

## ACCESS SERVICE

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)(B) Mergers and Acquisitions Affecting Access  
Service Ratio

- (1) 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, and inclusion of the recurring revenue from Contributory Services from the other company or companies involved in the merger or acquisition into this Contract Offer will cause the Customer to fall below Access Services Ratio Terms and Conditions as defined in Section 33.56.3 (E), the Customer must select from Option 1 or 2 of this Section 33.56.7(B), below, to incorporate any recurring annual revenues from the other company involved in the merger or acquisition into this Contract Offer.
- (2) The Customer must fully conform to Access Service Ratio within 18 months of the Transaction Close Date and must comply with the Access Conversion Schedule provided in Table H below. As long as the Customer is in compliance with the Access Conversion Schedule and the Customer's existing revenue complies with the Access Services Ratio, as provided in Section 33.56.3(E), MARC discounts will continue to apply and the Customer shall not be considered out of compliance with the Access Services Ratio Terms and Conditions as defined in Section 33.56.3(E).
- (3) If, at any time the Customer does not comply with the Access Conversion Schedule provided in Table H below, MARC discounts will be withheld and the Telephone Company will notify the Customer of non-compliance. The Customer will then have 60 days to comply with the Access Conversion Schedule. If the Customer does not comply within 60 days, this Contract Offer shall be deemed to be in default, and the Telephone Company shall have the right to terminate this

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

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

33.56.7 Mergers and Acquisitions Involving the Customer  
(Cont'd)(B) Mergers and Acquisitions Affecting Access  
Service Ratio (Cont'd)

## (3) (Cont'd)

Contract Offer. Upon such termination, termination liability charges will apply as provided in Section 33.56.9. Notwithstanding the foregoing, if Telephone Company is primarily responsible for a delay in the Access Conversion Schedule, MARC discounts will continue to apply. the Customer shall not be considered out of compliance with the Access Services Ratio Terms and Conditions as defined in Section 33.56.3(B), and this Contract Offer will not be considered in default, provided, however, that each party shall exercise best efforts to comply.

Table H outlines the Unbundled Network Element (UNE) to Access conversion schedule that will be used to migrate the services.

Table H: Access Conversion Schedule

90 Day Period	Required Conversion Level
1 <sup>st</sup>	10%
2 <sup>nd</sup>	20%
3 <sup>rd</sup>	50%
4 <sup>th</sup>	75%
5 <sup>th</sup>	85%
6 <sup>th</sup>	100%

## (a) Option 1

- (i) The Customer shall establish a temporary combined MARC by adding to the Customer's then current MARC at least 85%, but not more than 100% (at the Customer's option), of all recurring annual revenue for Contributory Services from the other company involved in the merger or acquisition, for a period not to exceed 18 months from the Transaction Close Date. Recurring annual revenue for Contributory

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33. Pricing Flexibility Contract Offerings (Cont'd)

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

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

(B) Mergers and Acquisitions Affecting Access  
Service Ratio (Cont'd)

(3) (Cont'd)

(a) Option 1 (Cont'd)

(1) (Cont'd)

Services shall be calculated in a manner consistent with the annual recalculation of the MARC under this Contract Offer.

(ii) The Customer must exercise this option within 60 days following the Transaction Close Date.

(iii) This option is not available in Year 5 of the Term Period.

(iv) A permanent combined MARC will be established no later than 18 months following the Transaction Close Date using the following calculation, based on a calculation of the Customer's combined recurring annual revenue.

(a) The calculation of the Customer's combined annual recurring revenue shall include all Contributory Services for the combined company resulting from the merger or acquisition. The calculation of the Customer's combined permanent MARC shall be performed in the same manner as the annual MARC calculations provided in Section 33.56.4(A), above. Following the calculation of the combined permanent MARC, the MARC shall be recalculated for each year remaining in the Term Period, and the MARC-related terms and conditions of this

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33. Pricing Flexibility Contract Offerings (Cont'd)

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33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)33.56.7 Mergers and Acquisitions Involving the Customer  
(Cont'd)(B) Mergers and Acquisitions Affecting Access  
Service Ratio (Cont'd)

## (3) (Cont'd)

(a) Option 1 (Cont'd)

## (iv) (Cont'd)

## (a) (Cont'd)

Contract Offer shall be applied to the combined company, in the same manner as would otherwise apply under this Contract Offer.

- (b) Notwithstanding anything to the contrary in this Contract Offer, the permanent combined MARC must be at least 85% of temporary combined MARC as defined in Section 33.56.7(C)(1)(a).

(b) Option 2

- (i) The Customer must establish a combined MARC by adding to the Customer's then-current MARC at least 85%, but not more than 100% (at the Customer's option), of all recurring annual revenue for Contributory Services from the other company involved in the merger or acquisition. Recurring annual revenue for Contributory Services shall be calculated in a manner consistent with the annual recalculation of the MARC under this Contract Offer.
- (ii) The Customer must exercise this option within 60 days following the Transaction Close Date.
- (iii) This option is not available in Year 5 of the Term Period.

