Services is made by a check, draft or similar instrument that is returned by a bank to the Company for any reason, a returned check charge of twenty dollars (\$20.00) shall be applied in addition to the total amount due.

**2.9.11 Collection Service Charge.** If the Services to the Customer are discontinued for non-payment pursuant to Section 3.16.1, a collection service charge of twenty dollars (\$20.00) shall be applied in addition to the total amount due.

**2.9.12 Billing Entity Conditions.** If billing functions are performed on behalf of the Company by LECs, credit card companies or others, the payment conditions and regulations of such billing entities apply, including any applicable interest and/or late payment charge conditions.

**2.9.13 Pro-Rated Charges.** When the billing date and the date that the Services are started, changed, or discontinued do not coincide, Monthly Recurring Charges will be adjusted to reflect the fractional part of the month involved.

**2.9.14 Business Use of Calling Card.** In the event that ten (10) or more Calling Cards are issued by the Company to the Customer for use by employees of the Customer, the Customer shall be liable for all unauthorized use of any of the issued Calling Cards.

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TELECOMMUNICATIONS SERVICES

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SECTION 2 - RULES AND REGULATIONS (cont'd)

**2.10 Cancellation or Delay of Service Orders.**

**2.10.1 Cancellation of a Service Order.** The Customer may cancel a Service Order at any time prior to the due date. A Service Order is considered to have been canceled when the Company receives a notification of cancellation from the Customer. Such notification may not be retroactive. Cancellation charges will be equal to the Installation Charge applicable to the Service involved, unless the cancellation is caused by Company delay, or otherwise specified in the section of this Tariff applicable to the specific Services.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.10 Cancellation or Delay of Service Orders (cont'd)****2.10.2 Delay of a Service Order.**

**2.10.2.A Delay of a Due Date by the Customer.** The Customer may delay the due date of a Service Order involving the installation or change of the Services when: (i) the request for the delay is received by the Company prior to the Service Order's due date; and (ii) the total delay measured from the Service Order's initial due date does not exceed thirty (30) cumulative calendar days. Service Orders involving the discontinuance of Service may be delayed at any time prior to the due date. There will be no maximum delay period for these orders. A Customer having delayed a Service Order for the maximum thirty (30) cumulative calendar day period may not delay the Service Order again. The Customer instead has the option to (1) accept billing for the Services ordered, or (2) cancel the Service Order and pay the applicable Nonrecurring Charge(s) for the Services ordered. The billing or cancellation is effective on the thirtieth (30th) cumulative calendar day of the delay. If the Customer elects to accept billing, the installation will be completed as soon as reasonably practical after the Customer advises the Company.

**2.10.2.B Delay of a Due Date by the Company.** The Company will make every reasonable effort to assure that the Services are furnished on the due date. However, in some cases a delay in the installation may be unavoidable. If an order is delayed beyond its due date for more than forty-five (45) cumulative calendar days and such delay is not requested or caused by the Customer, the Customer may cancel the Service Order without penalty or payment of Nonrecurring Charges.

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TELECOMMUNICATIONS SERVICES

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SECTION 2 - RULES AND REGULATIONS (cont'd)

**2.11 Cancellation of Service.**

The Customer may cancel the Services by giving thirty (30) days prior written notice to the Company. Upon receipt of the written notice, the Company places an order with the Underlying Carrier to cancel the Services. The Service are canceled when the Underlying Carrier moves the Customer to another carrier or when the Company receives notice from the Underlying Carrier that the Service has been canceled. The Customer will be liable for any traffic occurring with the Company through the cancellation date.

**2.12 Interconnection.**

The Customer shall take all necessary steps for the interconnection of Customer-Provided Equipment with Company-provided facilities. Interconnection between Customer-Provided Equipment and the Services, or between facilities or services provided to the Customer by another carrier and the Services, may be made by the Customer at an interface point designated by the Company. All terminal equipment and wiring necessary to connect to the channels at the designated interface point are provided by the Customer.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.13 Discontinuance of Service.**

**2.13.1 Suspension for Delinquent Bills.** A Customer's telecommunications service may be disconnected if a bill has not been paid or a payment arrangement has not been entered into within thirty (30) days from the date of mailing of a bill provided proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least ten (10) days prior to a stated date of suspension. The notice shall contain the following:

- 1) The words "suspension notice" or similar language prominently displayed on the notice.
- 2) The reason for the threatened suspension of service.
- 3) A statement of amounts currently due.
- 4) A statement that a specific reconnection fee will be required to have service restored after it has been suspended if applicable.
- 5) A statement that the Customer should immediately contact the Company to attempt to resolve the matter. Such notice shall include the mailing address and telephone number where questions may be filed answered and payment agreements entered into with the Company.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.13 Discontinuance of Service (cont'd).****2.13.1 Suspension for Delinquent Bills (cont'd).**

- 6) Attached to or on the face of the suspension notice for telecommunications bills shall appear a statement notifying the Customer that if they are in need of assistance with payment of their bill, or are ill and unable to pay their bill, they may be eligible for alternative payment programs, such as a payment arrangement, and to contact the local office of the Company for more information.
  
- 7) The service suspension day may not fall on a holiday or weekend, but shall fall on the next working day after the tenth day. Payment at the Company's authorized payment agency is considered payment to the Company. The Company may request Customers who pay at payment agencies less than three (3) days prior to the suspension date to call the Company with receipt information. The Company shall not issue late notices or disconnect notices to the Customer earlier than the first day the bill becomes delinquent, so that a reasonable length of time is allowed to ascertain receipt of payment by mail or at the Company's authorized payment agency.

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TELECOMMUNICATIONS SERVICES

**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.13 Discontinuance of Service (cont'd).**

**2.13.2 Suspension With Notice.** Service may be disconnected after proper notice for any of the following reasons:

- 1) Nonpayment of an undisputed delinquent account or the undisputed portion of an account where a dispute exists as to part but not all of an amount billed by the Company or failure to comply with the terms of a payment arrangement.
- 2) Violation of the Company's rules pertaining to the use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the Customer and the Customer is provided with a reasonable opportunity to remedy the situation.

**2.13.3 Suspension Without Notice.** Service may be disconnected without notice where a dangerous condition exists for as long as the condition exists or where service is connected without authority by a person who has not made application for service or who has reconnected service following suspension of service for nonpayment. Where reasonable, given the nature of the hazardous condition, a written statement providing notice of suspension and the reason therefore shall be posted at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.13 Discontinuance of Service (cont'd).**

**2.13.4 Suspension Prohibited.** Service may not be disconnected for any of the following reasons:

- 1) Delinquency in payment for service by a previous occupant of the premises.
- 2) Failure to pay for merchandise, or charges for non-utility service provided by the Company.
- 3) Failure to pay for a different type or class of service unless the service is provided by the billing Company and unless the fee for such service is included on the same bill.
- 4) Failure to pay the account of another customer thereof, unless the Company has in writing the guarantee as a condition precedent to service.
- 5) Failure to pay charges arising from an under billing occurring due to misapplication of rates more than six (6) months prior to the current billing.

**2.13.5 Suspension on Holidays or Weekends.** Unless a dangerous condition exists, or unless the Customer requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when personnel of the Company are not available to the public for the purpose of making collections and reconnecting service.

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TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.14 Inspections.**

The Company may, upon reasonable notice to the Customer, make such inspections, including monitoring of the Customer's use of the Services, as may be necessary to determine that requirements of the Tariff are being complied with in the installation, operation and maintenance of Customer-Provided Equipment connected to the Company facilities.

**2.15 Installation and Termination.**

Service is installed upon mutual agreement between the Customer and the Company. The service agreement does not alter rates specified in this tariff.

**2.16 Interruption of Service.**

Subject to Sections 2.2, 2.4 and 2.14, in the event a Customer's service is interrupted other than by negligence or willful act of the Customer, and it remains interrupted for two hours or more, the Custom shall be credited for such interruption at the rate of 1/720th of the monthly charge for the service affected for each hour or major fraction thereof that the interruption continues. Calculations of the credit shall be made in accordance with the following formula:

Credit Formula:

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

"A" - outage time in hours

"B" - total monthly charge for affected facility

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TELECOMMUNICATIONS SERVICES

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SECTION 2 - RULES AND REGULATIONS (cont'd)

**2.18 Timing of Calls.**

Chargeable time is determined by the duration of the Call. Calls are timed and measured by the Underlying Carrier. Timing for all Calls begins when the Called Station answers the Call (i.e., when two-way communications are established). Answer detection is based on standard industry answer detection methods, including hardware and software answer detection. Chargeable time ends when either the Called Station or the Calling Station disconnects from the Call. There are no billing charges applied for incomplete Calls.

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TELECOMMUNICATIONS SERVICES

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**SECTION 3 - DESCRIPTION OF SERVICES**

**3.1 Outbound Services.**

**3.1.1 Switched Outbound Services.** Switched Outbound Service is offered on a per-Call basis to Customers which originate and terminate within the State of South Dakota. Outbound Service is accessed on a conventional "1+" pre-subscribed direct dial basis over the facilities of a LEC. Calls originate and terminate via Switched Access provided by a LEC or other authorized access provider. The Customer is responsible for establishing originating local access facilities or equipment and for all nonrecurring, recurring, construction and other charges in connection with such originating access. Residential Service is available only on a switched outbound basis.

