

Decision 89 06 020 JUN 7 1989**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of ASSOCIATED
 COMMUNICATIONS OF LOS ANGELES, INC.,)
 a Delaware corporation, for a)
 certificate of public convenience and)
 necessity to provide digital private)
 line service for intra-LATA and)
 inter-LATA transmissions at speeds)
 of 1.544 MBPS or higher throughout)
 the State of California.)

Application 89-03-043
 (Filed March 27, 1989)

OPINIONBackground

On March 27, 1989, Associated Communications of Los Angeles, Inc. (Associated or Applicant) filed Application (A.) 89-03-043 seeking a certificate of public convenience and necessity (CPCN) in conjunction with the March 27, 1989 A.89-03-044 of Wang Communications, Inc. (U-5098-C) (Wang) to transfer that utility's assets to Associated.

On May 4, 1989, the Commission's Executive Director under our delegated authority¹ issued Decision (D.) 89-05-002 authorizing Wang to transfer all of its telecommunications utility properties and operating authority to Associated. D.89-05-002 also assigned a new corporate identification number (U-5175-C) to be used by Associated, Wang's successor, in the caption of all original filings and other pleadings in existing cases before this Commission.

1 D.86-08-057, modified by D.87-10-035, delegated authority to the Executive Director to grant noncontroversial applications by nondominant carriers for authority to transfer assets or control under Public Utilities (PU) Code §§ 851-855 under certain specified conditions.

The remaining authorizations of the requested CPCN and approval of current tariff schedules for Associated remain before us now in this application.

Description of Applicant

Associated is a Delaware corporation with its principal executive office at 200 Gateway Towers, Pittsburgh, PA 15222 and its principal office in California at 3600 Wilshire Boulevard, Suite 1700, Los Angeles, CA 90010. On March 8, 1989, Associated was also certified by the Secretary of State to do business in California as a foreign corporation. Evidence of its authority to do business in California and a certified copy of its articles of incorporation were appended to A.89-03-043.

Associated states that it is and has been managing Wang's utility properties and operations in California, and its parent Associated Communications Corporation has more than 10 years' experience constructing and operating public broadcast stations, cellular telephone systems, cable television networks and point-to-point microwave systems such as those acquired from Wang.

Its parent's financial statements lists a net loss of \$7,914,955 for calendar year 1988 and net income of \$29,380,943 for calendar year 1987. Its balance sheet lists current assets of \$21,527,692, other assets of \$13,896,039 and a depreciated plant investment of \$13,956,297, yielding total assets of \$49,380,028 for the year ending December 31, 1988. Its cash, short-term investments and accounts receivable total \$19,633,973. Applicant also states that it is a beneficiary of its parent's \$100,000,000 letter of credit issued by the Pittsburgh National Bank.

Description of Proposed Service

Associated proposes to continue to operate and expand Wang's point-to-point microwave system which was previously constructed by Wang pursuant to Commission D.85-12-082, D.88-02-044 and D.89-02-020. In the latter two decisions listed above, the Commission authorized Wang to expand its system to provide

intra- and interLATA high speed private line services throughout the State of California.

Applicant proposes the expansion of Wang's backbone system to provide the high speed private line services recently authorized by D.88-02-044 and D.89-02-020. Applicant will use the CPCN authority sought herein under its own name to implement D.89-02-020.

Applicant did not provide full tariff details of its California service offerings in the application, as filed. Therefore, the assigned Administrative Law Judge (ALJ) contacted applicant's attorney and requested that a review of Wang's current tariff be made and Associated's updated version of that tariff be provided. On May 18, 1989, applicant's attorney provided a draft copy of its proposed tariff for its California operations (see Appendix A to this order for details).

Applicant expects to lease 100 spans of microwave DS-1 service during the current year and 500 such spans during the fifth year of its expanded operations.

Environmental Impact

Applicant states that there will be no physical construction associated with this application, except as has already been authorized by the Commission. To the extent that applicant uses the expansion authority previously granted to Wang by virtue of D.89-02-020, it will comply with local environmental review procedures, if any, relative to the individual construction projects.

Protests

No timely protests to this application were received. On April 18, 1989, Pacific Bell wrote to the ALJ, stating its intention not to file a protest in view of Associated's agreement to abide by the conditions imposed in D.88-02-044, D.88-09-059 and D.89-02-020.

Discussion

In acquiring Wang's utility property and assets and a CPCN, Associated also becomes a nondominant carrier under the Federal Communications Commission's (FCC) regulatory framework, with authority to provide nonswitched transmission services between points of presence (POPs) of interexchange carriers (IECs) 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 1934,² and thus are not required to file tariffs or applications for certification under § 214.³

Associated's predecessor (Wang) was a certificated carrier with statewide authority to provide inter- and intraLATA high speed digital private line service in California at transmission speeds of 1.544 mbps or higher. Wang's authority included the provision of dedicated (nonswitched) access to the POPs of IECs.

