Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
KMC Telecom, Inc.'s	)	CC Docket No. 99-142
Petition for a Declaratory Ruling	)	
On Term Contracts and Tariffs with	)	
Early Termination Charges	)	

COMMENTS OF SOUTHWESTERN BELL TELEPHONE, PACIFIC BELL, NEVADA BELL AND SOUTHERN NEW ENGLAND TELEPHONE ON KMC TELECOM, INC.'S PETITION FOR DECLARATORY RULING

SOUTHWESTERN BELL TELEPHONE,
PACIFIC BELL, NEVADA BELL AND
SOUTHERN NEW ENGLAND
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SUMMARY

KMC requests the Commission to declare unlawful *all* termination charges of incumbent local exchange carriers ("ILECs"), to prohibit the enforcement of *all* such ILEC charges, and to require the removal of *all* such charges from ILEC state tariffs.

Term contracts with termination charges are a reasonable and standard business practice, and are common throughout the telecommunications industry. They are in the public interest because they offer telecommunications customers more options specifically tailored to meet their individual service needs, such as term discounts, reduced or deferred installation charges, etc.

KMC's Petition is largely premised on non-specific assertions and allegations, and by no means does KMC state a basis for vacating all ILEC term contracts and termination clauses/conditions in all markets and in all fifty states.

KMC has the burden to prove that all such contracts, clauses, and conditions violate or are inconsistent with Section 253(a) of the Federal Telecommunications Act with respect to State or local entry barriers and KMC has failed to meet that burden. Nor has KMC shown that its requested relief is "necessary to correct such [alleged] violation[s] or inconsistenc[ies]."

KMC's proposal is excessive, unreasonable, and discriminatory. It is not based upon particular facts and circumstances, and is to be applied to *all* ILEC term contracts and termination clauses/conditions without regard to their reasonableness or length. KMC does not identify any named customer, or present any testimony, to support the wide ranging allegations which KMC attributes to all such agreements and customers in general. KMC's proposal is also discriminatory because it only applies to ILECs and not to similar contracts, tariffs, and clauses offered by competitive local exchange carriers. ("CLECs").

KMC's claims of ILEC monopoly power in the markets mentioned are unsupported and unexplained. Local Competition is growing rapidly in the SBC Telephone Companies' markets without any across-the-board prohibition of ILEC term contracts or any "fresh look" type of requirement. Moreover, many of the services and markets chosen by KMC as examples (e.g., Centrex and high speed data access) have long been recognized as competitive. The ILECs possess no particular advantage, or any advantage for that matter, in those markets. In fact, prohibiting such ILEC term contracts and/or tariffs could have an adverse effect on their deployment of advanced wholesale access services for Information Service Providers ("ISPs"), who look to such contracts as a way of serving customers and providing them with advanced service capabilities.

The issues raised by KMC are more appropriately addressed at the State level on a service-by-service basis and based on the individual facts and circumstances of each case. It would be arbitrary and capricious to impose an across-the-board prohibition based on the record in this proceeding.

KMC should have raised its claims in the first instance in the relevant State proceedings. If KMC has a problem with a specific charge, contract, or tariff, it should file a fact-specific complaint rather than seeking a generic prohibition on *all* such ILEC charges, contracts and tariff provisions. KMC's real remedy (if any) should be to compete in the marketplace.

The Commission should deny KMC's Petition for Declaratory Ruling.

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Southwestern Bell Telephone, Pacific Bell, Nevada Bell and Southern New England Telephone (collectively, "SBC Telephone Companies") submit these comments in response to the Commission's May 4, 1999 Public Notice on KMC Telecom Inc.'s ("KMC") Petition for Declaratory Ruling. ("KMC Pet.")

I. Background.

KMC requests the Commission to declare unlawful *all* termination charges of incumbent local exchange carriers ("ILECs"), to prohibit the enforcement of *all* such ILEC charges, and to require the removal of *all* such charges from ILEC state tariffs. (KMC Pet., Summary p. i).

The referenced SBC Telephone Companies are all ILECs, and as such would be affected by KMC's proposals, as would every other ILEC in the country with term contracts and/or state tariffs with early termination charges.

KMC complains generally that its "efforts to enter local exchange markets throughout the country" have been hindered by "the imposition of excessive termination penalties on customers," and because of these "excessive financial penalt[ies]" (as KMC calls them) customers allegedly cannot switch service to KMC. (KMC Pet., p. 2). KMC

seeks to have the Commission vacate all such termination clauses/conditions for all markets in any customer contract and in all state jurisdictions.[1] Beyond these broad statements, the KMC Petition is largely premised on non-specific and unproven assertions and allegations, and by no means does KMC state a valid basis for vacating all ILEC term contracts and termination clauses/conditions in all markets and in all fifty States. For these reasons and others, the Petition cannot be granted.

II. Term Contracts With Termination Charges Are A Reasonable And Standard Business Practice.

Term contracts and tariffs with early termination charges are a standard business practice and are legally enforceable. Generally, such contracts and tariffs give customers the ability to pay less than on a month-to-month basis in exchange for the customer committing to a longer contract or tariff term. Early termination charges are standard as well, and can be designed to establish the measure of cost recovery. Establishing the measure of recovery at the beginning of the contract or tariff relationship can bring a level of certainty to the relationship and eliminate the need for both parties to engage in litigation later.

Term contracts offer options to meet a customer's specific needs. For example, a customer may want a particular serving arrangement or facility that is unique and is not generally available by tariff or which is specifically tailored to meet that customer's needs. The service provider may then agree to a nonstandard arrangement and build the facility to satisfy the customer in exchange for the customer committing to a specific term and to the payment of termination charges in the event the customer elects to terminate the contract early or no longer needs the facility. Because parts of or all of the arrangement or facility may not be reusable by the provider's other customers, it is entirely reasonable for the customer requesting it to bear the termination charges for early

[1] Although KMC alleges that it is only doing business in "23 markets in 12" unnamed states, the extent of requested relief is not limited to any of these unnamed markets and jurisdictions. [KMC Pet., 2].

service cancellation.[2] Early termination charges are also used in many instances to recover installation charges that have been previously waived for the customer. Such term contracts and tariffs are reasonable and in the public interest because they give customers more options than standard offerings.[3]

III. Term Contracts And Tariffs With Early Termination Charges Are Common Throughout The Telecommunications Industry.

Many telecommunications carriers use early termination clauses and this Commission and State regulatory commissions have routinely approved such arrangements because of the additional customer serving options they provide, whether in the form of a reduced rate, or in the form of a specialized serving arrangement, or in the form of deferral of installation charges.

Summary examples of tariffs containing such provisions which have been approved by this Commission and State Commissions are attached. (Attachment A). They are not just examples of ILEC tariffs, but of tariffs that were approved for AT&T, Sprint, Cable & Wireless, MCI, MCI Metro Access, MFS, Allegiance Telecom, ACSI, e. spire, Hyperion and Teleport.[4] There must be hundreds, if not thousands, of other similar tariffs that this Commission and State Commissions have approved.

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[2] *See Investigation into BellSouth and Alltel's Practices for Pricing Campus Wiring Associated With Provision of ESSX/Centrex Services*, 96 Fla. P.U.C. 8166 (August 23, 1996). ["Whether or not 100% of such an investment is attributed to a single service depends on whether that investment is fungible (i.e., reusable). If the investment is not fungible, then 100% of its cost should be attributed to and recovered through the rates for the specific service."]

[3] *Id.* ["To the extent that the LEC accounting treatment effectively reduces the amount of up-front costs to a potential purchaser, this aspect may be beneficial to certain customers."]

[4] Hyperion N.Y.P.S.C. Tariff No. 3, . 4.7.7 Original Page 39 provides an example of a tariff that in the termination charge seeks to recover all unpaid nonrecurring charges incurred in establishing service to the customer. ACSI Tariff Colorado PUC No. 1, . 2.14.4., Original Page 42 is an example of termination liability for facilities specially constructed at the request of the customer to the extent there is no other requirement for use by the Company. Sprint Customer Network Service Arrangements Tariff FCC No. 12, . 2.6, 5th Revised Page 32 and 1st Revised Page 32.1 is an example of termination liability for concessions, credits and installation charges previously waived. Allegiance

IV. KMC Has The Burden Of Proof To Establish A Violation Of Or Inconsistency With 47 U.S.C. Section 253(a) With Respect To State Or Local Entry Barriers.

KMC claims that the termination clauses/conditions violate Section 253(a) of the Federal Telecommunications Act ("FTA") which concerns State or local statutes, regulations, or requirements that prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. (KMC Pet., 8-9). KMC has the burden to prove the challenged conditions meet the Section 253(a)&(d) requirements. It is not enough to make mere assertions without demonstrative evidence that KMC has been denied the ability to provide service. *See In the Matter of California Payphone Association Petition for Preemption of Ordinance No. 576 NS of the City of Huntington Park, California*, 12 FCC Rcd 14191, paragraphs 25 & 37 (rel. July 17, 1997) [finding that the allegations asserted in support of preemption were not sufficiently supported in the record].

