

Decision 89 03 060

MAR 2 2 1989

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 OAK BROOK FIBER SYSTEMS, INC. for a )  
 Certificate of Public Convenience )  
 and Necessity Authorizing the )  
 Provision of Dedicated InterLATA )  
 Telecommunications Services )  
 Within California. )

Application 88-11-005  
 (Filed November 3, 1988)

Mailed

MAR 2 5 1989

OPINION

Applicant, Oak Brook Fiber Systems, Inc. (Oak Brook), seeks a certificate of public convenience and necessity (CPCN) to provide dedicated interLATA telecommunications services from origination points in certain metropolitan areas throughout the State of California to various locations, including the points of presence (POPs) of other interexchange carriers (IEC's). Initially, applicant plans to originate service in the San Francisco metropolitan area, and states that it may originate services from other intrastate points at a later date.

Oak Brook is a wholly-owned subsidiary of Metropolitan Fiber Systems, Inc. (MFS) a Delaware corporation headquartered in Oak Brook Terrace, Illinois. MFS is owned by Kiewit Communications Company, Inc., the Affiliated Banc Group Investors, and the MFS management team. The parent of Kiewit Communications Company is Peter Kiewit Sons', Inc. (Kiewit) of Omaha, Nebraska whose main areas of business are construction, mining and packaging.

Oak Brook plans to build the necessary cable facilities for this service. Initially it will extend facilities in the metropolitan area of San Francisco with the actual construction to be performed by Kiewit Telecommunications Services, Inc. (KTS) another subsidiary of Kiewit. KTS has previously installed about 3,000 miles of fiber optic cable throughout the United States and

therefore has the technical knowledge and experience to construct the necessary facilities for applicant. Oak Brook anticipates that the capital costs associated with its planned construction for calendar year 1989 will approximate \$5 to \$6 million. Oak Brook plans to employ a director in San Francisco to manage its marketing and operating responsibilities for California. By a separate correspondence to the then assigned Administrative Law Judge (ALJ), Oak Brook asserted that it will coordinate its construction wherever possible in concert with the reconstruction work planned by the City of San Francisco for Market Street.

Oak Brook, in its application (as filed) requests authority to provide access to interLATA carriers on a dedicated non-switched basis for circuits capable of serving one or more voice channels.

Oak Brook opines that the public convenience and necessity will be furthered if it is granted authority to provide these services, for the following reasons:

- a. Its proposed intrastate services will meet the needs of business and governmental users and interexchange carriers for competitively priced, superior quality telecommunications services;
- b. Its proposed services will be provided via state-of-the-art telecommunications facilities, including digital fiber optic cable, with resulting reliability, quality and efficiency;
- c. Approval of its application and the principle of competition in intrastate communications markets will foster the following long-term benefits to California telecommunications users:
  1. lower-priced and better quality services;
  2. innovative telecommunications service and equipment offerings as well as increased consumer choice;

3. efficient use of existing communications resources, increased diversification and reliability of supply of communications services; and
4. development of an expanded telecommunications industry in California with attendant [employment] opportunities for California residents.

Oak Brook herein seeks authority to offer dedicated nonswitched private line telecommunication services between LATA's in the State of California, and does not propose to offer intraLATA service at this time. Oak Brook also agrees not to engage in advertising or customer contacts promoting its ability to provide intraLATA services without first seeking and receiving such authority from the Commission.

Oak Brook requests that it be accorded the same treatment applicable to other non-dominant IECs, regarding exemptions from the requirements of Public Utilities Code Sections 816 through 830 and 851 through 855 (which require Commission authorization of securities issuances and transfers or encumbrances of utility property for purposes of securing debt) granted by Decision (D.) 85-01-008, D.85-07-081, D.85-11-044, and D.86-08-057.

Oak Brook also requests that it be authorized to deviate from the requirements of General Order 96-A respecting tariff pagination and the setting forth of each tariff rule on a separate page, as authorized for like utilities by Resolution T-10808 issued March 21, 1984.

In addition, Oak Brook requests that its application be granted on an ex parte basis, to allow it to commence providing these services promptly upon authorization.

As a part of the Appendix to its application, Oak Brook includes a Certificate of Qualification from the Secretary of State of the State of California certifying that it is a corporation qualified to do business in California.

Protests Received

On December 6, 1988, Access Net, Inc. (U-5157-C) and Access Net of San Francisco, Inc. (U-5158-C) protested this application asserting that the financial information submitted with the application was woefully inadequate and that applicant's parent has not made a significant commitment of resources for the proposed operations.

Protestants then urged that the Commission require some minimal requisite financial commitment by applicant prior to certification to assure that it is able to bear the initial operating losses set forth in its application.

On December 19, 1988, Oak Brook responded to the protests claiming that they were nothing more than a transparent attempt to delay certification by a potential competitor and to obtain additional information concerning the resources and strategies of that competitor.

On January 17, 1989, counsel for protestants wrote to the then assigned ALJ stating that while they remained dissatisfied with Oak Brook's financial showing, "Nonetheless, protestants do not wish to delay the processing of Application No. 88-11-005. Accordingly, [protestants] hereby withdraw their protest to Application No. 88-11-005."

Subsequently, by a letter dated February 27, 1987 to the then assigned ALJ, Oak Brook forwarded a letter from the president and chief executive officer of MFS, Oak Brook's parent committing it to an estimated construction budget of \$5 to \$6 million and \$400,000 in working capital to cover expenses over revenues for the first year of operation of Oak Brook.

