



TC05-155

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

210 N. Park Ave.  
Winter Park, FL  
32789

P.O. Drawer 200  
Winter Park, FL  
32790-0200

Tel: 407-740-8575  
Fax: 407-740-0613  
tmi@tminc.com

August 10, 2005  
**Overnight Delivery**

Ms. Pamela Bonrud  
Executive Director  
South Dakota Public Utilities Commission  
Capitol Building, 1st Floor  
500 East Capitol Ave.  
Pierre, SD 57501-5070

**RE: Application of Ernest Communications, Inc. to Provide Facilities-based Local  
Exchange Service within South Dakota**

Dear Ms Bonrud:

Enclosed for filing are the original and ten (10) copies of the application of Ernest Communications, Inc. ("Ernest") for authority to provide facilities-based local exchange service within South Dakota.

As part of this application Ernest submits, under separate Seal as Confidential, one (1) copy of its financial statements. Ernest is a private, closely-held corporation whose financial information is maintained as highly confidential and proprietary. The Company requests that these documents be designated as Confidential and handled in accordance with your established procedures for confidential material.

Also enclosed is our check in the amount of \$250.00 to cover the filing fee.

Please acknowledge receipt of this filing by date stamping the extra copy of this cover letter and returning it to me in the self-addressed stamped envelope. Any questions you may have regarding this filing may be directed to me at (407) 740-3006 or via email at croesel@tminc.com.

Thank you for your assistance.

Sincerely,

Carey Roesel  
Consultant to Ernest Communications, Inc.

CR/gs  
Enclosure

cc: Suzanne Walters - Ernest  
file: Ernest - SD Local  
tms: sdl0500

**APPLICATION OF  
Ernest Communications, Inc.**

Pursuant to Rule 20:10:32:03 of the Commission's Telecommunications Services Rules, Ernest Communications, Inc. ("Ernest") submits the following registration information:

1. **The applicant's name, address, telephone number, facsimile number, E-mail address and whether the applicant is a sole proprietorship, partnership, corporation, limited liability corporation, or limited liability partnership.**

Ernest Communications, Inc.  
5275 Triangle Parkway, Suite 150  
Norcross, Georgia 30092  
Telephone: 770 / 242-9069  
Facsimile: 770 / 448-4115  
E-Mail: pmasters@ernestgroup.com  
Web site: www.ernestgroup.com

Ernest Communications, Inc. is a Georgia corporation.

2. **If sole proprietorship, the full name and business address of its owner; if a partnership, the full name and business address of each partner; if a corporation, a listing of the full name and business address of each corporate officer and director; if a limited liability corporation, the full name and business address of each partner.**

The following individuals serve as officers and directors of Ernest Communications, Inc. and may be reached through the company's corporate office at 5275 Triangle Parkway, Norcross, GA 30092:

Joseph Ernest  
Chairman and CEO

Paul Masters  
President

Jay Morris  
Senior Vice President

3. **The name under which the applicant will provide local exchange services if different than in question (1) of this section:**

Not applicable.

4. **If a corporation:**

- (a) **The location of its principal office, if any, in this state and the name and address of its current registered agent.**

Ernest has no principal offices in South Dakota.

Registered Agent:

National Registered Agents, Inc.  
300 South Philips Avenue, Suite 300  
Sioux Falls, South Dakota 57102

- (b) **A list of shareholders owning twenty (20) percent or more of the interest in the business.**

List of shareholders having 20% or more interest

Joseph Ernest  
Chairman and CEO  
Ernest Communications, Inc.  
5275 Triangle Parkway, Suite 150  
Norcross, Georgia 30092  
Telephone: 770 / 242-9069

Paul Masters  
President  
Ernest Communications, Inc.  
5275 Triangle Parkway, Suite 150  
Norcross, Georgia 30092  
Telephone: 770 / 242-9069

- (c) **The state in which the applicant is incorporated, the date of incorporation and a copy of its certificate of incorporation.**

Ernest Communications, Inc. is a corporation organized under the laws of the State of Georgia in 1984. A copy of Applicant's Certificate of Incorporation from the State of Georgia is provided in Attachment I.

- (d) **If it is an out-of-state corporation, a copy of its certificate of authority to transact business in South Dakota from the Secretary of State.**

A copy of Ernest's Certificate of Authority to transact business in South Dakota is included as Attachment II.

5. **A description of the applicant's experience providing any telecommunications services in South Dakota or in other jurisdictions, including the types of services provided, and the dates and nature of state or federal authorization to provide the services.**

See Attachment III.

6. **Names and addresses of applicant's affiliates, subsidiaries, and parent organizations, if any.**

Ernest Communications, Inc., has no parent corporation, subsidiaries or affiliates.

7. **A list and specific description of the types of services the applicant seeks to offer and the means by which the services will be provided including:**

- (a) **Information indicating the class of customers the applicant intends to serve.**

Ernest proposes to provide service to residential and business customers.

- (b) **Information indicating the extent to and time-frame by which applicant will provide service through the use of its own facilities, the purchase of unbundled network elements, or resale.**

The Company intends to provide local exchange services in South Dakota as a facilities-based provider using an unbundled network element platform (UNE-P) or its equivalent of the incumbent local exchange company and through resale. The Company anticipates service availability within three (3) months of obtaining its certificate and receiving approval of its interconnection agreement.

- (c) **A description of all facilities that the applicant will utilize to furnish the proposed local exchange services, including any facilities of underlying carriers.**

Ernest will offer service through UNE-P or its equivalent utilizing the facilities of Qwest, the incumbent local exchange company. Ernest will rely on its facilities-based underlying carrier for the operation and maintenance of the local exchange network.

- (d) **Information identifying the types of services it seeks authority to provide by reference to the general nature of the service.**

Ernest proposes to provide facilities-based local exchange services via an unbundled network element platform (UNE-P) or its equivalent and on a resale basis. The Company's interexchange services will be offered on a resale basis. The Company intends to offer service immediately upon certification and approval of its interconnection agreement.

Ernest's primary market is business customers. Ernest intends to provide local exchange services, long distance services, and selected custom calling features. In addition, the Company will provide to its customers access to emergency call services (e.g. 911), directory assistance, operator assisted services, and other ancillary services.

8. **A service area map and narrative description indicating with particularity the geographic area proposed to be served by the applicant.**

Ernest intends to offer its services initially in the territory now served by Qwest Corporation. As competition is available in other areas of the state, and the Company can enter into UNE-P interconnection agreements, the Company anticipates expanding its serving geographic area.

9. **Information regarding the technical competence of the applicant to provide its proposed local exchange services including:**

- (a) **A description of the education and experience of the applicant's management personnel who will oversee the proposed local exchange services.**

A copy of current resumes of Ernest's management personnel is attached as Attachment IV.

- (b) **Information regarding policies, personnel, or arrangements made by the applicant which demonstrates the applicant's ability to respond to customer complaints and inquiries promptly and to perform facility and equipment maintenance necessary to ensure compliance with any commission quality of service requirements.**

Any questions regarding policies, personnel or the Applicant's ability to respond to customer complaints should be directed to:

Paul Masters  
President  
Ernest Communications, Inc.  
5275 Triangle Parkway, Suite 150  
Norcross, Georgia 30092  
Telephone: 770 / 242-9069  
Facsimile: 770 / 448-4115

10. **Information explaining how the applicant will provide customers with access to emergency services such as 911 or enhanced 911, operator services, interexchange services, directory assistance, and telecommunications relay services.**

Ernest will enter into an interconnection agreement with Qwest Corporation. Under such an agreement, Ernest customers will be able to access emergency services such as 911 or enhanced 911. Such calls will be routed through the underlying carrier to the appropriate emergency agency serving the originating location. Access to local operator services, directory assistance and telecommunications relay services will also be made available. Ernest sets the rates for its services and handles its own customer service.

**11. Financial information including:**

- (a) For the most recent 12 month period, financial statements consisting of balance sheets, income statements, and cash flow statements.**

The Company requests a waiver of the requirement that it provide financial statements. Ernest will provide the most current financial statements under Seal as Confidential, as Attachment V.

- (b) If a public corporation, the applicant's latest annual report and report to stockholders.**

Ernest is not a public company and does not have an annual report to stockholders.

**12. Information detailing the following matters associated with interconnection to provide proposed local exchange services:**

- (a) The identity of all local exchange carriers with which the applicant plans to interconnect.**

Ernest plans to sign an interconnection agreement with Qwest Corporation and with other incumbent LECs when a UNE-P offering becomes available.

- (b) The likely timing of initiation of interconnection service and a statement as to when negotiations for interconnection started or when negotiations are likely to start.**

Ernest anticipates an interconnection agreement with Qwest by 1st quarter 2005.

- (c) A Copy of any request for interconnection made by the applicant to any local exchange carrier.**

The Company has not yet requested an interconnection agreement.

**13. A tariff or price list indicating the prices, terms and conditions of each contemplated local service offering.**

Please see Attachment VI.

- 14. Cost support for rates shown in the Company's tariff or price list for rate or price regulated noncompetitive or emerging competitive services.**

The Company requests a waiver of ARSD 20:10:32:03(14) requiring cost support. The Company has not yet determined final prices for its noncompetitive or emerging competitive services and will be unable to do so until an interconnection agreement is signed.

- 15. A description of how the Applicant intends to market its local exchange target market, whether the Applicant engages in multilevel marketing, and copies of any Company brochures that will be used to assist in the sale of the services.**

Ernest will market its telecommunications services to residential and business customers. Ernest will use its own independent representatives to market services in South Dakota, through the use of a cooperative marketing strategy. This technique, which is sometimes referred to as multilevel marketing, encourages the independent representatives to obtain customers through their network of friends, family, professional and personal acquaintances.

Ernest does not use telemarketing to market to customers.

Included in Attachment VIII are sample marketing materials. In addition, a description of the company's services may be found on the internet at [www.ernestgroup.com](http://www.ernestgroup.com).

- 16. If the applicant is seeking authority to provide local exchange service in the service area of a rural telephone company, the date by which the applicant expects to meet the service obligation imposed pursuant to §20:10:32:15 and applicant's plan for meeting the service obligations.**

Ernest is not seeking authority to provide local exchange service in the service area of a rural telephone company.

- 17. 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.**

Ernest Communications, Inc. has never been denied registration or certification in any state. Ernest is in good standing with all states in which it is presently certified. A listing of the states in which Ernest is registered or certified is attached as Attachment III.

18. **The names, addresses, telephone numbers, E-mail addresses, and facsimile numbers of the Applicant's representatives to whom all inquiries must be made regarding customer complaints and other regulatory matters.**

Customer Complaints:	Paul Masters President Ernest Communications, Inc. 5275 Triangle Parkway, Suite 150 Norcross, Georgia 30092 Telephone: 770 / 242-9069 Facsimile: 770 / 448-4115
General Regulatory Matters:	Paul Masters President Ernest Communications, Inc. 5275 Triangle Parkway, Suite 150 Norcross, Georgia 30092 Telephone: 770 / 242-9069 Facsimile: 770 / 448-4115 E-mail: pmasters@ernestgroup.com

19. **Information concerning how the Applicant plans to bill and collect charges from customers who subscribe to its proposed local exchange services.**

Ernest bills its Customers directly. Concerns regarding billing may be addressed by calling Ernest's toll free customer service telephone number, 800-456-8353. Ernest customer service is available 24 hours a day, 7 days a week.

20. **Information concerning the Applicant's policies relating to solicitation of new customers and a description of the efforts the Applicant shall use to prevent the unauthorized switching of local service customers by the Applicant, its employees, or agents.**

Ernest will utilize its existing agent network as its primary marketing force to contact and market the Company's services to new customers. The Company uses a written LOA to prevent the unauthorized switching of local service customers and has adopted a zero tolerance policy toward slamming.



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

See Attachment VII.

22. **A written request for waiver of those rules believed to be inapplicable.**

Ernest requests a waiver from ARSD 20:10:32:03(14) requiring cost support and from the requirement to provide financial statements. The Company has addressed these issues in items 11 and 14.

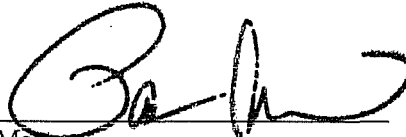
23. **Federal Tax Identification Number.**

Ernest's Federal Tax Identification Number is: 58-2395113

24. **Other information requested by the commission needed to demonstrate that the Applicant has sufficient technical, financial, and managerial capabilities to provide the local exchange services it intends to offer consistent with the requirements of this chapter and other applicable rules and laws.**

Ernest possesses the managerial, technical and financial ability to provide local and interexchange telecommunications service within the State of Nebraska. Ernest currently provides service in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, California, Missouri, Oklahoma, New York, Maryland, New Jersey, Virginia, Washington, Oregon, Arizona, and Colorado. Ernest has not been denied requested certification in any jurisdiction, nor has it had a permit, license, or certificate revoked by any authority.

Submitted by:



Paul Masters  
President  
Ernest Communications, Inc.

Date: 6-15-04

**ATTACHMENT I**

Certificate of Incorporation

ARTICLES OF INCORPORATION  
OF ERNEST COMMUNICATIONS, INC.

I.

The name of the Corporation is: Ernest Communications, Inc.

II.

