

ACCESS SERVICE

23. Pricing Flexibility Contract Offerings

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23.1 Contract Offer No. 1 – Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer23.1.1 General Description

Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Contract Offer No. 1) is an access discount plan that provides Customers with Incentive Discounts and Portability Incentives (as defined in Section 23.1.4) in accordance with the terms and conditions as set forth in this Section 23.1.3.

23.1.2 Services Available For WAMS-VIP Offer

- (A) Contract Offer No. 1 applies to qualified access services contained in Nevada Bell Telephone Company Tariff F.C.C. No. 1 (Qualified Access Services), listed in Table A below:

Table A

Service	General Basic Description	Rates and Charges	
High Capacity Service	7.11.1	7.11.5	22.5.2.5
Broadband Circuit Service (BCS)	20.1	20.2	22.5.2.9
Optical Carrier Network (OCN) Point-to-Point Service	21.1	21.3	22.5.2.10
Gigabit Ethernet Metropolitan Area Network (GigaMAN)	7.13.1	7.13.3	22.5.2.7
Multi-service Optical Network (MON) Ring Service	8.1	8.4	22.5.2.8

- (B) When additional Qualified Access Services are added to the services available under F.C.C. No. 1, all billed, recurring revenues for such additional Qualified Access Services will be added to this Contract Offer No. 1 for the purposes of calculating the Incentive Discounts and Portability Incentives included in this Contract Offer No. 1.

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23. Pricing Flexibility Contract Offerings (Cont'd)23.1 Contract Offer No. 1 - Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.2 Services Available Under WAMS-VIP Offer (Cont'd)

- (C) All terms and conditions for the Qualified Access Services are governed by the respective tariff sections, except as noted in this Contract Offer No. 1.

23.1.3 WAMS-VIP Offer Terms and Conditions

The following terms and conditions apply to Contract Offer No. 1:

(A) Eligibility Criteria

- (1) The Qualified Access Services must be located within the "Operating Territory" of the Telephone Company, as described in F.C.C. No. 1, Section 17 (Operating Territory);
- (2) Incentive Discounts earned by the Customer under Contract Offer No. 1 shall be applied in the form of a credit to the Customer's bill(s) for Qualified Access Services, located in the following MSA(s) where Telephone Company has been granted pricing flexibility: Reno, Nevada; and
- (3) All traffic on the Qualified Access Service(s) must originate or terminate on a wireless carrier's network.

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23.1 Contract Offer No. 1 - Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.3 WAMS-VIP Offer Terms and Conditions (Cont'd)(B) Terms and Conditions

- (1) Revenue commitments are based on billed, recurring charges for the Qualified Access Services and specifically exclude any non-recurring charges and Incentive Discounts earned under this Contract Offer No. 1;
- (2) Customer must maintain a Baseline Minimum Annual Revenue Commitment of \$1,176,000 (Baseline MARC) for Qualified Access Services;
- (3) Contract Offer No. 1 Incentive Discounts and Portability Incentives are in addition to, and do not alter, any of the existing service discount/term plans available in the Telephone Company's respective tariffs;
- (4) The Telephone Company reserves the right to change rates for Qualified Access Services included under Contract Offer No. 1. In the event such rate modifications are made no change will be made to the Baseline MARC;
- (5) Qualified Access Services are subject to certain rates, charges and general terms and conditions in other sections of F.C.C. Tariff No. 1 (Sections 2-General Regulations, 5-Ordering Options for Switched & Special Access Service, and 13-Additional Engineering, Additional Labor & Miscellaneous Services) and such terms and conditions may be modified through the filing of tariff changes at any time during the Term Period. Such tariff modifications will not change the terms and conditions described in Contract Offer No. 1;
- (6) This Contract Offer No. 1 is available October 9, 2004 through November 9, 2004;

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(This page filed under Transmittal No. 75)

Issued: October 8, 2004

Effective: October 9, 2004

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23.1 Contract Offer No. 1 - Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.3 WAMS-VIP Offer Terms and Conditions (Cont'd)(B) Terms and Conditions (Cont'd)

(7) The Customer must meet the criteria described for Incentive Discounts and Portability Incentives, as provided in Section 23.1.4; and

(8) To subscribe to Contract Offer No. 1, the Customer must submit a Letter of Subscription (LOS) to the Telephone Company. The LOS shall contain the effective date ("Effective Date") and the Access Customer's Name Abbreviation(s) (ACNA) and must be signed by the Customer and the Telephone Company's representative.

(C) Term Period

The contract term (Term Period) is eighty-four (84) months commencing on the Effective Date. Each twelve (12) month period beginning with the Effective Date shall be a Term Year. At the end of the Term Period, the Incentive Discounts and Portability Incentives provided in this Contract Offer No. 1 shall be discontinued. This offer is not renewable.

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23.1 Contract Offer No. 1 - Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.4 WAMS-VIP Offer Incentive Discounts

Customer will be eligible for the following Incentive Discounts and/or Portability Incentives (collectively "Incentives") under Contract Offer No. 1 during each of the Term Years:

Incentive Discount Commitment Credit (IDCC),
Incentive Discount for WinBack Services (WinBack Incentive), and
Portability Incentive for DS3s (Portability Incentive).

(A) Incentive Discount Commitment

In order to qualify for the IDCC and Portability Incentives, Customer must maintain the "Incentive Discount Commitment" (IDC):

(1) Establishment of the IDC

- (a) For Term Year one (1) the Customer's IDC will equal the Baseline MARC.
- (b) Unless and until Customer elects to increase the IDC, as provided in Section 23.1.4(A)(1)(c), the IDC during Term Years two (2) through seven (7) shall remain the Baseline MARC.
- (c) Customer may elect, by providing written notice to Telephone Company, to increase the IDC. Customer shall notify the Telephone Company of the new IDC Level, as provided in Table B in Section 23.1.4(B). The Customer may increase the IDC Level only; the IDC Level may not be decreased. An IDC Level may be increased effective at the beginning of each Term Year, after the first Term Year, and after the first six (6) months of each Term Year (New IDC Date). Each time Customer chooses a new IDC Level, the corresponding IDC and IDCC shall apply as of the New IDC Date and for the remainder of the Term Period, unless Customer further increases the IDC as provided in this section.

(2) Application of Incentive Discount Commitment

If during the Annual True-Up, as defined in Section 23.1.5(A), the Customer's Achieved Revenue Amount meets or exceeds the IDC, the Telephone Company will apply the IDCC and Portability Incentives for the following Term Year, provided the criteria in Section 23.1.4(B) and (E) respectively, are met. During the first Term Year, the Telephone Company will apply the IDCC based upon IDC Level 1.

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23.1 Contract Offer No. 1 – Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.4 WAMS-VIP Offer Incentive Discounts (Cont'd)(A) Incentive Discount Commitment (Cont'd)(2) Application of Incentive Discount Commitment (Cont'd)

Example: After Term Year one (1), the Customer's Achieved Revenue Amount, determined by the Annual True-Up, equals \$1,900,000 and the IDC is \$1,176,000. Since the Achieved Revenue Amount exceeds the IDC and the Customer has not provided notice to increase the IDC to a new IDC Level, the Telephone Company would apply the IDCC, and Portability Incentives in Term Year two (2), based on the Customer's IDC of \$1,176,000.

- (3) Notwithstanding the above, Incentives shall not be applied unless and until the Customer is current in paying (or properly disputing) all invoices submitted for payment by the Telephone Company for billed, recurring revenue for Qualified Access Services in accordance with F.C.C. No. 1, Section 2.

(B) Incentive Discount Commitment Credit for Qualified Access Services

For each Term Year, the Customer will be eligible for an "Incentive Discount Commitment Credit" (IDCC) according to Table B, per sub-section (1) below.

Table B

IDC Level	IDC	IDCC
1	\$ 1,176,000	\$ 105,840
2	\$ 1,296,000	\$ 129,600
3	\$ 1,416,000	\$ 169,920
4	\$ 1,536,000	\$ 215,040
5	\$ 1,656,000	\$ 248,400
6	\$ 1,776,000	\$ 301,920
7	\$ 1,896,000	\$ 379,200

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23. Pricing Flexibility Contract Offerings (Cont'd)23.1 Contract Offer No. 1 – Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.4 WAMS-VIP Offer Incentive Discounts (Cont'd)(B) Incentive Discount Commitment Credit for Qualified Access Services (Cont'd)(1) Application of Incentive Discount Commitment Credit

- (a) The Telephone Company will apply the IDCC to the Customer's bill(s) for Qualified Access Services in those Term Years for which the Customer qualifies for the IDCC per Section 23.1.4(A), as follows: One-quarter of the IDCC will be applied thirty (30) days in arrears from the end of the first, second, third and fourth quarters of the Term Year, based on the IDCC determined under Section 23.1.4(B)(1)(b) and 23.1.4(B)(1)(c) below.
- (b) The IDCC applied during the four (4) quarters of Term Year one (1) shall be based upon IDC-Level 1.
- (c) The IDCC applied during the four (4) quarters for Term Years two (2) through seven (7) will be based upon the IDC-Level determined using the IDC established in Section 23.1.4(A).

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23.1 Contract Offer No. 1 – Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.4 WAMS-VIP Offer Incentive Discounts (Cont'd)(C) Incentive Discount for WinBack Services

If the Customer elects to obtain Qualified Access Service(s) located in MSAs where the Telephone Company has been granted pricing flexibility within the Operating Territory, in place of access service(s) that is provided by a carrier other than the Telephone Company or one of its affiliates, the Customer will receive a one-time credit equal to twenty percent (20%) of the first twelve (12) months billed, recurring revenue for that new Qualified Access Service (WinBack Incentive).

This WinBack Incentive credit will be applied in addition to the Incentives described in Sections 23.1.4(B) and (D).

(1) Eligibility Criteria for WinBack Incentive

- (a) The Customer must present reasonable and verifiable information, which includes but is not limited to circuit detail or coordinated move orders, to demonstrate the service being converted is currently being provided by a carrier other than the Telephone Company or its affiliates; and
- (b) The new Qualified Access Service(s) ordered must have a minimum term period of twelve (12) months for DS1 and DS3 orders and thirty-six (36) months for SONET services.

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(a) The Telephone Company will apply the credit to the Customer's bill(s) for Qualified Access Services that follows the end of the initial twelve (12) month period, thirty (30) days in arrears, as follows:

(i) When the Telephone Company and Customer have identified the start date for the term period of the WinBack Qualified Access Service in a authorization letter, the initial twelve (12) month period will be the twelve (12) month period commencing on that start date; or,

(ii) When the start date for the term period of the WinBack Qualified Access Service is established by the completion of an access service order, the initial twelve (12) month period will be the twelve (12) month period commencing on the day the access service order is completed.

(N)

(This page filed under Transmittal No. 75)

Issued: October 8, 2004

Effective: October 9, 2004

One SBC Plaza, Dallas, Texas 75202

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The Portability Incentive waives termination liability charges that would otherwise be assessed to the Customer for moves of DS3 Qualified Access Services.

This Portability Incentive is in addition to the Incentives described in Sections 23.1.4(B) and (C).

(1) Eligibility Criteria for DS3 Portability Incentive

The following criteria must be met in order to receive the Portability Incentive:

- (a) Customer's DS3s must meet the Minimum Period requirements, as established under F.C.C. No. 1, Section 7.2.4 at the previous location;
- (b) The term period of the new circuit must be equal to, or greater than, the remaining term of the disconnected circuit; and
- (c) The disconnect service and new service must be within the Operating Territory.

(2) Semi-Annual Review of Disconnect Access Service Orders

If Customer qualified for the Portability Incentive as set forth in Section 23.1.4(A) but cumulative "disconnect" access service orders exceeded "add" access service orders during the Term Year, as measured on a semi-annual basis, the Customer will be assessed termination liability charges on the sum difference between the cumulative disconnect and add access service orders.

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23.1 Contract Offer No. 1 – Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.5 WAMS-VIP Annual True-Up

(A) An annual true-up calculation is performed after each Term Year ("Annual True-Up") to establish whether:

- (1) Customer maintained the Baseline MARC during that Term Year; and
- (2) Customer met or exceeded the IDC.

For the purposes of the Annual True-Up calculations, the Customer's billed, recurring revenue for Qualified Access Services during the Term Year will constitute the Customer's "Achieved Revenue Amount."

(B) Annual True-Up Calculations

(1) Baseline MARC Annual True-Up:

The Telephone Company will determine whether the Customer's Achieved Revenue Amount meets, exceeds or falls below the Baseline MARC.

(a) If Customer's Achieved Revenue Amount falls below the Baseline MARC, the Customer may pay the difference between the Baseline MARC and the Achieved Revenue Amount (Shortfall Payment).

- (i) The Telephone Company will notify the Customer within thirty (30) days of the end of the Term Year of any Shortfall Payment.
- (ii) Customer must make the Shortfall Payment within thirty (30) days after receiving notification from the Telephone Company.
- (iii) The following Term Year's IDC and IDCC will be determined as set forth in Section 23.1.4(A) and (B).

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If Customer's Achieved Revenue Amount in Term Year 5 is \$1,000,000, the Baseline MARC of \$1,176,000 has not been met. Customer may choose to pay the difference of \$176,000 (1,176,000 - 1,000,000), in order to avoid termination liability charges.

(b) If Customer's Achieved Revenue Amount falls below the Baseline MARC for any given Term Year, and the Customer does not make the Shortfall Payment, this Contract Offer Subscription shall terminate and termination liability charges will apply, as described in Section 23.1.8(A).

(N)

(N)

(This page filed under Transmittal No. 75)

Issued: October 8, 2004

Effective: October 9, 2004

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The Telephone Company will determine whether the Customer's Achieved Revenue Amount meets, exceeds or falls below the IDC.

(a) If the Customer's Achieved Revenue Amount meets or exceeds the IDC, the Telephone Company will determine the IDCC for the following Term Year and the quarterly credits, for that following Term Year, will be applied as set forth in Section 23.1.4(B)(1).

(b) If the Customer's Achieved Revenue Amount falls below the IDC, the Customer may pay the difference between the Achieved Revenue Amount and the IDC ("Make-Up Payment") to be eligible for IDCC for the following Term Year as detailed below.

(i) The Telephone Company shall notify the Customer within thirty (30) days of the end of the Term Year of any Make-Up Payment.

(ii) Customer must pay the Make-Up Payment within thirty (30) days after receiving said notification from the Telephone Company.

(iii) The following Term Year's IDCC will be determined as set forth in Section 23.1.4(B).

(iv) If the Customer chooses not to make the Make-Up Payment, no IDCC payments will be made to the Customer for the following Term Year.

Example of IDCC Annual True-Up:

If the Achieved Revenue Amount for Term Year 3 is \$1,500,000 and the IDC is \$1,296,000 the Earned IDCC for Term Year 4 would be \$129,600, unless the Customer increased the applicable IDC as provided in Section 23.1.4(A).

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23.1 Contract Offer No. 1 – Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.6 WAMS-VIP Offer Merger/Acquisitions(A) Assignment/Successors

- (1) If the Customer wishes to assign or transfer its rights and obligations under Contract Offer No. 1 ("Contract Offer Subscription"), the Telephone Company will permit such transfer or assignment if the criteria in F.C.C. No. 1 Sections 2.1.2 are fulfilled, unless the proposed assignee or transferee demonstrates a lack of credit worthiness under any of the criteria in (a), (b) or (c) below, or if the assignee or transferee or its parent, has commenced or had initiated against it a voluntary receivership or bankruptcy proceeding.
 - (a) Any debt of the proposed assignee or transferee or its parent (defined as an entity that owns directly or indirectly more than 50% of the equity of the proposed assignee or transferee) are rated below investment grade as defined by the Securities and Exchange Commission or;
 - (b) 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 a rating organization for a possible downgrade or;
 - (c) The proposed assignee or transferee 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:
 - (i) Fair or below in a composite credit appraisal published by Dun and Bradstreet or;
 - (ii) High risk in a Paydex score as published

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23.1 Contract Offer No. 1 – Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.6 WAMS-VIP Offer Merger/Acquisitions (Cont'd)(A) Assignment/Successors (Cont'd)

- (2) The terms and conditions of the Contract Offer No. 1 shall continue in full force and effect if the Customer merges with, acquires, is acquired by, or sells all or substantially all its stock or assets to any other entity (Transfer). After a Transfer, if the other entity also purchases Qualified Access Service(s) from the Telephone Company, either directly or through any affiliates, the Customer shall not include under the Contract Offer Subscription any of the billed, recurring revenue for the Qualified Access Services of the other entity in place as of the date the Transfer is finalized (Transfer Date), except as may be provided below.

Notwithstanding the foregoing, the Customer may choose, at its discretion, one of the options set forth in subsections (i)-(iii) below (Options), within the time period that is between twelve (12) months and twenty-four (24) months after the Transfer Date.

To exercise an Option, the Customer must send written notice to the Telephone Company within the time period described above stating which Option the Customer selects. The date that the Customer sends that written notice shall be the "Option Exercise Date". None of the Options shall alter in any way the terms or conditions of any contract or tariff pursuant to which the other entity obtains Qualified Access Services from the Telephone Company, including but not limited to any terms or conditions related to termination.

Option (i): The Customer and Telephone Company shall recalculate the Baseline MARC, IDC and IDCCs (Key Numbers) for the period from the Option Exercise Date to the end of the Term Period, to allow for the combined billed, recurring revenues for Qualified Access Services of the Customer and the merged or acquiring company to be covered under the Contract Offer Subscription, provided the following conditions are met:

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23.1 Contract Offer No. 1 – Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.6 WAMS-VIP Offer Mergers/Acquisitions (Cont'd)(A) Assignment/Successors (Cont'd)

(2) (Cont'd)

Option (i): (Cont'd)

(a) One hundred percent (100%) of the total combined billed, recurring revenues for Qualified Access Services of Customer and the other entity must be included in the Contract Offer Subscription;

(b) The Baseline MARC will be adjusted according to the following formula:

The Baseline MARC will be equal to one hundred percent (100%) of the other entity's billed, recurring revenues for Qualified Access Services for the three (3) months immediately preceding the Option Exercise Date multiplied by four (4) plus 1,176,000. This shall be the "Combined Baseline MARC";

(c) The IDC for the remainder of the then-current Term Year will be adjusted according to the following formula:

The IDC will be equal to one hundred percent (100%) of the other entity's actual billed recurring Qualified Access Services revenues for the three months immediately preceding the Option Exercise Date multiplied by four (4) plus the Customer's current IDC. This shall be the "Combined IDC";

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- (d) The IDC will be adjusted according to the following formula:

The Option 1 multiplier ("Option 1 Multiplier"), which equals the ratio of the Combined IDC to the Customer's current IDC, will be applied to the IDCCs associated with the IDC Levels that are available to the Customer, as defined in Section 23.1.4.

Example:

IDC = \$1,416,000

Current IDCC Level = 3

New Entity Revenue = \$1,000,000

Combined IDC = \$2,416,000

(\$1,416,000 plus \$1,000,000)

Option 1 Multiplier = 1.71

(\$2,416,000/\$1,416,000)

- (e) The IDCCs amounts will be adjusted according to the following formula:

The Option 1 Multiplier will be applied to the IDCC associated with the IDCC Levels which remain available to the Customer in order to determine the Combined IDCC.

Example:

IDC = \$1,416,000

Current IDC-Level = 3

IDCC = \$169,920

New Entity Revenue = \$1,000,000

Combined IDC = \$2,416,000

(\$1,416,000 plus \$1,000,000)

Option 1 Multiplier = 1.71

(1,416,000/\$1,000,000)

Combined IDCC = \$290,563

(\$169,920 multiplied by 1.71)

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23.1 Contract Offer No. 1 - Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.6 WAMS-VIP Offer Mergers/Acquisitions (Cont'd)(A) Assignment/Successors (Cont'd)

(2) (Cont'd)

Option (i): (Cont'd)

(f) The Customer must have at least forty-eight (48) months remaining in the Term Period under the Contract Offer Subscription or, if less than forty-eight (48) months are remaining in the Term Period under the Contract Offer Subscription, the Term Period shall be automatically extended so that the terms and conditions of the Contract Offer No. 1 remain in effect for forty-eight (48) months after the Option Exercise Date; and

(g) The Telephone Company will recalculate the Key Numbers within sixty (60) days of the Option Exercise Date with no credits being applied to the Customer's bill(s) during this sixty (60) day period. Starting with the remaining quarters, the combined Key Numbers will be used to determine applicable IDCC amounts.

(1) If the Option Exercise Date falls within the 1st, 2nd or 3rd quarter of the respective Term Year, the initial credit application of any eligible Combined IDCC will occur thirty (30) days after the Key Numbers are determined or thirty (30) days in arrears of the end of the quarter, whichever is later; or

(2) If the Option Exercise Date falls within the fourth quarter of the respective Term Year, the initial credit application of any eligible Combined IDCC will occur thirty (30) days after the Key Numbers are determined or sixty (60) days in arrears of the end of the quarter, whichever is later.

Option (ii): The Customer and Telephone Company shall endeavor to negotiate new Key Numbers for the period from the Option Exercise Date to the end of the Term Period, to allow for the combination of the billed, recurring revenues for Qualified Access Services of the Customer and the merged or acquiring company to be covered under this Contract Offer Subscription provided the following conditions are met:

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(2) (Cont'd)

Option (ii): (Cont'd)

- (a) The Customer and Telephone Company shall each identify a team (composed of business and network subject matter experts) which shall negotiate new Key Numbers in good faith;
- (b) If these discussions do not result in mutual agreement on new Key Numbers within sixty (60) days of the date of the Option Exercise Date, either Customer or Telephone Company may provide written notice to the other requesting that each party appoint a knowledgeable, responsible representative(s) to meet and negotiate in good faith to agree upon new Key Numbers. The Customer and Telephone Company intend that these negotiations be conducted by non-lawyer, business representatives. The location, form, frequency, duration and conclusion of these discussions shall be left to the discretion of the representatives;
- (c) The Customer and Telephone Company shall endeavor to reach agreement upon the new Key Numbers within one hundred twenty (120) days of the Option Exercise Date; and
- (d) If the Customer and Telephone Company cannot mutually agree upon new Key Numbers within timelines outlined above, and the Customer does not wish to continue according to the rates terms and conditions of this Contract Offer Subscription, the Customer may terminate the Contract Offer Subscription by giving thirty (30) days written notice to the Telephone Company. Upon such termination, the Telephone Company shall bill the Customer, and the Customer shall pay to the Telephone Company, termination liability charges as described below:

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(2) (Cont'd)

Option (ii): (Cont'd)

(d)(Cont'd)

(a) For termination that occurs between twelve (12) and twenty-four (24) months after the effective Date, eighty percent (80%) of all IDCC provided to the Customer pursuant to this Contract Offer No. 1; or

(b) For termination that occurs after the first twenty-four (24) months after the Effective Date, fifty percent (50%) of all IDCC provided to the Customer pursuant to this Contract Offer No. 1.

Option (iii): The Contract Offer Subscription shall be terminated as set forth in Section 23.1.8(A).

(N)

(N)

(This page filed under Transmittal No. 75)

Issued: October 8, 2004

Effective: October 9, 2004

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23. Pricing Flexibility Contract Offerings (Cont'd)23.1 Contract Offer No. 1 – Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.6 WAMS-VIP Offer Mergers/Acquisitions (Cont'd)(B) Sale of Markets

If Customer is required by a regulatory agency to divest any markets, market spectrum or customers ("Divested Market") in connection with a Transfer, the Customer can request that Key Numbers be recalculated by the Telephone Company. The Customer must send written notice to the Telephone Company within sixty (60) days of completing a market divestiture. The date the Customer sends that written notice shall be the "Divestiture Notice Date". The Telephone Company will recalculate the Key Numbers as described below:

- (1) The Baseline MARC, IDC and IDCC amounts will be reduced by either of the following methods, at the Customer's discretion ("Divested Revenue"):
 - (a) One hundred percent (100%) of the Divested Market's billed, recurring revenues for Qualified Access Services for the three (3) months immediately preceding the notification multiplied by four (4); or
 - (b) A revenue amount that is less than the amount determined under subparagraph (a) above.

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23. Pricing Flexibility Contract Offerings (Cont'd)23.1 Contract Offer No. 1 – Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.6 WAMS-VIP Offer Mergers/Acquisitions (Cont'd)(B) Sale of Markets(Cont'd)

(2)The IDCCs will be reduced according to the following steps:

Step 1.

Determine the impact on total revenue by calculating the "Divestiture Percentage". The Divestiture Percentage is the percent change between the Pre-Divest and Post-Divest revenues. The "Pre-Divest Revenue" equals 100% of the Customer's billed, recurring revenues for Qualified Access Services for the three (3) months immediately preceding the Divestiture Notice Date multiplied by four (4) or the Baseline MARC, whichever is greater. The "Post-Divest Revenue" equals Pre-Divest Revenue minus the Divested Revenue from (B)(1).

Example:

Pre-Divest Revenue = \$1,700,000
Divested Revenue = \$ 100,000
Post-Divest Revenue = \$1,600,000
(\$1,700,000 - \$100,000)

Divestiture Percentage = 6%
(1-(\$1,600,000/\$1,700,000))

(N)

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.1 Contract Offer No. 1 – Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.6 WAMS-VIP Offer Mergers/Acquisitions (Cont'd)(B) Sale of Markets (Cont'd)

(2)(Cont'd)

Step 2.

The Divestiture Percentage will equal the percent reduction in the IDCs and IDCCs which remain available to the Customer.

Example:

IDCC-Level equals 5

Divestiture % = 6%

Reduced IDC = \$1,598,000
(\$1,700,000 - (\$1,700,000 X .06))

Reduced IDCC = \$233,496
(\$248,400 - (\$248,400 X .06))

(3) The Telephone Company will recalculate the Key Numbers within sixty (60) days of the Divestiture Notice Date. The recalculated Key Numbers will become effective once the Divested Market's billed, recurring revenues for Qualified Access Service are no longer being billed to the Customer ("Divestiture Effective Date"). Starting with the remaining quarters of the Term Year as of the Divestiture Effective Date, the recalculated Key Numbers will be used to determine the applicable IDCC.

(a) If the Divestiture Effective Date falls within the 1st, 2nd or 3rd quarter of the respective Term Year, the initial credit application of any eligible Reduced IDCC will occur thirty (30) days after the Key Numbers are effective or thirty (30) days in arrears of the end of the quarter, whichever is later; or,

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23. Pricing Flexibility Contract Offerings (Cont'd)23.1 Contract Offer No. 1 - Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.6 WAMS-VIP Offer Mergers/Acquisitions (Cont'd)(B) Sale of Markets (Cont'd)

(3) (Cont'd)

- (b) If the Divestiture Effective Date falls within the fourth quarter of the respective Term Year, the initial credit application of any eligible reduced IDCC will occur thirty (30) days after the Key Numbers are determined or sixty (60) days in arrears of the end of the quarter, whichever is later.

23.1.7. WAMS-VIP Cell-Site Performance - Credits(A) Description

Cell-Site Performance Improvement Credits are available to the Customer based upon the quality of service delivered during the Term Period, as set forth in subparagraph (2) below. The credits will be granted in the event that the Telephone Company's Contract Offer No. 1 service performance level objectives for cell-site DS1 Qualified Access Services are not met.

- (1) The DS1 Qualified Access Services cell-site performance level parameters will be based on DS1 Percentage of Network Availability. The DS1 Percent of Network Availability will be calculated by determining the actual hours that the cell-site DS1 circuits are in service during a given month compared to the total expected availability, and then aggregating those total hours over the course of a Term Year.

Example:

If a Customer had 100 circuits in service at the end of January and 110 at the end of February, their total hours of expected availability would be (31 days times 100 circuits, times 24 hours) plus (28 days, times 110 circuits, times 24 hours) or 148,320. This would be the denominator of the network availability equation.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.1 Contract Offer No. 1 – Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.7 WAMS-VIP Cell-Site Performance – Credits (Cont'd)(A) Description (Cont'd)(1) Example: (Cont'd)

The numerator would be the total hours of outage based upon measured tickets reported to the Telephone Company subtracted from the 148,320. If there were eight (8) reported failures averaging 3.5 hours per outage, the total hours of outage would be equal to twenty-eight (28). The resulting availability equation for those two (2) months will be $((148,320 - 28) / 148,320)$ or 99.981%. A twelve (12) month aggregation using the same process as noted for two (2) months will be used to determine annual percent availability for a Customer.

- (2) Table C below provides cell-site service performance targets, based on DS-1 Percentage of Network Availability, for each Term Year.