On March 13, 1989, the Commission's Division of Ratepayer Advocates (DRA) filed "late filed comments" in this proceeding recommending limited approval of Oak Brook's request. DRA stated that its recommendation was conditioned on its understanding that Oak Brook intends to use its system as an alternative [dedicated]

conduit to the POPs of the IECs and it will not provide switched service. DRA opined that such approval of Oak Brook's application would be consistent with prior Commission decisions approving a number of similar applications.

DRA also believes that Oak Brook should be required to file tariffs as part of its application, as has been required of other recent applicants for CPCNs to provide high speed digital private line service. DRA contends that Oak Brook is seeking overly broad authority in its application as filed, and the Commission, as a minimum, should limit Oak Brook's authority to provide nonswitched services only. DRA suggests that such a limitation would be consistent with the Commission's recent Decision (D.89-02-080) to rehear Fiber Data Systems, Inc. (FDS) application (A.88-05-017) to revisit the question of the propriety of authorization of switched services. The concerns raised by DRA, in its late filed comments, are addressed in the following discussion.

#### Discussion

Oak Brook, as a nondominant carrier under the Federal Communications Commission's (FCC) regulatory framework, has authority to provide nonswitched transmission services between POPs, and from POPs to end users, for the purpose of facilitating interexchange carriers' interstate interLATA service offerings. Nondominant carriers are viewed as having blanket authority to provide interstate telecommunications service under Section 214 of the Communications Act of 1934,<sup>1</sup> and thus are not required to file tariffs or applications for certification under Section

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<sup>1</sup> 47 U.S.C. § 214 (1982).

214.<sup>2</sup> Oak Brook will utilize the interstate services facilities to furnish the intrastate communications services for which authorization is sought herein.

Oak Brook will provide initial service from cable facilities in San Francisco. Oak Brook by letter of Counsel to the ALJ dated March 13, 1989, states that it will use facilities constructed pursuant to Oak Brook's FCC authority using underground conduits or ducts, utility poles and other existing facilities, to serve its customers in California. Therefore, it can be seen with reasonable certainty that the proposed services will not have a significant impact on the environment.

Oak Brook proposes to provide service between end users and the POPs of IECs. Recently, we granted rehearing of D.88-12-029 in which we had authorized FDS to provide access to the POPs of IECs. Among the issues raised by the application for rehearing was whether the provision of access to the POP's of IECs is properly characterized as interLATA or intraLATA service. We will entertain the receipt of further evidence or argument on the question of the status of such access to the POPs of IECs in the rehearing of D.88-12-029, or another appropriate proceeding wherein interested parties may appear and address this issue. However, regardless of whether the provision of high speed digital private line access service to the POPs of IECs is interLATA or intraLATA service, we have allowed competitive entry in the provision of high speed digital line service both on an interLATA and intraLATA

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<sup>2</sup> See Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services, CC Docket No. 76-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979), First Report and Order, 85 FCC 2d 1 (1980), and subsequent reports and orders in the same Docket.

basis.<sup>3</sup> Accordingly, in the absence of a timely protest and request for hearing, we conclude that we should grant Oak Brook authority to provide access to and from IEC POPs on nonswitched dedicated private lines only at transmission speeds of 1.544 mbps or above.

Under the authority requested in this application, Oak Brook seeks to provide access to interLATA carriers on a dedicated nonswitched basis for circuits capable of serving one or more voice channels. The offering of a single voice grade channel goes beyond the kind of competitive entry we have previously allowed and raises issues that will likely be before us in the FDS rehearing of D.88-12-029 in Application (A.) 88-05-017. We have not formally concluded that such competitive service is appropriate at this time and will want to receive additional evidence from interested parties before extending such authority. Accordingly, we will not allow Oak Brook to provide single channel service at this time. However, we have granted CPCN's for dedicated private line services at 1.544 mbps<sup>4</sup> or above involving both intraLATA and interLATA communications service.

We will therefore give consideration to Oak Brook's request herein for authorization of any and all private line service options which equal or exceed a capacity of 1.544 mbps.

The question of the propriety of providing access service on a switched network and at speeds below 1.544 mbps will be addressed at forthcoming hearings in A.88-05-017 for FDS in the near future. Oak Brook may petition to intervene in that hearing

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3 We have previously granted such authority to Wang Communications, Inc. (D.88-02-044) and Teleport Communications - San Francisco, Inc. (D.89-02-016).

4 1.544 million bits per second (mbps) digital private line service, with proper multiplexing, is capable of handling 24 separate voice channels at one time.

if it wishes to explore the propriety of offering switched or lower speed (less than 1.544 mbps) private line service.

The assigned ALJ has advised counsel for Oak Brook of the issues regarding the offering of low speed private line services and Oak Brook subsequently agreed to delete the offering of a single dedicated voice channel until the pending issues are resolved. Oak Brook thereafter, on March 10, 1989, forwarded a revised comprehensive draft proposed tariff to the ALJ (see Appendix A to this order for details). We will authorize Oak Brook to file the revised tariff schedule contained in Appendix A to this order in advance of rendering service.

Oak Brook estimates that it will have 36 and 90 customers to its service at the end of the first and fifth full years of operation respectively.

Oak Brook has served a copy of this application upon the telecommunications utilities with whom it is likely to compete in the provision of its high-speed private line service. There are no current protests pending at this time. A public hearing is not necessary.

Findings of Fact

1. Applicant seeks a certificate of public convenience and necessity to provide dedicated nonswitched high-speed private line service between end users and POPs of IECs at speeds equivalent to 1.544 mbps or higher in the State of California with initial service in the San Francisco metropolitan area, defined as California LATA 1.

2. There is a demand for the proposed service.

3. Applicant has the financial and technical resources to provide the proposed service.

4. It can be seen with reasonable certainty that there is no possibility that the granting of this application may have a significant adverse effect on the environment.