The Corporation shall have authority to issue Two Million (2,000,000) shares of common stock ("Common Stock"). Each share of Common Stock shall be identical in all respects and for all purposes and entitled to one vote in all proceedings in which action may or is required to be taken by shareholders of the Corporation; participate equally in all dividends payable with respect to Common Stock, as, if, and when declared by the Board of Directors of the Corporation; and share ratably in all distributions of assets of the Corporation in the event of any voluntary or involuntary liquidation, or winding up of the affairs of the Corporation or any other distribution of assets, rights, or property.

III.

The initial registered office of the Corporation shall be at 3475 Lenox Rd. NE, Suite 990, Atlanta, GA 30326, in Fulton County. The initial registered agent of the Corporation at such address shall be Gerardo M. Balboni, II

IV.

The name and address of the incorporator is:

Erick H. Rock  
Balboni Law Group LLC  
3475 Lenox Road, N.E.  
Suite 990  
Atlanta, GA 30326

V.

The mailing address of the initial principal office of the Corporation is:

Ernest Communications, Inc.  
c/o Erick H. Rock  
Balboni Law Group LLC  
3475 Lenox Road, N.E.  
Suite 990  
Atlanta, GA 30326

VI.

No director shall have any personal liability to the Corporation or to its shareholders for monetary damages for breach of duty of care or other duty as a director, by reason of any act or omission

occurring subsequent to the date when this provision becomes effective, except that this provision shall not eliminate or limit the liability of a director for (a) any appropriation, in violation of his duties, of any business opportunity of the Corporation; (b) acts or omissions which involve intentional misconduct or a knowing violation of law; (c) liabilities of a director imposed by Section 14-2-832 of the Georgia Business Corporation Code; or (d) any transaction from which the director derived an improper personal benefit.

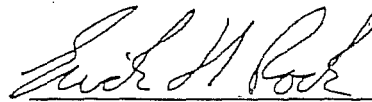
VII.

Any action required by law or by the Bylaws of the Corporation to be taken at a meeting of the shareholders of the Corporation, and any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a written consent, setting forth the action so taken, shall be signed by persons entitled to vote at a meeting those shares having sufficient voting power to cast not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote were present and voted. Notice of such action without a meeting by less than unanimous written consent shall be given within ten (10) days of the taking of such action to those shareholders of record on the date when the written consent is first executed and whose shares were not represented on the written consent.

VIII.

The Corporation shall have the power, acting through its Board of Directors, to make distributions of its assets to its shareholders out of its capital surplus and to repurchase its shares out of its unreserved and unrestricted capital surplus available therefor.

11<sup>th</sup> IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation this  
day of May, 1998.

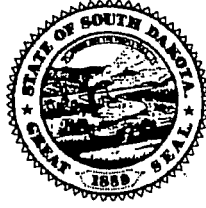


Erick H. Rock, Incorporator

## **ATTACHMENT II**

South Dakota Certificate of Authority

# State of South Dakota



## OFFICE OF THE SECRETARY OF STATE

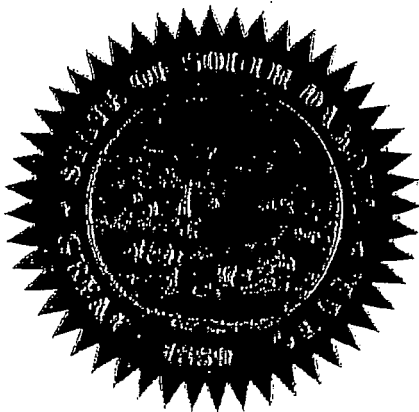
### Certificate of Authority

ORGANIZATIONAL ID #: FB028766

I, **Chris Nelson**, Secretary of State of the State of South Dakota, hereby certify that the Application for a Certificate of Authority of **ERNEST COMMUNICATIONS, INC. (GA)** 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 August 2, 2004.



*Chris Nelson*

Chris Nelson  
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. \_\_\_\_\_

RECEIPT NO. \_\_\_\_\_

RECEIVED

AUG 02 '04

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 ERNEST COMMUNICATIONS, 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 Georgia Federal Taxpayer ID# 58-2395113

(4) The date of its incorporation is May 11, 1998 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

5275 Triangle Parkway, Suite 150, Norcross, GA Zip Code 30092

mailing address if different from above is: \_\_\_\_\_

Zip Code \_\_\_\_\_

(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 57104

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)

To provide local and long distance telecommunications services to business,  
residential and coin telephone customers throughout each state

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

Name	Officer Title	Street Address	City	State	Zip
<u>Paul Masters</u>	<u>President</u>	<u>5275 Triangle Pky, Suite 150,</u>	<u>Norcross,</u>	<u>GA</u>	<u>30092</u>
<u>Joseph Ernest</u>	<u>Vice-President</u>	<u>5275 Triangle Pky, Suite 150,</u>	<u>Norcross,</u>	<u>GA</u>	<u>30092</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>5,000,000</u>	<u>Common</u>	<u>---</u>	<u>\$.001</u>
<u>1,000,000</u>	<u>Preferred</u>	<u>---</u>	<u>\$.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
2,025,000	Common	---	\$.001 per share

(11) The amount of its stated capital is \$ 2,025.00

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 July 2, 2004

(Signature)

Paul Masters, President  
(Title)

STATE OF Georgia  
COUNTY OF Bibb

I, Pam Ernest, a notary public, do hereby certify that on this 2 day of July, 2004, personally appeared before me Paul Masters who, being by me first duly sworn, declared that he/she is the president of ERNEST COMMUNICATIONS, INC., that he/she signed the foregoing document as officer of the corporation, and the statements therein contained are true.

11/12/06  
My Commission Expires

(Notary Public)

Notarial Seal

\*\*\*\*\*

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 ERNEST COMMUNICATIONS, INC.  
(name of registered agent)  
(corporate name)

Dated July 20 2004

By: Paul G. Bortner  
(signature of registered agent)



## ATTACHMENT III

### Listing of Existing Approved States

The following page provides the filing and approval status of the Company's certification for facilities-based competitive local exchange authority.

State	Authority	Certificate Date
Alabama	Local Facilities/Resale & Long Distance Resale	2/12/01
Arizona	Local Facilities/Resale & Long Distance Resale	11/16/00
Arkansas	Local Facilities/Resale & Long Distance Resale	5/13/03
California	Local Facilities/Resale & Long Distance Resale	11/19/98
Colorado	Local Facilities/Resale & Long Distance Resale	3/8/02
Florida	Local Facilities/Resale & Long Distance Resale	11/3/98
Georgia	Local Facilities/Resale & Long Distance Resale	Local – 2/18/03 LD – 4/18/00 OSP – 4/18/00
Illinois	Local Facilities/Resale & Long Distance Resale	12/17/03
Kansas	Local Facilities/Resale & Long Distance Resale	8/20/03
Louisiana	Local Facilities/Resale & Long Distance Resale	6/27/01
Maryland	Local Facilities/Resale & Long Distance Resale	3/27/02
Michigan	Local Facilities/Resale & Long Distance Resale	11/20/01
Mississippi	Local Facilities/Resale & Long Distance Resale	10/8/01
Missouri	Local Facilities/Resale & Long Distance Resale	9/11/01
Nevada	Local Facilities/Resale & Long Distance Resale	4/28/03
New York	Local Facilities/Resale & Long Distance Resale	12/31/98
No. Carolina	Local Facilities/Resale & Long Distance Resale	7/3/01
Oklahoma	Local Facilities/Resale & Long Distance Resale	1/16/02
Oregon	Local Facilities/Resale & Long Distance Resale	12/14/98
Pennsylvania	Local Facilities/Resale & Long Distance Resale	8/26/99
So. Carolina	Local Facilities/Resale & Long Distance Resale	2/6/02
Tennessee	Local Facilities/Resale & Long Distance Resale	3/16/99
Texas	Local Facilities/Resale & Long Distance Resale	10/8/98
Virginia	Local Facilities/Resale & Long Distance Resale	11/19/02

## **ATTACHMENT IV**

### **Resumes of Management**

# ERNEST COMMUNICATIONS, INC.

## MANAGEMENT PROFILES

Joseph Ernest

Chairman and CEO, Ernest Communications Inc.

Mr. Ernest founded Ernest Group in 1984 and is the co-founder of Ernest Communications Inc. (ECI) where he currently serves as Chairman and Chief Executive Officer. Joe is responsible for overseeing the strategic direction of ECI and the Ernest Group family of companies. Joe is responsible for the engineering, patenting and developing of many of the public communications products and services still in use today. Joe has served on dozens of boards, panels and industry steering committees throughout his 20-year telecommunications career.

Prior to Ernest Telecom, Joe was owner of a successful commercial and residential real estate brokerage firm for ten years. Joe holds a Bachelor of Arts degree from University of Southern Mississippi.

Paul Masters

President, Ernest Communications Inc.

Paul Masters is a telecommunications industry veteran and an experienced executive at Ernest Group. As the co-founder and President of Ernest Communications, Inc. (ECI), Paul oversees all day-to-day operations at ECI. After holding various senior sales and management positions within the Ernest Group family of companies, Paul is responsible for shifting ECI's focus from being the nation's largest manufacturer of public telecommunications instruments to becoming the nation's largest competitive local telephone service provider to the PSP industry, among other customer channels. Paul has been a leading industry advocate and driving force behind opening the Regional Bell Operating Company markets to local competition and a primary architect of developing many of the Unbundled Network Element Platform (UNE-P) products available to the industry today.

Paul holds a Bachelor of Science in Business Administration from Shorter College, and a Master of Business Administration from Emory University. In addition, Paul is a sought-after industry speaker as well as serving on various Boards and Panels within the telecommunications industry.

Jay Morris

Senior Vice President, Ernest Communications Inc.

Jay Morris is a 20-year telecommunications industry veteran who joined Ernest Communications Inc. (ECI) in 2002. Jay oversees all of ECI's sales and marketing efforts and reports to the President of the company. Jay began his telecommunications career during telecommunications divestiture in the early eighties beginning first as a Major Account and National Account Manager at MCI. Jay went on to become one of MCI's leading senior product development executives and was an architect of many of MCI's early business and consumer product development efforts, which included corporate account billing solutions, Prism, Friends and Family, Vnet, and Partner Marketing Affinity Programs. Jay has built his telecommunications career around developing solutions and programs to serve large telecom clients and partner's needs. Prior to joining ECI, Jay held various senior management and board positions with ATC, Campuslink Communications and LightSource Telecom.

Jay holds a Bachelor of Science degree from Kings City College. Jay has resided on dozens of various telecommunications industry steering committees and boards as well as volunteering his time as a board member of various non-profit organizations throughout his 20-year telecom career.

## **ATTACHMENT V**

### **Financial Information**

Financial Statements of Ernest Communications, Inc.  
are provided under seal as Confidential.

## **ATTACHMENT VI**

Proposed Tariff

SOUTH DAKOTA  
LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES TARIFF  
OF  
**Ernest Communications, Inc.**

This tariff contains the descriptions, regulations, and rates applicable to the provision of local exchange telecommunications services provided by Ernest Communications, Inc. within the State of South Dakota. This tariff is on file with the South Dakota Public Utilities Commission. Copies may be inspected during normal business hours at the Company's principal place of business.

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Issued:

Effective:

Issued by: Paul Masters, President  
Ernest Communications, Inc.  
5275 Triangle Parkway, Suite 150  
Norcross, Georgia 30092

sd10500

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**CHECK SHEET**

Pages of this tariff 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.

SECTION	PAGE	REVISION	SECTION	PAGE	REVISION
	Title	Original *	2	16	Original *
Preface	1	Original *	2	17	Original *
Preface	2	Original *	2	18	Original *
Preface	3	Original *	2	19	Original *
Preface	4	Original *	2	20	Original *
Preface	5	Original *	2	21	Original *
Preface	6	Original *	2	22	Original *
1	1	Original *	2	23	Original *
1	2	Original *	2	24	Original *
1	3	Original *	2	25	Original *
1	4	Original *	2	26	Original *
2	1	Original *	2	27	Original *
2	2	Original *	2	28	Original *
2	3	Original *	2	29	Original *
2	4	Original *	2	30	Original *
2	5	Original *	2	31	Original *
2	6	Original *	2	32	Original *
2	7	Original *	2	33	Original *
2	8	Original *	2	34	Original *
2	9	Original *	2	35	Original *
2	10	Original *	2	36	Original *
2	11	Original *	2	37	Original *
2	12	Original *	2	38	Original *
2	13	Original *	2	39	Original *
2	14	Original *	2	40	Original *
2	15	Original *			

\* included in this filing.

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**CHECK SHEET, (CONT'D.)**

SECTION	PAGE	REVISION	SECTION	PAGE	REVISION
3	1	Original *	6	10	Original *
4	1	Original *	6	11	Original *
4	2	Original *	6	12	Original *
4	3	Original *	6	13	Original *
5	1	Original *	6	14	Original *
5	2	Original *	7	1	Original *
5	3	Original *	8	1	Original *
5	4	Original *	9	1	Original *
5	5	Original *	10	1	Original *
5	6	Original *			
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6	5	Original *			
6	6	Original *			
6	7	Original *			
6	8	Original *			
6	9	Original *			

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

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

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

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## APPLICATION OF TARIFF

This tariff sets forth the service offerings, rates, terms and conditions applicable to the furnishing of intrastate end-user local exchange communications services by Ernest Communications, Inc., hereinafter referred to as the Company, to Customers within the state of South Dakota. Ernest's services are furnished subject to the availability of facilities and subject to the terms and conditions set forth herein.

