

5-10/25

Decision 89 11 020 NOV 3 1989

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the matter of the Application of )  
San Diego LINKATEL, Inc. for a )  
Certificate of Public Convenience and )  
Necessity Authorizing the Provision of )  
InterLATA High Speed Digital Private )  
Line Telecommunications Services. )

Application 89-06-048  
(Filed June 26, 1989)

In the matter of the Application of )  
San Diego LINKATEL, Inc. for a )  
Certificate of Public Convenience and )  
Necessity Authorizing the Provision of )  
IntraLATA High Speed Digital Private )  
Line Telecommunications Services. )

Application 89-06-049  
(Filed June 26, 1989)

### OPINION

#### Summary

This decision consolidates Application (A.) 89-06-048 and A.89-06-049 and grants applicant San Diego LINKATEL, Inc. (LINKATEL) a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit applicant to operate as a reseller of telephone services offered by communications common carriers providing telecommunications services in California and to provide inter and intraLATA 1.544 megabits per second (Mbps) high speed digital private line service in accordance with the rates and charges and special conditions set forth in its proposed tariff in Appendix A hereto. These tariff provisions are to become effective five days after filing.

Background

On June 26, 1989 LINKATEL filed A.89-06-048 and A.89-06-049 seeking CPCNs to provide inter<sup>1</sup> and intraLATA high speed digital private line services at 1.544 Mbps or higher in all LATAs in California. The interLATA authority sought by A.89-06-048 is consistent with the routinely authorized provision of interLATA telecommunications services offered by communications common carriers as well as by resellers of those common carrier telephone services.

By order dated June 29, 1983, the Commission instituted an investigation to determine whether competition should be allowed in the provision of telecommunications transmission services within the state (Order Instituting Investigation (OII) 83-06-01). Numerous applications to provide competitive service were consolidated with that investigation and by interim Decision (D.) 84-01-037 dated January 5, 1984 and subsequent decisions, these applications were granted, limited to the provision of interLATA service and subject to the condition that applicants not hold out to the public the provision of intraLATA service pending our decision in the OII.

On June 13, 1984 we issued D.84-06-113 in OII 83-06-01 denying the applications to the extent not previously granted and directing persons not authorized to provide intraLATA telecommunications services to refrain from holding out the availability of such services and to advise their subscribers that intraLATA communications services should be placed over the facilities of the local exchange company.

The intraLATA authority sought in A.89-06-049 is in accordance with the modified settlement adopted by this Commission

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<sup>1</sup> A.89-06-048 seeks interLATA authority and A.89-06-049 seeks intraLATA authority for the specified telecommunications services.

in D.88-09-059, dated September 28, 1988, which approved with certain modifications a settlement reached by many of the parties in Phase I of OII 87-11-033.<sup>2</sup>

Appendix A of D.88-09-059 prescribes the following conditions for competition for intraLATA high speed digital private line services:

"Competitive providers in high speed digital markets may hold out the availability of and provide multiplexing equipment or services, including voice services, as part of such high speed digital services.

"For purposes of this document, digital private line services at 1.544 megabits per second (Mbps) or above are considered to be 'high speed digital private line' service. As used herein, 'intraLATA high speed digital private line' service is defined as the dedicated connection of two or more end user premises within a LATA for the purpose of providing intraLATA high speed digital nonswitched services. Competitive carriers may provide multiplexing service for voice and/or data at the end user's premises such that the transmission speed from or to the end user's premises is at 1.544 Mbps or above.

"This document does not permit the transport from or to the end user's premises for intraLATA service of either analog or digital transmissions at speeds less than 1.544 Mbps." (D.88-09-059, Appendix A, mimeo. p. 8.)

In D.88-09-059 we also concluded that authorizations granted for provision of competitive intraLATA high speed digital private line services should be coincident with the effectiveness of local exchange carrier pricing flexibility for such services (D.88-09-059, mimeo. p. 8). Since that time, Pacific Bell

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2 OII 87-11-033 is the Commission's investigation of alternative regulatory frameworks for local exchange telephone companies.

(Pacific) and GTE California, Incorporated (GTEC) have requested pricing flexibility for these services in A.88-10-012 and A.88-10-017, respectively. Workshops were held in those matters and Pacific and GTEC were directed by D.89-02-023 and D.89-02-024, respectively, dated February 8, 1989 to file revised tariff schedules providing flexibility for the offering of 1.544 Mbps intraLATA high speed digital private line service with an effective date of February 15, 1989.

On February 8, 1989 the Commission also granted CPCNs to six interexchange carriers (IECs) thereby authorizing them to provide competitive intraLATA high speed digital private line services on or after February 15, 1989. Since that time various other carriers have been granted similar authority.

Consolidation of A.89-06-048 and A.89-06-049

A.89-06-048 and A.89-06-049 both involve requests for CPCNs to render telecommunications services in California by the same applicant. To the extent that these applications seek CPCNs to provide competitive telecommunications services similar to those currently offered by numerous previously certificated carriers, they raise related issues of fact and should be consolidated pursuant to Rule 55 of the Commission's Rules of Practice and Procedure. Accordingly, we will consolidate these applications for consideration in this order.

Description of Applicant

LINKATEL is a California corporation, with its principal office at 2330 Faraday Avenue, Carlsbad, CA 92008. LINKATEL's controlling shareholder is also the Chairman and Chief Executive Officer of TACAN Corporation (TACAN), a seven-year old firm specializing in advanced telephony, video cable transmission, high speed digital transmission, fiber optic sensors, and basic research. LINKATEL's applications state that it will be able to draw on the technical and financial resources of TACAN in support of this new telecommunications utility service.

LINKATEL also plans to utilize TACAN's administrative support services in the areas of purchasing, accounting, and personnel to assist it during its start-up phase.

LINKATEL is authorized to issue ten million shares of common stock, and as of June 26, 1989 eight million shares had been issued. LINKATEL asserts that there is no security agreement, mortgage, or deed of trust on its property, and no bonds, notes, or other indebtedness is outstanding. Financial support for this undertaking will come from private investors who purchase shares of stock in the corporation.

LINKATEL's ability to draw on the technical resources of TACAN will give LINKATEL access to TACAN's telephony group consisting of approximately 20 engineers with broad experience in the use of optical fibers in distribution loops. LINKATEL states that TACAN provides services to and enjoys a wide range of contacts with leading equipment manufacturers and operating telephone companies in the provision of ultra-high speed fiber optic transmission systems.

