

Carrier “C” – Off Net Terms & Conditions

Overview

The customer (“Customer”) purchasing the Off Net Services (sometimes referred to herein as “Facilities for Interstate Access” or “FIA”) under the Service Order to which these terms are either attached or as they are posted on Supplier’s website agrees that the following terms and conditions (collectively, the “Off Net Terms”) apply to the portion of the Off Net Services that are provided by Alpheus Communications, L.P. (“Supplier”) over the telecommunications network facilities owned and/or operated by a third party carrier (collectively, the “Off Net Services”). In the event of a conflict between these Off Net Terms and the terms of the Master Service Agreement (the “Agreement”) controlling the Service Order to which these Off Net Terms are made a part of, these Off Net Terms shall control with respect to the Off Net Services. Customer acknowledges and agrees that these Off Net Terms may be modified from time to time and that such changes shall be posted on Supplier’s website at www.alpheuscommunications.com. Customer acknowledges that it is Customer’s responsibility to refer to such website from time to time and that Customer’s receipt of Off Net Services after the effective date of any such change constitutes Customer’s acceptance of each such change.

2.1.2 Limitations

(C) SUPPLIER DOES NOT WARRANT THAT THE FACILITIES AND SERVICES MEET STANDARDS OTHER THAN THOSE SET FORTH IN THESE OFF NET TERMS.

2.1.3 Liability

- (A) WITH RESPECT TO ANY CLAIM OR SUIT BY CUSTOMER FOR DAMAGES ASSOCIATED WITH THE INSTALLATION, PROVISION, TERMINATION, MAINTENANCE, REPAIR OR RESTORATION OF FIA, AND SUBJECT TO THE PROVISIONS OF (B) AND (C), SUPPLIER’S LIABILITY, IF ANY, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE PROPORTIONATE CHARGE FOR THE FIA FOR THE PERIOD DURING WHICH THE PROVISION OF FIA WAS AFFECTED. This liability for damages shall be in addition to any amounts that may otherwise be due the Customer under these Off Net Terms as a credit allowance for a provision of FIA interruption.
- (B) Supplier shall not be liable for any act or omission of any other carrier or Customer providing a portion of a service or FIA, nor shall Supplier, for its own act or omission, hold liable any other carrier or Customer providing a portion of a service.
- (C) Supplier and its third party providers of the Off Net Services and FIA shall be indemnified, defended and held harmless by the Customer against any claim, loss or damage arising from the use of FIA provided pursuant to these Off Net Terms. The foregoing indemnity shall issue on the Customer separately, each being responsible for its own acts and omissions, involving:
- Claims for libel, slander, invasion of privacy, or infringement of copyright arising from any communications;
 - Claims for patent infringement arising from combining or using the FIA furnished by Supplier in connection with facilities or equipment furnished by the Customer; or
 - All other claims arising out of any act or omission of the Customer in the course of using FIA provided pursuant to these Off Net Terms.
- (D) Supplier does not guarantee or make any warranty with respect to its FIA when used in an explosive atmosphere. Supplier and its third party providers of these Off Net Services and FIA shall be indemnified, defended and held harmless by the Customer from any and

all claims by any person relating to the FIA so provided. The foregoing indemnity shall issue on the Customer separately, each being responsible for its own acts and omissions.

- (E) UNDER NO CIRCUMSTANCES WHATEVER SHALL SUPPLIER NOR ANY THIRD PARTY PROVIDER OF THE OFF NET SERVICES OR FIA BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; AND THIS DISCLAIMER SHALL BE EFFECTIVE NOTWITHSTANDING ANY OTHER PROVISIONS HEREOF.
- (F) No license under patents is granted by Supplier to the Customer or shall be implied or arise by estoppel in the Customer's favor with respect to any circuit, apparatus, system or method used by the Customer in connection with FIA provided under these Off Net Terms. With respect to claims of patent infringement made by third persons, Supplier will, subject to Section 2.3.9 below, defend, indemnify, protect and save harmless the Customer from and against all claims arising out of the use by the Customer of FIA provided under these Off Net Terms.
- (G) Supplier's failure to provide or maintain FIA under these Off Net Terms shall be excused by labor difficulties, governmental orders, civil commotions, acts of God and other circumstances beyond Supplier's reasonable control.