This tariff is on file with the South Dakota Public Utilities Commission. In addition, this tariff is available for review at the main office of Ernest Communications, Inc. at 5275 Triangle Parkway, Suite 150, Norcross, Georgia 30092.

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## TARIFF FORMAT

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

**B. Page Revision Numbers** - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current page version on file with the Commission. For example, the 4th Revised Page 14 cancels the 3rd Revised Page 14. Because of various suspension periods, deferrals, etc., the most current page number on file with the Commission is not always the tariff page in effect. 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 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.) The tariff user should refer to the latest Check Sheet to find out if a particular page is the most current on file with the Commission.

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## SECTION 1.0 - DEFINITIONS

**Access Line** - An arrangement from a local exchange telephone company or other common carrier, using either dedicated or switched access, which connects a Customer's location to Carrier's location or switching center.

**Account Codes** - Permits Centrex Stations and attendants to dial an account code number of up to eight digits. For use when placing calls over facilities arranged for Automatic Message Accounting (AMA) recording. The account or project number must be input prior to dialing the called number.

**Ernest** - Ernest Communications, Inc., issuer of this tariff.

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

**Authorization Code** - A numerical code, one or more of which may be assigned to a Customer, to enable Carrier to identify the origin of service of the Customer so it may rate and bill the call. All authorization codes shall be the sole property of Carrier and no Customer shall have any property or other right or interest in the use of any particular authorization code. Automatic numbering identification (ANI) may be used as or in connection with the authorization code.

**Authorized User** - A person, firm or corporation authorized by the Customer to be an end-user of the service of the Customer.

**Automatic Numbering Identification (ANI)** - A type of signaling provided by a local exchange telephone company which automatically identifies the local exchange line from which a call originates.

**Commission** - Refers to the South Dakota Public Utilities Commission, unless otherwise indicated.

**Common Carrier** - An authorized company or entity providing telecommunications services to the public

**Company** - Ernest Communications, Inc., the issuer of this tariff.

**Customer** - The person, firm or corporation that orders service and is responsible for the payment of charges and compliance with the terms and conditions of this tariff.

**Customer Premises** - A location designated by the Customer for the purposes of connecting to the Company's services.

**Customer Terminal Equipment** - Terminal equipment provided by the Customer.

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**SECTION 1.0 - DEFINITIONS, (CONT'D.)**

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

**End Office** - The LEC switching system office or serving wire center where Customer station loops are terminated for purposes of interconnection to each other and/or to trunks.

**Equal Access** - A form of dialed access provided by local exchange companies whereby interexchange calls dialed by the Customer are automatically routed to the Company's network. Presubscribed Customers may also route interexchange calls to the Company's network by dialing an access code supplied by the Company.

**Exchange Telephone Company or Telephone Company** - Denotes any individual, partnership, association, joint-stock company, trust, or corporation authorized by the appropriate regulatory bodies to engage in providing public switched communication service throughout an exchange area, and between exchange areas within the LATA.

**ICB** - Individual Case Basis.

**IXC or Interexchange Carrier**- A long distance telecommunications services provider.

**Interruption** - The inability to complete calls due to equipment malfunctions or human errors. Interruption shall not include, and no allowance shall be given for service difficulties such as slow dial tone, circuits busy or other network and/or switching capability shortages. Nor shall Interruption include the failure of any service or facilities provided by a common carrier or other entity other than the Carrier. Any Interruption allowance provided within this Tariff by Carrier shall not apply where service is interrupted by the negligence or willful act of the Customer, or where the Carrier, pursuant to the terms of this Tariff, terminates service because of non-payment of bills, unlawful or improper use of the Carrier's facilities or service, or any other reason covered by this Tariff or by applicable law.

**LATA** - A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the National Exchange Carrier Association, Inc. Tariff F.C.C. No. 4, or its successor tariff(s).

**LEC** - Local Exchange Company refers to the dominant, monopoly local telephone company in the area also served by the Company.

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**SECTION 1.0 - DEFINITIONS, (CONT'D.)**

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

**MOU** - Minutes of Use.

**NECA** - National Exchange Carriers Association.

**Non-Recurring Charge ("NRC")** - The initial charge, usually assessed on a one-time basis, to initiate and establish service.

**PBX** - Private Branch Exchange

**PIN** - Personal Identification Number. See Authorization Code.

**Point of Presence ("POP")** - Point of Presence

**Recurring Charges** - Monthly charges to the Customer for services, and equipment, which continues for the agreed upon duration of the service.

**Service** - Any means of service offered herein or any combination thereof.

**Service Order** - The written request for Company services executed by the Customer and the Company in the format devised by the Company. The signing of a Service Order Form by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this tariff.

**Serving Wire Center** - A specified geographic point from which the vertical and horizontal coordinate is used in calculation of airline mileage.

**Shared Inbound Calls** - Refers to calls that are terminated via the Customer's Company-provided local exchange line.

**Shared Outbound Calls** - Refers to calls in Feature Group (FGD) exchanges whereby the Customer's local telephone lines are presubscribed by the Company to the Company's outbound service such that "1 + 10-digit number" calls are automatically routed to the Company's or an IXC's network. Calls to stations within the Customer's LATA may be placed by dialing "10XXXX" or "101XXXX" with 1 + 10-digit number."

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**SECTION 1.0 - DEFINITIONS, (CONT'D.)**

**Station** - The network control signaling unit and any other equipment provided at the Customer's premises which enables the Customer to establish communications connections and to effect communications through such connections.

**Subscriber** - The person, firm, partnership, corporation, or other entity who orders telecommunications service from Ernest. Service may be ordered by, or on behalf of, those who own, lease or otherwise manage the pay telephone, PBX, or other switch vehicle from which an End User places a call utilizing the services of the Company.

**Switched Access Origination/Termination** - Where access between the Customer and the interexchange carrier is provided on local exchange company Feature Group circuits and the connection to the Customer is a LED-provided business or residential access line. The cost of switched Feature Group access is billed to the interexchange carrier.

**Terminal Equipment** - Any telecommunications equipment other than the transmission or receiving equipment installed at a Company location.

**Usage Charges** - Charges for minutes or messages traversing over local exchange facilities.

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

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## **SECTION 2.0 - REGULATIONS**

### **2.1 Undertaking of the Company**

#### **2.1.1 Scope**

The Company undertakes to furnish communications service pursuant to the terms of this tariff in connection with one-way and/or two-way information transmission between points within the state of South Dakota.

The Company is responsible under this tariff only for the services and facilities provided hereunder, and it assumes no responsibility for any service provided by any other entity that purchases access to the Company network in order to originate or terminate its own services, or to communicate with its own customers.

#### **2.1.2 Shortage of Equipment or Facilities**

- A.** The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.
- B.** The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.1 Undertaking of the Company, (Cont'd.)**

**2.1.3 Terms and Conditions**

- A.** Service is provided on the basis of a minimum period of at least thirty (30) days, 24-hours per day. For the purpose of computing charges in this tariff, a month is considered to have 30 days.
- B.** Except as otherwise stated in this tariff, Customers may be required to enter into written service orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this tariff. Customers will also be required to execute any other documents as may be reasonably requested by the Company.
- C.** At the expiration of the initial term specified in each Service Order, or in any extension thereof, service shall continue on a month-to-month basis at the then current rates unless terminated by either party upon notice. Any termination shall not relieve the Customer of its obligation to pay any charges incurred under the service order and this tariff prior to termination. The rights and obligations which by their nature extend beyond the termination of the term of the service order shall survive such termination.
- D.** In any action between the parties to enforce any provision of this tariff, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.1 Undertaking of the Company, (Cont'd.)**

**2.1.3 Terms and Conditions, (Cont'd.)**

- E.** Service may be terminated upon written notice to the Customer if:

  - .1 the Customer is using the service in violation of this tariff; or
  - .2 the Customer is using the service in violation of the law.
- F.** This tariff shall be interpreted and governed by the laws of the state of South Dakota regardless of its choice of laws provision.
- G.** Any other Telephone Company may not interfere with the right of any person or entity to obtain service directly from the Company. No person or entity shall be required to make any payment, incur any penalty, monetary or otherwise, or purchase any services in order to have the right to obtain service directly from the Company.
- H.** To the extent that either the Company or any other telephone company exercises control over available cable pairs, conduit, duct space, raceways, or other facilities needed by the other to reach a person or entity, the party exercising such control shall make them available to the other on terms equivalent to those under which the Company makes similar facilities under its control available to its customers. At the reasonable request of either party, the Company and the other telephone company shall join the attempt to obtain from the owner of the property access for the other party to serve a person or entity.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.1 Undertaking of the Company, (Cont'd.)**

**2.1.4 Limitations on Liability**

- A.** The Company's liability for damages arising out of mistakes, interruptions, omissions, delays, errors, or defects in transmission which occur in the course of furnishing service or facilities, shall be determined in accordance with SDCL 49-13-1 and 49-13-1.1 and any other applicable law.
- B.** The liability of the Company for errors in billing that result in overpayment by the Customer may be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed in accordance with SDCL 49-13-1 and 49-13-1.1 and any other applicable law.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.1 Undertaking of the Company, (Cont'd.)**

**2.1.4 Limitations on Liability, (Cont'd.)**

- C. The Company shall be indemnified and saved harmless by the Customer from and against all loss, liability, damage and expense, including reasonable counsel fees, due to:
- .1 Any act or omission of: (a) the Customer, or (b) common carriers or warehousemen, except as contracted by the Company;
  - .2 Any delay or failure of performance or equipment due to causes beyond the Company's control, including but not limited to, acts of God, fires, floods, earthquakes, hurricanes, or other catastrophes; national emergencies, insurrections, riots, wars or other civil commotions; strikes, lockouts, work stoppages or other labor difficulties; criminal actions taken against the Company; unavailability, failure or malfunction of equipment or facilities provided by the Customer or third parties; and any law, order, regulation or other action of any governing authority or agency thereof;
  - .3 Any unlawful or unauthorized use of the Company's facilities and services;
  - .4 Libel, slander, invasion of privacy or infringement of patents, trade secrets, or copyrights arising from or in connection with the material transmitted by means of Company-provided facilities or services; or by means of the combination of Company-provided facilities or services;
  - .5 Breach in the privacy or security of communications transmitted over the Company's facilities;

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.1 Undertaking of the Company, (Cont'd.)**

**2.1.4 Limitations on Liability, (Cont'd.)**

**C. (Cont'd.)**

- .6 Changes in any of the facilities, operations or procedures of the Company that render any equipment, facilities or services provided by the Customer obsolete, or require modification or alteration of such equipment, facilities or services, or otherwise affect their use or performance, except where reasonable notice is required by the Company and is not provided to the Customer, in which event the Company's liability is limited as set forth in paragraph A. of this Subsection 2.1.4.
- .7 Defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof which is not the result of negligence;
- .8 Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected to the Company's facilities;
- .9 Any calls not actually attempted to be completed during any period that service is unavailable;
- .10 And any other claim resulting from any act or omission of the Customer or patron(s) of the Customer relating to the use of the Company's services or facilities.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.1 Undertaking of the Company, (Cont'd.)**

**2.1.4 Limitations on Liability, (Cont'd.)**

- D.** The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere.
- E.** Failure by the Company to assert its rights pursuant to one provision of this tariff does not preclude the Company from asserting its rights under other provisions.
- F.** **Directory Errors** - In the absence of negligence or willful misconduct, no liability for damages arising from errors or mistakes in or omissions of directory listings, or errors or mistakes in or omissions of listing obtainable from the directory assistance operator, including errors in the reporting thereof, shall attach to the Company. An allowance for errors or mistakes in or omissions of published directory listings or for errors or mistakes in or omissions of listing obtainable from the directory assistance operator shall be at the monthly tariff rate for each listing, or in the case of a free or no-charge directory listing, credit shall equal two times the monthly tariff rate for an additional listing, for the life of the directory or the charge period during which the error, mistake or omission occurs.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.1 Undertaking of the Company, (Cont'd.)**

**2.1.4 Limitations on Liability, (Cont'd.)**

**G. With respect to Emergency Number 911 Service:**

- .1 This service is offered solely as an aid in handling assistance calls in connection with fire, police and other emergencies.
- .2 Neither is the Company responsible for any infringement, nor invasion of the right of privacy of any person or persons, caused or claimed to have been caused directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, occasion or use of emergency 911 service features and the equipment associated therewith, or by any services furnished by the Company, including, but not limited to the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing emergency 911 service, and which arise out of the negligence or other wrongful act of the Company, the Customer, its users, agencies or municipalities, or the employees or agents of any one of them.
- .3 When a Customer with a nonpublished telephone number, as defined herein, places a call to the emergency 911 service, the Company will release the name and address of the calling party, where such information can be determined, to the appropriate local governmental authority responsible for emergency 911 service upon request of such governmental authority. By subscribing to service under this tariff, the Customer acknowledges and agrees with the release of information as described above.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)****2.1 Undertaking of the Company, (Cont'd.)****2.1.5 Notification of Service-Affecting Activities**

The Company will provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.1 Undertaking of the Company, (Cont'd.)**

**2.1.6 Provision of Equipment and Facilities**

- A. The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in this tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.
- B. The Company shall use reasonable efforts to maintain only the facilities and equipment that it furnishes to the Customer. The Customer may not, nor may the Customer permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- C. The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided the Customer.
- D. Equipment the Company provides or installs at the Customer Premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which it was provided.
- E. The Customer shall be responsible for the payment of service charges as set forth herein for visits by the Company's agents or employees to the Premises of the Customer when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)****2.1 Undertaking of the Company, (Cont'd.)****2.1.6 Provision of Equipment and Facilities, (Cont'd.)**

F. The Company shall not be responsible for the installation, operation, or maintenance of any Customer-provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this tariff and to the maintenance and operation of such facilities. Subject to this responsibility, the Company shall not be responsible for:

- .1 the transmission of signals by Customer-provided equipment or for the quality of, or defects in, such transmission; or
- .2 the reception of signals by Customer-provided equipment.