#### Description of Proposed Services

LINKATEL seeks authority to provide continuous (24-hour) high speed digital private line transmission services<sup>3</sup> for inter and intraLATA, intrastate communications at speeds of 1.544 Mbps or higher throughout the State of California in accordance with the conditions specified in the modified settlement approved in D.88-09-059. LINKATEL's services will be dedicated and nonswitched, and used to connect a customer's premises to another customer's premises to facilitate inter and intraLATA communications as the latter service is allowed under the terms of the modified settlement. Applicant proposes to offer its services

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<sup>3</sup> LINKATEL refers to these services as DS-1 circuits in its proposed tariff schedules.

in the major metropolitan areas in California to various locations, including the points-of-presence (POPs) of other IECs. LINKATEL plans to initially originate its operations with intraLATA services within the San Diego metropolitan area. LINKATEL's currently planned services will consist solely of high speed transmissions at 1.544 Mbps and above. It proposes to primarily serve IECs and other large telecommunications users seeking direct, full period, nonswitched private line connections for digitized information on a bulk high-capacity basis between IEC POPs and end-user premises as well as end-user premises to premises.

LINKATEL proposes to provide these inter and intraLATA services via facilities constructed primarily for the provision of interstate communications services. LINKATEL plans to utilize fiber optic facilities which it will erect or install in or on existing underground conduits or ducts, utility poles, and other existing facilities and rights of way.

LINKATEL is not seeking authority for construction of facilities in these applications. Instead, as discussed above, it will provide these services through existing structures and facilities constructed under the authority of the Federal Communications Commission (FCC). Therefore, it can be seen with reasonable certainty that the proposed services will not have a significant impact on the environment. Should applicant elect to use other transmission media (e.g., microwave radio) to provide its services, it states that it will obtain such construction and frequency authorizations and permits as may be required from the FCC and/or local governmental agencies.

LINKATEL estimates the potential numbers of customers it is likely to serve during the first and fifth full year of operation of this competitive service will be 20 and 80, respectively.

LINKATEL believes that its proposed service will benefit customers by giving them a greater variety of services and service

offerings designed to meet their specific needs. LINKATEL contends that its provision of inter and intraLATA high speed digital private line services will offer numerous benefits to the public including:

1. Meeting the needs of sophisticated corporate and governmental customers for competitively priced, innovative, customized, and high quality services;
2. Provision of highly specialized and advanced telecommunications facilities, including fiber optic cable, thereby enhancing the reliability, quality, and efficiency of applicant's service;
3. Numerous long-term benefits to California telecommunications users, including:
  - a. Lower priced and better quality services;
  - b. Higher reliability using redundant and route diverse facilities.
  - c. Innovative telecommunications service and equipment offerings as well as increased consumer choice;
  - d. Efficient use of existing communications resources as well as increased diversification and reliability of supply of communications services; and
  - e. Development of an expanded telecommunications supply industry in California with attendant employment opportunities for California residents.

LINKATEL requests that it be accorded the same treatment applicable to other nondominant IECs, regarding exemptions from the requirements of PU Code §§ 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 D.85-01-008, D.85-07-081, D.85-11-044, and D.86-08-057.

LINKATEL also requests that it be authorized to deviate from the requirements of General Order 96-A respecting tariff pagination consistent with Resolution T-10808 issued March 21, 1984.

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

Notice of Applications and Comments Received

LINKATEL's new service is likely to compete with existing carriers and prospectively with other telecommunications providers. Therefore, in accordance with Rule 18(b) of the Commission's Rules of Practice and Procedure, it served copies of these applications on known potential competitors.

On July 26, 1989, the Commission's Division of Ratepayer Advocates (DRA) protested these applications raising concerns that: (1) LINKATEL had not agreed to provide the data which the Commission has required of all other intraLATA private line carriers, and (2) LINKATEL has not demonstrated its financial ability to construct its facilities, as required by Rule 18(g) of the Commission's Rules of Practice and Procedure.

Subsequently, according to DRA, LINKATEL's representatives provided DRA with its proposed construction and operations budget for the planned common carrier utility operations in San Diego County. LINKATEL also discussed its plans for financing the construction and operation of its proposed fiber network with the DRA.

Thereafter, on September 11, 1989 the DRA withdrew its protest of these applications stating that it was satisfied that LINKATEL has the financial ability to construct and operate its proposed fiber network, and has also agreed to comply with the



required reporting requirements. DRA then explained that it had no other ongoing concerns about LINKATEL's applications.

Counsel for LINKATEL also corresponded with the administrative law judge and explained, as he did to DRA, that the Chairman and Chief Executive Officer of TACAN will be the controlling shareholder of LINKATEL and has pledged sufficient financial resources to assure that LINKATEL will remain solvent during its first full year of operation. TRACAN's Chairman has also committed to seek and provide the necessary financial and technical resources to assure that all necessary plant and equipment will be installed without undue delay.

#### Discussion

On June 29, 1983, the Commission issued OII 83-06-01 to determine whether competition should be allowed in the provision of telecommunications transmission service within the state. Many applications to provide competitive service were consolidated with OII 83-06-01. By interim D.84-01-037 and later decisions we granted those applications, limiting the authority conferred to interLATA service and subjecting the applicants to the condition that they not hold themselves out to the public to provide intraLATA service, pending our decision in OII 83-06-01.

On June 13, 1984 we issued D.84-06-113 in OII 83-06-01, denying the applications to the extent not previously granted. We also directed persons not authorized to provide intraLATA telecommunications service to refrain from holding out the availability of such service; we required them to advise their subscribers that intraLATA calls should be placed over the facilities of the local exchange company.

On February 8, 1989 by D.89-02-023 in A.88-10-012 (Pacific) and D.89-02-024 in A.88-10-017 (GTEC) we directed these two largest California local exchange telephone companies to revise their respective tariff schedules effective February 15, 1989 to

allow the expansion of competition for the intraLATA high speed, 1.544 Mbps and above, digital private line services.

On February 8, 1989 we also authorized six IECs to offer intraLATA high speed, 1.544 Mbps and above, digital private line services, effective on or after February 15, 1989. Subsequently, we have granted CPCNs for these services to various other carriers as well.

We have routinely granted CPCNs for authority to provide interLATA telecommunications services in California to applicants which have presented evidence of technical and financial resources to develop and deliver such services to the public.

There is no basis for treating this applicant differently than those that filed earlier. Therefore, we will authorize LINKATEL to provide interLATA service; however, we will limit LINKATEL's intraLATA authority to the provision of high speed digital private line service in California, as further specified herein. All services furnished by LINKATEL under this proposal will be provided via full period, dedicated, nonswitched facilities, as contrasted to time sharing of a private line service using switched satellite facilities, or traditional switched message toll telephone services.

