33. Pricing Flexibility Contract Offerings (N)

33.56 Contract Offer No. 56 - Special Access Service Offer

33.56.1 General Description (N)

(Nx)

Special Access Service Offer (Contract Offer No. 56) is an access discount pricing plan for which subscription is required in the following Access Tariffs: Ameritech Operating Companies (Ameritech) Tariff F.C.C. No. 2, Pacific Bell Telephone Company Tariff F.C.C. No. 1, Southwestern Bell Telephone Company Tariff F.C.C. No. 73, and The Southern New England Telephone Company Tariff F.C.C. No. 39. Contract Offer No. 56 is available to any Customer with at least $26.5 million in cumulative annual recurring revenue for Contributory Services as defined herein. Customer must meet the Eligibility Criteria set forth in Section 33.56.2, and also must comply with all Terms and Conditions of this Contract Offer.

Contract Offer No. 56 requires the Customer to maintain a Minimum Annual Revenue Commitment (MARC) for each year of the five (5) year Term Period as defined in Section 33.56.4(A). The MARC shall include all Contributory Services purchased from the Telephone Company or its affiliates available under this Contract Offer. Contributory Services include Contributory Subject Services as described in Section 33.56.2(C), herein, in addition to the following Contributory Non-Subject Services (that are not Contributory Subject Services): OPT-E-MAN, ATM, Frame Relay and the following InterLATA services: DS0, DS1, DS3, OC3, OC12, OC48, and OC192. Contributory Services that are Non-Subject Services shall not be eligible for discounts or other incentives provided under this Contract Offer. All Contributory Services described above must be purchased through the SBC wholesale sales channel (SBC Industry Markets). Any ATM, Frame Relay or InterLATA Contributory Services shall be provided pursuant to agreements and/or contracts. Such agreements and/or contracts shall be available for review at the website established to make public any agreements for these services. Customers may reference:
https://www.sbcprimeaccess.com/shell.cfm?section=2501 (Nx)

(N)

In the event the Customer does not meet its MARC as of each Anniversary Date of the Term Period, the Customer must remit the shortfall payment via the Annual True-Up process set forth in Section 33.56.4(D). Notwithstanding the obligation to pay such shortfall payment, if the Customer does not comply with all Terms and Conditions of this Contract Offer (exclusive of terms and conditions of non-tariffed agreements referenced herein), termination liability charges, in accordance with Section 33.56.9, shall apply. Contract Offer No. 56 will only be available June 2, 2005 through July 2, 2005. (N)

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33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.2 Eligibility Criteria

(A) The Customer must meet the following Eligibility Criteria in order to subscribe to Contract Offer No. 56, and must continue to meet the Eligibility Criteria as described below throughout the Term Period of this Contract Offer:

(1) Contract Offer No. 56 is available for services located in the following pricing flexibility Metropolitan Statistical Areas (MSAs):

Bakersfield, Fresno, Los Angeles/Long Beach, Modesto, Oxnard/Ventura, Sacramento, San Diego, San Francisco/Oakland, San Jose, Santa Rosa, and Stockton, CA.

If the Telephone Company receives pricing flexibility relief in additional MSAs, any eligible Subject Services that the Telephone Company provides to the Customer pursuant to this Contract Offer available in those additional MSAs may, at the Customer's option, be included in this Contract Offer, beginning with the first year after the Telephone Company receives pricing flexibility in those additional MSAs, provided that the MARC increases to reflect the recurring annual revenues associated with the additional Contributory Subject Services, as described in Section 33.56.4. (N)

(2) The Customer's first and second year MARC shall be $26.5 million in cumulative annual recurring revenue for Contributory Services in the following SBC Companies: Ameritech Operating Companies (Ameritech), Pacific Bell Telephone Company, Southwestern Bell Telephone Company, and The Southern New England Telephone Company. Other Contributory Services may be provided by other SBC companies. (Nx)

(3) Customer cannot subscribe to Contract Offer No. 56 concurrently with SBC's MVP Offering in Section 22 (N)

(4) The Customer must maintain an Access Service Ratio, equal to or greater than 98%. The Access Service Ratio is defined in Section 33.56.3(E) and will be measured quarterly. (N)

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33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.2 Eligibility Criteria (Cont'd) (N)

(B) Concurrent Subscription (Nx)

The Customer must concurrently subscribe to the identical Contract Offer of Contract Offer No. 56 pursuant to the following tariffs:

(1) The Ameritech Telephone Company Tariff F.C.C. No. 2, Section 22, Contract Offer No. 64.
(2) Southwestern Bell Telephone Company Tariff F.C.C No. 73, Section 41, Contract Offer No. 48.
(3) Southern New England Telephone Company Tariff F.C.C. No. 39, Section 25, Contract Offer No. 16 (Nx)