V. KMC Has Failed To Meet That Burden.

Section 253(d) obligates the Commission to remove any state or local legal requirement that "prohibits or has the effect of prohibiting the ability of" any firm from providing any interstate or intrastate service *but only* "to the extent necessary to correct such violation or inconsistency." 47 U.S.C. Section 253(d). The purpose of Section 253(a) is to ensure that no new entrant is materially inhibited by any "state law, regulation or legal requirement." *In the Matter of the Public Utility Commission of Texas*, 13 FCC Rcd 3460, paragraph 3 (rel. Oct. 1, 1997). Should the Commission find that the challenged condition has these prohibited effects on KMC, then the Commission must "preempt", but *only* to the "extent necessary to correct such violation or inconsistency." Section 253(d). *In the Matter of Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, 12 FCC Rcd 15639, paragraph 47 (rel.

Telecom Rate Sheet No. 2, . 2.9, Original Page 21 is an example of an access service tariff which offers Term Agreements with termination liability for early termination.

Sept. 24, 1997). KMC's Petition, even if the facts alleged therein are proven accurate,[5] seeks relief far beyond the relief "necessary" to correct the alleged violations by seeking to prohibit all ILEC term contracts and/or tariffs with termination charges.

KMC does not claim that any "state or local statute or regulation" expressly prohibits any KMC service in any broadly defined geographic area. *See In the Matter of Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling, supra, paragraph* 47 [which says the statute or regulation must clearly prohibit the service]. Instead, KMC's claim is that certain term conditions in customer service agreements or local service tariffs of incumbent providers have "hindered" KMC's efforts to provide service. (KMC Pet., 1-2). The few tariff and agreement terms KMC identifies do not prohibit customer options. (See, *e.g.,* KMC Pet., 5). To the contrary, the agreements clearly allow customers to terminate long term arrangements upon the corresponding payment (where applicable) of the termination charges and to enter into service arrangements with other providers. On the basis of the Petition's allegations, the Commission cannot conclude that such terms "prohibit" the ability of any entity to enter the same markets and provide service to such customers. Indeed, KMC admits that it has entered and is doing business in 23 unnamed markets (KMC Pet., 2), and others have also entered such markets. (See *e.g.,* Part VII, *infra*).

In the absence of express prohibitions, the Commission can only preempt if the claimed condition "has the effect of prohibiting" the ability of KMC to enter any market or provide any service. *California Payphone Assoc., supra.,* paragraph 31; [KMC claims "ILEC terminations charges clearly *have the effect of prohibiting* competitive entry by KMC…."]. (KMC Pet., 8). However, consideration of "effective prohibition" claims is a more difficult question. It requires proof that the claimed condition "materially inhibits or limits the ability of" the entity to compete in a fair and balanced legal and regulatory environment. *California Payphone Assoc. supra,* paragraph 31. [*i.e.,* does KMC lack a

[5] KMC's Petition is replete with assertions that are vague and non-specific.

"realistic opportunity" to compete in the market and does it have a commercially viable opportunity with genuine revenue potential?] Like the Petitioners in *California Payphone Assoc.*, KMC offers insufficient facts to show that it lacks such opportunities or that customers are unable to terminate their contracts or tariffs in order to take service from KMC.

Nor does KMC cite any explicit state law, rule or regulation, utility commission orders or regulations that are alleged to inhibit KMC's efforts. Instead, KMC brings its Petition under the purview of Section 253(a) indirectly by alleging that state commission "approval" of tariffs and contracts is alone sufficient to meet the plain meaning of Section 253(a). (KMC Pet., 9). The Commission should recognize that the various state commissions, charged as they are with assuring that all such conditions are "just, reasonable and in the public interest," fully considered the various proposals and market conditions in approving the challenged terms.[6] KMC has not shown otherwise in its Petition and the Commission should not so easily disregard the efforts of local commissions to enhance the options and local rates available to customers. The Commission has expressed, in similar circumstances, reluctance to second guess other official agencies. *See California Payphone Assoc., supra*. (Concurring statement of Commissioner Ness). Indeed, those agencies, when KMC has petitioned them for review, have undertaken to fully review the facts and have moved with dispatch to evaluate the specifics of the conditions. See *e.g.*,Texas PUC Docket No. 17759 [where

[6] In such cases, the various state commissions act on behalf of potential users, in evaluating the terms and conditions proposed by utilities and approving or rejecting term agreements. The various state commissions are fully knowledgeable on competitive conditions in their territories and can be presumed to have approved such terms and conditions with full knowledge that those terms have benefits to users and providers alike. The proliferation of term contracts enhances the commercial benefits and customer benefits which the state commissions have found reasonable and in the public interest in their respective jurisdictions. See *e.g.*, *BellSouth supra* (August 23, 1996); and *Pennsylvania Public Utility Commission v. Bell Atlantic-PA*, R-00953393, 1995 Pa. PUC LEXIS 169 (August 31, 1995). KMC's unsupported assertions to the contrary cannot be simply accepted as true.

CLECs were allowed to resell certain ILEC term contracts by assuming the customer's termination liabilities.]

VI. KMC's Proposal Is Excessive, Unreasonable, And Discriminatory.

KMC proposes that *no* ILEC be allowed to collect or enforce a state-approved early termination charge, whatever the charge or the circumstances. To adopt such an across-the-board prohibition would be excessive, egregious, unwarranted, and of questionable validity. Section 253(b).[7] Courts which have considered early termination charges have held that they must be determined or at least considered based upon the particular facts and circumstances of each case. As stated in *Corpus Juris Secundum* (25 C.J.S., p. 1033):

> "The determination of whether a sum named in a contract to be paid by a party in default on its breach is to be considered liquidated damages or merely a penalty is a difficult and perplexing question. There is no fixed or general rule applicable to all contracts, each case being governed in a great measure by its own peculiarities and particular facts and circumstances."

The blanket prohibition which KMC seeks for ILECs would make all such ILEC provisions and tariff terms null and void going forward, regardless of their reasonableness. Such a blanket prohibition would be patently overbroad and unreasonable. The scope of the preemption request is excessive in that it goes beyond what is necessary to facilitate KMC's market entry and provision of service. Section 253(d). KMC can compete like everyone else for the business of customers with State approved term tariffs or contracts by offering them better services and/or better contract terms.

KMC generally says that, in the absence of Commission preemption, all "customers…will not be able to avail themselves" of competitive choices and will be

[7] Significantly, KMC does *not* in fact claim that termination conditions are invalid or anti-competitive per se. Instead, KMC asks the Commission to preempt such terms (and only for ILECs) "until such time as customers have a more genuine competitive choice than currently exists." (KMC Pet., 1).

"prevented from taking advantage of" newly available competitive choices and therefore "cannot switch services to KMC." (KMC Pet., 2-3). As noted earlier, no customer has been prohibited form switching service to KMC. KMC further alleges that customers were either "typically unaware" of service contract terms or entered into such service agreements only because there were no other "alternatives." (KMC Pet., 2). This allegation also fails for the lack of specific proof.[8]

The KMC implication is that KMC *now* offers the sole alternative, or at least an alternative that was not previously available which is of such import that it would likely alter the unnamed customers' choices. This, too, is not substantiated and is contradicted by the facts set forth in Part VII, *infra*. The only barrier to customer change, which KMC alleges is the "excessive financial penalty" of the termination charges in the service agreements. (KMC Pet., 2). However, KMC has failed to provide any facts which would actually prove such charges to be excessive.

KMC only alleges that such terms "appear to have no cost" basis. (KMC Pet., 4).[9] Yet, if that is the only basis for review, then each contract must be examined individually and each term examined to evaluate if the term is reasonable under the circumstances.

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[8] Many of the services and markets which KMC identifies have been recognized as competitive for many years, (KMC Pet., 3-7). See discussion, *infra*, Part VII, *BellSouth*, *supra* ["…LEC pricing of 'competitive' services such as ESSX/Centrex…"] (August 1996); and *Pennsylvania PUC*, *supra* ["We are convinced that sufficient competitive alternatives exist for the type of high speed data service involved here (Frame Relay Services) such that the contract terms do not unduly lock out evolving competition."] (August 1995). This Commission has also recognized that the CPE market, of which Centrex is a part, is competitive. See, *e.g.*, *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, *First Report and Order*, 10 FCC Rcd 8961, 9122 (1995) ("competition today is a fact in both the customer-premises equipment and the long-distance market"); *Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services*, 8 FCC Rcd 3891, 2891 (1993) (removing the National Security and Emergency Preparedness CPE reporting requirement as unnecessary, in part, because "the CPE market has been very competitive for a number of years and there are many suppliers available to provide CPE.") (citations omitted).

[9] Attached are examples of some of Southwestern Bell Telephone's ("SWBT") Texas tariffs which clearly have a "cost basis." Attachment B. Other tariffs may differ, and there is no requirement in any event that "costs" be the sole basis for State tariffs.