2.1.3-S Additional Limitation of Liability Provisions

The liability of Supplier (and any third party provider of the Off Net Services) arising out the provision of Off Net Services, delays in the restoration of Off Net Services to be provided pursuant to these Off Net Terms or any other telecommunications services, or arising out of mistakes, accidents, omissions, interruptions, errors or defects in transmission, or delays caused by judicial or regulatory authorities, shall be subject to the limitations set forth below and in any applicable tariff. IN NO EVENT SHALL SUPPLIER, CUSTOMER OR ANY THIRD PARTY PROVIDER OF OFF NET SERVICES BE LIABLE TO ANY OTHER PARTY HEREUNDER, OR TO CUSTOMER'S OWN CUSTOMERS, OR TO ANY OTHER THIRD PARTY WITH RESPECT TO THE SUBJECT MATTER OF THESE OFF NET TERMS, UNDER ANY CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY FOR ANY TYPE OF INDIRECT, CONSEQUENTIAL, INCIDENTAL, RELIANCE, SPECIAL, OR PUNITIVE DAMAGES, OR FOR ANY LOST PROFITS, LOST REVENUES, OR LOST SAVINGS OF ANY KIND, ARISING OUT OF OR RELATING TO THESE OFF NET TERMS OR THE OBLIGATIONS OF THE PARTIES PURSUANT TO THESE OFF NET TERMS, WHETHER OR NOT SUPPLIER, ANY THIRD PARTY PROVIDER OR CUSTOMER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE. IN NO EVENT SHALL SUPPLIER OR ANY THIRD PARTY PROVIDER BE LIABLE TO CUSTOMER FOR ANY AMOUNT IN EXCESS OF THE AGGREGATE AMOUNT SUPPLIER HAS PRIOR TO SUCH TIME COLLECTED FROM CUSTOMER WITH RESPECT TO THE OFF NET SERVICES DELIVERED HEREUNDER. NEITHER SUPPLIER NOR ANY THIRD PARTY PROVIDER OF THE OFF NET SERVICES MAKES ANY WARRANTY TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, OR FITNESS FOR ANY PURPOSE OF ANY OFF NET SERVICES PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH WARRANTIES ARE HEREBY EXCLUDED AND DISCLAIMED. For purposes of this Section, the term "Supplier" shall be deemed to include Supplier, its affiliates, shareholders, directors, officers and employees, and any other third party (whether a person or entity) assisting Supplier in its performance pursuant to these Off Net Terms.

2.1.6 Maintenance of FIA

- (A) The FIA provided under these Off Net Terms shall be maintained by Supplier. The Customer or others may not rearrange, move, disconnect, remove or attempt to repair any FIA provided by Supplier, other than by connection or disconnection to any interface means used, except with the written consent of Supplier.

2.1.7 Changes and Substitutions

Except as provided for equipment and systems subject to Part 68 of the FCC Rules and Regulations in 47 C.F.R. Paragraph 68.110 (b), Supplier or the third party provider of the FIA may, where such action is reasonably required in the operation of its business, substitute, change, or rearrange any telephone plant used in providing FIA under these Off Net Terms, change minimum network protection criteria, change operating or maintenance characteristics of facilities, or change operations or procedures of Supplier or the third party provider. In case of any such substitution, change or rearrangement, the facility parameters will be within generally accepted standards. Neither the Supplier nor the third party shall be responsible if any such substitution, change or rearrangement renders any services obsolete or requires modification or alteration thereof or otherwise affects their use or performance. If such substitution, change, or rearrangement materially affects the operating characteristics or technical parameters of the FIA, as originally ordered by the Customer, Supplier will notify the Customer in writing prior to making such substitution, change or rearrangement. The changes may or may not affect the technical parameters of the interface and could include level, impedance, signaling, interface, bandwidth, two-wire, four-wire, etc.

Supplier will work cooperatively with the Customer relative to the redesign and implementation required by the change in operating characteristics.

2.1.8 Discontinuance and Refusal of FIA

- (A) Failure to comply with any of the terms and conditions of these Off-Net Terms, including any payments to be made on the dates or at the times herein specified, and the failure of the Customer to correct such noncompliance within twenty-five (25) days after written notice from Supplier to the Customer, Supplier may discontinue the provision of the FIA to the non-complying Customer. In case of such discontinuance, all applicable charges shall become due.

