

ACCESS SERVICE

RATES, RULES AND CHARGES

Title Page and Pages 1 to 22-45, inclusive of this tariff are effective as of the date shown. Original and revised pages as named below and Supplement No. 7 contains all changes from the original tariff that are in effect on the date hereof.

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* New or Revised Page

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Certain material previously on this page now appears on the 6th Revised Page 22.3.

⁽¹⁾ Material in this Section has been de-tariffed as required by the Commission upon use of the forbearance relief pursuant to FCC Memorandum Opinion and Order No. 07-180, released October 12, 2007. Terms and Conditions associated with de-tariffed services are available at www.att.com/guidebook.

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Certain material on this page previously appeared on the 43rd Revised Page 22.2.

⁽¹⁾ Material in this Section has been de-tariffed as required by the Commission upon use of the forbearance relief pursuant to FCC Memorandum Opinion and Order No. 07-180, released October 12, 2007. Terms and Conditions associated with de-tariffed services are available at www.att.com/guidebook.

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23. Pricing Flexibility Contract Offerings (N)

23.38 Contract Offer No. 38 - Access Service Offer

23.38.1 General Description (N)

The Special Access Service Offer (Contract Offer No. 38) is a Minimum Annual Revenue Commitment attainment plan for which concurrent subscription is required to this Contract Offer and the following Access Tariffs: Pacific Bell Telephone Company (PBTC) Tariff F.C.C. No. 1, Contract Offer No. 174; Southwestern Bell Telephone Company (SWBT) Tariff F.C.C. No. 73, Contract Offer No. 194; BellSouth Telecommunications LLC (BellSouth) Tariff F.C.C. No. 1, Contract Offer No. 89; and Ameritech Operating Companies (Ameritech) Tariff F.C.C. No. 2, Contract Offer No. 224 (collectively, with this Contract Offer No. 38, referred to as the "Concurrently Subscribed Contract Offers". Ameritech, BellSouth, PBTC, and SWBT, together with the Telephone Company, shall be identified herein as the "Qualified Companies." (Nx)

The Concurrently Subscribed Contract Offers allow the Customer to qualify for certain credits based on its attainment of a "Minimum Annual Revenue Commitment" or "MARC," as described in Section 23.38.5, below. The MARC consists of certain recurring revenue from "Contributory Services," as defined in Section 23.38.2, below, that the Customer purchases from the Qualified Companies. (N)

Contract Offer No. 38 will be available for subscription only from May 17, 2016 through June 16, 2016. This Contract Offer is not renewable.

23.38.2 Subject and Non-Subject Services

"MARC-Eligible Services" under the Concurrently Subscribed Contract Offers are Subject Services, listed in Table A, below, and Non-Subject Services, listed in Table B, below, provided by the Telephone Company and located within the operating territories of the Qualified Companies, as well as "Subject Services" and "Non-Subject Services" as defined in the other Concurrently Subscribed Contract Offers.

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23. Pricing Flexibility Contract Offerings (Cont'd) (N)

23.38 Contract Offer No. 38 - Access Service Offer (Cont'd)

23.38.2 Subject and Non-Subject Services (Cont'd)

(A) Subject Services

- (1) Subject Services are pricing flexibility-qualified access services and associated rate elements, as identified in Table A, below.

Table A - Subject Services

Category	Services Included
Interstate Special Access Located in Pricing Flexibility Metropolitan Statistical Areas (MSAs)	DS1 and DS3, except for any rate elements not subject to pricing flexibility

- (2) Subject Services must be located in the Pricing Flexibility MSAs where the Telephone Company has been granted Phase II pricing flexibility, as listed in NBTC Tariff F.C.C. No. 1, Section 22, and those additional MSAs listed below. During the Term Period of this Contract Offer, if the Telephone Company is granted pricing flexibility relief in additional MSAs, the Customer may, at its option, include Subject Services in those additional MSAs as eligible for the discounts under this Contract Offer.