(C) Contributory Subject Services (N)

Contract Offer No. 56 applies to pricing-flexibility-qualified access services (hereafter referred to as Contributory Subject Services) contained in the following tariff sections:

(1) VG/DS0 Services - Pacific Bell Telephone Company Tariff F.C.C. No. 1, Sections 7.5.3 for Phase I MSAs, and Sections 31.5.2.3 for Phase II MSAs;
(2) DS1/DS3 Service - Pacific Bell Telephone Company Tariff F.C.C. No. 1, Section 7.5.9 for Phase I MSAs and Section 31.5.2.7 for Phase II MSAs;
(3) OC3/OC3c; OC12/OC12C/OC48/OC48c/OC192 Service - Pacific Bell Telephone Company Tariff F.C.C. No. 1, Section 32.3 for Phase I MSAs and Section 31.5.2.13 for Phase II MSAs;
(4) OC3/OC12/OC48/OC192 Dedicated Ring Service - Pacific Bell Telephone Company Tariff F.C.C. No. 1, Section 7.5.13 and 30.4 for Phase I MSAs, and Section 31.5.2.10 and 31.5.2.12 for Phase II MSAs.
(5) Gigabit Ethernet Metropolitan Area Network (GigaMAN) Service - Pacific Bell Telephone Company Tariff F.C.C. No. 1, Section 7.5.14 for Phase I MSAs and Section 31.5.2.14 for Phase II MSAs.
(6) Multi-service Optical Network (MON) Ring Service - Pacific Bell Telephone Company Tariff F.C.C. No. 1, Section 8.4 for Phase I MSAs and Section 31.5.2.15 for Phase II MSAs. (N)

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33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.2 Eligibility Criteria (Cont'd)

(C) Contributory Subject Services (Cont'd)

All Terms and Conditions for the Contributory Subject Services listed above are governed by their respective tariff sections except as noted herein. Annual recurring revenue generated from these services will be used in the MARC calculations defined in Section 33.56.4. Only the Contributory Subject Services listed above are eligible for the discounts provided under this Contract Offer. If, during the Term Period of this Contract Offer, additional services become eligible for pricing flexibility, those additional services may, at the Customer's option, be included among the Contributory Subject Services eligible under this Contract Offer, beginning with the first year after the additional services become eligible for pricing flexibility, provided that the MARC increases to reflect the recurring annual revenues associated with the additional Contributory Subject Services, as described in Section 33.56.4.

33.56.3 Terms and Conditions

(A) Term Period

The contract term (Term Period) is five (5) years commencing on the date the Customer executes a Letter of Subscription (LOS). The Anniversary Date shall be based on the date of the executed LOS. Contract Offer No. 56 is not renewable.

Contributory Subject Services to which the Customer already subscribes as of the commencement of the Term Period, or any additional Contributory Subject Services included in this Contract Offer after commencement of the Term Period in accordance with the terms and conditions set forth herein, must be converted to five (5) year term payment plans (where available), in order to receive discounts pursuant to this Contract Offer. If the five (5) year term payment plan is not available for certain Contributory Subject Services, the Customer must select from the longest term plan available for the Contributory Subject Service. The Customer may select from (N)

33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.3 Terms and Conditions (Cont'd)

(A) Term Period (Cont'd)

any year term payment plan for purchases of new Contributory Subject Services after the commencement of the Term Period of this Contract Offer. Services are subject to certain rates, charges, and general Terms and Conditions in other sections of F.C.C. Tariff No. 1, as set forth in Sections 2-General Regulations, 5-Ordering Options, and 13-Additional Engineering, Additional Labor and Miscellaneous Services. Such Terms and Conditions may be modified through the filing of tariff changes at any time during the Term Period. Such tariff modifications will not change the Terms and Conditions described in this Contract Offer.

(B) Contract Offer No. 56 is only available for subscription June 2, 2005 through July 2, 2005.

(C) Customer must submit a completed LOS to the Telephone Company.

(D) Customer must subscribe to this Contract Offer in accordance with the regulations set forth in Southern New England Telephone Company Tariff F.C.C. No. 1 Section 5 - Ordering Options.