(B) If the Customer fails to comply with the provisions of these Off Net Terms in connection with the provision of a FIA or group of FIA, and fails to correct such course of action after notice as in (A), Supplier may refuse applications for additional FIA to the non-complying Customer until the course of action is corrected.

2.2.2 Unlawful Use of FIA

The FIA are furnished subject to the condition that they will not be used for an unlawful purpose. FIA will be discontinued if any law enforcement agency, acting within its apparent jurisdiction, advises in writing that such FIA are being used in violation of law. Supplier will refuse to furnish FIA when it has reasonable grounds to believe that such FIA will be used in violation of law.

2.3 Obligation of the Customer

2.3.1 Damages

The Customer shall reimburse Supplier for damages to any facilities of Supplier or its third party providers utilized to provide FIA under these Off Net Terms caused by:

- the negligence or willful act of the Customer, or
- resulting from the Customer's improper use of such facilities, or

- due to malfunction of any facilities or equipment provided by other than Supplier.

Nothing in the foregoing provision shall be interpreted to hold Customer liable for another customer's actions. Supplier will, upon reimbursement for damages, cooperate with the Customer in prosecuting a claim against the person causing such damage and the Customer shall be subrogated to the right of recovery by Supplier for the damages to the extent of such payment. The amount of reimbursement shall be the actual cost of repair to the damaged facilities, including Supplier's and the third party provider's labor costs.

2.3.2 Theft

The Customer shall reimburse Supplier for any loss through theft of facilities, apparatus, or equipment utilized to provide FIA under these Off Net Terms at the Customer-designated location or at the end user's premises. The amount of reimbursement shall be the actual cost for replacement of facilities, apparatus, or equipment lost, plus Supplier's and the third party provider's labor costs.

2.3.3 Equipment Space and Power

Customer shall furnish or arrange to have furnished to Supplier and/or the third party provider at no charge, equipment space and electrical power required by Supplier to provide FIA under these Off Net Terms at the points of termination of such FIA. The equipment space provided shall meet industry standard environmental conditions.

The selection of ac or dc power shall be mutually agreed to by the Customer, Supplier and/or the third party provider. The Customer shall also make necessary arrangements in order that Supplier and/or the third party provider will have access to such spaces at reasonable times for installing, repairing or removing facilities of Supplier and/or the third party provider.

2.3.5 Availability for Testing

The FIA provided under these Off Net Terms shall be available to Supplier and/or the third party provider at times mutually agreed upon in order to permit Supplier and/or the third party provider to make tests and adjustments appropriate for maintaining the FIA in satisfactory operating condition. Such tests and adjustments shall be completed within a reasonable time. **NO CREDIT WILL BE ALLOWED FOR ANY INTERRUPTIONS INVOLVED DURING SUCH TESTS AND ADJUSTMENTS.**

2.3.7 Design of Customer Services

Subject to the provisions of 2.1.7, the Customer shall be solely responsible at its expense for the overall design of its services. The Customer shall be responsible at its own expense, for any redesigning or rearrangement of its services which may be required because of changes in FIA, operations or procedures of Supplier or the third party provider, minimum network protection criteria or operating or maintenance characteristics of the FIA.

2.3.9 Claims and Demands for Damages

(A) With respect to claims of patent infringement made by third persons, the Customer shall defend, indemnify, protect and save harmless Supplier and its third party provider of Off Net Services and facilities from and against all claims arising out of the combining with, or use in connection with, the FIA provided under these Off Net Terms, any circuit, apparatus, system or method provided by the Customer, the local access provider or its end users.

(B) The Customer shall defend, indemnify and save harmless Supplier and its third party provider of Off Net Services and facilities from and against suits, claims, and demands by third persons arising out of the construction, installation, operation, maintenance, or removal of the Customer's circuits, facilities, or equipment connected to Supplier's or the third party provider's FIA provided under these Off Net Terms including, without limitation, Workmen's Compensation claims, actions for infringement of copyright and/or unauthorized use of program material, libel and slander actions based on the content of communications transmitted over the Customer's circuits, facilities or equipment, and proceedings to recover taxes, fines, or penalties for failure of the Customer to obtain or maintain in effect any necessary certificates, permits, licenses or other authority to acquire or operate the FIA provided under these Off Net Terms; provided, however, the foregoing indemnification shall not apply to suits, claims, and demands to recover damages for damage to property, death, or personal injury unless such suits, claims or demands are based on the tortuous conduct of the Customer, its officers, agents or employees.

