EX PARTE OR LATE FILED

WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1000
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ORIGINAL

REDACTED – FOR PUBLIC INSPECTION

February 27, 2012

FILED/ACCEPTED

FEB 27 2012

Federal Communications Commission
Office of the Secretary

VIA COURIER AND ECFS *EX PARTE*

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: ***Special Access Rates for Price Cap Local Exchange Carriers; AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket No. 05-25, RM-10593***

Dear Ms. Dortch:

On February 23, 2012, Rochelle Jones, Senior Vice President, Regulatory, Kristie Ince, Vice President, Regulatory, and Don Shepheard, Vice President, Regulatory, each of tw telecom inc., and the undersigned met with Nick Alexander, Deena Shetler, Elizabeth McIntyre, Andrew Mulitz, and Daniel Shiman of the Wireline Competition Bureau. During the meeting, the representatives of tw telecom made the points described in the attached PowerPoint presentation and discussed the supporting materials attached to the PowerPoint presentation.

Please do not hesitate to contact me at (202) 303-1111 if you have any questions or concerns about this submission.

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones
Counsel for tw telecom inc.

cc (via email): Nick Alexander
Deena Shetler
Elizabeth McIntyre
Andrew Mulitz
Daniel Shiman

Enclosures

No. of Copies rec'd 0+1
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Dear Ms. Dortch:

On behalf of tw telecom inc. ("tw telecom"), please find enclosed two copies of the redacted version of an *ex parte* filing regarding tw telecom's February 23, 2012 meeting with FCC staff. The *ex parte* filing contains a PowerPoint presentation and three charts that include information that the Wireline Bureau has deemed highly confidential under the *Second Protective Order*[1] in this proceeding. Specifically, the PowerPoint presentation contains highly detailed information regarding (1) tw telecom's expenditures, including the dollar volumes of its purchases of services from specified incumbent LECs[2]; and (2) the rates that tw telecom pays specified incumbent LECs for special access

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[1] *In the Matter of Special Access for Price Cap Local Exchange Carriers,* Second Protective Order, 25 FCC Rcd. 17725 (2010) ("*Second Protective Order*"); *see also Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau to Paul Margie, Wiltshire & Grannis LLP, 26 FCC Rcd. 6571 (2011) ("*Letter to Paul Margie*") (supplementing the *Second Protective Order*); *Special Access for Price Cap Local Exchange Carriers*, Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau to Donna Epps, Vice President, Federal Regulatory Affairs, Verizon, DA 12-199 (dated Feb. 13, 2012) ("*Letter to Donna Epps*") (further supplementing the *Second Protective Order*).

[2] *See Letter to Donna Epps* at 4, category H (deeming information regarding "[e]xpenditures, including dollar volumes of purchases of intrastate and interstate DS1 and DS3 services, and expenditures under certain rate structures and discount plans" to be eligible for highly confidential treatment); *see also*

channel terminations and transport facilities.[3] Chart A and Chart B included in the *ex parte* filing also contain highly detailed information regarding the rates that specified incumbent LECs charge and tw telecom pays for channel terminations and transport facilities.[4] Chart C contains highly detailed information regarding the discount plans under which tw telecom purchases circuits.[5]

tw telecom keeps the information for which it seeks highly confidential classification in the strictest confidence, and it is not available from public sources. Any of this information, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace. Specifically, competitors would be able to determine tw telecom's costs, both in the aggregate and on a circuit-by-circuit basis, of obtaining wholesale inputs from incumbent LECs. Competitors would also be able to determine the terms and conditions, as defined by specific discount plans, to which tw telecom is subject when seeking to serve customers via incumbent LEC facilities. Competitors would be able to exploit access to this information to design competitive strategies that unfairly disadvantage tw telecom. Accordingly, the maximum level of protection afforded highly confidential information under the *Second Protective Order* should apply to the information described herein.

Second Protective Order, ¶ 6 (deeming information regarding "[t]he extent to which companies rely on incumbent local exchange carrier ('ILEC') . . . last-mile facilities and local transport facilities to provide special access-like services" to be eligible for highly confidential treatment).