**3.1.2 Dedicated Outbound Services.** Dedicated Outbound Services permit a Customer to establish a communications path between two (2) stations by using a uniform dialing plan. Dedicated outbound services are provided through T-1 or DS0 dedicated access and are available to customers that have T-1 or DS0 dedicated access to the underlying carrier's POP. The Customer is responsible for securing dedicated access to the underlying carrier's POP and for all nonrecurring and recurring, construction and other charges incurred in connection with establishing such Dedicated Access. At the Customer's request, the Company will arrange for dedicated access to the underlying carrier's POP and pass through to the Customer all costs incurred in establishing such access.

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TELECOMMUNICATIONS SERVICES

SECTION 3 - DESCRIPTION OF SERVICES (cont'd)

**3.2 Inbound Services.**

**3.2.1 Switched Inbound Services.** Switched Inbound Service provides the Customer with one or more 800/888 numbers which when dialed within the State of South Dakota will terminate on Customer-designated facilities or equipment within the State of South Dakota. All charges accruing in connection with usage of the Customer's assigned 800/888 numbers are billed to the Customer rather than the party originating the Call. Calls terminate via Switched Access provided by a LEC or other authorized access provider. The Customer is responsible for establishing originating local access facilities or equipment and for all nonrecurring, recurring, construction and other charges in connection with such originating access.

**3.2.2 Dedicated Inbound Services.** Dedicated Inbound Services permit Calls to be completed to the Customer's location without charge to the Calling Station. Access to the Service is gained by dialing a ten digit telephone number, (800/888) NXX-XXXX, which terminates at the Customer's Premises. Dedicated Inbound Services are available only to Customers that have terminating T-1 or DS0 access to the underlying carrier's POP. The Customer is responsible for all nonrecurring, recurring, construction and other charges incurred in connection with establishing such terminating dedicated access. At the Customer's request, the Company will arrange for terminating dedicated access to the underlying carrier's POP and pass through to the Customer all costs incurred in establishing such access.

**3.3 Calling Card Services.** Calling Card Service is an outbound service offered on a per-Call basis to Customers originating calls which originate and terminate within the State of South Dakota. Calling Card Service is accessed by dialing the Company's universal access toll free number to complete direct dialed or operator assisted calls.

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TELECOMMUNICATIONS SERVICES

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**SECTION 4 - RATES AND CHARGES**

**4.1 Rate Schedule.**

- 4.1.1 General.** This section sets forth the rates and charges applicable to the Services. All rates are set forth in U.S. dollars.
- 4.1.2 Rating Methodology.** Usage-sensitive charges for the Services are applied on a per-Call basis. Message charges are based on the duration of the Call.
- 4.1.3 Billing Fees.** A monthly billing fee may be assessed under individual service options.
- 4.1.4 Set-up Fees.** A one-time service fee may be assessed under individual service options.
- 4.1.5 Credit Card Fees.** A monthly service fee and per-Call surcharges may be assessed under individual service options for credit card usage.
- 4.1.6 Operator Service Charges.** Operator Service charges are billed by the Underlying Carrier or its agent; the Company does not provide or bill for Operator Services.

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TELECOMMUNICATIONS SERVICES

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SECTION 4 - RATES AND CHARGES (cont'd)

4.2 Service Rates.

4.2.1 Rates.

4.2.1.A Switched Outbound Service Usage Rates.

Initial Call Unit	Incremental Call Unit
\$0.052	\$0.017

4.2.1.B Dedicated Outbound Service Usage Rates.

Initial Call Unit	Incremental Call Unit
\$0.035	\$0.012

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## TELECOMMUNICATIONS SERVICES

SECTION 4 - RATES AND CHARGES (cont'd)**4.2 Service Rates (cont'd).****4.2.1 Rates (cont'd).****4.2.1.C Switched Inbound Service Usage Rates.**

<b>Initial Call Unit</b>	<b>Incremental Call Unit</b>
\$0.052	\$0.017

**4.2.1.D Dedicated Inbound Service Usage Rates.**

<b>Initial Call Unit</b>	<b>Incremental Call Unit</b>
\$0.035	\$0.12

**4.2.1.E Inbound Service Payphone Surcharge.**

The Customer will be assessed a surcharge of \$0.25 for each Inbound Service Call placed from a payphone.

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New York, NJ 10005

TELECOMMUNICATIONS SERVICES

---

**SECTION 4 - RATES AND CHARGES (cont'd)**

**4.2 Service Rates (cont'd).**

**4.2.3 Calling Card Service Rates.**

<b>Initial Call Unit</b>	<b>Incremental Call Unit</b>
\$0.060	\$0.020

**Calling Card Service Charge.**

The Customer will be assessed a surcharge of \$0.75 for each Calling Card Service Call.

**Calling Card Service Payphone Surcharge.**

The Customer will be assessed a surcharge of \$0.25 for each Calling Card Service Call placed from a payphone.

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TELECOMMUNICATIONS SERVICES

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SECTION 4 - RATES AND CHARGES (cont'd)

4.2 Service Rates (cont'd).

4.2.4 Miscellaneous Rates and Charges.

4.2.5.A Presubscribed Interexchange Carrier Change Charge. The Company reserves the right to assess on the Customer a one time Presubscribed Interexchange Carrier Change Charge of \$5.00 upon initiation of the Services.

4.2.5.B Pass-Through Charges. The Company reserves the right to pass through to the Customer any charges resulting from governmental assessment, tax, charges or action.

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# CONTINUATION

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**HUNTER COMMUNICATIONS LAW**


1620 I STREET, N.W. SUITE #701  
WASHINGTON, DC 20006-4005

65-2731  
559

DATE June 11, 2000


PAY TO THE ORDER OF South Dakota Public Utilities Commission \$ 250.<sup>00</sup>

Two hundred fifty & 00/100

DOLLARS 

**FCNB BANK**  
Frederick, Maryland 21701

FOR Vulcan, Inc. Filing fee

Catherine M. Hannan 

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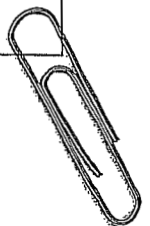
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**WEEKLY FILINGS**

For the Period of June 15, 2000 through June 21, 2000

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

Phone: 605-773-3705 Fax: 605-773-3809

**TELECOMMUNICATIONS**

**TC00-094 In the Matter of the Establishment of Switched Access Revenue Requirement for Union Telephone Company.**

Union Telephone Company filed a switched access cost study developing a revenue requirement that is included in the revenue requirement used to determine the switched access rates for the Local Exchange Carriers Association.

Staff Analyst: Keith Senger  
Staff Attorney: Karen E. Cremer  
Dated Docketed: 06/15/00  
Intervention Deadline: 07/07/00

**TC00-095 In the Matter of the Establishment of Switched Access Revenue Requirement for Bridgewater-Canistota Independent Telephone Company.**

Bridgewater-Canistota Independent Telephone Company filed a switched access cost study developing a revenue requirement that is included in the revenue requirement used to determine the switched access rates for the Local Exchange Carriers Association.

Staff Analyst: Harlan Best  
Staff Attorney: Karen E. Cremer  
Date Docketed: 06/15/00  
Intervention Deadline: 07/07/00

**TC00-096 In the Matter of the Request by West River Telecommunications Cooperative for a Waiver of a Requirement to File a Switched Access Cost Study.**

West River Telecommunications Cooperative filed a request to waive ARSD 20:10:27:07 which requires a company to submit "cost data in support of its switched access service tariff no less than once every three years." West River Telecommunications (WRT) states that "such a waiver [should be] allowed given that: 1) the estimated impact on access rates of a filing is negligible, 2) the cost of making a filing is significant given the number of customers involved, [and] 3) a similar filing by WRT's for its South Dakota study area, Mobridge Telecommunication Company, would more than offset the WRT reduction." West River Telecommunications Cooperative is a member of the Local Exchange Carriers Association.

Staff Analyst: Harlan Best  
Staff Attorney: Karen E. Cremer  
Date Docketed: 06/15/00  
Intervention Deadline: 07/07/00

**TC00-097 In the Matter of the Application of Norstar Communications, Inc. d/b/a Business Savings Plan for a Certificate of Authority to Provide Telecommunications Services in South Dakota.**

Norstar Communications, Inc. d/b/a Business Savings Plan is seeking a Certificate of Authority to provide resold interexchange telecommunications services in South Dakota. The applicant intends to provide MTS, in-WATS, out-WATS, and Calling Card services.

Staff Analyst: Heather Forney  
Staff Attorney: Camron Hoseck  
Date Docketed: 06/16/00  
Intervention Deadline: 07/07/00

**TC00-098 In the Matter of the Filing for Approval of a Resale Agreement between U S WEST Communications, Inc. and ServiSense.com, Inc.**

An interconnection agreement between ServiSense.com, Inc. and U S WEST Communications, Inc. was filed with the Commission. The agreement is a negotiated agreement setting forth certain arrangements to provide, within the geographical areas where U S WEST is the incumbent local exchange carrier, the resale of local telecommunications services.

Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than July 6, 2000. Parties to the agreement may file written responses to comments no later than twenty days after the service of the comments.