2.3.10 Coordination With Respect to Network Contingencies

The Customer shall, in cooperation with Supplier, coordinate in planning the actions to be taken to maintain maximum network capability following natural or man-made disasters which affect telecommunications services.

2.4 Payment Arrangements and Credit Allowances

2.4.1 Payment of Charges and Deposits

(A) Supplier may, in order to safeguard its interests, require a Customer, which has a history of late payments to Supplier or does not have established credit, to make a deposit prior to or at any time after the provision of the FIA to the Customer, to be held by Supplier as a guarantee of the payment of rates and charges. The fact that a deposit has been made in no way relieves the Customer from complying with Supplier's requirements as to the prompt payment of bills. At such time as the provision of the FIA to the Customer is terminated, the amount of the deposit will be credited to the Customer's account and any credit balance which may remain will be refunded.

(C) Supplier shall bill FIA services on a current basis for (a) all charges incurred, (b) applicable taxes, and (c) credits due the Customer. Ancillary and miscellaneous services shall be billed in arrears.

(D) All bills to the Customer are due twenty five (25) days (payment date) after the bill date or by the next bill date (i.e., same date in the following month as the bill date), whichever is the shortest interval. In the event the Customer does not remit payment in immediately available funds by the payment date, the FIA may be discontinued as specified in Section 2.1.8.

(1) If the entire amount billed is not received by Supplier in immediately available funds by the payment date, an additional charge (late payment charge) will be applied for each day or portion thereof that an outstanding balance remains. Such late payment charge amount on any unpaid amount shall accrue at a rate of one and one-half percent (1½%) per month, not to exceed any applicable maximum lawful rate, together with any court costs, reasonable attorneys' fees and all other costs of collection which Seller may incur in enforcing the terms of these Off Net Terms.

(2) In the event of a billing dispute, the Customer must submit a documented claim for the disputed amount.

- If the claim is received within five (5) months of the payment due date, and the Customer has paid the total billed amount, any interest credits due the Customer upon resolution of the dispute shall be calculated from the date of overpayment.

- If the claim is received more than five (5) months from the payment due date, any interest credits due the Customer upon resolution of the dispute shall be calculated from the later of the date the claim was received or the date of overpayment.

A credit will be granted to the Customer for both the disputed amount paid and an amount equal to the percentage rate in (1).

Supplier will assess or credit late payment charges on disputed amounts to the Customer as follows:

- If resolved in favor of Supplier and the Customer has paid the disputed amount on or before the payment due date, no late payment charges will apply.

- If resolved in favor of Supplier and the Customer has withheld the disputed amount, any payments withheld pending settlement of the dispute shall be subject to the late payment charge in (1).

- If resolved in favor of the Customer and the Customer has withheld the disputed amount, the Customer shall be credited for each month or portion thereof that the late payment charge in (1) may have been applied. In the event the Customer has paid the late payment charge, a credit will be granted to the Customer for both the late payment charge paid on disputed amount and an amount equal to the percentage rate in (1).

2.4.3 Cancellation of a Service Order (SO)

Provisions for the cancellation of an SO are set forth in Section 3.2.6 below.

2.4.4 Credit Allowance for FIA Interruptions

(A) General

A FIA is interrupted when it becomes unusable to the Customer because of a failure of a component used to furnish FIA under these Off Net Terms, or when the service is preempted as a result of invoking the National Security Emergency Preparedness (NSEP) Treatment or when the application of protective controls interrupt all transmission paths as set forth in Section 4.2.9 below. An interruption period starts when Supplier personnel become aware that the FIA is inoperative. The credit allowance(s) for an interruption or for a series of interruptions will be computed based upon the billing method which applies to the service being credited. In no case will the credit allowance for service interruptions exceed the applicable charges for the affected Off Net Services for the billing period during which the interruption occurred.

