

CHECK SHEET

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

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\* - indicates those pages included with this filing

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**SECTION 2 - RULES AND REGULATIONS, (CONT'D)**

**2.5 Terms and Conditions**

**2.5.1** Customers may be required to enter into written or oral 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.

**2.5.2** 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. Any termination shall not relieve Customer of its obligation to pay any charges incurred under the service order and the tariffs of the Company 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.

**2.5.3** In the event an action is brought or an attorney is retained by Company to enforce the terms the tariffs of the Company or to collect any moneys due thereunder, Company will be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, reasonable costs of investigation and other related expenses incurred in connection therewith. (T)

**2.5.4** Customer hereby agrees that any and all disputes or actions filed by Customer against Company shall be brought by Customer in its individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. There shall be no right or authority for any disputes or actions to be filed on a class action basis or in a purported representative capacity on behalf of other parties similarly situated, and Customer hereby expressly, knowingly, irrevocably, voluntarily, unequivocally and intentionally waives any such right to file same.

**2.5.5** If at any time there is a dispute between the parties regarding this tariff and performance hereunder, the parties agree that they will within ten (10) days following written notice by either party ("Meeting Notice"), engage in face-to-face negotiations in Cleveland, Ohio, or by teleconference, in an attempt to resolve the dispute ("Dispute Meeting"). The parties shall send senior executives with full and complete knowledge and settlement authority ("Settlement Representatives") to the Dispute Meeting. In the event that the Dispute Meeting does not result in a final, binding resolution of the dispute within five (5) days of such Dispute Meeting, the parties may, within five (5) days following notice by either party ("Mediation Notice"), choose a mutually agreeable third party neutral, who shall mediate the dispute between the parties. Mediation shall take place in Cleveland, Ohio within thirty (30) days of the Mediation Notice, shall be non-binding and shall be confidential. The parties shall refrain from court proceedings during the mediation process insofar as they can do so without prejudicing their legal rights. The parties shall send Settlement Representatives to the mediation and shall participate in good faith and in accordance with the recommendations of the mediator, and shall follow the procedures for mediation as suggested by the mediator and agreed upon by the parties. All expenses of mediation except expenses of the individual parties, shall be shared equally by the parties. Each party shall be represented in the mediation by a person with authority to settle the dispute. If the parties are unable to resolve the dispute in good faith within six (6) months of the date of the initial demand by either party for such fact finding shall be finally determined by the arbitration procedures set forth below. (T)

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**SECTION 2 - RULES AND REGULATIONS, (CONT'D)**

**2.5 Terms and Conditions (Cont'd)**

**2.5.6** If any part or provision of this tariff is or becomes illegal, invalid or unenforceable, that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the validity or enforceability of the remaining parts of said provision or the remaining provisions of this tariff. No waiver by either party to any provisions of this tariff shall be binding unless made in writing.

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**SECTION 2 - RULES AND REGULATIONS, (CONT'D)**

**2.8 Liability of the Customer**

**2.8.1** Subject to SDCL 49-13-1, 49-13-1.1 or any other applicable law, the Customer will be liable for damages to the facilities of the Company and for all incidental and consequential damages caused by the acts or omissions of the Customer, its officers, employees, agents, invites, or contractors. (T)

**2.8.2** Subject to SDCL 49-13-1, 49-13-1.1 or any other applicable law, to the extent caused by the acts or omissions of the Customer as described in 2.8.1, preceding, the Customer shall indemnify, defend and hold harmless the Company, its parents, subsidiaries, and affiliated individuals and entities (the "Indemnified Parties") from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees (collectively "Claims"), for (1) any loss, destruction or damage to property of any third party, and (2) any liability incurred by 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 to such third party.

**2.8.3** Subject to SDCL 49-13-1, 49-13-1.1 or any other applicable law, a Customer shall not assert any Claim against any other Customer or user of the Company's services for damages resulting in whole or in part from or arising in connection with the furnishing of service under this tariff including but not limited to mistakes, omissions, interruptions, delays, errors or other defects or misrepresentations, whether or not such other Customer or user contributed in any way to the occurrence of the damages, unless such damages were caused solely by the negligent or intentional act or omission of the other Customer or user and not by any act or omission of the Company. Nothing in this tariff is intended either to limit or to expand Customer's right to assert any Claims against third parties for damages of any nature other than those described in the preceding sentence.