Staff Attorney: Camron Hoseck  
Date Docketed: 06/16/00  
Comments Due: 07/06/00

**TC00-099 In the Matter of the Filing for Approval of an Interconnection Agreement between U S WEST Communications, Inc. and NewPath Holdings, Inc.**

An interconnection agreement between NewPath Holdings, Inc. and U S WEST Communications, Inc. was filed with the Commission. The agreement is a negotiated agreement with the parties adopting the interconnection between Covad Communications Company and U S WEST, Docket TC99-017, which was approved by the Commission effective November 18, 1999.

Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than July 6, 2000.

Parties to the agreement may file written responses to comments no later than twenty days after the service of the comments.

Staff Attorney: Camron Hoseck  
Date Docketed: 06/16/00  
Comments Due: 07/06/00

**TC00-100** In the Matter of the Application of eVulkan, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

eVulkan, Inc. is seeking a Certificate of Authority to provide resold interexchange telecommunication services in South Dakota. The applicant intends to provide switched and dedicated outbound interexchange services, and calling card services accessed via company provided 800/888 numbers.

Staff Analyst: Keith Senger  
Staff Attorney: Karen E. Cremer  
Date Docketed: 06/19/00  
Intervention Deadline: 07/07/00

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*hunter communications law group*

---

VIA OVERNIGHT COURIER

August 2, 2000

Mr. Keith Senger, Utility Analyst  
South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol Avenue  
Pierre, SD 57501-5070

**RECEIVED**

AUG 03 2000

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**Re: SD PUC Docket TC00-100 - Application of eVulkan, Inc. d/b/a beMANY!  
For a Certificate of Authority to Provide Telecommunications Services in  
South Dakota**

Dear Mr. Senger,

Pursuant to your letters of July 19 and August 1, 2000, set forth below are an original and two (2) copies of the modified tariff of eVulkan, Inc. d/b/a beMANY! ("eVulkan") reflecting the changes which you have requested. The deletion of Section 2.4.3 necessitated the repagination of all following pages. Modifications to Sections 2.9.2, 2.4.1(1), as well as the Table of Contents are incorporated therein.

The last two sentences of section 2.4.4, which place responsibility upon the customer for ensuring that the customer's equipment and/or system are configured in such a manner as to be able to utilize the Company's services without damage either to the Company's system or to the health and safety of the Company's personnel, reflect the fact that the customer's equipment and system are beyond the control of the Company and accordingly, only the customer is positioned to determine whether its equipment and/or system are appropriately compatible with the Company's services.

Should you require any additional information, please do not hesitate to contact me at my direct dial number, (202) 293-2590.

Respectfully submitted,

*Catherine M. Hannan*

Catherine M. Hannan  
Regulatory Counsel for  
eVulkan, Inc. d/b/a beMANY!

Enclosures

---

1620 I Street, N.W.  
Suite 701  
Washington, D.C. 20006  
Telephone (202) 293-2500  
Facsimile (202) 293-2571

TARIFF

OF

eVulkan, Inc.

LONG DISTANCE TELECOMMUNICATIONS SERVICE

This Tariff, filed with the South Dakota Public Utilities Commission contains the rates, terms and conditions applicable to the Resale Telecommunications Services provided by eVulkan, Inc., d/b/a beMANY! within the State of South Dakota.

TELECOMMUNICATIONS SERVICES

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**CHECK SHEET**

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

<u>PAGE</u>	<u>REVISION</u>
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TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

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TELECOMMUNICATIONS SERVICES

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CONCURRING CARRIERS

No concurring carriers

CONNECTING CARRIERS

No connecting carriers

OTHER PARTICIPATING CARRIERS

No other participating carriers

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TELECOMMUNICATIONS SERVICES

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**EXPLANATION OF SYMBOLS**

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

- D - Delete or Discontinue
- I - Change Resulting in an Increase in Rates
- M - Moved from Another Tariff Location
- N - New Regulation, Term, or Condition or Rate
- R - Change Resulting in a Reduction in Rate
- T - Change in Text or Regulation But no Change in Rates

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**TELECOMMUNICATIONS SERVICES**

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**TARIFF FORMAT**

**A. Page Numbering** - Page numbers appear in the upper right corner of the page. Pages are numbered sequentially. When a new page is added between pages already in effect, a decimal is added. For example, a new page added between pages 14 and 15 would be 14.1.

**B. Page Revision Numbers** - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the South Dakota Public Utilities Commission. For example, the 4th revised Page 14 cancels the 3rd revised Page 14. Consult the Check Sheet for the page currently in effect.

**C. Paragraph Numbering Sequence** - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

- 2.
- 2.1.
- 2.1.1.
- 2.1.1.A.
- 2.1.1.A.1.
- 2.1.1.A.1.(a).
- 2.1.1.A.1.(a).I.
- 2.1.1.A.1.(a).I.(i).
- 2.1.1.A.1.(a).I.(i).(1).

**D. Check Sheets** - When a tariff filing is made with the South Dakota Public Utilities Commission, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the pages contained in the tariff, with a cross reference to the current revision number. When new pages are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remain the same, just revised revision levels on some pages.)

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TELECOMMUNICATIONS SERVICES

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS**

- 1.1 **Access:** The connection between the Customer's location and an interexchange switching center.
- 1.2 **Access Line:** A transmission line from either an LEC central office or an IXC POP to the Customer's Premises used to process voice and limited speed data Calls.
- 1.3 **Account Code:** A numerical code, assigned to the Customer, to enable the Company to identify use of the Services by the Customer and to bill the use of the Services by the Customer. Multiple Account Codes may be assigned to the Customer to identify individual users or groups of users.
- 1.4 **Additional Period:** The minimum additional portion of a Calling Period after an Initial Period for which charges are incurred for completed Calls.
- 1.5 **Analog:** A transmission method employing a continuous (rather than a pulsed or digital) electrical signal that varies in amplitude or frequency in response to changes of sound, light, position, etc., impressed on a transducer in the sending device.
- 1.6 **Asynchronous:** Transmission in which each information character is individually synchronized usually by the use of start-stop elements. The gap between each character is not of a fixed length.

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New York, NJ 10005

## TELECOMMUNICATIONS SERVICES

**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.7 **Authorization Code:** A predefined series of numbers to be dialed by the Customer or End User upon access to the Company's system to identify the caller and validate the caller's authorization to use the Services provided. All Authorization Codes shall be the sole property of the Company and no Customer or End User shall have any property or other right or interest in the use of any particular Authorization Code. The Customer is responsible for charges incurred through the use of its assigned Authorization Code. Automatic Numbering Identification (ANI) may be used as or in connection with the Authorization Code.
- 1.8 **Automatic Numbering Identification (ANI):** A type of signalling provided by an LEC which automatically identifies the Calling Station.
- 1.9 **Bit:** The smallest unit of information in the binary system of notation.
- 1.10 **Call:** A completed connection established between a Calling Station and one or more Called Stations.
- 1.11 **Called Station:** The terminating point of a Call (*i.e.*, the Called number).
- 1.12 **Calling Card:** A billing arrangement which bills the charge for an MTS Call to the Main Billing Number of a Customer.
- 1.13 **Calling Card Services:** The Services described in Section 3.3 of this Tariff.
- 1.14 **Calling Station:** The originating point of a Call (*i.e.*, the Calling number).
- 1.15 **Calling Unit:** The measured period of a Call which is either Initial or Additional.

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New York, NJ 10005

TELECOMMUNICATIONS SERVICES

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.16 **Commission:** South Dakota Public Utilities Commission.
- 1.17 **Common Carrier:** A company or entity providing telecommunications services to the public.
- 1.18 **Company:** eVulkan, Inc. d/b/a beMANY!
- 1.19 **Competitive Access Provider (CAP):** A Common Carrier engaged in the origination and/or termination of interstate, interexchange Calls.
- 1.20 **Competitive Local Exchange Carrier (CLEC):** A Common Carrier engaged in the provision of local dial tone and other local exchange services in competition with one or more LECs.
- 1.21 **Customer:** A Person who orders Services under this Tariff and who is responsible for payment of all charges therefor and for complying with the terms and conditions set forth in this Tariff.
- 1.22 **Customer Premises:** A location, on property owned, leased or otherwise controlled by the Customer, that is designated by the Customer for the provision of the Services to the Customer pursuant to this Tariff.
- 1.23 **Customer-Provided Equipment:** Telecommunications equipment provided by a Customer used to originate or terminate Calls at the Customer Premises.