Phase I - All Rate Elements (Including Channel Terminations)

Reno, NV

Phase I - Rate Elements other than Channel Terminations

Non-MSA, NV

- (3) Subject Services ordered and purchased by the Customer prior to its subscription to this Contract Offer will be referred to as "Existing Subject Services."

Subject Services that were not being purchased from the Telephone Company prior to its subscription to this Contract Offer will be referred to as "New Subject Services."

(N)

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23.Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.38 Contract Offer No. 38 - Access Service Offer (Cont'd)

23.38.2 Subject and Non-Subject Services (Cont'd)

(B) Non-Subject Services

Non-Subject Services are listed in Table B, below.

TABLE B- Non-Subject Services will be included in calculations related to the "Minimum Annual Revenue Commitment," as defined in Section 23.38.1, but are not otherwise subject to this Contract Offer.

Category	Service ¹
Interstate Special Access Services	Optical Ethernet Metropolitan Area Network (OPT-E-MAN®), AT&T Switched Ethernet SM Service
Intrastate Special Access and/or Equivalent Non-Switched Exchange Services (Excluding Private Line Services)	DS1, DS3, Optical Ethernet Metropolitan Area Network (OPT-E-MAN®), AT&T Switched Ethernet Service
AT&T Corp.	AT&T OPT-E-WAN® Virtual Private LAN Service (VPLS)

(C) All terms and conditions for those Subject Services and Non-Subject Services that are tariffed are governed by their respective tariff sections, except as noted in this Contract Offer with respect to Subject Services. All terms and conditions for those Non-Subject Services that are not tariffed are governed by the applicable guidebooks, service guides or contracts.

¹ Interstate Opt-E-MAN® and AT&T Switched Ethernet services are now provided on a contractual basis outside of the tariff, including all terms and conditions. As required by the Commission, to allow the Telephone Company to take advantage of the relief granted in the Commission's Memorandum Opinion and Order No. 07-180 released October 12, 2007, services have been de-tariffed by the Telephone Company. Rates, terms and conditions associated with de-tariffed services are available at www.att.com/guidebook.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.38 Contract Offer No. 38 - Access Service Offer (Cont'd)23.38.2 Subject and Non-Subject Services (Cont'd)

(D) Subject Services and Non-Subject Services shall also include any similar or successor services which are provided by the Qualified Companies and which were not available as of the effective date of this Contract Offer.

23.38.3 Eligibility Criteria

The following Eligibility Criteria apply to this Contract Offer:

- (A) The Customer must have a minimum of 6,000 interstate special access DS1 circuit and 650 interstate special access DS3 circuits in service with the Qualified Companies, as of the effective date of this Contract Offer.
- (B) The Customer must have purchased interstate special access DS1 and DS3 \$1,543,000.00 (net of any applicable discounts and credits) for the month immediately prior to the effective date of this Contract Offer.
- (C) The Customer must have been purchasing a minimum of seventy-five percent (75%) of its DS1 and DS3 interstate special access circuits under either 5-year or 7-year term commitments, in aggregate, including purchases from all of the Qualified Companies, during the last six months prior to the Subscription Date of this Contract Offer (as defined in Section 23.38.4.B, below). DS1 and DS3 interstate special access circuits will be considered separately.

Example: If the Customer purchased more than seventy-five percent (75%) of its DS1 interstate special access circuits subject to 5-year term commitments, in the aggregate from all of the Qualified Companies, the Customer would be eligible to order and purchase DS1 Subject Services under this Contract Offer at five-year rates.

Example: If the Customer purchased more than seventy-five percent (75%) of its DS1 interstate special access circuits subject to 7-year term commitments, in the aggregate from all of the Qualified Companies, the Customer would be eligible

(N)

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to order and purchase DS1 Subject Services under
this Contract Offer at seven-year rates.

