

**TERMS & CONDITIONS  
APPLICABLE TO  
INTERSTATE AND INTERNATIONAL MESSAGE  
TELECOMMUNICATIONS SERVICE**

**FURNISHED BY**

**GTC-LD**

## **1. APPLICATION OF TERMS AND CONDITIONS**

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- 1.1 These Terms and Conditions of Service ("Terms and Conditions") apply to specialized switching services furnished by YK Communications, Inc., d/b/a GTC-LD, hereinafter referred to as "GTC-LD or Company". GTC-LD's principle address for the provision of interstate and international telecommunications services, as specified herein, is 115 W. Putnam St., P.O. Box 329, Ganado, Texas 77962. Service is furnished subject to the availability of facilities and subject to transmission, atmospheric and like conditions by wire, cable, radio and/or a combination thereof. By accepting the Company's Service, you the "Customer" agree to the terms and conditions set forth herein.
- 1.2 From time to time, the Company shall offer special promotional offerings allowing special discounts or modifications of its regular service offerings to its Customers. Such offerings may be limited to certain dates, times, and locations.
- 1.3 The Company may modify these Terms and Conditions upon advance written notice to the Customer. The most current version of these Terms and Conditions can be found on the Company's web site at [www.gtc-ld.com](http://www.gtc-ld.com), or business office at 115 W. Putnam St., Ganado, Texas 77962, between the hours of 8:00 A.M. and 5:00 P.M. Any changes to Terms and Conditions become effective on the Effective Date set forth in the written notice. By continuing to accept the Company's Service after the Effective Date, the Customer agrees to the Terms and Conditions as modified.
- 1.4 When services and facilities are provided in part by the Company and in part by other companies, these Terms and Conditions apply to that portion of the service or facilities, which it supplies.

## 2. **DEFINITIONS**

The following definitions apply for certain terms used generally throughout these Terms and Conditions:

Access Code: A sequence of numbers that, when dialed, connect the caller to the provider of operator services associated with that sequence.

Access Line: A communication channel, which is used for access to a Company service point.

Access Line Group: An access line or a number of access lines from a single Customer or authorized user location which have the same termination characteristics and which are arranged in a hunting sequence.

Accounting Code: A multi-digit code, which enables a Customer to allocate long distance charges to internal accounts.

Additional Increment: The rate element used to bill for the chargeable time when a call continues beyond the initial minute.

Aggregator: Any agent, that in the ordinary course of its operations makes telephone services available to the public or transient users on a resale basis.

Analog Transmissions: Denotes information transmitted in the form of continuously varying signal current and/or voltage.

Answer Supervision: An electrical signal transmitted by the local telephone company at the distant end of a long distance call to indicate that the call has been answered by the called party.

Application for Service: A standard order form which includes all pertinent billing, technical, and other descriptive information which will enable the carrier to provide the communication service as required.

## 2. **DEFINITIONS** (Cont'd)

Authorization Code: A multi-digit code which enables a Customer to access the Company's network and enables the Company to identify the use of proper billing.

Authorized User: A person, firm, corporation, or other legal entity, which is authorized by the Customer to be connected to the service of the Customer. An authorized user(s) must be named in the application for service.

Autodialer: A device which allows the Customer to dial pre-programmed telephone numbers, such as the Company access number or authorization codes, by pushing one or two buttons. Dialers can be bought as a separate device and added to a phone.

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

Billed Party: The person or entity responsible for payment of the Company's service as follows:

For Direct Dial Calls and other Company provided services:

- Direct dial calls are billed to the originating line number, or the party assigned the Company's authorization code used to complete the call, or the Company provided Inward 8XX calls, or other Company provided services.

Billing Period: The interval between Customer invoice to Customer invoice, which shall consist of approximately 30 days.

Business Service: The phrase "Business Service" means telecommunications service provided to the Customer for use primarily or substantially for a business, professional, institutional or other occupational purpose.

## 2. **DEFINITIONS** (Cont'd)

Calling Card Call: A call for which charges are billed, not to the originating telephone number, but to a telephone calling card issued by a local exchange or long distance telephone company for this purpose.

Cancellation of Order: A Customer initiated request to discontinue processing a service order, either in part or in its entirety, prior to its completion.

Central Office: A Local Exchange Carrier switching system where Local Exchange Carrier customer station loops are terminated for purposes of interconnection to each other and to trunks.

Channel: The path for electrical transmission between two or more points.

Commission: The Federal Communications Commission ("FCC").

Company: GTC-LD.

Connecting Carrier: A telecommunications company, which may be either an interexchange or a local exchange carrier, that supplies the Company with facilities to originate or terminate the Company's long distance services.

Customer: The Customer is the person, firm, corporation or other legal entity which: orders, cancels or amends service; is responsible for the payment of charges; and is responsible for compliance with all Terms and Conditions including any fraudulent use, misuse, or abuse of the Customer's Service or Customer provided equipment by third parties, the Customer's employees, or the public. This includes payment for calls or services that originate at the Customer's number(s), are accepted at the Customer's number(s)(e.g. collect calls), are billed to the Customer number(s) via third number billing, the use of a calling or travel card, or the use of an assigned special billing number or authorization code to the Customer.

Customer-Provided Facilities: All facilities, including those obtained from other communications common carriers, provided by the Customer and/or authorized user, other than those provided by the Company.

## 2. **DEFINITIONS** (Cont'd)

**DISA:** (Direct Inward System Access) This feature of a PBX or telephone system allows the outside caller to dial directly into the telephone system and access the system's features. A Customer would typically use this feature for making long distance calls away from the office using their less expensive business long distance lines.

**Dedicated Access Service:** The generic term for a service in which the Customer's traffic passes over an access line connecting the Customer's premise to a Company switch, which is used solely for that Customer's traffic.

**Designated Service Date:** Denotes the Customer specified installation date requested at the time the order for service is initiated. If the Company finds it cannot provide service by that date, the designated service date becomes that date specified by the Company on which the installation of service can be performed.

**Designated Service Point:** The customer designated service point may be a Customer or authorized user premise or a local exchange company central office or Centrex station.

**Disconnection:** The disconnection of a circuit, dedicated access line or port connection being used for existing service.

**Domestic Interstate Message Telecommunications Service:** The term "Domestic Interstate Message Telecommunications Service" denotes the furnishing of direct dial and operator assisted domestic interstate switched network services to the Customer for the completion of long distance voice and dial up low speed data transmissions over voice grade channel between and among points within the United States.

**End User:** An individual or entity designated by the consumer to be responsible for the payment of calls placed using the Company's services.

**Equal Access Office:** Switch operated by the Company equipped with the hardware and software required to allow the Customers to presubscribe to the interexchange carrier of their choice.

**Equal Access Code:** An access code that allows the consumer to obtain an equal access connection to the carrier associated with that code.

## 2. **DEFINITIONS** (Cont'd)

Excessive Call Attempt: An attempt to make a call over the Company's network using an invalid authorization code during a measured 15 minute period within which 10 or more incomplete call attempts are made from the same access line, and where those attempts do not complete because an invalid authorization code(s) was used.

FCC: Federal Communications Commission.

Foreign Exchange Service: Foreign exchange service provides subscribers with the capability of local dialing in a remote exchange via private line services.

Hertz: Is a unit of frequency equal to one cycle per second.

Holiday: One of the following Federally recognized Holidays: Independence Day, Memorial Day, Labor Day, Thanksgiving Day, Christmas Day, New Year's Day.

Initial Minute: The rate element used to bill for the first chargeable minute, or fraction thereof, of a call.

International Message Telecommunications Service: The term "International Message Telecommunications Service" ("IMTS") denotes the furnishing of station-to-station direct dial International switched network services to the Customer for the completion of long distance voice and dial up low speed data transmissions over voice grade channel from the Company Points of Presence to points in other countries as specified herein.

Line Haul Mileage: Denotes mileage distance between the Company Terminal Office sites.

Local Access Line or Local Distribution Channel: The facility consisting of the necessary equipment and local telephone company lines which are required to interconnect the Customer's or authorized user's premises to a company service point within the same local exchange area or extended service area.