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New York, NJ 10005

TELECOMMUNICATIONS SERVICES

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.24 **Dedicated Access:** A non-switched circuit connecting a Customer Premises to an IXC POP with no intermediate switching functions.
- 1.25 **DS-0:** A form of Service offered at digital signal level 0 and providing a 64 Kbps signal.
- 1.26 **DS-1:** A form of private line Service offered at digital signal level 1 and providing a 1.544 Mbps signal.
- 1.27 **DS-3:** A form of private line Service at digital signal level 3 and providing digital signals at the speed of 44.736 Mbps.
- 1.28 **End User:** Any Person which uses the Services ordered by the Customer under this Tariff. If at any time the Customer fails to make timely payment for the Services, satisfaction of the Customer's payment obligations with respect to Services utilized by an End User shall become the direct responsibility of the End User and said End User shall make immediate payment directly to the Company of all associated overdue amounts. Notwithstanding the foregoing, the Customer shall not be relieved of its responsibility to fully satisfy its payment obligations under this Tariff.
- 1.29 **FCC:** Federal Communications Commission.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.30 Fractional Charges and Credits:** Each month is considered to have thirty (30) days for billing purposes. To determine charges or credits for portions of months, the days remaining in the billing period (including the thirty-first (31st) day of a thirty-one (31)-day month) are counted, starting with the day after the date on which the Services were furnished or discontinued; that figure is divided by thirty (30) days and the resultant fraction is multiplied by the Monthly Charge to arrive at the Fractional Charge or Credit.
- 1.31 Inbound Services:** The Services described in Section 3.2 of this Tariff.
- 1.32 Incomplete Call:** Any Call as to which voice transmission between the Calling and the Called Stations is not established (*i.e.*, busy, no answer).
- 1.33 Incremental Call Unit:** The minimum additional period after an Initial Call Unit for which charges are incurred for completed Calls and, except as otherwise provided in this Tariff, equals six (6) seconds.
- 1.34 Initial Call Unit:** The minimum period for which charges are incurred for a completed Call; unless otherwise specified herein, the Initial Call Unit for all services offered pursuant to this Tariff shall be eighteen (18) seconds.
- 1.35 Installation Charge:** A fixed charge per unit which applies when certain Services are furnished.
- 1.36 Interexchange Carrier (IXC):** A Common Carrier engaged in the transport of Calls and other telecommunications across LATA boundaries.

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.37 **Isochronous**: A characteristic of a periodic signal in which the time interval that separates any two corresponding significant instants or transitions of signal level is equal to the unit interval or to a multiple of the unit interval. No timing or clock lead is provided at the customer interface.
- 1.38 **KBPS**: Kilobits per second.
- 1.39 **KHZ**: Kilohertz.
- 1.40 **LATA**: Local Access and Transport Area.
- 1.10 **Local Exchange Carrier or LEC**: A Common Carrier that is, or once was, the exclusive provider of local dial tone and other local exchange services within its service areas.
- 1.42 **Main Billing Number**: A telephone number assigned to the Customer to which charges for the Services are billed.
- 1.43 **MBPS**: Megabits per second.
- 1.44 **MHZ**: Megahertz.
- 1.45 **Minimum Payment Period**: The Minimum Payment Period is the minimum period, if any, for which the Customer is required to make payment for the Services. The Minimum Payment Period for a given Service is specified in the section of this Tariff applicable to that Service. Charges applicable to the Minimum Payment Period include recurring charges plus any nonrecurring and/or special construction charge(s) that may apply.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.46 Monthly Charge/Monthly Recurring Charge:** A flat charge which applies for each month in which the Services are furnished to the Customer and which is prorated for a fractional month of Service.
- 1.47 Move Charge:** A charge which applies when the physical location of the termination of an office connection or an office function is changed at the Customer's request. A move is considered to be the discontinuance of service at the old location and the reinstallation of the service at the new location. Installation charges apply only for the components that are moved. A new minimum payment period will be established.
- 1.48 MTS:** Message Telecommunications Services.
- 1.49 Nonrecurring Charges:** One-time charges payable to the Company including Installation Charges, Service Ordering Charges and Special Construction Charges. Charges may differ according to the work activity involved.
- 1.50 NPA:** Numbering Plan Area, more commonly referred to as an area code.
- 1.51 NPA Centroid:** The center of the area code, sometimes used to calculate mileage for inbound Calls where the NPA-NXX of the Calling Station is not available.
- 1.52 NXX:** The first three digits of the Customer's telephone number. "N" is a number between 2 and 9. "X" is a number between 0 and 9.

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TELECOMMUNICATIONS SERVICES

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.53 **Outbound Services:** The Services described in Section 3.1 of this Tariff.
- 1.54 **Person:** A natural being, firm, organization, partnership, association, corporation, or entity.
- 1.55 **Point-of-Presence (POP):** The central switching office of an IXC where it interconnects with an LEC.
- 1.56 **Rate Center:** A group of central offices determined by NPA Centroid or NPA-NXX.
- 1.57 **Recognized National Holidays:** New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.
- 1.58 **Recurring Charge:** Monthly Charges and Usage Charges.
- 1.59 **Reseller:** Any Person which obtains Services under this Tariff for the purpose of reselling those Services to End Users. The Reseller shall be deemed to be the Customer of such resold services.

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TELECOMMUNICATIONS SERVICES

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS (cont'd)**

- 1.60 RespOrg:** The entity responsible for the management of, and which may access and modify, a subscriber's record in the SMS/800 database. A RespOrg must meet certain eligibility criteria established by the FCC.
- 1.61 Service:** The telecommunications services provided by the Company pursuant to this Tariff as described in Section 3 of this Tariff.
- 1.62 Service Order:** A Customer order for installation, move, or record change related to the Services.
- 1.63 Special Construction Charge:** A charge associated with an installation of the Services requiring unique or additional equipment or facilities.
- 1.64 Switched Access:** A switched circuit connecting a Customer Premises to an IXC POP with intermediate switching functions.
- 1.65 Toll Call:** Any call extending beyond the local exchange of the originating caller which is rated on a toll schedule by the Company.
- 1.66 Toll Service:** The Services provided by the Company in this Tariff.
- 1.67 Underlying Carrier:** A facilities-based IXC which provides transport services that are resold by the Company.
- 1.68 Usage Charge:** Charges stated as a function of, and which vary with, use (e.g. per connection or per unit of time); Usage Charges are set forth for each Service provided by the Company in Section 4 of this Tariff.

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TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS**

**2.1 Undertaking of the Company.**

- 2.1.1 Scope.** The Company undertakes to provide the Services in accordance with the terms and conditions set forth in this Tariff. The Services are furnished for communications originating at points within the State of South Dakota and terminating within the State of South Dakota.
- 2.1.2 Provision of Customer Equipment.** Customer-Provided Equipment may be used with the Services. The Company does not provide such equipment.
- 2.1.3 Agency.** The Company may act as an agent for the Customer in connection with the implementation and maintenance of the Services.
- 2.1.4 Routing.** The Company will maintain sole and absolute discretion over the routing of Calls originated by the Customer pursuant to this Tariff and the channels and/or service components used to provide the Services. The Company will maintain sole and absolute discretion over the selection of the Underlying Carrier over whose network Calls originated by the Customer pursuant to this Tariff will be carried and will be under no obligation to notify End Users of any change in the Underlying Carrier.
- 2.1.5 Minimum Call Completion Rate.** The Customer can expect a Call completion rate (e.g., number of Calls completed/number of Calls attempted) of not less than ninety-five percent (95%) during peak use periods.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS****2.2 Limitations.**

**2.2.1 Availability of Services.** The Services are offered subject to the availability of facilities and under the terms and conditions contained in this Tariff. The Company's obligation to furnish the Services is dependent upon its ability to obtain, retain and maintain without unreasonable expense access to suitable facilities, including service arrangements with Underlying Carriers, and is subject to transmission, atmospheric and like limitations. The Services may be temporarily refused or limited due to limitations in system capacity or to other circumstances beyond the Company's control. The Services may be temporarily interrupted or curtailed due to equipment modifications, upgrades, relocations, repairs, or similar activities necessary for the proper or improved operation of the Services.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.2 Limitations (cont'd).**

**2.2.2 Rights of the Company.** The Company reserves the right to refuse or limit the use of or suspend or discontinue (pursuant to Section 3.16) Service to the Customer without incurring liability:

- 1) For non-payment when due of any amount due and owing to the Company by the Customer.
- 2) For violation of, or failure to comply with, the terms and conditions of this Tariff by the Customer of either the provisions of this Tariff or for violation of any laws, rules, regulations, or policies of a governmental authority applicable to the Services and the Customer's use thereof.
- 3) By reason of an order or decision of a court or other governmental authority which prohibits the Company from furnishing the Services.
- 4) In the event that the Company's service arrangement with one or more Underlying Carriers is terminated and the Company is unable to secure another service arrangement without incurring unreasonable expense.
- 5) When necessitated by conditions beyond the Company's control. Conditions beyond the Company's control include, but are not limited to, the Customer generating Call volume or utilizing a Calling pattern that results, or may result, in network blockage or other service degradation which adversely affects the Service to other customers of the Company.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.2 Limitations (cont'd).****2.2.2 Rights of the Company (cont'd).**

- (6) For abuse or fraudulent use of the Services by the Customer or its End Users. Abuse of the Services includes, without limitation, the making of Calls which might reasonably be expected to frighten, abuse, torment or harass another or which in any way would interfere unreasonably with the use of the Service by others. Fraudulent use of the Services includes, without limitation: (1) use of the Services to transmit a message, locate a person or otherwise give or obtain information without payment for the Services; (2) use, or attempted use, of the Services with the intent to avoid payment therefor by rearranging, tampering with, or making connections not authorized by this Tariff to any service components or through use of fraudulent means, devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices; (3) use of an Inbound Service with the intent of gaining access to an out-bound calling capability on an unauthorized basis; or (4) use of fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices to defraud or mislead callers.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.2 Limitations (cont'd).**

**2.2.2 Rights of the Company (cont'd).**

- 7) For submission or use by the Customer of insufficient or fraudulent billing information, invalid or unauthorized telephone numbers, or pre-arranged account code numbers.
- 8) If the Company deems such action necessary to protect itself or third parties against fraud or to otherwise protect its personnel, agents, or the Services.