5. Applicant is a nondominant carrier.



6. Applicant has the ability and willingness to provide the requested service immediately.

7. Public convenience and necessity require the granting of A.88-11-005 to the extent set forth in the ordering paragraphs which follow.

Conclusions of Law

1. The application should be granted to the extent provided in the following order.

2. Applicant is subject to the one-half percent (1/2%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf, as outlined in Resolution T-13005, dated July 22, 1988 pursuant to P.U. Code § 2881.

3. Oak Brook should be prohibited from holding out the availability of intraLATA services it is not authorized to provide and should be required to advise its customers that intraLATA communications should be placed over the facilities of an authorized carrier.

4. The effective date of Oak Brook's initial offering of dedicated nonswitched high-speed private line service authority should be five days after its filing of tariff schedules identical to those set forth in Appendix A to this order.

5. In order to allow Oak Brook to make these services available on or after April 1, 1989, this order should be effective today.

6. Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to applicant Oak Brook Fiber Systems, Inc., a Delaware corporation, to provide access service to and from interLATA carriers points of presence on dedicated nonswitched high-speed private lines at speeds equivalent to or greater than 1.544 mbps, statewide in California.
2. Applicant's initial service will be limited to customers in the metropolitan areas of San Francisco in the California LATA-1 area.
3. Oak Brook is hereby authorized to file an advice letter and associated tariff sheets identical to Appendix A to this order.
4. The advice letter and associated tariff sheets described in Ordering Paragraph 3 above shall be filed in compliance with the provisions of General Order (GO) 96-A after the effective date of this order. The revised schedules shall apply only to service rendered after their effective date which shall be at least five days after filing.
5. The requirements of GO 96-A relative to the effectiveness of tariffs after filing are waived in order that future tariff revisions for this competitive service may become effective on five days' notice after filing.
6. Within 30 days after this order is effective, applicant shall file a written acceptance of the certificate granted in this proceeding; absent such filing, the authority granted by this certificate may be revoked.
7. Applicant shall notify the CACD director in writing of the date service is first rendered to the public within 5 days after service begins.

8. Applicant shall notify its customers that all other telecommunications services needed by the customer should be placed over the facilities of an authorized carrier.

9. Within 60 days after the effective date of this order, Oak Brook shall prepare and issue to every employee who, in the course of his or her employment, has occasion to enter the premises of customers or subscribers of the corporation an identification card in a distinctive format having a photograph of the employee. Oak Brook shall require every employee to present the card upon requesting entry into any building or structure on the premises of a customer or subscriber, as set forth in P.U. Code § 708.

10. The certificate granted and the authority to render service under the rates, charges, and rules authorized herein will expire if not exercised within 12 months after the effective date of this order.

11. Applicant shall keep its books and records in accordance with the Uniform System of Accounts specified in Part 32 of the FCC Rules.

12. Applicant shall file an annual report, in compliance with General Order 104-A, on a calendar year basis using CPUC Annual Report Form L and prepared according to the instructions included in that form.

13. High-speed digital private line service is subject to a one-half percent (1/2%) monthly surcharge to fund Telecommunications Devices for the Deaf as outlined in Resolution T-13005 dated July 22, 1988 pursuant to P.U. Code § 2881.

14. Applicant is also subject to the user fee as a percentage of gross intrastate revenue under P.U. Code §§ 431 through 435.

15. The corporate identification number assigned to Oak Brook is U-5172-C, which should be included in the caption of all original filings with this Commission and in the title of other pleadings filed in existing cases.

16. This proceeding is closed.


This order is effective today.

Dated MAR 22 1989, at San Francisco, California.

G. MITCHELL WILK  
President  
FREDERICK R. DUDA  
STANLEY W. HULETT  
JOHN B. OHANIAN  
Commissioners

Commissioner Patricia Eckert,  
present but not participating

I CERTIFY THAT THIS DECISION  
WAS APPROVED BY THE ABOVE  
COMMISSIONERS TODAY.

  
Victor Weisler, Executive Director

SO

DRAFT 2/13/89

TARIFF SCHEDULE

Applicable to

TELECOMMUNICATIONS ACCESS SERVICES

Offered by

OAK BROOK FIBER SYSTEMS, INC.

(To be inserted by utility)

Issued by

(To be inserted by Cal. P.U.C.)

Advice Letter No. \_\_\_\_\_

Decision No. \_\_\_\_\_

NAME

TITLE

Date Filed \_\_\_\_\_

Effective \_\_\_\_\_

Resolution No. \_\_\_\_\_

U.S.  
701102-10,000

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## APPENDIX A

Page 4 \_\_\_\_\_

Cal. P.U.C. Sheet No. \_\_\_\_\_

Canceling \_\_\_\_\_

Cal. P.U.C. Sheet No. \_\_\_\_\_

## CHECK SHEET

This tariff contains the following sheets which are effective as of the dates shown.

Page NumberNumber of Revisions

## Title

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Resolution No. \_\_\_\_\_



## PRELIMINARY STATEMENT

This tariff sets forth the regulations and rates applicable to private line high-speed digital service for the purpose of intrastate, interLATA transmissions at speeds of 1.544 mbps or higher provided by Oak Brook Fiber Systems, Inc. (the "Company"). Service will originate from nonresidential user points and will connect end users to interexchange carriers' points of presence ("POPs") and POPs to POPs in certain metropolitan areas throughout the State of California. The Company will initially originate its service in the San Francisco metropolitan area and may originate services from other intrastate points at a later date.