**2.1.7 Non-routine Installation**

At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours or in hazardous locations. In such cases, charges based on cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)****2.1 Undertaking of the Company, (Cont'd.)****2.1.8 Special Construction**

Subject to the agreement of the Company and to all of the regulations contained in this tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that construction undertaken:

- A. where facilities are not presently available, and there is no other requirement for the facilities so constructed;
- A. of a type other than that which the Company would normally utilize in the furnishing of its services;
- C. over a route other than that which the Company would normally utilize in the furnishing of its services;
- D. in a quantity greater than that which the Company would normally construct;
- E. on an expedited basis;
- F. on a temporary basis until permanent facilities are available;
- G. involving abnormal costs; or
- H. in advance of its normal construction.

**2.1.9 Ownership of Facilities**

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

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.2 Prohibited Uses**

- 2.2.1** The services the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.2.2** The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and Commission regulations, policies, orders, and decisions.
- 2.2.3** The Company may block any signals being transmitted over its Network by Customers which cause interference to the Company or other users. Customer shall be relieved of all obligations to make payments for charges relating to any blocked Service and shall indemnify the Company for any claim, judgment or liability resulting from such blockage.
- 2.2.4** A customer, joint user, or authorized user may not assign, or transfer in any manner, the service or any rights associated with the service without the written consent of the Company. The Company will permit a Customer to transfer its existing service to another entity if the existing Customer has paid all charges owed to the Company for regulated communications services. Such a transfer will be treated as a disconnection of existing service and installation of new service, and non-recurring installation charges as stated in this tariff will apply.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)****2.3 Obligations of the Customer****2.3.1 General**

The Customer is responsible for making proper application for service; placing any necessary order, complying with tariff regulations; payment of charges for services provided. Specific Customer responsibilities include, but are not limited to the following:

- A. the payment of all applicable charges pursuant to this tariff;
- B. damage to or loss of the Company's facilities or equipment caused by the acts or omissions of the Customer; or the noncompliance by the Customer, with these regulations; or by fire or theft or other casualty on the Customer Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company;
- C. providing at no charge, as specified from time to time by the Company, any needed personnel, equipment space and power to operate Company facilities and equipment installed on the premises of the Customer, and the level of heating and air conditioning necessary to maintain the proper operating environment on such premises;
- D. obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduits necessary for installation of fiber optic cable and associated equipment used to provide Communication Services to the Customer from the cable building entrance or property line to the location of the equipment space described in 2.3.1.C. Any and all costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be borne entirely by, or may be charged by the Company to, the Customer. The Company may require the Customer to demonstrate its compliance with this section prior to accepting an order for service;

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**SECTION 2.0 - REGULATIONS, (CONT'D.)****2.3 Obligations of the Customer, (Cont'd.)****2.3.1 General, (Cont'd.)**

- E.** providing a safe place to work and complying with all laws and regulations regarding the working conditions on the premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company's employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g. asbestos) prior to any construction or installation work;
- F.** complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to, the location of Company facilities and equipment in any Customer premises or the rights-of-way for which Customer is responsible under Section 2.3.1D and granting or obtaining permission for Company agents or employees to enter the premises of the Customer at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company;
- G.** not creating, or allowing to be placed, any liens or other encumbrances on the Company's equipment or facilities; and
- H.** making Company facilities and equipment available periodically for maintenance purposes at a time agreeable to both the Company and the Customer. No allowance will be made for the period during which service is interrupted for such purposes.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.3 Obligations of the Customer, (Cont'd.)**

**2.3.2 Liability of the Customer**

- A. The Customer will be liable for damages to the facilities of the Company and for all incidental and consequential damages caused by the negligent or intentional acts or omissions of the Customer, its officers, employees, agents, invites, or contractors where such acts or omissions are not the direct result of the Company's negligence or intentional misconduct.
- B. To the extent caused by any negligent or intentional act of the Customer as described in A., preceding, the Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees, for (1) any loss, destruction or damage to property of any third party, and (2) any liability incurred by the Company to any third party pursuant to this or any other tariff of the Company, or otherwise, for any interruption of, interference to, or other defect in any service provided by the Company to such third party.
- C. The Customer shall not assert any claim against any other Customer or user of the Company's services for damages resulting in whole or in part from or arising in connection with the furnishing of service under this tariff including but not limited to mistakes, omissions, interruptions, delays, errors or other defects or misrepresentations, whether or not such other Customer or user contributed in any way to the occurrence of the damages, unless such damages were caused solely by the negligent or intentional act or omission of the other Customer or user and not by any act or omission of the Company. The Company's liability shall be determined in accordance with SDCL 49-13-1 and 49-13-1.1 and any other applicable law. Nothing in this tariff is intended either to limit or to expand Customer's right to assert any claims against third parties for damages of any nature other than those described in the preceding sentence.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)****2.4 Customer Equipment and Channels****2.4.1 General**

A User may transmit or receive information or signals via the facilities of the Company. The Company's services are designed primarily for the transmission of voice-grade telephonic signals, except as otherwise stated in this tariff. A User may transmit any form of signal that is compatible with the Company's equipment, but the Company does not guarantee that its services will be suitable for purposes other than voice-grade telephonic communication except as specifically stated in this tariff.

**2.4.2 Station Equipment**

- A.** Terminal equipment on the User's Premises and the electric power consumed by such equipment shall be provided by and maintained at the expense of the User. The User is responsible for the provision of wiring or cable to connect its terminal equipment to the Company Point of Connection.
- B.** The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense, subject to prior Customer approval of the equipment expense.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.4 Customer Equipment and Channels, (Cont'd.)**

**2.4.3 Interconnection of Facilities**

- A.** Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Communication Services and the channels, facilities, or equipment of others shall be provided at the Customer's expense.
- B.** Communication Services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers that are applicable to such connections.
- C.** Facilities furnished under this tariff may be connected to Customer-provided terminal equipment in accordance with the provisions of this tariff. All such terminal equipment shall be registered by the Federal Communications Commission pursuant to Part 68 of Title 47, Code of Federal Regulations; and all User-provided wiring shall be installed and maintained in compliance with those regulations.
- D.** Users may interconnect communications facilities that are used in whole or in part for interstate communications to services provided under this tariff only to the extent that the user is an "End User", as defined in Section 69.2(m), Title 47, Code of Federal Regulations (1992 edition).

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.4 Customer Equipment and Channels, (Cont'd.)**

**2.4.4 Inspections**

- A. Upon suitable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.4.2.A. for the installation, operation, and maintenance of Customer-provided facilities, equipment, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment.
- B. If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.5 Payment Arrangements**

**2.5.1 Payment for Service**

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Authorized Users by the Customer, regardless of whether those services are used by the Customer itself or are resold to or shared with other persons.

The Customer is responsible for payment of any sales, use, gross receipts, excise, access or other local, state, federal and 911 taxes, charges or surcharges (however designated) (excluding taxes on Company's net income) imposed on or based upon the provision, sale or use of Network Services.

The security of the Customer's PIN is the responsibility of the Customer. All calls placed using a PIN shall be billed to and shall be the obligation of the Customer. The Customer shall not be responsible for charges in connection with the unauthorized use of PINs arising after the Customer notifies the Company of the loss, theft, or other breach of security of such PINs.

Customers will only be charged once, on either an interstate or intrastate basis, for any nonrecurring or usage based charges.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.5 Payment Arrangements, (Cont'd.)**

**2.5.2 Billing and Collection of Charges**

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

- A.** Nonrecurring charges are due and payable within thirty (30) days after the invoice date, unless otherwise agreed to in advance.
- B.** All recurring charges, as well as Usage charges, if applicable, are billed monthly in arrears.
- C.** When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have thirty (30) days.
- D.** Billing of the Customer by the Company will begin on the Service Commencement Date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.5 Payment Arrangements, (Cont'd.)**

**2.5.2 Billing and Collection of Charges, (Cont'd.)**

- E.** A late payment charge of 1.5% per month shall be due to the Company for any billed amount for which payment has not been received by the Company within fifteen (15) days of the mailing date of the Company's invoice for service or by the due date printed on the invoice, whichever is later, or if any portion of the payment is received by the Company in funds which are not immediately available upon presentment. If the last calendar day for remittance falls on a Sunday, legal holiday or other day when the offices of the Company are closed, the date for acceptance of payments prior to assessment of any late payment fees shall be extended through to the next business day.
- F.** A service charge equal to \$25.00 will be assessed under South Dakota law for all checks or other payment type submitted by the Customer to the Company and returned by a bank or other financial institution for: insufficient or uncollected funds, closed account, apparent tampering, missing signature or endorsement, or any other insufficiency or discrepancy necessitating return of the instrument at the discretion of the drawee bank or other financial institution.
- G.** If service is disconnected by the Company in accordance with Section 2.6 following and later restored, restoration of service will be subject to all applicable installation charges.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.5 Payment Arrangements, (Cont'd.)**

**2.5.3 Disputed Bills**

- A.** In the event that a billing dispute occurs concerning any charges billed to the Customer by the Company, the Company may require the Customer to pay the undisputed portion of the bill to avoid discontinuance of service for non-payment. The Customer must submit a documented claim for the disputed amount. The Customer will submit all documentation as may reasonably be required to support the claim. All claims must be submitted to the Company within 180 days of receipt of billing for those services. If the Customer does not submit a claim as stated above, the Customer waives all rights to filing a claim thereafter.
- B.** If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the South Dakota Public Utilities Commission in accordance with the Commission's rules of procedure. The address of the Commission is as follows:

South Dakota Public Utilities Commission  
Capitol Building, 1<sup>st</sup> Floor  
500 East Capitol Ave.  
Pierre, South Dakota 57501-5070  
Toll-Free: (800) 332-1782  
TTY Through Relay South Dakota: (800) 877-1113

- C.** If the dispute is resolved in favor of the Customer and the Customer has withheld the disputed amount, no interest, credits or penalties will apply.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)****2.5 Payment Arrangements, (Cont'd.)****2.5.4 Advance Payments**

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the nonrecurring charge(s) and one (1) month's charges for the service or facilities. The advance payment will be applied to the first full billing cycle statement and additional one (1) month advance payment will be required for each subsequent month. Advance payments do not accrue interest. An advance payment may be required in addition to a deposit.

**2.5.5 Deposits**

- A. The Company may, in order to safeguard its interests, require a Customer which has a proven history of late payments to the Company or does not have established credit or has a bad credit rating to make a deposit prior to or at any time after the provision of service to the Customer to be held by the Company as a guarantee of the payment of rates and charges. No such deposit will be required of a Customer which has established satisfactory credit and has no history of late payments to the Company.
- B. The amount of the deposit which may be required of a Customer for the purpose of establishing credit shall not exceed two (2) times the estimated average monthly bill.. The deposit shall be returned: 1) when an application for service has been canceled prior to the establishment of service; 2) at the end of twelve (12) consecutive months of a satisfactory credit history; or 3) upon discontinuation of service. The Company shall apply the deposit against any outstanding balances due. If a credit balance exists after such application, the Company shall refund the balance to the Customer.
- C. The Company will pay interest on deposits, to accrue from the date the deposit is made until it has been refunded, or until a reasonable effort has been made to effect refund. The Company will pay interest at the rate prescribed by the Commission
- D. The making of a deposit shall not relieve the Customer of the obligation to pay current bills when due.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.6 Discontinuance of Service**

- 2.6.1** Upon nonpayment of any amounts owing to the Company, the Company may, by giving five (5) days written notice to the Customer, discontinue or suspend service without incurring any liability.
- 2.6.2** Upon violation of any of the other material terms or conditions for furnishing service the Company may, by giving five (5) days written notice to the Customer, discontinue or suspend service without incurring any liability if such violation continues during that period.
- 2.6.3** Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- 2.6.4** Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.6 Discontinuance of Service, (Cont'd.)**

- 2.6.5** Upon any governmental prohibition or required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- 2.6.6** In the event of fraudulent use of the Company's network, the Company will discontinue service without notice and/or seek legal recourse to recover all costs involved in enforcement of this provision.
- 2.6.7** Without notice in the event of Customer use of equipment or services in such a manner as to adversely affect the Company's service to others.
- 2.6.8** Without notice in the event of tampering with the equipment or services furnished by the Company.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.7 Cancellation of Application for Service**

- 2.7.1** Applications for service cannot be canceled without the Company's agreement. Where the Company permits a Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.
- 2.7.2** Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs incurred by the Company, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service commenced (all discounted to present value at six percent).
- 2.7.3** Where the Company incurs any expense in connection with special construction, or where special arrangements of facilities or equipment have begun, before the Company receives a cancellation notice, a charge equal to the costs incurred by the Company, less net salvage, applies. In such cases, the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.
- 2.7.4** The special charges described in 2.7.1 through 2.7.3 will be calculated and applied on a case-by-case basis.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.8 Changes in Service Requested**

If the Customer makes or requests material changes in circuit engineering, equipment specifications, service parameters, premises locations, or otherwise materially modifies any provision of the application for service, the Customer's installation fee shall be adjusted accordingly.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)****2.9 Allowances for Interruptions in Service**

Interruptions in service that are not due to the negligence of, or noncompliance with the provisions of this tariff by, the Customer or the operation or malfunction of the facilities, power or equipment provided by the Customer, will be credited to the Customer as set forth in 2.9.1 for the part of the service that the interruption affects.