We will extend the same authorizations to Associated which we have previously granted to Wang by D.85-12-082, D.88-02-044 and D.89-02-020. This authority will not include the offering of private line services operating at less than 1.544 mbps or provision of access services on a switched network at speeds below 1.544 mbps. The latter services are currently at issue in A.88-05-017 for Fiber Data Systems, Inc. (FDS). Associated may petition to intervene in that proceeding if it wishes to explore

2 47 U.S.C. § 214 (1982).

3 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.

the proprietary of offering switched access services and/or private line services at speeds less than 1.544 mbps.

We will authorize Associated to file the revised tariff schedule contained in Appendix A to this order to implement the transfer of Wang's services and to exercise the authority recently granted to Wang by D.89-02-020.

Associated has served a copy of this application upon the telecommunications utilities with whom it is likely to compete. 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 undertake and implement the utility services previously provided by its predecessor (Wang) as authorized by D.85-12-082, D.88-02-044 and D.89-02-020, including those intraLATA high speed private line services authorized by D.89-02-020, but not yet provided by Wang.

2. Applicant has previously received authority from this Commission by D.89-05-002 dated May 5, 1989, to acquire the telecommunications utility plant assets of Wang.

3. There is a continuing demand for the proposed service.

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

5. 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.

6. Applicant will be a nondominant carrier.

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

8. Public convenience and necessity require the granting of A.89-03-043 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 PU Code § 2881, as modified by Resolution T-13061 dated April 12, 1989.

3. Associated 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 such intraLATA communications should be placed over the facilities of an authorized carrier.

4. The effective date of Associated's offering of the telecommunications services previously authorized for Wang, under Associated's name and ownership, should be five days after its filing of tariff schedules identical to those set forth in Appendix A to this order, except that the filed tariff schedules shall be typed or printed on standard tariff sheets as required by General Order 96-A, Section II.

5. In order to allow Associated to make these services available on or after June 20, 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 Associated Communications of Los Angeles, Inc.

(Associated) a Delaware corporation to carry out the statewide telecommunications utility authority previously granted to its predecessor Wang Communications, Inc. (U-5098-C) (Wang) by D.85-12-082, D.88-02-044 and D.89-02-020.

2. Associated shall prepare a "New Customer Notice" to be included with its initial and on-going tariff schedules, advising its customers, among other things, that:

Associated is only authorized to provide intraLATA high speed digital private line services at speeds of 1.544 mbps, or higher and only offers these services on a full-period, 24-hour, round-the-clock, dedicated (non-switched) basis.

All other telecommunications services needed by the customer should be placed over the facilities of an authorized carrier.

3. Associated is authorized to file an advice letter with associated tariffs identical to Appendix A to this order, but amended to also include the "New Customer Notice" set forth in Ordering Paragraph 2 above, for its initial offering of high speed 1.544 mbps digital private line service, and except that the tariff schedules shall be typed on tariff sheets as required by General Order (GO) 96-A, Section II.

4. The advice letter and associated tariff sheets described in Ordering Paragraph 3 above shall be filed in compliance with the provisions of 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 5 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 monitor the implementation of its intraLATA 1.544 mbps high speed digital private line service and shall submit semiannual reports for a two-year period beginning with the effective date of the rates and charges for this service. These reports shall be filed with the CACD with copies to the DRA-Telecommunications Rate Design Branch and shall include the following recorded data for applicant's intraLATA 1.544 mbps high speed digital service:

- a. Monthly in-service volumes.
- b. Monthly inward movement volumes.
- c. Monthly recurring billings by tariff rate item.
- d. Monthly nonrecurring billings by tariff rate item.

The format of these semiannual reports shall be determined in consultation with the CACD staff.

9. The reporting requirement of Ordering Paragraph 8 shall commence within 45 days after December 31, 1989 and shall terminate upon submission of the report for the semiannual period ending June 30, 1991, to be submitted on or before August 14, 1991.

10. Within 60 days after the effective date of this order, Associated 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.

Associated 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 PU Code § 708.

11. 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.

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

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

14. 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 PU Code § 2881. This rate is reduced to 0.3% effective July 1, 1989 as outlined in Resolution T-13061 dated April 12, 1989.

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

16. The corporate identification number heretofore assigned to Associated is U-5175-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.

17. Except as otherwise specified in this decision, Associated is subject to the provisions of D.85-12-082, D.88-02-044, D.89-02-020, which remain in full force and effect, to the same extent such decisions governed the utility operations of its predecessor Wang.

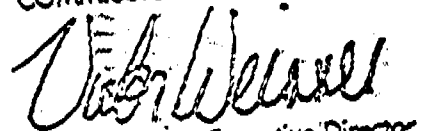
18. This proceeding is closed.
This order is effective today.

Dated JUN 7 1989, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

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


Victor Weiss, Executive Director

ps

TARIFF SCHEDULE
APPLICABLE TO
CALIFORNIA INTRASTATE, INTERLATA AND INTRALATA
PRIVATE LINE HIGH SPEED DATA AND ACCESS SERVICES
OF
ASSOCIATED COMMUNICATIONS OF LOS ANGELES, INC.