(To be inserted by utility)

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Resolution No. \_\_\_\_\_

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Cal P.U.C. Sheet No. \_\_\_\_\_

Canceling \_\_\_\_\_ Cal P.U.C. Sheet No. \_\_\_\_\_

## EXPLANATION OF SYMBOLS

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

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

(To be inserted by utility)

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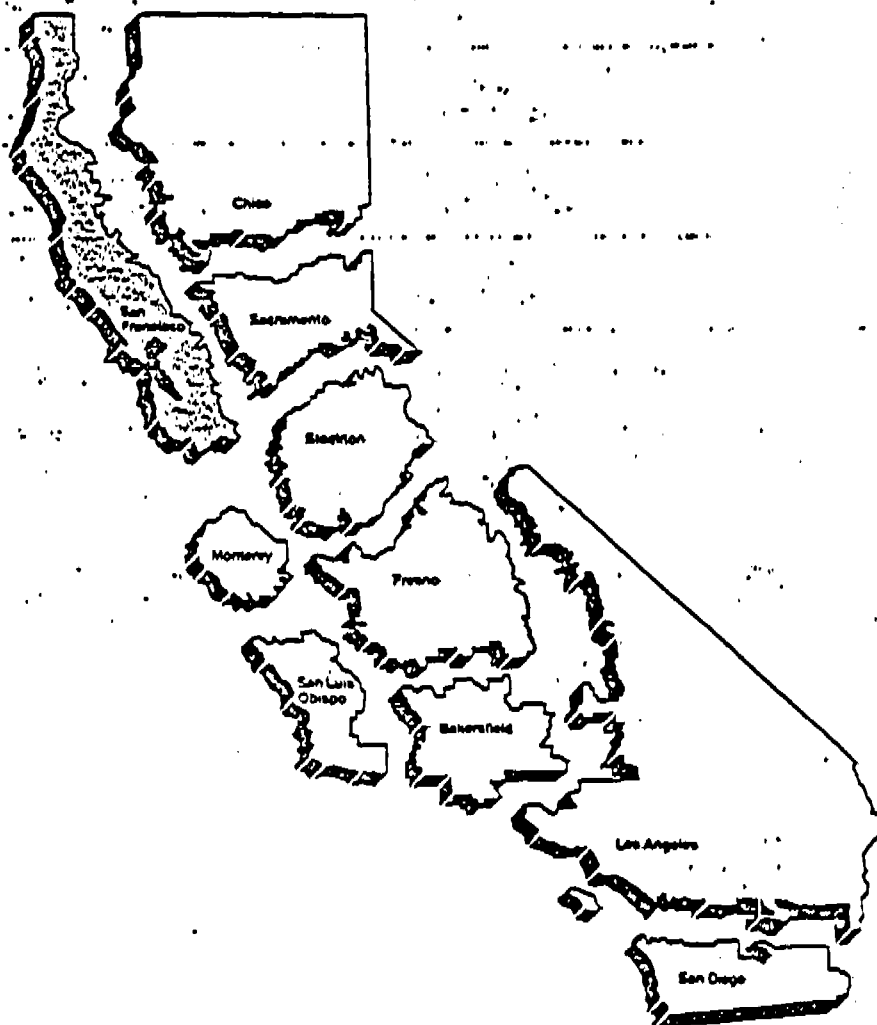
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## SERVICE AREA MAP



\* - Service to be initially provided in the  
San Francisco metropolitan area.

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## RATES

High Capacity ChannelsDS-1 Channel Termination RateNon-RecurringPer DS-1 Channel Termination

Initial installation

\$500.00

Additional installation  
at same location

\$400.00

RecurringPer MonthCharge per Channel  
Termination

\$400.00

Individual Case Basis Arrangements

Where the Company furnishes a facility or service for which a rate or charge is not specified in the Company's tariffs, charges will be determined on an Individual Case Basis ("ICB").

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Canceling \_\_\_\_\_ Cal P.U.C. Sheet No. \_\_\_\_\_  
Cal P.U.C. Sheet No. \_\_\_\_\_

## LIST OF CONTRACTS AND DEVIATIONS

(None in effect)

(To be inserted by utility)

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Cal P.U.C. Sheet No. \_\_\_\_\_

Canceling \_\_\_\_\_ Cal P.U.C. Sheet No. \_\_\_\_\_

## RULES

Rule 1 - DEFINITIONS

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

Authorized User: A person, firm or corporation which is authorized by the customer or joint user to be connected to the service of the customer or joint user, respectively. Since the Company intends to offer service only to nonresidential customers, the term "Authorized User" does not include residential users. An authorized user must be specifically named in the application for service.

Bit: The smallest unit of information in the binary system of notation.

Company: Oak Brook Fiber Systems, Inc., the issuer of this tariff, which is a Delaware corporation.

Customer: The person, firm or corporation which orders service and is responsible for the payment of charges and compliance with tariff regulations. Since the Company intends to offer service only to nonresidential users, the term "Customer" does not include residential users.

Dedicated: A facility or equipment system or subsystem set aside for the sole use of a specific customer.

DS-1 Service: This service consists of two DS-1 channel terminations. DS-1 Service provides for the transmission of digital signals at a speed of 1.544 Mbps.

Duplex Service: Service which provides for simultaneous transmission in both directions.

(To be inserted by utility)

Issued by \_\_\_\_\_

(To be inserted by Cal. P.U.C.)

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Cal P.U.C. Sheet No. \_\_\_\_\_

Canceling \_\_\_\_\_ Cal P.U.C. Sheet No. \_\_\_\_\_

**Rule 1 - Definitions (Cont'd)**

**Fiber Optic Cable:** A thin filament of glass with a protective outer coating through which a light beam carrying communications signals may be transmitted by means of multiple internal reflections to a receiver, which translates the message.