In D.88-09-059 we concluded that competition to provide intraLATA high speed digital private line services according to the conditions in the adopted modified settlement is in the public interest, and accordingly we have recently granted such authority to numerous nondominant competing utilities. LINKATEL's services must be provided in compliance with the requirements of D.88-09-059 (Appendix A, Section 4. A.1.a.) and we will limit its authority accordingly.

We have routinely imposed modest reporting requirements<sup>4</sup> to monitor the early development stages of this competitive intraLATA service. Accordingly, we will require similar reporting by LINKATEL as follows:

1. LINKATEL will be required to submit semiannual reports for a two-year period beginning with the effective date of LINKATEL's rates and charges. The reports will be filed with the Commission Advisory and Compliance Division (CACD) with copies to the DRA - Telecommunications Rate Design Branch and will contain the following recorded data for LINKATEL's intraLATA 1.544 Mbps high speed digital private line 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.
2. The format of these semiannual reports should be determined in consultation with CACD.

This reporting requirement will sunset with the submission of the report for the semiannual period ending December 31, 1991.

We conclude that the authority which LINKATEL requests should be granted as provided in this order.

Since there is a need to make the tariffs for this service effective as soon as practicable, and the protests to these

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<sup>4</sup> These same reporting requirements have been established for the numerous other nondominant competing carriers which have been authorized to implement this service effective on or after February 15, 1989 (e.g. see D.89-02-028, Cable & Wireless Management Services, Inc., dated February 8, 1989).

applications have been withdrawn, we will make this order effective today.

Findings of Fact

1. LINKATEL is a nondominant carrier (telephone corporation) qualified to do business in California and a regulated utility as defined under PU Code § 234.

2. LINKATEL is requesting authority to provide 1.544 Mbps high speed digital private line service on an inter and intraLATA basis in California and to resell the telephone services of other communications common carriers providing telecommunications services in California.

3. The timely protests received relative to these applications have been withdrawn; therefore, no hearing is deemed necessary.

4. LINKATEL will initially offer these services to customers within the metropolitan area of San Diego and may later extend these services to customers in other areas of California consistent with demand for such service and its business interests. LINKATEL will be required to file an advice letter with appropriate tariff revisions, prior to any expansion from its initial service areas.

5. LINKATEL forecasts that it will have 20 and 80 customers at the end of the first and fifth full year of operation, respectively.

6. LINKATEL possesses the technical resources and ability to provide this proposed service on a safe, effective, reliable, and continuous basis.

7. LINKATEL declared that it will arrange financing with the aid of another commonly held company (TACAN) and will have sufficient funds to carry out the first full year of its utility business operations.

8. Since LINKATEL intends to use already planned, and soon to be constructed fiber optic cable facilities in existing ducts, supporting structures, and rights of way to provide the proposed

services, it can be seen with reasonable certainty that granting these applications will not have a significant adverse impact on the environment.

9. In D.88-09-059, we concluded that competition to provide intraLATA high speed digital private line services as provided in the adopted modified settlement in Phase I of I.87-11-033 is in the public interest and should be authorized.

10. LINKATEL has agreed that it will not subdivide or multiplex its intraLATA services below 1.544 Mbps.

11. LINKATEL will not switch intraLATA voice or data traffic pursuant to these applications.

12. Since February 1989, we have granted numerous similar CPCNs for identical or similar services on a competitive basis. Therefore, LINKATEL's request should be processed on a timely basis to allow it to enter this competitive market without undue delay.

13. Based on analysis of its application, there is no reason to treat LINKATEL differently than other telecommunications utilities who possess authority to provide intraLATA high speed digital private line services.

14. Public convenience and necessity require the granting of A.89-06-048 and A.89-06-049 to the extent set forth in the ordering paragraphs which follow.

15. Applicant is subject to: (a) the three-tenths percent (0.3%) surcharge on gross intrastate revenues to fund Telecommunications Devices for the Deaf, as outlined in Resolution T-13005, dated July 22, 1988, and modified by Resolution T-13061 dated April 26, 1989; (b) the current 2.5% universal telephone service surcharge applicable to service rates of intraLATA toll and intrastate interLATA toll pursuant to PU Code § 879; and (c) the user fee provided in PU Code §§ 431 through 435, which is 0.1% of gross intrastate revenue for the 1989-90 fiscal year.

Conclusions of Law.

1. LINKATEL's request for authority to provide inter and intraLATA 1.544 Mbps and above high speed digital private line service is consistent with the provisions of D.88-09-059 and should be granted to the extent set forth in the ordering paragraphs hereof.

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

3. The effective date of LINKATEL's initial offering of intraLATA high speed digital private line service authority should be five days after its filing of revised tariff schedules identical to those revisions set forth in Appendix A to this order.

4. In order to allow LINKATEL to make these services available on or after November 1, 1989 this order should be effective today.

5. 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.89-06-048 and A.89-06-049, seeking authority to provide inter and intraLATA 1.544 megabits per second (Mbps) high speed digital private line services and to operate as a reseller of telephone services of other communications common carriers providing telecommunications services in California, are hereby consolidated to allow reasonable and proper determination of any and all related issues.

2. A CPCN is granted to applicant, San Diego LINKATEL, Inc. (LINKATEL), to provide inter and intraLATA high speed digital private line services at 1.544 Mbps or higher in California, and to operate as a reseller of telephone services offered by other communications common carriers providing telecommunications services in California. The intraLATA portions of such services shall be subject to the following conditions:

- a. LINKATEL may hold out the availability of and provide multiplexing equipment or services, including voice services, as part of such high speed digital services.
- b. Digital private line services at 1.544 Mbps or above are considered to be "high speed digital private line service." "IntraLATA high speed digital private line" service is defined as the dedicated connection of two or more end-user premises within a LATA for the purpose of providing intraLATA high speed digital nonswitched services.
- c. LINKATEL may provide multiplexing service for voice and/or data at the end-user's premises such that the transmission speed from or to the end-user's premises is at 1.544 Mbps or above.
- d. This authority does not permit the transport from or to the end-user's premises for intraLATA service of either analog or digital transmissions at speeds less than 1.544 Mbps.
- e. LINKATEL shall refrain from holding out to the public the provision of any intraLATA services it is not authorized to provide.

3. LINKATEL is authorized to file an advice letter with associated tariff sheets identical to those set forth in Appendix A to this order for its initial offering of high speed 1.544 Mbps digital private line service.

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. These tariff schedules shall apply only to service rendered after their effective date which shall be at least 5 days after filing.

5. If applicant desires to render or resell interstate telecommunications service and has an effective Federal Communications Commission (FCC) approved tariff, it may file a notice adopting such FCC tariff with a copy of the FCC tariff included in the filing. Such adoption notice shall specifically exclude the provision of intraLATA service and shall be effective not less than 1 day after filing. If applicant has no effective FCC tariffs, or wishes to file tariffs applicable only to California intrastate interLATA service, it is authorized to do so, including rates, rules, regulations, and other provisions necessary to offer service to the public. Such filing shall be made in accordance with GO 96-A, excluding Sections IV, V, and VI, and shall be effective not less than 5 days after filing.

6. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C. (1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division (CACD) Telecommunications Branch.

7. 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.

8. 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.



9. Applicant shall notify the CACD director in writing of the date service is first rendered to the public within 5 days after service begins.

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

11. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information request form developed by the CACD Auditing and Compliance Branch and contained in Appendix B to this order.

12. Applicant shall monitor the implementation of its intraLATA 1.544 Mbps high speed digital private line service and shall submit semiannual reports for a 2-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.

13. The reporting requirement of Ordering Paragraph 12 shall commence within 45 days after December 31, 1989 and shall terminate upon submission of the report for the semiannual period ending December 31, 1991, to be submitted on or before February 14, 1992.

14. Within 60 days after the effective date of this order, LINKATEL 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. LINKATEL 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.

15. 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.

16. High speed digital private line service is subject to a 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 currently 0.3% as outlined in Resolution T-13061 dated April 26, 1989.

17. LINKATEL as a telephone corporation is subject to the 2.5% universal telephone service surcharge applicable to service rates of intraLATA toll and intrastate interLATA toll, pursuant to PU Code § 879.

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

19. The corporate identification number currently assigned to San Diego LINKATEL, Inc. is U-5191-C, which shall continue to be included in the caption of all original filings with this Commission and in the title of other pleadings filed in existing cases.

20. These proceedings are closed.

This order is effective today.

Dated NOV 3 1989, at San Francisco, California.

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

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

*Wesley Franklin*

WESLEY FRANKLIN, Acting Executive Director

A-89-06-048, A-89-06-049

San Diego LINKATEL, Inc.

2330 Faraday Avenue

Carlsbad, CA 92008

(619) 431-8380

APPENDIX A

Page 1

DRAFT - 9/20/89

Original Cal. P.U.C. Sheet No. 1-T

TARIFF SCHEDULE  
APPLICABLE TO  
INTRASTATE INTRALATA  
AND INTRASTATE INTERLATA  
HIGH SPEED DIGITAL  
PRIVATE LINE TRANSMISSION SERVICES  
OF  
SAN DIEGO LINKATEL, INC.

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

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

Issued by

Dr. James Bechtel

Vice President - Regulatory

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

Effective \_\_\_\_\_

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

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Dr. James Bechtel

Vice President - Regulatory

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

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

PRELIMINARY STATEMENT

This tariff sets forth intrastate rates and rules applicable to the provision of San Diego LINKATEL's (Company's) interLATA and intraLATA High Speed Digital Private Line Service within the State of California. The rates, rules, terms and conditions contained herein apply to interLATA and intraLATA Service provided within the San Diego metropolitan area.

The rates, rules, terms and conditions contained herein are subject to change pursuant to the rules and regulations of the California Public Utilities Commission.

INTERLATA SERVICE

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 interLATA service in the San Diego metropolitan area and may originate services from other intrastate points at a later date.

INTRALATA SERVICE

This tariff sets forth the regulations and rates applicable to 24-hour high-speed digital private line transmission services for the purpose of intrastate, intraLATA transmissions at speeds of 1.544 Mbps or higher provided by the Company, as authorized by the California Public Utilities Commission in D. 88-09-059. Service will originate from nonresidential user points and will be used to connect a customer's premises to another customer's premises. The Company will initially originate its intraLATA service in the San Diego metropolitan area and may originate services within other LATAs in California at a later date.

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SYMBOLS USED IN THIS TARIFF

The following symbols are used in the Tariff to represent the changes between this issue and previous issues.

- (C) - To signify a changed rate, rule or condition which may affect rates or charges.
- (D) - To signify a discontinued listing, rate, rule or condition.
- (I) - To signify an increased rate.
- (L) - To signify material relocated from or to another part of the tariff schedule with no change in text, rate, rule or conditions.
- (N) - To signify new materials including listing, rate, rule or condition.
- (R) - To signify a reduction in a rate.
- (T) - To signify a change in text but no change in a rate, rule or condition.



**THE NEXT**           

**DOCUMENTS ARE**

**POOR ORIGINALS**

**MICROFILMING SERVICES**

*will not assume responsibility*

*for the image quality*



SAN DIEGO LINKATEL RATESFOR DS-1 SERVICE

Monthly recurring rates are determined by the originating and terminating Distribution Area as shown on the Service Area Map on Sheet 6-T. Rates shown are set forth on a per circuit basis.

ORIGINATING DISTRIBUTION AREA	TERMINATING DISTRIBUTION AREA			
	DT	MV	KM	GT
DOWNTOWN (DT)	\$200.00	\$375.00	\$550.00	\$650.00
MISSION VALLEY (MV)	\$375.00	\$200.00	\$450.00	\$575.00
KEARNY MESA (KM)	\$550.00	\$450.00	\$200.00	\$450.00
GOLDEN TRIANGLE (GT)	\$650.00	\$575.00	\$450.00	\$200.00

FOR DS-1 SERVICE (PER DS-1 CIRCUIT)

Installation of Initial DS-1 .....	\$1,200.00
Installation of Additional DS-1 at the same time as Initial DS-1 .....	\$500.00
Installation of Additional DS-1 at a time later than Initial DS-1 .....	\$700.00

INDIVIDUAL CASE BASIS ARRANGEMENTS

Where Company furnishes a Service (e.g., DS-3) for which a rate is not specified in Company Tariff, charges will be determined on an Individual Case Basis ("ICB"). ICB rates and charges are individually negotiated with each customer. Rates and charges for special requirements and services are available on an ICB basis.

RATES SHOWN ARE EXCLUSIVE OF USER FEE OF  
ONE-TENTH OF ONE PERCENT (.1%) IMPOSED ON GROSS INTRASTATE  
REVENUE PURSUANT TO PUBLIC UTILITIES CODE SECTIONS 431-435  
AND SURCHARGE OF THREE-TENTHS OF ONE PERCENT (0.3%)  
IMPOSED ON INTRASTATE TELECOMMUNICATIONS SERVICE  
PURSUANT TO PUBLIC UTILITIES CODE SECTION 2881  
AND COMMISSION RESOLUTION NO. T-13061

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A.89-06-048, A.89-06-049  
San Diego LINKATEL, Inc.  
2330 Faraday Avenue  
Carlsbad, CA 92008  
(619) 431-8380

APPENDIX A  
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DRAFT - 9/20/89

Original Cal. P.U.C. Sheet No. 8-T

LIST OF CONTRACTS AND DEVIATIONS

(None.)