(E) Access Service Ratio

As referenced in Section 33.56.2(A)(4), the Customer and its subsidiaries must maintain an Access Service Ratio of 98% or greater. The Customer shall not migrate any Contributory Services to or from any affiliates in a manner that would affect its obligations under this provision. The ratio, calculated quarterly, is the Access Revenue divided by Access Revenue plus Wholesale Revenue. To maintain compliance with this Contract Offer, the ratio must be greater than or equal to 98%. The 98% ratio is calculated as follows:

$$\frac{\text{Access Revenue}}{\text{Access Revenue + Wholesale Revenue}}$$

(N)

33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.3 Terms and Conditions (Cont'd)

(E) Access Service Ratio (Cont'd)

(1) Access Revenue is the Customer's and its affiliates' interstate recurring billed revenue associated with the rate elements, as defined in table A below:

TABLE A:

Service	General/Basic Description
Voice Grade	7.2.3
Base Rate (DS0), DS1 and DS3 Services	7.2.9
OCN PTP	32.1
GigaMAN	7.2.12
Dedicated Ring Service	7.2.11(A)(2)
MON Ring	8.1(A)

(2) Wholesale Revenue is the Customer's and its subsidiaries' recurring billed revenue for associated rate elements, as defined in Table B, not included in the interstate tariff(s). (N)

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33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.3 Terms and Conditions (Cont'd)

(B) Access Service Ratio (Cont'd)

TABLE B:

[illegible]	[illegible]
DS1/LT1	**4-wire digital loop DS1 Entrance Facilities DS1 Interoffice Transport DS1 Cross Connects DS1 Multiplexing All DS1 non-tariffed Committed Information Rate Broadband Services**
DS3/LT3	**DS3 Loop DS3 Entrance Facilities DS3 Interoffice Transport DS3 Cross Connects DS1/DS3 Multiplexing All DS3 non-tariffed Committed Information Rate Broadband Services**
OC-3 OC-12 OC-48	**OC-3 Entrance Facilities OC-3 Interoffice Transport OC-3 Cross Connects OC-3 Multiplexing OC-12 Entrance Facility OC-12 Interoffice Transport OC-12 Cross Connects OC-12 Multiplexing OC-48 Entrance Facilities OC-48 Interoffice Transport OC-48 Cross Connects OC-48 Multiplexing All OCN equivalent non-tariffed Committed Information Rate Broadband Service**
Other Transport Products	**Dark Fiber - Interoffice Dark Fiber - Loop Dark Fiber - Subloop Dark Fiber Cross Connects Unbundled Dedicated Transport**

(3) As new rate elements are introduced to Table A in this section, all recurring revenues associated with the new rate elements will automatically be added to the Customer's Access Revenue, as defined in this section, for calculation of the Access Service Ratio.

(N)

33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.3 Terms and Conditions (Cont'd)

(E) Access Service Ratio (Cont'd)

(4) As new rate elements are introduced to Table B in this section, all recurring revenues associated with the new rate elements will automatically be added to the Customer's Wholesale Revenue, as defined in this section, for calculation of the Access Service Ratio.

(5) If the Customer fails to meet the Access Service Ratio in any given quarter of the term, upon notification from the Telephone Company, the Customer has ten (10) business days to notify the Telephone Company in writing that it will meet or exceed the 98% Access Services Ratio within 60 days. Failure to achieve compliance in 60 days will constitute a default and the Telephone Company shall have the right to terminate this Contract Offer, unless the Customer has acted in good faith to achieve compliance and the Customer's failure to achieve compliance within sixty days is caused by delay attributable to the Telephone Company. In the event of a termination by the Telephone Company, termination liability charges will apply as set forth in Section 33.56.9.

(6) Credits will not be issued until the Customer has met the 98% Access Services Ratio.

(F) The Customer may not subscribe to any future Contract Offerings in Section 33 in conjunction with this Contract Offer or that might be offered by the Telephone Company for Subject Services covered under this Contract Offer unless expressly permitted in the future Contract Offer.

(G) The Customer must pay billed charges in full throughout the Term Period of this Contract Offer, excluding amounts being disputed. The Telephone Company will exhaust its remedies under Section 2.4 of FCC Tariff No. 1 before exercising any remedy under this section. The Telephone Company will provide Customer written notice (via registered letter to Customer's General Counsel) of non-compliance. The Customer will have thirty (30) days from receipt (N)

33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.3 Terms and Conditions (Cont'd)

(G) (Cont'd)

of the written notice to comply, which may be extended by mutual agreement of the Parties to allow the Parties to attempt to resolve any disputes. During this thirty (30) day period, or a period to be mutually agreed upon by the Parties, the Parties will cooperate in good faith to attempt to resolve any pending disputes. If, after the Parties have exhausted attempts to resolve any pending disputes or have resolved disputes and the Customer does not comply with the written notice of non-compliance, the Telephone Company shall have the right to terminate this Contract Offer. In the event of termination by the Telephone Company, termination liability charges as set forth in Section 33.56.9 will apply. Credits will not be issued until the Customer has paid all billed charges (excluding disputes). Any disputed billing amounts that have been resolved in favor of the Telephone Company are due and payable as described in Section 2.4.

(H) The Customer will continue to receive the benefit of rate stability for any Contributory Subject Services currently under a term plan with the Telephone Company that provides for rate stability.