KMC also says that such terms are "typically years" in length; but which of those terms might materially inhibit KMC is never mentioned. KMC's proposal that *all* such terms of whatever length should be pre-empted is excessive and is unsupported by any facts that are explained or presented.[10] The Commission has, in similar matters, concluded that certain terms are reasonable and acceptable. See, *e.g.*, *In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369, 7465 (rel. Oct. 19, 1992).[11] The request of KMC, on the facts, is excessive and cannot be appropriately designed to fairly limit the application of preemption because it seeks preemption of all terms for unspecific time frames, regardless of conditions. Section 253(d). Moreover, the Petition does not identify any named customer, or present any testimony, that supports the wide ranging allegations which KMC attributes to all such agreements and customers in general. KMC's unsupported allegations therefore provide entirely no basis for invalidating all ILEC term contracts and agreements with termination charges.

KMC's proposal is also discriminatory. It only applies to *ILECs*, to *their* term contracts and tariffs, and to *their* early termination charges. Unmentioned is the applicability of the proposal to Competitive Local Exchange Carriers ("CLECs"), like KMC. If the prohibition is only applicable to ILECs, then the CLECs would be unfairly allowed to lure away the ILECs' customers (free from their contractual and/or tariff obligations) and offer them the CLECs' own term contracts with term discounts and early termination charges. (See Attachment A tariff copies and footnote 1, *supra*, for examples of CLEC term tariffs.) Not only would this impair the sanctity and inviolability of

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[10] An agreement in the last months of the term would have a different impact in terms of termination charges than agreements which are in their early stages of performance. See *e.g.*, Pacific's California tariff included in Attachment A.

[11] The "fresh look" opportunity ordered in that docket applied only to agreements prior to the order's effective date, for terms longer than three years, for termination liabilities that met certain financial terms, and with the election to change effectively limited to 90 days. In this regard, the Kansas example cited by KMC at page 5 of its Petition would have been permissible and not subject to a "fresh look" because it was for a period of 36 months or three years.

contracts by denying the ILECs the benefits of their bargained-for and/or generally available tariffed terms, it would also give the CLECs an unfair advantage because they would be able to offer customers an option that would be denied to their ILEC competitors – namely, term contracts and favorable discounts based on those terms. The Commission should reject that proposal as unfair and discriminatory.

VII. KMC's Claims Of ILEC Monopoly Power In The Markets Mentioned Are Unsupported And Unexplained.

KMC claims that the ILEC termination charges "are a result of ILEC monopoly power" and that they "prevent CLECs from garnering customers…, thereby preventing CLEC entry in local markets." (KMC Summary, p. I). As examples, KMC cites ILEC contracts and/or tariffs for services like Centrex, and Internet access, among others. (KMC Pet., pp. 3-7). KMC asks the Commission "to require the removal of ILEC termination penalties from ILEC state tariffs until such time as customers have a more genuine competitive choice than currently exists." (KMC Pet., Summary, p. i).

KMC's claim that ILECs have a monopoly in local markets, of course, ignores everything which has occurred since the enactment of the Telecommunications Act of 1996 in terms of the ILECs opening their local exchange markets to competitors. But, that aside, KMC offers no specific information to explain or show the absence of competitive alternatives for the mentioned services. (KMC, Pet., pp. 3-7). It merely claims, without support, that they are not competitive.

The facts do not support KMC's claim. As of February 28, 1999, SBC had over 523 interconnection and resale agreements with competitors and more than 700 additional agreements are in the negotiation process. In SBC's territory, CLECs have captured between 1.3 to 1.5 million access lines through resale and facilities – based competition without any across-the-board "fresh look" requirement or term contract prohibition. CLECs also have 1204 collocation arrangements with the SBC Telephone Companies. Obviously, in SBC's territory at least, CLECs are finding ways to compete.

Furthermore, KMC could not have picked better service-specific examples to *disprove* its very point. Centrex service is offered by ILECs as an alternative to the competitor-provided Private Branch Exchange Systems ("PBXs").[12] Competitors have been providing PBXs for years in competition with the Bell System (well before divestiture) and, if the SBC Telephone Companies' experience is any indication, the competitive provision of PBXs has been considerably more successful than the alternative ILEC Centrex offerings. The ILEC offerings are but a small part of the total customer premise equipment market.[13] In fact, it was, in part, for that very reason that ILECs have offered term contracts for Centrex; allowing lower monthly payment options in an effort to attract and obtain customers.

ILECs also do not have a monopoly on Internet or high speed data access services by any means.[14] And, in any event, most of those services are *not* even local exchange services. CLECs provide high speed Internet access service (xDSL) in each of the 10 largest MSAs, and 25 of the top 50. They are in 21 states and 273 cities. By comparison ILECs are offering xDSL service in only 7 of the 10 largest MSAs and only 22 of the top 50. (See *SBC UNE Fact Report*, CC Docket 96-98, filed May 26, 1999, Map 4 & Table 6). The CLECs' trade association claims CLECs lead the ILECs in providing such services over ILEC loops[15] and CLECs have reportedly bought and deployed more DSL equipment than ILECs have. (*UNE Fact Report*, p. V1-26 & Table 9). In this area, also, the SBC Telephone Companies are not market leaders and are competing with CLECs, and with other providers of broadband services and technologies. Id. Prohibiting the SBC Telephone Companies from offering such term contracts and wholesale access tariff

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[12] *See BellSouth, supra.*

[13] Depending upon the ILEC, SBC has seen estimates of certain ILECs having market shares of between 8% and 15%.

[14] *See Pennsylvania PUC, supra.*

[15] ALTS Press Release, *ALTS' Fall Education Seminar Proves Success of Telecom Act in Stimulating Broadband Data and Competitive Providers*, Sept. 18, 1998.

discounts to information service providers ("ISPs") would only serve to place them further behind.[16] That result would hamper competition, not promote it.

In this regard, term contracts are key for many ISPs. Since many of those ISP companies do not have access to cable television networks, they rely on ILEC term contracts and/or tariffs in order to provide their customers with economical access to advanced service capabilities.

VIII. The Issues Raised By KMC Are More Appropriately Addressed At The State Level.

KMC and other CLECs have pursued similar claims about ILEC term contracts and tariffs at the State level. KMC has sought consideration of this issue in Texas and Kansas, and in both States its arguments are being considered.[17] There are similar proceedings pending in the SBC States of Nevada and Connecticut, which have already had so-called "fresh look" opportunities.[18]

Since these are primarily issues involving State approved contracts and/or tariffs and since a determination of the reasonableness and/or enforceability of *each* such termination charge provision must necessarily be on a service-by-service basis, the Commission should let the State Commissions decide such issues. That way, the precise factual basis for the specific charges and the nature and characteristics of the markets affected will be considered and assessed individually based upon the particular facts and circumstances of each case, and based on what has already occurred or is occurring in each jurisdiction.

To preempt all such ILECs contracts and tariffs, as KMC suggests, without even considering the facts associated with each particular provision or the State's previous looks would be arbitrary and capricious and is wholly unsupported by this record.

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[16] The Commission itself has acknowledged that the CLECs have deployed more advanced – service equipment than ILECs over ILEC loops. *See Advanced Services Report*, .. 53, 56, & 58.

[17] Tx P.U.C. Docket No. 17759; K.C.C. Docket No 99-GIMT-786-GIT.

[18] P.U.C. - Nevada Docket No. 98-12020 and Connecticut DPUC Docket No. 99-03-17.

IX. KMC Should Have Raised Its Claims In The First Instance In The Relevant State Proceedings.

To the extent KMC is complaining about state tariffs and/or contracts, it should have raised its claims initially in the proceedings in which those tariffs and/or contracts were approved. (See *e.g.*, *BellSouth* and *Pennsylvania PUC* proceedings cited *supra*). Or KMC should file a service-specific complaint in those States. (See discussion, *supra*, Part VIII). KMC has not pursued these remedies, and it should not be allowed to belatedly pursue such claims in this forum.

X. KMC's Real Remedy (If Any) Should Be To Compete In The Marketplace.

Nothing prevents a competitor, like KMC, from offering its own competitive alternatives and pricing plans to gain a customer's business. In fact, that happens in the long distance business every day with competing long distance carriers offering to pay and/or paying the PIC-change charge for customers switching to their long distance service, and offering other credits, fees, incentives and long distance calling discount pricing plans.

The solution is not to prohibit ILEC term contracts and/or tariffs, or any and all such contracts and tariffs (be they ILEC or CLEC.) The better course is to avoid the invitation to interfere with the marketplace, to allow carriers to develop their own competitive alternatives and pricing plans, and to let the competitive marketplace work. Nothing in this record supports a conclusion that the Commission should grant any kind of blanket prohibition on term contracts and/or state tariffs with early termination charges.

XI. Conclusion.

The Commission should deny KMC's Petition for a Declaratory Ruling.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE, PACIFIC BELL, NEVADA BELL AND SOUTHERN NEW ENGLAND TELEPHONE

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ATTACHMENT A
(31 Pages)

LOCAL EXCHANGE SERVICE TARIFF

2.0 REGULATIONS (Cont'd)

2.14 Special Construction and Special Arrangements (Cont'd)

2.14.4 **Termination Liability**

A To the extent that there is no other requirement for use by the Company, the Customer may have a termination liability for facilities specially constructed at the request of the Customer if and only if such liability is clearly stated in written agreement between the Company and the Customer.