[3] *See Letter to Paul Margie* at 2, category A (deeming information regarding "[t]he rates or charges associated with channel terminations or transport facilities, and information from which, whether alone or in combination with other confidential or non-confidential information, such rates or charges could be inferred" to be eligible for highly confidential treatment); *see also Letter to Donna Epps* at 4, category F (deeming information regarding "[p]ricing, to the extent such information is not publicly available, for *DS1s* and *DS3s* sold as unbundled network elements (UNEs) and as non-UNEs, as well as all *PSDS*," including "information concerning vendors," to be eligible for highly confidential treatment).

[4] *See Letter to Paul Margie* at 2, category A (deeming information regarding "[t]he rates or charges associated with channel terminations or transport facilities, and information from which, whether alone or in combination with other confidential or non-confidential information, such rates or charges could be inferred" to be eligible for highly confidential treatment); *see also Letter to Donna Epps* at 4, category F (deeming information regarding "[p]ricing, to the extent such information is not publicly available, for *DS1s* and *DS3s* sold as unbundled network elements (UNEs) and as non-UNEs, as well as all *PSDS*," including "information concerning vendors," to be eligible for highly confidential treatment).

[5] *See Letter to Donna Epps* at 5, category M (deeming information that, alone or in combination with other information, "would reveal the identity of a customer" that purchases service under a particular tariff to be eligible for highly confidential treatment); *see also id.* at 4, category G (deeming information regarding "the discount plans under which [a customer's] circuits were purchased" to be eligible for highly confidential treatment).

Pursuant to the *Modified Protective Order*[6] and *Second Protective Order*, one machine-readable copy of the redacted version of the *ex parte* filing will be filed electronically via ECFS. Additionally, one original of the highly confidential version of the *ex parte* filing is being filed with the Secretary's Office under separate cover, and two copies of the highly confidential version of the *ex parte* filing will be delivered to Marvin Sacks of the Pricing Policy Division of the Wireline Competition Bureau.

Please do not hesitate to contact me at (202) 303-1111 if you have any questions regarding this submission.

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones
Counsel for tw telecom inc.

cc (via email): Nick Alexander
Deena Shetler
Elizabeth McIntyre
Andrew Mulitz
Daniel Shiman

Enclosures

[6] *In the Matter of Special Access for Price Cap Local Exchange Carriers*, Modified Protective Order, 25 FCC Rcd. 15168 (2010) ("*Modified Protective Order*").

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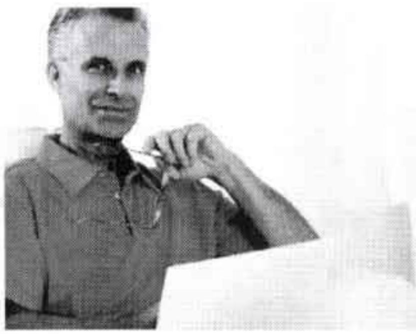
Enclosures

ILEC Special Access Discount Plans

An Exercise of Market Power




FCC Staff Meeting

2-23-2012

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The Reality

- To realize acceptable margins, CLECs must subscribe to discount plans.
- Choices are limited to off-the-shelf plans or to ILEC dictated terms and conditions even though we spend millions of dollars per year on special access:
  - AT&T – **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**
  - Verizon - **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**
  - Qwest/Century Link - **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**
- Current SPA tariffed month-to-month prices are not competitive.

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More Reality

- TWTC has invested billions in our own network, but we must have an off-net component to meet the multi-location and bandwidth needs of our customers.
- In order to meet our customer's needs, we often have to buy from multi-vendors and purchase from multi-tariffs and discount plans.
- Customers have 21st century needs, but we are faced with having to purchase 20th century technology. We are in a squeeze – paying supra-competitive rates for outdated technology; having to commit our growth revenues; and overpaying for special access reduces our ability to buy new off-net technology.

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Facts about Off-the-Shelf Plans

- Discounted term plan rates range between 10-60% off published month-to-month rates.
- Mileage rates are astronomical even with plan discounts.
- Plans capture purchased quantities and growth for both retail and wholesale customers.
- Costs would go up exponentially for special access purchases if LECs discontinued (or if they were permitted to discontinue) all tariffed discount plans.