A credit allowance for any FIA service will apply for the period specified as follows:

(3) Except as noted, all FIA will be eligible for a credit allowance for each occurrence of a service interruption period greater than 30 minutes. The maximum credit allowance will be \$200.00 for each out of service condition within Supplier's facilities and will not exceed

the monthly charge for the interrupted Off Net Service. The credit allowance will not be applied more than once per calendar month. This credit allowance is applicable in all jurisdictions. A credit allowance will not be extended in accordance with conditions in 2.1.3(G) and 2.4.4(B) for repair of Supplier-owned or third party provider-owned facilities.

(B) When Credit Allowance Does Not Apply

No credit allowance will be made for:

- (1) Interruptions caused by the negligence of the Customer.
- (2) Interruptions of a FIA due to the failure of equipment or systems provided by the Customer or others.
- (3) Interruptions of a FIA during any period in which Supplier and/or the third party provider are not afforded access to the premises where the FIA is terminated.
- (4) Interruptions of a FIA during an agreed upon period when the Customer has released a FIA to the Supplier and/or the third party provider for maintenance purposes, to make rearrangements, or for the implementation of a SO for a change in the FIA. Should the maintenance, rearrangement, or SO implementation interruption period extend beyond the agreed upon period, credit allowance will apply.
- (6) Periods when the Customer elects not to release the FIA for testing and/or repair and continues to use it on an impaired basis.
- (7) Periods when Supplier must temporarily interrupt an FIA, in order to prevent damage or disruption of Supplier's and/or the third party's network due to the Customer's equipment.
- (8) An interruption or a group of interruptions, resulting from a common cause, for amounts less than one dollar.

(C) Use of an Alternative Service Provided by Supplier

Should the Customer elect to use an alternative service provided by Supplier during the period that a FIA is interrupted, the Customer must pay the applicable rates and charges for the alternative service used.

2.4.5 Performance Commitment Program

(A) Performance Commitment Program - Provisioning

Supplier will use reasonable commercial efforts to install and make available for Customer's use the FIA ordered by Customer within the standard objectives as set forth in the Service Supplement.

FACILITIES FOR INTERSTATE ACCESS

3. ORDERING OPTIONS FOR FIA

3.1 General

This section sets forth the regulations and order related charges for FIA Orders to provide the Customer with FIA. These charges are in addition to other applicable charges in other sections of these Off Net Terms.

3.1.1 Ordering Conditions

The Customer shall supply all details necessary to complete an order. The details may include the following: requested service date, Customer name, Customer designated location, end office, Interface Arrangement, type of Access, Supplemental Features, End Office Services and Signaling Interface, and originating and terminating capacity required. The Customer may also be required to provide end user name and location, end user contact person, and end user premises access information to complete an order for Special Access.

When a Customer orders mixed-use FIA, the Customer must indicate the jurisdiction based on the criteria in Section 5.1.6 below.

3.2.1 Service Date Intervals

The time required to provision service is known as the service date interval. Such intervals will be established on an individual case basis based on the standard objectives as set forth in the Service Supplement. The service date interval guidelines will apply to SOs and will specify the quantities of FIA that can be provided on the same service date. The Customer may request a service date other than that established for the Customer, and Supplier, where possible, will establish the service date in accordance with such request, subject, however, to other applicable provisions of these Off Net Terms.

3.2.2 SO Modifications

The Customer may request a modification of its SO prior to the service date. Supplier will make every effort to accommodate a requested modification when it is able to do so with the normal work force assigned to complete such a SO within normal business hours. If the modification cannot be made with the normal work force during normal business hours, Supplier will notify the Customer. If the Customer still desires the SO modification, Supplier will schedule a new service date. All charges for SO modifications will apply on a per occurrence basis. Where a new SO may be required, the appropriate charges in other sections of these Off Net Terms will be applicable.

(A) Service Date Change Charge

SO service dates may be changed, however a Service Date Change Charge will apply for each service date change after the plant test date of the original SO. Except as specified below, the new service date may not exceed the original service date by more than twenty (20) calendar days. If the requested service date is more than twenty (20) calendar days after the original service date, the SO will be canceled by Supplier. Cancellation charges in Section 3.2.6 below will apply, and the SO will be reissued with the new service date unless the Customer indicates that billing for the service is to commence as in Section 3.2.6(A). With the agreement of Supplier, a new service date may be established that is prior to the original service date and the provisions in (E) of this Section will apply in addition to the Service Date Change Charge.