Table C

Term Year	% Network Availability
1	99.9800%
2	99.9840%
3	99.9877%
4	99.9900%
5	99.9900%
6	99.9900%
7	99.9900%

- (B) At the Annual True-Up, if the Telephone Company annual results fail to meet the performance target, as specified in Table D above, and the Customer has met the Baseline MARC, the Telephone Company will provide credits and services as follows:

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.1 Contract Offer No. 1 - Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.7 WAMS-VIP Cell-Site Performance - Credits (Cont'd)

(B)(Cont'd)

- (1) The Telephone Company will apply one hundred dollars (\$100) in special construction credits for each measured trouble ticket reported to the Telephone Company during the Term Year for cell-site improvements. The special construction credits will be used to improve performance at mutually agreed upon Customer's cell sites that are performing below the DS-1 Percentage of Network Availability as specified in Table D above.

For example: special construction credits can be used to offset the cost of replacing copper with fiber at non-performing cell-sites; and,

- (2) The Telephone Company will provide Customer the ability to purchase Automatic Loop Transfer service at twenty-five percent (25%) discount off the monthly recurring rates described in F.C.C. No. 1, Section 31.5.2 for those cell sites that fail to meet the performance target, as specified in Table D above.

23.1.8 Termination

The Customer's subscription to this Contract Offer No. 1 shall terminate if Customer gives notice to Telephone Company, as set forth in the following paragraph, and as set forth in other sections of this Contract Offer No. 1.

The termination liability charges described below shall apply if termination occurs because the Customer does not make a Shortfall Payment as described in Section 23.1.5(B)(1) and/or the Customer elects to terminate its subscription to Contract Offer No. 1 for reasons other than described in Section 23.1.6(A)(4) option(ii) and/or 23.1.8(B).

If the Customer elects to terminate its Contract Offer Subscription during the Term Period, written notification must be provided to the Telephone Company indicating the Customer's intention to terminate its Contract Offer Subscription. This notification must include the date upon which the Customer wishes to terminate its Contract Offer Subscription.

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23. Pricing Flexibility Contract Offerings (Cont'd)23.1 Contract Offer No. 1 – Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.8 Termination (Cont'd)(A) Termination Liability

Termination liability charges will consist of the sum of the following:

- (1) Ten percent (10%) of the Baseline MARC divided by twelve (12) then multiplied by the number of months remaining in the Term Period; plus
- (2) Repayment of the IDCC, given under Contract Offer No. 1 during the three (3) quarters preceding the termination date.

Example:

Customer with a Baseline MARC of \$1,176,000 and an IDC of \$1,416,000 terminates its Contract Offer Subscription after forty-eight (48) months and with thirty-six (36) months remaining in the eighty-four (84) month Term Period, and the Customer received IDCC \$127,440 for the previous three quarters before termination. The termination liability charges would be:

$((\$1,176,000/12) \times 10\% \times 36) + (\$127,440) = \$480,240$
termination liability charge.

(B) Rate Reductions

If the tariffed rates for the Qualified Access Services are reduced by a cumulative total of twenty percent (20%) from the tariffed rates in effect as of the Effective Date (Initial Tariff Rates), either party may terminate the Contract Offer Subscription by providing a sixty (60) day written notice to the other party. Termination liability charges will not apply.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.1 Contract Offer No. 1 - Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)23.1.8 Termination (Cont'd)(B) Rate Reductions (Cont'd)

To determine whether the 20% rate reduction has been met or exceeded, the Telephone Company shall perform an analysis within sixty (60) days following the Effective Date that details the Customer's inventory of Qualified Access Services and the Initial Tariff Rates (Initial Rate Analysis.)

Example: DS1-Initial Rate Analysis

Product Category/ Description	State	Zone	Term	Rate	Units	Total
DS1 - Channel Termination (CT)	CA	2	36	\$25.00	4,000	\$100,000
DS1 - Channel Mileage (CM-Fixed)				\$21.00	1,600	\$33,600
DS1 - Channel Mileage (CM-Per Mile)				\$16.40	1,000	\$16,400
DS1 Total					6,600	\$150,000

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23. Pricing Flexibility Contract Offerings (Cont'd)23.1 Contract Offer No. 1 - Wireless Advantage Managed Services Value Incentive Plan (WAMS-VIP) Offer (Cont'd)32.1.8 Termination (Cont'd)(B) Rate Reductions (Cont'd)

Telephone Company shall also perform a similar exercise within sixty (60) days following each Term Year detailing the Customer's inventory from the Initial Rate Analysis and the end-of-year tariff rates (EOY Rate Analysis). The Customer and Telephone Company will then compare the Initial Rate Analysis to the EOY Rate Analysis to identify the percent change in the total, cumulative rates, if any.

Example: Initial Rate Analysis and EOY Rate Analysis Comparison

Product Category	Units	Initial Tariff Rates	EOY Tariff Rates	% Rate Change
DS1	6600	\$150,000	\$122,000	
DS3	2000	\$ 90,000	\$ 70,000	
SONET	N/A	N/A	N/A	
Total	8600	\$240,000	\$192,000	20%

$$20\% = (1 - (\$192,000 / \$240,000))$$

The quantity of units for each product category used in the Initial Rate Analysis and the EOY Rate Analysis will be calculated from the Qualified Access Service rate elements listed below:

- (1) DS1 - Channel Terminations (CT), Channel Mileage (CM) fixed and Channel Mileage (CM) per mile;
- (2) DS3 - CT, CM fixed, CM per mile and Multiplexing (MUX); and
- (3) SONET - Not applicable.

(This page filed under Transmittal No. 75)

Issued: October 8, 2004

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23. Pricing Flexibility Contract Offerings23.2 Contract Offer No. 2 - Special Access Service Offer23.2.1 General Description

(Nx)

The Special Access Service Offer (Contract Offer No. 2) is an access discount pricing plan requiring subscription from Customers under the following Access Tariffs: Ameritech Operating Companies Tariff F.C.C. No. 2., Southwestern Bell Telephone Company Tariff F.C.C. No. 73, The Southern New England Telephone Company Tariff F.C.C. No. 39, Pacific Bell Telephone Company Tariff F.C.C. No. 1. and Nevada Bell Telephone Company Tariff F.C.C. No. 1. The plan requires Customers to maintain a Minimum Annual Revenue Commitment (MARC) for five (5) years. Contract Offer No. 2 is available to any Customer with at least \$18.5 million in cumulative annual recurring revenue for qualified access services in the SBC Interstate Access Tariffs as identified above. The qualified access services for the Nevada Bell Telephone Company (NBTC) are listed in Section 23.2.3(B). The Customer must meet the Eligibility Criteria as described in Section 23.2.2 and the Terms and Conditions as described in Section 23.2.3.

(Nx)

The Customer must meet a Minimum Annual Revenue Commitment (MARC) for each year of the five (5) year term. In the event the Customer does not meet its MARC as of each anniversary date, the Customer will be required to remit a payment, via the Annual True-Up process described in Section 23.2.4(D), otherwise termination liability charges will apply. Contract Offer No. 2 will only be available November 17, 2004 through January 17, 2005.

23.2.2 Eligibility Criteria

The following Eligibility Criteria must be met in order to receive Contract Offer No. 2 discounts:

- (A) Contract Offer No. 2 is only available for services located in the following Metropolitan Statistical Areas (MSAs): Reno, NV

If the Telephone Company receives pricing flexibility relief in additional MSAs, the Customer will be able to use services and/or revenue from those areas to meet MARC commitments upon adjustment of the MARC for those incremental revenues as defined in Section 23.2.4.

- (B) The Customer cannot subscribe to this Contract Offer concurrently with SBC's MVP offering in Section 22.

- (C) The Customer must have a minimum of \$18.5 million in cumulative annual recurring revenue for Voice Grade(VG), Digital Data (DS0), High Capacity (DS1 and DS3), Optical Carrier Network (OCN) Point-to-Point (PTP), and Gigabit Ethernet Metropolitan Area Network (GigaMAN) Services from this Contract Offer and the Contract Offers listed in Section 23.2.3 (A).

(N)

(x) issued under Authority of Special Permission Authority No. 04-075 of F.C.C.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.2 Eligibility Criteria (Cont'd)

- (D) The Customer must maintain an Access Service Ratio, equal to or greater than 98%. The Access Service Ratio is defined in Section 23.2.3(H) and will be measured monthly.

23.2.3 Terms and Conditions

(Nx)

(A) Concurrent Subscription

The Customer must concurrently subscribe to the parallel Contract Offers of Contract Offer No. 23 pursuant to the following tariffs:

- (1) Pacific Bell, Tariff F.C.C. No. 1, Section 33, Contract Offer No. 34.
- (2) Ameritech Tariff F.C.C. No. 2, Section 22, Contract Offer No. 43.
- (3) Southwestern Bell Tariff F.C.C. No. 73, Section 41, Contract Offer No. 31.
- (4) The Southern New England Telephone Company Tariff F.C.C. No. 39, Section 25, Contract Offer No. 6.

(Nx)

(B) Subject Services

Contract Offer No. 2 applies to pricing-flexibility-qualified access services (hereafter referred to as Subject Services) contained in the following tariff sections:

- (1) VG/DS0 Services - NBTC Tariff F.C.C. No. 1, Sections 7.7.6, 7.10.5 for Phase I MSAs, and Sections 22.5.2.1, 22.5.2.4 for Phase II MSAs;
- (2) DS1/DS3 Service - NBTC Tariff F.C.C. No. 1, Section 7.11.5.3 for Phase I MSAs and Section 22.5.2.5, 22.5.2.6, 22.5.2.11 for Phase II MSAs;
- (3) OCN PTP OC48/OC48c/OC192 Service - NBTC Tariff F.C.C. No. 1, Section 21.3 and Section 22.5.2.10 for Phase II
- (4) GigaMAN Service - NBTC Tariff F.C.C. No. 1 Section 7.3.12 for Phase I MSAs and Section 22.5.2.7 for Phase II MSAs.

All Terms and Conditions for the Subject Services listed above are governed by their respective tariff sections except as noted herein. Annual recurring revenue generated from these services will be used in the MARC calculations defined in Section 23.2.4.

(N)

(x) issued under Authority of Special Permission Authority No. 04-075 of F.C.C.

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.3 Terms and Conditions (Cont'd)(C) Term Period

The contract term (Term Period) is five (5) years commencing on the date the Telephone Company receives a completed Letter of Authorization (LOA) from the Customer. Contract Offer No. 2 is not renewable.

Subject Services to which the Customer already subscribes as of the commencement of the Term Period, or any Subsequently Added Services to which Customer subscribes after commencement of the Term Period in accordance with the terms set forth herein, must be on five (5) year term payment plans or converted to five (5) year term payment plans (where available) in order to receive discounts pursuant to this Contract Offer. If five (5) year term is not available, the Customer must select from the longest term plan available for the service. The Customer may select from any term plan available for purchases of new Subject Services.

(D) Discounts

Discounts will be applied 60 days after the close of each quarter beginning with the first three months after contract commencement. Discounts will be applied each quarter that the Customer complies with MARC requirements, all Eligibility Criteria, and all Terms and Conditions. MARC calculations are discussed in Section 23.2.4 and the application of discounts is detailed in Section 23.2.5.

(E) General

Services are subject to certain rates, charges, and general terms and conditions in other sections of F.C.C. Tariff No. 1, as set forth in Sections 2-General Regulations, 5-Ordering Options for Switched & Special Access Service, and 13-Additional Engineering, Additional Labor & Miscellaneous Services. Such terms and conditions may be modified through the filing of tariff changes at any time during the Term Period. Such tariff modifications will not change the Terms and Conditions described in this Contract Offer.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - DS1, DS3, SONET Service Offer (Cont'd)23.2.3 Terms and Conditions (Cont'd)(F) Contract Termination

If the Customer should terminate this Contract Offer during the Term Period, termination liability charges will apply in accordance with Section 23.2.8.

If the Customer fails to maintain any of the Terms and Conditions detailed in Section 23.2.3, the Telephone Company will notify the Customer in writing. The Customer will have 60 days to return to compliance. Failure to comply within 60 days will constitute a default and the Telephone Company shall have the right to terminate this contract. In the event of termination by Telephone Company, termination liability charges will apply as set forth in Section 23.2.8.

(G) Minimum Annual Revenue Commitment (MARC)

Customer must maintain a MARC (as described in Section 23.2.4) for each year in the Term Period of this Contract Offer.

(H) Access Service Ratio

As referenced in Section 23.2.2(D), the Customer and its affiliates must maintain an Access Service Ratio of 98% or greater. The ratio, calculated monthly, is the Access Revenue divided by Access Revenue plus Wholesale Revenue. To maintain compliance with this Contract Offer, the ratio must be greater than or equal to 98%. The 98% ratio is calculated as follows:

$$\frac{\text{Access Revenue}}{\text{Access Revenue} + \text{Wholesale Revenue}}$$

(1) Access Revenue is the Customer's and its affiliates interstate recurring billed revenue associated with the rate elements, as defined in Table A:

TABLE A:

Service	General/Basic Description
Voice Grade	7.7.1-5
DS0, DS1, DS3 Services	7.10.1-4, 7.11.1-5
OCN PTP	21.1, 21.2
GigaMAN	7.13.1-11

(2) Wholesale Revenue is the Customer's and its affiliates recurring billed revenue for associated rate elements, as defined in Table B, not included in the interstate tariff(s).

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.3 Terms and Conditions (Cont'd)(H) Access Service Ratio (Cont'd)TABLE B:

Service Level	Associated Rate Elements Not Included in Interstate Tariff
DS1/LT1	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/LT3	DS3 Loop DS3 Entrance Facilities DS3 Interoffice Transport DS3 Cross Connects DS1/DS3 Multiplexing All DS3 non-tariffed Committed Information Rate Broadband Services
OC-3 OC-12 OC-48	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 Transport Products	Dark Fiber - Interoffice Dark Fiber - Loop Dark Fiber - Subloop Dark Fiber Cross Connects Unbundled Dedicated Transport

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.3 Terms and Conditions (Cont'd)(H) Access Service Ratio (Cont'd)

- (3) As new rate elements are introduced to Table A in this section, all recurring revenues associated with the new rate elements will automatically be added to the Customer's Access Revenue, as defined in this section, for calculation of the Access Service Ratio.
- (4) As new rate elements are introduced to Table B in this section, all recurring revenues associated with the new rate elements will automatically be added to the Customer's Wholesale Revenue, as defined in this section, for calculation of the Access Service Ratio.
- (5) If the Customer fails to meet the Access Service Ratio in any given month of the term, upon notification from the Telephone Company, the Customer has ten (10) business days to notify the Telephone Company in writing that it will meet or exceed the 98% Access Services Ratio within 60 days. Failure to achieve compliance in 60 days will constitute a default and the Telephone Company shall have the right to terminate this Contract Offer. In the event of a termination by the Telephone Company, termination liability charges will apply as set forth in Section 23.2.8.
- (6) Credits will not be issued until the Customer has met the 98% Access Services Ratio.
- (I) The Customer will not be able to subscribe to any future Contract Offerings in Section 23 in conjunction with this Contract Offer or that might be offered by the Telephone Company for Subject Services covered under this Contract Offer.
- (J) The Customer must pay billed charges in full for the Term Period of the contract, excluding amounts being disputed. The Telephone Company will provide Customer written notice of a non-compliance situation. Customer will have ten (10) business days from receipt of the written notice to comply. If the Customer does not comply, the Telephone Company shall have the right to terminate this Contract Offer. In the event of termination by the Telephone Company, termination liability charges as set forth in Section 23.2.8 will apply. Credits will not be issued until the Customer has paid all billed charges (excluding disputes).

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.3 Terms and Conditions (Cont'd)

- (K) Any disputed billing amounts that have been resolved in favor of the Telephone Company are due and payable as described in Section 2.5 and Section 23.2.3 (J) above.
- (L) The Customer must provide, at the time of subscription, all of the Access Customer Name Abbreviation (ACNA), Other Company Name (OCN) and/or Tiecodes (collectively "Company Code(s)") that the Customer designates for inclusion in this Contract Offer. Company Code(s) may be added by the Customer after initial subscription but are subject to revenue and calculation requirements discussed in Section 23.2.4 (B). Customer shall not incur any termination liability under the relevant tariffs as a result of adding any such Company Code(s).

23.2.4 Minimum Annual Revenue Commitment (MARC)(A) Calculation of the MARC

Under Contract Offer No. 2, the Customer must establish and maintain a MARC. The MARC will be calculated as outlined in this section. The MARC for the first year will be established when the Telephone Company receives the Letter Of Authorization (LOA) from the Customer and the Customer identifies the Company Code(s) that will be included in this Contract Offer pursuant to Section 23.2.3 (L).

The Customer's MARC for Year 1 is calculated based on the total of the previous three (3) months recurring revenue (recalculated to five-year term rates where applicable pursuant to Section 23.2.3 (C)) for all Subject Services identified in Section 23.2.3 (B) from the SBC Tariffs identified in Section 23.2.3 (A) in eligible pricing flexibility MSAs, multiplied by four (4):

(Prior 3 months recurring revenue) x 4 = Year 1 MARC. The MARC for years 2 through 5 will be recalculated at each annual contract anniversary date.

Example for Year 1 MARC Establishment:

The Customer's prior 3 months recurring revenue (re-rated to 5 year term rates) is \$5M. The Customer's Year 1 MARC would be \$20M. (\$5M X 4).

The MARC for years 2 through 5 will be recalculated at each annual contract anniversary date as follows:

Total of the prior three (3) months recurring revenue for all Subject Services multiplied by four (4).
If the recalculated MARC is greater than the previous year's MARC, the newly recalculated MARC will apply. If the recalculated MARC is less than the previous year's MARC, the previous year's MARC will carryover for the new year.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)(A) Calculation of the MARC (Cont'd)Example for Year 2 MARC Establishment:

The Customer's prior 3 months recurring revenue is \$4M. The Customer's Year 2 MARC is \$20M. ($\$4M \times 4 = \$16M < \$20M$). In this example the Customer's prior 3 months recurring revenue multiplied by 4 is less than the Year 1 MARC.

If the Value is less than the Year 1 MARC, then the Year 1 MARC will be used for Year 2.

If the Value calculated is greater than the Year 1 MARC, then the newly calculated MARC will be used as the Year 2 MARC.

If the Telephone Company receives additional pricing flexibility relief for MSAs that are not listed in Section 23.2.2, the Telephone Company will recalculate the MARC to incorporate recurring revenues from those areas and will include those revenues in the calculations discussed in Section 23.2.4 (B).

(B) Calculations to Achieve the MARC

Recurring revenue will be counted to determine whether the Customer achieves its MARC based on the following criteria:

Revenue from Existing Services:

- (1) Recurring revenue from Subject Services to which the Customer subscribes as of the commencement of the Term Period and which are billed under the specific Company Code(s) provided by the Customer pursuant to Section 23.2.3 (L) will be included in the calculation used to achieve the MARC effective upon the commencement of the Term Period.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)(B) Calculations to Achieve the MARC (Cont'd)(2) Revenue from Subsequently Added Services:

Recurring revenue from Subject Services to which the Customer does not subscribe as of the commencement of the Contract Term Period will not be included in the calculations used to achieve the MARC except as specifically allowed in this subsection. Subject Services ordered prior to, and/or purchased after subscription to this Contract Offer and not subscribed to by the Customer as of the commencement of the Contract Term Period will be considered Subsequently Added Services.

Subsequently Added Services will be recalculated to five (5) year term payment plans in accordance with Section 3.2.3(C). Recurring revenue generated from these Subsequently Added Services may only be used in the calculations used to achieve the MARC after (1) the Telephone Company issues a completed service order, (2) the Customer has been billed for the Subsequently Added Services, and (3) the Subsequently Added Services are qualified under one of the following provisions:

(a) First Six (6) Months After Contract Subscription

Within the first six (6) months of subscribing to this Contract Offer, the Customer can add one or more of its existing Company Code(s) (with its corresponding recurring revenue) not previously included by the Customer on the LOA at the time of subscription pursuant to this provision. The Customer must notify the Telephone Company in writing of its desire to include additional Company Code(s) and specify the Company Code(s) to be added. The recurring revenue from Subject Services of these Company Code(s) (recalculated to five (5) year term payment plans where applicable pursuant to Section 23.2.3(C)) shall be eligible for the MARC discounts as detailed in Section 23.2.5 (A)(1). The recurring revenues from Subject Services of these added Company Code(s) are not eligible for above the MARC discounts detailed in Section 23.2.5 (A)(2) or win-back credits detailed in Section 23.2.5 (E).

N)

(N)

(This page filed under Transmittal No. 79)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)(B) Calculations to Achieve the MARC (Cont'd)(2) Revenue from Subsequently Added Services (Cont'd)(b) After the first six (6) Months of Contract Subscription

After the first six (6) months of subscribing to this Contract Offer, the Customer can add one or more of its existing Company Code(s) (with its corresponding recurring revenue) not previously included by the Customer on the LOA at the time of subscription pursuant to this provision.

If the Customer chooses to include any of its additional existing Company Code(s) after the first six (6) months of subscription to this Contract Offer, the Customer must notify the Telephone Company in writing of its desire to include additional Company Code (s) and specify the Company Code(s) added at which time the MARC developed pursuant to Section 23.2.4 (A) will be re-calculated and increased to reflect the additional Company Codes (recalculated to five (5) year term payment plans where applicable pursuant to Section 23.2.3(C)). The recurring revenue from Subject Services of these Company Codes shall be eligible for the MARC discounts detailed in Section 23.2.5 (A), the above the MARC discounts detailed in Section 23.2.5 (A) (2) and the win-back credits detailed in Section 23.2.5 (E).

(N)

(This page filed under Transmittal No. 79)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)(B) Calculations to Achieve the MARC (Cont'd)(3) Mergers and Acquisitions

If, after subscribing to this Contract Offer, the Customer merges with, acquires, is acquired by, sells all or substantially all its stock or assets to any other entity, or purchases all stock or substantially all stock or assets of another company (the foregoing generally referred to herein as a merger or acquisition) or establishes joint marketing arrangements with another company for Subject Services (including services currently or previously provided through the Telephone Company's network under any Company Code(s)), the Mergers and Acquisition provisions discussed in Section 23.2.7 will apply.

(C) MARC Adjustments

The Customer shall have the right to adjust the MARC downward by 10% or 20%. This adjustment can only be made one time during the life of the Contract Term Period anytime after the first 12 months of the Contract Term Period. If the Customer exercises this option, reduced discounts (as specified in Table E Section 23.2.5(B)) shall apply for the remainder of the Contract Term Period, discounts previously provided during that contract year will be re-rated retroactively to reflect the reduced discount level, and certain provisions will no longer apply as detailed in Section 23.2.5(B). If the Customer uses the MARC adjustment option in conjunction with any of the Merger and Acquisition options outlined in Section 23.2.7, reduced discounts will remain for the life of the Contract Term Period, and discounts previously received during that contract year will not be re-rated provided the Eligibility Criteria in Section 23.2.2, Terms and Conditions in Section 23.2.3 and the quarterly MARC schedule in Table D Section 23.2.5 have been met prior to the MARC adjustment, and certain provisions will no longer apply as detailed in Section 23.2.5.

(N)

(This page filed under Transmittal No. 79)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)(D) Failure to Achieve the MARC

If the Customer fails to achieve the annual MARC commitment as of the anniversary dates, the Customer will be notified by the Telephone Company.

The Customer must remit an Annual True-Up amount calculated as the difference between the annual MARC for the current plan year and the actual annual recurring revenue for the Subject Services.

If the Telephone Company does not receive the Annual True-Up amount within 30 days of the Customer's receipt of its notification, the Customer is deemed to have terminated this Contract Offer and termination liability charges will apply as set forth in Section 23.2.8.

(N)

(N)

(This page filed under Transmittal No. 79)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.5 Discounts and Other Credits(A) Discount Schedule and Application

Table C contains the level of discounts for this Contract Offer.

TABLE C:

Year	MARC Discount	Discount on Recurring Revenue above the MARC
1	7%	20%
2	9%	20%
3	10%	20%
4	11%	20%
5	12%	20%

Example for Year 1:

Customer's MARC = \$20M

Customer's actual annual recurring revenues for Subject Services = \$25M

Customer will receive a 7% discount on \$20M (issued quarterly in accordance with subsection (1) below) and a 20% discount on \$5M (issued annually in accordance with subsection (2))

- (1) The Customer will receive MARC discounts quarterly on recurring revenues for all Subject Services up to the MARC. The discount will be applied 60 days after the close of the quarter. Recurring revenue above the MARC is subject to discounts discussed in Section 23.2.5 (A) (2) below. Recurring revenue from Company Codes added pursuant to Section 23.2.3 (L) will receive quarterly discounts described below at the time the codes are added.

The Customer will receive the quarterly discounts as long as the following percentages of the MARC have been achieved by the close of the quarter per Table D. Discounts will be withheld if the Customer does not meet the percentage requirements in any given quarter and discounts will not be issued until the Customer is in compliance with the MARC percentage schedule as outlined below.

Table D:

Quarter	% of MARC
1st	25%
2nd	50%
3rd	75%
4th	100%

(N)

(This page filed under Transmittal No. 79)

Issued: November 16, 2004

Effective: November 17, 2004

One SBC Plaza, Dallas, Texas 75202

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)

(N)

23.2.5 Discounts and Other Credits (Cont'd)(A) Discount Schedule and Application (Cont'd)

(1) (Cont'd)

For example, if the Customer has achieved 25% of the MARC by the close of the 1st quarter and is in compliance with all Terms and Conditions of this Contract Offer, discounts will be issued. If in the second quarter the Customer only achieves 40% of the MARC and all Terms and Conditions are met, discounts will be withheld. If by the 3rd quarter the Customer has achieved 75% of the MARC and is in compliance with all Terms and Conditions, discounts previously withheld in the 2nd quarter will be issued as well as discounts due for the 3rd quarter.

- (2) The Customer will receive the 20% discount on recurring revenues above the MARC annually. The discount will be applied 60 days after each contract anniversary. Recurring revenue generated from services of Company Code(s) not identified at the time of subscription are not eligible for above the MARC discounts unless added pursuant to Section 23.2.3 (L) or Section 23.2.7.

(N)

(This page filed under Transmittal No. 79)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.5 Discounts and Other Credits (Cont'd)(B) MARC adjustments Discount Schedule and Application

Table E outlines discounts that the Customer will be eligible to receive depending on the MARC adjustment percentage chosen pursuant to Section 23.2.4 (C)

TABLE E:

MARC Adjustment	10%	20%
Discounts	Year 2 - 3% Year 3 - 4% Year 4 - 5% Year 5 - 6%	Year 2 - 2% Year 3 - 2% Year 4 - 3% Year 5 - 3%
Above MARC discount	Will only apply to revenue above the MARC used as the basis of the adjustment or the recurring revenue from the previous 3 months multiplied by 4, whichever is lower.	Will only apply to revenue above the MARC used as the basis of the adjustment or the recurring revenue from the previous 3 months multiplied by 4, whichever is lower.

For example, the Customer's year 1 MARC is \$17M. The Customer's year 2 MARC is \$18M (calculated as revenue from the last quarter in year 1 x 4). On the anniversary date at the end of year 2, the Customer's year 2 recurring revenue is \$15M. The Customer elects to invoke the MARC adjustment option and adjust the MARC downward by 20%. The Customer's year 3 recalculated MARC is therefore \$14.4M = (\$18M x 80%).

The Customer's discounts (including any previously withheld) for year 2 will be recalculated to reflect levels as set forth in Table E and would total \$300K (\$15M x 2%). Any discounts that have been applied to the Customer's bill during year 2 in excess of \$300K will be back-billed. The discount amount for year 3 is also 2% as set forth in Table E.

Discounts, on a going forward basis, will be based on the re-calculated MARC and will be subject to percentages as detailed in Table E.

(N)

(This page filed under Transmittal No. 79)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)

(N)

23.2.5 Discounts and Other Credits (Cont'd)(C) Non-Recurring Charges

The Telephone Company will waive Non-recurring charges associated with the purchase of VG, DS0, DS1, DS3, OCN PTP, and GigaMan Services. In the event that these non-recurring charges are billed, The Telephone Company will credit these charges quarterly. Access Order and Special Construction charges will apply where applicable. Non-recurring charges will be credited quarterly as long as the Customer is in compliance with the Eligibility Criteria in Section 23.2.2 and the Terms and Conditions of this Contract Offer as specified in Section 23.2.3. If the Customer fails to meet the MARC on a contract anniversary date pursuant to Section 23.2.4 (A) and fails to pay the Annual True-Up as defined in Section 23.2.4(D), the Customer will be back-billed the previous 12-months non-recurring charges previously waived or credited.