[BEGIN HIGHLY CONFIDENTIAL]

Special Access Price Comparison
DS1 Channel Termination
Zone 1

[CHART REDACTED IN FULL]

[END HIGHLY CONFIDENTIAL]

[BEGIN HIGHLY CONFIDENTIAL]

Special Access Price Comparison
DS1 Channel Termination
Zone 2

[CHART REDACTED IN FULL]

[END HIGHLY CONFIDENTIAL]

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Individual Circuit Term Plans

- **Pros**:
  - No volume commitment
- **Cons:**
  - Only longer terms produce competitive pricing
  - May not always match customer term
  - Matching circuit portability available in some situations but unmanageable
  - ETL applies

tw telecom

Prior Purchase Based Plans

Off-the-Shelf

- **Pros:**
  - Discounts applicable to entire circuit base – price flex and price cap
  - Circuit portability provided
  - Rate stability during term of plan (not available with all plans)
- **Cons:**
  - Not offered footprint-wide-- allowing ILECs to extract additional costly commitments
  - Not offered on all special access products (DS3s, Ethernet)
  - Growth captured to maintain discount
  - No customization
  - Penalties for declines in volume and refusal to commit growth
  - Plan termination penalties are often unrelated to level of discount received
  - NRCs are not waived consistently in all plans (e.g. region by region)
  - Benefits of plan not applicable on special construction circuits
  - Long minimal in-service periods (e.g. 1 year)
  - Plan can be discontinued by the ILEC at any time (e.g. HCTPP).

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Revenue-Based Contract Tariffs

- **Pros:**
  - In contrast to some off-the-shelf plans, contract applies to the entire footprint, and to both DS1s and DS3s
  - Credit percentage increases with spend
  - Application of discount to all price flex areas
- **Cons:**
  - Complexity = higher price
  - Price flex credit tied to non-price flex purchases (tying)
  - Credit applied to price-flex spend only
  - Can include onerous conditions (e.g. SPA/UNE ratio requirements)

Revenue-Based Commercial Tie-In Agreements

- **Pros:**
  - In contrast to some off-the-shelf plans, contract applies to the entire footprint, and to both DS1s and DS3s.
- **Cons:**
  - Ties special access purchases and non-special access service purchases (e.g. long distance)
  - Price flex credit tied to non-price flex purchases
  - Credit applied to non-dominant services
  - Complexity in managing plan
  - Can include onerous conditions (e.g. SPA/UNE ratio requirements, commingling restrictions)

Agenda for Next Meeting

Solutions – SPA Remedy Plan!

[CHART A REDACTED IN FULL]

[CHART B REDACTED IN FULL]

[CHART C REDACTED IN FULL]

ACCESS SERVICE
CHECK SHEET

Title pages 1 and 2 and pages 1 to 846 inclusive of this tariff are effective as of the date shown. Original and revised pages as named below and Supplement No. 336 contain all changes from the original tariff that are in effect on the date hereof.

Page	Number of Revision Except as Indicated	Page	Number of Revision Except as Indicated	Page	Number of Revision Except as Indicated
Title 1	2nd	8.1	5th	20.2	3rd
Title 2	9th	9	22nd	21	3rd
1	1335th*	9.1	1st	22	Original
1.1	317th	10	25th	23	3rd
1.2	271st	10.1	11th	24	1st
1.3	285th	10.2	8th	25	1st
1.4	229th	11	4th	26	3rd
1.5	207th	12	10th	27	8th
1.6	184th	13	5th	28	11th
1.7	124th	13.1	6th	28.1	5th
1.8	104th	13.2	10th	29	Original
1.9	133rd	13.3	10th	30	Original
1.10	46th	13.4	19th	31	Original
1.11	61st	13.5	25th*	32	Original
1.12	21st	13.6	2nd	33	Original
1.13	15th	14	3rd	34	4th
1.14	22nd	15	16th	34.1	1st
1.15	34th	15.1	10th	35	5th
1.15.1	1st	15.2	1st	35.1	1st
1.16	37th	16	12th	36	8th
1.17	21st	16.1	11th	36.1	6th
1.18	30th	16.1.1	Original	37	13th
1.19	17th*	16.2	8th	37.1	4th
2	3rd	16.3	1st	37.2	6th
3	8th	16.4	2nd	37.3	5th
3.1	12th	16.5	Original	37.4	1st
4	14th	16.6	3rd	37.5	2nd
4.1	9th	16.7	3rd	38	9th
5	18th	17	1st	38.1	11th
5.1	19th	18	6th	38.2	6th
5.2	4th	19	27th	38.2.1	3rd
6	5th	19.1	12th	38.3	4th
6.1	5th	19.2	15th	38.4	4th
6.2	3rd	19.3	8th		
7	6th	19.4	1st		
7.1	3rd	20	10th		
8	15th	20.1	5th		