Local Access Transport Area (LATA): A geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes.

Local Calling Area: Denotes a geographic area in which a local exchange company end user may complete a call without incurring long distance charges.

## 2. **DEFINITIONS** (Cont'd)

**Local Exchange Area**: The term "Local Exchange Area" denotes a unit established by the company for the administration of communications services in a specified area which usually embraces a city, town, or village and its environs. Specific definitions of the Company local exchange areas are available upon request.

**Local Exchange Carrier (LEC)**: The term "Local Exchange Carrier" denotes any telephone company that has been granted a certificate of Public Convenience and Necessity by a State Commission which provides local telephone service to Customers within a defined exchange.

**Local Time**: The time observed, standard or daylight savings, at the rate center associated with the originating point of the call.

**Measured Charge**: A charge assessed on a per minute basis in calculating a portion of the charges due for a completed Direct Dial Call or Calling Card call.

**Measured Service**: The provision of interstate long distance measured time communications telephone service to Customers who access the Company's service at its switching and call processing equipment by means of access facilities obtained from a local exchange carrier. The Company is responsible for arranging for the access line.

**Mileage Rate Band**: Mileage interval used to establish rates for the Company services.

**Minimum Average Time Requirements (MATR)**: A generic term indicating a specified period of time, used in the determination of usage charges, which represents the minimum average duration of calls completed during a billing period.

**Modem**: A device that modulates and/or demodulates signals for proper transmission via dedicated or switched facilities.

**Multiple Channel Service**: Is a service offering whereby a Customer may order more than one leased channel where the line haul mileage of the channels falls within the same mileage rate band.

**Normal Business Hours**: Normal business hours are represented by the period between 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding holidays.

## 2. **DEFINITIONS** (Cont'd)

Other Common Carrier: The term "Other Common Carrier" denotes a common carrier, other than The Company, providing domestic or international communications service to the public.

Points of Presence: The term "Points of Presence" denotes the sites where the Company provides a network interface with facilities provided by Other Common Carriers, Local Exchange Carriers or Customers for access to the network.

Premises: All buildings occupied by the Customer and/or his authorized user on a contiguous property (except railroad right of way, etc.) not intersected by a public road.

Responsible Organization (Resp. Org.): The carrier entity that has responsibility for the management of 8XX numbers in the Service Management System (SMS) including maintaining Customer records in the SMS system. Also, the entity which accesses the SMS to: a) search for and reserve 8XX numbers; b) create and maintain 8XX number Customer records, including call processing records; and c) provide a single point of contact for trouble reporting. The SMS recognizes one Resp. Org. for each 8XX number.

Service: Service means any or all service(s) provided pursuant to these Terms and Conditions.

Service Control Point (SCP): The real-time data base system in the service network that contains instructions on how Customers wish their calls to be routed, terminated or otherwise processed.

## 2. **DEFINITIONS** (Cont'd)

**Service Points:** Those cities from which the Company makes its services available to its Customers.

**Special Access Line (SAL):** A dedicated Analog, Digital or High Capacity Access Line(s) directly connecting Customer's telephone equipment to the Long Distance Provider without using the Local Exchange Carrier's switching equipment.

**Special Promotional Offering:** Special discounts or modifications of the Company's regular service offerings which may, from time to time, be offered to its Customers for a particular service. Such offerings may be limited to certain dates, times, and locations.

**Special Services:** Denotes service provided and performed by the Company involving special engineering, design, programming, development or production activities to provide services requested by a Customer to meet special needs not otherwise provided under these Terms and Conditions.

**Station:** Any location from which a message can be originated or received.

**Station-to-Station Call:** A call placed to a telephone number, with the understanding that the caller will speak to any person who answers the called number.

**Subscription Agreement:** A standard form which includes all pertinent billing, technical, and other descriptive information which will enable the Company to provide the long distance service required.

**Switch:** A local telephone company switching system where telephone exchange service customer station loops are terminated for purposes of interconnection to each other and to trunks through electronic services which are used to provide circuit routing and control.

**Switched Access Service:** Provides the ability to originate and terminate calls between two end user's premises over facilities of the telephone company.

**Telecommunications:** The transmission of voice communications or, subject to the transmission capabilities of the service, the transmission capabilities of the service, the transmission of data, facsimile, signaling, metering, or any other form of intelligence over dedicated or switched facilities.

**Terminal Equipment:** Devices, apparatus, and their associated wiring such as teleprinters, telephone hand sets, or data sets used for origination or termination of telecommunications services.

## 2. **DEFINITIONS** (Cont'd)

Vertical Features: Services such as call validation, "Plain Old Telephone Service" (POTS) number translation, and provision of statistical information on the Customer's 8XX traffic, which may be obtained by the Company from local exchange company access tariffs on behalf of 8XX Service Customer for which the Company serves as Resp. Org.

Voice-Grade Channel: Denotes a communications channel with a nominal bandwidth of 4,000 hertz.

Weekday: One of the normal business days of the week, Monday through Friday, excluding Holidays and Weekend periods.

Weekend: The period from 11 p.m. Friday to, but not including 8 a.m. Monday.

### **3. GENERAL RULES AND REGULATIONS**

#### **3.1 UNDERTAKING OF THE COMPANY**

##### **3.1.1 General**

3.1.1.1 The services furnished herein are for the transmission and reception of voice, data and other types of communications. Services provided pursuant to these Terms and Conditions may be utilized only for the transmission of communications by Customers consistent with the terms of these Terms and Conditions, and the rules and regulations of the Federal Communications Commission.

3.1.1.2 The Company reserves the right to interconnect its services with those of any Other Common Carrier, Local Exchange Carrier, or alternate access provider of its election, and to utilize such services concurrently with its own facilities for the provision of services offered herein.

3.1.1.3 Subject to unavoidable network interruptions, the Company shall endeavor to provide services and facilities 24 hours a day, 7 days a week.

##### **3.1.2 Availability**

3.1.2.1 Service is offered subject to the availability of the necessary facilities and/or equipment of the Company and/or the Local Exchange Carrier serving the Customer. The Company reserves the right to provide services to and from locations where the necessary facilities and/or equipment are available.

3.1.2.2 The Company reserves the right to suspend service or delay service installation until sufficient network facilities are available to meet the anticipated traffic demand, or terminate a service request with a full refund of any charges billed to the Customer if satisfactory arrangements cannot be concluded within what the Company determines to be a reasonable amount of time.

#### **3.2 USE OF SERVICE**

3.2.1 Customers are prohibited from and by their acceptance of service agree not to use the services furnished by the Company for any unlawful purpose or for any purpose prohibited under the provisions of any regulatory order.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.2 USE OF SERVICE (Cont'd)**

- 3.2.2 No restrictions apply on sharing or resale of services. The Customer remains liable for all obligations under these Terms and Conditions notwithstanding such sharing or resale and regardless of the Company's knowledge of same.
- 3.2.3 Use of the services herein in a manner that could interfere with the services provided to other Customers, harm the facilities of the Company or others is prohibited.
- 3.2.4 In the event that the Company determines, based upon its sole judgment, that there is fraudulent use of either the services furnished by the Company or the Company's network, the Company will without liability to the Customer discontinue service and/or seek legal recourse to recover from the Customer all costs involved in enforcement of this provision.
  - 3.2.4.1 Service may be discontinued by the Company, without notice to the Customer, by blocking traffic to or from certain cities, or NXX exchanges, or by blocking calls using certain Customer authorization codes, such as calling card codes, which the Company deems, in its sole judgment, is necessary to take such action to prevent unlawful use of its services. The Company will restore service as soon as it can be provided without undue risk.
  - 3.2.4.2 Without incurring any liability, the Company may discontinue the furnishing of service(s) to a Customer immediately and without notice if the Company deems, in its sole judgment, that such action is necessary to prevent or protect against fraud or to otherwise protect its personnel, agents, facilities or services.
- 3.2.5 The Company may, but is not required to, advise the Customer of abnormal calling patterns or other possible unauthorized use of facilities or calling cards assigned to the Customer. Additionally, the Company may, but is not required to, block calls on authorization codes which the Company believes to be unauthorized or fraudulent.
- 3.2.6 If a Customer utilizes a dedicated access line between the Customer's premises and the Company's service office for the origination or termination of calls, the Customer is responsible for payment of all charges for usage over that access line, including any usage which may be fraudulent or unauthorized.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.2 USE OF SERVICE (Cont'd)**

3.2.7 The use and restoration of service shall be in accordance with Part 64, Subpart D of the Federal Communications Commission's Rules.