**2.8.4** Subject to SDCL 49-13-1, 49-13-1.1 or any other applicable law, the Customer shall be fully liable for any damages, including, without limitation, usage charges, that the Customer may incur as a result of the unauthorized use of services provide to a Customer. Unauthorized use 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. The unauthorized use of the Company's services includes, but is not limited to, the placement of calls from the Customer's premise, and the placement of calls through equipment controlled and/or provided by the Customer, that are transmitted over the Company's network without the authorization of the Customer. The Customer shall be fully liable for all such usage charges and shall indemnify, defend and hold harmless the Indemnified Parties against all Claims relating to such.

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**SECTION 2 - RULES AND REGULATIONS, (CONT'D)**

**2.10 Billing and Payment for Service (Continued)**

**2.10.4 Disputed Charges**

- A.** In the event that a billing dispute occurs concerning any charges billed to the Customer by the Company, 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, including but not limited to the specific invoices and amounts disputed, and all reasons therefore. All claims must be submitted to the Company within (60) days of the invoice date of the bill for the disputed services. Customer waives the right to dispute any charges not disputed within such sixty (60) day period. The Company shall review Customer disputes in a reasonably timely fashion, and the Company shall resolve each dispute based on the terms of this tariff.
- B.** Customer shall pay any undisputed charges in full by the due date of the disputed invoice(s) and in any event, prior to or at the time of submitting a good faith dispute. Failure to tender payment for undisputed invoices or portions thereof is a sufficient evidence for the Company to deny a dispute due to the Customer's failure to demonstrate that the dispute was made in good faith.
- C.** If the dispute is resolved in favor of the Company and the Customer has withheld the disputed amount, any payments withheld pending resolution of the disputed amount shall be subject to the late payment penalty as set forth herein.
- D.** If the dispute is resolved in favor of the Company and the Customer has paid the disputed amount on or before the payment due date, no interest credit or penalties will apply.
- E.** In the event that the Company pursues a claim in Court or before any regulatory body arising out of a Customer's refusal to make payment pursuant to this tariff, including refusal to pay for services originating from or terminating to any End User, and the Company prevails on all or a substantial part of its claim, Customer shall be liable for the payment of the Company's reasonable attorneys' fees expended in collecting those unpaid amounts.

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**SECTION 2 - RULES AND REGULATIONS, (CONT'D)**

**2.13 Cancellation by Customer**

**2.13.1 General**

- A.** Customers of the Company's service may cancel service by providing the Company with written notification thirty (30) days prior to the requested cancellation date. The Company shall hold the Customer responsible for payment of all bills for service furnished until the cancellation date specified by the Customer or until thirty (30) days after the date that the cancellation notice is received, whichever is later. This subsection A. shall not apply to Customers who have committed to a minimum term greater than thirty (30) days. (T)  
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- B.** Customers seeking to cancel service have an affirmative obligation to block traffic originating from or terminating to the Company's network. By originating traffic from or terminating traffic to the Company's network, the Customer will have constructively ordered the Company's switched access service.

**2.13.2 Cancellation of Contract Services**

- A.** If a Customer cancels a service order or terminates services before the completion of an applicable term or where the Customer breaches the terms in the service contract, the Customer may be requested by the Company to pay to Company termination liability charges. These charges shall become due and owing as of the effective date of the cancellation or termination. Unless otherwise specified in this tariff, the termination liability shall be equal to:
- (a) all unpaid nonrecurring charges reasonably expended by the Company to establish service to Customer, plus;
  - (b) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by the Company on behalf of Customer, plus;
  - (c) all recurring charges specified in the applicable service order for the balance of the then current term.
- B.** In the event Customer fails to pay the termination liability charges set forth in subsection A. herein within thirty (30) days of invoice from the Company, said charges shall accrue interest at the rate set forth in Section 2.10.3(E).

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**SECTION 2 - RULES AND REGULATIONS, (CONT'D)**

**2.18 Customer-Provided Equipment**

**2.18.1** 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 represent that its services will be suitable for purposes other than voice-grade telephonic communication except as specifically stated in this tariff.

**2.18.2** 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 Customer. The Customer is responsible for the provision of wiring or cable to connect its terminal equipment to the Company's network.

**2.18.3** 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. Customer agrees to indemnify, defend and hold Company harmless from any and all claims to the extent they arise from Customer's violation of this Section 2.18.3. (T)  
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**2.18.4** 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 under this Section 2.18 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.

**2.18.5** 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 may, upon five (5) days written notice, require the use of additional protective equipment at the Customer's expense. If this written notice fails to remedy any protective deficiencies or potential harm, the Company may, without further notice, terminate the existing service of the Customer.

**2.18.6** If harm to the Company's network, personnel or services is imminent, the Company reserves the right to shut down Customer's service immediately, with no prior notice required and no liability to Customer.