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33. Pricing Flexibility Contract Offerings (Cont'd)

(N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)33.56.7 Mergers and Acquisitions Involving the Customer  
(Cont'd)(C) Mergers and Acquisitions not Affecting Access  
Service Ratio

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, and inclusion of recurring revenue from Subject Services from the other company or companies involved in the merger or acquisition into this Contract Offer will not cause the Customer to fall below Access Services Ratio Terms and Conditions as defined in Section 33.56.3 (E), the Customer must select from Option 3 or 4 of this Section 33.56.7(C), to incorporate into this Contract Offer any recurring annual revenues from the other company involved in the merger or acquisition.

(1) Option 3

- (a) The Customer must establish a temporary combined MARC by adding at least 85%, but no more than 100% (at Customer's option), of all recurring annual revenue for Contributory Services from the other company involved in the merger or acquisition, for a period not to exceed 12 months from the Transaction Close Date. Recurring annual revenue for Contributory Services shall be calculated in a manner consistent with the annual calculation of the MARC under this Contract Offer.
- (b) The Customer must exercise this option within 60 days following the acquisition Transaction Close Date.
- (c) This option is not available during Year 5 of the Term Period.
- (d) A permanent combined MARC will be established no later than 12 months following the Transaction Close Date, based on a calculation of the Customer's combined recurring annual revenue.

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33. Pricing Flexibility Contract Offerings (Cont'd)

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33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)33.56.7 Mergers and Acquisitions Involving the Customer  
(Cont'd)(C) Mergers and Acquisitions not Affecting Access  
Service Ratio (Cont'd)(1) Option 3 (Cont'd)

## (d) (Cont'd)

(i) The calculation of the Customer's combined annual recurring revenue shall include all Contributory Services for the combined company resulting from the merger or acquisition. The calculation of the Customer's combined permanent MARC shall be performed in the same manner as the annual MARC calculations provided in Section 33.56.4(A), above. Following the calculation of the combined permanent MARC, the MARC shall be recalculated for each year remaining in the Term Period, and the MARC-related terms and conditions of this Contract Offer shall be applied to the combined company, in the same manner as would otherwise apply under this Contract Offer.

(ii) Notwithstanding anything to the contrary in this Contract Offer, the permanent combined MARC must be at least 85% of temporary combined MARC as defined in Section 33.56.7(C) (1) (a).

(2) Option 4

(a) The Customer must establish a combined MARC by adding to the Customer's then-current MARC at least 85%, but not more than 100% (at the Customer's option), of all recurring annual revenue for Contributory Services from the other company involved in the merger or acquisition. Recurring annual revenue for Contributory Services shall be calculated in a manner consistent with the annual calculation of the MARC under this Contract Offer.

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33. Pricing Flexibility Contract Offerings (Cont'd)

(N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)33.56.7 Mergers and Acquisitions Involving the Customer  
(Cont'd)(C) Mergers and Acquisitions not Affecting Access  
Service Ratio (Cont'd)(2) Option 4 (Cont'd)

(b) The Customer must exercise this option within 60 days following the Transaction Close Date.

(c) This option is not available in Year 5 of the Term Period.

33.56.8 Merger or Acquisition Involving the Telephone Company

In the event that the Telephone Company, or the corporate parent of the Telephone Company, or any affiliate of the Telephone Company or its corporate parent, in whole or in part, merges with, acquires, 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), and the Customer purchases special access services from the other company, then the following terms and conditions will apply:

- (A) If the Customer purchases any interstate special access services from the merged or acquired company, and such special access services are or become eligible for pricing flexibility, the Customer may include those special access services in this Contract Offer, subject to any terms or conditions of any contracts or tariffs pursuant to which the Customer is purchasing such special access services prior to the merger or acquisition, including any terms or conditions regarding termination liability. If the Customer chooses to include the services subject to the merger or acquisition in this Contract Offer, they shall become Contributory Subject Services within the meaning of this Contract Offer at the time they are included in this Contract Offer. At the time such Contributory Subject Services are included in this Contract Offer, the MARC shall be recalculated, including both the recurring annual revenues of the Contributory Services provided to the Customer prior to the merger or acquisition, and the recurring annual revenues of the additional Contributory Subject Services previously provided by the merged or acquired Company.

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33. Pricing Flexibility Contract Offerings (Cont'd)

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33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)33.56.8 Merger or Acquisition Involving the Telephone Company  
(Cont'd)

- (B) The Customer must notify the Telephone Company in writing, within 120 days of the Transaction Close Date, of any Contributory Services from the merged or acquired company that Customer wishes to include in this Contract Offer. Discounts and credits specified in Section 33.56.5 will not apply to services from the merged or acquired company until the MARC has been recalculated to reflect the additional Contributory Services included in this Contract Offer as a result of the merger or acquisition. The MARC recalculation to include these services will occur at the Customer's next Anniversary Date following receipt of the Customer's written notice described above.

33.56.9 Termination Liability(A) Termination Liability Charges

Termination liability language described below applies in lieu of the termination liability language described in Pacific Bell Telephone Company Tariff F.C.C. No. 1, Sections 7, 8, 30 and 32. If the Customer terminates Contract Offer No. 56 before the completion of the term for any reason whatsoever (other than a material default by the Telephone Company), the Customer must pay the Telephone Company termination liability charges as described below. These charges shall become due as of the effective date of the cancellation or termination. The Customer must provide written notification 90 days prior to the desired date of termination to the Telephone Company. This notification must include the date upon which the Customer will terminate the Contract Offer.