APPENDIX A
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PRELIMINARY STATEMENT

This Tariff and the negotiated Communications Service Agreement contain all effective rates and rules together with information relating to, and applicable to Associated Communications of Los Angeles, Inc. ("Utility") services. In case of any conflict between the language contained in this Tariff and the Communications Service Agreement the tariff language will prevail.

Utility provides intraLATA, interLATA, and access telecommunications services within the State of California. Telecommunications services provided are private line high speed data transmission services at a data speed of 1.544 MBPS or higher.

Utility also provides interstate telecommunications services within the United States.

APPENDIX A
SYMBOLS USED IN THIS TARIFF

- (C) To signify changed listing, rule, or condition which may affect rates or charges.
- (D) To signify discontinued material, including listing, rate, rule or condition.
- (I) To signify increase.
- (L) To signify material relocated from or to another part of tariff schedules with no change in text, rate, rule or condition.
- (N) To signify new material including listing, rate, rule or condition.
- (R) To signify reduction.
- (T) To signify change in working of text but not change in rate, rule or condition.

APPENDIX A
SERVICE AREA MAP

Subject to availability of facilities, Utility provides intrastate, interLATA and non-switched intraLATA private line high capacity digital transmission services at a data speed of 1.544 MBPS or higher to customers within the State of California.

APPENDIX A
RATE SCHEDULES

APPLICABILITY

This schedule is applicable to non-switched private line high speed data and voice transmission services at a data speed of 1.544 MBPS or higher. Services are furnished to connect two or more points on a flat monthly rate.

TERRITORY

Depending on the availability of facilities, service is available to customers in all California LATAS.

RATES AND CHARGES

A. PRIVATE LINE, INTRALATA, HIGH SPEED DIGITAL: Charges are determined on an individual case basis, with contract rates being filed as a part of Utility's tariffs. Arrangements now available include the following:

1.

(D)

(D)

2. Seven duplex channels for data transmission, each at a rate of 1.544 MBPS, connecting the customer's headquarters at 800 South Hope Street in Los Angeles, California with the following locations.

8500 Beverly Blvd. 2 Channels
Hollywood, CA

3050 Wilshire Blvd. 1 Channel
Los Angeles, CA

16633 Gale Ave. 2 Channels
City of Industry, CA

2800 N. Main 2 Channels
Santa Ana, CA

	<u>Installation</u> <u>Charge</u>	<u>Monthly</u> <u>Charge</u>
Each Channel	\$3,000.00	\$663.43

APPENDIX A

3. Two duplex channels for data transmission, each at a rate of 6.312 MBPS, connecting the customer's locations in Los Angeles, California at 14931 Califa Street (Van Nuys) and 21221 Oxnard Street (Woodland Hills). The customer is the Daily News newspaper.

	<u>Installation Charge</u>	<u>Monthly Charge</u>
Each Channel	\$7,000.00	\$2,674.50

4. Two duplex channels for data transmission, each at a rate of 1.544 MBPS, connecting the customer's locations in Los Angeles, California at 1100 N. Eastern Avenue (Los Angeles) and 12720 Norwalk Boulevard (Norwalk). The customer is the County of Los Angeles.

	<u>Installation Charge</u>	<u>Monthly Charge</u>
Each Channel	\$3,500.00	\$1,381.00

B. NON-SWITCHED PRIVATE LINE, HIGH SPEED, INTERLATA SERVICES

(To be filed as negotiated)

C. DIRECT ACCESS SPECIALIZED COMMON CARRIER COMMUNICATIONS SERVICE

1. Installation Charges

Non-recurring Installation Charges for Direct Access Service shall be assessed Customer according to the number of Service Units ordered and pursuant to the following schedule:

<u>Service Units Ordered</u>	<u>Total Installation Charges</u>
2	\$7,000
3	\$9,000
4	\$10,000

2. Service Charges

Monthly recurring charges for Direct Access Service shall be assessed Customer according to the number of Service Units ordered and pursuant to the following schedule:

Unprotected System:

<u>Service Units</u>	<u>Term</u>		
	12 Months	18 Months	24 Months
2	\$3,110	\$2,850	\$2,590
3	\$3,585	\$3,285	\$2,985

Protected System:

Service UnitsTerm

12 Months

18 Months

24 Months

2

\$4,050

\$3,710

\$3,390

3

\$4,665

\$4,275

\$3,885

4

\$4,980

\$4,540

\$4,140

3. Physical Changes

Charges for Physical Changes to Customer's Direct Access Service shall depend upon the nature and extent of changes undertaken by Utility, and shall be assessed on a case-by-case basis, and will be tarified accordingly.

4. Administrative Changes

There shall be no charge for Administrative Changes.

5. Cancellation Charges

In the event that Customer cancels all or a portion of its order for Service before the Commencement Date or before completion of the Term, or Service is terminated with respect to all or a portion of the Service, Customer shall pay to Utility, within thirty (30) days of invoice, Cancellation Charges, in an amount equal to the greater of 0.7 multiplied by the sum of the remaining monthly charges for such Service, or the non-recoverable portion of expenditures and liabilities incurred with respect to such Service by Utility and not previously reimbursed by Customer to Utility, including, without limitation, the unreimbursed portion of all costs and expenses incurred by Utility with respect to the construction and/or installation of the Special Facilities.