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RULESRULE 1. - DEFINITIONS

**Access Line:** A communications path, provided by a Person other than Company, on Customer side of the Demarcation Point, which connects a Demarcation Point to another point.

**Administrative Change:** The modification of an existing Circuit or Service at Customer's request which does not involve the physical rearrangement of a Circuit or facility or the reprogramming of Service features. An Administrative Change generally involves the adjustment of records, including billing record changes.

**Advance Payment:** A payment required before the start of Service.

**Availability Notice:** The date that a Service, or that portion of a Service constituting a Circuit, becomes available for use by Customer will be deemed to be the date when Customer is notified (the "Availability Notice") by Company (which notice may be given by telephone) that Company-provided portion of the Circuit relating to such Service (to the Demarcation Point or Points) has been tested by Company and complies with the Technical Standards in Rule 24 or other generally accepted, published communications industry standards.

**Bit:** The smallest unit of information on a digital transmission facility such as the Network.

**Circuit:** A communications path provided by Company between two or more Demarcation Points, at a Transmission Speed agreed to between Company and Customer.

**Commencement Date:** With respect to each Circuit, the Commencement date shall be the Target Commencement Date in the Communications Services Agreement; or, if later, the date of the Availability Note; or, in lieu of the foregoing, a date mutually agreed to by Customer and Company.

**Company:** San Diego LINKATEL, Inc., the issuer of this tariff, which is a California corporation.

**Company Terminal Location:** Any Demarcation Point where the Company maintains its facilities.

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**Customer:** The person, firm or corporation which orders Service and is responsible for the payment of charges and compliance with Company's regulations.

**Customer Premises:** A location occupied by Customer, or which Customer has the right to occupy, for the purposes of transmitting or receiving communications signals, and which is made available to Company for the maintenance and operation thereon or therein of a Company terminal location.

**Customer Terminal Equipment:** Terminal Equipment provided by a Customer.

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

**Demarcation Point:** The point of interconnection of an Access Line or other connecting communications path or equipment provided by Customer or any Person to Company-provided equipment.

**Distribution Area (Originating or Terminating):** A geographical grouping of locations or areas served by Company that is used for determination of the rate for DS-1 service. See map on Sheet 6-T and Rate Schedule on Sheet 7-T.

**High Speed Digital Private Line Service:** Any Service offered herein or any combination thereof.

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

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

**Network:** Company's digital fiber optic network located in the San Diego area.

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

**Service:** The Circuit or Circuits provided by Company to customers.

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**Special Facilities:** Any facilities, goods, supplies, products, equipment, fixtures or other installation specially installed or constructed for Customer by Company pursuant to a negotiated agreement between Company and Customer.

**Terminal Equipment:** Any telecommunications equipment other than transmission or receiving equipment installed at a Company Terminal Location.

**Term or Term of Service:** The agreed-upon period of time during which Company will provide Service to Customer. The term of Service will normally be measured from the Commencement Date of the first Circuit provided to Customer, but may be specifically agreed upon for each Circuit.

**Transmission Speed:** Transmission speed or rate, in bits per seconds (bps), as agreed to by Company and Customer for each Circuit.

**RULE 2. - DESCRIPTION OF SERVICE**

Company provides 24-hour intrastate inter- and intraLATA private line Circuits, connecting points and at Transmission Speeds agreed to between Company and Customer.

**RULE 3. - APPLICATION FOR SERVICE**

A Customer wishing to obtain Service must complete a Service Order Form provided by Company.

**RULE 4. - CONTRACTS**

Customer and Company will enter into an Agreement for High Speed Digital Private Line Service.

**RULE 5. - SPECIAL INFORMATION REQUIRED ON FORMS**

No special notations are required to appear on contracts, bills and deposit receipts.

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RULE 6. - CREDIT

Company may require a Customer to make an advance payment before Services are furnished. The advance will not exceed the amount equal to the non-recurring charge(s) and one month's charges for the Service. 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. 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

Before a Service is furnished to a Customer whose credit has not been duly established to the sole and exclusive satisfaction of Company, 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 Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:

- (a) two months' 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.

When a Service is discontinued, the amount of a deposit, if any, will be applied to Customer's account and any credit balance remaining will be refunded. A deposit will be refunded with interest computed at the rate of 7% per year after a period of twelve months, provided Customer has made all requisite payments during such twelve month period.

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.

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RULE 9. - RENDERING AND PAYMENT OF BILLS

Customer is responsible for payment of all charges incurred by Customer for Services furnished to Customer by Company.

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

Recurring charges are due and payable as of the date shown upon presentment of an invoice to Customer for the Service furnished (the payment date). A Service may be discontinued for nonpayment of a bill.

Billing starts on the day after Company notifies Customer the Service is available for use. Billing accrues through and includes the day that the Service is discontinued. Monthly charges will be billed one month in advance, except where prohibited by law or as otherwise provided in this tariff. Payment for such charges is delinquent if not made within thirty (30) days of the date shown on the invoice presented to the customer (the delinquent payment date). Taxes and surcharges will be separately stated on Customer's bill. Customer is responsible for payment of all taxes and surcharges imposed by any governmental agency having jurisdiction.

If any portion of the payment is received by Company after the delinquent payment date set forth above, or if a portion of the payment is received by Company in funds which are not immediately available to Company, then a late payment penalty shall be due to 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 lesser 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 Customer actually makes the payment to Company; or
- (b) 0.000493 (18 $\frac{1}{2}$  per annum), compounded daily for the number of days from the payment date to and including the date that Customer actually makes the payment to Company.

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RULE 10. - DISPUTED BILLS

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

RULE 11. - DISCONTINUANCE OF SERVICE

Upon nonpayment of any charges or deposits owing to Company, Company, after complying with the procedures described in Rule 9, may, by giving ten days' prior written notice to Customer, discontinue or suspend Service under this tariff without incurring any liability.

Upon violation of any of the other terms or conditions for furnishing Service under this tariff, Company may, by giving 30 days' prior notice in writing to Customer, discontinue or suspend Service under this tariff without incurring any liability.

Upon condemnation of all or any material portion of the facilities used by 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, Company, by notice to Customer, may discontinue or suspend Service under this tariff without incurring any liability.

Upon Customer's filing for bankruptcy or reorganization, or failing to discharge an involuntary petition therefore within the time permitted by law, Company may immediately discontinue or suspend Service under this tariff without incurring any liability.

Upon Company's discontinuance of Service to Customer, 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 Customer during the remainder of the minimum term for which such Service would have otherwise have been provided to Customer to be immediately due and payable (discounted to present value at six percent).

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RULE 12. - INFORMATION PROVIDED TO THE PUBLIC

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 Company's office during normal business hours for inspection.