B. The maximum termination liability is equal to the total cost of the special facility as determined under 13.3, preceding, adjusted to reflect the redetermined estimate net salvage, including any reuse of the facilities -provided,

C . The maximum termination liability as determined in paragraph (A) shall be divided by the original term of service contracted for by the Customer (rounded up to the next whole number of months) to determine the monthly liability. The Customer's termination liability shall be equal to this monthly mount multiplied by the remaining unexpired term of service (rounded up to the next whole number of months) discounted to present value at six (6) percent, plus applicable taxes.

2. 14.5 Term

The minimum term for any ACSI Colorado Service shall not be less than one (1) month, unless otherwise agreed by the Company. The Customer and Company may agree to longer minimum terms for particular services

Cancels Sprint Communications Company L.P.
Tariff F.C.C. No. 9
BUSINESS COMMUNICATIONS SERVICES

This tariff applies to Sprint Clarity®, Sprint Premieresm, Real Solutionssm,Business Sensesm,Sprint Business Flexsm, and Sprint Real Solutions VPNsm (C)
Services furnished by Sprint Communications Company L.P. for interstate or foreign telecommunications in accordance with the Communications Act of 1934, as amended. These services are furnished:

From Customer-selected areas in the contiguous United States, Hawaii, Puerto Rico and the U.S. Virgin Islands to terminating points in the contiguous United States, Hawaii, Alaska, Puerto Rico, the U.S. Virgin Islands, Guam and the Commonwealth of Northern Mariana Islands (" CNMI") and those international termination points listed herein.
Sprint Clarity® service access options are marketed by Sprint under the following names:
Sprint Clarity® (Switched and Dedicated Access)
Sprint Clarity® FONCARD (Card Access)
Sprint Clarity® Toll Free (formely called Sprint Clarity 800) (Switched and Dedicated Access)
Sprint Clarity® SDS (Switched and Dedicated Access)

Sprint Premieresm service access options are marketed by Sprint under the following names: VPN Premieresm (Switched and Dedicated Access) SDS Premieresm (Switched and Dedicated Access) Premieresm Toll Free (formerly called 800 Premiere) (Switched and Dedicated Access)

ISSUED:	ISSUING OFFICER:	EFFECTIVE:
March 31, 1999	Sprint Communications Company L.P. Marybeth M. Banks Director, Federal Regulatory Affairs 1850M Street, N.W., Suite 1110 Washington, D.C. 20036	April 1, 1999

BUSINESS COMMUNICATIONS SERVICES

2.0 TERMS AND CONDITIONS (Continued)

2.8 MINIMUM SERVICE PERIOD
The minimum service period for Sprint Clarity®, Sprint Premieresm, Real Solutionssm, Business Sensesm, Sprint Business Flexsm, and Sprint (C) Real Solutions VPNsm services (as defined in 3.1.1) will be one month (C)(30 days), except where special construction is requested in which case the minimum period may be longer. Dedicated access facilities are offered with a minimum commitment period of three (3) months. Alternative access facilities or local telephone company special construction require minimum commitment periods and are to be defined via contractual agreement.

2.9 OWNERSHIP OF FACILITIES
Title to all facilities provided by Sprint in accordance with these regulations remains with Sprint.

2.10 PAYMENT OF CHARGES
.1 For billing of fixed charges, service is considered to be established upon the day in which Sprint notifies the customer of installation and testing of the customer's service.

Usage charges will be billed monthly in arrears. Customer will be billed for all usage accrued beginning immediately upon access to the service. Customers will be billed for usage occurring during their specific 30-day billing cycle, which for purposes of computing charges shall be considered a month. The rates charged to a customer will be the rates in effect on the first day of the customer's billing cycle.

Monthly charges for all access service components, provided under Sprint Tariff F.C.C. No. 8, are billed in advance of service and reflect the rates in effect as of the date of the invoice. A customer's first invoice may contain charges from previous periods for service provided from the date of installation through the current invoice period.

BUSINESS COMMUNICATIONS SERVICES

2.0 TERMS AND CONDITIONS (Continued)

2.16 DISCONNECTION OF SERVICE

By giving advance written notice, customer may disconnect service at any
time following the minimum service requirement(s) as described in Section 2.8.

Sprint will have up to 30 days to complete disconnect. Customer will be responsible for all charges for 30 days or until disconnect is effected,
whichever is sooner. This 30 day period will begin upon receipt of the written notification from the customer. However, in the event that a Customer continues to utilize Sprint services beyond the date upon which the services are to be disconnected, the Customer will be liable for the usage charges incurred.

For non-usage sensitive charges customers will be liable for the entire monthly recurring charge during the month customer's service terminates.
If the customer disconnects service prior to the end of the term plan, the termination liabilities associated with the term plan will apply.

4. REGULATIONS (Cont'd)

4.7 Allowances for Interruptions in Service (Cont'd)

4.7.5 Cancellation For Service Interruption

Cancellation or termination for service interruption is permitted only if any circuit experiences a single continuous outage of 8 hours or more or cumulative service credits equaling 16 hours in a continuous 12-month period. The right to cancel service under this provision applies only to the single circuit which has been subject to the outage or cumulative service credits.

4.7.6 Cancellation of Service/Termination Liability

If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a service interruption, Customer agrees to pay to Company termination liability charges, which are defined below. These charges shall become due and owing as of the effective date of the cancellation or termination and be payable within the period set forth in this Tariff.

4.7.7 Termination Liability

Customer's termination liability for cancellation of service shall be equal to:

1) all unpaid Non-Recurring charges reasonably expended by Company to establish service to Customer, plus;

4. REGULATIONS (Cont'd)

4.7 Allowances for Interruptions in Service (Cont'd)

4.7.7 Termination Liability (Cont'd)

2) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer, plus;

3) all Recurring Charges specified in the applicable Service Order for the balance of the then current term discounted at the prime rate announced in the Wall Street Journal on the third business day following the date of cancellation;

4) minus a reasonable allowance for costs avoided by the Company as a direct result of Customer's cancellation.

4.8 Customer Liability for Unauthorized Use of the Network

4.8.1 Unauthorized Use of the Network

A) Unauthorized use of the Network occurs when: (1) a person or entity that does not have actual, apparent, or implied authority to use the Network, obtains the Company's services provided under this Tariff-, or (2) a person or entity that otherwise has actual, apparent, or implied authority to use the Network, makes fraudulent use of the Network to obtain the Company's services provided under this Tariff, or uses specific services that are not authorized.

Issued: February 26, 1999

Effective: May 11, 1999

Issued By: Janet S. Livengood, Esquire, Director of Legal and Regulatory Affairs
DDI Plaza Two
500 Thomas Street, Suite 400
Bridgeville, Pennsylvania 1501-2838

SPECIALIZED COMMON CARRIER SERVICE

3. TERMS **AND CONDITIONS** (Continued)

3.17 Disconnection of Service
By giving advance verbal or written notice, subscriber may disconnect service at any time following the one month (30 days) minimum service requirement as described in Section 3.8.

carrier will have up to 30 days to complete disconnect. Subscriber will be responsible for all charges for 30 days or until disconnect is effected, whichever is sooner. This 30 day period will begin on the day of receipt of notice from the subscriber.

For non-usage sensitive charges subscribers will be liable for the entire monthly recurring charge during the month the subscriber's service terminates. The same will be true for multi-code subscribers who incur charges associated with the Monthly System Access Subscription Fee

SPECIALIZED COMMON CARRIER SERVICE

6. UNIVERSITY CONNECTION PROGRAM

6.1 General:
(N)

University Connection is a telecommunication service furnished only to state governments and agencies and colleges and universities. University Connection provides network connectivity among its member locations using the following services: VPN, VPN 56, VPN FONCARD, International VPN and DS1 Private Line, Ultra WATS, Dial 1 WATS, FONLINE 800 and Ultra 800.

6.2 Terms and Conditions:
In addition to the general terms and conditions in Section 2 of this tariff, the general terms and conditions of Sprint's Tariff F.C.C. No. 1, 2, 5 and 7, which may be amended from time to time, apply. Exceptions to the general terms and conditions are noted below.

6.2.1 Minimum Service Commitments:
Minimum service commitments vary based on the service selected by the customer. Refer to Section 6.4 of this tariff for minimum annual revenue commitment and term plan discounts. Minimum service commitments are based upon usage charges excluding taxes, interest, surcharges, access facilities charges, other charges associated with access, fixed recurring charges and nonrecurring charges such as installation charges.

6.2.2 Contributory Usage: Usage under the University Connection program is contributory to the aggregate volume discounts under the SIGN program in Section 5 of this tariff. However, University Connection usage is not eligible for the SIGN Program discounts.

6.2.3 Termination Liability: Early termination of a contract by the customer will result in monthly charges of $2,500 for each month or partial month remaining on the contract at the time of termination.

CUSTOM NETWORK SERVICE ARRANGEMENTS

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CUSTOM NETWORK SERVICE ARRANGEMENTS

1. APPLICATION OF TARIFF

1.1 This tariff applies to Custom Network Service Arrangements ("CNSAs") provided by Sprint Communications Company L.P. ("Sprint"). Each individually designed CNSA is customized to meet the diverse communications and network needs of a Sprint customer or customers. The underlying switched and dedicated Network Services included within a CNSA are furnished under this tariff and Sprint's Tariff F.C.C. Nos. 1, 2, 5, 6, 7, 8, 10 and 11 as referenced herein. CNSAs may include network management; network engineering, design and optimization; network operations and planning; disaster recovery; contingency planning; procurement; vendor management; and training. Except as expressly provided herein, all of the rates, terms and conditions set forth in Sprint's Tariff F.C.C. Nos. 1, 27 5, 6, 7, 87 10 and 11 apply to all CNSAs.