* New or Revised Page

(This page filed under Transmittal No. 1477)

ACCESS SERVICE
CHECK SHEET

Page	Number of Revision Except as Indicated	Page	Number of Revision Except as Indicated	Page	Number of Revision Except as Indicated	Page	Number of Revision Expect as Indicated
22-465	Original	22-522	Original	24-9	1st		
22-466	Original	22-523	Original	24-10	2nd		
22-467	Original	22-524	Original	24-11	1st		
22-468	Original	22-525	Original	24-12	1st		
22-469	Original	22-526	Original	24-13	Original		
22-470	Original	22-527	Original	24-14	1st		
22-471	Original	22-528	Original	24-15	1st		
22-472	Original	22-529	Original*	24-16	1st		
22-473	Original	22-530	Original*	24-17	1st		
22-474	Original	22-531	Original*	25-1	1st		
22-475	Original	22-532	Original*	25-2	Original		
22-476	Original	22-533	Original*	25-3	Original		
22-477	Original	22-534	Original*	25-4	Original		
22-478	Original	22-535	Original*	25-5	Original		
22-479	Original	22-536	Original*	25-6	Original		
22-480	Original	22-537	Original*	25-7	Original		
22-481	Original	22-538	Original*	25-8	Original		
22-482	Original	22-539	Original*	25-9	Original		
22-483	Original	22-540	Original*	25-10	Original		
22-484	Original	22-541	Original*	25-11	Original		
22-485	Original	22-542	Original*	25-12	1st		
22-486	Original	22-543	Original*	25-13	Original		
22-487	Original	22-544	Original*	25-14	Original		
22-488	Original	22-545	Original*	25-15	Original		
22-489	Original	22-546	Original*	25-16	Original		
22-490	Original	22-547	Original*	25-17	1st		
22-491	Original	22-548	Original*	25-18	Original		
22-492	Original	22-549	Original*	25-19	1st		
22-493	Original	22-550	Original*	25-20	Original		
22-494	Original	22-551	Original*	25-21	Original		
22-495	Original	22-552	Original*	25-22	1st		
22-496	Original	23-1	Original				
22-497	Original	23-2	1st				
22-498	Original	23-3	1st				
22-499	Original	23-4	Original				
22-500	Original	23-5	Original				
22-501	Original	23-6	Original				
22-502	Original	23-7	Original				
22-503	Original	23-8	Original				
22-504	Original	23-9	Original				
22-505	Original	23-10	Original				
22-506	Original	23-11	1st				
22-507	Original	23-12	Original				
22-508	Original	23-13	Original				
22-509	Original	23-14	Original				
22-510	Original	23-15	1st				
22-511	Original	23-16	Original				
22-512	Original	23-17	1st				
22-513	Original	23-18	Original				
22-514	Original	24-1	2nd				
22-515	Original	24-2	1st				
22-516	Original	24-3	1st				
22-517	Original	24-4	2nd				
22-518	Original	24-5	1st				
22-519	Original	24-6	1st				
22-520	Original	24-7	1st				
22-521	Original	24-8	Original				

* New or Revised Page

(This page filed under Transmittal No. 1477)

ACCESS SERVICE

(This page filed under Transmittal No. 1477)

Issued: June 1, 2005

Effective: June 2, 2005

22. Pricing Flexibility Contract Offerings (N)

22.64 Contract Offer No. 64 – Special Access Service Offer

22.64.1 General Description (N)

(Nx)

Special Access Service Offer (Contract Offer No. 64) 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. 64 is available to any Customer with at least $26.5 million in cumulative annual recurring revenue for Contributory Services as defined herein. The Customer must meet the Eligibility Criteria set forth in Section 22.64.2 and also must comply with all Terms and Conditions of this Contract Offer.