**2.9.1 General**

- A.** A credit allowance will be given when service is interrupted, except as specified below. A service is interrupted when it becomes inoperative to the Customer, e.g., the Customer is unable to transmit or receive, because of a failure of a component furnished by the Company under this tariff.
- B.** An interruption period begins when the Customer reports a service, facility or circuit to be inoperative and, if necessary, releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.
- C.** If the Customer reports a service, facility or circuit to be interrupted but declines to release it for testing and repair, or refuses access to its premises for test and repair by the Company, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service, facility or circuit considered by the Company to be impaired.
- D.** The Customer shall be responsible for the payment of service charges as set forth herein for visits by the Company's agents or employees to the premises of the Customer when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.9 Allowances for Interruptions in Service, (Cont'd.)**

**2.9.2 Limitations of Allowances**

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

- A. Due to the negligence of or noncompliance with the provisions of this tariff by any person or entity other than the Company, including but not limited to the Customer;
- B. Due to the failure of power, equipment, systems, connections or services not provided by the Company;
- C. Due to circumstances or causes beyond the reasonable control of the Company;
- D. During any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting interruptions;
- E. A service will not be deemed to be interrupted if a Customer continues to voluntarily make use of the such service. If the service is interrupted, the Customer can get a service credit, use another means of communications provided by the Company (pursuant to Section 2.9.3), or utilize another service provider;
- F. During any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- G. That occurs or continues due to the Customer's failure to authorize replacement of any element of special construction; and
- H. That was not reported to the Company within thirty (30) days of the date that service was affected.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.9 Allowances for Interruptions in Service, (Cont'd.)**

**2.9.3 Use of Another Means of Communications**

If the Customer elects to use another means of communications during the period of interruption, the Customer must pay the charges for the alternative service used.

**2.9.4 Application of Credits for Interruptions in Service**

- A.** Credits for interruptions in service that is provided and billed on a flat rate basis for a minimum period of at least one month, beginning on the date that billing becomes effective, shall in no event exceed an amount equivalent to the proportionate charge to the Customer for the period of service during which the event that gave rise to the claim for a credit occurred. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.
- B.** For calculating credit allowances, every month is considered to have thirty (30) days.
- C.** A credit allowance will be given for interruptions of thirty (30) minutes or more. Two or more interruptions of fifteen (15) minutes or more during any one 24-hour period shall be combined into one cumulative interruption.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)****2.9 Allowances for Interruptions in Service, (Cont'd.)****2.9.4 Application of Credits for Interruptions in Service, (Cont'd.)****D. Interruptions of 24 Hours or Less**

<b>Length of Interruption</b>	<b>Amount of Service To Be Credited</b>
Less than 30 minutes	None
30 minutes up to but not including 3 hours	1/10 Day
3 hours up to but not including 6 hours	1/5 Day
6 hours up to but not including 9 hours	2/5 Day
9 hours up to but not including 12 hours	3/5 Day
12 hours up to but not including 15 hours	4/5 Day
15 hours up to but not including 24 hours	One Day

**E. Interruptions Over 24 Hours and Less Than 72 Hours**

Interruptions over 24 hours and less than 72 hours will be credited 1/5 day for each 3-hour period or fraction thereof. No more than one full day's credit will be allowed for any period of 24 hours.

**F. Interruptions Over 72 Hours**

Interruptions over 72 hours will be credited 2 days for each full 24-hour period. No more than thirty (30) days credit will be allowed for any one month period.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.9 Allowances for Interruptions in Service, (Cont'd.)**

**2.9.5 Cancellation For Service Interruption**

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

**2.10 Use of Customer's Service by Others**

**2.10.1 Joint Use Arrangements**

Joint use arrangements will be permitted for all services provided under this tariff. From each joint use arrangement, one member will be designated as the Customer responsible for the manner in which the joint use of the service will be allocated. The Company will accept orders to start, rearrange, relocate, or discontinue service only from the designated Customer. Without affecting the Customer's ultimate responsibility for payment of all charges for the service, each joint user shall be responsible for the payment of the charges billed to it.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)****2.11 Cancellation by Customer**

Customers may cancel service verbally or in writing. The company shall hold the Customer responsible for payment of all charges, including fixed fees, surcharges, etc., which accrue up to the cancellation date. Customers that cancel the primary local exchange line will have the entire Account disconnected, including any secondary line and all associated features. In the event the Customer executes a term commitment agreement with the Company, the Customer must cancel service and terminate the agreement in accordance with the agreement terms.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)****2.12 Cancellation of Service/Termination Liability**

If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a service interruption (as defined in Section 2.9.1 above), the Customer agrees to pay to the Company termination liability charges, as defined below. These charges shall become due as of the effective date of the cancellation or termination and be payable within the period, set forth in Section 2.5.2.

**2.12.1 Termination Liability**

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

- A.** all unpaid Non-Recurring charges reasonably expended by the Company to establish service to the Customer; plus
- B.** any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by the Company on behalf of the Customer; plus
- C.** all Recurring Charges specified in the applicable Service Order Tariff for the balance of the then current term discounted at the prime rate announced in the Wall Street Journal on the third business day following the date of cancellation;
- D.** minus a reasonable allowance for costs avoided by the Company as a direct result of the Customer's cancellation.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.13 Transfers and Assignments**

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties:

**2.13.1** to any subsidiary, parent company or affiliate of the Company; or

**2.13.2** pursuant to any sale or transfer of substantially all the assets of the Company with the state; or

**2.13.3** pursuant to any financing, merger or reorganization of the Company.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)****2.14 Customer Liability for Unauthorized Use of the Network**

Unauthorized use of the network occurs when a person or entity that does not have actual, apparent, or implied authority to use the network, obtains the Company's services provided under this tariff.

**2.14.1 Customer Liability for Fraud and Unauthorized Use of the Network**

- A. The Customer is liable for the unauthorized use of the network obtained through the fraudulent use of a Company calling card, if such a card is offered by the Company, or an accepted credit card, provided that the unauthorized use occurs before the Company has been notified.
- B. A Company calling card is a telephone calling card issued by the Company at the Customer's request, which enables the Customer or user(s) authorized by the Customer to place calls over the Network and to have the charges for such calls billed to the Customer's account.

An accepted credit card is any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with this paragraph is an accepted credit card when received by the cardholder.

- C. The Customer must give the Company written or oral notice that an unauthorized use of a Company calling card or an accepted credit card has occurred or may occur as a result of loss, and/or theft.
- D. The Customer is responsible for payment of all charges for calling card services furnished to the Customer or to users authorized by the Customer to use service provided under this tariff, unless due to the negligence of the Company. This responsibility is not changed due to any use, misuse, or abuse of the Customer's service or Customer-provided equipment by third parties, the Customer's employees, or the public.

The liability of the Customer for unauthorized use of the Network by credit card fraud will not exceed the lesser of fifty dollars (\$50.00) or the amount of money, property, labor, or services obtained by the unauthorized user before notification to the Company.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.15 Notices and Communications**

- 2.15.1** The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that the Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- 2.15.2** The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that Company may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.
- 2.15.3** Except as otherwise stated in this tariff, all notices or other communications required to be given pursuant to this tariff will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following placement of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
- 2.15.4** The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)****2.16 Taxes, Fees and Surcharges**

The Company reserves the right to bill any and all applicable taxes, fees and surcharges in addition to normal rates and charges for services provided to the Customer. Taxes and fees include, but are not limited to: Federal Excise Tax, State Sales Tax, Municipal Tax, and Gross Receipts Tax. Unless otherwise specified in this tariff, such taxes, fees and surcharges are in addition to rates as quoted in this tariff and will be itemized separately on Customer invoices.

**2.16.1 E911 Service Surcharge**

All Customers will be assessed a per line surcharge to support local E911 Service Program. The E911 Surcharge will be based on a monthly snapshot of lines associated with each Customer's account. No fractional debits or credits will be given. This surcharge will appear as a separate line item on the Customer's bill. The amount of the surcharge will be equal to the per line assessment paid by the Company as determined by local jurisdictional assessments rounded up to the nearest whole cent, and may vary from time to time as required by South Dakota law, Commission rules or local jurisdiction requirements.

**2.16.2 South Dakota Telecommunications Relay Service Surcharge**

All Customers will be assessed a per line surcharge to support the South Dakota Telecommunications Relay Service ("SDTRS") program. The SDTRS Surcharge will be based on a monthly snapshot of lines associated with each Customer's account. No fractional debits or credits will be given. This surcharge will appear as a separate line item on the Customer's bill. The amount of the surcharge will be equal to the per line assessment paid by the Company as determined by South Dakota law or Commission rules rounded up to the nearest whole cent, and may vary from time to time as required by South Dakota law or Commission rules.

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**SECTION 2.0 - REGULATIONS, (CONT'D.)**

**2.17 Miscellaneous Provisions**

**2.17.1 Telephone Number Changes**

Whenever any Customer's telephone number is changed after a directory is published, the Company shall intercept all calls to the former number for at least one hundred and twenty (120) days and give the calling party the new number provided existing central office equipment will permit, and the Customer so desires.

When service in an existing location is continued for a new Customer, the existing telephone number may be retained by the new Customer only if the former Customer consents in writing, and if all charges against the account are paid or assumed by the new Customer.

**2.17.2 Maintenance and Operations Records**

Records of various tests and inspections, to include non-routine corrective maintenance actions or monthly traffic analysis summaries for network administration, necessary for the purposes of the Company or to fulfill the requirements of Commission rules shall be kept on file in the office of the Company as required under Commission rules.

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## **SECTION 3.0 - SERVICE AREAS**

### **3.1 Exchange Service Areas**

Local exchange services are provided, subject to availability of facilities and equipment, in areas currently served by the following Incumbent LECs:

- 1) Qwest.

### **3.2 Local Calling Areas**

Local Calling Areas and exchanges are equivalent to those specified by Qwest in its Exchange and Network Services Tariff, Section 5.

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**SECTION 4.0 - SERVICE CHARGES AND SURCHARGES****4.1 Service Order and Change Charges**

Non-recurring charges apply to processing Service Orders for new service and for changes in service.

Primary Line Connection Charge<sup>1</sup>: Applies to requests for initial connection or establishment of telephone service with the Company.

Secondary Line Connection Charge<sup>1</sup>: Applies to installation of a second or additional access line.

Moves: Applies to Customer request for a move or change in the physical location of the access line.

Telephone Number Change: Applies to Customer request for a change of the Customer telephone number.

Service Order Changes/Adds: Applies to Customer requests for changes in service or additional to services, including the additional of calling features.

**4.1.1 Rates**

	<b>Business</b>	<b>Residential</b>
New Installation Charge, per line:	\$ 47.00	\$25.00
Change Charge for Class, Type or Grade	\$ 10.00	\$ 9.55
Trouble Isolation Charge	\$ 95.00	\$85.00
Custom Number Service	\$250.00	\$75.00

<sup>1</sup> The Primary and Secondary Line Connection Charges are waived for customers who retain their existing telephone number when switching service to Ernest.

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**SECTION 4.0 - SERVICE CHARGES AND SURCHARGES, (CONT'D.)****4.2 Premises Visit Charge**

Premises Visit charges apply when the installation of network access facilities or trouble resolution require a visit to the Customer's premises. This charge applies in addition to the Technician Dispatch Charge.

Premises Work Charge	
Initial 30 minutes	\$60.00
Add'l 15 minutes	\$30.00
 Premises Visit Charge	 \$25.00

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**SECTION 4.0 - SERVICE CHARGES AND SURCHARGES, (CONT'D.)****4.3 Public Telephone Surcharge**

In order to recover the Company's expenses to comply with the FCC's pay telephone compensation plan effective on October 7, 1997 (FCC 97-371), an undiscountable per call charge is applicable to all intrastate calls that originate from any pay telephone, not presubscribed to the Company, used to access Company provided services. This surcharge, which is in addition to standard tariffed usage charges and any applicable service charges and surcharges associated with service, applies for the use of the instrument used to access Company provided service and is unrelated to the service accessed from the pay telephone.