(D) Portability

The Telephone Company will waive termination liability charges for moves and/or disconnection of DS1, DS3, and OCN PTP Services. In the event that termination liability charges for these moves and/or disconnections are assessed, the Telephone Company will credit these charges quarterly provided the following criteria are met, and provided the Eligibility Criteria in Section 23.2.2, and Terms and Conditions in Section 23.2.3 have been met. If the Customer fails to meet the MARC on each contract anniversary date pursuant to Section 23.2.4 (A) and fails to pay the Annual True-Up as defined in Section 23.2.4 (D), the Customer will be back-billed the previous 12-months charges that were waived or credited for termination liability charges.

(1) The move, disconnect, and/or new service may be from any SBC Tariff as described in Section 23.2.1.

(2) DS1 Services

The Telephone Company will credit the Customer, quarterly, any termination liability charges assessed and not disputed for the move and/or disconnection of DS1s throughout the term of this Contract Offer No. 23, provided that the Eligibility Criteria in Section 23.2.2, and Terms and Conditions in Section 23.2.3 have been met.

(N)

(This page filed under Transmittal No. 79)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.5 Discounts and Other Credits (Cont'd)(D) Portability (Cont'd)(3) DS3, OC3 and OC12 Point to Point Services

The Telephone Company will credit the Customer, quarterly, for any termination liability charges assessed and not disputed for the move and/or disconnection of DS3s, OC3 PTP, and OC12 PTP services throughout the Contract Term Period as long as the DS3, OC3 PTP or OC12 PTP has been in service for a minimum of one (1) year from the original installation date, and provided that the Eligibility Criteria in Section 23.2.2 and Terms and Conditions in Section 23.2.3 have been met.

(4) OC48 and OC192 PTP Services

The Telephone Company will credit the Customer, quarterly, for any termination liability charges assessed and not disputed for the move and/or disconnection of OC48 or OC192 Point to Point (PTP) throughout the Contract Term Period as long as the OC48 PTP or OC192 PTP has been in service for a minimum of three (3) years from the original installation date, and provided that the Eligibility Criteria in Section 23.2.2 and Terms and Conditions in Section 23.2.3 have been met.

(E) Winback

Winback credits will be calculated and applied on each contract anniversary date, and shall be in addition to all other discounts and credits set forth in this Contract Offer. Recurring revenue generated from services of Company Code(s) not identified at the time of subscription are not eligible for win-back credits described below.

(1) The Customer will receive a 20% discount for the first 12 months of service for any DS1 or DS3 services moved to the Telephone Company's network that were previously provided by another company as long as the service is on the Telephone company's network for at least one year.

(2) The Customer will receive a 30% discount for the first 12 months of service for any OC3, OC12, OC48, and/or OC192 Point to Point or Dedicated SONET Ring Service moved to the Telephone Company's network that were previously provided by another company as long as the service is on the Telephone Company's network for at least one year.

(N)

(This page filed under Transmittal No. 79)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)

(N)

23.2.5 Discounts and Other Credits (Cont'd)(E) Winback (Cont'd)

- (3) The Customer must provide documentation to demonstrate that the Subject Services have been converted from another carrier to the Telephone Company's network. Documentation may include but is not limited to: circuit detail records, invoices, and coordinated orders to move the service. The Telephone Company is willing to review other documents that the Customer may deem appropriate to meet this criteria, however only to the extent that it does not result in breach of any non-disclosure agreements which may govern the distribution of such information.

23.2.6 Assignment and Transfer

If the Customer wishes to assign or transfer its use of services under this Contract Offer pursuant to F.C.C. No. 1, Section 2.1.2 of this Tariff, the Telephone Company will acknowledge such transfer or assignment pursuant to the terms of F.C.C. No. 1, Section 2.1.2, unless: (1) the proposed assignee or transferee demonstrates a lack of credit worthiness under one of the criteria in (A) or (B) below, or (2) if the proposed assignee or transferee or its parent company 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 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 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 "fair" or below in a composite credit appraisal published by Dun and Bradstreet, or "high risk" in a Paydex score as published by Dun and Bradstreet.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions

The Terms and Conditions of Contract Offer No. 2 shall continue in full force and in effect if the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all its stock or certain assets to any other entity, or purchases all stock or substantially all stock or certain assets of another company (the foregoing generally referred to herein as a merger or acquisition). During or after the merger or acquisition, if the other company involved in the merger or acquisition also purchases Subject Services from the Telephone Company, either directly or through any affiliates, then billed, recurring revenue for Subject Services of the other company involved in the merger or acquisition will not be used in Calculations of the MARC as discussed in Section 23.2.4 (A) or Calculations to Achieve the MARC discussed in Section 23.2.4 (B), except as permitted by one of the provisions in this subsection.

The Customer must be meeting MARC commitments and all Eligibility Criteria and Terms and Conditions outlined in Sections 23.2.2 and 23.2.3 in order to exercise the provisions in this subsection.

Recurring revenue from Subject Services from the other entity involved in the merger or acquisition can not be used for any incentives or discounts contained in this Contract Offer except as permitted by one of the provisions outlined in this subsection.

The Customer shall have four one-time choices (per merger or acquisition) to incorporate revenue from the other company or companies involved in the merger or acquisition. If the Customer does not exercise any of the provisions in this subsection by the times specified in relation to the Transaction Close Date, the Customer will not be permitted to use existing or future Special Access revenues from the other company or companies involved in the merger or acquisition in the Calculation of the MARC or Calculations to Achieve the MARC discussed in Section 23.2.4 (A) & (B).

The acquisition and/or merger Transaction Close Date will be used to measure the length of time the following provisions are available. 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.

If the Customer has selected but not yet fully implemented one of the provisions in this subsection, the MARC adjustment calculation as detailed in Section 23.2.4 will only apply to the Customer's original (pre-merger or acquisition) MARC and will not include revenue from the other company involved in the merger or acquisition. The Customer cannot combine any of the Merger and Acquisition provisions in this subsection.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions (Cont'd)

The Telephone Company will calculate Annual Total Special Access revenue of the other company or companies involved in the merger or acquisition on the date the Customer selects one of the provisions in this subsection. The Annual Total Special Access revenue will be determined by calculating the prior three (3) months recurring revenue for Subject Services of the other company involved in the merger or acquisition multiplied by four (4). Until the Customer has fully implemented one of the provisions in this subsection, the Customer will not be eligible to earn above the MARC discounts discussed in Section 23.2.5 (A) (2) for revenue from the other company involved in the merger or acquisition until after it exceeds the Annual Total Special Access revenue. After the Customer has fully implemented one of the provisions in this subsection, the Customer will be eligible for above the MARC discounts discussed in Section 23.2.5 (A) (2) for revenue above the new combined MARC.

(N)

(N)

(This page filed under Transmittal No. 79)

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23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)

(N)

23.2.7 Mergers and Acquisitions (Cont'd)23.2.7.1 Merger and Acquisition Provisions(A) Mergers and Acquisitions - Access Services Ratio Impacting

If the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all its stock or certain assets to any other entity, or purchases all stock or substantially all stock or certain assets of another company and inclusion of the recurring revenue from Subject Services from the other company or companies involved in the merger or acquisition into this Contract Offer will cause the Customer to fall below Access Services Ratio Terms and Conditions as defined in Section 23.2.3 (H), the Customer must select from Option 1 or 2 below in order to receive incentives and discounts for the other company involved in the merger or acquisition under this Contract Offer.

The Customer must fully comply with the Access Services Ratio Terms and Conditions within 18 months of the Transaction Close Date and must comply with the Access Conversion Schedule outlined in Table F below. As long as the Customer is in compliance with the Access Conversion Schedule and the Customer's existing revenue complies with the Access Services Ratio in Section 23.2.4 (H), the MARC discounts will continue to apply and the Customer shall not be considered out of compliance with the Access Services Ratio Terms and Conditions as defined in Section 23.2.3 (H).

If at any time the Customer does not comply with the Access Conversion Schedule outlined in Table F below, MARC discounts will be withheld and the Telephone Company will notify the Customer of non-compliance. The Customer will have 30 days to comply with the Access Conversion Schedule. If the Customer does not comply within 30 days, this Contract Offer will be considered in default, and the Telephone Company shall have the right to terminate this Contract Offer and termination liability charges will apply as detailed in Section 23.2.8. Notwithstanding the foregoing, if Telephone Company is primarily responsible for a delay in the Access Conversion Schedule, then the MARC discounts will continue to apply and the Customer shall not be considered out of compliance with the Access Services Ratio Terms and Conditions as defined in Section 23.2.3 (H) and the contract will not be considered in default, however, each party shall take all reasonable steps to comply as soon as possible.

(N)

(This page filed under Transmittal No. 79)

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23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions (Cont'd)23.2.7.1 Merger and Acquisition Provisions (Cont'd)(A) Mergers and Acquisitions - Access Services Ratio Impacting
(Cont'd)

Table F outlines the Unbundled Network Element (UNE) to Access conversion schedule that will be used to migrate the services.

Table F: Access Conversion Schedule

90 Day Period	Required Conversion Level
1st	10%
2nd	20%
3rd	50%
4th	75%
5th	85%
6th	100%

(N)

(N)

(This page filed under Transmittal No. 79)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions (Cont'd)23.2.7.1 Merger and Acquisition Provisions (Cont'd)(A) Mergers and Acquisitions - Access Services Ratio Impacting
(Cont'd)(1) Option 1

- (a) The Customer may establish a temporary MARC by adding 85% but no more than 100% (depending on the Customer's selection) of Special Access Services recurring revenue from the other company involved in the merger or acquisition for Subject Services billed by the Telephone Company to the Customer's existing MARC as outlined below for a period not to exceed 18 months from the Transaction Close Date.
- (b) The Customer must exercise this option within 60 days following the Transaction Close Date.
- (c) This option is not available in the 5th year of the Contract Term Period.
- (d) The temporary MARC will be calculated by taking the last 3 months of applicable monthly recurring Special Access revenue for the other company involved in the merger or acquisition (from the date this option is selected) for Subject Services multiplied by four (4) multiplied by 85% to 100% (depending on the Customer's selection) and adding to that the Customer's existing MARC.
- (e) A combined permanent MARC will be established no later than 18 months following the Transaction Close Date using the following calculation.
 - (i) The last 3 months (at the time of the calculation) of monthly recurring Special Access revenue for the other company involved in the merger or acquisition for Subject Services multiplied by four (4) and adding to that the Customer's existing MARC.
 - (ii) The permanent MARC must be at least 85% of temporary MARC as defined in Section 23.2.7.1 (A) (1) (d).

(N)

(This page filed under Transmittal No. 79)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions (Cont'd)23.2.7.1 Merger and Acquisition Provisions (Cont'd)(A) Mergers and Acquisitions - Access Services Ratio Impacting
(Cont'd)(2) Option 2

- (a) The Customer must add at least 85% but no more than 100% (depending on the Customer's selection) of Special Access recurring revenue from the other company involved in the merger or acquisition for Subject Services billed by the Telephone Company to the Customer's existing MARC as outlined below for a period not to exceed 18 months from the Transaction Close Date.
- (b) The Customer must exercise this option within 12 months following the Transaction Close Date
- (c) This option is not available during the 5th year of the Contract Term Period.
- (d) The MARC will be set by taking the last 3 months of applicable monthly recurring Special Access revenue from the other company involved in the merger or acquisition (on the date this option is selected) for Subject Services multiplied by four (4) and multiplied by 85% to 100% (depending on the Customer's selection) and adding to that the Customer's existing MARC.

(B) Mergers and Acquisitions - Access Services Ratio Not Impacting

If the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all its stock or certain assets to any other entity, or purchases all stock or substantially all stock or certain assets of another company and inclusion of recurring revenue from Subject Services from the other company or companies involved in the merger or acquisition into this Contract Offer will not cause the Customer to fall below Access Services Ratio Terms and Conditions as defined in Section 23.2.3 (H), the Customer must select from Option 3 or 4 below in order to receive incentives and discounts for the other company involved in the merger or acquisition under this Contract Offer.

(This page filed under Transmittal No. 79)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions (Cont'd)23.2.7.1 Merger and Acquisition Provisions (Cont'd)(B) Mergers and Acquisitions - Access Services Ratio Not Impacting (Cont'd)(1) Option 3

- (a) The Customer may establish a temporary MARC by adding 90% to 100% (depending on the Customer's selection) of Special Access recurring revenue from the other company involved in the merger or acquisition for Subject Services used to calculate the MARC to the extent outlined below for a period not to exceed 12 months from the Transaction Close Date.
- (b) The Customer must exercise this option within 60 days following the acquisition Transaction Close Date.
- (c) This option is not available during the 5th year of the Contract Term Period.
- (d) The temporary MARC will be established by taking the last 3 months of applicable monthly recurring Special Access revenue, for the other company involved in the merger or acquisition (from this date this option is selected) for Subject Services multiplied by four (4) and multiplied by 90% to 100% (depending on the Customer's selection). This amount will be added to the Customer's existing MARC.
- (e) A combined permanent MARC will be established no later than 12 months following the Transaction Close Date using the following calculation:
 - (i) The last three (3) months (at the time of the calculation) of monthly recurring Special Access revenues from the other company involved in the merger or acquisition for Subject Services multiplied by four (4) and adding to that the Customer's existing MARC.
 - (ii) The permanent MARC must be at least 85% of the temporary MARC as defined Section 23.2.7 (A) (4).

(N)

(This page filed under Transmittal No. 79)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions (Cont'd)23.2.7.1 Merger and Acquisition Provisions (Cont'd)(B) Mergers and Acquisitions - Access Services Ratio Not Impacting (Cont'd)(2) Option 4

- (a) The Customer must add at least 90% but no more than 100% (depending on the Customer's selection) of Special Access recurring revenue from the other company involved in the merger or acquisition for Subject Services billed by the Telephone Company to the Customer's existing MARC to the extent outlined below for a period not to exceed 12 months from the Transaction Close Date.
- (b) The Customer must exercise this option within 12 months of the Transaction Close Date.
- (c) This option is not available during the 5th year of the Contract Term Period.
- (d) The MARC will be set by taking the last 3 months of applicable monthly recurring Special Access revenue from the other company involved in the merger or acquisition (from the date this option is selected) for Subject Services multiplied by four (4) and multiplied by 90% to 100% (depending on the Customer's selection) and adding to that the Customer's existing MARC.

(N)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.8 Termination Liability(A) Termination Liability Charges

If the Customer terminates Contract Offer No. 2 before the completion of the term for any reason whatsoever (other than a material default by the Telephone Company), the Customer must pay the Telephone Company termination liability charges as described below. These charges shall become due as of the effective date of the cancellation or termination. The Customer must provide written notification 90 days prior to the desired date of termination to the Telephone Company. This notification must include the date upon which the Customer will terminate the Contract Offer.

If the Customer fails to meet any of the eligibility criteria in Section 23.2.2, or fails to meet any of the Terms and Conditions in Section 23.2.3, then the Telephone Company shall provide the Customer with written notification of such non-compliance and the Customer will have sixty (60) days to comply. If the Customer does not comply within such time period, the Customer will be deemed to have terminated its participation in Contract Offer No. 2 and termination liability charges will apply as stated below and will be payable pursuant to F.C.C. No. 1, Section 2.4.

The Customer's termination liability charge shall be equal to: 100% of all Discounts under Contract Offer No. 2 for the six (6) months immediately prior to the date of termination; plus the following schedule:

- (1) If terminated in Year 1, 10.0% of the Base MARC for the remaining portion of Year 1, plus 10% of the Base MARC for the remaining years of the Contract Offer.
- (2) If terminated in Year 2, 12.5% of the Year 2 MARC for the remaining portion of Year 2, plus 12.5% of the Year 2 MARC for the remaining years of the Contract Offer.
- (3) If terminated in Year 3, 12.5% of the Year 3 MARC for the remaining portion of Year 3, plus 12.5% of the Year 3 MARC for the remaining years of the Contract Offer.
- (4) If terminated in Year 4, 12.5% of the Year 4 MARC for the remaining portion of Year 4, plus 12.5% of the Year 4 MARC for year 5.
- (5) If terminated in Year 5, 10.0% of the Year 5 MARC for the remaining portion of Year 5.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.8 Termination Liability (Cont'd)(B) New Technology Termination

If the Customer wishes to move its services to new alternative technology (such as Broadband over power lines, Wi-MAX, DWDM, or optical switching technologies), the Customer shall qualify to reduce the MARC termination liability charges as detailed above by 50% in year 4 and/or 5 of this Contract Offer as long as the conditions in this subsection are met. The Customer shall have the right to move its services to new alternative technology and receive reduced termination liability as long as Eligibility Criteria in Section 23.2. 2 and all Terms and Conditions in Section 23.2.3 are met. The Customer must provide documentation that reasonably demonstrates that the new technology is an alternative to existing Subject Services.

For example, if the Customer wishes to terminate this Contract Offer due to a new technology in year 4 of the Contract Offer, the termination liability charge would be equal to 100% of discounts applied during the previous six-months as well as 6.25% of the Year 4 MARC for the remaining portion of year 4, plus 6.25% of the Year 4 MARC for year 5.

The Customer must notify SBC in writing at least 90 days prior to the start of year 4 if they wish to terminate in year 4 and invoke this provision or at least 90 days prior to the start of year 5 if they wish to terminate in year 5 and invoke this provision. This notification must include the date upon which the Customer will terminate the Contract Offer. Additionally, this provision is only available to the Customer if it has not exercised the 20% MARC adjustment option as detailed in Section 23.2.4 (C).

- (C) This Section 23.2.8 sets forth the sole and exclusive remedies for termination of this Contract Offer No. 23, except for charges due and payable for Subject Services rendered prior to the date of termination and any non-recurring charges and/or termination liability charges that may become due and payable in accordance with Sections 23.2.5 (C) and (D).

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.2 Eligibility Criteria (Cont'd)

- (D) The Customer must maintain an Access Service Ratio, equal to or greater than 98%. The Access Service Ratio is defined in Section 23.2.3(H) and will be measured monthly.

23.2.3 Terms and Conditions

(Nx)

(A) Concurrent Subscription

The Customer must concurrently subscribe to the parallel Contract Offers of Contract Offer No. 23 pursuant to the following tariffs:

- (1) Pacific Bell, Tariff F.C.C No. 1, Section 33, Contract Offer No. 34.
- (2) Ameritech Tariff F.C.C. No. 2, Section 22, Contract Offer No. 43.
- (3) Southwestern Bell Tariff F.C.C. No. 73, Section 41, Contract Offer No. 31.
- (4) The Southern New England Telephone Company Tariff F.C.C. No. 39, Section 25, Contract Offer No. 6.

(Nx)

(B) Subject Services

Contract Offer No. 2 applies to pricing-flexibility-qualified access services (hereafter referred to as Subject Services) contained in the following tariff sections:

- (1) VG/DS0 Services - NBTC Tariff F.C.C. No. 1, Sections 7.7.6, 7.10.5 for Phase I MSAs, and Sections 22.5.2.1, 22.5.2.4 for Phase II MSAs;
- (2) DS1/DS3 Service - NBTC Tariff F.C.C. No. 1, Section 7.11.5.3 for Phase I MSAs and Section 22.5.2.5, 22.5.2.6, 22.5.2.11 for Phase II MSAs;
- (3) OCN PTP OC48/OC48c/OC192 Service - NBTC Tariff F.C.C. No. 1, Section 21.3 and Section 22.5.2.10 for Phase II
- (4) GigaMAN Service - NBTC Tariff F.C.C. No. 1 Section 7.3.12 for Phase I MSAs and Section 22.5.2.7 for Phase II MSAs.

All Terms and Conditions for the Subject Services listed above are governed by their respective tariff sections except as noted herein. Annual recurring revenue generated from these services will be used in the MARC calculations defined in Section 23.2.4.

(N)

(x) issued under Authority of Special Permission Authority No. 04-075 of F.C.C.

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.3 Terms and Conditions (Cont'd)(C) Term Period

The contract term (Term Period) is five (5) years commencing on the date the Telephone Company receives a completed Letter of Authorization (LOA) from the Customer. Contract Offer No. 2 is not renewable.

Subject Services to which the Customer already subscribes as of the commencement of the Term Period, or any Subsequently Added Services to which Customer subscribes after commencement of the Term Period in accordance with the terms set forth herein, must be on five (5) year term payment plans or converted to five (5) year term payment plans (where available) in order to receive discounts pursuant to this Contract Offer. If five (5) year term is not available, the Customer must select from the longest term plan available for the service. The Customer may select from any term plan available for purchases of new Subject Services.

(D) Discounts

Discounts will be applied 60 days after the close of each quarter beginning with the first three months after contract commencement. Discounts will be applied each quarter that the Customer complies with MARC requirements, all Eligibility Criteria, and all Terms and Conditions. MARC calculations are discussed in Section 23.2.4 and the application of discounts is detailed in Section 23.2.5.

(E) General

Services are subject to certain rates, charges, and general terms and conditions in other sections of F.C.C. Tariff No. 1, as set forth in Sections 2-General Regulations, 5-Ordering Options for Switched & Special Access Service, and 13-Additional Engineering, Additional Labor & Miscellaneous Services. Such terms and conditions may be modified through the filing of tariff changes at any time during the Term Period. Such tariff modifications will not change the Terms and Conditions described in this Contract Offer.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - DS1, DS3, SONET Service Offer (Cont'd)23.2.3 Terms and Conditions (Cont'd)(F) Contract Termination

If the Customer should terminate this Contract Offer during the Term Period, termination liability charges will apply in accordance with Section 23.2.8.

If the Customer fails to maintain any of the Terms and Conditions detailed in Section 23.2.3, the Telephone Company will notify the Customer in writing. The Customer will have 60 days to return to compliance. Failure to comply within 60 days will constitute a default and the Telephone Company shall have the right to terminate this contract. In the event of termination by Telephone Company, termination liability charges will apply as set forth in Section 23.2.8.

(G) Minimum Annual Revenue Commitment (MARC)

Customer must maintain a MARC (as described in Section 23.2.4) for each year in the Term Period of this Contract Offer.

(H) Access Service Ratio

As referenced in Section 23.2.2(D), the Customer and its affiliates must maintain an Access Service Ratio of 98% or greater. The ratio, calculated monthly, is the Access Revenue divided by Access Revenue plus Wholesale Revenue. To maintain compliance with this Contract Offer, the ratio must be greater than or equal to 98%. The 98% ratio is calculated as follows:

$$\frac{\text{Access Revenue}}{\text{Access Revenue} + \text{Wholesale Revenue}}$$

(1) Access Revenue is the Customer's and its affiliates interstate recurring billed revenue associated with the rate elements, as defined in Table A:

TABLE A:

Service	General/Basic Description
Voice Grade	7.7.1-5
DS0, DS1, DS3 Services	7.10.1-4, 7.11.1-5
OCN PTP	21.1, 21.2
GigaMAN	7.13.1-11

(2) Wholesale Revenue is the Customer's and its affiliates recurring billed revenue for associated rate elements, as defined in Table B, not included in the interstate tariff(s).

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.3 Terms and Conditions (Cont'd)(H) Access Service Ratio (Cont'd)TABLE B:

Service Level	Associated Rate Elements Not Included in Interstate Tariff
DS1/LT1	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/LT3	DS3 Loop DS3 Entrance Facilities DS3 Interoffice Transport DS3 Cross Connects DS1/DS3 Multiplexing All DS3 non-tariffed Committed Information Rate Broadband Services
OC-3 OC-12 OC-48	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 Transport Products	Dark Fiber - Interoffice Dark Fiber - Loop Dark Fiber - Subloop Dark Fiber Cross Connects Unbundled Dedicated Transport

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.3 Terms and Conditions (Cont'd)(H) Access Service Ratio (Cont'd)

- (3) As new rate elements are introduced to Table A in this section, all recurring revenues associated with the new rate elements will automatically be added to the Customer's Access Revenue, as defined in this section, for calculation of the Access Service Ratio.
- (4) As new rate elements are introduced to Table B in this section, all recurring revenues associated with the new rate elements will automatically be added to the Customer's Wholesale Revenue, as defined in this section, for calculation of the Access Service Ratio.
- (5) If the Customer fails to meet the Access Service Ratio in any given month of the term, upon notification from the Telephone Company, the Customer has ten (10) business days to notify the Telephone Company in writing that it will meet or exceed the 98% Access Services Ratio within 60 days. Failure to achieve compliance in 60 days will constitute a default and the Telephone Company shall have the right to terminate this Contract Offer. In the event of a termination by the Telephone Company, termination liability charges will apply as set forth in Section 23.2.8.
- (6) Credits will not be issued until the Customer has met the 98% Access Services Ratio.
- (I) The Customer will not be able to subscribe to any future Contract Offerings in Section 23 in conjunction with this Contract Offer or that might be offered by the Telephone Company for Subject Services covered under this Contract Offer.
- (J) The Customer must pay billed charges in full for the Term Period of the contract, excluding amounts being disputed. The Telephone Company will provide Customer written notice of a non-compliance situation. Customer will have ten (10) business days from receipt of the written notice to comply. If the Customer does not comply, the Telephone Company shall have the right to terminate this Contract Offer. In the event of termination by the Telephone Company, termination liability charges as set forth in Section 23.2.8 will apply. Credits will not be issued until the Customer has paid all billed charges (excluding disputes).

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.3 Terms and Conditions (Cont'd)

- (K) Any disputed billing amounts that have been resolved in favor of the Telephone Company are due and payable as described in Section 2.5 and Section 23.2.3 (J) above.
- (L) The Customer must provide, at the time of subscription, all of the Access Customer Name Abbreviation (ACNA), Other Company Name (OCN) and/or Tiecodes (collectively "Company Code(s)") that the Customer designates for inclusion in this Contract Offer. Company Code(s) may be added by the Customer after initial subscription but are subject to revenue and calculation requirements discussed in Section 23.2.4 (B). Customer shall not incur any termination liability under the relevant tariffs as a result of adding any such Company Code(s).

23.2.4 Minimum Annual Revenue Commitment (MARC)(A) Calculation of the MARC

Under Contract Offer No. 2, the Customer must establish and maintain a MARC. The MARC will be calculated as outlined in this section. The MARC for the first year will be established when the Telephone Company receives the Letter Of Authorization (LOA) from the Customer and the Customer identifies the Company Code(s) that will be included in this Contract Offer pursuant to Section 23.2.3 (L).

The Customer's MARC for Year 1 is calculated based on the total of the previous three (3) months recurring revenue (recalculated to five-year term rates where applicable pursuant to Section 23.2.3 (C)) for all Subject Services identified in Section 23.2.3 (B) from the SBC Tariffs identified in Section 23.2.3 (A) in eligible pricing flexibility MSAs, multiplied by four (4):

(Prior 3 months recurring revenue) x 4 = Year 1 MARC. The MARC for years 2 through 5 will be recalculated at each annual contract anniversary date.

Example for Year 1 MARC Establishment:

The Customer's prior 3 months recurring revenue (re-rated to 5 year term rates) is \$5M. The Customer's Year 1 MARC would be \$20M. (\$5M X 4).

The MARC for years 2 through 5 will be recalculated at each annual contract anniversary date as follows:

Total of the prior three (3) months recurring revenue for all Subject Services multiplied by four (4).
If the recalculated MARC is greater than the previous year's MARC, the newly recalculated MARC will apply. If the recalculated MARC is less than the previous year's MARC, the previous year's MARC will carryover for the new year.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)(A) Calculation of the MARC (Cont'd)Example for Year 2 MARC Establishment:

The Customer's prior 3 months recurring revenue is \$4M. The Customer's Year 2 MARC is \$20M. ($\$4M \times 4 = \$16M < \$20M$). In this example the Customer's prior 3 months recurring revenue multiplied by 4 is less than the Year 1 MARC.

If the Value is less than the Year 1 MARC, then the Year 1 MARC will be used for Year 2.

If the Value calculated is greater than the Year 1 MARC, then the newly calculated MARC will be used as the Year 2 MARC.

If the Telephone Company receives additional pricing flexibility relief for MSAs that are not listed in Section 23.2.2, the Telephone Company will recalculate the MARC to incorporate recurring revenues from those areas and will include those revenues in the calculations discussed in Section 23.2.4 (B).

(B) Calculations to Achieve the MARC

Recurring revenue will be counted to determine whether the Customer achieves its MARC based on the following criteria:

Revenue from Existing Services:

- (1) Recurring revenue from Subject Services to which the Customer subscribes as of the commencement of the Term Period and which are billed under the specific Company Code(s) provided by the Customer pursuant to Section 23.2.3 (L) will be included in the calculation used to achieve the MARC effective upon the commencement of the Term Period.