3.2.8 With the use of the Company authorization codes, the Customer agrees to pay the Company all charges incurred as a result of any delegation of authority whether authorized or unauthorized resulting in the use of its Company authorization codes.

#### **3.3 OBLIGATIONS OF THE COMPANY**

##### **3.3.1 Liability**

Except as provided in this Section, the Company's sole liability for any claim, loss, expense or damages of any kind, whether direct, indirect, special or consequential, arising from, or in any way attributable to, acts or omissions of the Company relating to the installation, provision, termination, maintenance, repair, restoration, or billing of any service, feature or option available under these Terms and Conditions shall not exceed an amount equal to the monthly recurring charge to the Customer for one (1) month, if any, or as otherwise set forth in the outage credit provisions of these Terms and Conditions provided, however, that:

3.3.1.1 The Company's liability for its willful misconduct is not limited by these Terms and Conditions.

3.3.1.2 The Company is not liable for any failure of facilities or performance of services due to causes beyond its control, including, not limited to, civil disorder, fire, flood, storm or other natural or man-made disasters or elements, labor problems or regulations issued by or action taken by any government agency having jurisdiction over the Company or its services or equipment.

3.3.1.3 The Company shall have no liability to any person or entity other than its Customer.

**3. GENERAL RULES AND REGULATIONS (Cont'd)**

**3.3 OBLIGATIONS OF THE COMPANY (Cont'd)**

3.3.1 Liability (Cont'd)

3.3.1.4 The Company shall not be liable for, and shall be fully indemnified and held harmless by the Customer against the following:

3.3.1.4.1 Any claim, loss, expense or damage (including, but not limited to, reasonable attorney's fees and expenses) for engaging in a criminal enterprise defamation, liable, slander, invasion of privacy, infringement of copyright or patent, arising from, or in connection with, the material, data, information, or other content transmitted over the services or facilities furnished by the Company.

3.3.1.4.2 Any claim, loss, expense or damage (including, but not limited to reasonable attorney's fees and expenses) for any act or omission of the Customer or its agents and contractors, or due to the failure of Customer-provided equipment, facilities, systems or services.

3.3.1.4.3 Any claim, loss, expense or damage (including, but not limited to, reasonable attorney's fees and expenses) for personal injury or death of any person caused directly or indirectly by the installation, maintenance, location, condition, operation, failure, presence, use or removal of equipment or wiring provided by the Company, if not caused by negligence of the Company.

3.3.1.4.4 Any use by the Customer of the Company's products or services which use has been restricted or limited by action of a government agency having jurisdiction over the Customer, the Company or its products or services.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.3 OBLIGATIONS OF THE COMPANY (Cont'd)**

##### **3.3.1 Liability (Cont'd)**

- 3.3.1.5 All or a portion of the service provided pursuant to these Terms and Conditions may be provided over facilities of third parties, and the Company shall not be liable to the Customer or any other person, firm or entity in any respect whatsoever arising out of errors or defects caused by such third parties.
- 3.3.1.6 Where any claim arises out of the Company's acting as a Resp. Org. or where the Company's Services are not made available on the date committed to the Customer, or cannot otherwise be made available after the Company's acceptance of the Customer's order, or is provided with a number(s) other than the one(s) committed by the Company to the Customer, or the number(s) is not included in the Directory Assistance or is included in an incorrect form, or Vertical Features are not obtained or are obtained in error, and any such failure(s) is due solely to the negligence of the Company, in such case the Company's liability, if any, is limited to the lesser of the actual monetary damages incurred and proved by the Customer as the direct result of such failure(s), or the sum of \$1,000.00.
- 3.3.1.7 The Company shall not be liable for the use, misuse or abuse of a Customer's service by third parties, including, without limitation, the Customer's employees or members of the public who dial the Customer's telephone number in error. Compensation for any injury the Customer may suffer due to the fault of others must be sought from such other parties.
- 3.3.1.8 Notwithstanding Section 3.3.1.5, in the event that the Company causes the misrouting of calls, the Company's sole liability shall be to provide a credit equal to the charges for the affected calls.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.3 OBLIGATIONS OF THE COMPANY (Cont'd)**

##### **3.3.1 Liability (Cont'd)**

- 3.3.1.9 The Company reserves the right to immediately suspend or cancel without advance written notice and without any liability whatsoever, the provision of any service(s) to any Customer if the Company determines in its sole discretion that the Customer is using the service(s) to make or permit any telephone facility under such Customer's control to be used for any purpose or activity, including, but not limited to, any obscene, indecent or harassing purpose or activity, prohibited by Section 223 of the Communications Act of 1934, as amended, and 8XX calls placed with the intent of gaining access to a Customer's outbound calling services without authorization from the Customer.
- 3.3.1.10 The Company is not liable for any damages, including toll usage charges, the Customer may incur as a result of the unauthorized use of its telephone facilities. This unauthorized use of the Customer's facilities includes, but is not limited to, the placement of calls from the Customer-provided equipment which are transmitted or carried on the Company network or the network over which its traffic is carried. The Company's Customer Service agents may work with Customers to recommend possible solutions to reduce unauthorized use of their facilities. However, the Company does not warrant or guarantee that its recommendations will prevent all unauthorized use, and the Customer is responsible for controlling access to, and use of, its own telephone facilities.
- 3.3.1.11 The Company is not liable for any damage to Customer's premises or equipment arising out of the connection of any of Company equipment associated wiring on such premises, or from the installation or removal thereof except to the extent that such damage results from the Company's negligence or willful misconduct. The Customer will indemnify and save and hold the Company harmless from any claims of the owner of the Customer's premises or equipment, or other third party claims for such damages.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.4 OBLIGATIONS OF THE CUSTOMER**

- 3.4.1 The Customer shall be responsible for damages to the Company's facilities or that of its network providers caused by the act or omission of the Customer, its authorized users, officers, directors, employees, agents, contractors, licensees or invitees or any person or entity who gains access to the service at the Customer through the negligence of the Customer.
- 3.4.2 The Customer shall provide access to the Customer's or authorized user's premises by the Company personnel for inspection, repair and/or removal of any facilities or equipment of the Company on an unrestricted basis, 24 hours a day, 7 days a week.
- 3.4.3 The Customer will guarantee the performance by his authorized user(s) of all provisions of and obligations under these Terms and Conditions. The Customer will be liable for the acts or omissions of its authorized user(s) relative to the compliance with the provision of these Terms and Conditions.
- 3.4.4 The Customer may not assign or transfer to a third party, whether by operation of law or otherwise, the right to use the services provided under these Terms and Conditions, provided however, that where there is not interruption of use or relocation of the services, such assignment or transfer may be made to the following:
- 3.4.4.1 Another Customer of the Company, provided that the assignee or transferee assumes all accrued and unpaid obligations of the transferring Customer including, but not limited to, all indebtedness for such services, and the unexpired portion of the minimum period and the termination liability applicable to such services if any; or
- 3.4.4.2 A court-appointed receiver, trustee or other person acting pursuant to the laws of bankruptcy, receivership, reorganization, insolvency, liquidation or other similar proceedings, provided that the assignee or transferee assumes all accrued and unpaid obligations of the transferring Customer, including but not limited to, all indebtedness for such services, and the unexpired portion of the minimum period and the termination liability applicable to such services, if any.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.4 OBLIGATIONS OF THE CUSTOMER (Cont'd)**

##### 3.4.4 (Cont'd)

3.4.4.3 If the Customer wishes to assign or transfer the right to use services provided under these Terms and Conditions, written consent of the Company is required prior to such assignment or transfer which consent may be granted or withheld in the sole discretion of the Company. All regulations and conditions contained in these Terms and Conditions shall apply to such assignee or transferee.