If the Customer fails to meet any of the Eligibility Criteria in Section 33.56.2, or fails to meet any of the Terms and Conditions in Section 33.56.3, then the Telephone Company shall provide the Customer with written notification of such non-compliance and the Customer will have sixty (60) days to comply. If the Customer does not comply within such time period, the Customer will be deemed to have terminated its participation in Contract Offer

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33. Pricing Flexibility Contract Offerings (Cont'd)

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33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)33.56.9 Termination Liability (Cont'd)(A) Termination Liability Charges (Cont'd)

No. 56, and termination liability charges will apply as stated below and will be payable pursuant to F.C.C. No. 1, Sections 7, 8, 30 and 32.

The Customer's termination liability charge shall be equal to the following :

If the Customer terminates the Contract Offer prior to the expiration of a term year, 100% of all Discounts (including non-recurring charges and early termination charges) received under Contract Offer No. 56 for the preceding six (6) months immediately prior to the date of termination, plus the following schedule:

- (1) If terminated in Year 1, 10.0% of the Base MARC for the remaining portion of Year 1, plus 10% of the Base MARC for the remaining years of the Contract Offer.
- (2) If terminated in Year 2, 12.5% of the Year 2 MARC for the remaining portion of Year 2, plus 12.5% of the Year 2 MARC for the remaining years of the Contract Offer.
- (3) If terminated in Year 3, 12.5% of the Year 3 MARC for the remaining portion of Year 3, plus 12.5% of the Year 3 MARC for the remaining years of the Contract Offer.
- (4) If terminated in Year 4, 12.5% of the Year 4 MARC for the remaining portion of Year 4, plus 12.5% of the Year 4 MARC for year 5.
- (5) If terminated in Year 5, 10.0% of the Year 5 MARC for the remaining portion of Year 5.

(B) New Technology Termination

If the Customer wishes to move its services to new alternative technology (such as Broadband over power lines, Wi-MAX, DWDM, or optical switching technologies), the Customer shall qualify to reduce the MARC termination liability charges as detailed above by 50% in Year 4 and/or 5 of this Contract Offer as long as the conditions in this subsection are met.

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33. Pricing Flexibility Contract Offerings (Cont'd)

(N)

33.56 Contract Offer No. 56 - Special Access Service Offer (Cont'd)33.56.9 Termination Liability (Cont'd)(B) New Technology Termination (Cont'd)

The Customer shall have the right to move its services to new alternative technology and receive reduced termination liability as long as Eligibility Criteria in Section 33.56.2 and all Terms and Conditions in Section 33.56.3 are met. The Customer must provide documentation that reasonably demonstrates that the new technology is an alternative to existing Subject Services, and that the rates, terms and conditions for the new technology are more favorable to the Customer than the rates, terms and conditions provided under this Contract Offering.

For example, if the Customer wishes to terminate this Contract Offer due to a new technology in Year 4 of the Contract Offer, the termination liability charge would be equal to 100% of discounts applied during the previous six-months, as well as 6.25% of the Year 4 MARC for the remaining portion of Year 4, plus 6.25% of the Year 4 MARC for Year 5.

The Customer must notify the Telephone Company in writing at least 90 days prior to the start of Year 4 if the Customer wishes to terminate in Year 4 and invoke this provision, or at least 90 days prior to the start of Year 5 if the Customer wishes to terminate in Year 5 and invoke this provision. This notification must include the date upon which the Customer will terminate the Contract Offer. Additionally, this provision is only available to the Customer if it has not exercised the 10% MARC adjustment option as detailed in Section 33.56.4 (C).

(C) New Special Access Service Offerings

If the Telephone Company makes available one or more new special access service offerings capable of substituting for the Subject Services provided under this Contract Offer, the Customer will be permitted to enter into a new contract offer or other contract or tariff arrangement to purchase the new service offerings from the Telephone Company, in substitution for the Subject Services provided under this Contract offer without incurring termination liability

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33. Pricing Flexibility Contract Offerings (Cont'd)

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

33.56.9 Termination Liability (Cont'd)

(C) New Special Access Service Offerings (Cont'd)

under this Contract Offer, provided, however, that the Customer's contract offer or other contract or tariff governing the new service offerings must include a term period and revenue commitment that are the same as, or greater than, this Contract Offer.

- (D) This Section 33.56.9 sets forth the sole and exclusive remedies for termination of this Contract Offer No. 56, except for charges due and payable for Contributory Services rendered prior to the date of termination and any non-recurring charges and/or termination liability charges that may become due and payable in accordance with Sections 33.56.9.