1.2 Sprint is classified jurisdictionally as an interstate and international communications common carrier by the Federal Communications Commission under authority of the Communications Act of 1934, as amended, and an intrastate communications common carrier by state regulatory bodies. **[INTENTIONALLY BLANK]**

CUSTOM NETWORK SERVICE ARRANGEMENTS

2.0 TERMS AND CONDITIONS (continued)

2.6 TERMINATION LIABILITY

If the customer discontinues using Network Services before the end of the Initial Term, or Renewal Term, as applicable; if Sprint terminates the CNSA due to customer's nonpayment of charges or failure to meet other obligations; if customer terminates the agreement for any reason other than Sprint's material failure as permitted under its CNSA; or if the customer ceases to use a material amount of Network Services under the CNSA at any time during the Term, the customer will pay Sprint the monthly amount of the Minimum Service Commitment applicable during the Term or then current Renewal Term, as the case may be, (applicable MSC divided by the number of months to which it applies), multiplied by the number of months remaining in the Term. In addition, the customer will be required to pay Sprint an amount equal to all, or such part of as may be specified in the customer's CNSA, concessions and credits issued, PIC charge and other charges reimbursed and charges waived under the CNSA. If the CNSA is terminated for any reason other than those specified above, the customer will be required to pay Sprint an amount equal to all, or such part of as may be specified in the customer's CNSA, concessions and credits issued, and other charges specified under the CNSA. Except as may be expressly permitted under the CNSA, if the customer disconnects prior to 24 months of service any dedicated local access line of capacity less than a T-1 that received installation charge waivers under the CNSA, the customer will pay to Sprint the total installation charges waived for such circuit in addition to all other applicable charges and termination liabilities. Customer's obligation under this condition survives any expiration or termination of the CNSA. Except as may be expressly permitted under the CNSA, if the customer disconnects prior to 24 months of service any dedicated local access line or Service element of capacity equal to or greater than T-1 or other Service element that received installation charge waivers under

CUSTOM NETWORK SERVICE ARRANGEMENTS

2.0 TERMS AND CONDITIONS (CONTINUED)

2.6 TERMINATION LIABILITY (CONTINUED)
The CNSA, the customer will pay to Sprint the total installation charges waived in addition to all other applicable charges and termination liabilities. Customer's obligation under this condition survives any expiration or termination of the CNSA. All other termination liabilities in the base service tariffs apply. (C)

CUSTOM NE TWORK SERVICE ARRANGEMENTS

3.2128 CNSA OPTION 2128

1.0 Term:
The Term of this option is thirty months from the Commencement Date. The Term will be extended for up to three additional twelvemonth periods with Customer=s written notification at least sixty days prior to the end of the Initial Term or the prior extension year.

2.0 Contributory & Network Services:
The following services contribute to the customer's MAC after all available discounts:

VPN Premiere (including VPN Premiere FONcard usage and surcharges)
Premiere Toll Free
SDS Premiere
International Toll Free Service
Domestic (excluding Alaska and Hawaii) Sprint Frame Relay Service (access channel and PVC)and Sprint-provided local loop access
Dial 1P
Dedicated IP
ATM
SprintNet Public Data Network (X.25)
Sprint Conference Line
Sprint Meeting Channel
SprintFax
Clearline 1.5, 45, FDS-1, DDS and Voiceband (domestic, point-to point IXC and domestic extension of international IXC only)

3.0 Minimum Service Commitments:
Customer's MAC in Years 1 and 2 is $5,300,000.

CUSTOM NETWORK SERVICE ARRANGEMENTS

3.2258 CNSA OPTION 2258

1.0 Term:
The Term of this option is thirty-six months from the Commencement Date.

2.0 Contributory & Network Services:
The following services contribute to the customer-s MMC:
Real Solutions Option A
Clearline FDS-1 (domestic IXC and not including domestic extension of international private lines)
Domestic (excluding Alaska and Hawaii) Sprint Enhanced Frame Relay
Sprint Dedicated IP

3.0 Minimum Service Commitments:
Customer's MMC is $15,000.

4.0 CNSA Rates and Charges:
The provisions of Sprint Tariff F.C.C. Nos. 7, 8 and 11 apply.

5.0 Discounts and Credits:
Customer will receive Type Five Net Effective Usage Discounts on its interstate, intrastate (calculated intrastate, applied to interstate) and international (domestic origination) Real Solutions Option A usage at the thirty-six month, $15,000 level, except as set forth in this CNSA. Customer will receive Type Four Discounts on interstate Real Solutions Option A Outbound (including interstate Real Solutions Option A FONCARD) usage as follows:
Price Per Minute
Service Type Dedicated
Dedicated
Customer=s MAC in Year 3 is $2,650,000.
Switched

CUSTOM NETWORK SERVICE ARRANGEMENTS

3.2533 CNSA OPTION 2533

1.0 Term:
The Term of this option is thirty-nine months from the Commencement Date, including a three-month Ramp Up Period.

2.0 Contributory & Network Services:
The following services contribute to the customer's MAC:
VPN Premiere
Premiere Toll Free
VPN Premiere FONCARD
SDS Premiere
Domestic (excluding Alaska) Sprint Enhanced Frame Relay
Hawaii Frame Relay
Clearline 1,5, DDS and Voiceband (not including the domestic extension of international private lines)

3.0 Minimum Service Commitments:
Customer's MAC is $1,440,000 beginning with the first month following the Ramp Up Period.

4.0 CNSA Rates and Charges:
The provisions of Sprint Tariff F.C.C. Nos. 7, 8 and 11 apply.

5.0 Discounts and Credits:
Customer will receive Type Four Discounts on interstate VPN Premiere (including interstate VPN Premiere FONCARD) and Premiere
Toll Free Service usage as follows:

Service Type	Price Per Minute
On-On	$0.0400
On-Off	$0.0600
Off-On	$0.0600
Off-Off	$0.0940
Dedicated Toll Free	$0.0620
Switched Toll Free	$0.0960

ALL MATERIAL ON THIS PAGE IS NEW
- Printed in the U.S.A. -

CUSTOM NETWORK SERVICE ARRANGEMENTS

3.2804 CNSA OPTION 2804

1.0 Term:
The Term of this option is twenty-four months.

2.0 Contributory & Network Services:
The following services contribute to the customer's MAC and
Mvs :
Sprint Premiere
Clearline 1.5, Fractional 1.5, DDS, DS-0, Clearline 45
(domestic, point-to-point IXC and not including domestic extension of
international private lines)
Sprint Audio Conferencing
Domestic (excluding Alaska and Hawaii) Sprint Enhanced
Frame Relay
Network Services:
Sprint Premiere
Clearline 1.5, Fractional 1.5, DDS, DS-0, Clearline 45
(domestic, point-to-point IXC and not including domestic extension of
international private lines)
Sprint Audio Conferencing

3.0 Minimum Service Commitments:
Customer's MAC is $1,500,000.

4.0 CNSA Rates and Charges:
The provisions of Sprint Tariff F.C.C. Nos. 7, 8 and 11 apply.

5.0 Discounts and Credits:
Customer will receive Type Four Discounts on its interstate VPN Premiere (including VPN Premiere FONCARD) Service Usage as follows:

Allegiance
The following description is from Allegiance's main tariff. Individaul agreements with customers are not found in files.

ALLEGIANCE TELECOM OF TEXAS, INC. TEXAS RATE SHEET NO. 2

ORIGINAL PAGE 21
ACCESS SERVICE

2.9
SECTION 2 - TERMS AND CONDITIONS (CONT'D.)
Term Agreements
The Company offers Term Agreements wherein the Customer agrees to retain specified Company services for a mutually agreed upon length of time A Termination Liability charge applies to the early termination of a Term Agreement

e-spire

End-User Services Price List: 8/6/98

e.spire

End-User Services Price List

Charles Kallenbach, Esq.
Vice President - Regulatory Affairs
e.spire Communications, Inc.
131 National Business Parkway, Suite 100
Annapolis Junction, Maryland 20701

Customer Term Agreement (Dallas & Fort Worth)

e.spire Customer Term Agreement (CTA) allows Customer to receive discounts on e.spire products and services for local exchange or local toll (Local Services). These discounts will be applied to the following products and services:

Business Exchange Service Digital PBX Trunk ISDN
Analog PBX Trunk Digital Access Facility PRI Access Facility
DID DID ISDN B Channel
DOD DOD
Combination Combination

The published monthly recurring rates are set forth within this Tariff. Customers that sign up for service for a one (1) year term will receive a three percent (3%) discount from the published monthly recurring rates. Customers that sign up for service for a two (2) year term will receive a seven percent (7%) discount from the published monthly recurring rates. Customers that sign up for service for a three year term will receive a eleven percent (11%) discount from the published monthly recurring rates.