**2.2.3 Restoration of Service.** The Company will provide or restore the Services when the Customer is in compliance with the provisions of this Tariff and all applicable laws, rules, regulations and policies of pertinent governmental authorities and the Company determines that the Services can be provided without undue risk to the Company or the Services provided to other Customers of the Company.

**2.2.4 Fraud Prevention.** In order to control fraud, the Company may refuse to accept Calling Card Calls or discontinue the use of Authorization Codes which it determines to be fraudulent or invalid and/or may limit the use of these billing options to or from certain areas, including any part of the State of South Dakota.

**2.2.5 Emergency Conditions.** The use and restoration of the Services during emergency conditions shall be in accordance with Part 64, Subpart D, Appendix A, of the FCC's Rules and Regulations, which specifies the priority system for such use and restoration.

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## TELECOMMUNICATIONS SERVICES

SECTION 2 - RULES AND REGULATIONS (cont'd)**2.2 Limitations (cont'd).**

**2.2.6 Property Rights.** The Customer will obtain no property right or interest in the use of any specific type of facility, service connection, equipment, number, process or code. All right, title and interest to such items will remain, at all times, solely with the Company.

**2.3 Use of Service.**

**2.3.1 Authorized Use.** The Services may be used solely to transmit communications of the Customer or authorized End Users in a manner consistent with the terms and conditions of this Tariff and the policies and regulations of the Commission. The Services are furnished for the transmission of voice communications, but may also be used for data, facsimile, signaling, metering, or other similar communications, subject to the transmission capabilities of the Services and the laws, rules and regulations of the Commission.

**2.3.2 Limitations.** The Services are furnished subject to the condition that they will be used only for authorized and lawful purposes by the Customer. The Customer may not use the Services for any unauthorized or unlawful purpose.

**2.3.3 Compatibility.** The Customer's use of the Services shall not interfere with or impair the Company's ability to provide the Services to other customers, cause damage to the Company's equipment or resold equipment, impair the privacy of communications over the Company's system or create hazards to the employees of any company or the public.

**2.3.4 Modifications.** The Customer may not rearrange, disconnect, remove, modify or attempt to repair or permit others to rearrange, disconnect, remove, modify or attempt to repair any Company facility without the prior written consent of the Company.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.4 Liability of the Company.**

**2.4.1 General.** The Company's liability, if any, for damages associated with the ordering (including the reservation of any specific number for use with a Service), installation (including delays associated therewith), provisioning, termination, maintenance, repair or restoration of the Services or associated facilities offered under this Tariff, shall be limited as follows:

With respect to any Outbound or Inbound Service provided by the Company which involves Switched Access, shared interexchange transmission, and shared termination, the Company's liability shall not exceed an amount equal to charge applicable to a one minute Call to the Customer's station at the time, and over the range of the affected Call, taking account of the form of Service and type of termination the Customer had selected. The liabilities of the Company for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission occurring in the

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.4 Liability of the Company (cont'd).**

course of furnishing Service hereunder and not caused by the negligence or intentional act of the Customer shall in no event exceed an amount equivalent to the Initial Period charge to the Customer under this Tariff for the Call during which such mistake, omission, interruption, delay, error or defect in transmission occurs. Other than amounts that may be due the Customer under this Tariff as a credit allowance, the Company shall have no further liability for damages or losses arising out of mistakes, omissions, interruptions, delays, errors or defects in the provision of the Services and/or associated equipment and facilities.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.4 Liability of the Company (cont'd).**

**2.4.2 Other Carriers.** The Company shall not liable for any act or omission of any other company or companies furnishing services to the Customer in conjunction with the Services, or for damages associated with services, channels or equipment which it does not furnish, or for damages which result from the operation of Customer-Provided Equipment or services furnished by other companies which are interconnected with the Company's Services. The liability of any Underlying Carrier to the Customer or any End-User shall be limited by the tariffs pursuant to which such carrier provides network services.

No agents or employees of connecting, concurring or other participating carriers or companies shall be deemed to be agents or employees of the Company without written authorization from the Company.

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TELECOMMUNICATIONS SERVICES

SECTION 2 - RULES AND REGULATIONS (cont'd)

**2.4 Liability of the Company (cont'd).**

**2.4.3 Customer Premises/Customer-Provided Equipment.** The Company shall not be liable for any defacement of, or damage to, the Customer's premises resulting from the furnishing of the Services or attachment of the Company's equipment and associated wiring on such premises, or from the installation or removal thereof, when such defacement or damage is not the result of the Company's negligence. The Customer shall indemnify and save harmless the Company from any claims of the owner of the Customer Premises or other third party claims for such damages.

The Company shall not be liable for the Customer's failure to fulfill its obligation to take all necessary steps, including, without limitation, obtaining, installing and maintaining all necessary equipment, materials and supplies, for interconnecting the terminal equipment or communications system of the Customer, or any third party acting as its agent, to the Company's network. The Customer shall secure all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In addition, the Customer shall ensure that its equipment and/or system or that of its agent is properly interfaced with the Company's Services, that the signals emitted into the Company's network are of the proper mode, band-width, power, data speed, and signal level for the intended use of the Customer and in compliance with the criteria set forth in the applicable subsections of this Tariff, and that the signals do not damage the Company's equipment, injure its personnel, or degrade service to other Customers.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.4 Liability of the Company (cont'd).****2.4.3 Customer Premises/Customer-Provided Equipment (cont'd).**

If the FCC or some other appropriate certifying body certifies terminal equipment as being technically acceptable for direct electrical connection with interstate communications service, the Company will permit such equipment to be connected with its channels without the use of protective interface devices. If the Customer or its agent fails to maintain and operate its equipment and/or system or that of its agent properly, with resulting imminent harm to the Company's equipment, personnel, or the quality of service to other Customers, the Company may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notice, terminate the Services to the Customer without liability.

The Company shall not be responsible for the installation, operation or maintenance of any Customer-Provided Equipment. Where Customer-Provided Equipment is used in conjunction with the Services, the responsibility of the Company shall be limited to the furnishing, and the maintenance and operation in the proper manner, of the Services, and shall not include responsibility for the quality of, or defects in, the signal that are caused by the Customer-Provided Equipment. Subject to the above, the Company shall not be responsible for the through transmission of signals generated by, the reception of signals by, or network control signalling where such signalling is performed by Customer-Provided Equipment.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.4 Liability of the Company (cont'd).**

**2.4.4 Force Majeure.** The Company shall not be liable for any failure of performance hereunder due to causes beyond its control, including, but not limited to: unavoidable interruption in the working of transmission facilities; acts of nature; storms, fire, flood or other catastrophes; any law, order, regulation, direction, action or request of the United States Government, or any other governmental entity having jurisdiction over the Company, or of any department, agency, commission, bureau, corporation or other instrumentality of any one or more of such governmental entities, or of any civil or military authority; national emergencies, insurrections, riots, rebellions, wars, strikes, lockouts, work stoppages, or other labor difficulties; or, notwithstanding anything in this Tariff to the contrary, the unlawful acts of individuals, including acts of the Company's agents and employees if committed beyond the scope of their employment.

**2.4.5 Notice.** Notwithstanding anything to the contrary set forth in this Section 3.3, the Company shall not be liable for damages or be obligated to provide any credit allowance unless the Customer has notified the Company of the basis of any claim for damages or credit allowance within thirty (30) calendar days after an invoice is rendered or a debit is effected by the Company for the Services or the Call giving rise to such claim. Any such notice must set forth sufficient facts to provide the Company with a reasonable basis upon which to evaluate the Customer's claim. Usage discounts will be adjusted based on total usage after all credits or adjustments have been applied.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.4 Liability of the Company (cont'd).**

**2.4.6 Unauthorized Use.** The Company shall not be liable for any damages, including Usage Charges, that the Customer may incur as a result of the unauthorized use of Customer-Provided Equipment. The unauthorized use of Customer-Provided Equipment includes, but is not limited to, the placement of Calls from the Customer Premises and the placement of Calls through Customer-controlled or Customer-provisioned equipment that are transmitted or carried over the Company's network Services without the authorization of the Customer. The Customer is responsible for controlling access to, and use of, its own communications equipment, and shall be fully liable for all such charges.

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

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.4 Liability of the Company (cont'd).**

**2.4.8 Indemnification.** The Company shall be indemnified, defended and held harmless by the Customer against any and all loss, claims, demands, suits or other action, or any liability whatsoever, arising from the use of the Services furnished pursuant to this Tariff involving:

- 1) Claims for libel, slander, infringement of patent or copyright, or unauthorized use of any trademark, trade name or service mark arising out of the material, data, information, or other content transmitted by the Company; violations of any other literary, intellectual, artistic, dramatic, or musical right; violations of the right to privacy; or violations of any other rights whatsoever relating to or arising from message content or the transmission thereof.
- 2) Claims arising out of abuse of or fraudulent use of the Services by the Customer or its End Users.
- 3) All other claims arising out of any act or omission of the Customer in connection with the Services provided by the Company.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.4 Liability of the Company (cont'd).****2.4.8 Indemnification (cont'd).**

The Company shall not be liable for, and the Customer shall indemnify and hold the Company harmless from, all losses, claims, demands, suits or other action, or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or any other Person, for any personal injury to, or death of, any Person, and for any loss, damage, defacement or destruction of the equipment or premises of the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, presence, condition, location, or use of equipment or wiring provided by the Company, when such installation, operation, failure to operate, maintenance, condition, use or location is not the direct result of the Company's gross negligence or willful misconduct.