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**ATTACHMENT 6**

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22. Pricing Flexibility Contract Offerings

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22.90 Contract Offering No. 90 – Access Discount Offer

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22.90.1 General Description

Contract Offer No. 90 – Access Discount Offer is an access discount plan for which subscription is required to the following access tariffs: Ameritech Operating Companies (Ameritech) Tariff F.C.C. No. 2, Southwestern Bell Telephone Company (SWBT) Tariff F.C.C. No. 73, Nevada Bell Telephone Company (NBTC) Tariff F.C.C. No. 1, The Southern New England Telephone Company (SNET) Tariff F.C.C. No. 39, and Pacific Bell Telephone Company (PBTC) Tariff F.C.C. No. 1. To be eligible for discounts under this Contract Offer, the Customer must meet the Eligibility Criteria set forth in Section 22.90.2, and also must comply with all terms and conditions of this Contract Offer.

(Nx)  
(N)

Contract Offer No. 90 requires eligible customers to establish and maintain a Total Revenue Commitment (TRC), as described in Section 22.90.6 following. The TRC shall include all Contributory Services subject to this Contract Offer. Contributory Services include Contributory Subject Services, as listed in Section 22.90.5, Table 3, herein, in addition to Contributory Non-Subject Services (that are not Contributory Subject Services), as described in Section 22.90.5, Table 4, herein. Contributory Non-Subject Services shall not be eligible for discounts or other incentives provided under this Contract Offer. All Contributory Services described in Section 22.90.5 must be purchased through the SBC wholesale sales channel (SBC Industry Markets). Any Frame Relay Contributory Services shall be provided pursuant to agreements and/or contracts. Such agreements and/or contracts shall be available for review at the web site established to make public any agreements for these services. Customers may reference <https://www.sbcprimeaccess.com/shell.cfm?section=2501>.

(N)  
(Nx)

In the event the Customer does not meet its monthly TRC amount, the Customer must remit the shortfall payment via the Monthly True-Up process set forth in Section 22.90.6. If the Customer does not meet the total TRC amount at the end of each Contract Year of the Term Period, the Customer must remit the shortfall payment via the Annual True-Up process set forth in Section 22.90.8. If the Customer does not comply with all terms and conditions of this Contract Offer (exclusive of the terms and conditions of non-tariffed agreements referenced herein) and cure any non-compliance within the cure period set forth in Section 22.90.13(A) of this Contract Offer, termination liability charges, in accordance with Section 22.90.13, will apply. Contract Offer No. 90 will be available only from November 19, 2005 through December 19, 2005.

(Nx)  
(N)

(N)

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22. Pricing Flexibility Contract Offerings (Cont'd)

22.90 Contract Offering No. 90 - Access Discount Offer (Cont'd)

22.90.2 Eligibility Criteria

The following eligibility criteria must be met to subscribe to Contract Offer No. 90:

(A) Managed Value Plan (MVP) Subscription

(1) At the time of subscription to this Contract Offer, the Customer must be, or have been, a participant under MVP agreements within the last 90 days, pursuant to:

- (a) SWBT Tariff F.C.C. No. 73, Section 38;
- (b) Ameritech Tariff F.C.C. No. 2, Section 19; and
- (c) Pacific Bell Tariff F.C.C. No. 1, Section 22.

(2) The Customer must maintain eligibility under all MVP agreements until they expire.

(3) All such MVP agreements must expire in 2005.

(B) As of December 1, 2005, the Customer must have billed revenue from Contributory Services, as listed in Section 22.90.5, net of all discounts, credits, and adjustments equal to or greater than 86.5 percent of the Customer's Gross Spend (as defined in Section 22.90.6) for the calendar year 2004, rounded to the nearest million, times 11/12's; or, if the Customer's Gross Spend as of December 1, 2005 is less than that amount, the Customer must pay the Telephone Company, or any of its affiliated telephone companies as described in Section 22.90.2(C), an additional amount sufficient to make up the shortfall from that amount, no later than 60 days after December 1, 2005.

(C) Concurrent Subscription

The Customer must concurrently subscribe to the identical Contract Offer of Contract Offer No. 90 pursuant to the following tariffs:

- (1) NBTC Tariff F.C.C. No. 1, Section 23, Contract Offer No. 5
- (2) PBTC Tariff F.C.C. No. 1, Section 33, Contract Offer No. 74;
- (3) SNET Tariff F.C.C. No. 39, Section 25, Contract Offer No. 22; and
- (4) SWBT Tariff F.C.C. No. 73, Section 41, Contract Offer No. 66.

Breach, cancellation or termination of any of these Contract Offers after the expiration of any cure provisions described in this Contract Offer, shall constitute a breach, cancellation or termination of all of these Contract Offers.

(D) Discounts applied under Contract Offer No. 90 are applicable for Contributory Subject Services located in MSAs as listed in Tariff F.C.C. No. 2, Section 21.

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## ACCESS SERVICE

22. Pricing Flexibility Contract Offerings (Cont'd)22.90 Contract Offering No. 90 – Access Discount Offer (Cont'd)22.90.3 Terms and Conditions(A) Term Period

The term of this Contract Offer (Term Period) will begin on December 1, 2005 and end on December 31, 2007, upon submission of a signed Letter of Subscription.