33.56.4 Minimum Annual Revenue Commitment (MARC)

(A) Calculation of the MARC

The Customer must establish and maintain a MARC as provided in this Contract Offer. The MARC for the first and second year of the Term Period (Years 1 and 2) will be established when the Telephone Company receives the LOS from the Customer. For purposes of calculating the MARC for Year 1, recurring annual revenue for all Contributory Services shall be included in the calculation based on the rates that would apply to the Contributory Subject Services for a five-year minimum term, regardless of whether the Subject Services were actually purchased pursuant to a five-year term at the time of the Customer's subscription to this Contract Offer. Recurring annual revenue for Contributory (N)

33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)

(A) Calculation of the MARC (Cont'd)

Services that are not Contributory Subject Services shall be included in the calculation based on the actual rates applicable to those Contributory Services at the time of calculation.

The Customer's MARC for Year 1 shall be $26.5 Million or four times the Customer's monthly recurring revenue for Contributory Services during the three months immediately preceding the receipt of the signed LOS, whichever is greater. The Customer's Year 2 MARC will be equal to the Year 1 MARC.

The MARC will be re-established, effective on the Anniversary Date, beginning on the second anniversary (the beginning of Year 3). The MARC for Year 3 and subsequent years will be based on the Customer's actual monthly recurring revenue for all Contributory Services during the previous 3 months multiplied by 4, or the then-current MARC, whichever is greater.

Example 1:
The Contract Tariff date is May 1, 2005. The MARC for Year 2 is $26.5M. The Customer's actual revenue to Telephone Company from February 1, 2007 to April 30, 2007 is $8M. The new Year 3 MARC, effective May 1, 2007, is $32M ($8M multiplied by 4 equals $32M).

Example 2:
The Contract Tariff date is May 1, 2005. The MARC for Year 2 is $26.5M. The Customer's actual revenue to Telephone Company from February 1, 2007 to April 30, 2007 is $6M. The new Year 3 MARC, effective May 1, 2007, is $26.5M. (The $26.5M MARC is due to the fact that the MARC recalculation cannot result in a MARC lower than the current MARC). (N)

33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)

(A) Calculation of the MARC (Cont'd)

If the Telephone Company receives additional pricing flexibility relief for MSAs that are not listed in Section 33.56.2, or if additional Contributory Subject Services that are not listed in Section 33.56.2 become eligible for pricing flexibility, the additional MSAs or Contributory Subject Services may be included, at the Customer's option, in this Contract Offer, beginning with the first year after the additional MSAs or Contributory Subject Services became eligible for pricing flexibility. Upon Customer's written notification to the Telephone Company of their intent to exercise this option, the Telephone Company will recalculate the MARC to incorporate the recurring annual revenues from those MSAs or Subject Services and will include those revenues in the calculations described herein. (N)

(B) Inclusion of Additional Contributory Services (Nx)

Not withstanding anything to the contrary herein, the Customer may, at its option, include in this Contract Offer any Contributory Services being provided to the Customer by the Telephone Company as of the date the Customer subscribes to this Contract Offer, but which are then being provided to the Customer according to a tariff or contract other than this Contract Offer, provided, however, that the MARC must be increased to reflect the recurring annual revenues associated with the additional Contributory Services, as provided in Section 33.56.4. If any additional Contributory Services are ATM, Frame Relay or InterLATA services, those additional Contributory Services shall be provided pursuant to an agreement and/or contract which shall be available for review at the following web site:
https://www.sbcprimeaccess.com/shell.cfm?section=2501 (Nx)

Example (N)

Year 1 MARC = $26.5M
If during Year 1, the Customer wishes to include $2M of annual spend currently purchased from the Telephone Company under another tariff or contract and if those services qualify as Contributory Services, then, the new Year 1 MARC is $28.5M. (N)

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(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)

(C) MARC Adjustments

(1) The Customer shall have the right to adjust the MARC downward by up to 10%. This adjustment can only be made one time during the Term Period at anytime after the first 24 months of the Term Period (beginning with the establishment of the Year 3 MARC). To exercise this option, the Customer must notify the Telephone Company, in writing, at least 60 days prior to the Anniversary Date.

(2) The MARC adjustment shall apply prospectively only. If Customer exercises this option, reduced discounts (as specified in Table D Section 33.56.5 (B)) will apply for the remainder of the Term Period, and certain provisions of the Contract Offer will no longer apply as provided in Section 33.56.5 (B). Also, if the Customer exercises this option, any MARC adjustments associated with SLA penalties offered in Section 33.56.5 shall not apply for the remaining years of the Term Period. If the Customer uses the MARC adjustment option in conjunction with any of the Merger and Acquisition options outlined in Section 33.56.7, reduced discounts will remain for the life of the Term Period, and discounts previously received during that contract year will not be re-rated provided the Eligibility Criteria in Section 33.56.2 and Terms and Conditions in Section 33.56.3 have been met prior to the MARC adjustment, and certain provisions will no longer apply as detailed in Section 33.56.5(B).