6. Special Services and Arrangements

Rates and charges for special services and/or arrangements will be based on the costs incurred by Utility and may include (a) non-recurring type charges, (b) recurring type charges, (c) termination liabilities, (d) under-utilization liabilities, or (e) combinations thereof. Such rates and charges will be set forth on an individual case basis and will be tarified accordingly.

D. APPLICABLE TAXES AND SURCHARGES

The customer is liable for and will be billed for all applicable Federal, State and Local Taxes and Surcharges including (without limitation) the following:

Federal Excise Tax	3.0%
Universal Lifeline Surcharge	4.0%
911 Surcharge	.5%
D.E.A.F. Surcharge	.5%*
CPUC Regulatory Fee	.1%

* ⁰⁶¹ Pursuant to Resolution T-13005, the D.E.A.F. surcharge will be reduced on July 1, 1989 to .3% of tariffed intra-LATA and inter-LATA services.

* *Correction*
GA/DW
5/23/89

APPENDIX A
LIST OF CONTRACTS AND DEVIATIONS

(To be filed by separate advice Letter)

APPENDIX A

RULESRULE 1DEFINITIONS

- Acceptance Criteria:** The date that a Service becomes available for use by Customer will be deemed to be the date when Customer is notified (the "Availability Notice") by Utility (which notice may be given by telephone) that the Utility-provided portion of the Circuit relating to such Service (to the Demarcation Point) has been tested by Utility and complies with published AT&T Technical Advisory 34 Standards or other generally accepted, published communications standards agreed to in writing by Utility and Customer. Monthly charges for each Service will begin on the date of the giving of the Availability Notice for such Service.
- Access Line:** A Circuit provided by a Person, not a party to this Agreement, which connects a Customer location or locations to a Utility Terminal Location.
- Administrative Change:** The modification of an existing Circuit or Service at the Customer's request which does not involve the physical rearrangement of a Circuit or facility or the reprogramming of Service features. An Availability Change generally involves the adjustment of records, including billing record changes.
- Channel or Circuit:** A communications path between two or more points.
- Channel Termination or Circuit Termination:** The point at which Utility's Channel originates, terminates, or drops for the insertion or removal of a Customer's signal.
- Common Carrier:** A Person with necessary regulatory approvals that subscribes to the Service and resells to the public for profit. The term "Common Carrier" also includes Persons who are brokers of the Service (act as intermediaries for the purposes of reselling), those Persons who are processors of the Service (enhance the value of the Service through substantial incurred costs), and those Persons who are underlying carriers (own transmission facilities).
- Customer Terminal Equipment:** Terminal Equipment provided by a Customer.
- Demarcation Point:** The point of interconnection of a third-Person-provided or Customer-provided Access Line or other connecting Circuit to Utility-provided equipment at a Utility Terminal Location.

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Direct Access Service: The furnishing of Utility Services for communication between Customer Premises and points of presence of an Interexchange Carrier or, when the Customer is an inter-exchange carrier ("IXC"), between that IXC's point of presence and its customer's location. Direct Access Service is provided via a single transmission microwave link for the origination and termination of traffic carried by an IXC. Direct Access Service is limited to the provision of between two and four Service Units to Customer. Standby facilities in the event of a service outage may be ordered as a Protected System pursuant to Section ___ of this tariff. Direct Access Service Units shall have an annual path rate availability of 99.8% (non-redundant service) and a bit error rate of 1×10^{-6} .

Installation: The establishment of a Circuit, dedicated Access Line, port connection or other facilities (including Special Facilities) for new or additional Service.

Person: Any individual, corporation, partnership, legal representative or other legal or governmental entity.

Physical Change: The modification of an existing Circuit or Service at Customer's request which involves the physical rearrangement of a Circuit or facility or the reprogramming of Service features. A Physical Change generally involves a change in the nature of the Service or the manner in which it is provided.

Premises: A Customer location at which Utility maintains a Utility Terminal Location.

Protected System: Service ordered by Customer pursuant to this tariff which includes the activation of redundant standby electronics in the event of a service outage due to failure of the primary electronics.

Restoration: The reestablishing of Service by rerouting, or substitution of component parts.

Service: Service obtained by Customer from Utility pursuant to the terms of this tariff.

Service Location: A Customer location, Interexchange Carrier location, or Interexchange Carrier's customer location at which Utility provides Service pursuant to this tariff.

Service Order: The application for Service made by Customer and agreed to by Utility. Such application shall include the name of Customer, the number of Service Units ordered, the Term of Service for each Service Unit ordered, the Estimated Completion Date for each Service Units ordered. The minimum Service Order shall be for two Service Units.

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Service Unit:

A communications path having a bandwidth or transmission speed of 1.544 MBPS (T-1) provided to Customer by Utility pursuant to Service Order and in accordance with the terms of this tariff.