Pay telephones include coin-operated and coinless phones owned by local telephone companies, independent companies and interexchange carriers. The Public Pay Telephone Surcharge applies to the initial completed call and any reoriginated call (e.g., using the "#" symbol). The Public Pay Telephone Surcharge does not apply to calls placed from pay telephones at which the Customer pays for service by inserting coins during the progress of the call.

Whenever possible, the Public Pay Telephone Surcharge will appear on the same invoice containing the usage charges for the surcharged call. In cases where proper pay telephone coding digits are not transmitted to the Company prior to completion of a call, the Public Pay Telephone Surcharge may be billed on a subsequent invoice after the Company has obtained information from a carrier that the originating station is an eligible pay telephone.

Rate Per Call:

\$0.55

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## **SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES**

### **5.1 Residential Network Switched Services**

#### **5.1.1 General**

Residential Network Switched Service provides a residential customer with a connection to the Company's switching network which enables the customer to:

- A. place and receive calls from other stations on the public switched telephone network;
- B. access the Company's local calling service;
- C. access the Company's operators and business office for service related assistance; access toll-free telecommunications services such as 800 NPA; and access 911 service for emergency calling; and
- D. access the service of providers of interexchange service. A customer may presubscribe to such provider's service to originate calls on a direct dialed basis or to receive 800 service from such provider, or may access a provider on an ad hoc basis by dialing the provider's Carrier Identification Code (101XXXX).

#### **5.1.2 Service Descriptions and Rates**

The following Residential Network Switched Service Options are offered:

Residential Flat Rate Service

Residential Measured Rate Service

All Residential Network Switched Service may be connected to customer-provided terminal equipment such as station sets or facsimile machines.

Charges for Residential Network Switched Service include a nonrecurring service connection charge and a monthly recurring charge for each line. Monthly recurring charges apply to certain optional features. Per minute charges apply to Measured Rate Service, in addition to other rate elements described above.

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**SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES, (CONT'D.)****5.1 Residential Network Switched Services, (Cont'd.)****5.1.2 Service Descriptions and Rates, (Cont'd.)****A. Flat Rate Service****.1 Description**

Flat Rate Service provides the customer with a single, analog, voice-grade telephonic communications channel that can be used to place or receive one call at a time. Service to points within the local calling area is included in the charge for Flat Rate Service.

Each Flat Rate Service line corresponds to a single, analog, voice-grade channel that can be used to place or receive one call at a time. Flat Rate Service lines are provided for connection to a single, customer-provided station set or facsimile machine.

Each Flat Rate Service Line has the following characteristics:

Terminal Interface:	2-wire
Signaling Type:	Loop Start
Pulse Type:	Dual Tone Multi-Frequency (DTMF)
Directionality:	Two-way

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**SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES, (CONT'D.)****5.1 Residential Network Switched Services, (Cont'd.)****5.1.2 Service Descriptions and Rates, (Cont'd.)****A. Flat Rate Service****.2 Rates**

## Monthly Recurring Charges:

Rate Group A (1 - 1,000 lines)	\$15.05
Rate Group B	
- Base Rate Area (1 - 1,000 lines)	\$12.00
- Outside Base Rate Area (1 - 1,000 lines)	\$15.00
Rate Group C (1,001 - 5,000 lines)	\$15.75
Rate Group D	
- Base Rate Area (1,001 - 5,000 lines)	\$12.70
- Outside Base Rate Area (1,001 - 5,000 lines)	\$15.70
Rate Group E (5,001 - 20,000 lines)	\$16.55
Rate Group G (20,001 - 45,000 lines)	\$17.75
Rate Group I (45,001 - 60,000 lines)	\$18.25

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**SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES, (CONT'D.)****5.1 Residential Network Switched Services, (Cont'd.)****5.1.2 Service Descriptions and Rates, (Cont'd.)****B. Measured Rate Service**

Measured Rate Service provides the customer with a single, analog, voice-grade telephonic communications channel that can be used to place or receive one call at a time. Calls to points within the local exchange area are charged on the basis of the number of minutes during the billing period.

**.1 Description**

Each Measured Rate Service Line corresponds to a single, analog, voice-grade channel that can be used to place or receive one call at a time. Measured Rate Service lines are provided for connection to a single, customer-provided station set or facsimile machine.

Each Measured Rate Port has the following characteristics:

Terminal Interface:	2-wire
Signaling Type:	Loop Start
Pulse Type:	Dual Tone Multi-Frequency (DTMF)
Directionality:	Two-way

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**SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES, (CONT'D.)****5.1 Residential Network Switched Services, (Cont'd.)****5.1.2 Service Descriptions and Rates, (Cont'd.)****B. Measured Rate Service, (Cont'd.)****.2 Rates**

Charges for each Measured Rate Service line include a monthly recurring Base Service Charge and usage charges for completed calls originated from the customer's line based on the total number of minutes during the billing period. The monthly recurring charge includes a 180 minute call allowance per month per line

**Monthly Recurring Charges:**

- Each Service Line	\$11.05
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**Measured Usage Charges**

- Per Minute (after 180 minute allowance)	\$0.02
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**SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES, (CONT'D.)****5.2 Business Network Switched Services****5.2.1 General**

Business Network Switched Service provide a business customer with a connection to the Company's switching network which enables the customer to:

- A. receive calls from other stations on the public switched telephone network;
- B. access the Company's local calling service;
- C. access the Company's operators and business office for service related assistance; access toll-free telecommunications service such as 800 NPA; and access 911 service for emergency calling; and
- D. access the service of providers of interexchange service. A customer may presubscribe to such provider's service to originate calls on a direct dialed basis or to receive 800 service from such provider, or may access a provider on an ad hoc basis by dialing the provider's Carrier Identification Code (101XXXX).

Business Network Switched Service is provided via one or more channels terminated at the customer's premises. Each Business Network Switched Service channel corresponds to one or more analog, voice-grade telephonic communications channels that can be used to place or receive one call at a time.

**5.2.2 Service Descriptions and Rates**

The following Business Access Service Options are offered:

Basic Business Line Service  
PBX Trunks

Basic Business Line Service, and PBX trunks are offered with flat rate or measured rate local service, at the option of the customer.

All Business Network Switched Service may be connected to customer-provided terminal equipment such as station sets, key systems, PBX systems, or facsimile machines. Service may be arranged for two-way calling, inward calling only or outward calling only.

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**SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES, (CONT'D.)****5.2 Business Network Switched Services, (Cont'd.)****5.2.2 Service Descriptions and Rates, (Cont'd.)****A. Basic Business Line Service****.1 General**

Basic Business Line Service provides a customer with a one or more analog, voice-grade telephonic communications channel that can be used to place or receive one call at a time. Local calling service is available at a flat rate included in the line price, or on a measured usage basis. Basic Business Lines are provided for connection of customer-provided single-line terminal equipment such as station sets or facsimile machines.

Each Basic Business Line has the following characteristics:

Terminal Interface:	2-wire
Signaling Type:	Loop start
Pulse Types:	Dual Tone Multifrequency (DTMF)
Directionality:	Two-Way, In-Only, or Out-Only, at the option of the customer

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**SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES, (CONT'D.)****5.2 Business Network Switched Services, (Cont'd.)****5.2.2 Service Descriptions and Rates, (Cont'd.)****A. Basic Business Line Service, (Cont'd.)****.2 Flat Rate Basic Business Line Service****(a) Description**

Flat Rate Service provides the customer with a single, analog, voice-grade telephonic communications channel that can be used to place or receive one call at a time. Service to points within the local calling area is included in the charge for Flat Rate Service.

**(b) Rates**

## Monthly Recurring Charges:

Rate Group A (1 - 1,000 lines)	\$27.25
Rate Group B	
- Base Rate Area (1 - 1,000 lines)	\$23.60
- Outside Base Rate Area (1 - 1,000 lines)	\$26.60
Rate Group C (1,001 - 5,000 lines)	\$29.65
Rate Group D	
- Base Rate Area (1,001 - 5,000 lines)	\$26.00
- Outside Base Rate Area (1,001 - 5,000 lines)	\$29.00
Rate Group E (5,001 - 20,000 lines)	\$32.45
Rate Group G (20,001 - 45,000 lines)	\$36.60
Rate Group I (45,001 - 60,000 lines)	\$38.40

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**SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES, (CONT'D.)****5.2 Business Network Switched Services, (Cont'd.)****5.2.2 Service Descriptions and Rates, (Cont'd.)****A. Basic Business Line Service, (Cont'd.)****.3 Measured Rate Basic Business Line Service****(a) Description**

Calls to points within the local exchange area are charged on the basis of the number of messages and minutes originating from the customer's service in addition to a base monthly charge.

**(b) Rates**

Charges for each Measured Rate Service line include a monthly recurring Base Service Charge and usage charges for messages and minutes originated from the customer's line.

**Monthly Recurring Charges:**

- Each Service Line	\$28.65
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**Measured Usage Charges**

- Per Minute (after 180 minute allowance)	\$0.02
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**SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES, (CONT'D.)****5.2 Business Network Switched Services, (Cont'd.)****5.2.2 Service Descriptions and Rates, (Cont'd.)****B. PBX Trunk Services****.1 General**

Analog and/or digital PBX trunks are provided for connection of customer-provided PBX terminal equipment. Analog trunks are delivered on a DS0 level and digital trunks are delivered at the DS1 level. All trunks are equipped with multiline hunting.

DID service allows callers to reach the called party without going through a PBX attendant. DOD service allows end users to dial outside of a PBX system without going through the PBX attendant to get access to an outside line. Digital trunks cannot be two-way trunks, but must be ordered as with either Direct Inward Dialing (DID) or Direct Outward Dialing (DOD). For DID-configured PBX trunks, additional charges apply for DID capability and for DID Station numbers.

Automatic Identification of Outward Dialing (AIOD) provides for identification and recording of PBX station line numbers for station originated directly dialed or operator handled toll messages and for the billing of those messages by station line number through central office facilities at the serving central office. All trunks in an outgoing trunk group accessible by PBX station lines must be equipped for AIOD. DID and AIOD are not provided in the same trunk group.

Each Trunk has the following characteristics:

Terminal Interface:	2-wire or 4-wire, as required for the provision of service
Signaling Type:	Loop, Ground, E&M I, II, III
Pulse Type:	Dual Tone Multi-Frequency (DTMF)
Directionality:	In-Coming Only (DID), Out-Going Only (DOD), or Two-Way

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**SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES, (CONT'D.)**
**5.2 Business Network Switched Services, (Cont'd.)****5.2.2 Service Descriptions and Rates, (Cont'd.)****B. PBX Trunk Services, (Cont'd.)****.2 Flat Rate PBX Trunks****(a) Description**

Flat Rate PBX Trunks provide the customer with a single, analog, voice grade telephonic communications channel which can be used to place or receive one call at a time. Local calls on two-way trunks and DOD trunks are billed on a flat rate basis. DID trunks are arranged for one-way inward calling only.

**(b) Rates****Monthly Recurring Charges:****Two-Way or Outward Trunk, each**

Rate Group A (1 - 1,000 lines)	\$36.25
Rate Group B (1 - 1,000 lines)	\$32.60
Rate Group C (1,001 - 5,000 lines)	\$38.65
Rate Group D (1,001 - 5,000 lines)	\$35.00
Rate Group E (5,001 - 20,000 lines)	\$41.45
Rate Group G (20,001 - 45,000 lines)	\$45.60
Rate Group I (45,001 - 60,000 lines)	\$47.40

**Inward and Inward DID Trunk, each**

Rate Group A (1 - 1,000 lines)	\$33.90
Rate Group B (1 - 1,000 lines)	\$30.25
Rate Group C (1,001 - 5,000 lines)	\$36.05
Rate Group D (1,001 - 5,000 lines)	\$32.40
Rate Group E (5,001 - 20,000 lines)	\$38.55
Rate Group G (20,001 - 45,000 lines)	\$42.30
Rate Group I (45,001 - 60,000 lines)	\$43.95

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**SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES, (CONT'D.)****5.2 Business Network Switched Services, (Cont'd.)****5.2.2 Service Descriptions and Rates, (Cont'd.)****B. PBX Trunk Services, (Cont'd.)****.2 Flat Rate PBX Trunks, (Cont'd.)****(b) Rates, (Cont'd.)**

## Monthly Recurring Charges:

## Two-Way 4-Wire Trunk or In-only Analog

DID Trunk for Call Transfer

Rate Group A (1 - 1,000 lines)	\$77.65
Rate Group B (1 - 1,000 lines)	\$74.00
Rate Group C (1,001 - 5,000 lines)	\$77.65
Rate Group D (1,001 - 5,000 lines)	\$74.00
Rate Group E (5,001 - 20,000 lines)	\$77.65
Rate Group G (20,001 - 45,000 lines)	\$77.65
Rate Group I (45,001 - 60,000 lines)	\$77.65

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**SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES, (CONT'D.)****5.2 Business Network Switched Services, (Cont'd.)****5.2.2 Service Descriptions and Rates, (Cont'd.)****B. PBX Trunk Services, (Cont'd.)****.3 Measured Rate PBX Trunks****(a) Description**

Measured Rate PBX Trunks provide the customer with a single, analog, voice grade telephonic communications channel which can be used to place or receive one call at a time. Local calls on two-way trunks and DOD trunks are billed on a measured rate basis. DID trunks are arranged for one-way inward calling only.