(N)

(This page filed under Transmittal No. 79)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)(B) Calculations to Achieve the MARC (Cont'd)(2) Revenue from Subsequently Added Services:

Recurring revenue from Subject Services to which the Customer does not subscribe as of the commencement of the Contract Term Period will not be included in the calculations used to achieve the MARC except as specifically allowed in this subsection. Subject Services ordered prior to, and/or purchased after subscription to this Contract Offer and not subscribed to by the Customer as of the commencement of the Contract Term Period will be considered Subsequently Added Services.

Subsequently Added Services will be recalculated to five (5) year term payment plans in accordance with Section 3.2.3(C). Recurring revenue generated from these Subsequently Added Services may only be used in the calculations used to achieve the MARC after (1) the Telephone Company issues a completed service order, (2) the Customer has been billed for the Subsequently Added Services, and (3) the Subsequently Added Services are qualified under one of the following provisions:

(a) First Six (6) Months After Contract Subscription

Within the first six (6) months of subscribing to this Contract Offer, the Customer can add one or more of its existing Company Code(s) (with its corresponding recurring revenue) not previously included by the Customer on the LOA at the time of subscription pursuant to this provision. The Customer must notify the Telephone Company in writing of its desire to include additional Company Code(s) and specify the Company Code(s) to be added. The recurring revenue from Subject Services of these Company Code(s) (recalculated to five (5) year term payment plans where applicable pursuant to Section 23.2.3(C)) shall be eligible for the MARC discounts as detailed in Section 23.2.5 (A)(1). The recurring revenues from Subject Services of these added Company Code(s) are not eligible for above the MARC discounts detailed in Section 23.2.5 (A)(2) or win-back credits detailed in Section 23.2.5 (E).

N)

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(This page filed under Transmittal No. 79)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)(B) Calculations to Achieve the MARC (Cont'd)(2) Revenue from Subsequently Added Services (Cont'd)(b) After the first six (6) Months of Contract Subscription

After the first six (6) months of subscribing to this Contract Offer, the Customer can add one or more of its existing Company Code(s) (with its corresponding recurring revenue) not previously included by the Customer on the LOA at the time of subscription pursuant to this provision.

If the Customer chooses to include any of its additional existing Company Code(s) after the first six (6) months of subscription to this Contract Offer, the Customer must notify the Telephone Company in writing of its desire to include additional Company Code (s) and specify the Company Code(s) added at which time the MARC developed pursuant to Section 23.2.4 (A) will be re-calculated and increased to reflect the additional Company Codes (recalculated to five (5) year term payment plans where applicable pursuant to Section 23.2.3(C)). The recurring revenue from Subject Services of these Company Codes shall be eligible for the MARC discounts detailed in Section 23.2.5 (A), the above the MARC discounts detailed in Section 23.2.5 (A) (2) and the win-back credits detailed in Section 23.2.5 (E).

(N)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)(B) Calculations to Achieve the MARC (Cont'd)(3) Mergers and Acquisitions

If, after subscribing to this Contract Offer, the Customer merges with, acquires, is acquired by, sells all or substantially all its stock or assets to any other entity, or purchases all stock or substantially all stock or assets of another company (the foregoing generally referred to herein as a merger or acquisition) or establishes joint marketing arrangements with another company for Subject Services (including services currently or previously provided through the Telephone Company's network under any Company Code(s)), the Mergers and Acquisition provisions discussed in Section 23.2.7 will apply.

(C) MARC Adjustments

The Customer shall have the right to adjust the MARC downward by 10% or 20%. This adjustment can only be made one time during the life of the Contract Term Period anytime after the first 12 months of the Contract Term Period. If the Customer exercises this option, reduced discounts (as specified in Table E Section 23.2.5(B)) shall apply for the remainder of the Contract Term Period, discounts previously provided during that contract year will be re-rated retroactively to reflect the reduced discount level, and certain provisions will no longer apply as detailed in Section 23.2.5(B). If the Customer uses the MARC adjustment option in conjunction with any of the Merger and Acquisition options outlined in Section 23.2.7, reduced discounts will remain for the life of the Contract Term Period, and discounts previously received during that contract year will not be re-rated provided the Eligibility Criteria in Section 23.2.2, Terms and Conditions in Section 23.2.3 and the quarterly MARC schedule in Table D Section 23.2.5 have been met prior to the MARC adjustment, and certain provisions will no longer apply as detailed in Section 23.2.5.

(N)

(This page filed under Transmittal No. 79)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)(D) Failure to Achieve the MARC

If the Customer fails to achieve the annual MARC commitment as of the anniversary dates, the Customer will be notified by the Telephone Company.

The Customer must remit an Annual True-Up amount calculated as the difference between the annual MARC for the current plan year and the actual annual recurring revenue for the Subject Services.

If the Telephone Company does not receive the Annual True-Up amount within 30 days of the Customer's receipt of its notification, the Customer is deemed to have terminated this Contract Offer and termination liability charges will apply as set forth in Section 23.2.8.

(N)

(N)

(This page filed under Transmittal No. 79)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.5 Discounts and Other Credits(A) Discount Schedule and Application

Table C contains the level of discounts for this Contract Offer.

TABLE C:

Year	MARC Discount	Discount on Recurring Revenue above the MARC
1	7%	20%
2	9%	20%
3	10%	20%
4	11%	20%
5	12%	20%

Example for Year 1:

Customer's MARC = \$20M

Customer's actual annual recurring revenues for Subject Services = \$25M

Customer will receive a 7% discount on \$20M (issued quarterly in accordance with subsection (1) below) and a 20% discount on \$5M (issued annually in accordance with subsection (2))

- (1) The Customer will receive MARC discounts quarterly on recurring revenues for all Subject Services up to the MARC. The discount will be applied 60 days after the close of the quarter. Recurring revenue above the MARC is subject to discounts discussed in Section 23.2.5 (A) (2) below. Recurring revenue from Company Codes added pursuant to Section 23.2.3 (L) will receive quarterly discounts described below at the time the codes are added.

The Customer will receive the quarterly discounts as long as the following percentages of the MARC have been achieved by the close of the quarter per Table D. Discounts will be withheld if the Customer does not meet the percentage requirements in any given quarter and discounts will not be issued until the Customer is in compliance with the MARC percentage schedule as outlined below.

Table D:

Quarter	% of MARC
1st	25%
2nd	50%
3rd	75%
4th	100%

(N)

(This page filed under Transmittal No. 79)

Issued: November 16, 2004

Effective: November 17, 2004

One SBC Plaza, Dallas, Texas 75202

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)

(N)

23.2.5 Discounts and Other Credits (Cont'd)(A) Discount Schedule and Application (Cont'd)

(1) (Cont'd)

For example, if the Customer has achieved 25% of the MARC by the close of the 1st quarter and is in compliance with all Terms and Conditions of this Contract Offer, discounts will be issued. If in the second quarter the Customer only achieves 40% of the MARC and all Terms and Conditions are met, discounts will be withheld. If by the 3rd quarter the Customer has achieved 75% of the MARC and is in compliance with all Terms and Conditions, discounts previously withheld in the 2nd quarter will be issued as well as discounts due for the 3rd quarter.

- (2) The Customer will receive the 20% discount on recurring revenues above the MARC annually. The discount will be applied 60 days after each contract anniversary. Recurring revenue generated from services of Company Code(s) not identified at the time of subscription are not eligible for above the MARC discounts unless added pursuant to Section 23.2.3 (L) or Section 23.2.7.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.5 Discounts and Other Credits (Cont'd)(B) MARC adjustments Discount Schedule and Application

Table E outlines discounts that the Customer will be eligible to receive depending on the MARC adjustment percentage chosen pursuant to Section 23.2.4 (C)

TABLE E:

MARC Adjustment	10%	20%
Discounts	Year 2 - 3% Year 3 - 4% Year 4 - 5% Year 5 - 6%	Year 2 - 2% Year 3 - 2% Year 4 - 3% Year 5 - 3%
Above MARC discount	Will only apply to revenue above the MARC used as the basis of the adjustment or the recurring revenue from the previous 3 months multiplied by 4, whichever is lower.	Will only apply to revenue above the MARC used as the basis of the adjustment or the recurring revenue from the previous 3 months multiplied by 4, whichever is lower.

For example, the Customer's year 1 MARC is \$17M. The Customer's year 2 MARC is \$18M (calculated as revenue from the last quarter in year 1 x 4). On the anniversary date at the end of year 2, the Customer's year 2 recurring revenue is \$15M. The Customer elects to invoke the MARC adjustment option and adjust the MARC downward by 20%. The Customer's year 3 recalculated MARC is therefore \$14.4M = (\$18M x 80%).

The Customer's discounts (including any previously withheld) for year 2 will be recalculated to reflect levels as set forth in Table E and would total \$300K (\$15M x 2%). Any discounts that have been applied to the Customer's bill during year 2 in excess of \$300K will be back-billed. The discount amount for year 3 is also 2% as set forth in Table E.

Discounts, on a going forward basis, will be based on the re-calculated MARC and will be subject to percentages as detailed in Table E.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)

(N)

23.2.5 Discounts and Other Credits (Cont'd)(C) Non-Recurring Charges

The Telephone Company will waive Non-recurring charges associated with the purchase of VG, DS0, DS1, DS3, OCN PTP, and GigaMan Services. In the event that these non-recurring charges are billed, The Telephone Company will credit these charges quarterly. Access Order and Special Construction charges will apply where applicable. Non-recurring charges will be credited quarterly as long as the Customer is in compliance with the Eligibility Criteria in Section 23.2.2 and the Terms and Conditions of this Contract Offer as specified in Section 23.2.3. If the Customer fails to meet the MARC on a contract anniversary date pursuant to Section 23.2.4 (A) and fails to pay the Annual True-Up as defined in Section 23.2.4(D), the Customer will be back-billed the previous 12-months non-recurring charges previously waived or credited.

(D) Portability

The Telephone Company will waive termination liability charges for moves and/or disconnection of DS1, DS3, and OCN PTP Services. In the event that termination liability charges for these moves and/or disconnections are assessed, the Telephone Company will credit these charges quarterly provided the following criteria are met, and provided the Eligibility Criteria in Section 23.2.2, and Terms and Conditions in Section 23.2.3 have been met. If the Customer fails to meet the MARC on each contract anniversary date pursuant to Section 23.2.4 (A) and fails to pay the Annual True-Up as defined in Section 23.2.4 (D), the Customer will be back-billed the previous 12-months charges that were waived or credited for termination liability charges.

(1) The move, disconnect, and/or new service may be from any SBC Tariff as described in Section 23.2.1.

(2) DS1 Services

The Telephone Company will credit the Customer, quarterly, any termination liability charges assessed and not disputed for the move and/or disconnection of DS1s throughout the term of this Contract Offer No. 23, provided that the Eligibility Criteria in Section 23.2.2, and Terms and Conditions in Section 23.2.3 have been met.

(N)

(This page filed under Transmittal No. 79)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.5 Discounts and Other Credits (Cont'd)(D) Portability (Cont'd)(3) DS3, OC3 and OC12 Point to Point Services

The Telephone Company will credit the Customer, quarterly, for any termination liability charges assessed and not disputed for the move and/or disconnection of DS3s, OC3 PTP, and OC12 PTP services throughout the Contract Term Period as long as the DS3, OC3 PTP or OC12 PTP has been in service for a minimum of one (1) year from the original installation date, and provided that the Eligibility Criteria in Section 23.2.2 and Terms and Conditions in Section 23.2.3 have been met.

(4) OC48 and OC192 PTP Services

The Telephone Company will credit the Customer, quarterly, for any termination liability charges assessed and not disputed for the move and/or disconnection of OC48 or OC192 Point to Point (PTP) throughout the Contract Term Period as long as the OC48 PTP or OC192 PTP has been in service for a minimum of three (3) years from the original installation date, and provided that the Eligibility Criteria in Section 23.2.2 and Terms and Conditions in Section 23.2.3 have been met.

(E) Winback

Winback credits will be calculated and applied on each contract anniversary date, and shall be in addition to all other discounts and credits set forth in this Contract Offer. Recurring revenue generated from services of Company Code(s) not identified at the time of subscription are not eligible for win-back credits described below.

(1) The Customer will receive a 20% discount for the first 12 months of service for any DS1 or DS3 services moved to the Telephone Company's network that were previously provided by another company as long as the service is on the Telephone company's network for at least one year.

(2) The Customer will receive a 30% discount for the first 12 months of service for any OC3, OC12, OC48, and/or OC192 Point to Point or Dedicated SONET Ring Service moved to the Telephone Company's network that were previously provided by another company as long as the service is on the Telephone Company's network for at least one year.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)

(N)

23.2.5 Discounts and Other Credits (Cont'd)(E) Winback (Cont'd)

- (3) The Customer must provide documentation to demonstrate that the Subject Services have been converted from another carrier to the Telephone Company's network. Documentation may include but is not limited to: circuit detail records, invoices, and coordinated orders to move the service. The Telephone Company is willing to review other documents that the Customer may deem appropriate to meet this criteria, however only to the extent that it does not result in breach of any non-disclosure agreements which may govern the distribution of such information.

23.2.6 Assignment and Transfer

If the Customer wishes to assign or transfer its use of services under this Contract Offer pursuant to F.C.C. No. 1, Section 2.1.2 of this Tariff, the Telephone Company will acknowledge such transfer or assignment pursuant to the terms of F.C.C. No. 1, Section 2.1.2, unless: (1) the proposed assignee or transferee demonstrates a lack of credit worthiness under one of the criteria in (A) or (B) below, or (2) if the proposed assignee or transferee or its parent company 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 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 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 "fair" or below in a composite credit appraisal published by Dun and Bradstreet, or "high risk" in a Paydex score as published by Dun and Bradstreet.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions

The Terms and Conditions of Contract Offer No. 2 shall continue in full force and in effect if the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all its stock or certain assets to any other entity, or purchases all stock or substantially all stock or certain assets of another company (the foregoing generally referred to herein as a merger or acquisition). During or after the merger or acquisition, if the other company involved in the merger or acquisition also purchases Subject Services from the Telephone Company, either directly or through any affiliates, then billed, recurring revenue for Subject Services of the other company involved in the merger or acquisition will not be used in Calculations of the MARC as discussed in Section 23.2.4 (A) or Calculations to Achieve the MARC discussed in Section 23.2.4 (B), except as permitted by one of the provisions in this subsection.

The Customer must be meeting MARC commitments and all Eligibility Criteria and Terms and Conditions outlined in Sections 23.2.2 and 23.2.3 in order to exercise the provisions in this subsection.

Recurring revenue from Subject Services from the other entity involved in the merger or acquisition can not be used for any incentives or discounts contained in this Contract Offer except as permitted by one of the provisions outlined in this subsection.

The Customer shall have four one-time choices (per merger or acquisition) to incorporate revenue from the other company or companies involved in the merger or acquisition. If the Customer does not exercise any of the provisions in this subsection by the times specified in relation to the Transaction Close Date, the Customer will not be permitted to use existing or future Special Access revenues from the other company or companies involved in the merger or acquisition in the Calculation of the MARC or Calculations to Achieve the MARC discussed in Section 23.2.4 (A) & (B).

The acquisition and/or merger Transaction Close Date will be used to measure the length of time the following provisions are available. 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.

If the Customer has selected but not yet fully implemented one of the provisions in this subsection, the MARC adjustment calculation as detailed in Section 23.2.4 will only apply to the Customer's original (pre-merger or acquisition) MARC and will not include revenue from the other company involved in the merger or acquisition. The Customer cannot combine any of the Merger and Acquisition provisions in this subsection.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions (Cont'd)

The Telephone Company will calculate Annual Total Special Access revenue of the other company or companies involved in the merger or acquisition on the date the Customer selects one of the provisions in this subsection. The Annual Total Special Access revenue will be determined by calculating the prior three (3) months recurring revenue for Subject Services of the other company involved in the merger or acquisition multiplied by four (4). Until the Customer has fully implemented one of the provisions in this subsection, the Customer will not be eligible to earn above the MARC discounts discussed in Section 23.2.5 (A) (2) for revenue from the other company involved in the merger or acquisition until after it exceeds the Annual Total Special Access revenue. After the Customer has fully implemented one of the provisions in this subsection, the Customer will be eligible for above the MARC discounts discussed in Section 23.2.5 (A) (2) for revenue above the new combined MARC.

(N)

(N)

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23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)

(N)

23.2.7 Mergers and Acquisitions (Cont'd)23.2.7.1 Merger and Acquisition Provisions(A) Mergers and Acquisitions - Access Services Ratio Impacting

If the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all its stock or certain assets to any other entity, or purchases all stock or substantially all stock or certain assets of another company and inclusion of the recurring revenue from Subject Services from the other company or companies involved in the merger or acquisition into this Contract Offer will cause the Customer to fall below Access Services Ratio Terms and Conditions as defined in Section 23.2.3 (H), the Customer must select from Option 1 or 2 below in order to receive incentives and discounts for the other company involved in the merger or acquisition under this Contract Offer.

The Customer must fully comply with the Access Services Ratio Terms and Conditions within 18 months of the Transaction Close Date and must comply with the Access Conversion Schedule outlined in Table F below. As long as the Customer is in compliance with the Access Conversion Schedule and the Customer's existing revenue complies with the Access Services Ratio in Section 23.2.4 (H), the MARC discounts will continue to apply and the Customer shall not be considered out of compliance with the Access Services Ratio Terms and Conditions as defined in Section 23.2.3 (H).

If at any time the Customer does not comply with the Access Conversion Schedule outlined in Table F below, MARC discounts will be withheld and the Telephone Company will notify the Customer of non-compliance. The Customer will have 30 days to comply with the Access Conversion Schedule. If the Customer does not comply within 30 days, this Contract Offer will be considered in default, and the Telephone Company shall have the right to terminate this Contract Offer and termination liability charges will apply as detailed in Section 23.2.8. Notwithstanding the foregoing, if Telephone Company is primarily responsible for a delay in the Access Conversion Schedule, then the MARC discounts will continue to apply and the Customer shall not be considered out of compliance with the Access Services Ratio Terms and Conditions as defined in Section 23.2.3 (H) and the contract will not be considered in default, however, each party shall take all reasonable steps to comply as soon as possible.

(N)

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23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions (Cont'd)23.2.7.1 Merger and Acquisition Provisions (Cont'd)(A) Mergers and Acquisitions - Access Services Ratio Impacting
(Cont'd)

Table F outlines the Unbundled Network Element (UNE) to Access conversion schedule that will be used to migrate the services.

Table F: Access Conversion Schedule

90 Day Period	Required Conversion Level
1st	10%
2nd	20%
3rd	50%
4th	75%
5th	85%
6th	100%

(N)

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions (Cont'd)23.2.7.1 Merger and Acquisition Provisions (Cont'd)(A) Mergers and Acquisitions - Access Services Ratio Impacting
(Cont'd)(1) Option 1

- (a) The Customer may establish a temporary MARC by adding 85% but no more than 100% (depending on the Customer's selection) of Special Access Services recurring revenue from the other company involved in the merger or acquisition for Subject Services billed by the Telephone Company to the Customer's existing MARC as outlined below for a period not to exceed 18 months from the Transaction Close Date.
- (b) The Customer must exercise this option within 60 days following the Transaction Close Date.
- (c) This option is not available in the 5th year of the Contract Term Period.
- (d) The temporary MARC will be calculated by taking the last 3 months of applicable monthly recurring Special Access revenue for the other company involved in the merger or acquisition (from the date this option is selected) for Subject Services multiplied by four (4) multiplied by 85% to 100% (depending on the Customer's selection) and adding to that the Customer's existing MARC.
- (e) A combined permanent MARC will be established no later than 18 months following the Transaction Close Date using the following calculation.
 - (i) The last 3 months (at the time of the calculation) of monthly recurring Special Access revenue for the other company involved in the merger or acquisition for Subject Services multiplied by four (4) and adding to that the Customer's existing MARC.
 - (ii) The permanent MARC must be at least 85% of temporary MARC as defined in Section 23.2.7.1 (A) (1) (d).

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions (Cont'd)23.2.7.1 Merger and Acquisition Provisions (Cont'd)(A) Mergers and Acquisitions - Access Services Ratio Impacting
(Cont'd)(2) Option 2

- (a) The Customer must add at least 85% but no more than 100% (depending on the Customer's selection) of Special Access recurring revenue from the other company involved in the merger or acquisition for Subject Services billed by the Telephone Company to the Customer's existing MARC as outlined below for a period not to exceed 18 months from the Transaction Close Date.
- (b) The Customer must exercise this option within 12 months following the Transaction Close Date
- (c) This option is not available during the 5th year of the Contract Term Period.
- (d) The MARC will be set by taking the last 3 months of applicable monthly recurring Special Access revenue from the other company involved in the merger or acquisition (on the date this option is selected) for Subject Services multiplied by four (4) and multiplied by 85% to 100% (depending on the Customer's selection) and adding to that the Customer's existing MARC.

(B) Mergers and Acquisitions - Access Services Ratio Not Impacting

If the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all its stock or certain assets to any other entity, or purchases all stock or substantially all stock or certain assets of another company and inclusion of recurring revenue from Subject Services from the other company or companies involved in the merger or acquisition into this Contract Offer will not cause the Customer to fall below Access Services Ratio Terms and Conditions as defined in Section 23.2.3 (H), the Customer must select from Option 3 or 4 below in order to receive incentives and discounts for the other company involved in the merger or acquisition under this Contract Offer.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions (Cont'd)23.2.7.1 Merger and Acquisition Provisions (Cont'd)(B) Mergers and Acquisitions - Access Services Ratio Not Impacting (Cont'd)(1) Option 3

- (a) The Customer may establish a temporary MARC by adding 90% to 100% (depending on the Customer's selection) of Special Access recurring revenue from the other company involved in the merger or acquisition for Subject Services used to calculate the MARC to the extent outlined below for a period not to exceed 12 months from the Transaction Close Date.
- (b) The Customer must exercise this option within 60 days following the acquisition Transaction Close Date.
- (c) This option is not available during the 5th year of the Contract Term Period.
- (d) The temporary MARC will be established by taking the last 3 months of applicable monthly recurring Special Access revenue, for the other company involved in the merger or acquisition (from this date this option is selected) for Subject Services multiplied by four (4) and multiplied by 90% to 100% (depending on the Customer's selection). This amount will be added to the Customer's existing MARC.
- (e) A combined permanent MARC will be established no later than 12 months following the Transaction Close Date using the following calculation:
 - (i) The last three (3) months (at the time of the calculation) of monthly recurring Special Access revenues from the other company involved in the merger or acquisition for Subject Services multiplied by four (4) and adding to that the Customer's existing MARC.
 - (ii) The permanent MARC must be at least 85% of the temporary MARC as defined Section 23.2.7 (A) (4).

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.7 Mergers and Acquisitions (Cont'd)23.2.7.1 Merger and Acquisition Provisions (Cont'd)(B) Mergers and Acquisitions - Access Services Ratio Not Impacting (Cont'd)(2) Option 4

- (a) The Customer must add at least 90% but no more than 100% (depending on the Customer's selection) of Special Access recurring revenue from the other company involved in the merger or acquisition for Subject Services billed by the Telephone Company to the Customer's existing MARC to the extent outlined below for a period not to exceed 12 months from the Transaction Close Date.
- (b) The Customer must exercise this option within 12 months of the Transaction Close Date.
- (c) This option is not available during the 5th year of the Contract Term Period.
- (d) The MARC will be set by taking the last 3 months of applicable monthly recurring Special Access revenue from the other company involved in the merger or acquisition (from the date this option is selected) for Subject Services multiplied by four (4) and multiplied by 90% to 100% (depending on the Customer's selection) and adding to that the Customer's existing MARC.

(N)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.8 Termination Liability(A) Termination Liability Charges

If the Customer terminates Contract Offer No. 2 before the completion of the term for any reason whatsoever (other than a material default by the Telephone Company), the Customer must pay the Telephone Company termination liability charges as described below. These charges shall become due as of the effective date of the cancellation or termination. The Customer must provide written notification 90 days prior to the desired date of termination to the Telephone Company. This notification must include the date upon which the Customer will terminate the Contract Offer.

If the Customer fails to meet any of the eligibility criteria in Section 23.2.2, or fails to meet any of the Terms and Conditions in Section 23.2.3, then the Telephone Company shall provide the Customer with written notification of such non-compliance and the Customer will have sixty (60) days to comply. If the Customer does not comply within such time period, the Customer will be deemed to have terminated its participation in Contract Offer No. 2 and termination liability charges will apply as stated below and will be payable pursuant to F.C.C. No. 1, Section 2.4.

The Customer's termination liability charge shall be equal to: 100% of all Discounts under Contract Offer No. 2 for the six (6) months immediately prior to the date of termination; plus the following schedule:

- (1) If terminated in Year 1, 10.0% of the Base MARC for the remaining portion of Year 1, plus 10% of the Base MARC for the remaining years of the Contract Offer.
- (2) If terminated in Year 2, 12.5% of the Year 2 MARC for the remaining portion of Year 2, plus 12.5% of the Year 2 MARC for the remaining years of the Contract Offer.
- (3) If terminated in Year 3, 12.5% of the Year 3 MARC for the remaining portion of Year 3, plus 12.5% of the Year 3 MARC for the remaining years of the Contract Offer.
- (4) If terminated in Year 4, 12.5% of the Year 4 MARC for the remaining portion of Year 4, plus 12.5% of the Year 4 MARC for year 5.
- (5) If terminated in Year 5, 10.0% of the Year 5 MARC for the remaining portion of Year 5.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.2 Contract Offer No. 2 - Special Access Service Offer (Cont'd)23.2.8 Termination Liability (Cont'd)(B) New Technology Termination

If the Customer wishes to move its services to new alternative technology (such as Broadband over power lines, Wi-MAX, DWDM, or optical switching technologies), the Customer shall qualify to reduce the MARC termination liability charges as detailed above by 50% in year 4 and/or 5 of this Contract Offer as long as the conditions in this subsection are met. The Customer shall have the right to move its services to new alternative technology and receive reduced termination liability as long as Eligibility Criteria in Section 23.2. 2 and all Terms and Conditions in Section 23.2.3 are met. The Customer must provide documentation that reasonably demonstrates that the new technology is an alternative to existing Subject Services.

For example, if the Customer wishes to terminate this Contract Offer due to a new technology in year 4 of the Contract Offer, the termination liability charge would be equal to 100% of discounts applied during the previous six-months as well as 6.25% of the Year 4 MARC for the remaining portion of year 4, plus 6.25% of the Year 4 MARC for year 5.

The Customer must notify SBC in writing at least 90 days prior to the start of year 4 if they wish to terminate in year 4 and invoke this provision or at least 90 days prior to the start of year 5 if they wish to terminate in year 5 and invoke this provision. This notification must include the date upon which the Customer will terminate the Contract Offer. Additionally, this provision is only available to the Customer if it has not exercised the 20% MARC adjustment option as detailed in Section 23.2.4 (C).

- (C) This Section 23.2.8 sets forth the sole and exclusive remedies for termination of this Contract Offer No. 23, except for charges due and payable for Subject Services rendered prior to the date of termination and any non-recurring charges and/or termination liability charges that may become due and payable in accordance with Sections 23.2.5 (C) and (D).

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23. Pricing Flexibility Contract Offerings23.3 Contract Offer No. 3 – Broadband Plan - Service Offer23.3.1 General Description

Contract Offer No. 3 – the Broadband Plan is a special access discount pricing plan requiring subscription from the Customer under the following Access Tariffs: Ameritech Operating Companies (Ameritech) Tariff F.C.C. No 2, Nevada Bell Telephone Company (NBTC) Tariff F.C.C. No. 1, Pacific Bell Telephone Company (PBTC) Tariff F.C.C. No. 1, Southwestern Bell Telephone Company (SWBT) Tariff F.C.C. No. 73, and The Southern New England Telephone Company (SNET) Tariff F.C.C. No. 39. The Broadband Plan provides discounted rates (Level II as described below) subject to volume commitments as described in Section 23.3.4 (G).

Services covered under this Contract Offer will be grouped into Levels:

- (1) Level I – Qualified existing access services that are already in service prior to the commencement of the Term Period are “Level I” circuits. Level I circuits will be counted toward the Customer’s Portability Volume Commitment, as provided in Section 23.3.4 (G) of this Contract Offer, but are not eligible for the discounts provided under this Contract Offer.
- (2) Level II – Qualified access services that are installed during the Term Period, or qualified access services that migrate from Level I to Level II as described in section 23.3.5, are “Level II” circuits. Level II circuits will be counted toward the Customer’s Portability Volume Commitment and also will be eligible for the discounts provided under this Contract Offer.