(3) The MARC will be adjusted automatically pursuant to SLA measurement guidelines specified in Section 33.56.5, unless the MARC adjustment option discussed in Section 33.56.4(C)(1) is exercised.

(D) Failure to Achieve the MARC

The Customer and the Telephone Company agree to exchange information quarterly, and meet quarterly, if necessary, to review Customer's progress toward achieving the MARC for the term

(N)

33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.4 Minimum Annual Revenue Commitment (MARC) (Cont'd)

(D) Failure to Achieve the MARC (Cont'd)

year and the Telephone Company's progress on SLA targets. The Customer and the Telephone Company agree that they will meet in the ninth month of each term year to discuss and address, if necessary, compliance with the Terms and Conditions of the Contract Offer prior to the Anniversary Date.

If the Customer fails to achieve the annual MARC commitment as of the Anniversary Date of each year of the Term Period, the Customer will be notified by the Telephone Company.

The Customer must remit an Annual True-Up payment, the amount of which will be calculated as the difference between the annual MARC for the current term year and the actual recurring annual revenue for the Contributory Services during that term year.

If the Telephone Company does not receive the Annual True-Up amount within 30 days of the Customer's receipt of its notification, the Customer shall be deemed to have terminated this Contract Offer and termination liability charges will apply as set forth in Section 33.56.9.

33.56.5 Discounts and Other Credits

(A) Discount Schedule and Application

(1) Table C contains the level of discounts for this Contract Offer.

TABLE C:

Year	MARC Discount	Discount on Recurring Revenue above the MARC
1	0%	0%
2	5%	5%
3	10%	10%
4	11%	11%
5	12%	12%

(N)

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(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.5 Discounts and Other Credits (Cont'd)

(A) Discount Schedule and Application (Cont'd)

(1) (Cont'd)

Example for Year 2:

Customer's MARC = $26.5M
Customer's annual recurring revenues for Contributory Services = $32M
Customer's annual recurring revenues for Subject Services = $30M
Customer will receive a 5% discount on $30M (issued annually in accordance with subsection (2).

(2) The Customer will receive the 0%, 5%, 10%, 11%, or 12% discount (depending on the year outlined in Table C) on annual recurring revenues for Contributory Subject Services, provided that the Customer meets or exceeds the MARC. The discount will be applied no later than 60 days after each Anniversary Date. Recurring revenue generated from Subject Services that were not included in this Contract Offer at the time of subscription are not eligible for discounts under this Contract Offer unless, and until, those Contributory Subject Services have been added to this Contract Offer pursuant to Section 33.56.2, Section 33.56.4 Section 33.56.7 or Section 33.56.8.

(B) MARC Adjustments - Discount Schedule and Application

Table D outlines discounts that the Customer will be eligible to receive following a MARC adjustment option pursuant to Section 33.56.4 (C)

TABLE D

	MARC Discount	Above MARC Discount, if available
MARC Adjustment	Year 3 - 4% Year 4 - 5% Year 5 - 6%	Year 3 - 4% Year 4 - 5% Year 5 - 6%

(N)

(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.5 Discounts and Other Credits (Cont'd)

(B) MARC Adjustments - Discount Schedule and Application (Cont'd)

Following a MARC adjustment, above the MARC discounts are available only if, during any year, the MARC for that year is equal to or greater than the MARC in effect immediately prior to the adjustment.

Example
The Customer's Year 3 MARC is $30M (calculated as revenue from the last quarter in Year 2 x 4). On the Anniversary Date at the beginning of Year 4, the Customer's Year 3 annual recurring revenue for Contributory Services is $25M. The Customer elects to invoke the MARC adjustment option and adjust the MARC downward by 10%. The Customer's Year 4 recalculated MARC is therefore $27M = ($30M x 90%). The Customer must make an Annual True-Up payment for Year 3 in the amount of $5M. If the Customer fails to make the True-Up payment, the Customer will be in default and termination liabilities will apply. Under this scenario, the Customer will not become eligible for the above the MARC discounts provided in table D, above, until the Customer's MARC in a subsequent year equals or exceeds $30M.

(C) Non-Recurring Charges

The Telephone Company will waive installation Non-recurring charges (NRCs) associated with the purchase of Contributory Subject Services pursuant to this Contract Offer. In the event that the installation NRCs are billed by the Telephone Company, the Customer will receive credits for these charges on a quarterly basis.

In order to receive credits for installation NRCs, the Customer must be in compliance with all terms and conditions of this Contract Offer. Additionally, if the Customer fails to meet the MARC on an Anniversary Date pursuant to Section 33.56.4 (A) and/or fails to pay the Annual True-Up as defined in Section 33.56.4 (D), termination liability charges will apply as set forth in Section 33.56.9.

