

PART 23 - Interconnection Service for Local
Exchange Telecommunications Carriers
SECTION 1 - General

Original Sheet No. 1

1. GENERAL

(N)

A. DESCRIPTION

Interconnection Services are available to telecommunications carriers for use in the provision of a telecommunications service as specified and to the extent required by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("the Act") and the rules and regulations of the Federal Communications Commission and the Indiana Utility Regulatory Commission.

In the event that any of the rates and/or other provisions in this Tariff, or any of the laws or regulations that were the basis or rationale for such rates and/or other provision in this Tariff, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, the Company fully reserves its rights to withdraw, conform, and/or otherwise alter this Tariff or any part hereof, including any rate and/or other provision, consistent with any action of such regulatory or legislative body or court. Such withdrawal, confirmation, and/or other alteration shall become effective upon its filing with the Commission or as soon thereafter as legally permitted and, in any event, shall relate and be retroactive back to the effective date of such regulatory, legislative, or court action. Without limiting the general applicability of the foregoing, it applies to *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct 721 (1999), *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), and the Eighth Circuit opinion in *Iowa Utilities Bd. v. FCC*, No. 96-3321, 2000 WL 979117 (8th Cir. July 18, 2000)(invalidating the costing/pricing rules adopted by the FCC in its First Report and Order in *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996)(e.g., 47 C.F.R. § 51.501, et seq.)), and any FCC subsequent remand proceedings.

TELRIC based rates in this tariff, are based on the FCC's TELRIC pricing methodology mandated by the Federal Communications Commission in its First Report and Order in *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996)(e.g., 47 C.F.R. § 51.501, et. Seq.). In light of the Eight Circuit opinion in *Iowa Utilities Bd. v. FCC*, No. 96-3321, 2000 WL 979117 (8th Cir. July 18, 2000)(invalidating those FCC costing/pricing rules as being contrary to the Act).

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A. Description

Upon rates being set pursuant to the costing/pricing standard of the Act (including under lawful rules Adopted in any FCC remand proceeding), those successor rates shall be submitted in this Tariff. With the Tariff, the Company is not accepting, or otherwise waiving its objections to, the FCC's TELRIC costing/pricing standard and/or any rate based thereon (including those in Part 23), and is not otherwise waiving any of its rights, remedies, or arguments with respect to any regulatory or court decision and any remand thereof, including its right to seek legal review or a stay pending appeal of such decisions or the Company's rights under this provision.

This Part applies to Interconnection Services provided by AT&T Indiana, hereafter referred to as (T) the "Company."

General Regulations as found in Part 2 of this Tariff apply to this Part unless otherwise specified in this Part. The term "customer," which appears in Part 2 General Regulations, is the equivalent of the term "telecommunications carrier" as defined by the Act and used in this Part (sometimes referred to herein as Carrier). Any references in this Part to service descriptions contained in other sections of this tariff shall include all definitions. Unless expressly provided to the contrary herein, however, such references do not incorporate the terms, conditions, or rates and charges contained in the referenced material. Where service descriptions use the terms "customer" or "subscriber," such terms shall be deemed to mean:

- "Carrier" (as defined in this Part) when the context concerns ordering service including requesting repair, including authorization for the dispatch of service technicians to the Carrier's Customer's premises and performance of any premises work; and billing responsibility for the provision of service ordered by Carrier, and the use, activation, or premature termination of service by Carrier.
- "Carrier's Customer" (as defined in this Part) when the context concerns the definition of: the service location (premises); the configuration and sizing of the telecommunications system, network, including any aspects or capabilities of service, are used, activated, or accessed.

1. GENERAL (cont'd)

A. Description (cont'd)

This Part contains a schedule of rates and regulations applicable to Interconnection Services. Currently the following types of Interconnection Services are available:

| | | |
|--|-------------|-----|
| • End Office Integration Service | - Section 2 | (T) |
| • Emergency Number Service Access (ENSA) | - Section 3 | |
| • Collocation Services | - Section 4 | |

The Interconnection Services provided in this section are exclusively for use by "telecommunications carriers." The Company's Interconnection Services provide interconnection to the Company's network or access to the Company's unbundled network elements. When a telecommunications carrier seeks technically feasible interconnection in a manner not offered by this section, the telecommunications carrier may request an alternative form of interconnection via the "Bona Fide Request" Process.

A "Bona Fide Request" (hereafter referred to as BFR), as referenced in this tariff, is a telecommunications carrier's written request to the Company to provide:

- a service not currently offered in the tariff,
- a requested different level of quality of a service than AT&T Indiana currently provides to itself, or
- a customized service for features, capabilities, functionalities or unbundled network elements not currently otherwise provided under the tariff.

The Bona Fide Request includes a technical description of each requested feature, capability, functionality or unbundled network element requested.

The Company will provide interconnection or access to unbundled network elements, for the provision of telecommunications service, at other technically feasible points within the Company's network (e.g., mid-span meet) on a Bona Fide Request basis.

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1. GENERAL (cont'd)

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B. TERMS AND CONDITIONS

Responsibility of the Company

The Company is not responsible to the telecommunications carrier if necessary changes in protection criteria or in any of the facilities, operation, or procedures of the Company render any facilities provided by a telecommunications carrier obsolete or render modification of the telecommunications carrier's equipment necessary.