Special Facilities:

Facilities or special equipment constructed or furnished by Utility pursuant to Customer's Service Order.

Term:

The time period in monthly increments for which Service is ordered by Customer.

Terminal Equipment:

Devices, apparatus and their associated wiring, which directly or indirectly connect to the Utility system.

Transmission Speed:

Data transmission speed or rate, in bits per seconds (BPS).

Unprotected System:

Service ordered by Customer pursuant to this tariff which does not include standby facilities in the event of a service outage.

Utility Terminal
Location:

Any location where Utility maintains its facilities.

APPENDIX 'A'
RULE 2

DESCRIPTION OF SERVICE

Utility provides 24-hour intrastate, interLATA, intraLATA private line high speed data, voice and access Services at a speed of 1.544 MBPS or higher.

CUSTOMER APPLICATION FOR SERVICE

Customers wishing to obtain Service must contact a Utility Sales office. No form is necessary. Service will be provided upon negotiation and execution of a definitive Communications Service Agreement satisfactory in form to the attorneys of both parties, and subject to authorization of the Public Utilities Commission of the State of California.

CONTRACTS

Utility negotiates with each Customer a Communications Service Agreement detailing the specific data speeds to be supplied, the specific locations to be serviced, and the length of service.

A.89-03-043

APPENDIX A
RULE 5

SPECIAL INFORMATION REQUIRED ON FORMS

(None in effect)

ESTABLISHMENT AND REESTABLISHMENT OF CREDIT

Utility reserves the right to examine the credit record of all applicants and Customers. A Customer whose Service has been discontinued for nonpayment of bills will be required to pay any unpaid balance due to Utility and to reestablish credit before Service is restored.

DEPOSITS

Depending on their credit history and references, Applicants and Customers may be required at any time to make a deposit up to an amount equaling the installation charges, if applicable, and up to three months of charges for the Service to be provided. Utility will pay interest at the rate currently paid by the Main Branch of the Bank of California (San Francisco) on passbook accounts for the period during which the deposit is held by Utility. At Utility's option, such deposit may be refunded or credited to the Customer at any time prior to termination of Service. The deposit plus interest, if still held, will be returned to Customer within sixty (60) days of termination of Service or upon receipt of final payment of outstanding charges, whichever is the latest date.

APPENDIX A

RULE 8

NOTICES

Unless otherwise provided by these Rules, Utility may give to a Customer notice orally or by written notice mailed to the Customer's billing address, or to such address as may be subsequently given by the Customer to Utility.

Unless otherwise provided by these Rules, any notice from any Customer may be given to Utility orally or by written notice mailed to Utility's business office.

RENDERING AND PAYMENT OF BILLS

Bills are mailed on the first of each month. Service charges are billed in advance.

Bills are due and payable immediately on presentation. Amounts which are unpaid on the thirtieth day following the Invoice Date shall bear interest at 1-1/2% per month (or portion thereof) following the Invoice Date that the bill remains unpaid. Late payment charges at the rate of one-and-one-half percent (1-1/2%) per month will accrue upon any unpaid amount commencing forty-five (45) days after the Invoice Date.

Bills are paid by mail to the address stipulated on the invoice from Utility.

A month is considered to have thirty (30) days.

If Customer does not give Utility notice that Customer disputes the amount of the charges shown on an invoice to Customer disputes the amount of the charges shown on an invoice to Customer within ninety (90) days after receipt by Customer of such invoice, Customer will be deemed to have agreed to such charges and such invoice will be deemed to be correct and will be binding on Customer.

Utility reserves the right to modify invoice amounts for each invoice to Customer due to billing errors by Utility up to ninety (90) days from the invoice date of such invoice. Unless a billing error has resulted from an act or omission of the Customer, all invoices will thereafter be deemed correct and will bind Utility.

DISPUTED BILLS

In the case of a billing dispute between the Customer and Utility for Service furnished to the Customer, which cannot be settled with mutual satisfaction, the Customer can take the following action:

- (1) First, the Customer may request, and Utility will comply with the request, an in-depth review of the disputed amount. The undisputed portion and subsequent bills must be paid on a timely basis or the Service may be disconnected.
- (2) Second, if there is still disagreement about the disputed amount after the investigation and review by a manager of the Utility, the Customer may appeal to the California Public Utilities Commission for their investigation and decision.

The addresses of the California Public Utilities Commission are:

California Public Utilities Commission, Consumer Affairs Division, at

State Building
505 Van ness Avenue
San Francisco, CA 94102

or

State Building
107 S. Broadway
Los Angeles, CA 90012

DISCONTINUANCE AND RESTORATION OF SERVICE

The rights of Utility and the Customer to discontinue Service, the procedures to discontinue Service, and the charges to be incurred are negotiated and specified for each Customer installation in a Communications Service Agreement. The Service of any customer may be disconnected on seven days' written notice in the event of an uncured breach of such Agreement, or of the terms of this tariff, or of any statute or regulation relating to the use or resale of the Service.

OPTIONAL RATES AND INFORMATION TO BE PROVIDED TO THE PUBLIC

A copy of this tariff schedule and advice letters will be available for public inspection in Utility's business office during regular hours.