(B) Terms and Conditions

- (1) The Customer must establish and maintain a TRC as described in Section 22.90.6.
- (2) A True-up will take place each month during the Term Period and annually at the end of each Contract Year, as defined in Section 22.90.6.
  - (a) With respect to each month's billing, the monthly true-up will include all qualified billing from Contributory Services, as described in 22.90.6(B), and will take place no later than 60 days after the end of the month, as described in Section 22.90.8.
  - (b) With respect to each Contract Year's billing, the annual true-up will include all qualified billing from Contributory Services, as described in Section 22.90.6, and will take place no later than 60 days after December 31, as described in 22.90.8.
- (3) MVP credits will continue to apply, if applicable, as described in Tariff F.C.C. No. 2, Section 19 until expiration of the MVP agreement. The MVP MATA process will take place as described in Tariff F.C.C. No. 2, Section 19.3.
- (4) Contract Offer No. 90 is available for subscription only from November 19, 2005 through December 19, 2005.
- (5) Any Customer-requested transfer of services purchased from SBC non-wholesale entities or channels, or purchased by the Customer under a different Access Customer Name Abbreviation (ACNA) than those identified at time of subscription, will require an equivalent increase in the Customer's TRC commitment based on the amount of revenue associated with the transferred services. The Customer's maximum Basic Credit amount will not change as a result of this transfer.
- (6) Any conversion of UNE or equivalent offerings to Contributory Subject Services, subject to this Contract Offer, will result in an increase in the TRC commitment equal to the revenue associated with those Contributory Subject Services and according to the rates that would apply to those Contributory Subject Services under this Contract Offer. This increase will apply to the TRC each subsequent year of the Term Period.

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22. Pricing Flexibility Contract Offerings (Cont'd)22.90 Contract Offering No. 90 – Access Discount Offer (Cont'd)22.90.3 Terms and Conditions (Cont'd)(B) Terms and Conditions (Cont'd)

- (7) The Customer will be eligible to subscribe to contract offers in Section 22 (or any successor section) filed after Contract Offer No. 90, in combination with this Contract offer, unless such contract offer states that it may not be combined with other contract offers, or as long as such contract offers do not reduce the TRC under this Contract Offer and the Customer qualifies for, and adheres to the terms, conditions and eligibility requirements of the other contract offer.
- (a) If the Customer has subscribed to any other contract offer and chooses to terminate the other contract offer for purposes of subscribing to this Contract Offer, any termination liabilities provided in the other contract offer will apply according to the terms of the other contract offer.
- (b) If the Customer purchases Contributory Subject Services pursuant to another contract offer, in addition to this Contract Offer No. 90, the Customer will not be eligible to earn Achievement Credits with respect to any charges that apply under the other contract offer.
- (c) If the Customer purchases Contributory Services pursuant to another contract offer that states it may not be combined with other contract offers, the Contributory Services purchased under the other contract offer will not count toward achievement of Gross Spend or TRC under this Contract Offer.
- (8) The Customer may choose to remove from this Contract Offer services provided under one or more Access Customer Name Abbreviations (ACNA's) without liability; however, the TRC commitment will not be reduced and the Access Service Ratio under Contract Offer No. 90 will continue to apply.
- (9) Terms and Conditions for Contributory Subject Services, pursuant to other contract offers the Customer is currently subscribed to at the time of subscription to this Contract Offer, shall continue to apply to those Contributory Subject Services covered under the other contract offers.
- (10) Contributory Services continue to be governed by the otherwise applicable rates, terms and conditions provided in Tariff F.C.C. No. 2 (including MVP provisions with respect to services subject to MVP for so long as the Customer's MVP subscription remains in effect) except as noted herein.
- (11) The Customer must subscribe to the services available under this Contract Offer in accordance with the regulations set forth in Section 5 – Ordering Options for Switched and Special Access Service.
- (12) The Customer must submit a Letter of Subscription (LOS) to the Telephone Company as described in Section 22.90.3(A).

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22. Pricing Flexibility Contract Offerings (Cont'd)22.90 Contract Offering No. 90 – Access Discount Offer (Cont'd)22.90.3 Terms and Conditions (Cont'd)(B) Terms and Conditions (Cont'd)

- (13) The Customer must maintain an Access Service Ratio equal to or greater than 95 percent, except as described in Section 22.90.11 (B). The Access Service Ratio is defined in Section 22.90.4, and will be measured monthly.
- (14) Commingling, as defined in Ameritech Tariff F.C.C. No. 2, Section 2.6, of Subject Services under this Contract Offer, is prohibited.
- (15) The Customer shall be permitted to Groom Contributory Subject Services subject to this Contract Offer as provided in this Section. Grooming is defined as moving, rearranging, or rolling over circuits subject to this Contract Offer without disconnecting the end user locations of those circuits. During Contract Years 2 and 3 (and during Years 4 and 5, if the Customer has exercised extension options), the Customer shall be permitted to Groom up to 9,000 circuits subject to this Contract Offer per year. The sum of all circuits groomed under the individual contract offers listed in Section 22.90.2 (C) cannot exceed 9,000. Grooms shall be scheduled and managed on a monthly basis according to the otherwise applicable operational methods and procedures.
- (16) The Customer must remit bill payments as described in F.C.C. No. 2 Section 2.4.1 for all Contributory Services via electronic payment process. The Telephone Company will provide Customer with written notice if Customer fails to comply with the requirement. The Customer will have fifteen (15) business days from receipt of such written notice to comply. If the Customer does not comply, the Telephone Company shall have the right to terminate this Contract Offer. In the event of termination of any of the Contract Offers, as described in Section 22.90.2 (C), termination liability charges, as set forth in Section 22.90.13, will apply. Credits, if applicable, will not be issued until the Customer has paid all billed charges.
- (17) If the Customer discontinues service under Contract Offer No. 90 during the Contract Period, termination liability charges will apply in accordance with Section 22.90.13.
- (18) The Customer may exercise Contract Offer extension options as described in Section 22.90.9.