RULE 13. - TEMPORARY SERVICE

Temporary Service will be provided if such Service provision is consistent with the best interests of Company.

RULE 14. - CONTINUITY OF SERVICE

Company will provide 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.

RULE 15. - EXTENSIONS

(Not Applicable)

RULE 16. - FACILITIES ON CUSTOMER'S PREMISES

Customer shall allow Company continuous access and right-of-way to Customer's premises to the extent reasonably determined by Company to be appropriate to the provision and maintenance of Services, equipment, facilities and systems relating to this tariff.

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

Title to all facilities provided by Company, including terminal equipment, shall remain in Company. The operating personnel, and the electric power consumed by such equipment on the premises of Customer shall be provided by and maintained at the expense of Customer.

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RULE 16. - FACILITIES ON CUSTOMER'S PREMISES (Continued)

Customer 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 Company-provided equipment and wiring or injury to Company's employees or to other persons. Any additional protection equipment required to prevent such damage or injury shall be provided by Company at Customer's expense.

RULE 17. - MEASUREMENT OF SERVICE

(Not Applicable)

RULE 18. - METER TESTS AND ADJUSTMENTS OF BILLS

(Not Applicable)

RULE 19. - SUPPLY TO SEPARATE PREMISES AND RESALE

Company may require applicants for Service who intend to use Company's intraLATA offerings for resale to file a letter with Company confirming that their use of Company's offerings complies with relevant laws and CPUC regulations, policies, orders, and decisions. In the event that Customer is subscribing to a Service for the purpose of resale, Customer shall be responsible for all interaction and interfaces with Customer's own subscribers or customers. Monthly charges for each Service, which includes defined customer locations, is billed on a flat monthly rate.

RULE 20. - COMPANY-PROVIDED EQUIPMENT

Company is solely responsible for operating Company-provided equipment. In the event that Customer attempts to operate any Company-provided equipment without first obtaining Company's written approval, in addition to any other remedies of Company for a breach by Customer of Customer's obligations hereunder, Customer shall pay Company for any damage to Company-provided equipment caused by or related to Customer's improper operation of Company-provided equipment upon receipt by Customer of a

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Company invoice therefor. In no event shall Company be liable to Customer or any other Person for interruption of the Service or for any other loss, cost or damage caused by or related to Customer's improper use of Company-provided equipment.

Customer agrees to allow Company to remove all Company-provided equipment from Customer's Premises upon (a) termination, interruption or suspension of the Service in connection with which the equipment was used, and (b) for repair, replacement or otherwise as Company may reasonably determine is necessary or desirable. At the time of such removal, such equipment shall be in the same condition as when delivered to Customer or installed in Customer's Premises, normal wear and tear only excepted. Customer shall reimburse Company for the unamortized cost of any such equipment in the event the foregoing conditions are not met.

#### RULE 21. - ADDITIONAL CUSTOMER OBLIGATIONS

Unless otherwise agreed in writing, Customer is responsible for taking all necessary legal and other steps for interconnecting Customer's Terminal Equipment or communications systems, and Access Lines of any kind, with Company facilities. Customer shall secure all licenses, permits, certificates, rights-of-way and other arrangements necessary for such interconnection.

Customer shall not use the Service in violation of any applicable law, rule or regulation. In the event that Company determines that Customer has violated Customer's obligation in the preceding sentence, in addition to any other remedies which Company may have, Company may suspend Service to Customer without liability, provided that Company shall forthwith notify Customer (which notice may be given by telephone) of the reason for such interruption.

Customer shall insure that Customer's Terminal Equipment and any Access Lines are properly interfaced with Company facilities, that the signals emitted into Company's network are of the proper mode, bandwidth, power, data speed, bit error rates, and signal level for the intended use of Customer and that the signals do not damage Company equipment or equipment owned by others, cause personal injury or degrade services made available or provided to other users of Company facilities or services. Customer Terminal Equipment shall be maintained by Customer at its sole expense, unless otherwise agreed between Company and Customer. If Customer fails to maintain, interconnect, and operate Customer Terminal Equipment properly, or if any Access Line is not interconnected or operated properly, with resulting

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imminent threat of personal injury or harm to Company equipment of equipment owned by others, or to the quality of service made available or provided to other users of Company services or facilities, Company may, upon notice to Customer, require the use of protective equipment at Customer's expense. If such action fails to produce satisfactory quality and safety, Company may, upon notice to Customer, terminate the Service.

Notwithstanding the foregoing, if Company in its sole judgment determines that such failure could cause personal injury or be harmful to Company's equipment or equipment owned by others, or to the services made available or provided to others, Company may immediately interrupt the Service and disconnect Customer Terminal Equipment or any Access Lines without liability to Customer, provided that Company shall forthwith notify Customer (which notice may be given by telephone) of the reason for such interruption.

If Company-provided equipment is to be installed on Customer's Premises, Customer is responsible for all costs connected therewith including, without limitation, the expenses of Customer personnel as needed, electrical power, space, air conditioning, other utilities, local governmental permits and, if required, permission of Customer's landlord (in form and substance acceptable to Company). If necessary, Customer shall also be responsible for arranging access to areas near or adjacent to Customer's Premises, which is necessary in order to provide the Service at Customer's Premises. Customer is responsible for obtaining all necessary local governmental permits related to the location at Customer's Premises of Company's equipment. Company shall be permitted to use Company-provided equipment on or in Customer's Premises for purposes other than providing the Service to Customer.

#### RULE 22. - LIMITATION OF LIABILITY AND INDEMNITIES

Nothing herein shall be deemed to limit Company's liability for Company's fraud or willful misconduct.

THE WARRANTIES EXPRESSLY SET FORTH IN THE COMMUNICATIONS SERVICES AGREEMENT 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. The remedies of Customer with respect to the Service shall be limited to those expressly provided herein to the exclusion of any and all other remedies. No agreement varying or extending such warranties, the remedies expressly provided, or these limitations, will be binding upon Company unless in writing and signed by Company and Customer.