Contract Offer No. 64 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 22.64.4(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 22.64.2(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)

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 22.64.4(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 22.64.9, shall apply. Contract Offer No. 64 will only be available June 2, 2005 through July 2, 2005. (N)

22.64.2 Eligibility Criteria

(A) The Customer must meet the following Eligibility Criteria in order to subscribe to Contract Offer No. 64, and must continue to meet the Eligibility Criteria as described below throughout the Term Period of this Contract Offer:

(1) Contract Offer No. 64 is available for services located in the following pricing flexibility Metropolitan Statistical Areas (MSAs):
- Champaign-Urbana, Chicago, IL;
- Davenport/Rock Island/Moline, Decatur, Peroria/Pekin, Rockford, Springfield, St Louis, IL;
- Anderson, Bloomington, Evansville-Henderson, Indianapolis, Kokomo, Louisville, Muncie, South Bends, IN;
- Battle Creek, Detroit Ann Arbor, Flint, Grand Rapids, Kalamazoo, Lansing, Saginaw-Bay City-Midland, MI;
- Akron, Cleveland-Lorain-Elyria, Columbus, Dayton, Toledo, OH;
- Appleton/Oshkosh/Neenah, Eau Claire, Green Bay, Janesville, Kenosha, Madison, Milwaukee-Waukesha, Racine, Sheboygan, WI. (N)

(x) Issued under Authority of Special Permission No. 05-026 F.C.C.

(This page filed under Transmittal No. 1477)

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

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64. 2 Eligibility Criteria (Cont'd)

(A) (Cont'd)

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 22.64.4; (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. 64 concurrently with SBC's MVP Offering in Section 19; and (N)

(4) The Customer must maintain an Access Service Ratio, equal to or greater than 98%. The Access Service Ratio is defined in Section 22.64.3(E) and will be measured quarterly. (N)

(B) Concurrent Subscription (Nx)

The Customer must concurrently subscribe to the identical Contract Offer of Contract Offer No. 64 pursuant to the following tariffs:
(1) Southwestern Bell Telephone Company Tariff F.C.C No. 73, Section 41, Contract Offer No. 48;
(2) Pacific Bell Telephone Company Tariff F.C.C. No. 1, Section 33, Contract Offer No .56. and
(3) The 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. 64 applies to pricing-flexibility-qualified access services (hereafter referred to as Contributory Subject Services) contained in the following tariff sections:

(1) VG/DS0 Services – Ameritech Tariff F.C.C. No. 2, Sections 7.5.15, 7.5.9 (A) for Phase I MSAs, and Sections 21.5.2.3, 21.5.2.7 (A) for Phase II MSAs;
(2) DS1/DS3 Service - Ameritech Tariff F.C.C. No. 2, Sections 7.5.9 (B), 7.5.9(C) for Phase I MSAs and Section 21.5.2.7 (B), 21.5.2.7 (C) for Phase II MSAs;
(3) OC3/OC3c; OC12/OC12C/OC48/OC48c/OC192 Service – Ameritech Tariff F.C.C. No. 2, Sections 7.5.10(A), 7.5.10(B), 7.5.10(C) and 7.5.10(D) for Phase I MSAs and Sections 21.5.2.8(A), 21.5.2.8(B), 21.5.2.8(C) and 21.5.2.8(D) for Phase II MSAs; (N)

(x) Issued under Authority of Special Permission No. 05-026 of F.C.C.

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

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.2 Eligibility Criteria (Cont'd)

(C) Contributory Subject Services (Cont'd)

(4) OC3/OC12/OC48/OC192 Dedicated Ring Service – Ameritech Tariff F.C.C. No. 2, Sections 7.5.10 for Phase I MSAs, and Sections 21.5.2.9 for Phase II MSAs;
(5) SONET Xpress Service – Ameritech Tariff FCC No. 2, Section 7.5.12 for Phase IMSAs and Section 21.5.2.10 for Phase II MSAs;
(6) Gigabit Ethernet Metropolitan Area Network (GigaMAN) Service – Ameritech Tariff F.C.C. No. 2, Section 7.5.13 for Phase I MSAs and Section 21.5.2.16 for Phase II MSAs; and
(7) Multi-service Optical Network (MON) Ring Service – Ameritech Tariff F.C.C. No. 2, Section 23 for Phase I MSAs and Section 21.5.2.17 for Phase II MSAs.