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ACCESS SERVICE

22. Pricing Flexibility Contract Offerings (Cont'd)

22.90 Contract Offering No. 90 - Access Discount Offer (Cont'd)

22.90.4 Access Service Ratio

- (A) As referenced in Section 22.90.4, the Customer and its affiliates must maintain an Access Service Ratio of 95 percent or greater, except as described in Section 22.90.11(B) of this Contract Offer. The ratio, calculated monthly, 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 95 percent, except as provided in Section 22.90.11.

The 95-percent ratio is calculated as follows:

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

- (1) Access Revenue is the Customer's and its affiliates' current interstate recurring billed revenue associated with the rate elements, as defined in Table 1 below, or comparable interstate access services, from the Telephone Company or its affiliated telephone companies in any of the Contract Offers as described in Section 22.90.2(C):

Table 1:

Service	General/Basic Description
Voice Grade	7.2.3
Generic Digital Transport (DS0), High Capacity (DS1 and DS3) Services	7.2.9
Optical Carrier Network (OCN)	7.2.10
GigaMAN	7.2.13
Dedicated SONET Ring Service	7.2.11

Any shortfall payments remitted to meet the monthly TRC commitment will be included in the Access Revenue calculation for the applicable month.

- (2) Wholesale Revenue is the Customer's and its affiliates' recurring billed revenue for associated rate elements, as defined in Table 2 herein, from the Telephone Company or its affiliated telephone companies, in any of the Contract Offers as described in Section 22.90.2 (C) and not included in the interstate or intrastate access tariff(s).

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22. Pricing Flexibility Contract Offerings (Cont'd)

22.90 Contract Offering No. 90 – Access Discount Offer (Cont'd)

22.90.4 Access Service Ratio (Cont'd)

(A) (Cont'd)

(2) (Cont'd)

**Table 2 UNE OR EQUIVALENT OFFERINGS NOT PURCHASED PURSUANT TO THIS AGREEMENT**

<b>Voice Grade/DS0</b>	2-wire analog and 2-wire digital loops 2-wire analog and digital transport
<b>DS1/LT1</b>	4-wire digital loop DS1 Entrance Facilities DS1 Interoffice Transport DS1 Cross Connects DS1 Multiplexing All DS1 non-tariffed Committed Information Rate Broadband Services
<b>DS3/LT3</b>	DS3 Loop DS3 Entrance Facilities DS3 Interoffice Transport DS3 Cross Connects DS1/DS3 Multiplexing All DS3 non-tariffed Committed Information Rate Broadband Services
<b>OC-3 OC-12 OC-48</b>	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
<b>Other Transport Products</b>	Dark Fiber – Interoffice Dark Fiber – Loop Dark Fiber – Subloop Dark Fiber Cross Connects Unbundled Dedicated Transport

(3) Services purchased pursuant to a Local Wholesale Complete (LWC) Agreement shall not be included in the calculation of the Customer's Access Service Ratio.

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22. Pricing Flexibility Contract Offerings (Cont'd)

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22.90 Contract Offering No. 90 – Access Discount Offer (Cont'd)22.90.4 Access Service Ratio (Cont'd)

## (A) (Cont'd)

- (4) As new rate elements are introduced to Table 1 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.
- (5) As new rate elements are introduced to Table 2 in Section 22.90.4(A)(2), all recurring revenues associated with the new rate elements will automatically be added to the Customer's Annual Wholesale Revenue, as defined in Section 22.90.4(A) preceding, for calculation of the Access Service Ratio.
- (6) Except as provided in Section 22.90.11, if the Customer fails to meet the Access Service Ratio in any given month of the Contract Period, upon notification from the Telephone Company as described in Section 22.90.2 (C), the Customer will have ten (10) business days to notify the Telephone Company in writing that it will meet or exceed the 95-percent Access Service 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 Contract Offer No. 90. In the event of a termination by the Telephone Company, termination liability charges will apply as set forth in Section 22.90.13.

Credits will not be issued for any month the Customer fails to meet the Access Service Ratio as described in Section 22.90.6 following.

22.90.5 Contributory Services

The TRC shall include all Contributory Services purchased from the Telephone Company and its affiliated telephone companies in any of the contract offers, as described in Section 22.90.2 (C), eligible under this Contract Offer. Contributory Services include Contributory Subject Services, as listed in Section 22.90.5, Table 3, herein, in addition to Contributory Non-Subject Services (that are not Contributory Subject Services), as described in Section 22.90.5, Table 4, herein.

Contributory Subject Services and Contributory Non-Subject Services shall together be known as Contributory Services. Customer's TRC includes revenue from all Contributory Services being provided by the Telephone Company and its affiliated telephone companies in any of the contract offers described in Section 22.90.2 (C), as listed in Table 3 and 4 below.