Qualified services under this Contract Offer are available only in the Pricing Flexibility Metropolitan Statistical Areas (hereafter referred to as MSA) as described in Section 23.3.3 (A). Contract Offer No. 3 is available for subscription from July 1, 2005 through August 1, 2005. This Contract Offer is not renewable.

(x) Issued under Authority of Special Permission No. 05-024 of F.C.C.

(This page filed under Transmittal No. 102)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.2 Subject Services

This Contract Offer applies to access services that qualify for pricing flexibility (hereafter referred to as Subject Services), as provided in the following tariff sections:

- (1) High Capacity Service (DS3), NBTC Tariff F.C.C. No. 1, Section 7.11.5 for Phase 1 MSAs and Section 22.5.2.5 for Phase 2 MSAs;
- (2) OCN Point to Point (OC-3, OC-12), NBTC Tariff F.C.C. No. 1, Section 21.3 for Phase 1 MSAs and Section 22.5.2.10 for Phase 2 MSAs;

All terms and conditions for the Subject Services provided under this Contract Offer are governed by their respective tariff sections, except as noted herein.

23.3.3 Eligibility Criteria

The following eligibility criteria must be met for Subject Services to be provided under this Contract Offer.

- (A) Subject Services must be located in the following Pricing Flexibility MSAs:

Reno, NV

If the Telephone Company receives end-user channel termination pricing flexibility relief in additional MSAs, those MSAs will be added the Broadband Plan, as outlined in Section 23.3.4 (E) of this Contract Offer.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.3 Contract Offer No. 3 - Broadband Plan - Service Offer (Cont'd)23.3.3 Eligibility Criteria (Cont'd)

(B) Subject Services must be configured as follows:

- (1) Subject Services must be a non-channelized point-to-point service; and
- (2) Both end points of the circuit must be served by the Telephone Company and be located in an MSA listed in Section 23.3.3 (A) of this Contract Offer; and
- (3) Subject Services must be at capacity levels of DS3, OC-3 or OC-12; and
- (4) The 'Z' location for each circuit must be an end-user premise that is not a wireless cell site.

(C) The Customer must have a minimum of 1,200 existing Subject Service circuits meeting the configuration requirements described in Section 23.3.3 (B) of this Contract Offer.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.4 Term and Conditions(A) Term Period

The Term Period for this Contract Offer shall be five (5) years commencing on the first day of the month after the Telephone Company receives a completed Letter of Subscription (LOS).

If the Customer elects to continue service upon the expiration of the Term Period, the Customer may; by written notification to the Telephone Company sixty (60) days prior to the expiration of the Term Period:

- (1) Extend rates, terms and conditions of this Contract Offer for one (1) additional two (2) year term; or
- (2) Select from the applicable payment options in NBTC Tariff F.C.C. No. 1.

If, at the expiration of the Term Period, the Customer does not elect an option as described above, the Subject Services provided under this Contract Offer will be subsequently be provided under the prevailing applicable monthly extension rates found in NBTC Tariff F.C.C. No. 1.

(B) Subscription

- (1) Contract Offer No. 3 is available only from June 1, 2005 through August 1, 2005.
- (2) To subscribe to this Contract Offer the Customer must submit a Letter of Subscription (LOS) to the Telephone Company.
- (3) To subscribe to this Contract Offer the Customer must meet all eligibility criteria as outlined in 23.3.3.
- (4) The Customer must also concurrently subscribe to the following contract offers pursuant to the following tariffs:
 - (a) SWBT Tariff F.C.C. No. 73, Section 41, Contract Offer No. 47;
 - (b) PBTC Tariff F.C.C. No. 1, Section 33, Contract Offer No. 54;
 - (c) SNET Tariff F.C.C. No. 39, Section 25, Contract Offer No. 15;
 - (d) Ameritech Tariff F.C.C. No. 2, Section 22, Contract Offer No. 61.

(x) Issued under Authority of Special Permission No. 05-024 of F.C.C.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.4 Term and Conditions (Cont'd)(C) General

- (1) The Customer must subscribe to the services available under this Contract Offer according to the regulations set forth in NBTC Tariff F.C.C. No. 1, Section 5-Ordering Options for Switched and Special Access Services.
- (2) Subject Services provided under this Contract Offer shall also be subject to certain rates, charges and general terms and conditions set forth in NBTC Tariff F.C.C. No. 1, Sections: 2-General Regulations, 5-Ordering Options for Switched and Special Access Service, and 13-Additional Engineering, Additional Labor and Miscellaneous Services. Such terms and conditions may be modified through the filing of tariff revisions at any time during the Term Period, however such tariff modifications will not change the terms and conditions described in this Contract Offer.
- (3) If the Customer discontinues service under this Contract Offer during the Term Period, termination liability charges will apply in accordance with Section 23.3.10 of this Contract Offer.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.4 Term and Conditions (Cont'd)(D) New Subject Services

- (1) All of the Customer's new Subject Services that are purchased from the Telephone Company and are eligible for inclusion in this Contract Offer must be provided under this Contract Offer.
- (2) The Customer may not include new Subject Services that are provided under this Contract Offer in any other promotional tariff, contract offer, or other discount plan concurrently with this Contract Offer.
- (3) The Customer must subscribe to all new Subject Services according to the otherwise applicable one (1) year term payment plan.
- (4) The Customer must pay all Special Construction charges associated with the provisioning of new Subject Services.
- (5) New Subject Services must remain in service under this Contract Offer for at least one (1) year.
- (6) New Subject Services installed in the final year of the Term Period of this Contract Offer must remain in service for at least one (1) year. Such Subject Services will continue to be subject to the Rates and Charges outlined in this Contract Offer for the remainder of the one (1) year minimum period. If any such Subject Services do not remain in service for at least one (1) year, they will be subject to Termination Liability as described in Section 23.3.10 of this Contract Offer.

(N)

(N)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.4 Term and Conditions (Cont'd)(E) Additional MSA Relief

- (1) Upon FCC approval of additional MSAs for pricing flexibility relief for end-user channel terminations, those MSAs will be added to the Broadband Plan in TSA₃.
- (2) Subject Services that were installed in such additional MSAs prior to the commencement of the Term Period will be included in this Contract Offer as Level I services; subject to existing terms for Migration to Level II as provided in Section 23.3.5.
- (3) Subject Services installed, in such additional MSAs, during the Term Period will be included in this Contract Offer as Level II services.
- (4) As Subject Services in such additional MSAs are provided under this Contract Offer, the then-current Portability Volume Commitment will be increased to reflect the added Subject Services, based on the in service volumes for qualified Subject Services that are reflected in the recurring billing records from the Telephone Company during the month prior to the MSA being granted pricing flexibility relief.

(F) Access Service Ratio

The Customer and its affiliates must maintain an Access Service Ratio of 95 percent or greater. The ratio will be based cumulative billing for DS1 and DS3 services in the MSAs described in Section 23.3.3 (A) of this Contract Offer for the prior six-month period. The Access Service Ratio will be calculated upon the completion of each six-month period beginning upon the commencement of the Term Period as follows:

$$\frac{\text{Access Billing} - \text{Wholesale Billing}}{\text{Access Billing}}$$

Where:

- (1) Access Billing consists of the Customer's and its affiliates' interstate recurring billing for DS1 and DS3 rate elements, as defined in NBTC Tariff F.C.C. No. 1, Sections 7.11 and 22.5.2; and
- (2) Wholesale Billing consists of the Customer's and its affiliates' recurring billing for DS1 and DS3 bandwidth equivalent rate elements, as provided in Table A, not included in the interstate tariff(s).

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.4 Term and Conditions (Cont'd)(F) Access Service Ratio (Cont'd)Table A:

Service Level	Associated Rate Elements Not Included in Interstate Tariff
DS1/LT1	4-wire Digital Loop DS1 Entrance Facilities DS1 Interoffice Transport DS1 Cross Connects DS1 Multiplexing All DS1 Non-tariffed Committed Information Rate Broadband Services Unbundled Dedicated Transport
DS3/LT3	DS3 Loop DS3 Entrance Facilities DS3 Interoffice Transport DS3 Cross Connects DS1/DS3 Multiplexing All DS3 Non-tariffed Committed Information Rate Broadband Services Unbundled Dedicated Transport

- (3) If new wholesale rate elements are introduced which are comparable to those set forth in Table A, all recurring billing associated with those new rate elements will also be included in the Customer's Wholesale Billing, as defined in this Section 23.3.4 (F), for purposes of calculating the Customer's Access Service Ratio.
- (4) If the Customer does not meet the Access Service Ratio, then the Customer must pay the Telephone Company an amount sufficient to result in the Customer's resulting total Access Billing being equivalent to the amount that would have been billed, had the Customer maintained an Access Service Ratio of 95 percent. If the Customer fails to pay that amount, the Customer shall be deemed to have terminated this Contract Offer.

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(N)

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.4 Term and Conditions (Cont'd)(G) Portability Volume Commitment (PVC)

Portability is provided under this Contract Offer through the Portability Volume Commitment (PVC). For purposes of determining the Customer's PVC, the Telephone Company shall aggregate volumes for the various Subject Services included in this Contract Offer by converting counts of Telephone Company assigned unique Circuit ID's, by Circuit Type, into PVC Units, as shown below in Table B.

Table B:

Qty	Circuit Type		PVC Units
1	DS3	=	1
1	OC-3	=	2.5
1	OC-12	=	5

(1) PVC Level

- (a) The initial PVC Level shall be established at the commencement of the Term Period and is based on the in service volumes for Level I Subject Services that are reflected in the recurring billing records of the Telephone Company during the month prior to the commencement of the Term Period.
- (b) The PVC Level will be reset after each PVC Attainment Review, as described below in Section 23.3.4 (G) (2) (c).
- (c) The PVC Level can not be reduced, except as provided by the PVC Reduction Option described in Section 23.3.4 (G) (5) of this Contract Offer.

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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 – Broadband Plan – Service Offer (Cont'd)23.3.4 Term and Conditions (Cont'd)(G) Portability Volume Commitment (PVC) (Cont'd)

(2) PVC Attainment Review

Upon the completion of each six-month period, beginning upon the commencement of the Term Period, the Telephone Company will perform a review (the PVC Attainment Review), to compare the Customer's then-current PVC Measurement to the PVC Floor.

(a) The Telephone Company shall calculate the Customer's PVC Level and PVC Floor as follows:

- (i) The PVC Measurement shall be the sum of all Level I and Level II PVC Units that are reflected in the recurring billing records of the Telephone Company for the last month of the period under review.
- (ii) The PVC Floor shall be equal to the Customer's then-current PVC Level, multiplied by the PVC Attainment Factor, as provided in Table C:

Table C:

Current PVC Level	PVC Attainment Factor
1,200 – 1,800	95%
1,801 – 2,100	92%
2,101 +	90%

(b) The Customer's PVC Measurement, at the time of each six-month review, must equal or exceed the current PVC Floor.

- (i) If the PVC Measurement is greater than or equal to the PVC Floor, the Customer shall be deemed to have met the PVC requirement for the six-month period under review.
 - (ii) If PVC Measurement is lower than the PVC Floor, then the Customer must pay the PVC Attainment Shortfall as described in Section 23.3.4 (G) (3).
- (c) Upon completion of the PVC Attainment Review, the PVC Level shall be reset to the PVC Measurement calculated for the period under review, or the existing PVC Level, whichever is greater.

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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 - Broadband Plan - Service Offer (Cont'd)23.3.4 Term and Conditions (Cont'd)(G) Portability Volume Commitment (PVC) (Cont'd)

(3) PVC Attainment Shortfall Payment

The PVC Attainment Shortfall Payment shall be calculated as follows:

- (a) The PVC Unit Shortfall shall be calculated according to the following equation: $(\text{PVC Level} \times 95\%) - \text{PVC Measurement} = \text{PVC Unit Shortfall}$.
- (b) The PVC Attainment Shortfall Payment shall be calculated by multiplying the PVC Unit Shortfall by \$9,600.

(N)

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.3 Contract Offer No. 3 – Broadband Plan – Service Offer (Cont'd)23.3.4 Term and Conditions (Cont'd)(G) Portability Volume Commitment (PVC) (Cont'd)

(4) PVC Attainment Review Example

At month 6:

PVC Level = 1,500. PVC Measurement = 1,800. PVC Measurement exceeds PVC Floor of 1,425, thus commitment is met and new PVC Level is reset to 1,800.

At month 12:

PVC Level = 1,800. PVC Measurement = 1,750. PVC Measurement exceeds PVC Floor of 1,710, thus commitment is met and PVC Level remains 1,800.

At month 18:

PVC Level = 1,800. PVC Measurement 18 = 1,700. PVC Measurement is below PVC Floor of 1,710, thus commitment is not met. Customer must pay PVC Attainment Shortfall and PVC Level remains = 1,800.

Month 18 PVC Attainment Shortfall calculation:

Step 1 – (PVC Level x 95%) – PVC Measurement = PVC Unit Shortfall

$[(1,800 \times 95\%) - 1,700] = 10$

Step 2 – PVC Unit Shortfall x \$9,600 = PVC

Attainment Shortfall Payment

$10 \times \$9,600 = \$96,000$

Table D: PVC Attainment Review Example

Completed Contract Month	PVC Level	PVC Floor	PVC Measurement	PVC Attainment Review	PVC Unit Shortfall	PVC Attainment Shortfall
6	1,500	1,425	1,800	met	0	n/a
12	1,800	1,710	1,750	met	0	n/a
18	1,800	1,710	1,700		10	\$96,000

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.4 Term and Conditions (Cont'd)(G) Portability Volume Commitment (PVC) (Cont'd)

(5) PVC Reduction Option

Annually, upon each anniversary of the commencement of the Term Period, the Customer shall be permitted to reduce its PVC Level, as outlined herein:

- (a) The PVC Reduction Option is available only if the Customer has met the PVC requirements of this Contract Offer during the previous six-month period, as provided in Section 23.3.4 (G) (2) (b) of this Contract Offer, either by meeting the PVC Attainment Review criteria or by making the PVC Attainment Shortfall Payment.
- (b) The PVC Reduction Option lowers Customer's PVC Level; however, the Customer's PVC Level remains subject to increase through the PVC Attainment Review process as provided in Section 23.3.4 (G) (2) of this Contract Offer.
- (c) The Customer must notify the Telephone Company, in writing, within sixty (60) days following the anniversary of the commencement of the Term Period, of its decision to reduce the PVC Level, to be effective during the year of the Term Period in which notice is provided. The Customer shall include in its notice a PVC Reduction Amount, which shall be the amount of the reduction the customer has chosen, expressed in PVC Units.
- (d) A PVC Reduction Charge shall be calculated by multiplying the PVC Reduction Amount by \$1,600, then multiplying that amount by the PVC Term Factor, as provided in Table E:

Table E:

	PVC Term Factor
Completion of Year 1	24
Completion of Year 2	18
Completion of Year 3	12
Completion of Year 4	6

Example: PVC Reduction

Customer requests a PVC Reduction of 10 PVC Units upon the completion of Year 2. PVC Reduction Charge is calculated as follows:

Requested PVC Reduction x \$1,600 x PVC Term Factor =
PVC Reduction Charge
10 x \$1,600 x 18 = \$288,000

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 - Broadband Plan - Service Offer (Cont'd)23.3.5 Migration of Subject Services from Level I to Level II

Eligible Level I circuits may migrate to Level II of this Contract Offer. Migration from Level I to Level II may occur either automatically under defined circumstances (Type I Migration) or at the option of the Customer (Type II Migration), as further provided below. Upon migration, migrated circuits shall be subject to TSA₃ Rates and Charges, as provided in Section 23.3.7 of this Contract Offer.

(A) Migration Eligibility

Level I circuits must meet the following qualifications to be deemed eligible to migrate to Level II.

- (1) Level I circuits eligible for migration cannot be included in a promotional tariff or contract offering of any kind.
- (2) Level I circuits shall continue to be subject to the rates, terms and conditions of the otherwise applicable tariffs, including any otherwise applicable term payment plans. Upon expiration of existing term payment plans for Level I circuits the Customer must select one of the following options for the circuits to remain eligible for Level II status:
 - (a) Circuits may be provided according to Monthly Extension Rates; or
 - (b) Circuits may be renewed for terms equal to the existing terms; or
 - (c) Circuits may be renewed for terms shorter than the existing terms.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.5 Migration of Subject Services from Level I to Level II
(Cont'd)(B) Rank Ordered Migration List

- (1) Upon completion of each PVC Attainment Review, the Telephone Company will provide the Customer a Rank Ordered Migration List of eligible Level I circuits. Type I and Type II Migration to Level II will be based on this list. To be included on the Rank Ordered Migration List, circuits must remain eligible for migration, as provided Section 23.3.5 (A) of this Contract Offer.
- (2) Level I circuits eligible for migration will be included in the Rank Ordered Migration List. The first criterion for the rank ordering shall be the service term applicable to each circuit (Expired Plans, 1 yr, 2 yr, 3yr, 4 yr and 5 yr respectively). The second criterion for the rank ordering shall be oldest Service Establishment Date. Both the service term and Service Establishment Date shall be determined according to the end-user termination rate element in the Telephone Company's billing records.

(C) Type I Migration

Type I Migration shall occur automatically if, upon any PVC Attainment Review, the PVC Measurement exceeds the PVC Level. For each PVC Unit by which the PVC Measurement exceeds the PVC Level, one PVC Unit shall be migrated from Level I to Level II. The order of migration shall be determined according to the Rank Ordered Migration List. TSA₃ pricing shall apply to all circuits subject to Type I Migration, effective on the first day of the subsequent PVC Attainment Review Period.

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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.5 Migration of Subject Services from Level I to Level II
(Cont'd)(D) Type II Migration

Type II Migration shall be permitted at the Customer's option, as provided in this Section 23.3.5 (D)

- (1) The Customer must submit a written request to the Telephone Company meeting the following requirements:
 - (a) The Customer's request must be received by the Telephone Company within sixty (60) days after the completion of the last day of the six-month PVC Attainment Review Period; and
 - (b) The request must include the specific number of PVC Units to be migrated.
- (2) The order of migration shall be determined according to the Rank Ordered Migration List.
- (3) TSA₃ pricing will apply to all circuits subject to Type II Migration, effective on the date the Telephone Company receives the Customer's written request.
- (4) A one-time migration charge will apply, as provided in Table F:

Table F: One-Time Migration Charge per PVC Unit

	Migration Charge (per PVC Attainment Review Period)							
Cumulative Net Adds	12	18	24	30	36	42	48	54
0 - 75	\$10,595							
76 - 125	\$8,965							
126 - 200	\$7,335							
201 - 300	\$5,705							
301 - 425	\$4,075							
426 - 575	\$2,445							
576 - 725	\$815							
726 +	\$0							
Less than 400			Not Eligible for Type II					
Greater than 400			\$2,445		\$1,630		\$815	

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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.6 Termination Liability Credits for Renewed Level I Circuits

If the customer renews a Level I circuit as provided in Section 23.3.5 (A) (2) and that circuit is subsequently disconnected before the completion of its renewal term, the Telephone Company will credit the Customer 50% of the otherwise applicable Termination Liability charges billed to the Customer if the following requirements are met:

- (A) The original term plan for the disconnected circuit must expire after the commencement of the Term Period of this Contract Offer; and
- (B) The Customer must renew the Level I circuit as provided in Section 23.3.5 (A); and
- (C) The renewed Level I circuit must be disconnected before the completion of the first year of the Term Period of this Contract Offer; and
- (D) The Customer must pay all billed Termination Liability charges by their applicable due date.

Upon validation of compliance with the eligibility criteria, the Telephone Company will process a billing credit each quarter to the Customer.

(N)

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 - Broadband Plan - Service Offer (Cont'd)23.3.7 Rates and Charges(A) Target Service Areas (TSA)

Eligible MSAs have been grouped into TSA₁, TSA₂ or TSA₃ for purpose of applying the Rates and Charges as described in this section of the Contract Offer.

TSA₃
Reno, NV

(N)

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 – Broadband Plan – Service Offer (Cont'd)23.3.7 Rates and Charges (Cont'd)(B) Monthly Recurring Charge (MRC)

The Customer must pay the applicable MRC for each rate element listed below. Any rate elements not described below will continue to be billed at the applicable tariff rates as described in NBTC Tariff F.C.C. No. 1.

Rate Element	Applicable USOC	TSA ₁	TSA ₂	TSA ₃
DS3 Service				
Channel Termination	Z3MAC	n/a	n/a	\$900.00
Channel Termination	Z3MAP	n/a	n/a	\$900.00
Channel Mileage Termination	1L5XX	n/a	n/a	\$332.50
Channel Mileage Termination	1L5XX	n/a	n/a	\$35.00
OCN (OC-3/OC-3c)				
Local Distribution Channel	TMECS	n/a	n/a	\$1,300.00
Mileage - Fixed	1L5XX	n/a	n/a	\$886.00
Mileage - per mile	1L5XX	n/a	n/a	\$220.00
OCN (OC-12/OC-12c)				
Local Distribution Channel	TMECS	n/a	n/a	\$3,000.00
Mileage - Fixed	1L5XX	n/a	n/a	\$2,250.00
Mileage - per mile	1L5XX	n/a	n/a	\$220.00

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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.7 Rates and Charges (Cont'd)(C) Nonrecurring Charges (NRC)

The Customer must pay the applicable NRC for installation and rearrangement as listed below. Any NRC not listed below will continue to be billed at the applicable tariff rates as described in NBTC Tariff F.C.C. No. 1.

Description	Applicable USOC	NRC
DS3 Service		
Channel Termination	Z3MAC	\$0.00
Channel Termination	Z3MAP	\$0.00

(N)

(N)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)

23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.8 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 of this Tariff, the Telephone Company will acknowledge such transfer or assignment if the criteria in Section 2.1.2 are met, unless (1) the proposed assignee or transferee demonstrates a lack of credit worthiness under one of the criteria in (A) or (B) below, or (2) if the proposed assignee or transferee or its parent company 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 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 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 "fair" or below in a composite credit appraisal published by Dun and Bradstreet, or "high risk" in a Paydex score as published by Dun and Bradstreet.

23.3.9 Mergers/Acquisitions

The Terms and Conditions of this Contract Offer shall continue in full force and in effect if the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all its stock or assets to any other entity or purchases all stock or substantially all stock or certain assets 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 Telephone Company, the Subject Services as provided for in this Contract Offer will continue to be maintained 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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23. Pricing Flexibility Contract Offerings (Cont'd)23.3 Contract Offer No. 3 – Broadband Plan - Service Offer (Cont'd)23.3.10 Termination Liability

If Customer terminates this Contract Offer the termination liability language contained below applies in lieu of the termination liability language described in NBTC Tariff F.C.C. No. 1. Customer must pay to the Telephone Company termination liability charges as described below if Customer terminates this Contract Offer before the completion of the term period for any reason, or if Customer is not in compliance with Terms and Conditions in Section 23.3.4. These charges shall become due as of the effective date of the termination and are payable within 30 days of the billing invoice date.

Customer's termination liability charges for termination of this Contract Offer shall be equal to a complete reduction of the Portability Volume Commitment as outlined in 23.3.4 (G) (5). The PVC Term Factor shall be based on the longest fully completed year under this Contract Offer at termination.

Upon termination of this Contract Offer, all Subject Services provided under this Contract Offer will subsequently be provided under the prevailing applicable monthly extension rates found in NBTC Tariff F.C.C. No. 1.

If the Customer disconnects a Subject Service provided under this Contract Offer prior to the completion of the one (1) year minimum in service requirement, then the following termination liability charges will apply:

75% of all recurring charges for the balance of the one (1) year term period plus the current applicable NRC charge for a service installed under a one (1) year term payment plan less the NRC charge paid at installation of Subject Service.

The termination liability charge will be calculated as follows:

(Monthly Recurring Charges) multiplied by (Months remaining in order to achieve one (1) year in service) multiplied by (Termination liability percentage of 75%) plus current applicable NRC minus NRC charges already paid.

Example: Customer has \$20,000 in Monthly Recurring Charges for a Subject Service provided under this Contract Offer. The customer paid an NRC of \$550 at installation and the current applicable NRC equals \$750. If Customer terminates service after six (6) months and has six (6) months remaining in order to meet the one (1) year minimum time in service, the termination liability would be calculated as:

$$(\$20,000 \times 6 \text{ months} \times 75\%) + (\$750 - \$550) = \$90,250$$

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23. Pricing Flexibility Contract Offerings23.4 Contract Offering No. 4 – 2005 Access Extension Offer23.4.1 General Description

Contract Offer No. 4 – 2005 Access Extension Offer is an access discount plan for which subscription is required to the following access tariffs: Ameritech Operating Companies (Ameritech) Tariff F.C.C. No. 2, Southwestern Bell Telephone Company Tariff F.C.C. No. 73, Nevada Bell Telephone Company Tariff F.C.C. No. 1, The Southern New England Telephone Company Tariff F.C.C. No. 39, and Pacific Bell Telephone Company Tariff F.C.C. No. 1. (Ameritech, Southwestern Bell Telephone Company, Nevada Bell Telephone Company, The Southern New England Telephone Company, and Pacific Bell Telephone Company shall be identified herein as the Qualified Companies). To be eligible for discounts under this Contract Offer, the Customer must meet the Eligibility Criteria set forth in Section 23.5.2 and also must comply with all terms and conditions of this Contract Offer.

Contract Offer No. 4 requires eligible customers to establish and maintain a Total Revenue Commitment (TRC), as described in Section 23.4.6 following. The TRC shall include all Contributory Services purchased from the Qualified Companies eligible under this Contract Offer. Contributory Services include Contributory Subject Services, as listed in Section 23.4.5, Table 3, herein, in addition to Contributory Non-Subject Services (that are not Contributory Subject Services), as described in Section 23.4.5, Table 4, herein. Contributory Non-Subject Services shall not be eligible for discounts or other incentives provided under this Contract Offer. All Contributory Services described in Section 23.4.5 must be purchased through the SBC wholesale sales channel (SBC Industry Markets).

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 - 2005 Access Extension Offer (Cont'd)23.4.2 Eligibility Criteria

(N)

(Nx)

The following eligibility criteria must be met to subscribe to Contract Offer No. 4:

(A) Managed Value Plan (MVP) Subscription

(1) At the time of subscription to this Contract Offer, the Customer must have MVP agreements pursuant to

- (a) SWBT Tariff F.C.C. No. 73, Section 38; and
- (b) Ameritech Tariff F.C.C. No. 2, Section 19; and
- (c) Pacific Bell Tariff F.C.C. No. 1, Section 22.

(Nx)

(2) The Customer must maintain eligibility under all MVP agreements until they expire.

(3) Such MVP agreements must all be expiring in 2005.

(B) Customer must have billed revenue from Contributory Services, as listed in Section 23.4.5, net of all discounts, credits, and adjustments equal to or greater than 86.6 percent of 2004 Gross Spend rounded to the nearest million times 7/12's as of August 1, 2005, or must buy up to that amount no later than 60 days after August 1, 2005 in order to qualify and remain qualified for Contract Offer No. 4.

(N)

(Nx)

(C) Concurrent Subscription

The Customer must concurrently subscribe to the identical contract offer of Contract Offer No. 4 pursuant to the following tariffs:

- (1) SWBT Tariff F.C.C. No. 73, Section 41, Contract Offer No. 54;
- (2) Ameritech Tariff F.C.C. No. 2, Section 22, Contract Offer No. 73;
- (3) The Southern New England Telephone Company Tariff F.C.C. No. 39, Section 25, Contract Offer No. 18; and
- (4) Pacific Bell Tariff F.C.C. No. 1, Section 33, Contract Offer No. 65.

(Nx)

(N)

(D) Discounts applied under Contract Offer No. 4 are applicable for services located in MSAs as listed in Tariff F.C.C. No. 1, Section 22.

(N)

(x) Issued under Authority of Special Permission No. 05-037 of F.C.C.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.3 Terms and Conditions(A) Term Period

The contract term (Term Period) will begin when the Customer submits a Letter of Subscription (LOS) and will end on December 31, 2005.