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 22.64.4. 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 22.64.4.

22.64.3 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. 64 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 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. 2, as set forth in Sections 2-General Regulations, 5-Ordering Options for Switched & Special Access Service, and 13-Additional Engineering, Additional Labor & 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. (N)

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

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.3 Terms and Conditions (Cont'd)

(B) Contract Offer No. 64 is only available for subscription June 2, 2005 through July 2, 2005

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

(D) The Customer must subscribe to this Contract Offer in accordance with the regulations set forth in Ameritech Tariff F.C.C. No. 2, Section 5 – Ordering Options for Switched Access and Special Access Services.

(E) Access Service Ratio

As referenced in Section 22.64.2(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:

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

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

TABLE A:

Service	General/Basic Description
Voice Grade	7.2.3
Base Rate (DS0), DS1 and DS3 Services	7.2.9
OCN PTP	7.2.10
GigaMAN	7.2.13
Dedicated Ring Service	7.2.11
MON Ring	23

(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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(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.3 Terms and Conditions (Cont'd)

TABLE B:

Service Level	Associated Rate Elements Not Included in Interstate Tariff
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.

(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.

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.3 Terms and Conditions (Cont'd)

(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 60 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 22.64.9.

(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 22 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 2.4.1 of F.C.C. Tariff No. 2 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. Customer will have thirty (30) days from receipt 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 22.64.9 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.

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.4 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 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 Dates, 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.)

If the Telephone Company receives additional pricing flexibility relief for MSAs that are not listed in Section 22.64.2, or if additional Contributory Subject Services that are not listed in Section 22.64.2 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)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

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

(B) Inclusion of Additional Contributory Services (N)

(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, but which are 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 22.64.4. 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)

(N)

Example
Year 1 MARC = $26.5M
If during Year 1, 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, the new Year 1 MARC is $28.5M.

(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 22.64.5 (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 22.64.5 (B). Also, if the Customer exercises this option, any MARC adjustments associated with SLA penalties offered in Section 22.64.5 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 22.64.7, 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 22.64.2 and Terms and Conditions in Section 22.64.3 have been met prior to the MARC adjustment, and certain provisions will no longer apply as detailed in Section 22.64.5(B).

(3) The MARC will be adjusted automatically pursuant to SLA measurement guidelines specified in Section 22.64.5, unless the MARC adjustment option discussed in Section 22.64.4 (C) (1) is exercised.

(N)

(x) Issued under Authority of Special Permission No. 05-026 of F.C.C.

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

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

(D) Failure to Achieve the MARC

The Customer and Telephone Company agree to exchange information quarterly, and meet quarterly if necessary, to review the Customer's progress toward achieving the MARC for the term year and Telephone Company's progress on SLA targets. The Customer and 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 Dates 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 22.64.9.

22.64.5 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%

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)

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.5 Discounts and Other Credits (Cont'd)

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

(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 22.64.2, Section 22.64.4 Section 22.64.7 or Section 22.64.8.

(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 22.64.4 (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%

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.

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.5 Discounts and Other Credits (Cont'd)

(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 22.64.4 (A) and/or fails to pay the Annual True-Up as defined in Section 22.64.4 (D), termination liability charges will apply as set forth in Section 22.64.9.

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 Ameritech F.C.C. No. 2.5.2.2 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) The Customer must be in compliance with all terms and conditions of this Contract Offer.

(2) The Customer shall be permitted to move and/or disconnect Contributory Subject Services from any of the identical Contract Offers, as described in Section 22.64.2 (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.

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64– Special Access Service Offer (Cont'd)

22.64.5 Discounts and Other Credits (Cont'd)

(D) Portability (Cont'd)

(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 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. 2, Section 24, 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 22.64.4 (A) and/or fails to pay the Annual True-Up as defined in Section 22.64.4 (D), termination liability charges will apply as set forth in Section 22.64.9.