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Company does not transmit messages, although Customer may use the Service for that purpose. Company is providing dedicated communications Circuits to customer, without respect to the volume, quantity, content or value of signals transmitted over the Service. The payments provided for to Company are based solely on the value of the Service, and are unrelated to the nature, content, volume or value of any signals or communications transmitted over the Service. Company is not liable for losses which may occur in cases of malfunction or nonfunction of the Service of Company's facilities, even if due to Company's negligence, gross negligence or failure of performance, except as expressly provided herein. Company is not an insurer. Insurance, if any, covering personal injury, property loss or loss of revenue or business advantage shall be obtained and maintained by Customer if desired by Customer. IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES WHICH MAY ARISE IN SITUATIONS WHERE THERE MAY BE A FAILURE OF THE SERVICE, DUE TO THE UNCERTAIN NATURE OF THE VOLUME, NATURE, CONTENT AND VALUE OF MESSAGES, SIGNALS OR COMMUNICATIONS TRANSMITTED OVER THE SERVICE. THEREFORE, IF ANY LIABILITY IS IMPOSED ON COMPANY, SUCH LIABILITY SHALL BE LIMITED TO THE AMOUNT HEREAFTER STATED. THE PAYMENT OR CREDIT OF THESE AMOUNTS SHALL BE COMPANY'S SOLE AND EXCLUSIVE LIABILITY REGARDLESS OF WHETHER LOSS OR DAMAGE IS CAUSED BY THE PERFORMANCE OR NONPERFORMANCE OF COMPANY'S OBLIGATIONS UNDER THIS AGREEMENT, OR BY NEGLIGENCE OR GROSS NEGLIGENCE, ACTIVE OR OTHERWISE, OF COMPANY, ITS EMPLOYEES, AGENTS OR REPRESENTATIVES.

The liability of Company for damages arising out of mistakes, omissions, interruptions, delays, error or defects occurring in the Service or otherwise with respect to the Service, where caused by the gross negligence of Company, its employees, agents or representatives, shall in no event exceed the greater of an amount equivalent to the proportionate charge to Customer for the affected Circuit(s) for the period during which such mistake, omission, interruption, delay, error or defect occurs, calculated in accordance with Rule 25; or the total sum of Five Thousand Dollars (\$5,000.00), regardless of the number of affected Circuits.

The liability of Company for damages arising out of mistakes, omissions, interruptions, delays, errors or defects occurring in the Service or otherwise with respect to the Service, where due to causes other than fraud, willful misconduct or gross negligence of Company, and even if caused by the negligence, whether active or passive, of Company, its employees, agents or representatives, shall in no event exceed an amount equivalent to the proportionate charge to Customer for the affected Circuit(s) for the period during which such mistake, omission,

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interruption, delay, error or defect occurs, calculated in accordance with Rule 25.

Company shall not be liable for:

Libel, slander or infringement of patent or copyright arising from or in connection with the transmission of communications over the Service, unless such libel, slander or infringement results solely from the negligence or willful misconduct of Company;

Infringement of patents or copyright arising from the combination or use of Company-provided facilities with Customer-provided facilities or services;

Unlawful or unauthorized use of the Service or Company's facilities;

Any claim arising out of or relating to the provision of Special Facilities, including the furnishing, installation, operation, maintenance or removal of Special Facilities at Customer Premises;

Any claim arising out of a breach in the privacy or security of communications transmitted over the Service.

Customer shall defend, indemnify and hold Company harmless of and from any and all liability, loss, claims, costs, demands, damages, or expenses disclaimed herein arising out of or in connection with the provision of Service by Company to Customer, and shall pay all expenses and satisfy all judgments which may be incurred by or rendered against Company in connection therewith. Company shall notify Customer of any such suit or claim against Company.

The remedies provided herein shall be the sole and exclusive remedies of Customer for failure, omission or delay of the Service. COMPANY SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE OR FOR THE LOSS OF REVENUE, PROFIT OR DATA OR ECONOMIC LOSS OF ANY KIND FOR ANY REASON WHATSOEVER, EXCEPT AS EXPRESSLY PROVIDED HEREIN.

Company shall not be liable for any act or omission of any other Person furnishing a communications path to Customer or furnishing a communications path that is included in, facilitates or forms a part of the Service, except as expressly provided herein. The Service may include facilities or services provided by other Persons. Such services or facilities provided

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by others are provided under tariffs or agreements with disclaimers and limitations of liabilities similar to those contained herein, which may require Company to indemnify such other Persons in the event of the assertion of any liability inconsistent with such tariffs and/or agreements. The limitations and disclaimers of liability herein shall apply with equal force and effect to any Person providing any services or facilities that are included in, form a part of, or facilitate the provision of the Service to Customer, and Customer hereby releases and discharges all such Persons from any liability in excess of the liability provided for herein. Customer shall defend and indemnify Company and any such Person in the event of the assertion by an other Person, including Customer's customers, of any claims or liabilities inconsistent herewith.

Company shall not be liable for delay, interruption or failure of the Service when due to acts of God or the public enemy, riots, labor disputes, delays of suppliers, contractors, subcontractors, vendors or other carriers, severe weather, laws, rules or regulations whether enacted before or after the date of this Tariff, delay caused by any governmental authority or entity of any nature in giving an approval required for the installation of equipment or facilities necessary to supply the Service, or for any cause beyond Company's reasonable control ("Force Majeure"). Without incurring any liability to Customer, Company reserves the right to discontinue efforts to provide the Service, upon notice given to Customer, on account of Force Majeure.

Company is a corporation organized under the laws of the State of California. Recourse by Customer or others arising out of or in connection with the Service or under the Communications Service Agreement is expressly limited to, and will be had solely against, Company and the assets of Company; and no claim, suit or other demand will be made or asserted against any investors in the Company, or any of their assets other than their interest in Company.

Company 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.

Company is not liable for any defacement of, or damage to, the Premises or any other property of Customer or anyone (whether real or personal) resulting from the furnishing or installation of Customer-provided equipment of Special Facilities or the attachment of instruments, apparatus and associated wiring furnished by Company on Customer's Premises or anywhere or by

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the removal thereof, when such defacement or damage is not the result of Company's sole negligence. No agents, servants or employees of any other Person providing a Circuit to Customer shall be deemed to be an agent, servant or employee of Company.

Company shall not be liable to Customer for the failure to provide the Service, or any part thereof, by the Target Commencement Date in the Communications Services Agreement for any Circuit. Customer's sole remedy for Company's failure to achieve a Target Commencement Date or Dates shall be the right of cancellation as set forth in Rule 23.

RULE 23. - CANCELLATION OF SERVICE BY CUSTOMER; CANCELLATION CHARGES

If Customer cancels all or a portion of its order for Service before the Commencement Date or before completion of the Term agreed upon for provision of Service, Customer shall forthwith pay to Company all charges theretofore accrued and unpaid with respect to such Service and shall pay to Company the cancellation charges with respect to such Service described herein.

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 agreed upon for provision of Service, or if Service is terminated with respect to all or a portion of the Service as provided in Rules 9, 11 or 21, Customer shall pay to Company the amount representing non-recoverable portions of expenditures and liabilities made and incurred with respect to such terminated Service by Company and not previously reimbursed by Customer to Company, including, without limitation, the unreimbursed portion of all costs and expenses incurred by Company with respect to the construction and/or installation of Special Facilities, engineering costs, sales expenses including commissions to Company sales representatives, and all termination or cancellation charges incurred by Company to any other Person furnishing all or any portion of a Circuit.