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23. Pricing Flexibility Contract Offerings (Cont'd) (N)

23.38 Contract Offer No. 38 - Access Service Offer (Cont'd)

23.38.3 Eligibility Criteria (Cont'd) (N)

(A) The Customer must concurrently subscribe to the following Contract Offers: (Nx)

- (1) Ameritech Tariff FCC No. 2, Contract Offer No. 224;
- (2) BellSouth Tariff FCC No. 1, Contract Offer No. 89;
- (3) NBTC Tariff FCC No. 1, Contract Offer No. 38;
- (4) PBTC Tariff FCC No. 1, Contract Offer No. 174; and
- (5) SWBT Tariff FCC No. 73, Contract Offer No. 194.

23.38.4 General Terms and Conditions (Nx)
(N)

The following General Terms and Conditions apply to this Contract Offer No. 38:

(A) Subscription

To subscribe to this Contract Offer, the Customer must submit Letters of Subscription (LOS) to the Qualified Companies. The Customer must provide, at the time of subscription, all Access Customer Name Abbreviations (ACNAs) that the Customer designates for inclusion in the Concurrently Subscribed Contract Offers for itself and any of its "Affiliates" that may purchase service pursuant to the Concurrently Subscribed Contract Offers (hereafter referred to as "Eligible ACNAs").

Services ordered or purchased under other ACNAs may not be transferred to, or converted for inclusion under, the Concurrently Subscribed Contract Offers, unless otherwise agreed in writing by the parties. (N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.38 Contract Offer No. 38 - Access Service Offer (Cont'd)23.38.4 General Terms and Conditions (Cont'd)(B) Term Period

The term of this Contract Offer (Term Period) will begin on the first day of the first calendar month following the date the Qualified Companies receive signed Letters of Subscription (LOS) from the Customer (that date to be referred to as the "Subscription Date"), and will continue October 31, 2019. Each period of twelve (12) consecutive months during the Term Period; provided however, that the final Term Year will begin on the third anniversary of the Subscription Date and end on October 31, 2019, beginning from the Subscription Date, shall be referred to as a Term Year. Each period of three (3) consecutive months during the Term Period, beginning from the Subscription Date, shall be referred to as a Quarter; provided however, that the final Quarter of the Term Period will begin thirty-nine (39) months after the Subscription Date and end on October 31, 2019. Upon expiration of the Term Period, Subject Services will be provided at the prevailing month-to-month rates as provided in NBTC Tariff F.C.C. No. 1, Sections 7 or 22, or if there are no month-to-month rates, then at the rates applicable to the shortest available term, unless the Customer disconnects the services or chooses another applicable rate.

(C) Service Term

Subject Services must be ordered and purchased subject to the Term Period applicable to either DS1 or DS3 service, respectively, under this Contract Offer, as provided in Section 23.38.3(C) (in either case, referred to as the Service Term). Customer shall order any New Subject Services under this Contract Offer by submitting an ASR, including the PNUM of this Contract Offer, to the Telephone Company. Customer may convert any Existing Subject Services to this Contract Offer either: (1) by submitting one or more ASRs, including the PNUM of this Contract Offer, to the Telephone Company, or (2) by requesting a bulk conversion project, to be coordinated by the Telephone Company. In either case, Existing Subject Services must begin a new service term upon conversion to this Contract Offer. Termination liability charges will not apply as a result of such conversion.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.38 Contract Offer No. 38 - Access Service Offer (Cont'd)23.38.4 General Terms and Conditions (Cont'd)

(C) (Cont'd)

Upon expiration of the Service Term, below, Subject Services will be provided at the prevailing month-to-month rates as provided in NBTC Tariff F.C.C. No. 1, Sections 7 or 22, or if there are no month-to-month rates, then at the rates applicable to the shortest available term, unless the Customer disconnects the services or chooses another applicable rate.

(D) Commingling of Subject Services is defined in NBTC Tariff F.C.C. No. 1, Section 2.6. During the Term Period, the Customer may not at any time be obtaining from the Qualified Companies a greater number of Subject Services that are commingled with one or more unbundled network elements than the number of such Subject Services in place as of the Subscription Date.