**2.4.9 Independent Contractor.** The Company's relationship with any Underlying Carrier that may provide facilities to the Company for resale to the Customer is that of an independent contractor and the Company and any such Underlying Carrier shall not be deemed to be partners or joint venturers by virtue of this relationship. No agents or employees of other carriers shall be deemed to be agents or employees of the Company.

**2.4.10 Implied License.** No license under patents, copyrights, trademarks, or trade secrets is granted to the Customer by the Company, or shall be implied or arise by estoppel, with respect to the Services.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.5 Customer Deposits.**

The Company does not require deposits.

**2.6 Taxes.**

The Customer will be billed for and is liable for payment of all applicable federal, state and local taxes, surcharges, fees or other assessments, including such amounts as the Company may be authorized to pass through to the Customer. All taxes, surcharges, fees or other assessments are listed as separate line items and are not included in the quoted rates.

When utility or telecommunications assessments, franchise fees, or privilege, license, occupational, excise or other similar taxes or fees, based on intrastate receipts, are imposed by certain taxing jurisdictions upon the Company or upon any LEC and passed on to the Company through or with intrastate access charges, the amounts of such taxes or fees may be billed to the Customer in such a taxing jurisdiction on a prorated basis. The amount of charge that is prorated to each Customer's bill is determined by the intrastate telecommunications services provided to and billed to a Customer service location in such a taxing jurisdiction with the aggregate of such charges equal to the amount of the tax or fee imposed upon or passed on to the Company.

**2.7 Miscellaneous Rates and Charges**

The Company may adjust its rates and charges or impose additional rates and charges on its Customers in order to recover amounts it is required by governmental or quasi-governmental authorities to collect from or pay to others in support of statutory or regulatory programs. Examples of such programs include, but are not limited to, the Universal Service Fund, the Primary Interexchange Carrier Charge, and compensation to payphone service providers for the use of their payphones to access the Company's service.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.8 Terminal Equipment**

The Company's facilities and service may be used with or terminated in Customer-provided terminal equipment or Customer-provided communications systems, such as a telephone set, PBX or key system. Such terminal equipment shall be furnished and maintained at the expense of the Customer, except as otherwise provided. The Customer is responsible for all costs at his or her premises, including personnel, wiring, electrical power, and the like, incurred in the use of the Company's service. When such terminal equipment is used, the equipment shall comply with the generally accepted minimum protective criteria standards of the telecommunications industry as endorsed by the Federal Communications Commission.

**2.9 Rendering and Payment of Bills.**

**2.9.1 General.** The Customer is ultimately responsible for payment of all charges for the Services provided by the Company to the Customer and its End Users, including, but not limited to, charges associated with Calls originated at the Customer's number(s), accepted at the Customer's number(s) or billed to the Customer's number(s) via Calling Cards, and the Services requested by the Customer.

**2.9.2 Billing Period.** The billing period is generally one calendar month; provided, however, that for purposes of billing Monthly Recurring Charges, each month is considered to have thirty (30) days. All Charges for the Services will be billed monthly in arrears. Monthly Charges start on the day after the Services are installed, but not before the due date of the order unless the Customer agrees to an earlier installation. Monthly Recurring Charges accrue through and include the day that the Services are discontinued.

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TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.9 Rendering and Payment of Bills (cont'd).**

**2.9.3 Rendering Bills.** Bills will generally be rendered on a monthly basis. Bills are sent via U.S. mail to the most recent billing address provided to the Company by the Customer. Some bills may be rendered by an LEC on behalf of the Company. Bills shall contain the following information:

Name and telephone number of identifying number under which service is billed;

Any previous balance due;

The ending date of the bill cycle or the invoice date;

The due date of the bill and the date on which a late payment charge will be imposed;

Itemization of the charges including any applicable taxes;

Name and a toll free telephone number of the Company's customer service representatives for billing inquiries.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.9 Rendering and Payment of Bills (cont'd).**

**2.9.4 Due Date.** The due date for payment of a monthly bill for service shall be no less than twenty (20) days from the date of mailing by the Company to the Customer after issuance. If the last day for payment should fall on a Saturday, Sunday, or bank holiday or other day when the offices of the Company are not open to the general public, the due date shall be extended to the next business day.

**2.9.5 Late Charge.** If any portion of a payment is still outstanding thirty (30) days following the invoice date, a late payment charge may be applied. The charge is determined by applying the maximum rate allowed by law to the unpaid balance for each month or fraction thereof that such balance remains unpaid.

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SECTION 2 - RULES AND REGULATIONS (cont'd)

2.9 Rendering and Payment of Bills (cont'd).

**2.9.6 Billing Disputes.** Billing will be deemed to be correct and binding on the Customer unless the Customer notifies the Company in writing of any dispute within one hundred eighty (180) days of the date of the invoice on which the disputed charges appear. Billing disputes should be addressed in writing to eVulkan, Inc. d/b/a beMANY!, 100 Broadway, 21<sup>st</sup> Floor, New York, NJ 10005. Billing disputes may also be referred to the Company's Customer Service number, (877) 289-7401. Customer Service representatives are available to assist with billing inquiries Monday through Friday from 8:00 AM to 5:00 PM Eastern Time.

In the event of a dispute between a Customer and the Company regarding any bill for utility service, the company shall forthwith make such investigation as shall be required by the particular case, and report the results thereof to the Customer and, in the event the dispute is not resolved, shall inform the Customer of his or her right to file a complaint with the Commission. The South Dakota Public Utilities Commission can be reached at:

500 East Capitol  
Pierre, SD 57501-5070  
(605) 733-3201  
(800) 332-1782

Notwithstanding any other provision of this Tariff, the Customer shall not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the completion of the investigation of the dispute by the Company.

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SECTION 2 - RULES AND REGULATIONS (cont'd)

**2.9 Rendering and Payment of Bills (cont'd).**

**2.9.7 Overbilling and Underbilling.** If billings for the Company's service are found to differ from Company's lawful rates for the services being purchased by the Customer, or if the Company fails to bill the Customer for such service, a billing adjustment shall be calculated by the Company.

**2.9.7.A Refunds for Overcharges.** If the Company has overbilled a Customer, the Company shall make a refund or billing credit in a subsequent billing cycle following discovery and computation of

**2.9.7.B Backbilling of Undercharges.** If the Customer was undercharged, the Company may back bill the Customer for the amount which was under billed. When the Company bills a Customer an amount correcting a previous underbilling, and it results in an undue hardship on a Customer, the Customer may call the Company and make special payment arrangements, unless the underbilling was caused by unauthorized or fraudulent use or procurement of service.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.9 Rendering and Payment of Bills (cont'd).**

**2.9.8 Payment Arrangements.** A payment arrangement is any arrangement or agreement between the Company and a Customer in which an outstanding bill will be paid in installments that extend beyond the due date of the next bill. The company, through its employees, shall exercise good faith and fair judgment in attempting to enter into a reasonable payment agreement regarding undisputed amounts or to otherwise equitably resolve the matter. Factors to be taken into account when attempting to make a reasonable payment agreement shall include but not be limited to the size of the unpaid balance, the payment history of the Customer and the length of time over which the bill accumulated. The Company may not suspend service for an undisputed delinquent bill under the following circumstances: (1) while it is negotiating a payment agreement with the Customer; or (2) within twenty-four (24) hours after negotiating fails. In all other cases, the Company is encouraged to offer a payment arrangement to residential Customers.

**2.9.9 Notification of Alternate Payment Programs or Payment Assistance.** Any time a Customer contacts the Company to discuss their inability to pay a bill or to indicate that they are in need of assistance with their bill payment, a Company representative shall inform the Customer of all available alternative payment and any payment assistance programs that are available, such as payment arrangements, and of the eligibility requirements and procedures for applying for each.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.9 Rendering and Payment of Bills (cont'd).**

**2.9.10 Returned Checks.** If payment for the Services is made by a check, draft or similar instrument that is returned by a bank to the Company for any reason, a returned check charge of twenty dollars (\$20.00) shall be applied in addition to the total amount due.

**2.9.11 Collection Service Charge.** If the Services to the Customer are discontinued for non-payment pursuant to Section 3.16.1, a collection service charge of twenty dollars (\$20.00) shall be applied in addition to the total amount due.

**2.9.12 Billing Entity Conditions.** If billing functions are performed on behalf of the Company by LECs, credit card companies or others, the payment conditions and regulations of such billing entities apply, including any applicable interest and/or late payment charge conditions.

**2.9.13 Pro-Rated Charges.** When the billing date and the date that the Services are started, changed, or discontinued do not coincide, Monthly Recurring Charges will be adjusted to reflect the fractional part of the month involved.