Notwithstanding the foregoing, Customer may cancel the Service, without payment of cancellation charges or other liability to Company, as to each Circuit for which the Availability Notice is not given by Company within ninety (90) days of the Target Commencement Date for such Circuit in the Communications Services Agreement. Customer must give notice to Company of such cancellation within seven (7) days of the date ninety (90) days after the applicable Target Commencement Date, or Customer's right to cancel the Service with respect to such Circuit shall be waived.

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RULE 24. - MAINTENANCE OBLIGATIONS OF COMPANY

Trouble Report List; Escalation List: Company shall provide to Customer a twenty-four (24) hour a day, three hundred sixty-five (365) days per year, trouble-reporting telephone number.

Response to and Notification of System Impairment or Outage: Any impairment or outage reasonably suspected to be caused by facilities on Company's side of the Demarcation Point shall require response from Company. During system impairments or outages affecting Customer service, Company shall keep Customer advised and updated.

Maintenance Considerations and System Degradation Thresholds: The maintenance responsibility for each Circuit provided by Company on Company's side of the Demarcation Point lies entirely with Company. The Demarcation Point defines the maintenance responsibilities boundary between Company and Customer. Customer is responsible for maintenance of Customer Terminal Equipment and Access Lines, unless otherwise agreed by Company and Customer. Company is required to take maintenance actions when the following condition arises and the cause is traced to Company-provided facilities: Bit Error Rate ("BER") exceeds 10<sup>-4</sup> averaged any 10-minute interval (fading hits are excluded). The Circuit shall be considered non-acceptable and an interruption in the Service shall be deemed to exist when:  
(a) BER exceeds 10<sup>-3</sup> averaged over any one-minute interval; or  
(b) there is a loss of continuity and it is verified by Company maintenance personnel.

Planned Outages: Routine planned outages (non-critical) for preventative maintenance purposes will be scheduled five (5) calendar days in advance.

Verification of Quality of Circuit Performance: Company shall perform and make available to Customer results of circuit operational parameter tests upon request, but not more often than after each outage or annually.

The use and restoration of Service in emergencies described in 47 CFR 64, subpart D (of the Federal Communications Commission's Rules and Regulations) shall be made in accordance with such regulations, which specify the priority system for such activities.

Company may, upon reasonable notice (which may be given by telephone), make such tests, adjustments and inspections as may be necessary to determine that the requirements hereof are being complied with in the installation, operation or maintenance of

Customer or Company equipment, and to maintain same in satisfactory condition. No interruption allowance will be granted for the time during which such tests, adjustments and inspections are being performed.

RULE 25. - CREDITS FOR INTERRUPTIONS IN SERVICE

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

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

For calculating credit allowance, 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. Customer will receive a credit only for the interrupted portion of a Service.

A credit allowance will be given for interruptions of 30 minutes or more. Credit allowances shall be credited in 15 minute increments.

Customer shall not be entitled to an allowance for (and shall hold Company harmless from) an interruption to the Service attributable to (a) the act or omission of any other Person, or (b) for an interruption of the Service attributable to an interruption, failure, disturbance or other occurrence to or in any communications path or portion of a communications path or any equipment on Customer side of the Demarcation Point, including any Access Line. Where Company has provided a Circuit to Customer through use of another Person's facilities on Company's side of the Demarcation Point, and an interruption of the Service is due to the failure of the portion of the Circuit provided to Company by such Person, or otherwise due to the act or omission of such Person, Company will provide an allowance to Customer.

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RULE 26. - CUSTOMER INTERCONNECTION WITH OTHER CARRIERS

Service furnished by Company is not part of a joint undertaking with any other Person or Persons providing Service to Customer on Customer side of the Demarcation Point, and the rates and charges for such services and the use of such facilities shall be borne by Customer. Any specific interface equipment or facilities necessary to achieve compatibility between the facilities of Company and a Person providing a communications path on Customer's side of the Demarcation Point shall be provided at Customer's expense.

RULE 27. - MISCELLANEOUS

If any provision or provisions of this Tariff shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in anyway be affected or impaired thereby.

Captions used in this Tariff are for convenience of reference of the provisions to which such captions may refer only and shall not be deemed or construed in any way as limiting or extending the language.

Nothing in this Tariff shall be deemed to create a joint venture, partnership or principal-agent relationship between Company and Customer. Nothing in this Tariff shall be deemed to create a contractual relationship with or to confer any benefit or right upon any Person not a Customer hereunder.

Notwithstanding any provision in this Tariff to the contrary, Customer's obligation to pay charges to Company and otherwise compensate, indemnify and/or hold Company harmless and Company's rights and the limitations on Company's liability contained in this Tariff shall survive the expiration, cancellation or termination of this Tariff or any Service which is the subject of this Tariff.

Nothing herein shall be construed as conveying to Customer any right, title or interest in the Circuits, Service or equipment provided hereunder, except as expressly set forth herein, or in the Communication Services Agreement.

In the event any action is commenced to enforce or interpret the terms of the Communications Services Agreement or this Tariff, the prevailing party shall be entitled to recover its reasonable fees, either as damages or as an item of costs. Any such action may be brought in the County of San Diego, California.

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This Tariff and any Communications Service Agreements negotiated between Company and its customers contain all effective rates and rules together with information relating to, and applicable to, Company's inter- and intraLATA private line high speed data transmission Services. In case of any conflict between the language contained in this Tariff and the Communications Services Agreement, the language of this Tariff will prevail.

The rights of Company and 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 Services Agreement, except for the following: the Service of any Customer violating the provisions of this Tariff may be disconnected.

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NOTICE TO NEW CUSTOMERS  
CONCERNING THE INTRALATA SERVICE  
OF SAN DIEGO LINKATEL

San Diego LINKATEL's intralATA high speed digital private line telecommunications services are only provided at speeds of 1.544 Mbps or higher. These services are only offered on a 24-hour, full period (round-the-clock), dedicated (non-switched) basis.

All other intralATA telecommunications (less than 1.544 Mbps) needed by the customer should be placed over the facilities of an authorized carrier.

(END OF APPENDIX A)

APPENDIX B  
Page 1

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

Commission

Branch, Room 3251

California Public Utilities

Auditing and Compliance

505 Van Ness Avenue

San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call  
(415) 557-2484.



APPENDIX B  
Page 2.

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities.

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).  
If incorporated, specify:
  - a. Date of filing articles of incorporation with the Secretary of State.
  - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
  - a. Regulated public utility.
  - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

(END OF APPENDIX B)