(E) The Customer may not be a party to any agreement for de-tariffed interstate access services provided by any of the Qualified Companies ("Broadband Agreement") or any other pricing flexibility contract tariff, if the Broadband Agreement or pricing flexibility contract tariff contains any revenue or volume commitment or attainment level, as of the effective date of the Contract Offer (Commitment Agreement), unless the Commitment Agreement expressly allows the Customer to participate in both the Commitment Agreement and the Concurrently Subscribed Contract Offers.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.38 Contract Offer No. 38 - Access Service Offer (Cont'd)23.38.4 General Terms and Conditions (Cont'd)

- (F) If, during the Term Period, any of the Qualified Companies or any portion of any such Qualified Company is no longer under the ownership and control of AT&T Inc. (a "Divested Entity"), then as of the closing date(s) of the relevant transaction(s), any Concurrently Subscribed Contract Offer applicable to a Divested Entity shall be administered and enforced, and any rights or obligations of either party to such Contract Offer shall apply, separately to: (i) the Qualified Companies (and any portions of Qualified Companies) remaining under the ownership and control of AT&T Inc. and (ii) the Divested Entity or Entities. In particular, but without limitation, the MARC (as provided in Section 23.38.5) and the amount of MARC-Eligible Charges required to qualify for Plan Shortfall Charges (as provided in Section 23.38.6(C)) shall be pro-rated between the Qualified Companies (and any portions of Qualified Companies) remaining under the ownership and control of AT&T Inc. and the Divested Entity or Entities in proportion to the amount of MARC-Eligible Charges billed by the Qualified Companies (and any portions of Qualified Companies) remaining under the ownership and control of AT&T Inc. and the Divested Entity or Entities, for the three months immediately prior to the closing date(s) of the relevant transaction(s).

Notwithstanding the foregoing paragraph, nothing in this Section 23.38.4(H) shall prevent the lawful modification or termination of any of the Concurrently Subscribed Contract Offers, as applicable to any Qualified Company or Divested Entity.

- (G) If, prior to the Customer's Subscription to this Contract Offer, the Customer subscribed to Contract Offer 33, this Contract Offer will supersede Contract Offer 33.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.38 Contract Offer No. 38 - Access Service Offer (Cont'd)23.38.5 Minimum Annual Revenue Commitment

The Customer must satisfy a Minimum Annual Revenue Commitment (MARC) for each Term Year of this Contract Offer. The MARC shall be satisfied by gross billed recurring revenue, after application of any discounts or credits applicable to those recurring revenues (except those issued under the Concurrently Subscribed Contract Offers), as well as adjustments for overbilling, under-billing and billing dispute settlements issued during that Term Year for Subject Services and Non-Subject Services purchased by and billed to Customer under the Eligible ACNAs (collectively, "MARC-Eligible Charges"). The Customer's MARC-Eligible Charges shall specifically exclude non-recurring charges, usage-based charges and temporary service charges. Credits under this Contract Offer are conditioned on the Customer's satisfaction of the MARC in each Term Year. Satisfaction of the MARC shall be determined according to MARC-Eligible Revenue.

The MARC for the first Term Year will be equal to ninety-five percent (95%) of the Customer's MARC-Eligible Revenue for the three (3) months prior to the Subscription Date, times four (4). The MARC for the second and third Term Years will be equal to ninety-five percent (95%) of the Customer's MARC-Eligible Revenue for the last three (3) months of the prior Term Year, times four (4). The MARC for the fourth Term Year will be equal to ninety-five percent (95%) of the Customer's MARC-Eligible Revenue for the last three (3) months of the prior Term Year, times four (4), times the number of days in the final Term Year, divided by three hundred sixty-five (365).