3.4.4.4 The assignment or transfer of services does not relieve or discharge the assignor or transferor from remaining jointly and severally liable with the assignee or transferee for any obligations existing at the time of the assignment or transfer.

3.4.5 The Customer of the Company's 1+, calling card, and/or Inbound Service is responsible for payment for all calls placed:

- via the Customer's local telephone service number(s);
- via dedicated access lines to the Company facilities and/or network;
- via the Customer's 8XX Service number(s) either intentionally or mistakenly placed;
- originated at the Customer's number(s);
- accepted at the Customer's number(s) (e.g. collect calls); and
- billed to the Customer's number(s) via third number billing.

This responsibility is not changed by virtue of any use, misuse, or abuse of the Customer's service, Customer-provided systems, equipment, facilities, services interconnected to the Customer's local telephone service, dedicated lines or inbound service; which use, misuse or abuse may be occasioned by third parties, including, without limitation, the Customer's employees and members of the public.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.4 OBLIGATIONS OF THE CUSTOMER (Cont'd)**

3.4.6 The Customer must obtain an adequate number of access lines for service to handle its expected demand in order to prevent interference or impairment of the service or any other service provided by the Company. The Company will have the right to determine such adequacy giving due consideration to (1) the total call volume; (2) average call duration; (3) time-of-day characteristics; and (4) peak calling period.

The Company, without incurring any liability, may disconnect or refuse to furnish Service to any Customer that fails to obtain an adequate number of lines. In the case of disconnection, the Customer will be notified in writing in advance of the termination of service.

3.4.7 Any mistakes, accidents, omissions, interruptions, delays, errors or defects in transmission or service which are caused or contributed to, directly or indirectly, by an act or omission of the Customer, by others, through the use of Customer-provided facilities or equipment, or through the use of facilities or equipment furnished by any other person using the Customer's facilities shall not result in the imposition of any liability upon the Company. The Customer shall pay to the Company any reasonable costs, expenses, damages, fees or penalties incurred by the Company as a result thereof, including the costs of any local exchange company labor and materials. The Company shall be indemnified, defended and held harmless by the Customer against any and all claims, demands, causes of action and liability relating to services provided pursuant to this agreement, including payment to the Company associated with reasonable attorney's fees.

#### **3.5 MISCELLANEOUS PROVISIONS**

3.5.1 Notice. Written notice to the Customer is sent to the Customer's last known address in the Company's invoicing records. Notice shall be deemed given three (3) days after postmarked.

3.5.2 Waiver of Trial by Jury. The Customer and the Company waive their respective rights to a trial by jury of any and all claims or causes of action (including counterclaims) related to or arising out of these Terms and Conditions brought by either party against the other. Any claim or cause of action will be tried by a court trial without a jury. The waiver applies to the Terms and Conditions as amended or modified.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.5 MISCELLANEOUS PROVISIONS (Cont'd)**

- 3.5.3 Choice of Law; jurisdiction. These Terms and Conditions are covered by and construed under the laws of the State of New Mexico and State of Texas without regard to choice of law principles.
- 3.5.4 Waiver of Class Actions. All claims between the Customer and the Company related to these Terms and Conditions will be litigated individually and the Customer may not consolidate or seek class treatment for any claim, unless previously agreed to in writing by the Customer and the Company. This waiver applies to these Terms and Conditions as amended or modified, and survives termination of service under these Terms and Conditions.
- 3.5.5 Severability. If any part of these Terms and Conditions is held invalid or unenforceable, the rest of these Terms and Conditions shall remain in full force and effect unless the Company's obligations hereunder are materially impaired.
- 3.5.6 Waiver. If either the Customer or the Company does not enforce any right or remedy available under these Terms and Conditions, that failure is not a waiver of the right or remedy for any other breach or failure by the other party. The Company's waiver of any requirement in any one instance is not a general waiver of that requirement and does not amend these Terms and Conditions.
- 3.5.7 Headings. Section headings are for descriptive purposes only and are not used to interpret these Terms and Conditions.
- 3.5.8 Entire Terms and Conditions. These Terms and Conditions (including any referenced documents and attachments) make up the entire terms and conditions between the Customer and the Company, and replace all prior written or spoken terms and conditions, representations, promises or understandings between the Customer and the Company.
- 3.5.9 Assignment
- 3.5.9.1 The Customer shall not assign or transfer the use of the Company's services except that, where there is no interruption or relocation of use, such assignment or transfer may be made to an assignee Customer, whether an individual, partnership, association or corporation, if the Company consents in writing to such assignment and provided that:

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.5 MISCELLANEOUS PROVISIONS (Cont'd)**

##### 3.5.9 Assignment (Cont'd)

###### 3.5.9.1 (Cont'd)

3.5.9.1.1 Customer of record (assignor Customer) requests such assignment or transfer in writing in accordance with paragraph 3.5.9.1.2 below; and

3.5.9.1.2 The new Customer (assignee Customer) notifies the Company in writing that the assignee agrees to assume all outstanding obligations of the former Customer for use of the Company's services. These obligations include all outstanding indebtedness for the use of the Company's service.

Consent to such assignment or transfer will not be unreasonably withheld.

3.5.9.2 Any permitted assignment or transfer of the Company's service shall not relieve or discharge any Customer from remaining jointly and severally liable with the new Customer for any obligations existing at the time of transfer or assignment.

3.5.9.3 The Customer shall provide written notice to the Company at least forty-five (45) days prior to the effective date of any requested assignment or transfer. The Company agrees to respond to a request to assign or transfer to another Customer within thirty (30) days of receipt of notification. All terms and provisions contained in these Terms and Conditions shall apply to any assignee or transferee.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.6 PAYMENT REGULATIONS**

- 3.6.1 Service shall be provided and billed for on a monthly basis. Payment is to be made to the address designated on the invoice or such other location as the Company may direct in writing from time to time. In addition to the charges for the Company's services, the Customer shall pay any applicable federal, state or local use, excise, sales or privileges taxes resulting from the services furnished by the Company. Such taxes shall not be counted toward the attainment of any volume or revenue commitment and will not be discounted.
- 3.6.2 The Customer is responsible for payment of all charges for service(s) furnished by the Company. This includes payment for calls or services (a) originated at the Customer's number(s) whether authorized or not; (b) accepted at the Customer's number(s) (e.g. 8XX Service and collect calls); (c) billed to the Customer's number via third number billing, a calling card, a Company-assigned authorization code, travel card number, or other special billing number; and/or (d) incurred at the specific request of the Customer.
- 3.6.3 A Customer is responsible for payment for all calls placed to or via the Customer's telephone number(s). This responsibility is not changed by virtue of any use, misuse, or abuse of the customer's service or Customer-provided systems, equipment, facilities or services interconnected to the Customer's 8XX Service, which use, misuse or abuse may be occasioned by third parties, including, without limitation, the Customer's employees and members of the public who dial the Customer's 8XX number by mistake.
- 3.6.4 If notice of a dispute with respect to charge is not received, in writing, within 30 days after an invoice is rendered, such invoice shall be deemed to be correct and binding upon the Customer. In instances of a dispute, the Customer is required to pay the undisputed portion of the bill in its entirety. Accounts not paid within 25 days from the billing date stated on the bill will be considered delinquent. Delinquent payments may result in the imposition of a late fee that shall be imposed at the rate of 1.5% of the unpaid balance per month or the maximum allowable rate under applicable state law. In the event that a Customer's check or bank draft is dishonored/returned, a fee is applicable pursuant to 3.6.13, following. When contracting with a local exchange company to be the billing entity, the tariffs of that company apply.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.6 PAYMENT REGULATIONS (Cont'd)**

3.6.5 If a Customer accumulates more than \$500 of undisputed delinquent charges, the Company's Resp. Org. reserves the right not to honor that Customer's request for a Resp. Org. change and the Company reserves the right not to honor that Customer's request for a carrier change until such undisputed charges are paid in full.