(E) Service Level Assurance (SLA) Performance

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.

(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.

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.5 Discounts and Other Credits (Cont'd)

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

(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 E outlines the SLA performance targets for each measured service in each contract year.

Table E

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%

(F) SLA Performance Penalties

At the conclusion of each Anniversary Date, the 12-month averages based on 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. (N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.5 Discounts and Other Credits (Cont'd)

(F) SLA Performance Penalties (Cont'd)

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 22.64.2.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. 3 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 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)

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

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.5 Discounts and Other Credits (Cont'd)

(F) SLA Performance Penalties (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 22.64.2.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 22.64.4, 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.

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%

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.5 Discounts and Other Credits (Cont'd)

(F) SLA Performance Penalties (Cont'd)

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%).

22.64.6 Assignment and Transfer

Subject to the provisions set forth in section 22.64.7 regarding mergers and acquisitions, if the Customer wishes to assign or transfer its use of services under this Contract Offer No. 64, pursuant to F.C.C. No. 2, 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. 2, 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.

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.7 Mergers and Acquisitions Involving the Customer

(A) The Terms and Conditions of Contract Offer No. 64 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 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 22.64.4 (A) or calculations to achieve the MARC discussed in Section 22.64.4 (B) or in the calculation of the Access Service Ratio discussed in Section 22.64.3(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 22.64.2 and 22.64.3 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. The 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 22.64.4 (A) & (B), nor will such revenues be eligible for any discounts provided under this Contract Offer, nor will the 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 22.64.3(E).

(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 22.64.4, 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.

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

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

(A) (Cont'd)

(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 22.64.5 (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 22.64.5(A)(2) for recurring annual revenue above the new combined MARC.

(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 22.64.3 (E), the Customer must select from Option 1 or 2 of this Section 22.64.7(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 22.64.3(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 22.64.3(E).

(3) If, at any time the Customer does not comply with the Access Conversion Schedule provided in Table H, 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 Contract Offer. Upon such termination, termination liability charges will apply as provided in Section 22.64.9. Notwithstanding the foregoing, if the 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 22.64.3(E), and this Contract Offer will not be considered in default, provided, however, that each party shall exercise best efforts to comply.

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

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

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

(3) (Cont'd)

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
1st	10%
2nd	20%
3rd	50%
4th	75%
5th	85%
6th	100%

(a) Option 1

(i) The Customer must 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 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.

(1) 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 22.64.4(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.

(2) 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 22.64.7 (C) (1) (a).

(N)

(N)

2. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

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

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

(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.

(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 22.64.3 (E), the Customer must select from Option 3 or 4 of this Section 22.64.7(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.

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.7 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 22.64.4(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 22.64.7(C) (1)(a).

(2) Option 4

(a) The Customer shall 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.

(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.

22.64.8 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:

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.8 Merger or Acquisition Involving the Telephone Company (Cont'd)

(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.

(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 22.64.5 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.

22.64.9 Termination Liability

(A) Termination Liability Charges

Termination liability language described below applies in lieu of the termination liability language described in Ameritech Tariff F.C.C. No. 2, Section 7. If the Customer terminates Contract Offer No. 64 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 22.64.2, or fails to meet any of the Terms and Conditions in Section 22.64.3, 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 No. 64 and termination liability charges will apply as stated below and will be payable pursuant to F.C.C. No. 2, Section 2.4.

(This page filed under Transmittal No.1477)

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64 – Special Access Service Offer (Cont'd)

22.64.9 Termination Liability (Cont'd)

(A) Termination Liability Charges (Cont'd)

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. 64 for the preceding six (6) months immediately prior to the date of termination, plus the following schedule:

(1) If terminated in Year 1, 10% 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% 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. 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 22.64.2 and all Terms and Conditions in Section 22.64.3 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.

(N)

(N)

22. Pricing Flexibility Contract Offerings (Cont'd)

22.64. Contract Offer No. 64– Special Access Service Offer (Cont'd)

22.64.9 Termination Liability (Cont'd)

(B) New Technology Termination (Cont'd)

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 22.64.4 (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 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 22.64.9 sets forth the sole and exclusive remedies for termination of this Contract Offer No. 64, 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 22.64.9.

(N)