**2.9.14 Business Use of Calling Card.** In the event that ten (10) or more Calling Cards are issued by the Company to the Customer for use by employees of the Customer, the Customer shall be liable for all unauthorized use of any of the issued Calling Cards.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.10 Cancellation or Delay of Service Orders.**

**2.10.1 Cancellation of a Service Order.** The Customer may cancel a Service Order at any time prior to the due date. A Service Order is considered to have been canceled when the Company receives a notification of cancellation from the Customer. Such notification may not be retroactive. Cancellation charges will be equal to the Installation Charge applicable to the Service involved, unless the cancellation is caused by Company delay, or otherwise specified in the section of this Tariff applicable to the specific Services.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.10 Cancellation or Delay of Service Orders (cont'd).****2.10.2 Delay of a Service Order.**

**2.10.2.A Delay of a Due Date by the Customer.** The Customer may delay the due date of a Service Order involving the installation or change of the Services when: (i) the request for the delay is received by the Company prior to the Service Order's due date; and (ii) the total delay measured from the Service Order's initial due date does not exceed thirty (30) cumulative calendar days. Service Orders involving the discontinuance of Service may be delayed at any time prior to the due date. There will be no maximum delay period for these orders. A Customer having delayed a Service Order for the maximum thirty (30) cumulative calendar day period may not delay the Service Order again. The Customer instead has the option to (1) accept billing for the Services ordered, or (2) cancel the Service Order and pay the applicable Nonrecurring Charge(s) for the Services ordered. The billing or cancellation is effective on the thirtieth (30th) cumulative calendar day of the delay. If the Customer elects to accept billing, the installation will be completed as soon as reasonably practical after the Customer advises the Company.

**2.10.2.B Delay of a Due Date by the Company.** The Company will make every reasonable effort to assure that the Services are furnished on the due date. However, in some cases a delay in the installation may be unavoidable. If an order is delayed beyond its due date for more than forty-five (45) cumulative calendar days and such delay is not requested or caused by the Customer, the Customer may cancel the Service Order without penalty or payment of Nonrecurring Charges.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.11 Cancellation of Service.**

The Customer may cancel the Services by giving thirty (30) days prior written notice to the Company. Upon receipt of the written notice, the Company places an order with the Underlying Carrier to cancel the Services. The Service are canceled when the Underlying Carrier moves the Customer to another carrier or when the Company receives notice from the Underlying Carrier that the Service has been canceled. The Customer will be liable for any traffic occurring with the Company through the cancellation date.

**2.12 Interconnection.**

The Customer shall take all necessary steps for the interconnection of Customer-Provided Equipment with Company-provided facilities. Interconnection between Customer-Provided Equipment and the Services, or between facilities or services provided to the Customer by another carrier and the Services, may be made by the Customer at an interface point designated by the Company. All terminal equipment and wiring necessary to connect to the channels at the designated interface point are provided by the Customer.

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TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.13 Discontinuance of Service.**

**2.13.1 Suspension for Delinquent Bills.** A Customer's telecommunications service may be disconnected if a bill has not been paid or a payment arrangement has not been entered into within thirty (30) days from the date of mailing of a bill provided proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least ten (10) days prior to a stated date of suspension. The notice shall contain the following:

- 1) The words "suspension notice" or similar language prominently displayed on the notice.
- 2) The reason for the threatened suspension of service.
- 3) A statement of amounts currently due.
- 4) A statement that a specific reconnection fee will be required to have service restored after it has been suspended if applicable.
- 5) A statement that the Customer should immediately contact the Company to attempt to resolve the matter. Such notice shall include the mailing address and telephone number where questions may be filed answered and payment agreements entered into with the Company.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.13 Discontinuance of Service (cont'd).****2.13.1 Suspension for Delinquent Bills (cont'd).**

- 6) Attached to or on the face of the suspension notice for telecommunications bills shall appear a statement notifying the Customer that if they are in need of assistance with payment of their bill, or are ill and unable to pay their bill, they may be eligible for alternative payment programs, such as a payment arrangement, and to contact the local office of the Company for more information.
  
- 7) The service suspension day may not fall on a holiday or weekend, but shall fall on the next working day after the tenth day. Payment at the Company's authorized payment agency is considered payment to the Company. The Company may request Customers who pay at payment agencies less than three (3) days prior to the suspension date to call the Company with receipt information. The Company shall not issue late notices or disconnect notices to the Customer earlier than the first day the bill becomes delinquent, so that a reasonable length of time is allowed to ascertain receipt of payment by mail or at the Company's authorized payment agency.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.13 Discontinuance of Service (cont'd).**

**2.13.2 Suspension With Notice.** Service may be disconnected after proper notice for any of the following reasons:

- 1) Nonpayment of an undisputed delinquent account or the undisputed portion of an account where a dispute exists as to part but not all of an amount billed by the Company or failure to comply with the terms of a payment arrangement.
- 2) Violation of the Company's rules pertaining to the use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the Customer and the Customer is provided with a reasonable opportunity to remedy the situation.

**2.13.3 Suspension Without Notice.** Service may be disconnected without notice where a dangerous condition exists for as long as the condition exists or where service is connected without authority by a person who has not made application for service or who has reconnected service following suspension of service for nonpayment. Where reasonable, given the nature of the hazardous condition, a written statement providing notice of suspension and the reason therefore shall be posted at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected.

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.13 Discontinuance of Service (cont'd).**

**2.13.4 Suspension Prohibited.** Service may not be disconnected for any of the following reasons:

- 1) Delinquency in payment for service by a previous occupant of the premises.
- 2) Failure to pay for merchandise, or charges for non-utility service provided by the Company.
- 3) Failure to pay for a different type or class of service unless the service is provided by the billing Company and unless the fee for such service is included on the same bill.
- 4) Failure to pay the account of another customer thereof, unless the Company has in writing the guarantee as a condition precedent to service.
- 5) Failure to pay charges arising from an under billing occurring due to misapplication of rates more than six (6) months prior to the current billing.

**2.13.5 Suspension on Holidays or Weekends.** Unless a dangerous condition exists, or unless the Customer requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when personnel of the Company are not available to the public for the purpose of making collections and reconnecting service.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.14 Inspections.**

The Company may, upon reasonable notice to the Customer, make such inspections, including monitoring of the Customer's use of the Services, as may be necessary to determine that requirements of the Tariff are being complied with in the installation, operation and maintenance of Customer-Provided Equipment connected to the Company facilities.

**2.15 Installation and Termination.**

Service is installed upon mutual agreement between the Customer and the Company. The service agreement does not alter rates specified in this tariff.

**2.16 Interruption of Service.**

Subject to Sections 2.2, 2.4 and 2.14, in the event a Customer's service is interrupted other than by negligence or willful act of the Customer, and it remains interrupted for two hours or more, the Customer shall be credited for such interruption at the rate of 1/720th of the monthly charge for the service affected for each hour or major fraction thereof that the interruption continues. Calculations of the credit shall be made in accordance with the following formula:

Credit Formula:

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

"A" - outage time in hours

"B" - total monthly charge for affected facility

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**SECTION 2 - RULES AND REGULATIONS (cont'd)**

**2.18 Timing of Calls.**

Chargeable time is determined by the duration of the Call. Calls are timed and measured by the Underlying Carrier. Timing for all Calls begins when the Called Station answers the Call (i.e., when two-way communications are established). Answer detection is based on standard industry answer detection methods, including hardware and software answer detection. Chargeable time ends when either the Called Station or the Calling Station disconnects from the Call. There are no billing charges applied for incomplete Calls.

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TELECOMMUNICATIONS SERVICES

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**SECTION 3 - DESCRIPTION OF SERVICES**

**3.1 Outbound Services.**

**3.1.1 Switched Outbound Services.** Switched Outbound Service is offered on a per-Call basis to Customers which originate and terminate within the State of South Dakota. Outbound Service is accessed on a conventional "1+" pre-subscribed direct dial basis over the facilities of a LEC. Calls originate and terminate via Switched Access provided by a LEC or other authorized access provider. The Customer is responsible for establishing originating local access facilities or equipment and for all nonrecurring, recurring, construction and other charges in connection with such originating access. Residential Service is available only on a switched outbound basis.

**3.1.2 Dedicated Outbound Services.** Dedicated Outbound Services permit a Customer to establish a communications path between two (2) stations by using a uniform dialing plan. Dedicated outbound services are provided through T-1 or DS0 dedicated access and are available to customers that have T-1 or DS0 dedicated access to the underlying carrier's POP. The Customer is responsible for securing dedicated access to the underlying carrier's POP and for all nonrecurring and recurring, construction and other charges incurred in connection with establishing such Dedicated Access. At the Customer's request, the Company will arrange for dedicated access to the underlying carrier's POP and pass through to the Customer all costs incurred in establishing such access.

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 3 - DESCRIPTION OF SERVICES (cont'd)****3.2 Inbound Services.**

**3.2.1 Switched Inbound Services.** Switched Inbound Service provides the Customer with one or more 800/888 numbers which when dialed within the State of South Dakota will terminate on Customer-designated facilities or equipment within the State of South Dakota. All charges accruing in connection with usage of the Customer's assigned 800/888 numbers are billed to the Customer rather than the party originating the Call. Calls terminate via Switched Access provided by a LEC or other authorized access provider. The Customer is responsible for establishing originating local access facilities or equipment and for all nonrecurring, recurring, construction and other charges in connection with such originating access.

**3.2.2 Dedicated Inbound Services.** Dedicated Inbound Services permit Calls to be completed to the Customer's location without charge to the Calling Station. Access to the Service is gained by dialing a ten digit telephone number, (800/888) NXX-XXXX, which terminates at the Customer's Premises. Dedicated Inbound Services are available only to Customers that have terminating T-1 or DS0 access to the underlying carrier's POP. The Customer is responsible for all nonrecurring, recurring, construction and other charges incurred in connection with establishing such terminating dedicated access. At the Customer's request, the Company will arrange for terminating dedicated access to the underlying carrier's POP and pass through to the Customer all costs incurred in establishing such access.