(N)

(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.5 Discounts and Other Credits (Cont'd)

(C) Non-Recurring Charges (Cont'd)

The Customer must pay all other applicable non-recurring charges, including, but not limited to, rearrangement charges, special construction charges, access order charges, cancellation charges and Access Order Modification charges as described in Pacific Bell Telephone Company F.C.C. No. 1, Section 5.2 for Subject Services pursuant to this Contract Offer.

(D) Portability

The Telephone Company will waive termination liability charges for moves and/or disconnection of Contributory Subject Services. In the event that termination liability charges for any such moves and/or disconnections are billed by the Telephone Company, the Customer will receive credits for these charges on a quarterly basis. In order to receive credits or a waiver of termination liability charges for such moves and/or disconnects, the following conditions must be met:

(1) Customer must be in compliance with all terms and conditions of this Contract Offer.

(2) Customer shall be permitted to move and/or disconnect Contributory Subject Services from any of the identical Contract Offers, as described in Section 33.56.2(B).

(3) DS1 Services must have been in service for a minimum of one (1) month from the original installation date.

(4) DS3, OC-3 and OC-12 Point to Point Services must have been in service for a minimum of one (1) year from the original installation date.

(5) OC48 Point To Point, OC192 Point to Point and GigaMAN Services must have been in service for a minimum of three (3) years from the original installation date.

(6) If, and to the extent that OPT-E-MAN becomes eligible for pricing flexibility, OPT-E-MAN may, at the Customer's option, become a

(N)

(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.5 Discounts and Other Credits (Cont'd)

(D) Portability (Cont'd)

(6) (Cont'd)

Contributory Subject Service included in this Contract Offer. If so, such OPT-E-MAN service shall be eligible for portability, provided that for each OPT-E-MAN circuit to be ported:

(a) facilities necessary to provide OPT-E-MAN, as specified in F.C.C. No. 1, Section 35, exist at the end user location in which the circuit is being moved; and
(b) the circuit has been in service for a minimum of one (1) year from the original installation date.

If the Customer fails to meet the MARC on a contract Anniversary Date pursuant to Section 33.56.4(A) and/or fails to pay the Annual True-Up as defined in Section 33.56.4(D), termination liability charges will apply as set forth in Section 33.56.9.

(E) Service Level Assurance (SLA) Performance

The Customer will be eligible for additional credits and/or MARC adjustments based upon the quality of service delivered by the Telephone Company during the Term Period of this Contract Offer. Pursuant to this Contract Offer, SLA credits and MARC adjustments will apply in the event the Telephone Company's SLA service performance level objectives are not met.

SLA performance targets are established for a twelve (12) month interval commencing with the subscription date of this Contract Offer.

The service performance targets will be based on the following four (4) measured service components:

(1) Percent Network Availability: The percent of the time all DS1, DS3 and OCN circuits are in service compared to the total expected availability during the reporting period factoring in both failure frequency and time to repair. (N)

(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.5 Discounts and Other Credits (Cont'd)

(B) Service Level Assurance (SLA) Performance (Cont'd)

(2) Mean Time To Repair (MTTR) of DS1 circuits: The average time it takes the Telephone Company to repair all of the Customer's DS1 circuits during the reporting period.

(3) Mean Time To Repair (MTTR) of DS3 and OCN circuits: The average time it takes the Telephone Company to repair all of the Customer's DS3 and OCN circuits during the reporting period.

(4) On Time Delivery - Due Date: Calculated by dividing the number of Customer requests for new service and rearrangements of existing service that were missed for Telephone Company reasons by the total number of new service requests and rearrangements of existing service completed during the reporting period. The date used to determine whether or not the service request was missed is the service confirmation date provided on the Firm Order Confirmation (FOC). This measurement will apply to all of the Customer's DS1, DS3 and OCN services.

Table B outlines the SLA performance targets for each measured service in each contract year.

Table B

Measured Service	Year 1 Target	Year 2 Target	Year 3 Target	Year 4 Target	Year 5 Target
% Network Availability (DS1-OCN)	99.93%	99.96%	99.96%	99.99%	99.99%
MTTR (DS1 only)	4:45	4:30	4:30	4:15	4:15
MTTR (DS3 & OCN)	3:15	3:15	3:00	3:00	3:00
On Time Delivery - Due Date (DS1-OCN)	96.00%	96.50%	96.500 %	97.00%	97.00%

(N)

(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.5 Discounts and Other Credits (Cont'd)

(F) SLA Performance Penalties

At the conclusion of each Anniversary Date, the 12-month averages based on the Telephone Company's provided results for each measured service will be compared to its corresponding target in Table E. For each measurement that is not achieved by the Telephone Company, the Customer will be eligible to receive credits as outlined in subsection (1) and MARC adjustments as outlined in subsection (2).