(B) Partial Cancellation Charge

(1) When a SO for FIA is partially canceled on or after the Acceptance Period, the charge will be determined by multiplying the total nonrecurring charges for such services for the canceled portion of the order by the number of business days elapsed since the Acceptance Period and dividing that figure by the number of days in the service interval.

(2) When Customer cancels part of an SO for which billing has commenced as provided in Sections 3.2.2(A) and 3.2.6(A), cancellation charges in Section 3.2.6(C)(3) below will apply to that part of the SO being canceled.

(D) Design Change Charge

The Customer may request a design change to a pending SO for FIA or request a change to an existing Switched Access Service. A design change is a change which requires engineering review. The regulations, rates and charges for a design change are in Section 5.6.1(F)(1) for FIA below, and are in addition to the regulations, rates and charges specified in this section.

(E) Requests for Expedition

A Customer may request an expedited service date. When this situation occurs, expedite charges will apply. Supplier will provide an estimate of the expedite charges to the Customer. The Customer must accept the price estimate prior to Supplier's performing the expedite. The actual charges billed to the Customer will be no more than 15 percent over the estimate.

3.2.6 Cancellation of an SO

(A) Customer may cancel ordered FIA on any date prior to the service date. The cancellation date is the date Supplier receives written notice from the Customer that the SO is to be canceled. For FIA, if a Customer is unable to accept service within twenty five (25) calendar days of the original service date, the Customer has the choice of the following options:

- The SO shall be canceled and charges in (C) will apply, or
- Billing for the service will commence.

In either case, the cancellation date or the billing date shall commence on the twenty sixth (26th) calendar day beyond the original service date of the SO.

(B) SO costs are considered to have started when Supplier incurs any cost in connection therewith or in preparation thereof which would not otherwise have been incurred. These costs include, but are not limited to preliminary engineering, orders to suppliers, and other similar items of cost.

(C) When Customer cancels an SO for the installation of new service, or an SO to modify existing service, charges will apply as follows:

(1) When an SO for FIA is canceled on or after the Acceptance Period, the cancellation charge is calculated, on a per SO basis, by multiplying the total nonrecurring charges for the quantity ordered by the number of business days elapsed since the Acceptance Period and dividing that figure by the number of days in the service interval (i.e., the number of business days between the order date and the last day of the service date interval).

(3) When Customer chooses to commence billing rather than cancel an SO for these services specified in (A), Customer must submit an SO prior to calendar day twenty-six (26) from the original service date and request a service date change. The new service date may not exceed the original service date by more than one hundred and ten (110) calendar days. Charges in Section 3.2.2(A) will only apply for each subsequent service date change request after calendar day twenty-six (26), not to exceed one hundred and ten (110) calendar days.

When a Customer elects to commence billing, monthly recurring charges will begin accruing at calendar day twenty-six (26) after the original service date. Upon completion of the SO, the initial bill for the service will include these accrued charges and any additional nonrecurring charges in addition to billable charges specified in 2.4.1(C).

If the SO is not completed within one hundred and eleven (111) calendar days of the original service date, the SO will be canceled. Cancellation charges in (C)(2) will apply. In addition, the Customer will be billed the accrued monthly recurring charges specified above plus any additional nonrecurring charges applicable for the Service. These charges will be computed commencing at day twenty six (26) after the original service date up to and including the cancellation date, not to exceed ninety (90) days of service (one hundred and ten (110) days from the original service date). Supplier will not reissue an SO with a new service date beyond one hundred and eleven (111) calendar days. It will be the Customer's responsibility to submit a new SO for FIA.

4.2.9 Network Management

The Supplier and/or the third party provider will administer its respective network to ensure the provision of standard traffic grade of service levels to all telecommunications users of the Supplier's and/or third party provider's network services, as applicable. The Supplier and/or the third party provider maintains the right to apply protective controls such as diversion of overflow traffic to informational announcements or restriction of access to congested traffic areas on any traffic carried over its network in order to assure satisfactory service levels to all customers. These controls include the right to restrict and, if necessary, deny access to and from the point of termination at the Customer Designated Location (CDL).