**High Capacity Channels:** These services over the Company's Network are furnished for full-duplex transmission of digital signals at operating speeds of 1.544 mbps (DS-1) or higher.

**Individual Case Basis or ICB:** A service arrangement in which the regulation, rates and charges are developed based on the specific circumstances of the case.

**Joint User:** A person, firm or corporation which is designated by the customer as a user of the Network Services, as defined below, furnished to the customer and to whom a portion of the charges for the service will be billed under a joint user arrangement as specified herein. A Joint User shall not include residential users.

**Kbps:** Kilobits, denotes thousands of bits per second.

**Mbps:** Megabits, denotes millions of bits per second.

**MFS or Metropolitan Fiber Systems** Wherever used in the Sample Forms shall refer to Oak Brook Fiber Systems, Inc.

**Network:** The Company's digital fiber optic-based network located in California.

**Node:** The Company office where all customer facilities are terminated for purposes of interconnection to trunks and/or cross-connection to distant ends.

**Premises:** The space occupied by a customer or authorized user in a building or buildings or

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Cal P.U.C. Sheet No. \_\_\_\_\_

Canceling \_\_\_\_\_ Cal P.U.C. Sheet No. \_\_\_\_\_

**Rule 1 - Definitions (Cont'd)**

contiguous property (except railroad rights-of-way, etc.) not separated by a highway.

**Shared:** A facility or equipment system or subsystem which can be used simultaneously by several customers.

**Rule 2 - Description of Service**

Network Services consist of furnishing dedicated private line high-speed digital service for the purpose of interLATA transmissions at speeds of 1.5444 mbps or higher. Service will originate from nonresidential user points and will connect end users to interexchange carriers' points of presence ("POPs") and POPs to POPs in certain metropolitan areas throughout the State of California.

**Rule 3 - Application for Service**

Customer wishing to obtain service must complete Company's Service Order form.

**Rule 4 - Contracts**

Customer and the Company will enter into a Master Agreement for Telecommunications Services.

**Rule 5 - Special Information Required on Forms**

(None in effect)

**Rule 6 - Establishment and Re-establishment of Credit**

6.1 The Company will conduct a credit investigation of each new Customer. A Customer whose service has been discontinued for nonpayment of bills will be required to re-establish credit before service is restored.

6.2 The Company may require a customer to make an advance payment before services and facilities are furnished. The advance payment will not

(To be inserted by utility)

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**Rule 6 - Establishment and Re-establishment of Credit (Cont'd)****6.2 (Cont'd)**

exceed an amount equal to the non-recurring charge(s) and one month's charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the customer. The advance payment will be credited to the customer's initial bill. An advance payment may be required in addition to a deposit.

**Rule 7 - Deposits**

7.1 Before a service or facility is furnished to a customer whose credit has not been duly established to the sole and exclusive satisfaction of the Company, the Company may require a customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:

- (a) two month's charges for a service or facility which has a minimum payment period of one month; or
- (b) the charges that would apply for the minimum payment period for a service or facility which has a minimum payment period of more than one month;

except that the deposit may include an additional amount in the event that a termination charge is applicable.

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**Rule 7 - Deposits (Cont'd)**

7.2 When a service or facility is discontinued, the amount of a deposit, if any, will be applied to the customer's account and any credit balance remaining will be refunded. A deposit will be refunded with interest after a period of twelve months provided the customer has made all requisite payments during such twelve month period.

7.3 Deposits held will accrue interest at a rate of 7% per annum.

**Rule 8 - Notices**

All notices shall be in writing addressed to the parties and shall be considered as delivered on the third business day after the date of mailing if sent certified mail or when received in all other cases, including telecopy or other printed electronic medium or personal delivery.

**Rule 9 - Rendering and Payment of Bills**

The customer is responsible for payment of all charges incurred by the customer or users for services and facilities furnished to the customer by the Company.

9.1 Non-recurring installation charges are due and payable upon presentment of an invoice to the customer.

9.2 Recurring charges are due and payable upon presentment of an invoice to the customer for the service or facility furnished. A service or facility may be discontinued for nonpayment of a bill.

9.3 Billing starts on the day after the Company notifies the customer the service or facility is available for use. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued. Monthly charges will be billed one month in

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**Rule 9 - Rending and Payment of Bills (Cont'd)****9.3 (Cont'd)**

advance, except where prohibited by law or as otherwise provided in this tariff. Taxes will be separately stated on customer's bill.

- 9.4 If any portion of the payment is received by the Company after the payment date set forth above, or if any portion of the payment is received by the Company in funds which are not immediately available to the Company, then a late payment penalty shall be due the Company. The late payment penalty shall be the portion of the payment not received by the payment date times a late factor. The late factor shall be the lessor of:

- (a) the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the payment date to and including the date that the customer actually makes the payment to the Company; or
- (b) 0.000493 per day (18% per annum), compounded daily for the number of days from the payment date to and including the date that the customer actually makes the payment to the Company.

**Rule 10 - Disputed Bills**

Customer may dispute a bill only by written notice to Company delivered within 30 days after the statement date. Unless disputed the statement shall be deemed to be correct and payable in full by Customer.