23.38.6 Billing & Credits

(A) Subject Service Monthly Recurring Charges

- (1) Tables C and D, below, contain the effective rates for Subject Services under this Contract Offer No. 38. Any rate elements not listed in Tables C and D will be provided at the applicable rates in NBTC Tariff F.C.C No 1, Section 7. Each circuit element (Channel Termination and Mileage) must be located entirely in the MSAs listed in Section 23.38.2(A) to be eligible for these rates.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.38 Contract Offer No. 38 - Access Service Offer (Cont'd)

23.38.6 Billing & Credits (Cont'd)

(A) Subject Service Monthly Recurring Charges (Cont'd)

(2) The Telephone Company will initially bill the Customer according to the otherwise applicable twelve (12) month Optional Payment Plan Monthly Recurring Charges ("OPP MRCs"). The Customer will then be credited in an amount equal to the difference between the otherwise applicable OPP MRCs and the MRCs for the rate elements listed in Tables C and D, below. Credits will be applied monthly in arrears. Taxes, if applicable, will be charged on the OPP MRC rates, but will not be included in the credits applied to the Customer's bill.

Table C:

DS1 Special Access Services Rate Element	USOC	5 Year MRC
Channel termination - Per Point of Termination	TMECS	\$105.00
Channel Mileage Termination - Per Termination	1L5XX	\$35.00
Channel Mileage - Per Mile	1L5XX	\$8.50
Central Office Multiplexing DS1 to DS0	MQ1, MQ1++, QMUA1, QMU, QMU++	\$160.00

Table D:

DS3 Rate Elements	USOC	5 YR MRC
Channel Termination - Per Point of Termination	Z3MAC/Z3MAP/Z31A+	\$900.00
Channel Mileage - Per Termination	1L5XX/CMF	\$332.50
Channel Mileage - Per Mile	1L5XX/CMF	\$35.00
Multiplexing, Per Arrangement (DS3 to DS1)	MQ3	\$400.00

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.38 Contract Offer No. 38 - Access Service Offer (Cont'd)23.38.6 Billing & Credits (Cont'd)

(B) Service Portability Credits

The Qualified Companies will issue credits in the amount of any termination liability charges that would otherwise apply as a result of the disconnection of Subject Services during the Term Period, provided that the conditions set forth below have been met. Such charges initially will be billed, and must be paid, as provided in the relevant sections of NBTC Tariff F.C.C. No. 1, not including this Contract Offer. The Telephone Company will calculate and issue credits for each Quarter, which will be issued no later than sixty (60) days after the end of each Quarter.

(1) Any disconnected Subject Service(s) must have been in service for a minimum of twelve (12) months.

(2) The Customer must continue to purchase no less than the number of DS1 and DS3 Subject Services (which is defined in Section 23.38.3) that were in service as of the Subscription Date of this Contract Offer.

(C) Credits for Termination Liability or Plan Shortfall Charges

The Qualified Companies will issue credits in the amount of any termination liability charges or any charges for failure to satisfy a minimum Commitment Level pursuant to a High Capacity Service Portability Commitment, when such charges would otherwise apply as a result of the disconnection of Subject Services during the Term Period, provided that the conditions set forth below have been met. Such charges initially will be billed, and must be paid, as provided in the relevant sections of NBTC Tariff F.C.C. No. 1, not including this Contract Offer. The Telephone Company will calculate and issue credits for each Term Year, which will be issued no later than sixty (60) days after the end of each Term Year. As clarification, but not to modify this paragraph, the BellSouth Area Commitment Plan (ACP) is not a High Capacity Service Portability Commitment within the meaning of this Section 23.38.6(C) and is not eligible for termination liability or plan shortfall credits.

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(C) Credits for Plan Shortfall Charges (Cont'd)

- (1) "Access Revenue" means the Qualified Companies' interstate recurring revenue from the Customer and its Affiliates. Any disconnected Subject Service(s) must have been in service for a minimum of twelve (12) months.
- (2) MARC-Eligible Charges for the Term Year must have been equal to or greater than the MARC.