The three preceding term options are subject to the termination liability charges set forth below.

A termination liability charge will be applicable for service rate elements provided under a term payment plan, as described above, that are disconnected prior to the end of the chosen service period. The termination liability charge is equal to the difference between e.spire tariffed rates and the Term Plan rates, for the remainder of the Term Agreement period If at least six month remain under the Initial Term of the Term Plan, an additional cancellation fee of $50000 will be added to the early termination charges. The Customer shall be obligated to pay such fees within thirty (30) days of early termination of this Term Plan.

Issued:	Effective:
August 6, 1997 TR#l	August 7, 1998

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Vice President - Regulatory Affairs
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AT&T COMMUNICATIONS TARIFF F.C.C. NO. 9
Adm. Rates and Tariffs 1st Revised Page 47
Issued: September 17, 1993 Effective: September 18, 1993
2.6.6.B. Nonrecurring Charges (continued)
3. Termination Charge - A Termination Charge applies when a Customer orders the discontinuance of a private line service before the expiration of a specified period of time. Termination charges apply to specific components as set forth in the appropriate sections of this tariff. The charge has two elements, a dollar amount and a specified period of time. This period, expressed in months, is shown in brackets next to the dollar amount (e.g., $10,000[120]) in the appropriate sections of this tariff.
The Termination charge is determined by multiplying the dollar amount by the ratio of the unexpired portion of the specified period of time. A description and example of the process for determining Termination Charges follows.
(a) Identify the number of months in the specified period. This is shown in brackets following the dollar amount, e.g., [60] = 60 months.
(b) Identify the number of months that the private line service has been furnished, including fractions of months.
(c) Subtract the number of months the private line service has been furnished from the number of months in the specified period to obtain the unexpired portion of the specified period (a-b).
(d) Divide the unexpired portion of the specified period by the specified period to obtain the charge ratio to be used (c divided by a).

CABLE & WIRELESS USA, INC. Tariff No. 1
Original Page 14
2. GENERAL RULES AND REGULATIONS (Cont.)
2.7 Cancellation, Delay or Termination of Service by Customer
2.7.1 Cancellation or Delay of Service Prior to Service Start Date
Customer shall be liable for an additional charge in the event (i) Customer cancels an order (or any portion thereof) for Service prior to the Requested Service Date; (ii) requests a delay in the Requested Service Date; or (iii) otherwise delays C&W USA's provisioning of the Services."
2.7.2 Termination of Service without Term Commitment
For a Service not subject to term commitment, the Customer may, by providing thirty (30) days advance written notice to C&W USA, terminate such Service without incurring liability. Upon such a termination, Customer shall immediately cease using the Service and pay C&W USA for all charges incurred by Customer through the date such Service is discontinued.
2.7.3 Termination of Service with Term Commitment
For a Service, subject to term commitment, Customer may, by providing thirty (30) days* advance written notice to C&W USA, terminate such Service prior to the expiration of its specified term. Upon such termination, the following shall apply:
A. Customer shall immediately cease using that Service; and

B. Customer shall pay C&W USA for all charges incurred for that Service through the date that Service is discontinued; and
C. Customer shall pay C&W USA any promotion credits provided to Customer by C&W USA for the terminated Service; and
D. Customer shall pay C&W USA a discontinuance charge (as a discontinuance fee and not as a penalty) equal to the sum of the following:
Issued: October 15, 1998 By: Effective: October 16, 1998

CABLE & WIRELESS, INC. Tariff FCC No. 1
Original Page 15
2. GENERAL RULES AND REGULATIONS (Cont.)
2.7 Termination of Service by Customer (Cont.)
2.7.3 Termination of Service with Term Commitment (Cont.)
(1) the number of months remaining in the term commitment then in effect, multiplied by the total of the Intercity Channel portion of the monthly charges for the terminated Service; and
(2) amounts C&W USA is obligated to pay the Access Carrier, if any, for terminating their facilities.

MCI TELECOMMUNICATIONS CORPORATION TARIFF F.C.C. NO. 8
ORIGINAL PAGE NO. 21
DEDICATED ACCESS LINE SERVICE
SECTION C - DESCRIPTION OF SERVICE
.08 Access Pricing Plans (Continued) T
.083 Early Termination T
Customers who terminate service prior to the end of the committed term will be charged an early termination charge equal to the lesser of the following:
- the number of months remaining in the term multiplied by 50 percent of the undiscounted monthly rate at the time of termination; or,
- one month's undiscounted monthly rate at the time of termination for customers in a one-year APP; two months' undiscounted monthly rate at the time of termination for customers in a two-year APP; six months' undiscounted monthly rate at the time of termination for customers in a three-year APP; eight months' undiscounted monthly rate at the time of termination for customers in a four-year APP; and ten months' undiscounted monthly rate at the time of termination for customers in a five-year APP. Early termination charges will be waived under the following circumstances:
- The customer upgrades its service from Analog Local Access or DDS Local Access or DSO (Hubless) T Access
to T-1 Digital Access, or from T-1 Digital Access to DS-3 Local Access, as described in this
T Tariff; the new service is provided from the MCI facility to the same customer location as the disconnected service; and the written request to disconnect the circuit under the APP and to install the upgrade circuit are received by MCI concurrently, with no lapse in service;
- The customer replaces an APP for a given circuit with an APP expiring on or after the original APP for the same circuit;
- The customer requests that a circuit be moved; and T
The move is to another location in the U.S. Mainland; T
The new circuit at the new location is to be installed on or before the date the original circuit is disconnected; and
The new circuit is enrolled in an APP expiring on or after the APP on the original circuit.
The customer is responsible for all applicable installation charges for the new circuit.

- The customer replaces an APP with an MCI Vision VIP Plus or an MCI Vision Customized Business Program (as described in MCI Tariff FCC No. 1) with a greater volume commitment than the existing T/C # MCI Vision commitment, has an MCI Vision term length equal to or greater than their existing MCI Vision term, and expires after the date of the plan.

.084 Renewal T

Upon expiration of an APP, a circuit will be automatically resubscribed through an APP with the same term commitment as the original plan unless the customer states, in writing to MCI, that it wishes not to be re-enrolled
or to be enrolled in an APP of a different term than the original. Such written notice must be received by MCI no later than 30 days prior to the existing plan's expiration.

.085 Discounts T

The following discounts apply to those customers who have enrolled in an APP term discount arrangement as described herein, in accordance with the terms specified therein.

Analog DSO (Hubless) Local Access T-1 T Local Access DDS Local Access Digital Access T Term Commitment	Discount	Discount	Discount
12 Months	0%	0%	5%
24 Months	4	5	10
36 Months	5	8	20
48 Months	6	10	22
60 Months	7	15	24

This material filed pursuant to Special Permission No. 98-221 of the Federal Communications Commission.

ISSUED: September 30, 1998 EFFECTIVE: October 1, 1998

7. Cancellation of Service

7.1 If a Customer cancels service before the completion of the term for any reason whatsoever other than a service interruption (as defined in Section 6.1 above), the Customer agrees to pay to the Company the following sums, which shall become due and owing as of the effective date of the cancellation or termination and shall be payable within the period set forth in Section B.5.2: all costs, fees, and expenses reasonably incurred in connection all Non-Recurring Charges reasonably expended by Company to establish service to Customer, plus 2) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer, plus 3) all Recurring Charges specified in the applicable Tariff for the balance of the then current term. The terms and conditions specified in Section C.2.3 will apply for cancellation of an Access Service Request.

8. Transfers and Assignments

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties (a) to any subsidiary, parent company or affiliate of the Company (b) pursuant to any sale or transfer of substantially all the assets of the Company; or (c) pursuant to any financing, merger or reorganization of the company.

9. Notices and Communications

9.1 The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that the Customer may also designate a separate address to which the Company's bills for service shall be mailed.

9.2 The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that the Company may designate a separate address, on each bill for service, to which the Customer shall mail payment on that bill.
9.3 All notices or other communications required to be given pursuant to this tariff shall be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following deposit of the notice, communication, or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.
9.4 The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.
ALL MATERIAL ON THIS PAGE IS NEW.
ISSUED: October 31, 1995 EFFECTIVE: November 1, 1995

MFS TELECOM, INC. TARIFF F.C.C. NO. 2
1st Revised Page 3 9
Cancels Original Page 39
2. REGULATIONS (Cont'd)
2.7 Cancellation of Service/Termination Liability (T)
If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a service intention (as defined in 2.6.1 above), Customer agrees to pay to Company (C) termination liability charges, which are defined below. These charges shall become due and owing as of the effective date of the cancellation or termination and be payable within the period set forth in 2.5.2. (D)

Issued: August 11, 1994 Effective: August 12, 1994

MFS TELECOM, INC. TARIFF F.C.C. NO. 2
2nd Revised Page 39.1
Cancels 1st Revised Page 39.1
2. REGULATIONS (Cont'd)
2.7 Cancellation of Service/Termination Liability (Cont'd)
2.7.1 Termination Liability (T)
Customer's termination liability for cancellation of service shall be equal to: (T) (a) all unpaid Non-Recurring charges reasonably expended by Company to establish service to Customer, plus; (b) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer, plus; (c) all Recurring Charges specified in the applicable Service Order for the balance of the then current term discounted at the (T) prime rate announced in the Wall Street Journal on the third business day following the date of cancellation; (T) (d) minus a reasonable allowance for costs (N) avoided by the Company as a direct result of Customer's cancellation. (N)

Issued: March 30, 1995 Effective: March 31, 1995

Teleport Communications Group Operating Companies Tariff FCC No. 2
1st Revised Page 39
SECTION 2 - GENERAL REGULATIONS (Cont'd.)
Issued: April 17, 1998 Effective: April 27, 1998

2.5. Payment Arrangements (Cont'd.)
2.5.11 Service Cancellations Cancellation of Service Applications: Applications for service are non-cancelable unless the Company otherwise agrees. Where the Company permits Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.