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**Rule 11 - Discontinuance and Restoration of Service**

- 11.1 Upon nonpayment of any charges or deposits owing to the Company, the Company, after complying with the procedures described in Rule 9, may, by giving ten days' prior written notice to the customer, discontinue or suspend service under this tariff without incurring any liability.
- 11.2 Upon violation of any of the other terms or conditions for furnishing service under this tariff, the Company may, by giving 30 days' prior notice in writing to the customer, discontinue or suspend service under this tariff without incurring any liability.
- 11.3 Upon condemnation of all or any material portion of the facilities used by the Company to provide service to a customer or in the event a casualty renders all or any material portion of such facilities inoperable and beyond feasible repair, the Company, by notice to the customer, may discontinue or suspend service under this tariff without incurring any liability.
- 11.4 Upon the customer's filing for bankruptcy or reorganization, or failing to discharge an involuntary petition therefore within the time permitted by law, the Company may immediately discontinue or suspend service under this tariff without incurring any liability.
- 11.5 Upon the Company's discontinuance of service to the customer, the Company, in addition to all other remedies that may be available to it at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges which would have been payable by the customer during the remainder of the minimum term for which such services would have otherwise been provided to the customer to be immediately due and payable (discounted to present value at six percent).

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Issued by \_\_\_\_\_

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Rule 12 - Optional Rates and Information to be Provided the Public

The Company shall promptly advise affected customers of new, revised or optional rates applicable to their service.

This tariff and any advice letters will be available at the Company's office during normal business hours for inspection.

Rule 13 - Temporary Service

(None in effect)

Rule 14 - Continuity of Service

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

Rule 15 - Extensions

(Not Applicable)

Rule 16 - Service Connections and Facilities on Customers' Premises

16.1 Customer shall allow Company continuous access and right-of-way to customer's premises to the extent reasonably determined by Company to be

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Rule 16 - Service Connections and Facilities on Customers' Premises (Cont'd)

## 16.1 (Cont'd)

appropriate to the provision and maintenance of services, equipment, facilities and systems relating to this tariff. Customer shall furnish Company, at no charge, such equipment space and electrical power as is reasonably determined by Company to be required and suitable to render these services.

16.2 Equipment the Company provides or installs at the customer's premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the Company provided it.

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

16.4 Customer provided terminal equipment, the operating personnel, and the electric power consumed by such equipment on the premises of the customer, authorized user, or joint user, shall be provided by and maintained at the expense of the customer, authorized user, or joint user.

16.5 The customer, authorized user, or joint user is responsible for ensuring that customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the customer's expense.

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Rule 17 - Measurement of Service

(Not applicable)

Rule 18 - Meter Tests and Adjustments of Bills for Meter Error

(Not applicable)

Rule 19 - Supply to Separate Premises and Resale

The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and PUC regulations, policies, orders, and decisions.

Rule 20 - Liability of the Company

20.1 Because the customer has exclusive control of its communications over the services furnished by the Company, and because interruptions and errors incident to these services are unavoidable, the services the Company furnishes are subject to the terms, conditions, and limitations specified in this tariff and to such particular terms, conditions, and limitations as set forth in the special regulations applicable to the particular services and facilities furnished under this tariff.

20.2 The liability of the Company for damages arising out of the furnishing of Network Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or arising out of the failure to furnish the service, whether caused by acts of commission or omission, shall be limited to the extension of allowances for interruption as set forth in Rule 14. The extension of such allowances for interruption shall be the sole remedy of the customer, authorized user, or joint user and the sole liability of the

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**Rule 20 - Liability of the Company (Cont'd)****20.2 (Cont'd)**

Company. The Company will not be liable for any special, consequential, exemplary or punitive damages a customer may suffer, whether or not caused by the intentional acts or omissions or negligence of the Company's employees or agents.

20.3 The Company shall not be liable for any failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of the federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots, wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

20.4 The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's customers facilities or equipment used for or with Network Services the Company offers.

20.5 The Company shall not be liable for any damages or losses due to the fault or negligence of the customer or due to the failure or malfunction of customer-provided equipment or facilities.

20.6 The Company shall not be liable for the claims of vendors supplying equipment to customers of the Company which may be installed at premises of the Company; nor shall the Company be liable for the performance of said vendor or vendor's equipment.

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**Rule 21 - Credits for Interruptions in Service**

21.1 Interruptions in service, which are not due to the negligence of, or noncompliance with the provisions of this tariff by, the customer or of an authorized or joint user, or the operation or malfunction of the facilities, power or equipment provided by the customer or authorized or joint user, will be credited to the customer as set forth below for the part of the service that the interruption affects.

21.2 A credit allowance will be made when an interruption occurs because of a failure of any component furnished under this tariff. An interruption period begins when the customer reports a service, facility or circuit to be interrupted and releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative. If the customer reports a service, facility or circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but not interrupted.

21.3 For calculating credit allowances, every month is considered to have 30 days. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.

21.4 A credit allowance will be given for interruptions of 60 minutes or more. Credit allowances shall be credited in 15 minute increments.

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(To be inserted by Cal. P.U.C.)

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METROPOLITAN FIRE SYSTEMS

## Service Order

COMPANY NAME		ORDER NO.	CUSTOMER NO.
ADDRESS		CIRCUIT NO.	
CITY	STATE	ZIP	
INSTALLATION		OR	QUANTITY
TITLE		SERVICE TYPE	
TELEPHONE NO.		ORDER DATE	
FAX NO.		DUE DATE	
CUSTOMER PO#		RELATED ORDER NO.	
CUSTOMER CRY NO		MULTI-RELATED CRY NO	
Location 1		Location 2	
NAME		NAME	
STREET		STREET	
FLOOR	ROOM	FLOOR	ROOM
CITY	STATE	ZIP	
CONTACT	BUILDING CODE	LOCATION CODE	
TELEPHONE NO.	TELEPHONE NO.		
FAX NO.	FAX NO.		
REMARKS		REMARKS	
Billing Information			
BILL TO		CONTACT	
ADDRESS		FLOOR	
CITY	STATE	ZIP	TELEPHONE NO.
LENGTH OF CONTRACT		MONTHLY RECURRING CHARGE	
Facility Charges		INITIAL SERVICE CHARGE	
INITIAL SERVICE	@ \$	= \$	@ \$ = \$
ADDITIONAL SERVICE	@ \$	= \$	@ \$ = \$
Equipment Charges		TOTAL \$	
TYPE	@ \$	= \$	@ \$ = \$
TYPE	@ \$	= \$	@ \$ = \$
TOTAL \$		TOTAL \$	
GRAND TOTAL \$		GRAND TOTAL \$	
CUSTOMER APPROVAL		OFFICE	
Signature		Order Remarks	
SALES DEPARTMENT		DATE	
EMPLOYEE NO.			
PHONE NO.			
LOCATION			
SALES APPROVAL			
OPERATION APPROVAL			