Utility will post in a conspicuous place in its business office, a notice to the effect that a copy of this tariff schedule and advice letters as filed with the California Public Utilities Commission are available for public inspection.

TEMPORARY SERVICE

(None in effect)

CONTINUITY OF SERVICE

(None in effect)

(None in effect)

SERVICE CONNECTIONS AND FACILITIES ON CUSTOMER PREMISES

Utility is solely responsible for operating Utility-provided equipment.

Upon notice to Customer, the channels and equipment provided by Utility shall be made available to Utility for such tests and adjustments as may be necessary to maintain them in satisfactory condition.

Customer terminal equipment shall be furnished by and maintained at the expense of Customer.

MEASUREMENT OF SERVICE

Each Service provided to the Customer is billed on a flat monthly rate. No measurement is required.

METER TESTS AND ADJUSTMENT OF BILLS FOR METER ERROR

(Not applicable)

SUPPLY TO SEPARATE PREMISES

Monthly charges for each Service, which includes defined customer locations, are billed on a flat monthly rate.

DISCONTINUANCE OF SERVICE FOR CAUSE

- A. Upon non-payment of any sum due the Company, or upon a violation of any of the conditions governing the furnishing of service as provided in this tariff, the Company may by notice in writing to the customer, without incurring any liability, temporarily discontinue or terminate the furnishing of service to that customer, and may decline to authorize the transfer of the customer's electronic serial number until all sums billed have been paid to Company, or the customer has invoked Company's disputed bill procedure. Notice by mail shall be deemed given five days after such written notice is placed in the United States Mail, postage paid, and addressed to the customer at the address last given by him to the Company. Service shall not be discontinued for at least seven calendar days after giving notice of intention to discontinue service, except as provided herein. Should the Company elect to terminate the service, the customer shall be responsible for all tariff charges through the date of service termination.
- B. Where any customer equipment is used with facilities provided by the Company in violation of any statute or any of the provisions in this tariff, the Company will take such action as necessary for the protection of its facilities or the services of its customers. The customer shall discontinue such use of the equipment or correct the violation immediately upon actual or constructive knowledge of a violation and shall confirm in writing to the Company within seven calendar days that such use has ceased or that the violation has been corrected. Failure of the customer to discontinue such use or correct the violation within the time stated above shall result in interruption of the service of a customer who is creating the violation, until such time as the customer complies with the provisions of this tariff.
- C. Service may be refused, reduced, or partially or completely discontinued without notice in the event the Company is informed that the service is used in such a manner that will adversely affect the Company's service to others.
- D. The Company shall refuse service to a new applicant and shall disconnect existing service to a customer upon receipt from any authorized official of a law enforcement agency of a writing, signed by a magistrate, as defined by Penal Code Sections 807 and 808, finding that probable cause exists to believe that the use made or to be made of the service is prohibited by law, or that the service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in the violation of the law. Included in the magistrate's writing shall be a finding that there is probable cause to believe not only that the subject telephone facilities have been or are to be used in the commission or facilities have been or are to be used in the commission or facilitation of illegal acts, but that the character of such acts is such that, absent immediate and summary action, significant dangers to public health, safety, or welfare will result.
- E. Any person aggrieved by any action taken or threatened to be taken pursuant to this rule shall have the right to file a complaint with the Commission and may include therein a request for interim relief. The Commission shall

schedule a public hearing on the complaint to be held within 20 calendar days of the filing of the complaint. The remedy provided by this rule shall be exclusive. No other action at law or in equity shall accrue against any communications utility because of, or as a result of, any matter or thing done or threatened to be done pursuant to the provisions of this rule.

- F. If communications facilities have been physically disconnected by law enforcement officials at the premises where located, without central office disconnection, and if there is not presented to the Utility the written finding of a magistrate, as specified in paragraph D of this rule, then upon written request of the subscriber the Utility shall promptly restore such service.
- G. Any concerned law enforcement agency shall have the right to Commission notice of any hearing held by the Commission pursuant to paragraph (g) of this rule, and shall have the right to participate therein, including the right to present evidence and argument and to present and cross-examine witnesses. Such law enforcement agency shall be entitled to receive copies of all notices and orders issued in such proceeding and shall have both (1) the burden of proving that the use made or to be made of the service is prohibited by law, or that the service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in the violation of the law and that the character of such acts is such that, absent immediate and summary action in the premises, significant dangers to public health, safety, or welfare will result, and (2) the burden of persuading the Commission that the service should be refused or should not be restored.
- H. The Company, immediately upon refusal or disconnection of service in accordance with paragraph D of this rule, shall notify the applicant or subscriber in writing that such refusal or disconnection has been made pursuant to a request by a law enforcement agency, naming the agency, and shall include with said notice a copy of this rule together with a statement that the applicant or subscriber may request information and assistance from the Commission at its San Francisco or Los Angeles office concerning any provision of this rule.
- I. At the expiration of fifteen (15) days after refusal or disconnection of service pursuant to paragraph D of this rule, the Utility, upon written request of the applicant or subscriber, shall provide or restore such service unless the law enforcement agency concerned shall have notified the utility in writing of its objection to such provision or restoration of service, in which event service may be provided or restored only in a complaint proceeding pursuant to paragraph E of this Rule. At the time of giving any such notice of objection, the law enforcement agency shall mail or deliver a copy thereof to the applicant or subscriber. Nothing in this paragraph shall be construed to preclude the granting of interim relief in a proceeding initiated pursuant to paragraph E of this Rule.
- J. Each contract for communications service, by operation of law, shall be deemed to contain the provisions of this rule. Such provisions shall be deemed to be a part of any application for communications service. Applicants for service shall be deemed to have consented to the provisions of this rule as a consideration for the furnishing of such service.