#### 3.6.6 Authorization to Obtain Credit Information

The Company reserves the right to require all Customers to establish credit worthiness to the reasonable satisfaction of the Company. Upon application for service, the Customer shall be deemed to have authorized the Company to obtain such routine credit information and verification as the Company shall require in accordance with its then existing credit policies.

#### 3.6.7 Deposit

Prior to service activation or any permitted assignment, the Company reserves the right to require any Customer whose credit worthiness has not been established to the reasonable satisfaction of the Company to make a deposit to guarantee payment of charges. After service activation, if the Customer's recurring charges are usage sensitive and the Customer's actual monthly usage exceeds the Customer's estimated monthly usage by more than 25% a deposit or additional deposit may be required.

3.6.7.1 The total amount of any security deposit, if required by the Company, shall be a maximum of the Customer's estimated charges for three (3) months' service. Deposits may be applied against any bill(s) owed by the Customer to the Company for service rendered hereunder and the Company provided special/unscheduled service and installation of service, to the extent that such bill(s) are unpaid more than twenty-five (25) days after the billing date stated on the bill(s).

3.6.7.2 In the case of a cash deposit, interest will be paid for the period during which the Company holds the deposit. The interest rate paid on deposits will be the rate determined by the state with jurisdiction for telephone service deposits. If the Company, in its sole discretion, determines that the Customer is not capable of satisfying its payment obligations, services may be canceled by the Company upon written notice.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.6 PAYMENT REGULATIONS (Cont'd)**

##### 3.6.7 Deposit (Cont'd)

- 3.6.7.3 A deposit will be returned by the Company under the following circumstances:

When an application for service has been canceled prior to service activation, the deposit will be applied to any existing charges incurred in accordance with the provisions of these Terms and Conditions. The Company agrees to refund the excess portion of the deposit, if any, within thirty (30) days following settlement of the Customer's account.

Upon cancellation or discontinuance of service, the Company will refund the Customer's deposit to the extent that it exceeds any unpaid charges for installation and service to the Customer.

- 3.6.7.4 At the Company's option, such deposit may be refunded or credited to the Customer at, or any time prior to, termination of service. The Customer may elect to apply the deposit to future invoices or receive a payment of the deposit amount. However, if any balance is outstanding on the Customer's account at the time of cancellation, the Company reserves the right to apply the Customer's deposit and accumulated interest against the Customer's unpaid balance.

- 3.6.7.5 The refunding or crediting of the Customer's deposit and accrued interest in no way relieves the Customer from complying with all terms and provisions contained in these Terms and Conditions or from tendering payments when due.

- 3.6.8 In the event the Company incurs fees or expenses, including attorney's fees, court costs, costs of investigation and related expenses in collecting, or attempting to collect, any charges owed to the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

- 3.6.9 In the event that a Customer's check or draft is dishonored/returned, a fee is applicable pursuant to 3.6.13. The fee will be assessed when a check or instrument issued by a Customer is returned without payment for any reason whatsoever, unless the return is a bank error, in which case documentary evidence is required to waive the fee.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.6 PAYMENT REGULATIONS (Cont'd)**

3.6.10 All stated charges in these Terms and Conditions are computed by the Company exclusive of any federal, state, or local use, excise, gross receipts, sales, or privilege taxes, duties, fees, or similar liabilities (other than general income or property taxes). Such taxes, fees, etc. shall be paid by the Customer in addition to the charges stated in these Terms and Conditions. All such taxes, duties and fees shall each be shown as a separate line item on the Customer's monthly invoice.

3.6.11 In cases involving toll fraud, the Company may backbill for one and one-half (1½) years from the point when such fraud was detected and/or quantified.

#### 3.6.12 Billing Disputes

In the event the Customer disputes any charges billed by the Company, the Customer may withhold from payment to the Company the disputed portion of any billing pending resolution of the dispute, provided the Customer submits to the Company an itemized statement in writing which identifies the disputed charges and reasonably explains the basis of the dispute. The Customer's explanation must be received by the Company within ten (10) days of the bill date of the disputed bill. The Company shall resolve the dispute, within thirty (30) days of receipt of determination of whether any billing adjustment should be made into the Customer's account. In making such determination the Company will consider all relevant and credible information provided by the Customer as well as any other information reasonably available to the Company. The burden of proof to establish any right to billing adjustments in the Customer's favor shall be solely upon the Customer.

In the event the Customer does not agree with the initial determination by the Company relating to amounts in dispute and adjustments, if any, which the Company may agree to make, the Customer shall so advise the Company and within ten (10) days following the Company's initial determination shall submit to the Company any additional information which the Customer deems pertinent or relevant to the dispute. Within twenty (20) days of the Company's receipt of additional information, the Company shall make its final determination based upon all documentation or information available to the Company. In the event the Company lacks credible evidence to substantiate

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.6 PAYMENT REGULATIONS (Cont'd)**

##### 3.6.12 Billing Disputes (Cont'd)

The Customer's position after a reasonable review of and consideration of such information available, the Company shall notify the Customer and, if the Company determines that all or any portion of such disputed amount is still owed, the Customer shall be required to tender payment of such amount within ten (10) days thereafter. If the Customer withholds the disputed amount thereafter, or within the time required, fails to provide supporting information in writing which sets out a legitimate basis under these Terms and Conditions for disputing any charges, the Customer's account shall be deemed to be past due and unpaid. In such event, the Company shall be entitled to deny the Customer's service immediately and/or require an additional deposit.

If the billing dispute is resolved in favor of the Company, any payments withheld pending resolution of the dispute shall be subject to a late payment fee of 1.5 percent per month for the period during which such charges remain unpaid.

##### 3.6.13 Bank Charges

In the event that a Customer's check or bank draft is dishonored/returned, a fee of \$25.00 is applicable.

#### **3.7 CREDIT ALLOWANCES**

##### 3.7.1 Interruption of Service

3.7.1.1 No credit will be allowed for relinquishing facilities in order to perform routine maintenance.

3.7.1.2 Credit for failure of service or equipment will be allowed only when such failure is caused by or occurs in facilities or equipment provided by the Company. As used in these Terms and Conditions, all equipment, facilities and/or services for which the Company renders a bill for payment are considered provided by the Company whether or not the equipment, facilities and/or services are owned and operated by the Company unless otherwise provided by the terms of these Terms and Conditions.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.7 CREDIT ALLOWANCES (Cont'd)**

##### **3.7.1 Interruption of Service (Cont'd)**

- 3.7.1.3 No credit will be allowed for failures of service or equipment due to the Customer user-provided facilities or any act or omission of the Customer, its authorized user(s), officers, directors, employees, agents, contractors, licensees or invitees or any person or entity who gains access to the service of the Customer through the negligence of the Customer.
- 3.7.1.4 Credit allowance time for failure of service or equipment starts when the Customer notifies the Company of the failure or when the Company has actual knowledge of the failure, and ceases when the service has been restored and an attempt has been made to notify the Customer.
- 3.7.1.5 The Customer shall notify the Company of failures of service or equipment and make reasonable attempts to ascertain whether the failure is caused by customer-provided equipment.
- 3.7.1.6 Only those portions of the service or equipment operation materially interfered with will be credited.

##### **3.7.2 Outage Credit**

- 3.7.2.1 No credit shall be given for an interruption of less than two (2) hours.
- 3.7.2.2 The Customer shall be credited for an interruption of 2 hours or more at the rate of 1/360th of the monthly charge for the facilities affected for each period of 2 hours or major fraction thereof that the interruption continues. (A billing period has 30 days and service is provided 24 hours a day, 7 days a week. Every month will have 720 hours.) Such a credit shall only be applied to services priced by the Company on a monthly flat rated basis.
- 3.7.2.3 Where a minimum usage charge is applicable and the Customer fails to meet a usage minimum, credit for the outage shall be applied against that minimum equal to 1/360th of the monthly minimum charges associated with the portion of service disabled for each period of 2 hours or major fraction thereof that the interruption continues. Such a credit shall only be applied to services priced by the Company on a monthly flat rated basis.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.8 EQUIPMENT**

##### **3.8.1 Customer Obligations**

3.8.1.1 The Customer shall comply with the minimum protective criteria generally accepted in the telephone industry and other appropriate criteria as may be prescribed by the Company to protect the integrity of service or for safety reasons.