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METROPOLITAN FIBER SYSTEMS

Master Agreement  
For Telecommunications Services

Contract Number \_\_\_\_\_

This AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ between  
Metropolitan Fiber Systems of \_\_\_\_\_, Inc. ("MFS") and the undersigned person (the "Customer").

WHEREAS, MFS provides telecommunications services which  
Customer desires to purchase as set forth herein.

Now, therefore, it is agreed as follows:

1. During the Term of this AGREEMENT, MFS will provide Customer with the specific services identified on the Service Order attached hereto and made a part hereof.
2. The Term of this Agreement shall begin as of the date first set forth above and shall extend thereafter until terminated by either party upon not less than 90 days prior written notice. However, MFS may terminate this Agreement or suspend services hereunder at any time upon: (a) any failure of Customer to pay any amounts as provided in this Agreement; (b) any breach by Customer of any material provision of this Agreement or any law, rule or regulation; (c) any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event with respect to Customer; or (d) any governmental prohibition or required alteration of the services to be provided hereunder. Any termination shall not relieve Customer of its obligation to pay any charges incurred hereunder prior to such termination.
3. During the Term, Customer shall pay MFS for the services as set forth in the attached Service Order. MFS shall not increase such amounts during the initial twelve month period, but thereafter MFS may increase such amounts upon 90 days prior written notice. All taxes, fees and governmental charges imposed on the services provided hereunder shall be paid by Customer in addition to any other amounts owing. Normal service charges shall be invoiced monthly in advance. All amounts owed by Customer hereunder shall be paid within 30 days after the date of invoice and MFS reserves the right to charge interest on all delinquent payments at a rate 2 percentage points above the "prime" rate announced by the Morgan Guaranty Trust from time to time.
4. MFS may charge Customer for service calls (except as necessitated by a failure of MFS) at the rates generally charged by MFS to its customers.
5. MFS may substitute, change or rearrange any equipment, facility or system used in providing services at any time and from time to time, but shall not thereby alter the technical parameters of the services provided hereunder.
6. Customer shall not cause or allow any facility or equipment of MFS to be rearranged, moved, removed, disconnected, altered or repaired without MFS's prior written consent. Customer shall not create or allow any liens or other encumbrances to be placed on any MFS equipment, facility or system arising from any act, transaction or circumstance relating to Customer.
7. If Customer elects to relocate or otherwise change the place of services after commencement of the installation of facilities, Customer shall pay any additional installation charges for both the original and new location.
8. MFS will grant a credit allowance for service interruption calculated and credited in 15-minute increments. A service interruption will be deemed to have occurred only if service becomes unusable to Customer as a result of failure of MFS's facility, equipment or personnel used to provide the service in question, and only where the interruption is not the result of: (i) the negligence or acts of Customer

or its agents; (ii) the failure or malfunction of non-MFS equipment or systems; (iii) circumstances or causes beyond the control of MFS; or (iv) a service interruption caused by service maintenance, alteration or implementation. Such credits will be granted only if: (a) Customer affords MFS full and free access to Customer's premises to make appropriate repairs, maintenance, testing, etc.; and (b) Customer does not continue to use the service on an impaired basis. The foregoing states Customer's sole remedy for service interruption under the Agreement and in no event shall MFS be liable for any direct, indirect, incidental, consequential, punitive or special damages to Customer as result of any MFS service, equipment, facilities, person or system provided or utilized under this Agreement.

There are no warranties, representations or agreements, expressed or implied either in fact or by operation of law, statutory or otherwise, including warranties of merchantability or fitness for a particular purpose, except those expressly set forth herein.

9. Customer shall allow MFS continuous access and right-of-way to Customer's premises to the extent reasonably determined by MFS to be appropriate to the provision and maintenance of services, equipment, facilities and systems hereunder. Customer shall furnish MFS, at no charge, such equipment space and electrical power as is reasonably determined by MFS to be required and suitable to render services hereunder.

10. Customer shall be liable for any damage to MFS equipment, facility and system which is caused by: (a) negligent or willful acts or omissions of Customer; or (b) malfunction or failure of any equipment or facility provided by Customer or its agents, employees or suppliers.

11. Neither party may assign this Agreement without the written consent of the other party, except that MFS may assign its rights and/or obligations hereunder: (a) to any subsidiary, parent company or affiliate of MFS; (b) pursuant to any sale or transfer of substantially all the business of MFS; or (c) pursuant to any financing, merger or reorganization of MFS.

12. This Agreement, together with the attached Service Order, sets forth the full agreement of the parties with respect to the subject matter hereof, and supercedes any prior agreement or understanding. If any provision hereof is held by a court to be invalid, void or unenforceable, the remainder of this Agreement shall nevertheless remain unimpaired and in effect. To the extent of a conflict between any provision of this Agreement and the attached Service Order, the provision of this Agreement shall control.