(B) Terms and Conditions

- (1) The Customer must establish and maintain a TRC as described in Section 23.4.6 following.
- (2) Two (2) true-up periods will occur during the Term Period of this Contract Offer:
 - (a) The first true-up will include all billing with respect to periods from the time of subscription to Contract Offer No. 4, up to and including the final MVP true-up, and will take place no later than 30 days after the expiration of the Customer's final MVP regional contract, as described in 23.4.7 (A).
 - (b) The final true-up will include all billing with respect to periods from the first day following the expiration of the Customer's final MVP contract, up to and including December 31, 2005, and will take place no later than 30 days thereafter, as described in 23.4.7(B).
- (3) MVP credits will continue to apply, if applicable. The MVP MATA process will take place as part of the first true-up described in Section 23.4.7 herein.
- (4) Contract Offer No. 4 is only available for subscription from August 4, 2005 through September 3, 2005.
- (5) Any transfer of services from non-SBC wholesale entities/Access Customer Name Abbreviation (ACNA) will require an equivalent increase in the TRC commitment based on the amount of revenue associated with the transferred services. The Customer's maximum Basic Credit Amount will not change as a result of the transfer.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 - 2005 Access Extension Offer (Cont'd)23.4.3 Terms and Conditions (Cont'd)(B) Terms and Conditions (Cont'd)

- (6) Customer will be eligible to subscribe to contract offers in Section 23 (or any successor section) filed prior to (providing the subscription window is still open) or after Contract Offer No. 4, as long as such contract offers do not reduce the TRC under Contract Offer No. 4 and the Customer qualifies for and adheres to the terms, conditions and eligibility requirements of the contract offer. For any contract offer which states that subscribers under such contract offer are not eligible to combine such contract offer with other contract offers, the Customer will not be permitted to earn any Achievement Credits with respect to such purchases, except that for any contract offer that by its terms states that nonrecurring charges apply under such contract offer the Customer will not be eligible to earn Basic or Achievement Credits associated with those nonrecurring charges.
- (7) Terms and Conditions for Contributory Subject Services pursuant to other contract offers the Customer is currently subscribed to at the time of subscription to this Contract Offer, shall continue to apply to those Contributory Subject Services covered under the other contract offers.
- (8) Contributory Services continue to be governed by the respective terms and conditions (including MVP provisions with respect to services subject to MVP for so long as the Customer's MVP subscription remains in effect) as defined in Tariff F.C.C. No. 1, except as noted herein.
- (9) The Customer must subscribe to the services available under this Contract Offer No. 4 in accordance with the regulations set forth in Section 5 - Ordering Options for Switched and Special Access Service.
- (10) The Customer must submit a completed Letter of Subscription (LOS) to the Qualified Companies as described in 23.4.3(A).

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.4 Contract Offering No. 4 - 2005 Access Extension Offer (Cont'd)23.4.3 Terms and Conditions (Cont'd)(B) Terms and Conditions (Cont'd)

- (11) The Customer must maintain an Access Service Ratio equal to or greater than 95 percent. The Access Service Ratio is defined in Section 23.4.4 and will be measured monthly.
- (12) The Customer must remit bill payments as described in F.C.C. No. 1 Section 2.4.1 for all Contributory Services via electronic payment process. The Qualified Companies will provide Customer with written notice if Customer fails to comply with the requirement. The Customer will have ten (10) business days from receipt of such written notice to comply. If the Customer does not comply, the Qualified Companies shall have the right to terminate this Contract Offer. In the event of termination by the Qualified Companies, termination liability charges as set forth in Section 23.4.11 will apply. Credits, if applicable, will not be issued until the Customer has paid all billed charges
- (13) If the Customer discontinues service under Contract Offer No. 4 during the Term Period, termination liability charges will apply in accordance with Section 23.4.11.

(N)

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.4 Access Service Ratio

- (A) As referenced in Section 23.4.3, the Customer and its affiliates must maintain an Access Service Ratio of 95 percent or greater. The ratio, calculated monthly, is the Access Revenue divided by Access Revenue plus Wholesale Revenue. To maintain compliance with this Contract Offer, the ratio must be greater than or equal to 95 percent.

The 95-percent ratio is calculated as follows:

$$\frac{\text{Access Revenue}}{\text{Access Revenue} + \text{Wholesale Revenue}}$$

- (1) Access Revenue is the Customer's and its affiliates' current interstate recurring billed revenue associated with the rate elements, as defined in Table 1 below, or comparable interstate access services from all Qualified Companies:

Table 1:

Service	General/Basic Description
Voice Grade	7.7.1
Generic Digital Transport (DS0), High Capacity (DS1 and DS3) Services	7.10.1 & 7.11.1
Optical Carrier Network	21.1
GigaMAN	7.13.1

- (2) Wholesale Revenue is the Customer's and its affiliates' recurring billed revenue for associated rate elements, as defined in Table 2 herein, from all Qualified Companies not included in the interstate or intrastate access tariff(s).

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23. Pricing Flexibility Contract Offerings (Cont'd)23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.4 Access Service Ratio (Cont'd)

(A) (Cont'd)

(2) (Cont'd)

Table 2

Service Level	Associated Rate Elements Not Included in Interstate Tariff
Voice Grade/DS0	2-wire analog and 2-wire digital loops 2-wire analog and digital transport
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
OC-3 OC-12 OC-48	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 Transport Products	Dark Fiber – Interoffice Dark Fiber – Loop Dark Fiber – Subloop Dark Fiber Cross Connects Unbundled Dedicated Transport

(3) As new rate elements are introduced to Table 1 in this section, all recurring revenues associated with the new rate elements will automatically be added to the Customer's Access Revenue, as defined in this section, for calculation of the Access Service Ratio.

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(N)

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.4 Access Service Ratio (Cont'd)

(A) (Cont'd)

(4) As new rate elements are introduced to Table 2 in Section 23.4.4(A)(2), all recurring revenues associated with the new rate elements will automatically be added to the Customer's Annual Wholesale Revenue, as defined in Section 23.4.4(A)(1) preceding, for calculation of the Access Service Ratio.

(5) If the Customer fails to meet the Access Service Ratio in any given month of the Term Period, upon notification from the Qualified Companies, the Customer will have ten (10) business days to notify the Qualified Companies in writing that it will meet or exceed the 95-percent Access Service ratio within 60 days. Failure to achieve compliance in 60 days will constitute a default and Qualified Companies shall have the right to terminate Contract Offer No. 4. In the event of a termination by Qualified Companies, termination liability charges will apply as set forth in Section 23.4.11 following.

Credits will not be issued until the Customer has met the 95 percent Access Service Ratio.

23.4.5 Contributory Services

The TRC shall include all Contributory Services purchased from the Qualified Companies eligible under this Contract Offer. Contributory Services include Contributory Subject Services, as listed in Section 23.4.5, Table 3, herein in addition to Contributory Non-Subject Services (that are not Contributory Subject Services), as described in Section 23.4.5, Table 4, herein.

Contributory Subject Services and Contributory Non-Subject Services shall together be known as Contributory Services. Customer's TRC includes revenue from all Contributory Services being provided by the Qualified Companies, as listed in Table 3 and 4 below.

Any new Special Access services added to the respective tariffs by Qualified Companies during the Term Period will qualify as Contributory Services and will be deemed to be added to the tables below.

(A) Contributory Subject Services

Contract Offer No. 4 applies to pricing flexibility qualified access services (referred to as Contributory Subject Services) located in pricing flexibility Metropolitan Statistical Areas (MSAs) as listed in Tariff F.C.C. No. 1, Section 22. Contributory Subject Services are eligible for discounts and credits under this Contract Offer and are listed in Table 3.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.5 Contributory Services (Cont'd)(B) Contributory Non-Subject Services

Contributory Non-Subject Services (that are not Contributory Subject Services) shall not be eligible for discounts or other incentives provided under this Contract Offer and are listed in Table 4.

Table 3 – Contributory Subject Services

Contributory Subject Services	
Interstate Special Access	VG, DS0, DS1, DS3, OCN PTP, DSRS, SRAS, STN, FGTS, BCS, MON, Gigaman, DAL, Program Audio, Video
Interstate Switched Transport	Entrance Facility, Direct Transport
Includes Recurring and Non-Recurring Charges (including termination charges) associated with the products listed where applicable, except as described in Section 23.4.6 following, for all services located in Pricing Flexibility MSA's.	

Table 4 – Contributory Non-Subject Services

Contributory Non-Subject Services	
Interstate Special Access	VG, DS0, DS1, DS3, OCN PTP, DSRS, SRAS, STN, FGTS, BCS, MON, Gigaman, Opt-E-MAN, DAL, Program Audio, Video
Interstate Switched Transport	Entrance Facility, Direct Transport
Intrastate Special Access	Equivalent services as Interstate Special Access above if available
Includes all Recurring and Non-Recurring Charges (including termination charges) associated with the products listed where applicable, except as described in Section 23.4.6 following, for all non-price flex qualified services.	

All Terms and Conditions for all Contributory Services are governed by their respective tariff sections.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.6 Calculation of the Total Revenue Commitment (TRC)

The Customer must establish and maintain a Total Revenue Commitment (TRC) as provided in this Contract Offer. Upon subscription, the Customer's TRC will be established based on billed revenue from Contributory Services, as listed in Section 23.4.5, net of all discounts, credits, and adjustments as specified in Section 23.4.6 (B)(1)(b), equal to 86.6 percent of 2004 Gross Spend rounded to the nearest million times 5/12's.

Example: Customer's 2004 Gross Spend equals \$121.3M. 86.6% of 121.3M equals \$105M (rounded to the nearest million). 5/12's of \$105M equals \$43.75 TRC.

$$\$121.3M * 86.6\% = \$105M/12 = \$8.75M * 5 = \$43.75M$$

(A) Gross Spend, as defined in Section 23.4.6 (A)(1), (2), (3), (4), (5), and (6), is calculated by taking the sum of all of the purchases from the Qualified Companies, as described in Section 23.4.5 preceding, based on billed revenue. The Gross Spend is net of all discounts from existing optional payment plans or other tariffs or offers utilized by the Customer as of the date of subscription to this Contract Offer, any renewals, replacements or extensions of the foregoing, and any underlying tariff performance credits, but does not include discounts received under MVP (MARC or SLA credits).

(1) Interstate Special Access recurring charges billed to the Customer associated with services described in Section 23.4.5 Table 3 and 4 preceding.

(2) Interstate Special Access non-recurring charges billed to the Customer (including, but not limited to, items such as termination liability charges, expedite charges, cancellation charges, rearrangement charges, installation charges, and access order charges) except as noted in 23.4.6(A)(6).

(3) Intrastate Special Access recurring charges billed to the Customer associated with services described in Section 23.4.5 Table 4 preceding.

(4) Intrastate Special Access non-recurring charges billed to the Customer (including, but not limited to, items such as termination liability charges, expedite charges, cancellation charges, rearrangement charges, installation charges, and access order charges), except as noted in 23.4.6(A)(6) below.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)

(A) (Cont'd)

- (5) Interstate Switched Access Dedicated Transport recurring and non-recurring charges (including but not limited to items such as termination liability charges, expedite charges, cancellation charges, rearrangement charges, installation charges, and access order charges) billed to the Customer for rate elements in Table 5 below.

Table 5

Service	General Basic Description
Entrance Facilities	Section 6.7.1(D)1
Direct Trunk Transport	Section 6.7.1(D)2

- (6) Non-recurring charges detailed in 23.4.6(A)(2), (4), and (5) above exclude Special Construction and unregulated time and materials charges (e.g. Inside Wire, Custom Work Orders, etc.).

(B) Application of Credits

The Customer is eligible to receive two (2) types of credits under this Contract Offer.

(1) Basic Credit

The Basic Credit is equal to the difference between the TRC and the purchase of Contributory Services up to 148.9 percent of the TRC (rounded to the nearest million). The Customer will receive Basic Credits on Contributory Subject Services.

- (a) Calculation of the Basic Credit. To determine the amount of Basic Credit the Customer can achieve, the TRC is multiplied by 148.9 percent. This amount less the TRC will equal the potential eligible Basic Credit rounded to the nearest million. If qualified, award of Basic Credit under this Contract Offer shall satisfy the Qualified Companies' Basic Credit obligations.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)(B) Application of Credits (Cont'd)(1) Basic Credit (Cont'd)

(a) (Cont'd)

Example:

The Customer has 2004 Gross Spend of \$121.3M.
86.6 percent of 2004 Gross Spend equals \$105M
rounded to the nearest million.

The TRC is equal to 5/12's of \$105M.
5/12's of \$105M equals \$43.75M

The eligible total Basic Credit available is:

$$\$43.75 * 148.9\% = \$65.14M$$
$$\$65.14M - \$43.75M = \$21M \text{ eligible Basic Credits}$$

rounded to the nearest million.

- (b) The following credits issued to the Customer associated with the Contributory Services covered under the TRC (MVP Commitment credits, MVP SLA credits, and credit received under the first true-up attributable to this Contract Offer), but not including any discounts or credits described in 23.4.6(B)(1)(c) below, will be used by the Qualified Companies to satisfy any applicable Basic and Achievement Credit obligations under this Contract Offer.

Example:

The Customer has TRC of \$43.75M. The Customer achieves 148.9 percent of TRC equal to \$65.14M. The Customer has received or is entitled to receive a total of \$7M in MVP Commitment Credits and \$2M in MVP SLA Credits for a total of \$9M in credits unrelated to this Contract Offer.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)(B) Application of Credits (Cont'd)(1) Basic Credit (Cont'd)

(b) (Cont'd)

Table 6

2004 Gross Spend calculated as described above	86.6 percent of 2004 Gross Spend (rounded)	TRC = 5/12's of 86.6 percent 2004 Gross Spend	148.9 percent of TRC as described above (rounded)
\$121.3M	\$105M	\$43.75M	\$65.14M

Qualified Companies' Basic Credit obligations to the Customer in the amount of \$21M (\$65.14M - \$43.75M, rounded to the nearest million) under Contract Offer No. 4, as described in Table 6, will be satisfied by the \$9M in non-contract related credits acquired by the Customer under MVP and MVP SLA, and \$12M in Basic Credits paid related to this Contract Offer. This amount will be determined at the final true-up period once all other credits have been applied accordingly.

- (c) MVP Commitment credits applicable to periods prior to 2005, MVP SLA credits applicable to periods prior to 2005, or other credits applicable to periods prior to 2005, other discounts from optional payment plans or other tariffs or offers utilized by the Customer as of the date of subscription to this Contract Offer, any renewals, replacements, or extensions of the foregoing, and any underlying tariff performance credits (other than MVP SLA credits) will not be used to satisfy any applicable Basic or Achievement Credit Obligations under this Contract Offer.

The Customer will not pay less than the TRC for the Term Period, except as described in Section 23.4.8 following. If the Customer does not achieve the TRC through the purchase of Contributory Services as of December 31, 2005, the Customer will be required to pay the deficiency.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)(B) Application of Credits (Cont'd)(1) Basic Credit (Cont'd)

(c) (Cont'd)

Basic Credits shall be calculated and awarded on an aggregate basis across the Qualified Companies. If qualified for a Basic Credit, an award of Basic Credit under this Contract Offer shall satisfy any Basic Credit obligations of the other Qualified Companies under the tariff offerings listed in Section 23.4.2(C), and an award of Basic Credit under such other contract offers shall satisfy any Basic Credit obligations under this Contract Offer No. 4.

The total Basic Credit will be increased dollar for dollar to the extent that any amount by which Gross Spend during the Term Period exceeds 148.9 percent of the TRC is attributable to increases in tariff rates effective after March 31, 2005.

Example:

Customer's Gross Spend increased \$10M due to applicable tariff rate increases after March 31, 2005.

Customer exceeds 148.9% of TRC by \$30M.

Of the \$30M, \$10M is added to Basic Credit
\$20M would receive Achievement Credit equal 17%

(2) Achievement Credits

Achievement Credits are those credits the Customer will receive based on purchases of Contributory Subject Services above 148.9 percent of the TRC.

- (a) Achievement Credits are applied to purchase of services as described in Section 23.4.5 in excess of 148.9 percent of the TRC. The amount of applicable credit will be determined based on the amount of Gross Spend above the TRC, as defined in Section 23.4.6 preceding, measured at the final true-up period described in Section 23.4.7 below. The Customer will receive a discount on Contributory Subject Services equal to 17 percent of total revenue above 148.9 percent of the TRC.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)(B) Application of Credits (Cont'd)(2) Achievement Credits (Cont'd)

(a) (Cont'd)

Achievement Credits shall be calculated and awarded on an aggregate basis across the Qualified Companies. If qualified, award of Achievement Credit under this Contract Offer shall satisfy the Qualified Companies' Achievement Credit obligations.

Example:

The Customer has TRC of \$43.75M. The Customer achieves 155 percent of TRC equal to \$67.8M. The Customer will receive \$21M in Basic Credits as described above, and the Customer will receive \$452K in Achievement Credits calculated as follows:

$$(\$67.8\text{M minus (TRC} \times 148.9\%)) \times 17\%$$

$$\begin{aligned} \$67.8\text{M} - \$65.14\text{M} (\$43.75\text{M} \times 148.9\%) &= \$2.66\text{M} \\ \$2.66\text{M} \times 17\% &= \$452\text{K (Achievement Credits).} \end{aligned}$$

Table 7

148.9% of TRC	\$65.14M
Gross Spend Achievement during Term Period (GSA)	\$67.8M
Difference between 148.9% of TRC and GSA	\$2.66M
Credit due for billed revenue above 148.9% of TRC x 17%	\$452K

The Customer receives \$21M in Basic Credits plus \$452K in Achievement Credits for total credits of \$21.452M as described in Table 7.

(3) Transfer of Qualified Services

- (a) Any transfer of services from non-SBC wholesale entities/ACNAs will require an equivalent increase in the TRC based on the amount of revenue associated with the transferred services. The Customer's maximum Basic Credit will not change as a result of the transfer.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)(B) Application of Credits (Cont'd)(3) Transfer of Qualified Services (Cont'd)

(a) (Cont'd)

Example: Customer has a TRC of \$43.75M and is eligible to earn up to a maximum of \$21M in Basic Credits. Customer transfers \$10M of services from a non-SBC wholesale entity. The Customer's new TRC will be \$53.75M (\$43.75M plus \$10M = \$53.75M). The Customer's maximum Basic Credit (\$21M) will not change as a result of the transfer.

23.4.7 True-up Process

To determine TRC achievement, two true-up calculations will be performed as follows:

- (A) First True Up - At the expiration of the final regional MVP agreement, the minimum required revenue will be based on the TRC proportionately divided between the months of 2005, in whole or in part, under MVP and the months of 2005 not under MVP plus 7/12's of 86.6 percent of 2004 Gross Spend as described in Section 23.4.2 preceding.

Example 1: MVP expires 8/31/05. The Customer must meet a minimum of 1/5 of \$43.75M TRC, which is equivalent to \$8.75M plus 7/12's of 86.6 percent of 2004 Gross Spend, as described in Section 23.4.2 preceding.

Example 2: MVP agreements expire 8/31/05 and 10/31/05. The Customer must meet a minimum of 3/5's of \$43.75M TRC, which is equivalent to \$26.25M plus 7/12's of 86.6% of 2004 Gross Spend, as described in Section 23.4.2 preceding.

If the Customer's purchase of Contributory Services, after all credits as described above, is greater than the minimum required revenue at time of true-up, the Customer will receive a Basic Credit equivalent to revenue above the minimum required revenue amount.

If the Customer's purchase of Contributory Services, after all credits as described above, is below the minimum required revenue at the time of true-up, the Customer will be billed the amount required to meet the minimum revenue amount, and will pay such bill pursuant to Section 23.4.7(D).

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.7 True-up Process (Cont'd)

- (B) Final True Up - On December 31, 2005 calculation of final TRC achievement will be made to determine any eligible Basic or Achievement credits.

If the Customer's purchase of Contributory Services, after all credits as described above, is greater than the TRC required at time of true-up, the Customer will receive a Basic Credit against Contributory Subject Services equal to the amount above the TRC not to exceed the amount outlined in Section 23.4.6(B) preceding.

Example 3: The Customer's TRC is \$43.75M.
The Customer's purchase of Contributory Services is \$54M.
The Customer will receive Basic Credit equal to \$11.75M.

If the Customer's purchase of Contributory Services, after all credits as described above, is below the TRC at the time of the final true-up, the Customer will be billed the amount required to meet the TRC, and will pay such charge pursuant to Section 23.4.7(D).

Example 4: The Customer's TRC is \$43.75M.
The Customer's purchase of Contributory Services is \$38.75M.
The Customer must pay \$5M.

If the Customer's purchase of Contributory Services, after all credits as described above, is greater than 148.9 percent of the TRC, the Customer will receive a Basic Credit against Contributory Subject Services equal to the difference between the TRC and 148.9 percent of TRC and an Achievement Credit against Contributory Subject Services equal to a 17 percent discount on services above 148.9 percent of TRC.

Example 5: The Customer's TRC is \$43.75M.
The Customer's purchase of Contributory Services is \$67.8M.
The Customer receives \$21M in Basic Credits and \$452K in Achievement credits.

- (C) If, at the time of final true-up the Qualified Companies owe the Customer a Basic Credit amount as described above, the credit will be applied to the Customer's bill no later than 30 days after the final true-up date.
- (D) If, at the time of true-up, the Customer must buy up to meet the TRC as described above, payment must be submitted to the Qualified Companies no later than 30 days after the true-up date.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 - 2005 Access Extension Offer (Cont'd)23.4.8 Service Level Agreement (SLA)

The Qualified Companies will calculate the MVP SLA 1 performance measurement point value and the SLA 2 performance measurement as if it were applicable for the full 2005 calendar year. The Qualified Companies will calculate the MVP SLA 1 performance measurement point value and the SLA 2 performance measurement, as described in F.C.C. 1 Section 22.3(G), as if it were applicable for the full 2004 calendar year. No credits will be rendered with respect to 2005 based on these calculations, but if these calculations show that the Qualified Companies would have paid out a higher amount under the MVP SLAs in calendar year 2005 (if the Customer had been eligible to receive credits under the MVP SLAs through calendar year 2005) than what the Qualified Companies would have paid out under the MVP SLAs in calendar year 2004, the Qualified Companies will determine the difference between what the Qualified Companies paid out under MVP SLA in calendar year 2004 versus what the Customer would have been eligible to receive under MVP SLA if MVP extended through calendar year 2005. If the MVP SLA credit amount the Qualified Companies would have paid out for calendar year 2005 is greater than the MVP SLA credit amount paid out for calendar year 2004, then the MVP SLA credit amount the Customer received in calendar year 2004 will be subtracted from the amount of MVP SLA credit the Customer would have qualified for in calendar year 2005 and, if a positive number, the amount of any difference, less any impact based on an MVP MARC increase, will be deducted from the Customer's TRC.

Any credits due to the Customer resulting from any deduction to the TRC under this section will be determined and applied after the December 31, 2005 true-up process is finalized.

Example A: MVP calendar year 2005 effective SLA credit would be greater than MVP calendar year 2004 SLA credit.

The Customer's MVP MARC = \$30M (with MVP term agreement expiration August 31, 2005).

MVP calendar year 2004 total SLA credit = 1%.

$\$30M * 1\% = \$300K$ total SLA credit received by the Customer in calendar year 2004.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.8 Service Level Agreement (SLA) (Cont'd)Example A: (Cont'd)

MVP calendar year 2005 effective SLA credit the Customer would have received if MVP extended through December 31, 2005 = 2%.

$\$30M * 2\% = \$600K$ total SLA credit the Customer would have received in calendar year 2005.

MVP calendar year 2005 effective SLA credit (\$600K) minus MVP calendar year 2004 credit (\$300K) = \$300K.

The Customer qualifies for a \$300K SLA credit to be applied to the Customer TRC.

$\$105M - \$300K = \$104.7M$ (new TRC).

Example B: MVP calendar year 2005 effective SLA credit is less than or equal to MVP calendar year 2004 SLA credit.

The Customer MVP MARC = \$30M (with MVP term agreement expiration August 31, 2005).

MVP calendar year 2004 total SLA credit = 1%.

$\$30M * 1\% = \$300K$ total SLA credit received by the Customer in 2004.

MVP calendar year 2005 effective SLA credit the Customer would have received if MVP extended through December 31, 2005 = 1%.

$\$30M * 1\% = \$300K$ effective SLA credit the Customer would have received in 2005.

MVP plan year 2005 effective SLA credit (\$300K) minus MVP plan year 2004 SLA credit (\$300K) = \$0.

The Customer does not qualify for any additional SLA credits toward its TRC.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 - 2005 Access Extension Offer (Cont'd)23.4.9 Assignment and Transfer

If the Customer wishes to assign or transfer its use of services under this Contract Offer No. 4 pursuant to F.C.C. No. 1, Section 2.1.2 of this Tariff, the Qualified Companies will acknowledge such transfer or assignment pursuant to the terms of F.C.C. No. 1, Section 2.1.2, unless:

(A) the proposed assignee or transferee demonstrates a lack of credit worthiness under one of the criteria in (1) or (2) below, or

(B) if the proposed assignee or transferee or its parent company has commenced a voluntary receivership or bankruptcy proceeding (or had a receivership or bankruptcy proceeding initiated against it).

(1) Any debt securities of the proposed assignee or transferee or its parent (defined as an entity that owns directly or indirectly more than 50 percent 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.

(2) The proposed assignee or transferee 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 "fair" or below in a composite credit appraisal published by Dun and Bradstreet, or "high risk" in a Paydex score as published by Dun and Bradstreet.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 - 2005 Access Extension Offer (Cont'd)23.4.10 Mergers and Acquisitions

The terms and conditions of this Contract Offer shall continue in full force and in effect if the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all its stock or assets to any other entity, or purchases all stock or substantially all stock or certain assets 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 any services that are Contributory Services under this Contract Offer No. 4 from the Qualified Companies, the Contributory Services as provided for in this Contract Offer will continue to be maintained 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.

The terms and conditions of Section 23.4.9 above do not apply when the merger or acquisition occurs in accordance with the provisions outlined in this section 23.4.10.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 – 2005 Access Extension Offer (Cont'd)23.4.11 Termination Liability Charges

Termination liability language described below applies in lieu of the termination liability language in F.C.C. No. 1, Section 7. If the Customer terminates Contract Offer No. 4 before the expiration of the Term Period, for any reason whatsoever, the Customer must pay the Qualified Companies termination liability charges as described below. These charges shall become due as of the effective date of the cancellation or termination. The Customer must provide written notification ninety (90) days prior to the desired date of termination to the Qualified Companies. This notification must include the date upon which the Customer will terminate the Contract Offer.

If the Customer fails to meet any of the eligibility criteria in Section 23.4.2, or fails to meet any of the terms and conditions in Contract Offer No 4, then the Qualified Companies shall provide the Customer with written notification of such non-compliance and the Customer will have sixty (60) days to return to compliance. If the Customer does not return to compliance within such time period, the Customer will be deemed to have terminated its participation in Contract Offer No. 4, and termination liability charges will apply as stated below and will be payable within thirty (30) days from the time the contract is deemed terminated.

If the Customer terminates its subscription to this Contract Offer prior to September 30, 2005, the Customer must pay termination liability charges in an amount equivalent to a prorated portion of the TRC based upon the remaining months of the TRC as shown below:

(A) Example:

The Customer's TRC is \$43.75M. The Customer terminates the contract on August 31, 2005. The Customer has 4 months remaining on the contract term and will owe \$35M in termination liability

$$\$43.75\text{M}/5 * 4 = \$35\text{M} = \text{in termination liability}$$

If the Customer terminates its subscription to this Contract Offer after September 30, 2005, the Customer must pay termination liability charges in an amount equivalent to a prorated portion of the TRC commitment based upon the remaining months of 2005, as well as any credits received under this Contract Offer.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.4 Contract Offering No. 4 - 2005 Access Extension Offer (Cont'd)23.4.11 Termination Liability Charges (Cont'd)

(B) Example:

The Customer's TRC is \$43.75M. The Customer terminates the contract on October 31, 2005. The Customer has 2 months remaining on the contract term and has received \$5M in the first true-up under this Contract Offer.

$\$43.75\text{M}/5 * 2 = \$17.5\text{M}$ plus
\$5M in first true-up.

$\$17.5\text{M} + \$5\text{M} = \$22.5\text{M}$ in termination liability.

(N)

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23. Pricing Flexibility Contract Offerings23.5 Contract Offering No. 5 – Access Discount Offer23.5.1 General Description

Contract Offer No. 5 – Access Discount Offer is an access discount plan for which subscription is required to the following access tariffs: Ameritech Operating Companies (Ameritech) Tariff F.C.C. No. 2, Southwestern Bell Telephone Company (SWBT) Tariff F.C.C. 73, Nevada Bell Telephone Company (NBTC) Tariff F.C.C. No. 1, The Southern New England Telephone Company (SNET) Tariff F.C.C. No. 39, and Pacific Bell Telephone Company (PBTC) Tariff F.C.C. No. 1. To be eligible for discounts under this Contract Offer, the Customer must meet the Eligibility Criteria set forth in Section 23.5.2, and also must comply with all terms and conditions of this Contract Offer.