3.8.1.2 The Customer shall be responsible for the installation, operation or maintenance of any Customer-provided equipment. Where such equipment is connected to service furnished pursuant to these Terms and Conditions, the responsibility of the Company shall be limited to the furnishing of services under these Terms and Conditions and to the maintenance and operation of such services in the proper manner. Subject to this responsibility, the Company shall not be responsible for the following:

- the through transmission of signals generated by Customer-provided equipment or for the quality of, or defects in, such transmission;
- the reception of signals by Customer-provided equipment; or
- network control signaling where such signaling is performed by Customer-provided network control signaling equipment.

3.8.1.3 The Customer shall:

- provide adequate space, electrical power, wiring HVAC and electrical outlets necessary for the proper operation of the Company's equipment on the Customer's or its authorized user's premises;
- be responsible for loss regardless of cause (other than directly resulting from an act or omission of the Company) to the Company's equipment on the Customer's or its authorized user's premises; and
- ensure that, except for Customer authorized and qualified personnel, no one attempts to adjust, modify, move or otherwise interfere in any way with the continuous operation of the Company's equipment located at the Customer's or authorized user's premises.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.8 EQUIPMENT (Cont'd)**

##### **3.8.2 Terminal Equipment**

- 3.8.2.1 The Company's facilities and service may be used with or terminated in Customer-provided terminal equipment or Customer-provided communications systems. Such terminal equipment shall be furnished and maintained at the expense of the Customer, except as otherwise provided in these Terms and Conditions. The Customer is responsible for all costs at his premises, including Customer personnel, wiring, Customer-owned equipment interface, electrical power, and the like, incurred in the use of the Company's service.
- 3.8.2.2 When such terminal equipment is used, the equipment shall comply with the minimum protective criteria set forth below and shall not interfere with service furnished to other Customers. Additional protective equipment, if needed, shall be employed at the Customer's expense.
- 3.8.2.3 When service(s) using voice grade facilities is/are terminated in Customer-provided terminal equipment, channel derivation devices, or communications systems, the Customer shall comply with the following minimum protective criteria:
  - 3.8.2.3.1 When the facilities furnished under these Terms and Conditions are used in common with local telephone company services, it is necessary in order to prevent excessive noise and cross talk, that the power of the signal applied to the local lines be limited. A single valued limit for all applications cannot be specified. Therefore, the power of the signal in the band over 300 hertz which may be applied by the Customer-provided equipment at the point of termination will be specified by the Company for each application, to be consistent with the signal power allowed on the telecommunications network as specified in FCC Part 68 Rules and Regulations.

### 3. GENERAL RULES AND REGULATIONS (Cont'd)

#### 3.8 EQUIPMENT (Cont'd)

##### 3.8.2 Terminal Equipment (Cont'd)

##### 3.8.2.3 (Cont'd)

3.8.2.3.2 To protect the telecommunications services from interference at frequencies which are above the band of service provided, the carrier will specify the acceptable signal power in the following bands to be applied by the customer-provided equipment or communications system at the point of termination to insure that the input to facilities of the Company or other communications company that the Company connects with does not exceed the limits indicated.

- The power in the band from 3,995 hertz to 4,000 hertz shall be at least 19 dB below the power of the signal as specified in 3.8.2.3.1 preceding.
- The power in the band from 4,000 hertz to 10,000 hertz shall not exceed 24 dB below one milliwatt.
- The power in the band from 10,000 hertz to 25,000 hertz shall not exceed 24 dB below one milliwatt.
- The power in the band from 25,000 hertz to 40,000 hertz shall not exceed 36 dB below one milliwatt.
- The power in the band above 40,000 hertz shall not exceed 50 dB below one milliwatt.

3.8.2.3.3 Where there is connection via Customer-provided terminal equipment or communications systems to a Message Telecommunications Service to prevent the interruption or disconnection of calls or interference with network control signaling, it is necessary that the equipment to the interface at no time has energy solely in the 2450 to 2740 hertz band. If signal power is in the 2450 to 2750 hertz band, it must not exceed the power present at the same time in the 800 to 2450 hertz band.

### 3. GENERAL RULES AND REGULATIONS (Cont'd)

#### 3.8 EQUIPMENT (Cont'd)

##### 3.8.2 Terminal Equipment (Cont'd)

##### 3.8.2.3 (Cont'd)

3.8.2.3.4 Where such Customer-provided equipment or communications system applies, signals having components in the frequency spectrum below 300 hertz, excluding ringing signals, the currents and voltages (including all harmonics and spurious signals) at the interface shall not exceed the limits indicated below:

- The maximum rms (root-mean-square) value, including dc and ac components of the current per conductor shall not exceed 0.35 ampere.
- The magnitude of the peak of the conductor or ground voltage shall not exceed 70 volts.
- The conductor voltage shall be such that the conductor-to-ground voltage limit preceding, is not exceeded. If the signal source is not grounded, the voltage limit preceding, applies to the conductor-to-conductor voltage.
- The total weighted rms voltage within the band from 50 hertz shall not exceed 100 volts. The total weighted rms voltage is the square root of the sum of the products times the square of the rms voltage of the individual frequency components. The weighting factors are indicated.

<u>For Frequencies Between</u>	<u>Weighting Factor</u>
50 Hertz and 100 Hertz	$f^2/10^4$
100 Hertz and 300 Hertz	$f^{3.3}/10^{6.6}$

Where f is the numerical value of the frequency, in hertz, of the frequency component being weighted.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.8 EQUIPMENT (Cont'd)**

##### **3.8.2 Terminal Equipment (Cont'd)**

##### **3.8.2.3 (Cont'd)**

3.8.2.3.5 If the Customer fails to maintain and operate his terminal equipment properly, resulting in the occurrence or possibility of harm to the Company's equipment, personnel, or the quality of service to other Customers, the Company may, upon written notice, require repair, maintenance or the use of protective equipment at the Customer's expense. If such repair, maintenance or use of protective equipment fails to produce satisfactory results, the Company may, upon written notice, terminate the Customer's service immediately.

3.8.2.3.6 The Customer shall also comply with the minimum protective criteria generally accepted in the telephone industry including Part 68 of the FCC Rules and Regulations, and other appropriate criteria as may be prescribed by the Company. The Customer shall ensure that his terminal facilities are of the proper mode, bandwidth, power, data, speed, and signal level for the intended use of the Customer, and that the signals do not damage the Company's equipment, injure personnel or degrade service to other Customers.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.9 CANCELLATION OF SERVICE**

- 3.9.1 For any of the following reasons, the Company may discontinue service upon at least 10 days' notice or cancel an application for all services without incurring any liability. Separate accounts for the same Customer are also subject to this provision.
- 3.9.1.1 In the event that a Customer's bill remains unpaid after more than twenty-five (25) days from the billing date stated on the bill.
- 3.9.1.2 In the event of a violation of any regulation governing the service under these Terms and Conditions, when necessitated by conditions beyond the Company's control, a violation of any law, rule, or regulation of any government authority having jurisdiction over the service.
- 3.9.1.3 Where the Company is prohibited from furnishing services by order of a court or other government authority having jurisdiction.
- 3.9.2 The Company, by written notice to the Customer, may, without incurring any liability, cancel or suspend the provision of service or equipment for non-payment of any sum due to the Company from the Customer, whether pursuant to service offered under these Terms and Conditions or otherwise, or as a result of actions of a government agency which forces discontinuance of the provision of service or equipment, or for violation or threatened violation of any of the terms or conditions of these Terms and Conditions by the Customer or authorized user, or if the Customer becomes insolvent or bankrupt, or makes a general assignment for the benefit of creditors or as otherwise permitted by these Terms and Conditions. Cancellation will be effective on the date specified on the notice.
- 3.9.3 The discontinuance of service by the Company pursuant to this Section does not relieve the Customer of any obligations to pay the Company for charges due and owed for service(s) furnished up to the time of discontinuance.
- 3.9.4 The remedies set forth herein shall not be exclusive and the Company shall at all times be entitled to all rights available to it under either law or equity.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.9 CANCELLATION OF SERVICE (Cont'd)**