Where the Company incurs any expense in connection with special arrangements, or where special arrangements of facilities or equipment have begun, before the Company receives a cancellation notice, a charge equal to the costs incurred, less net salvage, applies. In such cases the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.

The special charges described above will be calculated and applied on a case-by-case basis.
Cancellation of Service Terms: Cancellation of service prior to the completion of a service term for any reason whatsoever other than a service interruption (as defined in Section 2.6, following) shall subject the Customer to the following sums: All costs, fees and expenses reasonably incurred in connection with:
1) All Non-Recurring charges as specified in the Company's tariffs, plus
2) Any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by the Company on behalf of Customer, plus
3) 100% of all Recurring charges specified in the applicable Company Tariff for the balance of the then current term.
Such cancellation charges shall be payable to the Company within 21 days of the effective date of the cancellation or termination under the terms set forth in Section 2.5, preceding.

INTEGRATED PATHWAY SERVICE

(AT) 5.8 Term Pricing Plan (TPP) - (Continued)

(H) Termination Charges

(1) Customers requesting to discontinue Services provided under a prior to the expiration of the Initial Service Period or Extended Service Period, will incur termination charges. Payment of the termination charge does not release the customer from other previous amounts owed to SWBT.

(2)The termination charge for the Initial Service Period shall be the lesser of .

(a) The difference between the Initial Service Period rates and charges for the completed months of the initial service term at the time of termination and the rates and charges for the next lower service term actually completed plus interest charges based on approved cost of money in affect at the time of term-i-nation; or

(b) The monthly payments remaining on the service

For example, a customer completes 27 months of a 36 months (3 year) service term. The first termination calculation will be the difference between 27 months of rates and charges at the 3 year service term and 27 months of rates and charges at the 2 year service term (which is the next lower service term actually completed) plus interest at the approved cost of money rate in effect at the time of termination. The second termination calculation will be the sum of the 9 remaining monthly payments of the 3 year service term. The termination charge is the lesser of the two calculations.

(3) The termination charges for the Extended Service Period shall ~~e the lesser of:

(a) The difference between the extended service period rates and charges and the month-to-month rates and charges for the months actually completed plus interest charges based on the approved cost of money in effect at the time of termination; or

(b) The monthly payments remaining on the service term.

(1) if the service is terminated within the first 12 months, the calculation is based on month-to month rates and charges.

INTEGRATED PATHWAY SERVICE

5.9 Term Pricing Plan (TPP) - (Continued)

(I) Customer Specific Pricing

SWBT may offer discounted volume pricing to customers who subscribe to a minimum of 5 Integrated Pathway services. The established rates and charges for the Integrated Pathway services will apply for the duration of the contract.

In order to qualify for the discounted volume price, at least 5 Integrated Pathway services must terminate at a single location and be covered by a single contract. When the customer meets these eligibility requirements, the customer may elect to transfer existing Integrated Pathway services to a new contract.

Customers who have existing TPPs and who quality for the discounted volume price may at any time convert to a Customer Specific Pricing contract without incurring any termination charges- The Customer Specific Pricing contact must be for a term of equal or greater duration to the number of months remaining on the original TPP.

During the term of the Customer Specific Pricing contract, additional Integrated Pathway service elements may be added to the contract, and the contract will specify the terms and conditions of such additions.

INTEGRATED PATHWAY SERVICE

(AT) 5.9 Rates and Charges

			Monthly USOC	Nonrecurring Rate	Charge
(A)	**Integrated Pathway Cross-Connect, each**				
(1)	Same Serving Office	EMZCX	$ 10.00	$ 175.00	
(2)	Different Serving Offices				
	Fixed -	EMZCF	25.00	350.00	
	Per Mile -	I LNOX	2.00	None	
(B)	**Integrated Pathway Transport**	EM2DX			
	Month-to-Month		500.00	2,500.00	
	One year		500.00	1,000.00	
	Two years		425.00	500.00	
	Three years		375.00	None	
(C)	**Integrated Voice Access Line**				
(1)	Single Line	I F7			
	Month-to-Month		18.00	None	
	One year		15.20	None	
	Two years		14.40	None	
	Three years		14.00	None	
(2)	Multi-Line	1D8			
	Month-to-Month		25.00	None	
	One year		23.75	None	
	Two years		22.50	None	
	Three years		20.50	None	
(D)	**Integrated Pathway Trunk**	P1**			
	Month-to-Month		25.00	None	
	One year		23.75	None	
	Two year		22.50	None	
	Three year		20.50	None	

NETWORK AND EXCHANGE SERVICES

A6. MESSAGE TELECOMMUMCATIONS SERVICE[1]

6.5 VALUE PROMISES ☐ (Con't)

6.5.4 VALUE FROMISE☐ PLUS (Con't)

G. VALUE FROMISE☐ (VPP) TERM DISCOUNT

Value Promise☐ Plus (VPP) Term Discount allows VPP customers to subscribe to a discount plan which provides a discount on charges for directly dialed MTS, Zone 3, Custom 9 and Pacific Bell calling card (including calling card service charges and pay station service charges if any) usage for a fixed term in 12, 18 or 24 month increments.

1. The discounts will be effective when Pacific Bell completes the processing of the service order.

2. A minimum monthly usage charge of $100.00 for directly dialed MTS, Zone 3, Custom 8 and Pacific Bell calling card usage shall apply as illustrated in G.9. following.

3. The applicable discount will apply against the actual usage billed and to the difference between the actual billed and the required minimum monthly usage, as illustrated in G.S. following.

4. Changes to the length of the VPP Term Discount prior to the expiration of the customer's agreement are permitted, provided:

- the customer's initial term agreement must be terminated and a new agreement entered into, and
- the new term **agreement** must be equal to a greater period or equal to the same, greater or the longest period allowable under another applicable tariff, than initially selected.

5. A customer may terminate an agreement by paying Pacific Bell a termination charge (as shown in G. 9. a. and b. following) times the number of months remaining in the term agreement.

6. Minimum usage is determined by the amount of directly dialed MTS, Zone 3, Pacific Bell calling card calls without operator assistance, Custom 8 inbound calls.

7. If a customer subscribes to a term agreement, the discounts as shown in G.9. following apply in lieu of Options 1, 2, 3 or 4 in F.1. preceding.

8. VPP Term Discounts do not apply to each BTN, they apply to all BTNs aggregated at the customer level.

NOTE 1: Also known as Local Toll.

NETWORK AND EXCHANGE SERVICES
A6. MESSAGE TELECOMMUMCATIONS SERVICE[1]

6.5 VALUE PROMISES ☐ (Con't)
6.5.4 VALUE FROMISE☐ PLUS (Con't)
G. VPP TERM DISCOUNT (Con't)

9. Rates and Changes

a. Options 1, 3

Minimum Monthly Usage	12 mo.[2]	Termination Charge
$ 100.00 - 149.99	5 %	$ 100.00[3]
150.00 - 899.99	30 %	200.00
900.00 - 1799.99	35 %	300.00
1800.00 +	40 %	500.00
	18 mo.[2]	
100.00 - 149.99	10 %	100.00[3]
150.00 - 899.99	35 %	200.00
900.00 - 1799.99	40 %	300.00
1800.00 +	45 %	500.00
	24 mo.[2]	
100.00 149.99	15 %	100.00[3]
150.00 999.99	40 %	200.00
900.00 1799.99	45 %	300.00
1800.00	50 %	500.00

NOTE 1: Also known as Local Toll.
NOTE 2: See D.16 preceding.
NOTE 3: For those customers that elect to end their Tier 1 Value Promise Plus term agreement, the termination charge is waived from November 9, 1998 through February 6, 1999.

NETWORK AND EXCHANGE SERVICES

A6. MESSAGE TELECOMMUMCATIONS SERVICE[1]

6.5 VALUE PROMISES ☐ (Con't)
6.5.4 VALUE FROMISE☐ PLUS (Con't)
G. VPP TERM DISCOUNT (Con't)

9. Rates and Changes (Con't)

a. Options 2, 4

Minimum Monthly Usage	12 mo.[2]	Termination Charge
$ 100.00 - 149.99	5 %	$ 100.00[3]
150.00 - 899.99	30 %	200.00
900.00 - 1799.99	35 %	300.00
1800.00 +	40 %	500.00
	18 mo.[2]	
100.00 - 149.99	10 %	100.00[3]
150.00 - 899.99	35 %	200.00
900.00 - 1799.99	40 %	300.00
1800.00 +	45 %	500.00
	24 mo.[2]	
100.00 149.99	15 %	100.00[3]
150.00 999.99	40 %	200.00
900.00 1799.99	45 %	300.00
1800.00	50 %	500.00

NOTE 1: Also known as Local Toll.
NOTE 2: See D.16 preceding.
NOTE 3: For those customers that elect to end their Tier 1 Value Promise Plus term agreement, the termination charge is waived from November 9, 1998 through February 6, 1999.