**3.3 Calling Card Services.** Calling Card Service is an outbound service offered on a per-Call basis to Customers originating calls which originate and terminate within the State of South Dakota. Calling Card Service is accessed by dialing the Company's universal access toll free number to complete direct dialed or operator assisted calls.

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TELECOMMUNICATIONS SERVICES

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**SECTION 4 - RATES AND CHARGES**

**4.1 Rate Schedule.**

- 4.1.1 **General.** This section sets forth the rates and charges applicable to the Services. All rates are set forth in U.S. dollars.
- 4.1.2 **Rating Methodology.** Usage-sensitive charges for the Services are applied on a per-Call basis. Message charges are based on the duration of the Call.
- 4.1.3 **Billing Fees.** A monthly billing fee may be assessed under individual service options.
- 4.1.4 **Set-up Fees.** A one-time service fee may be assessed under individual service options.
- 4.1.5 **Credit Card Fees.** A monthly service fee and per-Call surcharges may be assessed under individual service options for credit card usage.
- 4.1.6 **Operator Service Charges.** Operator Service charges are billed by the Underlying Carrier or its agent; the Company does not provide or bill for Operator Services.

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TELECOMMUNICATIONS SERVICES

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SECTION 4 - RATES AND CHARGES (cont'd)

4.2 Service Rates.

4.2.1 Rates.

4.2.1.A Switched Outbound Service Usage Rates.

<b>Initial Call Unit</b>	<b>Incremental Call Unit</b>
\$0.052	\$0.017

4.2.1.B Dedicated Outbound Service Usage Rates.

<b>Initial Call Unit</b>	<b>Incremental Call Unit</b>
\$0.035	\$0.012

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TELECOMMUNICATIONS SERVICES

SECTION 4 - RATES AND CHARGES (cont'd)

4.2 Service Rates (cont'd).

4.2.1 Rates (cont'd).

4.2.1.C Switched Inbound Service Usage Rates.

Initial Call Unit	Incremental Call Unit
\$0.052	\$0.017

4.2.1.D Dedicated Inbound Service Usage Rates.

Initial Call Unit	Incremental Call Unit
\$0.035	\$0.12

4.2.1.E Inbound Service Payphone Surcharge.

The Customer will be assessed a surcharge of \$0.25 for each Inbound Service Call placed from a payphone.

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**SECTION 4 - RATES AND CHARGES (cont'd)**

**4.2 Service Rates (cont'd).**

**4.2.3 Calling Card Service Rates.**

<b>Initial Call Unit</b>	<b>Incremental Call Unit</b>
\$0.060	\$0.020

**Calling Card Service Charge.**

The Customer will be assessed a surcharge of \$0.75 for each Calling Card Service Call.

**Calling Card Service Payphone Surcharge.**

The Customer will be assessed a surcharge of \$0.25 for each Calling Card Service Call placed from a payphone.

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**SECTION 4 - RATES AND CHARGES (cont'd)**

**4.2 Service Rates (cont'd).**

**4.2.4 Miscellaneous Rates and Charges.**

**4.2.5.A Presubscribed Interexchange Carrier Change Charge.** The Company reserves the right to assess on the Customer a one time Presubscribed Interexchange Carrier Change Charge of \$5.00 upon initiation of the Services.

**4.2.5.B Pass-Through Charges.** The Company reserves the right to pass through to the Customer any charges resulting from governmental assessment, tax, charges or action.

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# *hunter communications law group*

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VIA OVERNIGHT COURIER

August 10, 2000

Mr. Keith Senger, Utility Analyst  
South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol Avenue  
Pierre, SD 57501-5070

**Re: SD PUC Docket TC00-100 - Application of eVulkan, Inc. d/b/a beMANY!  
For a Certificate of Authority to Provide Telecommunications Services in  
South Dakota**

Dear Mr. Senger,

Following up on our conversation of earlier today, enclosed please find an original and two (2) copies of replacement page 33 to SD P.U.C. Tariff No. 1 of eVulkan, Inc. The sentence which we discussed has been deleted from the second paragraph of Section 2.4.3.

Many thanks for your patience.

Sincerely yours,

*Catherine M. Hannan*

Catherine M. Hannan  
Regulatory Counsel for  
eVulkan, Inc. d/b/a beMANY!

Enclosures

**RECEIVED**  
AUG 11 2000  
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UTILITIES COMMISSION

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**TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS (cont'd)****2.4 Liability of the Company (cont'd).**

**2.4.3 Customer Premises/Customer-Provided Equipment.** The Company shall not be liable for any defacement of, or damage to, the Customer's premises resulting from the furnishing of the Services or attachment of the Company's equipment and associated wiring on such premises, or from the installation or removal thereof, when such defacement or damage is not the result of the Company's negligence. The Customer shall indemnify and save harmless the Company from any claims of the owner of the Customer Premises or other third party claims for such damages.

The Company shall not be liable for the Customer's failure to fulfill its obligation to take all necessary steps, including, without limitation, obtaining, installing and maintaining all necessary equipment, materials and supplies, for interconnecting the terminal equipment or communications system of the Customer, or any third party acting as its agent, to the Company's network. The Customer shall ensure that its equipment and/or system or that of its agent is properly interfaced with the Company's Services, that the signals emitted into the Company's network are of the proper mode, band-width, power, data speed, and signal level for the intended use of the Customer and in compliance with the criteria set forth in the applicable subsections of this Tariff, and that the signals do not damage the Company's equipment, injure its personnel, or degrade service to other Customers.

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Issued: \_\_\_\_\_, 2000

Effective: \_\_\_\_\_, 2000

Issued by: George Jankovic, President and Chief Executive Officer  
eVulkan, Inc.  
100 Broadway, 21<sup>st</sup> Floor  
New York, NY 10005

TELECOMMUNICATIONS SERVICES

SECTION 2 - RULES AND REGULATIONS (cont'd)

2.4 Liability of the Company (cont'd).

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New York, NY 10005



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION OF )</b>	<b>ORDER GRANTING</b>
<b>EVULKAN, INC. FOR A CERTIFICATE OF )</b>	<b>CERTIFICATE OF</b>
<b>AUTHORITY TO PROVIDE )</b>	<b>AUTHORITY</b>
<b>TELECOMMUNICATIONS SERVICES IN )</b>	
<b>SOUTH DAKOTA )</b>	<b>TC00-100</b>

On June 19, 2000, the Public Utilities Commission (Commission), in accordance with SDCL 49-31-3 and ARSD 20:10:24:02, received an application for a certificate of authority from eVulkan, Inc. (eVulkan).

eVulkan proposes to offer intraLATA and interLATA switched and dedicated outbound interexchange services, and calling card services accessed via company-provided "800/888" numbers. A proposed tariff was filed by eVulkan. The Commission has classified long distance service as fully competitive.

On June 22, 2000, the Commission electronically transmitted notice of the filing and the intervention deadline of July 7, 2000, to interested individuals and entities. No petitions to intervene or comments were filed and at its August 22, 2000, meeting, the Commission considered eVulkan's request for a certificate of authority. Commission Staff recommended granting a certificate of authority, subject to the condition that eVulkan not offer a prepaid calling card or require deposits or advance payments without prior approval of the Commission. Commission Staff further recommended a waiver of ARSD 20:10:24:02(8).

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-3 and ARSD 20:10:24:02 and 20:10:24:03. The Commission finds that eVulkan has met the legal requirements established for the granting of a certificate of authority. eVulkan has, in accordance with SDCL 49-31-3, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. Further, the Commission finds that there is good cause to waive ARSD 20:10:24:02(8). The Commission approves eVulkan's application for a certificate of authority, subject to the condition that eVulkan not offer a prepaid calling card or require deposits or advance payments without prior approval of the Commission. As the Commission's final decision in this matter, it is therefore

**ORDERED**, that eVulkan's application for a certificate of authority is hereby granted, subject to the condition that eVulkan not offer a prepaid calling card or require deposits or advance payments without prior approval of the Commission. It is

**FURTHER ORDERED**, that the Commission finds good cause to waive ARSD 20:10:24:02(8). It is

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

Dated at Pierre, South Dakota, this 25<sup>th</sup> day of August, 2000.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u><i>William Kalbs</i></u>
Date:	<u>8/29/00</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

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

*Laska Schoenfelder*  
LASKA SCHOENFELDER, Commissioner

# SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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## CERTIFICATE OF AUTHORITY

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

Authority was Granted August 22, 2000  
Docket No. TC00-100

*This is to certify that*

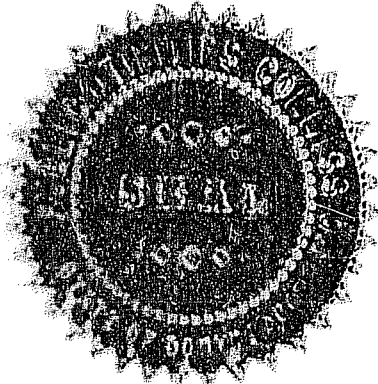
**EVULKAN, INC.**

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

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

Dated at Pierre, South Dakota, this 25<sup>th</sup> day of August, 2000.

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION:



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

*Laska Schoenfelder*  
LASKA SCHOENFELDER, Commissioner