Contract Offer No. 5 requires eligible customers to establish and maintain a Total Revenue Commitment (TRC), as described in Section 23.5.6 following. The TRC shall include all Contributory Services subject to this Contract Offer. Contributory Services include Contributory Subject Services, as listed in Section 23.5.5, Table 3, herein, in addition to Contributory Non-Subject Services (that are not Contributory Subject Services), as described in Section 23.5.5, Table 4, herein. Contributory Non-Subject Services shall not be eligible for discounts or other incentives provided under this Contract Offer. All Contributory Services described in Section 23.5.5 must be purchased through the SBC wholesale sales channel (SBC Industry Markets). Any Frame Relay Contributory Services shall be provided pursuant to agreements and/or contracts. Such agreements and/or contracts shall be available for review at the web site established to make public any agreements for these services. Customers may reference <https://www.sbcprimeaccess.com/shell.cfm?section=2501>.

In the event the Customer does not meet its monthly TRC amount, the Customer must remit the shortfall payment via the Monthly True-Up process set forth in Section 23.5.6. If the Customer does not meet the total TRC amount at the end of each Contract Year of the Term Period, the Customer must remit the shortfall payment via the Annual True-Up process set forth in Section 23.5.8. If the Customer does not comply with all terms and conditions of this Contract Offer (exclusive of the terms and conditions of non-tariffed agreements referenced herein) and cure any non-compliance within the cure period set forth in Section 23.5.13(A) of this Contract Offer, termination liability charges, in accordance with Section 23.5.13, will apply. Contract Offer No. 5 will be available only from November 15, 2005 through December 15, 2005.

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23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 - Access Discount Offer (Cont'd)23.5.2 Eligibility Criteria

The following eligibility criteria must be met to subscribe to Contract Offer No. 5:

(A) Managed Value Plan (MVP) Subscription

(1) At the time of subscription to this Contract Offer, the Customer must be, or have been, a participant under MVP agreements within the last 90 days, pursuant to:

- (a) SWBT Tariff F.C.C. No. 73, Section 38;
- (b) Ameritech Tariff F.C.C. No. 2, Section 19; and
- (c) Pacific Bell Tariff F.C.C. No. 1, Section 22.

(2) The Customer must maintain eligibility under all MVP agreements until they expire.

(3) All such MVP agreements must expire in 2005.

(B) As of December 1, 2005, the Customer must have billed revenue from Contributory Services, as listed in Section 23.5.5, net of all discounts, credits, and adjustments equal to or greater than 86.5 percent of the Customer's Gross Spend (as defined in Section 23.5.6) for the calendar year 2004, rounded to the nearest million, times 11/12's; or, if the Customer's Gross Spend as of December 1, 2005 is less than that amount, the Customer must pay the Telephone Company, or any of its affiliated telephone companies as described in Section 23.5.2(C), an additional amount sufficient to make up the shortfall from that amount, no later than 60 days after December 1, 2005.

(C) Concurrent Subscription

The Customer must concurrently subscribe to the identical Contract Offer of Contract Offer No. 5 pursuant to the following tariffs:

- (1) Ameritech Tariff F.C.C. No. 2, Section 22, Contract Offer No. 90;
- (2) PBTC Tariff F.C.C. No. 1, Section 33, Contract Offer No. 74;
- (3) SNET Tariff F.C.C. No. 39, Section 25, Contract Offer No. 22; and
- (4) SWBT Tariff F.C.C. No. 73, Section 41, Contract Offer No. 66.

Breach, cancellation or termination of any of these Contract Offers after the expiration of any cure provisions described in this Contract Offer, shall constitute a breach, cancellation or termination of all of these Contract Offers.

(D) Discounts applied under Contract Offer No. 5 are applicable for Contributory Subject Services located in MSAs as listed in Tariff F.C.C. No. 1, Section 22.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.3 Terms and Conditions(A) Term Period

The term of this Contract Offer (Term Period) will begin on December 1, 2005 and end on December 31, 2007, upon submission of a signed Letter of Subscription.

(B) Terms and Conditions

- (1) The Customer must establish and maintain a TRC as described in Section 23.5.6.
- (2) A True-up will take place each month during the Term Period and annually at the end of each Contract Year, as defined in Section 23.5.6.
 - (a) With respect to each month's billing, the monthly true-up will include all qualified billing from Contributory Services, as described in 23.5.6(B), and will take place no later than 60 days after the end of the month, as described in Section 23.5.8,
 - (b) With respect to each Contract Year's billing, the annual true-up will include all qualified billing from Contributory Services, as described in Section 23.5.6, and will take place no later than 60 days after December 31, as described in 23.5.8,.
- (3) MVP credits will continue to apply, if applicable, until expiration of the MVP agreement.
- (4) Contract Offer No. 5 is available for subscription only from November 15, 2005 through December 15, 2005.
- (5) Any Customer-requested transfer of services purchased from SBC non-wholesale entities or channels, or purchased by the Customer under a different Access Customer Name Abbreviation (ACNA) than those identified at time of subscription, will require an equivalent increase in the Customer's TRC commitment based on the amount of revenue associated with the transferred services. The Customer's maximum Basic Credit amount will not change as a result of this transfer.
- (6) Any conversion of UNE or equivalent offerings to Contributory Subject Services, subject to this Contract Offer, will result in an increase in the TRC commitment equal to the revenue associated with those Contributory Subject Services and according to the rates that would apply to those Contributory Subject Services under this Contract Offer. This increase will apply to the TRC each subsequent year of the Term Period.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 - Access Discount Offer (Cont'd)23.5.3 Terms and Conditions (Cont'd)(B) Terms and Conditions (Cont'd)

- (7) The Customer will be eligible to subscribe to contract offers in Section 23 (or any successor section) filed after Contract Offer No. 5, in combination with this Contract offer, unless such contract offer states that it may not be combined with other contract offers, or as long as such contract offers do not reduce the TRC under this Contract Offer and the Customer qualifies for, and adheres to the terms, conditions and eligibility requirements of the other contract offer.
- (a) If the Customer has subscribed to any other contract offer and chooses to terminate the other contract offer for purposes of subscribing to this Contract Offer, any termination liabilities provided in the other contract offer will apply according to the terms of the other contract offer.
- (b) If the Customer purchases Contributory Subject Services pursuant to another contract offer, in addition to this Contract Offer No. 5, the Customer will not be eligible to earn Achievement Credits with respect to any charges that apply under the other contract offer.
- (c) If the Customer purchases Contributory Services pursuant to another contract offer that states it may not be combined with other contract offers, the Contributory Services purchased under the other contract offer will not count toward achievement of Gross Spend or TRC under this Contract Offer.
- (8) Customer may choose to remove from this Contract Offer services provided under one or more Access Customer Name Abbreviations (ACNA's) without liability; however, the TRC commitment will not be reduced and the Access Service Ratio under Contract Offer No. 5 will continue to apply.
- (9) Terms and Conditions for Contributory Subject Services, pursuant to other contract offers the Customer is currently subscribed to at the time of subscription to this Contract Offer, shall continue to apply to those Contributory Subject Services covered under the other contract offers.
- (10) Contributory Services continue to be governed by the otherwise applicable rates, terms and conditions provided in Tariff F.C.C. No. 1 except as noted herein.
- (11) The Customer must subscribe to the services available under this Contract Offer in accordance with the regulations set forth in Section 5 - Ordering Options for Switched and Special Access Service.
- (12) The Customer must submit a Letter of Subscription (LOS) to the Telephone Company as described in Section 23.5.3(A).

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.3 Terms and Conditions (Cont'd)(B) Terms and Conditions (Cont'd)

- (13) The Customer must maintain an Access Service Ratio equal to or greater than 95 percent, except as described in Section 23.5.11 (B). The Access Service Ratio is defined in Section 23.5.4, and will be measured monthly.
- (14) Commingling, as defined in Tariff F.C.C. No. 2, Section 2.6, of Subject Services under this Contract Offer, is prohibited.
- (15) The Customer shall be permitted to Groom Contributory Subject Services subject to this Contract Offer as provided in this Section. Grooming is defined as moving, rearranging, or rolling over circuits subject to this Contract Offer without disconnecting the end user locations of those circuits. During Contract Years 2 and 3 (and during Years 4 and 5, if the Customer has exercised extension options), the Customer shall be permitted to Groom up to 9,000 circuits subject to this Contract Offer per year. The sum of all circuits groomed under the individual contract offers listed in Section 23.5.2 (C) cannot exceed 9,000. Grooms shall be scheduled and managed on a monthly basis according to the otherwise applicable operational methods and procedures.
- (16) The Customer must remit bill payments as described in F.C.C. No. 1 Section 2.4 for all Contributory Services via electronic payment process. The Telephone Company will provide Customer with written notice if Customer fails to comply with the requirement. The Customer will have fifteen (15) business days from receipt of such written notice to comply. If the Customer does not comply, the Telephone Company shall have the right to terminate this Contract Offer. In the event of termination of any of the Contract Offers, as described in Section 23.5.2 (C), termination liability charges, as set forth in Section 23.5.13, will apply. Credits, if applicable, will not be issued until the Customer has paid all billed charges.
- (17) If the Customer discontinues service under Contract Offer No. 5 during the Contract Period, termination liability charges will apply in accordance with Section 23.5.13.
- (18) The Customer may exercise Contract Offer extension options as described in Section 23.5.9.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.4 Access Service Ratio

- (A) As referenced in Section 23.5.4, the Customer and its affiliates must maintain an Access Service Ratio of 95 percent or greater, except as described in Section 23.5.11(B) of this Contract Offer. The ratio, calculated monthly, is the Access Revenue divided by Access Revenue plus Wholesale Revenue. To maintain compliance with this Contract Offer, the ratio must be greater than or equal to 95 percent, except as provided in Section 23.5.11.

The 95-percent ratio is calculated as follows:

$$\frac{\text{Access Revenue}}{\text{Access Revenue} + \text{Wholesale Revenue}}$$

- (1) Access Revenue is the Customer's and its affiliates' current interstate recurring billed revenue associated with the rate elements, as defined in Table 1 below, or comparable interstate access services, from the Telephone Company or its affiliated telephone companies in any of the Contract Offers as described in Section 23.5.2(C):

Table 1:

Service	General/Basic Description
Voice Grade	7.7.1
High Capacity Services	7.11.1
Optical Carrier Network (OCN)	21.1
GigaMAN	7.13.1

Any shortfall payments remitted to meet the monthly TRC commitment will be included in the Access Revenue calculation for the applicable month.

- (2) Wholesale Revenue is the Customer's and its affiliates' recurring billed revenue for associated rate elements, as defined in Table 2 herein, from the Telephone Company or its affiliated telephone companies, in any of the Contract Offers as described in Section 23.5.2 (C) and not included in the interstate or intrastate access tariff(s).

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.4 Access Service Ratio (Cont'd)

(A) (Cont'd)

(2) (Cont'd)

**Table 2 UNE OR EQUIVALENT OFFERINGS NOT PURCHASED
PURSUANT TO THIS AGREEMENT**

Service Level	Associated Rate Elements Not Included in Interstate Tariff
Voice Grade/DS0	2-wire analog and 2-wire digital loops 2-wire analog and digital transport
DS1/LTI	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/LT3	DS3 Loop DS3 Entrance Facilities DS3 Interoffice Transport DS3 Cross Connects DS1/DS3 Multiplexing All DS3 non-tariffed Committed Information Rate Broadband Services
	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 Transport Products	Dark Fiber – Interoffice Dark Fiber – Loop Dark Fiber – Subloop Dark Fiber Cross Connects Unbundled Dedicated Transport

(3) Services purchased pursuant to a Local Wholesale Complete (LWC) Agreement shall not be included in the calculation of the Customer's Access Service Ratio.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 - Access Discount Offer (Cont'd)23.5.4 Access Service Ratio (Cont'd)

(A) (Cont'd)

- (4) As new rate elements are introduced to Table 1 in this section, all recurring revenues associated with the new rate elements will automatically be added to the Customer's Access Revenue, as defined in this section, for calculation of the Access Service Ratio.
- (5) As new rate elements are introduced to Table 2 in Section 23.5.4(A)(2), all recurring revenues associated with the new rate elements will automatically be added to the Customer's Annual Wholesale Revenue, as defined in Section 23.5.4(A) preceding, for calculation of the Access Service Ratio.
- (6) Except as provided in Section 23.5.11, if the Customer fails to meet the Access Service Ratio in any given month of the Contract Period, upon notification from the Telephone Company as described in Section 23.5.2 (C), the Customer will have ten (10) business days to notify the Telephone Company in writing that it will meet or exceed the 95-percent Access Service ratio within 60 days. Failure to achieve compliance in 60 days will constitute a default, and the Telephone Company shall have the right to terminate Contract Offer No. 5. In the event of a termination by the Telephone Company, termination liability charges will apply as set forth in Section 23.5.13.
- Credits will not be issued for any month the Customer fails to meet the Access Service Ratio as described in Section 23.5.6 following.

23.5.5 Contributory Services

The TRC shall include all Contributory Services purchased from the Telephone Company and its affiliated telephone companies in any of the contract offers, as described in Section 23.5.2 (C), eligible under this Contract Offer. Contributory Services include Contributory Subject Services, as listed in Section 23.5.5, Table 3, herein, in addition to Contributory Non-Subject Services (that are not Contributory Subject Services), as described in Section 23.5.5, Table 4, herein.

Contributory Subject Services and Contributory Non-Subject Services shall together be known as Contributory Services. Customer's TRC includes revenue from all Contributory Services being provided by the Telephone Company and its affiliated telephone companies in any of the contract offers described in Section 23.5.2 (C), as listed in Table 3 and 4 below.

(A) Contributory Subject Services

Contract Offer No. 5 applies to pricing flexibility qualified access services (referred to as Contributory Subject Services) located in pricing flexibility Metropolitan Statistical Areas (MSAs) as listed in Tariff F.C.C. No. 1, Section 22. Contributory Subject Services are eligible for discounts and credits under this Contract Offer and are listed in Table 3.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 - Access Discount Offer (Cont'd)23.5.5 Contributory Services (Cont'd)(B) Contributory Non-Subject Services

Contributory Non-Subject Services (that are not Contributory Subject Services) shall not be eligible for discounts or other incentives provided under this Contract Offer, and are listed in Table 4 below.

Table 3 - CONTRIBUTORY SUBJECT SERVICES

Contributory Subject Services	
Interstate Special Access	VG, DS0, DS1, DS3, OCN PTP, DSRS, SRAS, STN, FGTS, BCS, MON, Gigaman
Interstate Switched Transport	Entrance Facility, Direct Transport
Includes Recurring and Non-Recurring Charges (including termination charges) associated with the products listed where applicable, except as described in Section 23.5.6 following, for all services located in Pricing Flexibility MSAs.	

Table 4 - CONTRIBUTORY NON-SUBJECT SERVICES

Contributory Non-Subject Services	
Interstate Special Access	VG, DS0, DS1, DS3, OCN PTP, DSRS, SRAS, STN, FGTS, BCS, MON, Gigaman, Opt-E-MAN
Interstate Switched Transport	Entrance Facility, Direct Transport as described in Table 6, following.
Intrastate Special Access	Equivalent services as Interstate Special Access above if available
Intrastate Switched Access	Equivalent services as described in Table 6 following.
Advanced Services	Frame Relay Service
Includes all Recurring and Non-Recurring Charges (including termination charges) associated with the products listed, where applicable, except as described in Section 23.5.6 following, for all non-price flex qualified services.	
Frame Relay services shall be provided pursuant to agreements and/or contracts. Such agreements and/or contracts shall be available for review at the web site established to make public any agreements for these services. Customers may reference https://www.sbcprimeaccess.com/shell.cfm?section=2501 .	

All Terms and Conditions for all Contributory Services are governed by their respective tariff sections.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.6 Calculation of the Total Revenue Commitment (TRC)

The Customer must establish and maintain a Total Revenue Commitment (TRC) as provided in this Contract Offer. Upon subscription, the Customer TRC will be established, as described in Table 5 below, based on billed revenue from Contributory Services, as listed in Section 23.5.5, net of all discounts, credits, and adjustments as specified in Section 23.5.6(B).

The Contract Year shall be each Calendar Year, or fraction thereof, to which this Contract Offer applies, as described in Table 5 below.

Table 5

Contract Year	2005 (Dec)	2006	2007
TRC equals	86.5% of 2004 Gross Spend described in (A) below, rounded to the nearest million dollars, times 1/12's	2005 TRC times 12 times 89.7%, rounded to the nearest million dollars	2005 TRC times 12 times 83.4%, rounded to the nearest million dollars

(A) Gross Spend shall include all billed revenue for services identified in Section 23.5.6(A), and shall be based on the sum of all of the purchases from the Telephone Company and its affiliated telephone companies, including all of the contract offers as described in Section 23.5.2 (C), as described in Section 23.5.5 preceding, based on billed revenue. The Gross Spend is calculated as billed revenue, prior to the application of MVP discounts, MVP Service Level Agreement (SLA) credits and Discount Value Plan (DVP) credits, but after all other tariff term plan discounts, and other underlying tariff performance credits.

- (1) Interstate Special Access recurring charges billed to the Customer associated with services described in Section 23.5.5 Table 3 and 4 preceding.
- (2) Interstate Special Access non-recurring charges billed to the Customer (including, but not limited to, items such as termination liability charges, expedite charges, cancellation charges, rearrangement charges, installation charges, and access order charges), except as noted in 23.5.6(A)(7).
- (3) Intrastate Special Access recurring charges billed to the Customer associated with services described in Section 23.5.5 Table 4 preceding.
- (4) Intrastate Special Access non-recurring charges billed to the Customer (including but not limited to items such as termination liability charges, expedite charges, cancellation charges, rearrangement charges, installation charges, and access order charges), except as noted in 23.5.6(A)(7) below.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)

(A) (Cont'd)

- (5) Interstate Switched Access Dedicated Transport recurring and non-recurring charges (including, but not limited to, items such as termination liability charges, expedite charges, cancellation charges, rearrangement charges, installation charges, and access order charges) billed to the Customer for rate elements in Table 6 below.

Table 6

Service	General Basic Description
Entrance Facilities	Section 6.8.1
Direct Trunk Transport	Section 6.8.1

- (6) Intrastate Switched Access Dedicated Transport recurring and non-recurring charges (including, but not limited to, items such as termination liability charges, expedite charges, cancellation charges, rearrangement charges, installation charges, and access order charges) billed to the Customer and remitted for rate elements equivalent to those described in Table 6 above.
- (7) Non-recurring charges identified in 23.5.6(A)(2), (4), (5) and (6) above exclude Special Construction and unregulated time and materials charges (e.g. Inside Wire, Custom Work Orders, etc.)

(B) Application of Credits

The Customer is eligible to receive two (2) types of credits under this Contract Offer. For the purposes of this Contract Offer, Customer will receive any applicable credits (the Basic Credit and Achievement Credit) through the SBC wholesale sales channel for all of the contract offers as described in Section 23.5.2 (C). The sum of all Basic Credits applicable under the individual contract offers listed in Section 23.5.2 (C) cannot exceed the total maximum Basic Credit described in Table 7 following. Award of the credits described below under this Contract Offer shall satisfy the credit obligations of the Telephone Company and its affiliated telephone companies to the Customer, as described in Section 23.5.2(C).

(1) Basic Credit

The Basic Credit for each Contract Year shall be equal to the Gross Spend of Contributory Services minus the TRC, but not to exceed the Maximum Basic Credit as described in Table 7 below. This calculation shall be performed at the commencement of the Contract Offer, and the Maximum Basic Credit resulting from these calculations will not change at any time during the Term Period except as described in Section 23.5.11 following. The Customer will receive Basic Credits on Contributory Subject Services on a monthly basis, as provided in Section 23.5.6(B)(1)(b) below, for each Contract Year and subject to the true-up process described in Section 23.5.8 following.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)(B) Application of Credits (Cont'd)(1) Basic Credit (Cont'd)

- (a) Calculation of the Basic Credit. To determine the amount of Basic Credit the Customer can achieve, the TRC is multiplied by the applicable percent as described in Table 7 below. This amount, less the TRC, will equal the potential Maximum Basic Credit, rounded to the nearest million. If qualified, award of Basic Credit under this Contract Offer shall satisfy the Basic Credit obligations of the Telephone Company and its affiliated telephone companies.

Table 7 -

Year	TRC	Maximum Basic Credit Amount
2005	86.5% of 2004 Gross Spend described in (A) below, rounded to the nearest million dollars, times 1/12's	310% of TRC minus the TRC amount, rounded to the nearest million dollars
2006	2005 TRC times 12 times 89.7%, rounded to the nearest million dollars	119.6% of TRC minus the TRC amount, rounded to the nearest million dollars
2007	2005 TRC times 12 times 83.4%, rounded to the nearest million dollars	123.7% of TRC minus the TRC amount, rounded to the nearest million dollars

Example A: The Customer has 2004 Gross Spend of \$121.3M. 86.5 percent of 2004 Gross Spend equals \$105M, rounded to the nearest million.

The 2005 TRC is equal to 1/12th of \$105M.
1/12th of \$105M equals \$8.75M

The eligible total Basic Credit available is;

$$\$8.75M \times 310\% = \$27.13M$$

$\$27.13M - \$8.75M = \$18.38M$, rounded to the nearest million, equals potential maximum Basic Credits

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 - Access Discount Offer (Cont'd)23.5.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)(B) Application of Credits (Cont'd)(1) Basic Credit (Cont'd)

(a) (Cont'd)

Example B: The 2006 TRC is equal to 2005 TRC times 12 times 89.7 percent, rounded to the nearest million.

$8.75M \times 12 \times 89.7\% = \$94.18M$, rounded to the nearest million

The eligible total Basic Credit available is;

$\$94M \times 119.6\% = \$112.42M$

$\$112.42M - \$94M = \$18.42M$, rounded to the nearest million equals maximum Basic Credits

(b) Application of the Maximum Basic Credit

The TRC will be divided evenly across the number of months for each Contract Year ending December 31st as described below. The resulting monthly average amount will be the Customer's Monthly TRC commitment.

2005 - Contract Year 1 - 1 month

2006 - Contract Year 2 - 12 months

2007 - Contract Year 3 - 12 months

Example:

2005 TRC equal \$8.75M

Maximum Basic Credits will be applied to the Customer's Monthly TRC revenue for Contributory Services, as described in Section 23.5 5 preceding, based on the amount above the Monthly TRC commitment, not to exceed the maximum Basic Credit allowed for each Contract Year as described in Table 7 preceding.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)(B) Application of Credits (Cont'd)(1) Basic Credit (Cont'd)(b) Application of the Maximum Basic Credit (Cont'd)

If the Customer exceeds the Monthly TRC commitment, a credit will be issued on a monthly basis sixty (60) days in arrears. Monthly credits will be issued for every month the Customer maintains eligibility under Contract Offer No. 5 and exceeds the Monthly TRC Commitment, provided, however, that once the maximum Basic Credit is reached, as described in Table 7 preceding, no additional Basic Credits will be given for that Contract Year.

At MVP expiration, a MATA true-up will be conducted to determine the Customer's credit amount or required buy-up amount under MVP. The monthly TRC true-up will be calculated at the same time. Customer will be paid the net amount above the TRC. At the end of the Contract Year, a true-up will be conducted, as described in Section 23.5.8, to determine any additional applicable credits or buy-up amount required.

Example: The Customer's MVP expires on October 31, 2005. Under MVP MATA on October 31, the Customer has met its MARC and is due \$2M in MVP credits (earned in 2005), plus \$1M in MVP SLA credits (earned in 2005), for a total MVP credit amount of \$3M.

The Customer's monthly TRC under this Contract Offer is \$8.75M, and Customer is billed \$9.75M.

The Customer will receive the \$1M under Contract Offer No. 5.

At the Contract Year true-up, the total Gross Spend and total credits paid to the Customer, as described in Section 23.5.6 above, will be calculated to determine any additional applicable credit amount or, if a TRC shortfall occurs, the amount of buy-up the Customer will be billed.

If the Customer does not achieve the Monthly TRC commitment in a given month, the Customer will be billed, and will be required to pay, the amount required to meet the Monthly TRC commitment. This payment must be submitted to the Telephone Company no later than 60 days after the true-up date. Timely payment of this true-up amount to meet Customer's Monthly TRC commitment shall constitute full satisfaction of Customer's Monthly TRC obligation.

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23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)(B) Application of Credits (Cont'd)(1) Basic Credits (Cont'd)(b) Application of the Maximum Basic Credit (Cont'd)

Except as provided in Section 23.5.11, credits will not be issued unless the Customer has met the monthly TRC and the 95 percent Access Service Ratio. Under the Contract Year True-up Process, any credits due to the Customer will be paid, except for those months the Customer was not in compliance with the 95 percent Access Service Ratio, or the Temporary Access Service Ratio set forth in Section 23.5.11. Any Basic Credits paid will not exceed the amount described in 23.5.6, Table 7.

A final true-up will take place at the end of each Contract Year as described in Section 23.5.8.

- (c) Any of the following credits issued to the Customer and associated with the Contributory Services included in the TRC (including MVP Commitment credits earned in 2005, MVP SLA credits earned in 2005, DVP credits, any Basic Credits received pursuant to this Contract Offer) will be applied by the Telephone Company in satisfaction of any applicable Basic and Achievement Credit obligations under this Contract Offer.

Example

The Customer has Contract Year 1 TRC of \$8.75M. The Customer achieves 310 percent of the Contract Year 1TRC, equal to \$27.13M. The Customer has received, or is entitled to receive, a total of \$7M in MVP Commitment Credits and \$2M in MVP SLA Credits, for a total of \$9M in credits unrelated to this Contract Offer.

The Basic Credit obligation of the Telephone Company and its affiliated telephone companies providing service pursuant to the Contract Offers, as described in Section 23.5.2 (C), is \$18M (\$27.13M - \$8.75M, rounded to the nearest million), as illustrated in Table 7. The Basic Credit obligation will be satisfied by the \$9M in non-contract related credits acquired by the Customer under MVP and MVP SLA, plus \$9M in Basic Credits paid pursuant to this Contract Offer. This amount will be determined at the time of the final Contract Year true-up, once all other credits have been applied accordingly.

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 - Access Discount Offer (Cont'd)23.5.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)(B) Application of Credits (Cont'd)(1) Basic Credits (Cont'd)

(c) (Cont'd)

The Customer will not pay less than the TRC for the Contract Year. If the Customer does not achieve the TRC at the end of each Contract Year through the purchase of Contributory Services, the Customer will be required to pay the deficiency as full satisfaction of this obligation.

Basic Credits shall be calculated and awarded on an aggregate basis across the concurrently subscribed to contract offers as described in Section 23.5.2 (C). If qualified for a Basic Credit, an award of Basic Credit under this Contract Offer shall satisfy any Basic Credit obligations of the concurrently subscribed to contract offers as described in Section 23.5.2 (C), and an award of Basic Credit under such other contract offers shall satisfy any Basic Credit obligations under this Contract Offer No. 5.

(2) Achievement Credits

Achievement Credits are those credits the Customer will receive based on purchases of Contributory Subject Services above the TRC, plus the maximum Basic Credit Amount, as described in Table 7 preceding. Achievement Credits will not be applicable until the maximum Basic Credit amount has been achieved.

- (a) The Customer may receive Achievement Credits if the Customer's Gross Spend for any Contract Year exceeds the TRC plus the Maximum Basic Credit, as described in Table 7 preceding. The Customer will receive a discount on Contributory Subject Services equal to 17 percent of total revenue above the sum of the TRC, plus the Maximum Basic Credit Amount. Any applicable Achievement Credit will be paid out at the end of each Contract Year.

Achievement Credits shall be calculated and awarded on an aggregate basis across the Telephone Company and its affiliated telephone companies, as they apply to the contract offers as described in Section 23.5.2 (C). If qualified, award of Achievement Credit under this Contract Offer shall satisfy the Telephone Company's Achievement Credit obligations.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.6 Calculation of Total Revenue Commitment (TRC) (Cont'd)(B) Application of Credits (Cont'd)(2) Achievement Credits (Cont'd)

(a) (Cont'd)

Example:

The Customer has TRC for Contract Year 1 of \$8.75M. The Customer achieves 325 percent of TRC equal to \$28.44M. The Customer will receive \$18M in Basic Credits as described above, and the Customer will receive \$223K in Achievement Credits calculated as follows:

$(\$28.44\text{M} \text{ minus } (\text{Contract Year 1 TRC} \times 310\%)) \times 17\%$

$\$28.44\text{M} - \$27.13\text{M} (\$8.75\text{M} \times 310\%) = \$1.31\text{M}$
 $\$1.31\text{M} \times 17\% = \$223\text{K}$ (Achievement Credits).