Continued

NETWORK AND EXCHANGE SERVICES

A6. MESSAGE TELECOMMUMCATIONS SERVICE[1]

6.5 VALUE PROMISES ☐ (Con't)
6.5.4 VALUE FROMISE☐ PLUS (Con't)
G. VPP TERM DISCOUNT (Con't)

9. Rates and Changes (Con't)

Illustrative Only for a customer that Selects Option 2 or 4 and signs a 24 Month Agreement

Meets Minimum Monthly Usage (assumes no Custom 8 evening, night/weekend calls)

a. ISO hours x $9-48 per hour of directly dialed and Calling Card usage = $972.00
b. 50 hours x $9.00 per hour of Custom 8 usage = $450.00
c. $1,422.00 (a+b) @ 45% = $639.90
d. Total discounted amount = $639.90

Does not meet Minimum Monthly Usage (assumes no Custom 8 evening, night/weekend calls)

a. 6 hours x $6.48 per hour of directly dialed and calling card usage = $38.88
b. 2 hours x $9.00 per hour of Custom 8 usage = $18.00
c. Total (a+b) = $56.88
d. Difference of actual usage (c) and required minimum ($100) = $43.12
e. Required minimum monthly usage (c+d) = $100.00
f. $56.88 @ 14% = $8.53
g. $43.12 @ 15% = $6.47
h. Total discounted amount (f+g) = $15.00
i. Total billed amount (e-h) = $85.00

ATTACHMENT B
(6 Pages)

Tariff Sheets from SelectVideo Plus Service and SmartTrunk Service. These are examples of services that allow Installation Charges to be spread out (amortized) over the life of the Term Agreement.

SELECTVIDEO PLUS SERVICE

8. Application of Rates and Charges (Cont'd)

8.9 Optional Deferred Payment of Installation Charges and/or Special Construction Charges:

8.9.1 Before service is established, only those customers selecting either the 12, 36, or 60 month service term may request to spread all the installation charges (including the installation charges associated with optional features) and/or Special construction Charges over a payment period of either 12, 24, 36, 40, or 60 months but not to exceed the 12, 36, or 60 month service term. If the deferral is associated with charges for optional features installed subsequent to initial installation, the deferral period nay not exceed the number of months remaining on the customer's SelectVideo Plus Service term. The customer cannot change the deferred payment term. The deferred monthly charge will equal the installation charges and/or special construction charges multiplied by t-he appropriate annuity factor shown below.

	Payment Term (in months)				
	12	24	36	48	60
Annuity Factor	0.0887	0.0470	0.0331	0.0262	0.0221

Upon 30 days prior notification to SWBT, the customer may terminate the deferred payment term by paying the remaining principal in full. No credit will be made for interest already paid or accrued.

8.10 Change of SelectVideo Plus Service Arrangement from the SelectVideo option to the SelectData option or vice versa:

8.10.1 Changes from the SelectVideo option to the SelectData option or vice versa will be considered a disconnection and new connection of service. The customer will be required to Select a new service term and to sign a new contract. installation charges will apply to the connection of the new service.

8.10.2 Installation charges do not apply to conversions from other

SelectData Option pricing plans to a SelectData Option Volume Package for existing Links being converted.

(N) (*)

Information previously located on this sheet has been moved to Section 11, Sheet 13.1, Original.

* Effective as of June 30, 1997 pursuant to PURA 95 θ3.355 and SWBT's notification thereunder.

SELECTVIDEO PLUS SERVICE

8. <u>Application of Rates and Charges</u> (Cont'd)

8.11 Disconnection of Service Prior to the Expiration of the Service Term:

8.11.1 If the customer disconnects a SelectVideo Plus Service Control Link or Communication Link prior to the expiration of the 12, 36, or 60 month service term, the customer shall pay a charge equal to the Control Link or Communication Link rate in effect on the date of the contract times the number of months remaining on the 12, 36, or 60 month service term for each Control Link or Communication Link disconnected. See paragraph 8.11.2. below for exceptions to this provision. Additional charges will not be applied for any Link Extension disconnected prior to the expiration of the service term. (M)

8.11.2 The provisions of Paragraph 8.11.1. above do not apply in the following circumstances:

1. If the customer converts from the SelectVideo option to the SelectData option or vice versa
2. When the customer with an existing contract converts to another SWBT digital service under a contract term, which is equal to or greater than the number of months remaining on the SelectVideo Plus Service contract being terminated. In this instance, the charges specified in Paragraph above, are modified as follows. If the customer converts within the first 12 months of the contract, the charge is multiplied by 0.20 (20%). If the customer converts after 12 months, the charge is multiplied by 0.10 (10%). (C) (*)
3. If the disconnection of service is the result of a customer move which required the SelectVideo Service to be provided from a different central office.

However, in each of the above circumstances, deferred installation charges will become due as specified in Paragraph 8.11.3. following.

8.11.3. If the customer disconnects a SelectVideo Plus Service Control Link or Communication Link prior to the expiration of the 12, 36, or 60 month service term and the installation charges and/or special construction charges were deferred at the time service was established (pursuant to Paragraph 8.9 above), the customer shall pay a charge equal to the remaining principal on the deferred payment term for each Control Link or Communication Link disconnected. No credit will be made for interest already paid or accrued.

(M)

* Effective as of June 30, 1997 pursuant to PURA 95 θ3.355 and SWBT's notification thereunder.

SMARTTRUNK SERVICE

2. Rate Applications (Cont'd)

(M)

2 .2. 1 Before service is established, the customer may request to spread all the service connection charges, installation charges (including the installation charges associated with optional features) and/or special construction charge over a payment term of either 12, 24, 36, 48 or 60 continuous months but not to exceed the 12, 24, 36, 43 or 60 month Initial Service Term. The customer cannot change the deferred payment term. The deferred payment monthly charge will equal the service connection charges, installation charges and/or special construction charge multiplied by the appropriate annuity factor shown below:

	Payment Term (in months)				
	12	24	36	48	60
Annuity Factor	0.0875	0.0457	0.0318	0.0249	0.0208

Upon 30 days prior notification to SWBT, the customer may terminate the deferred payment term by paying the remaining principal in full. No credit will be made for interest already paid or accrued.

2.2.2 This optional deterred payment is not offered for customers selecting the Month-to-Month service term.

(M)

SMARTTRUNK SERVICE

2. <u>Rate Applications</u> (Cont'd)

(M)

2 .3 Disconnection of Service Prior to the Expiration of the Initial or Renewal Service Term

2.3.1 If the customer disconnects a SmartTrunk Interface prior to the expiration of the 12, 24, 36, 48 or 60 month initial or renewal service term, the customer shall pay a charge equal to the SmartTrunk Interface monthly rate in effect on the date of the contract, times the number of months remaining on the 12, 24, 36, 48 oz 60 month Initial or Renewal Service Term for each SmartTrunk Interface disconnected.

2.3.2 If the customer disconnects a SmartTrunk Interface Prior to the expiration of the 12, 24, 36, 48 or 60 month Initial Service Term and the installation charge and/oz special construction charge were deferred at the time service was established (pursuant to Paragraph 2.2.1 above), the customer shall pay a charge equal to the deferred payment monthly charge, times the number of months remaining on the deferred payment term for each SmartTrunk Interface disconnected.

2.4 Cancellation and Changes in Service Request

Subsequent to signing the contract:

2.4.1 If the customer cancels or changes an order for service after installation of the required equipment and facilities, but before service is established, the customer agrees to pay up front the applicable installation charges specified in 2.7, following and/or the applicable special construction charge if any. The customer may not avoid this provision by extending the service establishment due date. The customer may not defer payment of the installation charge and/or special construction charge.

2.4.2 If the customer cancels an order for service before installation of the required equipment and facilities, the customer agrees to pay Service Connection Charges (under Section 27 of the General Exchange Tariff) which would have been applicable had the service been installed.

2.5 FX, FSO and Tie Line Services Billing Procedures

2.5.1 FX, FSO and tie line services will be billed in quantities as specified by the customer.

2.6 Dynamic Channel Allocation (DCA) Billing Procedures

2.6.1 When DCA is provided, the customer Must specify the following: (T)

1. The total number of channels assigned to the DCA arrangement.

2. The maximum number of channels allocated per call type within the arrangement.

2.6.2 The quantity of Integrated Services Network Components billed for the DM arrangement is based on the sum of the maximum channels allocated for DID, DOD, FSO, Common Line 800, and outward WATS call types up to, but not exceeding, the total number of channels assigned to the arrangement.

2.6.3 The quantity of Universal Termination charges billed for the DCA arrangement is based on the rnaximum number of channels allocated for FX, FSO, and tie line call types.

2.6.4 A DCA arrangement may not include both extended and non-extended call types.