- 3.9.5 Except as otherwise provided in these Terms and Conditions or as specified in writing by the party entitled to receive service, notices may be given orally or in writing to the person(s) whose name(s) and business address(es) appear on the executed service order.
- 3.9.6 Where the Company cancels a service and the final service period is less than the monthly billing period, a credit will be issued for any amounts billed in advance, prorated at 1/30th of the monthly recurring charge for each day after the service was discontinued. This credit will be issued to the Customer or applied against the balance remaining on the Customer's account.
- 3.9.7 The Customer shall pay a cancellation charge for services that require special facilities dedicated to its use when the Customer cancels the order before service begins or prior to the expiration of the service term or if service is canceled for nonpayment or failure to make a requested deposit. The charge will be equal to the non-recoverable portion of expenditures or liabilities incurred expressly for the Customer and the sum of the monthly recurring or minimum usage amount remaining through the end of the term. The Customer is liable for any charges assessed by the interconnection telephone company providing the dedicated local access line.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.10 DETERMINATION AND RENDERING OF CHARGES**

- 3.10.1 For the purpose of billing, service will be deemed to be started on the day the service and its associated equipment, if any, is installed. Where billing is based upon Customer usage, Customers will be billed for all usage commencing on the date usage begins.
- 3.10.2 Subject to the Company's right to cancel or suspend services as otherwise provided in these Terms and Conditions, the minimum service period is 30 days.
- 3.10.3 In situations where a Special Service is requested, the minimum service period and charges will be determined on a case-by-case basis.
- 3.10.4 All monthly recurring charges are billed one month in advance. Initial and final month's billing, when the service period is less than a month, will be prorated at 1/30th of the month's recurring charge for each day the service was rendered or equipment was provided.
- 3.10.5 Usage charges are billed monthly for the preceding billing period. For periods less than the monthly billing period, minimum usage charges are prorated at 1/30th of the monthly minimum amount for each day the service was rendered.
- 3.10.6 The duration of a call is rated in intervals of the billing increments described for each service provided in these Terms and Conditions. If the final interval of a call is less than the applicable billing increment, it will be rounded up to a full increment for purposes of billing.
- 3.10.7 Computed usage charges or credits for each call are rounded to the nearest cent when possible.
- 3.10.8 Interstate and International Message Telecommunications Service is provided by the Company pursuant to these Terms and Conditions. All rates, terms and conditions related to the provisions of such service are contained in these Terms and Conditions.

#### **3.11 TIMING OF CALLS**

Billable time for service is the duration of time between the called station answering and the called or calling station disconnecting, provided duration may be rounded in accordance with specific descriptions in these Terms and Conditions.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.12 SPECIAL SERVICES**

For the purpose of these Terms and Conditions, a Special Service is deemed to be any service requested by the Customer for which there is no prescribed rate in these Terms and Conditions. Special Services charges will be developed on an individual case basis and set forth in a separate agreement.

3.12.1 Special Service charges will be based on the estimated cost of furnishing such services including the cost of operating and maintaining such a service, the cost of equipment and materials used in providing such a service, the cost of installation including engineering, labor supervision, transportation, and the cost of any other specific item associated with the particular Special Service request.

3.12.1.1 If at the request of the Customer, the Company obtains facilities not normally used to provide service to its customer, the cost incurred will be billed as a Special Service.

3.12.1.2 If at the request of the Customer, the Company provides technical assistance not normally required to provide service, the costs involved will be billed as a Special Service.

3.12.1.3 Where special signaling, conditioning, equipment, or other features are required to make Customer-provided equipment compatible with the Company service, the cost of providing these features will be billed as a Special Service.

#### **3.13 FRACTIONAL CHARGES**

3.13.1 Charges for a fractional part of a month are calculated by counting the number of days remaining in the billing period after service is furnished. Divide that number of days figure by thirty days (billing period). The result is then multiplied by the applicable monthly service charge to arrive at the appropriate fractional monthly service charge.

3.13.2 For each call the minimum charge shall be the applicable charge for the initial billing increment of use with use in excess of the initial billing increment, with the fractional billing increments, if any, of each call rounded up to the next highest whole billing increment. Service offerings elsewhere in these Terms and Conditions may be subject to a different billing policy if so stated with that individual offering.

### **3. GENERAL RULES AND REGULATIONS (Cont'd)**

#### **3.13 FRACTIONAL CHARGES (Cont'd)**

3.13.3 All per call charges of fractional cents shall be rounded to the next full cent unless otherwise stated in the specific product description (Sections 4 & 5).

### **4. INTERSTATE SERVICE DESCRIPTIONS**

#### **4.1 INTERSTATE MESSAGE TELECOMMUNICATIONS SERVICE (MTS)**

4.1.1 MTS - This service arrangement allows a Customer to originate interstate calls in areas with Equal Access capabilities served by the Company by presubscribing to the Service. All MTS service plans include calling from U.S. Mainland to Alaska, Hawaii, Puerto Rico and U.S. Virgin Islands. Any Services originating from a payphone will have a payphone surcharge applied.

##### 4.1.2 Product Types

###### 4.1.2.1 Direct Dial MTS

4.1.2.1.1 Service via equal access facilities is available to Customers served by any LEC equal access office served by the Company.

4.1.2.1.2 Company provided services are available for calls originating in Texas.

4.1.2.1.3 Usage Charges - Per Minute Rates - Refer to the Section 6 Service Charges.

###### 4.1.2.2 Account Code Option

Requires end-user customer(s) to dial an Account Code (Personal Identification Number) authorization for long distance calling. A Section 6, Service Charge is applicable for each Customer that subscribes to this service. The charge for Account Code is in addition to charges described in 4.1.2.1, preceding.

#### **4. INTERSTATE SERVICE DESCRIPTIONS (Cont'd)**

##### **4.2 CALLING CARD SERVICE**

###### 4.2.1 Description

This service arrangement allows Customers to originate calls from any point within the United States through use of a Company Calling Card via the Company's toll free calling card platform access number. Calls may be terminated to any point within the United States and select expanded calling areas.

Applicable usage rates are outlined in Section 6.1.4. Calls are billed in whole minute increments and are subject to a per call surcharge. Calls made with this service can only be placed from touch-tone telephones.

International Calling Card Service is available on an individual case-by-case basis, and upon approval by the Company, to areas defined in Section 6.2.

This service is also conditional that the Company's calling card platform access number is dialable from the call originating telephone.

Usage rates for Calling Card Service are not time-of-day sensitive.

There is a per-call Surcharge applicable to all Calling Card Service calls. The applicable Surcharge is in addition to the per minute usage rate for a specific Calling Card Service call listed in Section 6.

#### **4. INTERSTATE SERVICE DESCRIPTIONS (Cont'd)**

##### **4.3 INBOUND SERVICES**

- 4.3.1 The Company Inbound Service is an inbound service originating on feature group facilities provided by the Local Exchange Carrier (LEC) and terminating on a regular business line or a Special Access Line (SAL). This service enables the Customer to receive Inbound service calls at their residence or place of business.
- 4.3.2 The Company reserves the right to require an applicant for the Company Inbound Service to supply the following information when requesting service: an initial traffic forecast, identification of anticipated busy hour, identification of its geographical marketing target areas, and a schedule of marketing and promotional activities. The Company may also require that the Customer submit a new traffic forecast quarterly after service is initiated.
- 4.3.3 The Company's Inbound Service is furnished upon condition that the Customer contracts for adequate facilities to permit the use of this service without injurious effect upon it or any service rendered by the Company. The Company may terminate or refuse to furnish Inbound Service to any applicant, without incurring any liability and without notice to the Customer, if the use of the service would interfere with or impair any service rendered by the Company.
- 4.3.4 The Customer must obtain an adequate number of access lines for the Company Inbound Services to handle the Customer's expected demand in order to prevent interference or impairment of this service or any other service provided by the Company considering: (1) total call volume; (2) average call duration; (3) time-of-day characteristics; and (4) peak calling period. The Company, without incurring any liability and without notice to the Customer, may disconnect or refuse to furnish the Company Inbound Service to any Customer that fails to comply with these conditions.