Table 8

310% of TRC	\$27.13M
Gross Spend Achievement during Contract Year (GSA)	\$28.44M
Difference between 310% of TRC and GSA	\$1.31M
Credit due for billed revenue above 310% of TRC x 17%	\$223K

The Customer receives \$18M in Basic Credits plus \$223K in Achievement Credits, for total credits of \$18.223M, as described in Table 8.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.6 Calculation of Total Revenue Commitment (TRC) (Cont'd)(B) Application of Credits (Cont'd)(3) Transfer of Qualified Services

- (a) The Customer may transfer services purchased from SBC non - wholesale entities or channels, or purchased by the Customer under a different Access Customer Name Abbreviation (ACNA) than those identified under this Contract Offer. Upon such transfer, the Customer's TRC commitment must be increased proportionally, based on the amount of revenue associated with the transferred services. The Customer's Maximum Basic Credit amount will not change as a result of this transfer.

Example:

The Customer has a Contract Year 1 TRC of \$8.75M and is eligible to earn up to a maximum of \$18M in Basic Credits. The Customer transfers \$10M of services from a non-SBC wholesale entity. The Customer's new Contract Year 1 TRC will be \$18.75M (\$8.75M plus \$10M = \$18.75M). The Customer's maximum Basic Credit (\$18M) will not change as a result of the transfer.

This increase in the TRC amount will apply to Contract Year 2 and Contract Year 3, as well as the optional Contract Year Extensions.

23.5.7 Portability

- (A) The Telephone Company will waive termination liability charges for moves and/or disconnection of non-channelized DS1, DS3, OCN PTP services connecting to an end user premise, provided the conditions listed below are met, and provided the Eligibility Criteria in Section 23.5.2, and terms and conditions in Section 23.5.3 have been met. If the Customer both (i) fails to meet the monthly TRC during the Contract period pursuant to Section 23.5.6, and (ii) fails to pay the True-up amount, as defined in Section 23.5.8, or if the Customer fails to comply with the terms and conditions of their underlying term plans, the Customer will be back-billed for termination liability charges that were waived during the Term Period, up to a maximum of two years of such charges, to the extent such termination liability charges would otherwise apply under the relevant underlying term plans. Portability will apply subject to the following terms and conditions:

- (1) Each move and/or disconnection must be from any SBC Tariff as described in Section 23.5.1; and
- (2) Services moved or disconnected must be in the Price Flex MSAs described in Tariff F.C.C. No. 1, Section 22.

(N)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 - Access Discount Offer (Cont'd)23.5.7 Portability (Cont'd)

- (3) Services must be non-channelized and must include at least one end user termination. The end user must be disconnected.
- (4) The Customer must meet the minimum in-service period for each service, as described below:
 - (a) DS1 - no minimum in-service period;
 - (b) DS3, OC3 and OC12 Point to Point Services - 1 year minimum in-service period; and
 - (c) OC48 and OC192 Point to Point Services - 3 year minimum in-service period;
- (5) The Customer must continue to meet the terms and conditions of any underlying term plan.

23.5.8 End of Contract Year True-up Process

A true-up calculation will be performed at the end of each Contract Year during the Term Period as follows:

- (A) At the end of each Contract Year, the Customer's Gross Spend, as defined in Section 23.5.6 preceding, will be calculated to determine the applicable Basic Credit and Achievement Credits.

For true-up calculation purposes, the Gross Spend for Contract Year 1 will include the Customer's Contributory Service revenue for the full 2005 calendar year. The amount of Contributory Service minimum required revenue at final true-up for Contract Year 1 will be the 2005 TRC, plus 11/12ths of 86.5 percent of the 2004 Gross Spend, rounded to the nearest million. The applicable Basic Credit Amount and Achievement Credit Amount received as a result of this calculation will apply only to the TRC amount included in this Contract Offer, as described in Section 23.5.6 Table 7 preceding.

For Contract Years 2 and 3, the minimum required revenue shall be equal to the TRC.

The Basic Credit Amount shall be equal to the Gross Spend minus the TRC for each year (or, for Contract Year 1, the Gross Spend minus the sum of the TRC plus 11/12ths of 86.5 percent of 2004 Gross Spend), provided, however, that the Basic Credit Amount shall not exceed the amount provided in Section 23.5.6 Table 7 preceding, and will only apply to the TRC amount included in this Contract Offer.

Credits received under this Contract Offer during the Contract Year, as well as any MVP credits earned in 2005, MVP SLA credits earned in 2005, and DVP credits, will be calculated to determine the amount of Basic Credit the Customer has been paid.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.8 End of Contract Year True-up Process (Cont'd)

- (B) If the Customer's Gross Spend for Contributory Services, after all credits and shortfall payments described above, is greater than the minimum required revenue at time of the true-up, the Customer will receive a Basic Credit against Contributory Subject Services equal to the amount above the TRC, not to exceed the amount outlined in Section 23.5.6(B) Table 7 preceding.

Example 1: The Customer's TRC for the first Contract Year is \$8.75M. The Customer's Gross Spend for Contributory Services, after all credits and adjustments as described above, is \$10M. The Customer will receive an additional Basic Credit equal to \$1.25M

If the Customer's Gross Spend for Contributory Services, after all credits and shortfall payments described above, is below the minimum required revenue at the time of the true-up, the Customer will be billed the amount required to meet the minimum required revenue and will pay such charge pursuant to Section 23.5.8 (D).

Example 2: The Customer's TRC for the first Contract Year is \$8.75M. The Customer's Gross Spend for Contributory Services, after all credits and adjustments as described above, is \$7M. The Customer must pay \$1.75M.

If the Customer's Gross Spend for Contributory Services, after all credits and shortfall payments described above, is greater than the TRC times the maximum Basic Credit (plus 11/12ths of 86.5% of 2004 Gross Spend for Contract Year 1), as described in Section 23.5.6, Table 7, the Customer will receive the Maximum Basic Credit against Contributory Subject Services as described above, and an Achievement Credit against Contributory Subject Services (equal to a 17 percent discount on services above the TRC times the maximum Basic Credit amount, plus 11/12ths of 86.5 percent of 2004 Gross Spend for Contract Year 1).

Example 3: The Customer's TRC for the first Contract Year is \$8.75M. The Customer's Gross Spend for Contributory Services after all credits and adjustments as described above, is \$28.44M. The Customer receives \$18M in Basic Credits and \$223K in Achievement credits.

- (C) If, at the time of final true-up, the Telephone Company or any of its affiliated telephone companies described in Section 23.5.2 (C), owe the Customer a Basic Credit amount as described above, the credit will be applied to the Customer's bill no later than 60 days after the final true-up date.
- (D) If, at the time of true-up, the Customer must make a true-up payment to meet the TRC as described above, the true-up payment must be submitted to the Telephone Company no later than 60 days after the true-up date. The true-up amount will appear on the Customer's monthly invoice.

(N)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 - Access Discount Offer (Cont'd)23.5.9 Contract Extension Options

At the Customer's option, the Customer may extend this Contract Offer at the end of the Term Period. The Customer may extend for one year at the end of Term Period (First Extension Option), and may also extend the Contract Offer by another year at the end of the first extension year (Second Extension Option). The First Extension Option and Second Extension Option must be exercised concurrently for all contract offers described in Section 23.5.2(C). Those contract offers may not be extended individually. To exercise either option, the Customer must notify the Telephone Company and its affiliated telephone companies as described in Section 23.5.2 (C), in writing, no later than 60 days prior to the expiration of the Term Period or, for the Second Extension Option, 60 days prior to the expiration of the First Extension Option.

For the First Extension Option, the TRC shall be determined as follows:

The TRC amounts for the First Extension Option will be equal to the last 3 months of qualified Contributory Services revenue in Contract Year 3 times 4 times 83 percent, or the Contract Year 3 TRC, whichever is greater. The maximum Basic Credit will be equal to the TRC times 120 percent minus the TRC amount, less any Basic Credit reductions applied during the Term Period of this Contract Offer, as described in Section 23.5.11(A) following. An Achievement Credit of 17 percent will apply on revenue above 120 percent of the TRC, except as described in Section 23.5.11 (A) following.

Example:

$(\text{TRC} \times 120\% - \text{TRC}) - (\text{any credit reduction as described in Section 23.5.11})$

For the Second Extension Option, the TRC shall be determined as follows:

The TRC amount for the Second Extension Option will be equal to the last 3 months of qualified Contributory Services revenue in Contract Year 4 times 4 times 83 percent, or the Contract Year 4 TRC, whichever is greater. The maximum Basic Credit Amount will be equal to the TRC times 120 percent minus the TRC amount, less any Basic Credit reductions applied during the Term Period of this Contract Offer, or under the First Extension Option as described in Section 23.5.11(A) following.. An Achievement Credit of 17 percent will apply on revenue above 120 percent of the TRC, except as described in Section 23.5.11 (A) following.

Example:

$(\text{TRC} \times 120\% - \text{TRC}) - (\text{any credit reduction as described in Section 23.5.11})$

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.10 Assignment and Transfer

If the Customer wishes to assign or transfer its use of services under this Contract Offer No. 5 pursuant to F.C.C. No. 1, Section 2.1.2 of this Tariff, the Telephone Company will acknowledge such transfer or assignment pursuant to the terms of F.C.C. No. 1, Section 2.1.2, unless:

- (A) the proposed assignee or transferee demonstrates a lack of credit worthiness under one of the criteria in (1) or (2) below, or
- (B) if the proposed assignee or transferee or its parent company has commenced a voluntary receivership or bankruptcy proceeding (or had a receivership or bankruptcy proceeding initiated against it).
 - (1) Any debt securities of the proposed assignee or transferee or its parent (defined as an entity that owns directly or indirectly more than 50 percent 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.
 - (2) The proposed assignee or transferee 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 "fair" or below in a composite credit appraisal published by Dun and Bradstreet, or "high risk" in a Paydex score as published by Dun and Bradstreet.

All of the contract offers described in Section 23.5.2(C) must be assigned or transferred concurrently. Those contract offers may not be assigned or transferred individually.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.11 Mergers and Acquisitions

- (A) The terms and conditions 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 its stock or assets to any other entity, or purchases all stock or substantially all stock or assets of another company (the foregoing generally referred to herein as a merger or acquisition). Any other company involved in such merger or acquisition shall be identified for purposes of this Contract Offer as an Acquired Company, without regard to whether the Customer or the Acquired Company is the surviving entity following the transaction. The Transaction Close Date shall be the date upon which a stock purchase has been completed and/or the final date on which the assets of the acquired/merged company have been purchased. Upon the Transaction Close Date, if the Acquired Company purchases any services that are Contributory Services under this Contract Offer No. 5 from the Telephone Company and each of its affiliated telephone companies in each of the contract offers described in Section 23.5.2 (C), the Contributory Services purchased by the Acquired Company will not count toward the Gross Revenue achievement or TRC amount, and the Contributory Services provided for in this Contract Offer will continue to be maintained at the same volume, rates, terms, and conditions as outlined herein.

Effective upon the Transaction Close Date:

The Acquired Spend shall be calculated for the Acquired Company, including the Acquired Company's billed revenue for Contributory Services consistent with the manner of calculating Gross Spend, as provided in Section 23.5.6(A) of this Contract Offer, plus the Acquired Company's billed revenue for UNE or equivalent offerings, as described in Section 23.5.4, Table 2.

- (1) If the Acquired Spend (calculated based on the billed revenue of the Acquired Company during the three months immediately prior to the Transaction Close Date, times four) is less than or equal to 15 percent of the billed revenue for both Contributory Services and UNE, or equivalent offerings provided to the Customer prior to the Transaction Close Date, this Contract Offer shall remain in force without change, unless Customer includes the Acquired Spend in this Contract Offer, as provided in Section 23.5.11(B) of this Contract Offer.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.11 Mergers and Acquisitions (Cont'd)

(A) (Cont'd)

(2) If the Acquired Spend (calculated based on the billed revenue of the Acquired Company during the three months immediately prior to the Transaction Close Date, times four) is greater than 15 percent of the billed revenue for both Contributory Services and UNE, or equivalent offerings provided to the Customer prior to Transaction Close Date, the following provisions shall apply:

(a) The Customer's Calculated Annual Spend shall be the Customer's actual annualized billed revenue for Contributory Services (calculated as the Customer's billed revenue during the three months immediately prior to the Transaction Close Date, times four). The Ceiling shall be the sum of the TRC plus the Maximum Basic Credit. If the Customer's Calculated Annual Spend is less than the Ceiling, the Customer's Maximum Basic Credit shall be reduced by an amount equal to the difference between the Ceiling and the Calculated Annual Spend. The Customer's TRC shall not change. The reduced Maximum Basic Credit shall apply thereafter throughout the Term Period, unless subsequently reduced pursuant to this provision as a result of a subsequent merger or acquisition. Thereafter, the Customer shall not receive Achievement Credits for any revenue above the Calculated Annual Spend, except as described in Section 23.5.11(A)(3) of this Contract Offer.

Example: The Customer's Year 2 TRC is \$90M and its Maximum Basic Credit is \$18M, for a Ceiling of \$108M (TRC plus Maximum Basic Credit).

On the Transaction Close Date, the Customer's Calculated Annual Spend (billed revenue for Contributory Services during the prior three months, times four) is \$100M. The Customer's TRC remains \$90M, and the Customer's Maximum Basic Credit is reduced to \$10M. The Maximum Basic Credit remains at \$10M thereafter, unless further reduced as a result of a subsequent merger or acquisition.

No Achievement Credits will apply to any revenue over \$100M.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.11 Mergers and Acquisitions (Cont'd)

(A) (Cont'd)

(2) (Cont'd)

- (b) If the Customer's Calculated Annual Spend is equal to or greater than the Ceiling, neither the TRC nor the Maximum Basic Credit shall change, except as provided in Section 23.5.11(A)(3) of this Contract Offer. The Customer shall not receive Achievement Credits for any revenue above the Ceiling during the months after the Transaction Close Date, except as provided in Section 23.5.11(A)(3) of this Contract Offer. Any Achievement Credits earned after the maximum Basic Credit amount has been achieved, but prior to the Transaction Close Date, will continue to apply.

Example: The Customer's Year 2 TRC is \$90M and the Maximum Basic Credit is \$18M for total of \$108M.

On the Transaction Close Date, the Calculated Annual Spend (billed revenue for Contributory Services during the prior three months, times four) is \$112M. The Customer's TRC remains \$90M and the Maximum Basic Credit remains \$18M.

Achievement Credits will apply to Contributory Service revenue during any month after the month in which the Customer reaches the Maximum Basic Credit amount, but before the Transaction Close Date. Achievement Credits will not apply after the Transaction Close Date.

(N)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 - Access Discount Offer (Cont'd)23.5.11 Mergers and Acquisitions (Cont'd)

(A) (Cont'd)

- (3) If the Customer wishes to include Contributory Services provided to the Acquired Company in this Contract Offer, the Customer must so notify the Telephone Company within nine (9) months after the Transaction Close Date. If the Customer chooses to include the Acquired Company's Contributory Services in this Contract, the Acquired Spend (calculated based on the billed revenue of the Acquired Company during the three months immediately prior to the date upon which the Customer provides notification pursuant to this provision, times four) will be added to the Customer's then-current TRC. In addition, the revenues resulting from any conversion of UNE or equivalent offerings to qualified Contributory Subject Services, whether voluntary or required, shall also be added to the Customer's then-current TRC, according to the rates that would apply to those Contributory Services under this Contract Offer. The Maximum Basic Credit shall be determined according to Section 23.5.11(A) of this Contract Offer. Achievement Credits will apply to revenue above the Ceiling, beginning upon the date the Customer provides notification pursuant to this provision. Upon including the other company's Contributory Services in this Contract Offer, any pricing flexibility contract offer, or similar intrastate arrangement governing the included services, shall be deemed terminated and any termination liability or other charges will apply, as provided in the previously effective pricing flexibility contract offer or similar intrastate arrangement. The Customer's Maximum Basic Credit amount will not change as a result of this transfer except as described in Section 23.5.11(A)(2)(a) of this Contract Offer. The Access Service Ratio, as described in Section 23.5.4, will be applicable to all of the Customer's affiliates, regardless of their inclusion in, or exclusion from, this Contract Offer (except as described in Section 23.5.11(B) of this Contract Offer). The increase in the Customer's TRC shall apply thereafter, except to the extent the TRC may be further modified pursuant to this Contract Offer.

Example A: The Customer has a Year 2 TRC of \$90M, and the Maximum Basic Credit is \$18M. The Customer acquires another company with annualized Contributory Service revenues of \$40M, and the Customer chooses to add the Acquired Company's Contributory Services business to this Contract Offer. The Customer's new Contract Year 2 TRC will be \$130M (\$90M plus \$40M = \$130M). The Customer's Maximum Basic Credit (\$18M) will not change, except as described in Section 23.5.11(A)(2)(a) of this Contract Offer. The new TRC will apply thereafter, unless the TRC is subsequently changed pursuant to this Contract Offer.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.11 Mergers and Acquisitions (Cont'd)(B) Mergers and Acquisitions Affecting Access Service Ratio

If any merger or acquisition affects the Customer's Access Service Ratio, the Customer and any affiliated entities that existed as of the Transaction Close Date (as determined by the applicable ACNA's) shall comply with the Access Service Ratio requirements of this Contract Offer, as described in Section 23.5.4 of this Contract Offer, subject to the provisions of this Section 23.5.11(B).

If the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all its stock or certain assets to any other entity, or purchases:

(1) All stock, or substantially all stock or certain assets of another company, and the merger or acquisition will cause the Customer to fall below Access Services Ratio Terms and Conditions as defined in Section 23.5.4, regardless of whether the Customer chooses to include the Acquired Company's Contributory Services in this Contract Offer, the following will apply.

(a) A Temporary Access Service Ratio will be calculated in a manner consistent with the calculation of the Access Service Ratio as described in Section 23.5.4 of this Contract Offer, for the Acquired Company, for the month immediately following the Transaction Close Date, according to the following formula.

$$\frac{\text{Acquired Company Access Revenue}}{\text{Acquired Company Access Revenue} + \text{Acquired Company Wholesale Revenue}}$$

Example:

$$\frac{\$35\text{M Access}}{\$35\text{M Access} + \$34\text{M Wholesale}}$$

The Temporary Access Services Ratio would be:

50.7%/49.3%

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 - Access Discount Offer (Cont'd)23.5.11 Mergers and Acquisitions (Cont'd)(B) Mergers and Acquisitions Affecting Access Service Ratio
(Cont'd)

(1) (Cont'd)

- (b) The Temporary Access Service Ratio will apply to the Acquired Company's Contributory Services until the earlier of nine (9) months after the Transaction Close Date, or the date upon which the Customer notifies the Telephone Company of its election to add the Acquired Company's Contributory Services to this Contract Offer, whichever is earlier. While the Temporary Access Service Ratio remains in effect, the Contributory Services of the Acquired Company must at all times meet or exceed the Temporary Access Service Ratio.

Thereafter, a Combined Access Service Ratio shall be calculated according to the following formula:

$$\frac{\text{Combined Access Revenue}}{\text{Combined Access Revenue} + (\text{Combined Wholesale} - \text{Acquired Wholesale Revenue})}$$

The Acquired Wholesale Revenue in the combined equation shall be measured at the earlier of nine (9) months after the Transaction Close Date or the date upon which the Customer notifies the Telephone Company of its election to add the Acquired Company's Contributory Services to this Contract Offer, whichever is earlier.

Example:

$$\frac{\$140\text{M}}{\$140\text{M} + (\$37\text{M} - \$35\text{M})}$$

The combined Access Service Ratio of 98.6%/1.4% exceeds the 95%/5% ratio required.

- (c) Once the Combined Access Service Ratio has been calculated, the combined Company (the Customer and Acquired Company, considered together) must meet or exceed a Combined Access Service Ratio of 95 percent for all services (Contributory and UNE or other equivalent offerings) purchased thereafter. Any wholesale services purchased by the Acquired Company prior to the earlier of the date nine months after the Transaction Close Date, or the date upon which the Customer notifies the Telephone Company of its election to add the Acquired Company's Contributory Services to this Contract Offer, will be deducted from the Combined Wholesale Revenue for purposes of calculating the Combined Access Service Ratio.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.11 Mergers and Acquisitions (Cont'd)(B) Mergers and Acquisitions Affecting Access Service Ratio
(Cont'd)

(1) (Cont'd)

(d) Services included in the calculation of the Temporary Access Service Ratio or the Combined Access Service Ratio shall be the same as those described in Section 23.5.4 of this Contract Offer.

(e) If the Customer and/or the Acquired Company fails to meet or exceed the Temporary Access Service Ratio or the Combined Access Service Ratio, the remedies provided in Section 23.5.4 of this Contract Offer shall apply.

(f) The provisions of this Section 23.5.11 shall apply to each merger or acquisition during the Term Period.

(2) If the Customer chooses to include the Acquired Company's Contributory Services in this Contract Offer, Contributory Services previously provided to the Acquired Company shall be included in this Contract Offer immediately upon the Telephone Company's receipt of the Customer's notice of intent to include them, and the TRC will be increased by the amount of the Acquired Company's qualified revenues. In addition, the monthly TRC will be increased to reflect the conversion of any unbundled network elements and equivalent offerings to Contributory Subject Services subject to this Contract Offer. Any converted services will be billed as Contributory Subject Services subject to this Contract Offer, and will be included in the TRC, effective upon the date on which receives the Customer's request to convert. The Customer's Maximum Basic Credit will not change as a result of the inclusion of the Acquired Company's Contributory Services in this Contract Offer, except as described in 23.5.11(A) preceding. The recalculated monthly TRC will apply for the remainder of that Contract Year. In each subsequent Contract Year, the TRC will continue to include the revenues associated with the Acquired Company's Contributory Services.

(N)

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(N)

23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.12 Cessation of Business

If, at any time during the Term Period, the Telephone Company, or any of its affiliated telephone companies, cease to provide telecommunications services in any MSA subject to this Contract Offer, or any of the other Contract Offers as described in Section 23.5.2 (C), sells or divests its operating assets in any MSA subject to this Contract Offer, or otherwise ceases to provide any of the Contributory Services subject to this Contract Offer, the TRC will be decreased by the amount of the qualified revenue associated with the Contributory Services no longer provided by the Telephone Company or its affiliated telephone companies.

23.5.13 Termination Liability Charges

Termination liability language described below applies in lieu of the termination liability language in F.C.C. No. 1, Section 7 and Section 21. If the Customer terminates Contract Offer No. 5 before the expiration of the Term Period for any reason, except for that defined in 23.5.13 (B) below, the Customer must pay the Telephone Company termination liability charges as described below. These charges shall become due as of the effective date of the cancellation or termination. The Customer must provide written notification to the Telephone Company 90 days prior to the desired date of termination. This notification must include the date upon which the Customer will terminate the Contract Offer.

- (A) If the Customer fails to meet any of the eligibility criteria in Section 23.5.2, or fails to meet any of the terms and conditions in Contract Offer No. 5, then the Telephone Company shall provide the Customer with written notification of such non-compliance, and the Customer will have sixty (60) days to return to compliance. If the Customer does not return to compliance within such time period, the Customer will be deemed to have terminated its participation in Contract Offer No. 5, and termination liability charges will apply as stated below, and will be payable within sixty (60) days from the time the contract is deemed terminated.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)23.5 Contract Offering No. 5 - Access Discount Offer (Cont'd)23.5.13 Termination Liability Charges (Cont'd)

(B) If the Telephone Company and its affiliated telephone companies providing service pursuant to the contract offers described in Section 23.5.2(C) fail, in the aggregate, to maintain a Network Availability cumulative annual target of 90 percent for all Contributory services for twelve consecutive months, the Customer will have the option to notify the Telephone Company of the Customer's intent to terminate this Contract Offer. The Customer must provide the Telephone Company with ninety (90) days notice of the Customer's intent to invoke this escape clause and return its services to standard special access services. The Telephone Company will have sixty (60) days, from the date that Customer notice is received, to rectify the service problems or the Customer will be allowed to terminate this offering without incurring any termination liability on the services moved to standard Special Access services. If the Telephone Company and its affiliated telephone companies meet the Network Availability targets within sixty (60) days, the Customer will continue to purchase services under this Contract Offer.

The following occurrences will not be included in the measurements described in the calculation of Network Availability:

- (1) In the case of labor disputes, governmental orders, civil commotions, or criminal actions taken against the Telephone Company or its affiliated telephone companies, the Telephone Company and its affiliated telephone companies will be excused for the duration of these events.
- (2) In the case of actions outside of the Telephone Company or its affiliated telephone companies' reasonable control (e.g., catastrophic weather conditions) that have a severe impact on the Telephone Company or its affiliated telephone companies' ability to provision and repair service, the Telephone Company and its affiliated telephone companies will be excused, for the duration of the situation, from the performance measures set forth herein. Any such temporary exemption will apply only to the dispatch area(s) directly affected by the situation, and the Telephone Company and its affiliated telephone companies will return to the levels of performance required hereunder as promptly as is reasonably practicable. To the extent additional dispatch areas are impacted by such a situation, the Telephone Company and its affiliated telephone companies will give prompt notice to the Customer of the scope and nature of such impact so the parties can determine whether additional temporary exemptions from the applicable performance measures are appropriate.
- (3) Performance shall be excused for the duration of any interruptions caused by the negligence of the Customer, the Customer's end-user, or other third parties not affiliated with the Telephone Company or its affiliated telephone companies.

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.13 Termination Liability Charges (Cont'd)

(B) (Cont'd)

- (4) Performance shall be excused for the duration of any interruptions of a service due to the failure of equipment or systems provided by the Customer or parties other than the Telephone Company or its affiliated telephone companies.
- (5) Performance shall be excused for the duration of any interruptions of a service during any period in which the Telephone Company or its affiliated telephone companies are not afforded access to the premises where the service is terminated.
- (6) Performance shall be excused for the duration of any interruptions of a service when the Customer has released that service to the Telephone Company or any of its affiliated telephone companies for maintenance purposes, to make rearrangements, or for the implementation of an order for a change in the service during the time that was negotiated with the Customer prior to the release of that service.
- (7) Performance shall be excused for the duration of any interruptions of a service which continue because of the failure of the Customer to authorize replacement of any element of special construction, as set forth in Section 5 and Section 13 of F.C.C. No. 1.
- (8) Performance shall be excused for the duration of any interruptions that occur on facilities that the Customer elected not to release the service to the Telephone Company or its affiliated telephone companies for testing and/or repair.

(N)

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23. Pricing Flexibility Contract Offerings (Cont'd)

(N)

23.5 Contract Offering No. 5 – Access Discount Offer (Cont'd)23.5.13 Termination Liability Charges (Cont'd)

- (C) If the Customer terminates its subscription to this Contract Offer prior to the end of the Term Period, for any reason other than described in 23.5.13 (B) above, the Customer must pay termination liability charges as described below:

Termination of Contract during:

Contract Year 1 – Any credits received under this Contract Offer plus 25% of TRC for remaining months of Term Period

Contract Year 2 – Last 6 months of credit received under this Contract Offer plus 25% of TRC for remaining months of Term Period.

Contract Year 3 – Last 6 months of credit received under this Contract Offer plus 10% of total TRC for Contract Year 3.

Example:

The Customer's 2006 TRC is \$90M. The Customer terminates the contract on April 31, 2006. The Customer has 20 months remaining on the Term Period and has received \$6M in credits under this Contract Offer in the 6 months prior to termination. The customer will owe \$43.4M in termination liability

$\$26.25\text{M} \times 4 = \$105\text{M}$

$\$105\text{M} \text{ times } 89.7\% = \$94\text{M}$

$\$94\text{M}/12 = \$7.8\text{M} \times 8 = \$62\text{M} \times 25\% = \$15.5\text{M}$ for remainder of Contract Year 2

plus

$\$105\text{M} \text{ times } 83.4\% = \$87.5\text{M}$

$\$87.5\text{M} \times 25\% = \$21.9\text{M}$ for Contract Year 3

Contract Year 2 + Contract Year 3 + Last 6 months of credits

$\$15.5\text{M} + \$21.9\text{M} + \$6\text{M} = \$43.4\text{M}$ Termination Liability

(N)

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