(1) The Customer will be eligible for the following credit amounts, as set forth in Table F. For each measurement that is not achieved by the Telephone Company after each Anniversary Date, credits will be paid into a Telephone Company account held on the Customer's behalf.

Immediately following the Customer's subscription to this Contract Offer, the Telephone Company will establish a holding account with an initial balance of $300,000. The initial balance of the holding account represents the total, aggregate amount that the Customer will be eligible to receive across the regions identified in Section 33.56.2(B) of this Contract Offer. The credit account will be applied for the purpose of improving service delivery and performance. The Customer and Telephone Company will cooperate in good faith to identify and plan appropriate service and/or service performance projects, which shall be planned and completed as Special Construction. The Telephone Company will follow the Special Construction guidelines provided in F.C.C. Tariff No. 2 for work performed pursuant to this provision, including standard time and materials rates, and shall be subject to any applicable additional charges for expediting or overtime. Work performed pursuant to this provision shall be credited to a designated BAN of the Customer's choice. The amount will be deducted from the SLA credit holding account. After the first Anniversary Date, the Telephone Company will annually add to

(N)

(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.5 Discounts and Other Credits (Cont'd)

(F) SLA Performance Penalties (Cont')

(1) (Cont'd)

the holding account the credit amount due to the Customer for each SLA measurement not met.

The Customer and the Telephone Company will work together to create a project schedule designed to ensure that projects are completed by the Telephone Company prior to the end of each term year.

The initial balance must be used within the first 12 months following the receipt of a signed LOS. Any amount remaining from the initial balance will not be allowed to carry over to Year 2 and will be forfeited. Any credit due to the Customer at the end of term Year 5, will be available to the Customer in the holding account for the 12-month period subsequent to the end of the Term Period. Annual SLA performance credits must be used within the year after the credits were issued, and cannot be rolled over into the following year. Any amounts left over, after the year following the issuance of the credits, will be forfeited, provided, however, that projects on the project schedule that are not completed at the end of the term year can be completed in the subsequent year and any allocated amounts associated with that project shall not be debited from the following year's holding account balance. If the Telephone Company fails to complete an agreed upon project on the project schedule at any time during the Term Period, the amount allocated for that project shall be carried over until the agreed upon project has been completed.

(N)

(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.5 Discounts and Other Credits (Cont'd)

(F) SLA Performance Penalties (Cont'd)

(1) (Cont'd)

Table F

Service Quality Measure	**Annual Credit if SLA Target not Met**
% Network Availability (DS1-OCN)	$100,000
MTTR (DS1 only)	$100,000
MTTR (DS3 & OCN)	$100,000
On Time Delivery - Due Date (DS1-OCN)	$100,000

The credits in Table F are the total, aggregate amounts that the Customer will be eligible to receive across the five regions identified in Section 33.56.2(B) of this Contract Offer.

(2) The Customer will be eligible for the following MARC adjustments in Table G for each measurement that is not achieved by the Telephone Company at each Anniversary Date. However, if the Customer exercises the MARC adjustment option specified in Section 33.56.4, the MARC adjustments in Table G will not apply in the year that the MARC adjustment option is exercised and for the remaining years of the contract.

(N)

(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.5 Discounts and Other Credits (Cont'd)

(F) SLA Performance Penalties (Cont'd)

(2) (Cont'd)

Table G

Service Quality Measure	Year in which Adjustment Applies	MARC Adjustment
% Network Availability (DS1-OCN)	2	Decrease ½ %
MTTR (DS1 only)	2	Decrease ½ %
MTTR (DS3 & OCN)	2	Decrease ½ %
On Time Delivery - Due Date (DS1-OCN)	2	Decrease ½ %
% Network Availability (DS1-OCN)	3, 4 or 5	Decrease 1%
MTTR (DS1 only)	3, 4, or 5	Decrease 1%
MTTR (DS3 & OCN)	3, 4, or 5	Decrease 1%
On Time Delivery - Due Date (DS1-OCN)	3, 4, or 5	Decrease 1%

Example:

The percent decrease will be applied to the recalculated annual MARC. For example, the Customer's Year 4 MARC is set for $33M [(previous 3 months billing at end of Year 3) X 4]. The Telephone Company achieved 1 out of the 4 measurements in Year 3. The Year 4 MARC is then recalculated and set at $32.01M ($33M X 97%).