(A) Contributory Subject Services

Contract Offer No. 90 applies to pricing flexibility qualified access services (referred to as Contributory Subject Services) located in pricing flexibility Metropolitan Statistical Areas (MSAs) as listed in Tariff F.C.C. No. 2, Section 21. Contributory Subject Services are eligible for discounts and credits under this Contract Offer and are listed in Table 3.

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22. Pricing Flexibility Contract Offerings (Cont'd)

22.90 Contract Offering No. 90 – Access Discount Offer (Cont'd)

22.90.5 Contributory Services (Cont'd)

(B) Contributory Non-Subject Services

Contributory Non-Subject Services (that are not Contributory Subject Services) shall not be eligible for discounts or other incentives provided under this Contract Offer, and are listed in Table 4 below.

**Table 3 – CONTRIBUTORY SUBJECT SERVICES**

<b>Contributory Subject Services</b>	
Interstate Special Access	VG, DS0, DS1, DS3, OCN PTP, DSRS, SRAS, STN, FGTS, BCS, MON, Gigaman
Interstate Switched Transport	Entrance Facility, Direct Transport
Includes Recurring and Non-Recurring Charges (including termination charges) associated with the products listed where applicable, except as described in Section 22.90.6 following, for all services located in Pricing Flexibility MSAs.	

**Table 4 – CONTRIBUTORY NON-SUBJECT SERVICES**

<b>Contributory Non-Subject Services</b>	
Interstate Special Access	VG, DS0, DS1, DS3, OCN PTP, DSRS, SRAS, STN, FGTS, BCS, MON, Gigaman, Opt-E-MAN
Interstate Switched Transport	Entrance Facility, Direct Transport as described in Table 6, following.
Intrastate Special Access	Equivalent services as Interstate Special Access above if available
Intrastate Switched Access	Equivalent services as described in Table 6 following.
Advanced Services	Frame Relay Service
Includes all Recurring and Non-Recurring Charges (including termination charges) associated with the products listed, where applicable, except as described in Section 22.90.6 following, for all non-price flex qualified services.	
Frame Relay services shall be provided pursuant to agreements and/or contracts. Such agreements and/or contracts shall be available for review at the web site established to make public any agreements for these services. Customers may reference <a href="https://www.sbcprimeaccess.com/shell.cfm?section=2501">https://www.sbcprimeaccess.com/shell.cfm?section=2501</a> .	

All Terms and Conditions for all Contributory Services are governed by their respective tariff sections.

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22. Pricing Flexibility Contract Offerings (Cont'd)

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22.90 Contract Offering No. 90 – Access Discount Offer (Cont'd)

22.90.6 Calculation of the Total Revenue Commitment (TRC)

The Customer must establish and maintain a Total Revenue Commitment (TRC) as provided in this Contract Offer. Upon subscription, the Customer's TRC will be established, as described in Table 5 below, based on billed revenue from Contributory Services, as listed in Section 22.90.5, net of all discounts, credits, and adjustments as specified in Section 22.90.6(B).

The Contract Year shall be each Calendar Year, or fraction thereof, to which this Contract Offer applies, as described in Table 5 below.

Table 5

Contract Year	2005 ( Dec)	2006	2007
TRC equals	86.5% of 2004 Gross Spend described in (A) below, rounded to the nearest million dollars, times 1/12's	2005 TRC times 12 times 89.7%, rounded to the nearest million dollars	2005 TRC times 12 times 83.4%, rounded to the nearest million dollars

(A) Gross Spend shall include all billed revenue for services identified in Section 22.90.6(A), and shall be based on the sum of all of the purchases from the Telephone Company and its affiliated telephone companies, including all of the contract offers as described in Section 22.90.2 (C), as described in Section 22.90.5 preceding, based on billed revenue. The Gross Spend is calculated as billed revenue, prior to the application of MVP discounts, MVP Service Level Agreement (SLA) credits and Discount Value Plan (DVP) credits, but after all other tariff term plan discounts, and other underlying tariff performance credits.

- (1) Interstate Special Access recurring charges billed to the Customer associated with services described in Section 22.90.5 Table 3 and 4 preceding.
- (2) Interstate Special Access non-recurring charges billed to the Customer (including, but not limited to, items such as termination liability charges, expedite charges, cancellation charges, rearrangement charges, installation charges, and access order charges), except as noted in 22.90.6(A)(7).
- (3) Intrastate Special Access recurring charges billed to the Customer associated with services described in Section 22.90.5 Table 4 preceding.
- (4) Intrastate Special Access non-recurring charges billed to the Customer (including but not limited to items such as termination liability charges, expedite charges, cancellation charges, rearrangement charges, installation charges, and access order charges), except as noted in 22.90.6(A) (7).

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## 22. Pricing Flexibility Contract Offerings (Cont'd)

## 22.90 Contract Offering No. 90 – Access Discount Offer (Cont'd)

## 22.90.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)

## (A) (Cont'd)

- (5) Interstate Switched Access Dedicated Transport recurring and non-recurring charges (including, but not limited to, items such as termination liability charges, expedite charges, cancellation charges, rearrangement charges, installation charges, and access order charges) billed to the Customer for rate elements in Table 6 below.