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- K. The term "person," as used herein, includes a subscriber to communications service, an applicant for such service, a corporation, a company, a co-partnership, an association, a political subdivision, a public officer, a governmental agency, and an individual.
- L. For the information of our customer, the addresses of the Commissions' offices are as follows:

For Northern California:

State Building
505 Van Ness Avenue
San Francisco, California 94102

For Southern California:

State Building
107 South Broadway
Los Angeles, California 90012

- M. Any notice of disconnection of the customer for the cause which is sent by the Company to a customer must be sent by the customer to each of the customer's authorized users within three working days. Working days are all days except Saturday, Sunday and legal holidays. Should the cause for the notice be correct by the customer with the three working days, no notice is required to be sent to the authorized users by the customer.

LIABILITY AND OBLIGATIONS

1. The liability of Utility for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission occurring in the course of furnishing the Service or otherwise with respect to the Service, shall in no event exceed an amount equivalent to the proportionate charge to the Customer for the period of Service during which such mistake, omission, interruption, delay, error or defect in transmission occurs. No provision in this tariff shall be construed to limit Utility's liability in the event of the willful misconduct of its employees.
2. Utility shall be indemnified and held harmless by the Customer against:
 - (a) Claims for libel, slander, or infringement of copyright arising out of the material, data, information, or other content transmitted over Utility's channels; and
 - (b) Patent infringement claims arising from combining or connection Utility-furnished channels with apparatus and systems of the Customer; and
 - (c) All other claims arising out of any act or omission of the Customer in connection with any Service provided by Utility.
3. Utility shall not be liable for any act or omission of any Person furnishing an Access Line or other connection to Utility-provided equipment.
4. Utility does not guarantee or make any warranty with respect to any equipment provided by it where such equipment is used in locations containing an atmosphere which is explosive, prone to fire, dangerous or otherwise unsuitable for such equipment.
5. The Customer shall indemnify and hold Utility harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party or persons, for any personal injury to, or death of, any person or person, and for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have resulted from services provided by Utility to customer, or to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, presence, condition, location or use of equipment in connection with such services where such installation, operation, failure to operate, maintenance, condition, location or use is not the direct result of Utility's negligence.
6. Utility is not liable for any defacement of, or damage to, the Customer's Premises or other Service Locations or any other property of a Customer or company (whether real or personal) resulting from the furnishing or installation of Service or the Special Facilities or the attachment of instruments, apparatus and associated wiring furnished by Utility on Customer's Premises or anywhere or by the removal thereof, when such defacement or damage is not the result of Utility's negligence. No agents, servants or employees of any Person or other participating carriers providing an Access

Line or other connection to Utility-provided equipment shall be deemed to be an agent, servant or employee of Utility.

7. The Customer shall secure all leases, licenses, permits, rights-of-way, and other arrangements necessary for interconnecting Customer's Terminal Equipment or communication systems with Utility-provided equipment.
8. The Customer shall insure that Customer's equipment and/or system is properly interfaced with Utility facilities, that the signals emitted into Utility's network are of the proper mode, bandwidth, power, data speed, bit error rates, and signal level for the intended use of Customer and in compliance with the criteria set forth in this tariff, and that the signals do not damage Utility equipment, cause personal injury, or affect quality of service made available or provided to other users of Utility facilities. If Customer fails to maintain and operate Customer Terminal Equipment and/or Customer's system, Utility may, upon written notice to Customer, require the use of protective equipment at Customer's expense. If this fails to produce satisfactory quality and safety, Utility may, upon written notice to Customer, terminate the Service.
9. Customer shall not use the Service in violation of any applicable law, rule or regulation. In the event of any such violation, and in addition to any other remedies which Utility may have, Utility may suspend Service to Customer without liability, provided that Utility shall use its best efforts to notify Customer prior to said suspension of the Service. If it is not practical for Utility to provide such notice to Customer prior to suspension of the Service, or if it may be unlawful to continue the Service and Utility may incur liability with respect to the continuation of the Service, Utility may immediately suspend the Service without liability to Customer provided that Utility shall notify Customer as soon as practicable by telephone of the reason for such interruption. In the event that oral notice is given pursuant to this Section, Utility shall immediately provide Customer with written notice.
10. If Utility in its reasonable judgment determines that failure of Customer to maintain and operate Customer Terminal Equipment and/or Customer's system could cause imminent personal injury or harm to Utility's equipment, the system, or the services made available or provided to other users, Utility may immediately interrupt the Service, provided that Utility shall notify as soon as practicable (which notice may be given by telephone) Customer of the reason for such interruption. In the event oral notice is so provided, Utility shall immediately provide Customer with written notice.
11. Throughout the Term, Customer shall make all necessary lease or other arrangements for the placement of Utility's equipment at Service Locations, including, if necessary, lease or other arrangements concerning any rooftop space or conduits which connect Service Locations and such rooftop space. If Customer is an Interexchange Carrier, then Customer shall also make all necessary arrangements at its Customer's Premises pursuant to Section 8 of this tariff.
12. Utility shall not be liable for delay in the Installation or failure to provide service when due to acts of God, riots, labor disputes, delays of suppliers, contractors, subcontractors or other carriers, severe weather,