(N)

(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.6 Assignment and Transfer

Subject to the provisions set forth in section 33.56.7 regarding mergers and acquisitions, if the Customer wishes to assign or transfer its use of services under this Contract Offer No. 56, pursuant to F.C.C. No. 1, Section 2.1.2 of this Tariff, the Telephone Company will acknowledge such transfer or assignment pursuant to the terms of F.C.C. No. 1, Section 2.1.2, unless: (1) the proposed assignee or transferee demonstrates a lack of credit worthiness under one of the criteria in (A) or (B) below, or (2) if the proposed assignee or transferee or its parent company has commenced a voluntary receivership or bankruptcy proceeding (or had a receivership or bankruptcy proceeding initiated against it).

(A) Any debt securities of the proposed assignee or transferee or its parent (defined as an entity that owns directly or indirectly more than 50% of the equity of the proposed assignee or transferee) are rated below investment grade, as defined by the Securities and Exchange Commission or if any debt securities of a proposed assignee or transferee or its parent company are rated the lowest investment grade and have been placed on review by the rating organization for a possible downgrade.

(B) The proposed assignee or transferee does not have any outstanding securities rated by credit rating agencies (e.g. Standard and Poor's), but does have a Dun and Bradstreet rating, and the proposed assignee or transferee is rated "fair" or below in a composite credit appraisal published by Dun and Bradstreet, or "high risk" in a Paydex score as published by Dun and Bradstreet.

33.56.7 Mergers and Acquisitions Involving the Customer

(A) The Terms and Conditions of Contract Offer No. 56 shall continue in full force and in effect if the Customer, in whole or in part, merges with, acquires, is acquired by, sells all or substantially all its stock or certain assets to any other entity, or purchases all stock or substantially all stock or certain assets of another company (the foregoing generally referred to herein as a merger or acquisition). During or after the merger or acquisition, if

(N)

(N)

33. Pricing Flexibility Contract Offerings (Cont'd)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.7 Mergers and Acquisitions Involving the Customer (Cont'd)

(A) (Cont'd)

the other company involved in the merger or acquisition also purchases Contributory Services from the Telephone Company, either directly or through any affiliates, then billed, recurring revenue for Contributory Services of the other company involved in the merger or acquisition will not be used in calculations of the MARC as discussed in Section 33.56.4 (A), or calculations to achieve the MARC discussed in Section 33.56.4 (B) or in the calculation of the Access Service Ratio discussed in Section 33.56.3(E), except as permitted by one of the provisions in this subsection.

(1) The Customer must be meeting MARC commitments and all Eligibility Criteria and Terms and Conditions outlined in Sections 33.56.2 and 33.56.3 in order to exercise the provisions under this subsection.

(2) Recurring revenue from Contributory Services from the other entity involved in the merger or acquisition cannot be applied to, or eligible for, any incentives or discounts contained in this Contract Offer, except as expressly permitted by one of the provisions herein.

(3) The Customer shall have four options (per merger or acquisition) to incorporate revenue from the other company or companies involved in the merger or acquisition. Customer may elect only one of those options with respect to any particular merger or acquisition. If the Customer does not exercise any of those options in the manner provided herein, the Customer will not be permitted to use existing or future Special Access revenues from the other company or companies involved in the merger or acquisition in the Calculation of the MARC or Calculations to Achieve the MARC discussed in Section 33.56.4(A) & (B), nor will such revenues be eligible for any discounts provided under this Contract Offer, nor will Telephone Company apply existing or future Special Access or Wholesale Service revenues from the other company or companies in calculating the Access Service Ratio in Section 33.56.3(E).

(N)

33. Pricing Flexibility Contract Offerings (Cont'd) (N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)

33.56.7 Mergers and Acquisitions Involving the Customer (Cont'd)

(A) (Cont'd)

(4) The acquisition and/or merger Transaction Close Date will be used to measure the length of time the following provisions are available. The Transaction Close Date shall be defined as the date that the stock purchase is complete and/or the final date on which the assets of the acquired/merged company have been purchased.

(5) If the Customer has selected, but not yet fully implemented, one of the options provided herein, the MARC, and any MARC adjustment calculation as provided in Section 33.56.4, will apply only to the Customer's original (pre-merger or acquisition) MARC and will not include revenue from the other company involved in the merger or acquisition.

(6) The Customer cannot combine any of the Merger and Acquisition provisions in this subsection.

(7) The Telephone Company will calculate the actual recurring annual revenue of the other company involved in the merger or acquisition on the date the Customer selects one of the provisions in this subsection in the same manner such revenue would be calculated for purposes of performing the annual recalculation of the MARC under this Contract Offer. Until the Customer has fully implemented one of the provisions in this subsection, the Customer will not be eligible to earn the above the MARC discounts discussed in Section 33.56.5(A)(2) of this Contract Offer for revenue from the other company involved in the merger or acquisition. After the Customer has fully implemented one of the provisions in this subsection, the Customer will be eligible for above the MARC discounts provided in Section 33.56.5(A)(2), for recurring annual revenue above the new combined MARC.

(N)