#### **4. INTERSTATE SERVICE DESCRIPTIONS (Cont'd)**

##### **4.3 INBOUND SERVICES (Cont'd)**

- 4.3.5 Use of Numbers - Each Inbound Service telephone number must be placed in actual and substantial use by the Customer. "Substantial use" shall mean a pattern of use that demonstrates an intent on the Customer's part to employ the number for the purpose for which it was intended; namely, to allow callers to reach the Customer, as indicated, for example, by at least 30 average monthly minutes of use or more. Any 8XX telephone number associated with the Company's Inbound Service that has not been placed in actual and substantial use during the first sixty (60) day period after service activation may be redesigned as a spare number in the Company 8XX database by the Company upon written notice to the Customer.
- 4.3.6 If the Customer requests assignment of a specific Inbound Service telephone number, the Company may require the Customer to submit a number reservation agreement form to the Company. At no time may a Customer have more than ten (10) numbers reserved. Any reservation shall be for no more than sixty (60) days and shall be subject to a reservation fee which will be credited to the Customer's unpaid balance after the Company Inbound Service has been in actual and substantial use for a consecutive sixty (60) day period.
- 4.3.7 Nothing in this Section, or in any other provision of these Terms and Conditions, or in any marketing materials issued by or on behalf of the Company, shall give any person, including prospective Customers who have reserved 8XX telephone number hereunder or Customers who subscribe to and use the Company Inbound Service or their transferee or assigns, any ownership interest or proprietary right in any particular 8XX number; however, upon placing a number actually and substantially in use, as defined above, the Company Inbound Service Customers do have a controlling interest in the 8XX number(s). The Company's Inbound Service Customer that is in good standing may retain the use of their 8XX number assignments, even following changes in their 8XX carrier and/or Resp. Org.

#### **4. INTERSTATE SERVICE DESCRIPTIONS (Cont'd)**

##### **4.3 INBOUND SERVICES (Cont'd)**

- 4.3.8 If a Customer places an order for the Company to carry the Customer's already existing 8XX number service, the Customer shall provide to the Company the contact names, telephone number and address of the Customer's Responsible Organization (Resp. Org.). Upon subscription to the Company's Inbound Service, the Customer may execute a Letter of Authorization to transfer Resp. Org. responsibility of its 8XX number(s) to the Company Resp. Org. in writing within 48 hours of the change. The Customer is responsible for all outstanding indebtedness for services provided by a previous Resp. Org. or inbound service carrier. The Company assumes no responsibility or liability with respect to any obligations of the Customer to such previous service providers existing at the time of transfer to the Company.
- 4.3.9 The Company's Resp. Org. functions include 1) search for and reservation of 8XX numbers in the SMS/8XX; 2) creating and maintaining the 8XX number Customer record in the SMS/8XX; and 3) provision of a single point of contact for trouble reporting.
- 4.3.10 In the event that a Customer cancels its Company Resp. Org. or Inbound Service, the customer shall be responsible for all outstanding indebtedness to the Company and any outstanding charges applicable to any service obtained by or on behalf of the Customer by the Company.
- 4.3.11 It is the Customer's responsibility to provide answer supervision back to the Company point of connection even when the Company Inbound Service is connected to switching equipment or a Customer-provided communications system. In such case, the equipment or system must provide appropriate supervision so that the measure of chargeable time begins upon delivery of the call to the Customer's switching equipment or communications system and ends upon termination of the call.
- 4.3.12 Inbound Feature Charges - Feature Charges are determined by the specific feature requested by an Inbound Customer. These charges are in addition to Inbound usage charges and are not subject to discounting unless specifically indicated in 6.1.5.2 & 6.1.5.3, following.

**4. INTERSTATE SERVICE DESCRIPTIONS (Cont'd)**

**4.3 INBOUND SERVICES (Cont'd)**

4.3.13 The Company will bill the Inbound Service Customer for calls generated on the Customer's Inbound service number in whole minute increments. The rates for usage of Inbound Service are defined in Section 6.1.5.1 of these Terms and Conditions.

4.3.14 The Inbound Service calling scope includes the fifty (50) United States.

**4.4 RESERVED FOR FUTURE USE**

#### **4. INTERSTATE SERVICE DESCRIPTIONS (Cont'd)**

##### **4.5 SUPPLEMENTAL SERVICES**

###### **4.5.1 Directory Assistance**

4.5.1.1 Long Distance Directory Assistance is available to Customers of Company's switched services. The charge applies to each call regardless of whether the Directory Assistance Bureau is able to furnish the requested telephone number. Up to two requests may be made on each Directory Assistance call.

4.5.1.2 A credit allowance for a Directory Assistance call will be provided if the Customer experiences poor transmission quality, receives an incorrect telephone number.

4.5.1.3 Usage Charges - Refer to Section 6, Service Charges (6.1.6).

4.5.1.4 Handicapped Exemption - Handicapped Customers who qualify for exemptions from Directory Assistance charges due to visual or other physical disabilities will be required to submit a written letter of verification to the Company. Each Directory Assistance billed call will appear on the subsequent month's bill as a credit.

#### **4. INTERSTATE SERVICE DESCRIPTIONS (Cont'd)**

##### **4.6 PROMOTIONAL OFFERINGS**

Certain promotional offerings may be provided from time to time via these Terms and Conditions. These promotional offerings may only apply to certain services, and may be limited to certain dates, times, and locations.

##### **4.7 PUBLIC PAYPHONE SURCHARGE**

This charge will apply to all completed consumer calls placed from a public/semipublic payphone in which a 1-8XX call is placed. Specifically, the public payphone charge applies to: 1) calling card services, 2) Any Inbound Service offering, 3) collect calls, 4) calls billed to a third number and 5) Company Prepaid Card Services (if applicable).

The public payphone surcharge is applied in addition to any other applicable service charges or surcharges. Discounts offered by any of the Company's discount plans do not apply to the Public Payphone Surcharge. The amount of the surcharge is located in 6.1.7, following.

##### **4.8 RESERVED FOR FUTURE USE**

## **5. INTERNATIONAL SERVICE DESCRIPTIONS**

### **5.1 INTERNATIONAL MESSAGE TELECOMMUNICATIONS SERVICE (IMTS)**

IMTS is available to any Customer subscribing to any of the Company's Interstate Telecommunications service offerings in any city in Texas in which the Company's Interstate Telecommunications Services are offered. The Customer's service shall be automatically discontinued upon termination of the Customer's subscription to the Company's Interstate Telecommunications Service.

Where a Customer subscribes to a direct connection between a Customer's telephone system and the Company's Point of Presence, the Customer may use the Company's IMTS by dialing 1+ the Country Code + the National Number (telephone number).

### **5.1 TYPES OF OFFERINGS**

IMTS is available as additional service at the rates listed in 6.2, through subscription to any Interstate Telecommunications service offerings available from the Company: Interstate MTS Service and Inbound Service.

#### **5.1.1 Determination of Duration**

5.1.1.1 Chargeable time begins when the connection is established between the calling station and the desired telephone, attendant board, or private branch exchange console.

5.1.1.2 Chargeable time ends when the connection is terminated.

5.1.1.3 Chargeable time does not include the time lost because of faults or defects in the service.

#### **5.1.2 Determination of Time of Day**

The rate charged is not dependent on the time of day. The rates listed in Section 6.2 are the rates per minute to be charged 24 hours per day.

#### **5.1.3 Calculation of Billable Time for IMTS Service**

5.1.3.1 The initial whole minute or fraction thereof is subject to the initial minute rate.

5.1.3.2 The subsequent seconds are rounded in whole minute increments, with the remaining seconds, if any, rounded up to the next whole minute and billed at the additional minute rate.