23.38.7 Access Service Ratio

The Customer (including any of its Affiliates included in this Contract Offer) must maintain an Access Service Ratio as further provided in this Section 23.38.7. The Access Service Ratio shall be calculated quarterly, based on data for the most recent single month for which information is available at the time of the calculation. The Qualified Companies will calculate the Customer's Access Service Ratio as of the Subscription Date and for each Quarter thereafter, as follows:

$$\text{Access Service Ratio} = \frac{\text{Access Revenue}}{\text{Access Revenue} + \text{Wholesale Revenue}}$$

During the Term Period, the Access Service Ratio may not decline by more than 3%, as compared to the Access Service Ratio on the Subscription Date, as determined by each quarterly calculation of the Access Service Ratio.

Example: Assume that the Customer's Access Service Ratio, as calculated for the Subscription Date, is 95%. For each subsequent quarterly calculation of the Access Service Ratio, the Customer would be required to achieve an Access Service Ratio of at least 92%.

If during the Term Period, any of the Qualified Companies offers additional ILEC access services or UNEs, such additional ILEC access services or UNEs shall also be included in the calculation of the Access Service Ratio. Recurring revenue, for purposes of calculating the Access Service Ratio, will be measured according to gross billed recurring revenue, after application of any discounts or credits applicable to that recurring revenue, plus any adjustments for overbilling, under-billing and billing dispute settlements. The calculation of recurring revenue will not include any DS1 Plan Credits issued pursuant to this Contract Offer.

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23.38 Contract Offer No. 38 - Access Service Offer (Cont'd)

23.38.7 Access Service Ratio (Cont'd)

If, upon the initial review or any quarterly review of the Customer's compliance with the Access Service Ratio, the Qualified Companies determines that the Customer has not complied with the Access Service Ratio, the Qualified Companies will so notify the Customer in writing. The "Affiliates" associated with the services defined in Tables E and F, below. An "Affiliate" of a party to this Contract Offer means any entity that controls, is controlled by, or is under common control with, such party.

Table E:

Service Type	Service ¹
Interstate Special Access	OCN (Optical Carrier Network) PTP
	Dedicated SONET Ring Service (DSRS)
	SONET Ring and Access Service (SRAS)
	GigaMAN (Gigabit Ethernet Metropolitan Area Network)
	Multi-Service Optical Network (MON) Ring Service
	OpteMAN (Optical Ethernet Metropolitan Area Network)
	DecaMAN (10 Gigabit Ethernet Metropolitan Area Network)
	AT&T Switched Ethernet Service (ASE)
	WaveMAN (Wavelength Metropolitan Area Network)
	Serial Component Video Service (SCVS)
	High Definition Video Transport (HDVT)
	AVS 270 Video Service
	Voice Grade
	DS0
	DS1
	DS3
Switched Access Transport	

¹Ethernet-based services are now provided on a contractual basis outside of the tariff, including all terms and conditions. As required by the Commission, to allow the Telephone Company to take advantage of the relief granted in the Commission's Memorandum Opinion and Order No. 07-180 released October 12, 2007, services have been de-tariffed by the Telephone Company. Rates, terms and conditions associated with de-tariffed services are available at www.att.com/guidebook.

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23.38.7 Access Service Ratio (Cont'd)

"Wholesale Revenue" means the Qualified Companies' recurring revenue from the Customer and its Affiliates for unbundled network elements and associated rate elements, as defined in Table F, below.

Table F

Service Type-- Unbundled Network Elements and Associated Services or Rate Elements	Service or Network Element ¹
DS1	4-wire digital loop DS1 Entrance Facilities DS1 Interoffice Transport DS1 Cross Connects DS1 Multiplexing All DS1 non-tariffed Committed Information Rate Broadband Services
DS3	DS3 Loop DS3 Entrance Facilities DS3 Interoffice Transport DS3 Cross Connects DS1/DS3 Multiplexing All DS3 non-tariffed Committed Information Rate Broadband Services
OCn	OC-3 Entrance Facilities OC-3 Interoffice Transport OC-3 Cross Connects OC-3 Multiplexing OC-12 Entrance Facility OC-12 Interoffice Transport OC-12 Cross Connects OC-12 Multiplexing OC-48 Entrance Facilities OC-48 Interoffice Transport OC-48 Cross Connects OC-48 Multiplexing All OCN equivalent non-tariffed Committed Information Rate Broadband Service
Other	Dark Fiber - Interoffice Dark Fiber - Loop Dark Fiber - Subloop Dark Fiber Cross Connects Unbundled Dedicated Transport