**(b) Rates**

Charges for each Measured Rate Service trunk include a monthly recurring Base Service Charge and usage charges for messages and minutes originated from the customer's trunk.

**Monthly Recurring Charges:****Two-Way, Inward or Outward Trunk, each**

Rate Group A (1 - 1,000 lines)	\$28.65
Rate Group B (1 - 1,000 lines)	\$25.00
Rate Group C (1,001 - 5,000 lines)	\$28.65
Rate Group D (1,001 - 5,000 lines)	\$28.00
Rate Group E (5,001 - 20,000 lines)	\$28.65
Rate Group G (20,001 - 45,000 lines)	\$28.65
Rate Group I (45,001 - 60,000 lines)	\$28.65

**Measured Usage Charges:**

- Per Minute (after 180 minute allowance)	\$0.02
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**SECTION 5.0 – LOCAL EXCHANGE SERVICES AND RATES, (CONT'D.)****5.2 Business Network Switched Services, (Cont'd.)****5.2.2 Service Descriptions and Rates, (Cont'd.)****B. PBX Trunk Services, (Cont'd.)****.4 DID Service****Nonrecurring Charge:**

Each DID number	\$ 1.00
Each Block of 20 sequential numbers	\$ 20.00
Trunk Termination, per trunk equipped	\$ 50.00

**Monthly Recurring Charge:**

Each DID number	\$ 0.15
Each Block of 20 sequential numbers	\$ 3.00
Trunk Termination, per trunk equipped	\$35.00

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES****6.1 Custom Calling Features****6.1.1 General**

The features in this section are made available on an individual basis or as part of multiple feature packages. All features are provided subject to availability; features may not be available with all classes of service. Transmission levels may not be sufficient in all cases.

**6.1.2 Description of Features**

- A. Call Forwarding – Automatically routes incoming calls to a predetermined telephone number
- B. Call Forward No Answer – Automatically routes incoming calls to a predetermined telephone number when the called line does not answer within a pre-specified number of rings.
- C. Call Forward Busy – Automatically routes incoming calls to a predetermined telephone number when the called line is busy.
- D. Call Waiting – Signals the Customer with a burst of tone to indicate that another call is waiting. The second call can either be answered by flashing the switchhook or hanging up the phone and being rung back by the caller.
- E. 3 – Way Calling – Allows the Customer to add a third party to an existing conversation.
- F. Speed Calling 8 – Allows the Customer to dial an abbreviated code to originate a call to any of 8 programmed telephone numbers.
- G. Speed Calling 30 – Allows the Customer to dial an abbreviated code to originate a call to any of 30 programmed telephone numbers.

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES, (CONT'D.)**

**6.1 Custom Calling Features, (Cont'd.)**

**6.1.2 Description of Features, (Cont'd.)**

- H. Auto Call Back – Automatically redials the last incoming call.
- I. Repeat Dialing – Automatically redials a busy number for up to 30 minutes until line is available.
- J. Call Screening – Automatically rejects calls from a specified list of numbers or from the incoming number.
- K. Caller ID - Provides for the display of the calling party telephone number on Caller ID compatible customer premises equipment.
- L. Caller ID with Name – Provides for the display of the calling party name and telephone number on Caller ID compatible customer premises equipment.
- M. Multi Ring Service 1 – Provides the Customer with two (2) separate telephone numbers, each with a distinctive ring, associated with one line.
- N. Multi Ring Service 2 - Provides the Customer with three (3) separate telephone numbers, each with a distinctive ring, associated with one line.
- O. Caller Originating Trace – Allows the Customer to dial a Call Trace activation code to initiate a trace of the last incoming call without obtaining prior legal authorization or assistance from the Company. The results of a completed trace will be recorded in the Central Office and will be made available only to law enforcement agencies, as directed by the Customers.

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES, (CONT'D.)**
**6.1 Custom Calling Features, (Cont'd.)****6.1.3 Rates and Charges**

- A. The following features are available to Customers on a monthly basis. Customers are allowed unlimited use of each feature. No usage sensitive charges apply. Multiline Customers must order the appropriate number of features based on the number of lines which will have access to the features.

The rates and charges below are provided on a month-to-month basis.

	<b>Business</b>	<b>Residential</b>
Abbreviated Access, one digit		
Each shared list	\$20.00	N/A
Each line	\$0.50	\$0.50
Abbreviated Access, two digit		
Each shared list	\$30.00	N/A
Each line	\$0.50	\$0.50
Call Curfew	N/A	\$3.95
Call Forwarding Busy Line (expanded)	\$3.00	\$0.25
Call Forwarding Busy Line (external)	\$3.00	N/A
Call Forwarding Busy Line (overflow)	\$8.95	\$0.25
Call Forwarding Busy Line/Don't Answer (expanded)	\$5.50	\$0.80
Call Forwarding Busy Line/Don't Answer (external)	\$5.50	N/A
Call Forwarding Busy Line/Don't Answer (overflow)	\$10.45	\$0.80
Call Forwarding Busy Line (programmable)	\$8.95	\$1.85
Call Forwarding Don't Answer	\$4.00	\$0.65
Call Forwarding Don't Answer (expanded)	\$4.00	\$0.65
Call Forwarding Don't Answer (program)	\$4.50	\$2.60
Call Forwarding Variable	\$5.00	\$3.00
Call Rejection	\$4.50	\$4.50
Call Trace, per activation	\$1.55	\$1.55
Call Transfer	\$6.00	\$6.00
Call Waiting	\$7.00	\$5.50
Talking Call Waiting	\$3.95	\$2.95
Caller ID Name and Number	\$7.95	\$5.95
Caller ID – Number	\$7.50	\$5.50
Caller ID with Privacy +	\$10.95	\$9.95

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES, (CONT'D.)**
**6.1 Custom Calling Features, (Cont'd.)****6.1.3 Rates and Charges (Cont'd.)****A. (Cont'd.)**

	<b>Business</b>	<b>Residential</b>
Continuous Redial*	\$3.50	\$3.50
Dial Call Waiting	\$2.15	\$2.15
Dial Lock	\$3.95	\$3.95
Directed Call Pick Up	\$1.00	\$1.00
Directed Call Pick Up with Barge-In	\$1.00	\$1.00
Distinctive Alert	\$1.00	\$1.00
Do Not Disturb	\$3.95	\$3.95
Easy Access	\$0.98	\$0.98
Hot Line	\$2.00	\$2.00
Last Call Return*	\$4.00	\$3.95
No Solicitation	\$6.95	\$6.95
Priority Call	\$3.50	\$3.50
Remote Access to Call Forwarding	\$7.95	\$5.00
Scheduled Forwarding	\$8.95	\$6.00
Security Screen	\$2.95	\$2.95
Selective Call Forwarding	\$3.50	\$3.50
Selective Call Waiting	\$5.50	\$5.50
Speed Calling (8 Code)	\$4.00	\$2.00
Speed Calling (30 Code)	\$9.10	\$3.00
Three-Way Calling*	\$5.00	\$3.50
Wireless Extension	\$4.95	\$4.95
Remote Call Forwarding	\$16.00	\$16.00
Custom Ringing Service – one number	\$7.45	\$5.00
Custom Ringing Service – two number	\$5.25	\$2.50
Custom Ringing Service – three number	\$5.25	\$2.50
Hunting, per line	\$8.95	N/A

\*Usage charges are capped monthly at \$7.60.

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES, (CONT'D.)****6.1 Custom Calling Features, (Cont'd.)****6.1.3 Rates and Charges (Cont'd.)****B. Non-Recurring Charges**

The nonrecurring charge applies only when ordered subsequent to the initial service connection. One charge applies per service request for groups of features ordered.

	<b>Business</b>	<b>Residential</b>
Non-Recurring Charge	\$11.00*	\$6.00

\*Hot Line NRC is \$15.00 (business) and Remote Call Forwarding NRC is \$35.50 (business and residential).

- C.** The following features are available to all local exchange Customers on a per use basis. Customers may utilize each feature by dialing the appropriate access code. The Customer will be billed a per use charge each time the feature is used by the Customer. Customers may choose to subscribe to these features on a monthly basis to obtain unlimited use of these features for a fixed monthly charge.

<b>Custom Calling Feature</b>	<b>Per Use</b>
Continuous Redial	\$0.95
Last Call Return	\$0.95
Three-Way Calling	\$0.95

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES, (CONT'D.)****6.2 Directory Assistance Services**

Provides for identification of telephone directory numbers, via an operator or automated platform. Customers are provided with a maximum of 2 listings per each call to Directory Assistance. Residential and Business Customer will receive five (5) free directory assistance calls during each billing cycle.

Per Directory Assistance Call:

Local and intraLATA-

Direct dialed	\$1.25
Operator dialed local	\$4.35
Operator dialed intraLATA	\$6.75

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES, (CONT'D.)****6.3 Operator Services**

The Company's operator services, available to presubscribed Customers, are accessible on a twenty-four (24) hour per day seven (7) days per week basis. In addition to the per call service charge, usage rates apply. The types of calls handled are as follows:

Customer Dialed Calling/Credit Card Call - This charge applies in addition to usage charges for station to station calls billed to an authorized Calling Card or Commercial Credit Card. The Customer must dial the destination telephone number where the capability exists for the Customer to do so. A separate rate applies in the event operator assistance is requested for entering the Customer's card number for billing purposes.

Operator Dialed Calling/Credit Card Call - This charge applies in addition to usage charges for station to station calls billed to an authorized telephone Calling Card or Commercial Credit Card and the operator dials the destination telephone number at the request of the Customer.

Operator Station - These charges apply in addition to usage charges for non-Person-to-Person calls placed using the assistance of a Company operator and billed Collect, to a Third Party, by deposit of coins in Pay Telephones, or via some method other than a Calling Card or Commercial Credit Card.

Person-to-Person - This charge applies in addition to usage charges for calls placed with the assistance of a Company operator to a particular party at the destination number. This charge applies regardless of billing method, including but not limited to billing to a Calling Card, Commercial Credit Card, Collect, by deposit of coins in Pay Telephones, or to a Third Party. Charges do not apply unless the specified party or an acceptable substitute is available.

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES, (CONT'D.)****6.3 Operator Services, (Cont'd.)****6.3.1 Usage Charges:**

Usage charges for local operator assisted calls are those usage charges that would normally apply to the calling party's service. In addition to usage charges, an operator assistance charge applies to each call.

**6.3.2 Per Call Service Charges**

Customer Dialed Calling Card	\$0.55
Operator Assisted Station-to-Station	
- Partially Assisted	\$2.10
- Fully Assisted	\$3.10
Operator Assisted Person-to-Person	
- Partially Assisted	\$4.50
- Fully Assisted	\$5.50

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES, (CONT'D.)****6.4 Busy Line Verification and Emergency Interrupt Service**

Upon request of a calling party the Company will verify a busy condition on a designated local service line. The operator will determine if the line is clear or in use and report to the calling party. At the request of the Customer, the operator will interrupt the call on the busy line. Emergency Interruption is only permitted in cases where the calling party indicates an emergency exists, requests interruption and the call has already been verified as busy.

No charge will apply when the calling party advises that the call is to or from an official public emergency agency. Busy Verification and Interrupt Service is furnished where and to the extent that facilities permit.

The Customer shall identify and save the Company harmless against all claims that may arise from either party to the interrupted call or any person.

**6.4.1 Rates**

Busy Line Verification, per request:	\$1.25
Busy Line Interrupt, per request:	\$2.00

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES, (CONT'D.)**

**6.5 Directory Listing Service**

**6.5.1 General**

The following rates and regulations apply to standard listings in light face type in the white pages (alphabetical section) of the telephone directory and to the Directory Assistance records of the Company.

Directory listings are limited to such information as is essential to the identification of the listed party. The listing of a service, commodity, or trade name is not permitted unless it is the name, or an integral part of the name, under which the Customer does business.

A listing is limited to one line in the directory, except where in the judgement of the Company, more than one line is required to identify the Customer properly. In such cases, the additional lines required are provided at no extra charge.

Listing services are available with all classes of main telephone exchange service.

**6.5.2 Listings**

**A. Primary Listing**

One listing, termed the primary listing, is included with each exchange access line or each joint user service.

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES, (CONT'D.)**

**6.5 Directory Listing Service, (Cont'd.)**

**6.5.2 Listings, (Cont'd.)**

**B. Additional Listings**

Additional listings may be the listings of individual names of those entitle to use the customer's service or, for business, Departments, Divisions, Tradenames, etc.

In connection with business and residence service, regular additional listings are available only in the names of Authorized Users of the Customer's service.

Ordinarily, all additional listings are of the same address and telephone number as the primary listings, except as provided for joint user and alternate number listings. However, when it appears necessary as an aid to the use of the directory and provided satisfactory service can be furnished, a listing will be permitted under the address of a branch exchange.

Business additional listings are not permitted in connection with residence service. Residence additional listings are also permitted in connection with business service which is located in a residence and for permanent or season guests residing in a hotel or club.

A residence dual name additional listing is comprised of a surname, two first names, address and telephone number. A residence dual name additional listing may be provided for two persons who share the same surname and reside at the same address, or for a person known by two first names.