13. No license, express or implied, is granted by MFS pursuant to this Agreement.

14. Each party agrees to maintain in strict confidence all plans, designs, drawings, trade secrets, and other proprietary information of other party which is disclosed pursuant to this Agreement.

15. If this Agreement is entered into by more than one Customer, each is jointly, and severally liable for all agreements, covenants and obligations herein.

16. This Agreement shall be governed by the laws of the State of Illinois.

MFS \_\_\_\_\_

Customer \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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## THE MFS CUSTOMER LETTER OF UNDERSTANDING

Metropolitan Fiber Systems is pleased to offer

(company name)

special access fiber optic service. You have ordered quantity \_\_\_\_\_ service \_\_\_\_\_. We offer this service based on the following understandings:

## CUSTOMER RESPONSIBILITIES

## DISCONNECTION OF EXISTING SERVICE

The current special access carrier is \_\_\_\_\_. The disconnection of this service will be arranged by customer. Customer should schedule 30 days in advance the disconnection of his existing service. The requested date of disconnect will be determined by the new service installation date. The customer will receive a firm order commitment (FOC) date from MFS. It is recommended that the disconnect date be scheduled 3 days or longer after the FOC date.

## THE LONG-DISTANCE CARRIER

As a provider of special access service, we will meet our obligations to provide you with the service you requested when you request it. We will even coordinate our service with your long-distance provider. However, you are responsible for notifying that long-distance carrier of your intentions and placing any orders with them that will be required.

## TELEPHONE EQUIPMENT PREPARATIONS

To ensure a timely and error-free installation, when our engineer arrives to do the site survey, he will want to visually inspect the physical location where MFS and you will interconnect. MFS has a variety of ways and equipment to serve your locations. If it is a co-location and we place equipment at your premise, we will do so where your request. Our equipment can run on 120V AC or -48V DC. It is our responsibility to wire to a mutually-agreed DSX appearance.

If we already have a presence elsewhere in your building, we will cable to your DSX appearance that you designate. MFS will be responsible for coordination and acquisition of any necessary conduit runs in support of this application. If this service is DS-0 related, we shall need technical information such as signaling, levels, and any special condition required. If you desire us to work with your COAM, his name is \_\_\_\_\_ and the phone number is \_\_\_\_\_.

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(To be inserted by Cal. P.U.C.)

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**CREDIT POLICY**

MFS conducts a credit investigation of every new customer. If the MFS Financial Department is unable to obtain the needed information through normal channels, we may request a financial statement from you. If your credit history is listed under a parent or other company name, please specify: \_\_\_\_\_

**INSTALLATION DAY: WHAT TO EXPECT**

Prior to installation, MFS Engineering conducts a site survey at your location. This survey is to determine location and connectivity. Our terminal tests the quality of every service before it is accepted. On installation day, the technician from your telephone equipment vendor will arrive. The technician should notify MFS of his/her arrival and remain at your location until the necessary hook-ups and test calls are made. You or a representative of your company must verify that this has been done. This will ensure that your service is working properly.

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## BILLING

Invoices generated every month reflect the charge for service in advance. All computer generated invoices are issued on the first day of the month.

The first invoice shows the monthly charges prorated for the first month of installation. It will also show the installation charge applicable.

Keep in mind that if you decide to cancel your order prior to the installation, there will be a charge. This amount reflects the costs already incurred by MFS in processing your order.

Other charges to be aware of include: physical move charge is applicable when neither the origination or termination end of the circuit is moved. This charge applies only to the end relocated.

If for some reason you need to disconnect your MFS service, we require a 30-day written notice. Please send it to your Account Executive or CSR.

This document is meant to outline the specific details of your order and to give you, the customer, an idea of what to expect prior to, during, and after installation. Thank you for choosing MFS Special Access. Welcome to MFS.

Signed \_\_\_\_\_ Date: \_\_\_\_\_  
Customer

Signed \_\_\_\_\_ Date: \_\_\_\_\_  
Account Executive

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## ACCOUNT EXECUTIVE'S RESPONSIBILITIES

## SERVICE ORDER INFORMATION

Your Account Executive is \_\_\_\_\_  
and can be reached at \_\_\_\_\_ (phone #).

The Account Executive will need the following details of your order:

Billing Address: \_\_\_\_\_

Billing Contact: \_\_\_\_\_

Main Listed Phone Number: \_\_\_\_\_

Interexchange carrier presently providing service: \_\_\_\_\_

Will your service be used for data transmission? Yes \_\_\_ No \_\_\_

## ORDER PROCESS

Your Customer Service Representative is Linda Mollowell and can be contacted at 1-800-MFS-CITY. Your CSR will process your order and track the order until completion.

Upon placement of your order, you will be contacted by the CSR, who will keep you informed of its progress. You will be sent a letter confirming the installation date. It is the responsibility of the CSR to verify that installation will take place as scheduled. The time between placement of your order and installation of service is dependent on availability of facilities and the turnaround time of their order-processing. We will strive to meet your required installation date of: \_\_\_\_\_.

## AFTER INSTALLATION

The CSR will be your main contact after MFS service is installed and working. you can expect continuous customer service and attention from the CSR. Your Account Executive will also be available to answer your concerns.

## OPERATION'S RESPONSIBILITIES

MFS Operation personnel run the terminals that comprise our local network. They do regular preventative maintenance checks and take trouble-reporting calls directly from customers. The phone number to report trouble is: 1-800-MFS CITY. If you need to report troubleshooting, you should give the specific problems, and the time it occurred. We will give you a trouble ticket and keep you informed as to the status and action we are taking. A long-lasting and satisfactory relationship between the customer and MFS is dependent on communication between the two parties.

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(END OF APPENDIX A)