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laws, rules or regulations whether enacted before or after the date of the Service Order, delay caused by any governmental authority or entity of any nature in giving an approval required for the Installation or the Service, or for any cause beyond Utility's control (hereinafter "Force Majeure"). Without incurring any liability to Customer, Utility reserves the right to discontinue efforts to install the Service or the Special Facilities prior to completion or to discontinue or not provide the Service, upon notice given to Customer, when necessitated by Force Majeure.

13. Unless otherwise specifically agreed to in writing by Utility and Customer, all of the Special Facilities and related equipment and the installation thereof shall be the property of Utility and owned by Utility and Utility shall not suffer or permit any lien or encumbrances, including mechanics liens, to attach to any portion thereof or interest therein.
14. In no event shall Utility be liable to Customer for any special, incidental, indirect, consequential or punitive damages of any nature or for the loss of profit, revenue or date including, without limitation, the provision by Utility of the Service.
15. The warranties expressly set forth in this tariff are given and accepted in lieu of any and all warranties express or implied, including without limitation the implied warranties of merchantability and fitness for a particular purpose.

TERMINAL EQUIPMENT

1. Customer Terminal Equipment shall be furnished by and maintained at the expense of Customer.
2. The characteristics of Customer Terminal Equipment shall not interfere with services made available or provided to other users of the Utility's system. Additional protective equipment, where required, shall be at Customer's expense.
3. Customer-provided equipment must not cause objectionable interference to Utility facilities or other Utility customer's equipment or communication systems. If Customer desires to make modifications to its equipment, it shall notify Utility of the intended modifications. Utility will notify Customer of the changes to Utility equipment which will be required in order to accommodate Customer's modifications. If Customer wishes to proceed with such modifications and if Utility facilities must be modified to accommodate Customer-provided equipment, costs incurred by Utility for such modification will be borne by Customer as additional Charges and shall be paid within thirty (30) days of invoice. Installation and mounting of Customer-provided equipment must conform to written specifications established by Utility, such specifications to be tariffed accordingly.
4. All costs, which may include, without limitation, the expenses of Customer personnel and electrical power, incurred on the Customer's side of the Demarcation Point shall be Customer's responsibility.

ALLOWANCE FOR INTERRUPTIONS

1. Customer may claim credit allowance for interruptions of Service which are not due to Utility testing and adjusting as set forth herein, negligence of the Customer, or breach by Customer of its obligations under this tariff, the failure of Channels, equipment and/or communication systems provided by Customer, or for any cause described in Rule ____ hereof, and subject to the other provisions of these tariffs and of the service agreement entered into by Customer and Utility. When the Service provided by Utility is interrupted for a period of thirty (30) minutes or more, credit is allowed for that portion of the Service which is affected, in accordance with the following formula:

$$\text{Credit} = \frac{T}{48} \text{ times } C$$

"T" is outage time in half-hour increments.

"C" is total daily charge for the affected Service.

48 is the number of half-hour increments in a day.

2. For the purpose of determining the amount of allowance, every month is considered to have thirty (30) days. Only those Service Units actually affected by the interruption shall be considered in determining the amount of allowances.
3. The length of an interruption shall be measured from the time Customer notifies Utility of the interruption, or from the time the interruption is known to Utility, until Service is restored.
4. As used in this Section ____, the term "Service" shall be limited to the circuits and/or equipment provided by Utility. Customer shall not be entitled to an allowance for (and shall hold Utility harmless from) an interruption to the Service due to an interruption, failure, disturbance or other occurrence to or in an Access Line or portion of an Access Line or any Customer-provided equipment.
5. For the purposes of this Section ____, in no event will the Service to Customer be deemed to be interrupted during a period when the Utility-provided Service Units comply with the published AT&T Technical Advisory 34 Standard.

INTERCONNECTION WITH OTHER CARRIERS

Service furnished by Utility is not part of a joint undertaking with other carriers and the rates and charges for such services and the use of such facilities shall be borne by Customer. Any special interface equipment or facilities necessary to achieve compatibility between the facilities of Utility and a Reseller or any other person providing an Access Line shall be provided at Customer's expense.

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(END OF APPENDIX A)