Table 6

Service	General Basic Description
Entrance Facilities	Section 6.1.3(A)(1)(a)
Direct Trunk Transport	Section 6.1.3(A)(1)(b)

- (6) Intrastate Switched Access Dedicated Transport recurring and non-recurring charges (including, but not limited to, items such as termination liability charges, expedite charges, cancellation charges, rearrangement charges, installation charges, and access order charges) billed to the Customer and remitted for rate elements equivalent to those described in Table 6 above.
- (7) Non-recurring charges identified in 22.90.6(A)(2), (4), (5) and (6) exclude Special Construction and unregulated time and materials charges (e.g. Inside Wire, Custom Work Orders, etc.)

## (B) Application of Credits

The Customer is eligible to receive two (2) types of credits under this Contract Offer. For the purposes of this Contract Offer, Customer will receive any applicable credits (the Basic Credit and Achievement Credit) through the SBC wholesale sales channel for all of the contract offers as described in Section 22.90.2 (C). The sum of all Basic Credits applicable under the individual contract offers listed in Section 22.90.2 (C) cannot exceed the total maximum Basic Credit described in Table 7 following. Award of the credits described below under this Contract Offer shall satisfy the credit obligations of the Telephone Company and its affiliated telephone companies to the Customer, as described in Section 22.90.2(C).

## (1) Basic Credit

The Basic Credit for each Contract Year shall be equal to the Gross Spend of Contributory Services minus the TRC, but not to exceed the Maximum Basic Credit as described in Table 7. This calculation shall be performed at the commencement of the Contract Offer, and the Maximum Basic Credit resulting from these calculations will not change at any time during the Term Period except as described in Section 22.90.11 following. The Customer will receive Basic Credits on Contributory Subject Services on a monthly basis, as provided in Section 22.90.6(B)(1)(b), for each Contract Year and subject to the true-up process described in Section 22.90.8 following.

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22. Pricing Flexibility Contract Offerings (Cont'd)

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22.90 Contract Offering No. 90 – Access Discount Offer (Cont'd)

22.90.8 Calculation of the Total Revenue Commitment (TRC) (Cont'd)

(B) Application of Credits (Cont'd)

(1) Basic Credit (Cont'd)

- (a) Calculation of the Basic Credit. To determine the amount of Basic Credit the Customer can achieve, the TRC is multiplied by the applicable percent as described in Table 7 below. This amount, less the TRC, will equal the potential Maximum Basic Credit, rounded to the nearest million. If qualified, award of Basic Credit under this Contract Offer shall satisfy the Basic Credit obligations of the Telephone Company and its affiliated telephone companies.

Table 7

Year	TRC	Maximum Basic Credit Amount
2005	86.5% of 2004 Gross Spend described in (A) below, rounded to the nearest million dollars, times 1/12's	310% of TRC minus the TRC amount, rounded to the nearest million dollars
2006	2005 TRC times 12 times 89.7%, rounded to the nearest million dollars	119.6% of TRC minus the TRC amount, rounded to the nearest million dollars
2007	2005 TRC times 12 times 83.4%, rounded to the nearest million dollars	123.7% of TRC minus the TRC amount, rounded to the nearest million dollars

Example A: The Customer has 2004 Gross Spend of \$121.3M. 86.5 percent of 2004 Gross Spend equals \$105M, rounded to the nearest million.

The 2005 TRC is equal to 1/12th of \$105M.  
 1/12th of \$105M equals \$8.75M

The eligible total Basic Credit available is;

$$\$8.75M \times 310\% = \$27.13M$$

$$\$27.13M - \$8.75M = \$18.38M, \text{ rounded to the nearest million, equals potential maximum Basic Credits}$$

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22. Pricing Flexibility Contract Offerings (Cont'd)

22.90 Contract Offering No. 90 – Access Discount Offer (Cont'd)

22.90.6 Calculation of the Total Revenue Commitment (TRC) (Cont'd)

(B) Application of Credits (Cont'd)

(1) Basic Credit (Cont'd)

(a) (Cont'd)

**Example B:** The 2006 TRC is equal to 2005 TRC times 12 times 89.7 percent, rounded to the nearest million.

$8.75M \times 12 \times 89.7\% = \$94.18M$ , rounded to the nearest million

The eligible total Basic Credit available is:

$\$94M \times 119.6\% = \$112.42M$

$\$112.42M - \$94M = \$18.42M$ , rounded to the nearest million equals maximum Basic Credits

(b) Application of the Maximum Basic Credit

The TRC will be divided evenly across the number of months for each Contract Year ending December 31<sup>st</sup>, as described below. The resulting monthly average amount will be the Customer's Monthly TRC commitment.

2005 – Contract Year 1 – 1 month  
2006 – Contract Year 2 – 12 months  
2007 – Contract Year 3 – 12 months

Example:

2005 TRC equal \$8.75M

Maximum Basic Credits will be applied to the Customer's Monthly TRC revenue for Contributory Services, as described in Section 22.90.5 preceding, based on the amount above the Monthly TRC commitment, not to exceed the maximum Basic Credit allowed for each Contract Year as described in Table 7 preceding.

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