Special types of additional listings, such as Alternate, Alpha and Informational, Duplicate and Reference Listings, Foreign Listings, etc. take the same business or residence classification as the service with which such listings are furnished.

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES, (CONT'D.)****6.5 Directory Listing Service, (Cont'd.)****6.5.2 Listings, (Cont'd.)****C. Nonpublished Service**

The telephone numbers of nonpublished service are not listed in either the Company's alphabetical directory or Directory Assistance records available to the general public.

Non published information may be released to emergency service providers, to customers who subscribe to Company offerings which require the information to provide service and/ or bill their clients, or, to telephone customers who are billed for calls placed to or from nonpublished numbers and to entities which collect for the billed services. Nonpublished names and/or telephone numbers may also be delivered to customers on a call-by-call basis.

Incoming calls to nonpublished service will be completed by the Company only when the calling party places the call by number. The Company will adhere to this practice not withstanding any claim the calling party may present, except claims of emergencies involving life and death. In such cases, the Company will call the non-published number and request permission to make an immediate connection to the calling party.

When the Company agrees to keep a number unlisted, it does so without any obligation. Except for cases of gross negligence or willful misconduct, the Company is not liable for any damages that might arise from publishing a non-published number in the directory or disclosing it to some. If, in error, the telephone number is published in the directory, the Company's only obligation is to credit or refund any monthly charges the Customer paid for non-published service.

The Subscriber indemnifies (i.e., promises to reimburse the Company for any amount the Company must pay as a result of) and save the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by the publication of a non-published service or the disclosing of said number to any person.

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES, (CONT'D.)**

**6.5 Directory Listing Service, (Cont'd.)**

**6.5.2 Listings, (Cont'd.)**

**D. Non-listed Service**

Non-listed service means that the Customer's telephone number is not listed in the directory, but does it appear in the Company's Directory Assistance Records.

This service is subject to the rules and regulations for E911 service, where applicable.

The Company will only complete calls to a non-listed number, if requested by a caller, during the course of a directory assistance call completion service.

When the Company agrees to keep a number unlisted, it does so without any obligation. Except for cases of gross negligence or willful misconduct, the Company is not liable for any damages that might arise from publishing a non-listed number in the directory or disclosing it to some. If, in error, the telephone number is listed in the directory, the Company's only obligation is to credit or refund any monthly charges the Customer paid for non-listed service.

The subscriber indemnifies (i.e., promises to reimburse the Company for any amount the Company must pay as a result of) and save the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by the publication of a non-listed service or the disclosing of said number to any person.

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**SECTION 6.0 – SUPPLEMENTARY SERVICES AND RATES, (CONT'D.)****6.5 Directory Listing Service, (Cont'd.)****6.5.3 Rates**

	Nonrecurring	Monthly Recurring
Additional Listings		
Business	\$10.00	\$ 6.00
Residential	\$ 5.00	\$ 1.50
Non-Published Service		
Business	\$15.00	\$ 3.00
Residential	\$ 8.00	\$ 3.00
Non-Listed Service		
Business	\$10.00	\$ 2.00
Residential	\$ 8.00	\$ 2.00

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**SECTION 7.0 - LONG DISTANCE SERVICES**

**7.1 General**

Rates and regulations for the Company's Long Distance Services may be found in the Company's South Dakota Tariff No. 2.

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**SECTION 8.0 - ACCESS SERVICES**

**8.1 General**

Rates and regulations for the Company's Access Services may be found in the Company's South Dakota Tariff No. 3.

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## SECTION 9.0 - SPECIAL ARRANGEMENTS

### 9.1 Contract Service Arrangements

At the option of the Company, service may be offered on a contract basis to meet specialized requirements of the Customer not contemplated in this tariff. The terms of each contract shall be mutually agreed upon between the Customer and Company and may include discounts off of rates contained herein, waiver of recurring or nonrecurring charges, charges for specially designed and constructed services not contained in the Company's general service offerings, or other customized features. The terms of the contract may be based partially or completely on the term and volume commitment, type of originating or terminating access, mixture of services or other distinguishing features. Service shall be available to all similarly situated Customers for six months after the initial offering to the first contract Customer for any given set of terms.

Special contracts may be available for one, two, or three year terms.

Contract Service Arrangements will be filed with the Communications Division of the Commission.

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## **SECTION 10.0 - PROMOTIONAL OFFERINGS**

### **10.1 Special Promotions**

From time to time, the Company shall, at its option, promote subscription or stimulate network usage by offering to waive some or all of the nonrecurring, recurring and usage charges for the Customer (if eligible) of target services for a limited duration. Such promotions shall be made available to all similarly situated Customers in the target market area and will comply with all applicable Commission regulations. The Company will file notice of with the Commission prior to offering any promotions.

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## ATTACHMENT VII

### Customer Complaint Information

As an established provider of local and interexchange services in seven states, Ernest has had occasions where customers are unhappy with the service rendered. As a result, a brief complaint history does exist for Ernest.

*1/4/05: Service Terminated - Paid bill - not restored - NY*

*He was late on bills, failed to pay according to payment plans arranged and thus violated terms of arranged plan: In the event Universal Telecommunications fails to meet the terms of this agreement, this agreement will be considered null and void and all past due balances and applicable fees will become due immediately. Failure to comply with the terms of this agreement could also result in the immediate suspension of all lines serviced on this account. We suspended to get his attention - didn't work - so we brought the remainder of his lines down starting 12/20. Complaint was answered and customer contacted according to requirements.*

*02/25/05: FCC Official Notice of Informal Complaint: Joyce McGee - Com-Tech*

*Systems: receiving message "if you are dialing from a payphone, we are not receiving the flex-ani digits" when testing her line. Assigned to Noie - she resolved, kept in good contact with customer, I wrote a letter to the customer and to the FCC with apologies and outlined steps taken to rectify. All is well.*

*New York: 18*

*12/29/03-1 - Steve Stone - NDT past 5 days; request that dial tone be restored - I see no notes, so I am guessing that it was restored*

*12/24/03-1 - Steve Stone - NDT since 12/19 (5 days again) request that repair be expedited, as Verizon continually reports GTD - no notes - apparently restored*

*09/10/03-1 - Steve Stone - NDT 4 days - wants repaired - apparently was repaired - no notes*

*09/05/03-1 - Steve Stone - out of service for last 2 days - company does not fulfill obligation to repair - must have been repaired - no notes*

*09/04/03-1 - Steve Stone - "ernest unable to restore dial tone to payphone - would like repair expedited" - no notes - must have been repaired*

*08/29/03-1 - Steve Stone - payphone not working - would like repair expedited - no notes - must have been repaired*

*08/28/03-11 - Larry Gingsburg - Line dead for a long time - "help me get my line restored." no notes - must have been repaired (he submitted all 10, I had previously stated 11, but one was actually received on the 29th - same problem, same person)*

*08/26/03-1 - Steve Stone - out of service - wants dial tone restored - no notes must have been repaired*

## **ATTACHMENT VIII**

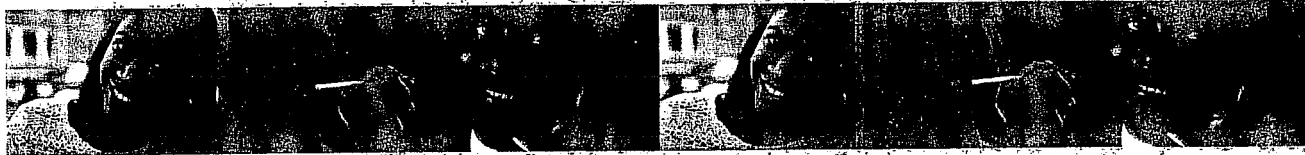
### **Sample Marketing Materials**

## Company Overview

Quality, Reliability and  
Service



A Better Kind Of Phone Company



## CORPORATE OVERVIEW

Ernest Communications Inc. (ECI) provides local dial tone and long distance services in 35 states and growing throughout the US. ECI markets include public telecommunications, hospitality, national retail and restaurant chains and financial service companies. ECI is the largest competitive local exchange carrier serving the public communications and ATM market, which includes serving as the primary local telephone company to the largest independent operator of ATM machines in the United States. ECI is also the exclusive public telecommunications service provider to one of the country's largest Independent Local Exchange Carriers.

ECI is celebrating over 20 years as one of the country's premier communications companies. ECI, following the '96 Telecom Act, was an early adopter of UNE-P (Unbundled Network Element Platform). UNE-P allows ECI the ability to provide local switched telephone service to any location for any customer within all RBOC and many ILEC footprints throughout the US.

ECI delivers the best of all worlds:

- Tremendous Savings
- Tailored Solutions
- Personalized Attention and Service
- Seamless, Hassle-Free Conversion
- World's Most Reliable Network

Few competitors, if any, have our combined strengths in the areas of management, assets, systems, financial strength and technological expertise. These elements form the foundation needed to deliver and support an innovative portfolio of products and services that can easily be bundled into a complete solution for your company.

We believe your business is ready for a change. ECI has the people and services to demonstrate we are a Better Kind Of Phone Company!

## GET THE ECI ADVANTAGE



- Debt-free and Private Company
- State-of-the-art Billing Platform
- Single Source Provider
- Dedicated Account Representatives
- Nationwide Coverage





Confidence is knowing your company is in good hands with the local phone company network and a 20-year telecommunications service provider.



## PRODUCT PORTFOLIO

ECI offers a complete suite of local and long distance services in over 30 states throughout the US. Whether you simply require local telephone service for a single location or looking to consolidate thousands of locations onto a single bill, ECI offers the savings you deserve, and the service you expect. But don't take our word for it, just ask our customers.

Get the piece of mind ECI customers already experience by working with an established 20 year-old financially stable, debt-free telecommunications company.

We invite you to ask about the ECI product that's right for you. We think you'll agree, ECI is better, we do try harder, and once you switch to ECI, we think you, too, will remain a long-term member of the ECI family

## FEATURES AND BENEFITS

Designed exclusively for the small to medium size business owners, Business EZ™ can save customers 20% - 50% or more over what you presently pay to the local phone company, and that's just the beginning!

In many cases we save customers even more on local services with advanced features. And our customers REALLY save big on our great long distance rates, as well. Customers with just a single line can often save hundreds per year. Multi-line customers can save thousands. In fact, many of our national accounts save hundreds of thousands with ECI!

## MARKET FOCUS

Ernest offers competitive pricing, volume discounts and a variety of flexible billing options with reliable, high quality, cost-effective services. ECI has built a successful telecommunication's business based on several key fundamentals, the most important of which are honesty and integrity. These fundamentals apply not only externally when working with customers, but internally as well. ECI will only offer products and services we know we can deliver flawlessly to customers, and offer only in the markets we are confident will provide the right value, features and benefits for your company.

## MARKETS WE SERVE

- Public Communications Services
- Small / Medium size Business
- National Multi-Location
- Franchise / Corporate Retail
- ATM & POS
- Hospitality
- State/National Affinity Partners
- Association Programs

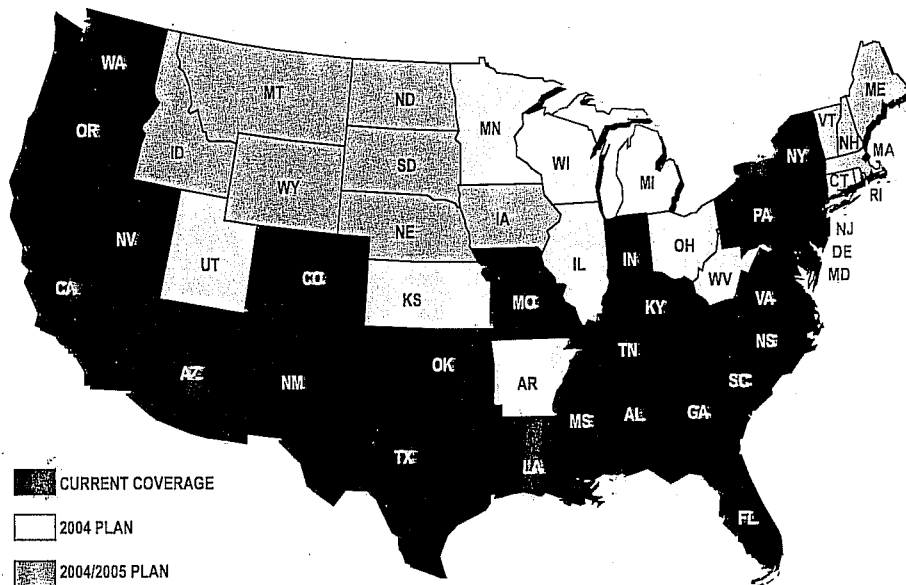
## CUSTOMER CARE

Our commitment to customer care is unparalleled. ECI believes you deserve to talk with live Customer Care Representatives, not automated systems. After all, good communications drives every business, and we understand how valuable your time is! ECI has dedicated, customer-focused, representatives always available to assist you. In fact, more than 20% of our employees are in Customer Care positions. Call us today and see for yourself. We are waiting to talk with you!





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\* Service applies to the following LECs: BellSouth, SBC, Sprint, Qwest and Verizon.  
 Some Sprint, SBC and Verizon footprints may not be included in the current coverage area.  
 Please contact your sales representative for details on current coverage areas.