Outage credit will apply as in Section 2.4.4. above in cases where all transmission paths are blocked as a result of application of protective controls, except that to the extent these controls relate to emergency situations, no notice requirement is necessary beyond that already provided for in these Off Net Terms.

Section number-S Change-in-Law

If any federal or state statute or regulation or order by a court of law or regulatory authority directly (a) prohibits performance under these Off Net Terms, (b) makes such performance illegal, impossible or impractical, or (c) effects a change which has a material adverse impact upon any party's performance of its obligations under these Off Net Terms, then Supplier and the Customer will use all reasonable efforts to either (1) revise or amend such conflicting statute, regulation or order or (2) revise these Off Net Terms so that (a) performance under these Off Net Terms is no longer prohibited, illegal, impossible or is no longer impacted in a material adverse fashion, and (b) these Off Net Terms are revised in a manner that preserves, to the maximum extent possible, the respective positions of the parties hereunder. Supplier and the Customer will provide reasonable and prompt notice to the other as to any proposed laws, regulations or any regulatory proceedings or actions that could affect the rights and obligations of the parties hereunder. If the parties are unable to revise these Off Net Terms in accordance with the above, then the party whose performance is rendered prohibited, illegal, impossible, impractical or is impacted in a material adverse manner shall have the right, at its sole discretion, to cease performance of any such obligations that are so prohibited, impossible, impractical or materially and adversely affected upon thirty (30) days' prior written notice to the other party (or less if required by law). Supplier and the Customer will continue to perform all such obligations under these Off Net Terms that are not so prohibited, impossible, impractical or materially and adversely affected; provided if a material part of the rights and obligations under these Off Net Terms is suspended in accordance with the above and the performance of the remaining obligations would not reasonably maintain the respective positions of the parties or would not serve the essential purpose of these Off Net Terms, then either party shall have the right, at its sole discretion, to terminate these Off Net Terms upon thirty (30) days' prior written notice to the other party.

5.1 General

5.1.6 Ordering Conditions

(A) Determination of Jurisdiction of Mixed Use Special Access Lines

2. THE CUSTOMER REPRESENTS AND WARRANTS THAT THE INTERSTATE TRAFFIC ON THE PHYSICALLY INTRASTATE LINE PROVIDED AS PART OF THE FIA CONSTITUTES MORE THAN 10% OF THE TOTAL TRAFFIC ON THAT LINE. BASED UPON SUCH REPRESENTATION AND WARRANTY WITH RESPECT TO SUCH LINE, THE LINE WILL BE ORDERED AND PROVIDED IN ACCORDANCE WITH THE APPLICABLE RULES AND REGULATIONS OF THESE OFF NET TERMS.

(B) Special Access Jurisdictional Verification

If a billing dispute arises or a regulatory commission or governmental entity questions the Customer's certification of the jurisdiction of the line, the Supplier will ask the Customer to provide the data used to determine the jurisdiction. The Customer shall supply the data within 25 days of the Supplier's request. The Customer shall keep records of system design and functions from which the jurisdiction can be ascertained and upon request of the Supplier make the records available for inspection by Supplier or its agents as reasonably necessary for purposes of verification of the jurisdiction of the service.

5.6 Rate Regulations

5.6.1 Types of Rates and Charges

(F) Nonrecurring Charges

Nonrecurring charges are one-time charges that apply for specific work activity (i.e., installation of service or change to an existing service). The types of nonrecurring charges that apply for FIA include those listed below.

(1) Design Change Charge

The Customer may request a design change to the service ordered. A design change is any change to a pending SO for FIA which requires engineering review. Design changes include such things as changes in the terminating options.

The Supplier will review the requested change, notify the Customer whether the change can be accommodated and specify if a new service date is required. If the Customer authorizes the Supplier to proceed with the design change, a Design Change Charge will apply.

The Design Change Charge will apply on a per SO per occurrence basis, for each SO requiring a design change and will be priced on an individual case basis.

If a change of service date is required, the Service Date Change Charge as set forth in Section 3 preceding will also apply.