¹ Ethernet-based services are now provided on a contractual basis outside of the tariff, including all terms and conditions. As required by the Commission, to allow the Telephone Company to take advantage of the relief granted in the Commission's Memorandum Opinion and Order No. 07-180 released October 12, 2007, services have been de-tariffed by the Telephone Company. Rates, terms and conditions associated with de-tariffed services are available at www.att.com/guidebook.

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(N)

23.38 Contract Offer No. 38 - Access Service Offer (Cont'd)23.38.8 Assignment/Transfer/Successors

If the Customer wishes to assign or transfer its use of services under this Contract Offer pursuant to NBTC Tariff F.C.C. No. 1, Section 2.1.2, the Qualified Companies will acknowledge such transfer or assignment if the criteria in NBTC Tariff F.C.C. No. 1, Section 2.1.2, are fulfilled, unless 1) the proposed assignee or transferee demonstrates a lack of credit worthiness under one of the criteria in (A), (B) or (C), below, or 2) if the proposed assignee or transferee or its parent has commenced a voluntary receivership or bankruptcy proceeding (or had a receivership or bankruptcy proceeding initiated against it).

- (A) Any debt securities of the proposed assignee or transferee or its parent (defined as an entity that owns directly or indirectly more than fifty percent (50%) of the equity of the proposed assignee or transferee) are rated below investment grade, as defined by the Securities and Exchange Commission; or

If any debt securities of a proposed assignee or transferee or its parent are rated the lowest investment grade and have been placed on review by the rating organization for a possible downgrade,

- (B) The proposed assignee or transferee or its parent does not have any outstanding securities rated by credit rating agencies, e.g. Standard and Poor's, but does have a Dun and Bradstreet rating, and the proposed assignee or transferee is rated:
- (1) "fair" or below in a composite credit appraisal published by Dun and Bradstreet; or
 - (2) "high risk" in a Paydex score as published by Dun and Bradstreet.
- (C) If the information required to review the assignee or transferee's credit worthiness pursuant to either Subsections (A) or (B) of this Section 23.38.8 is not available, the Qualified Companies shall exercise its reasonable discretion in determining the credit worthiness of the assignee or transferee based on any information available.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.38 Contract Offer No. 38 - Access Service Offer (Cont'd)23.38.8 Assignment/Transfer/Successors (Cont'd)

- (D) Notwithstanding anything to the contrary in this Section 23.38.8, the Customer may, upon written notice to the Qualified Companies, assign in whole or relevant part its rights and obligations under this Agreement to an Affiliate of the Customer, but the Customer will remain financially responsible for the performance of such obligations.

23.38.9 Mergers, Acquisitions, Sales or Divestitures Involving Customer

All provisions of this Contract Offer shall continue in full force and effect if the Customer, in whole, or in part, merges with, acquires, is acquired by, sells all or substantially all of its stock or assets to any other entity, or purchases all stock or substantially all stock or certain a of another company (the foregoing generally referred to herein as a merger or acquisition). Upon the Transaction Close Date of the merger or acquisition, if the other company involved in the merger or acquisition also purchases Subject Services from the Qualified Companies, the Subject Services, as provided for in this Contract Offer, will continue to be provided at the same volume, rates, Terms and Conditions as outlined herein. The Transaction Close Date shall be defined as the date that the stock purchase is complete and/or the final date on which the assets of the acquired/merged company have been purchased.

(N)

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