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1. GENERAL (cont'd)

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B. TERMS AND CONDITIONS (cont'd)

Use of Service

General

• **Unlawful Use of Service**

Service shall not be used for any purpose in violation of law. The Carrier, and not the Company, shall be responsible to ensure that Carrier and its customers' use of the services provided hereunder complies at all times with all applicable laws. The Company may refuse to furnish service to a Carrier applicant or shall disconnect the service of a Carrier or as appropriate the Carrier's Customer when:

- An order is issued by a court, the Public Utilities Commission of Ohio or any other duly authorized agency, finding that probable cause exists to believe that the use made or to be made of the service is prohibited by law, or
- The Company is notified in writing by a Law Enforcement Agency acting within its jurisdiction that any facility furnished by the Company is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of law.

Termination of service shall take place after reasonable notice is provided the Carrier, or as ordered by the Court.

If communications facilities have been physically disconnected by Law Enforcement officials at the premises where located, and if there is not presented to the Company the written finding of a court of competent jurisdiction authorizing such disconnection, then upon written request of the Carrier, and agreement to pay restoral of service charges and other applicable Service Charges, the Company shall promptly restore such service.

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1. GENERAL (cont'd)

(N)

B. TERMS AND CONDITIONS (cont'd)

Liabilities

Liabilities Between Parties

Liability of the Company to the telecommunications carrier and the telecommunications carrier to the Company, resulting from any and all causes, shall not exceed the liability of the Company as set forth herein and in other Sections of this tariff. Specifically, the Company and the telecommunications carrier shall each be liable only for the service(s) or facility(ies) that each provides. Neither the Company nor the telecommunications carrier shall bear any responsibility for the services and facilities provided by the other, Affiliates of the other, or agents, subcontractors, or other persons retained by the other.

Neither the Company nor the telecommunications carrier shall be liable for any act or omission of another telecommunications carrier (other than an Affiliate) providing a portion of a service. A Party's liability, whether in contract, tort or otherwise, to the other Party shall not exceed the amounts properly charged for the service or facility (ies) by such Party for the period of time during which such Party failed to provide the service(s) or facility(ies).

Notwithstanding the foregoing, in cases involving any Claim for a Loss associated with the installation, provision, termination, maintenance, repair or restoration of an individual Network Element or combination or a resale service provided for a specific customer of the telecommunications carrier, the Company's liability to the telecommunications carrier shall be limited to the greater of: (i) the total amount properly charged to the telecommunications carrier for the service or function not performed or improperly performed and (ii) the amount the Company would have been liable to its customer if the comparable retail service was provided directly to its customer.

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1. GENERAL (cont'd)

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B. TERMS AND CONDITIONS (cont'd)

Liabilities (cont'd)

Liabilities Between Parties (cont'd)

In no case shall either the Company or the telecommunications carrier be liable to the other for any indirect, special, consequential, incidental or punitive damages, including, but not limited to, economic loss, lost business, revenues, or profits (collectively "Consequential Damages"), whether foreseeable or not, and regardless of notification by, the other party of the possibility of such damages. This limitation shall not limit any right the Company or a telecommunications carrier may have to be indemnified, defended or held harmless against any amounts payable to a third person, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorney's fees) and Consequential Damages of such third person. The Company and the telecommunications carrier agree that this allocation of risk and liability is fair and reasonable.

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1. GENERAL (cont'd)

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B. TERMS AND CONDITIONS (cont'd)

Liabilities (cont'd)

Liabilities Between Parties (cont'd)

The telecommunications carrier and the Company shall each be responsible only for the service(s) and facility(ies) it provides, and neither shall bear any responsibility for the service(s) and facility(ies) provided by the other or a third party. Neither the Company nor the telecommunications carrier shall bear any responsibility for the services and facilities provided by the other, Affiliates of the other, or agents, subcontractors, or other persons retained by the other.

Neither the Company nor the telecommunications carrier shall be liable for any act or omission of another telecommunications carrier (other than an Affiliate) providing a portion of a service. A Party's liability, whether in contract, tort or otherwise, to the other Party shall not exceed the amounts properly charged for the service or facility (ies) by such Party for the period of time during which such Party failed to provide the service(s) or facility(ies).

Notwithstanding the foregoing, in cases involving any Claim for a Loss associated with the installation, provision, termination, maintenance, repair or restoration of an individual Network Element or combination or a resale service provided for a specific customer of the telecommunications carrier, the Company's liability to the telecommunications carrier shall be limited to the greater of: (i) the total amount properly charged to the telecommunications carrier for the service or function not performed or improperly performed and (ii) the amount the Company would have been liable to its customer if the comparable retail service was provided directly to its customer.

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1. GENERAL (cont'd)

(N)

B. TERMS AND CONDITIONS (cont'd)**Liabilities (cont'd)**

Liabilities Between Parties (cont'd)

The telecommunications carrier and the Company shall indemnify, defend and hold each other harmless for and against any claim, loss or damage, asserted by any person related to or arising out of the acts or omissions of the other party or by customers, employees, agents, or contractors of the other party against whom indemnification is sought. In such cases, the indemnifying party shall reimburse the other for all of the non-defending party's costs, expenses or judgments including attorney's fees. Each party agrees to notify the other promptly of any matters for which the foregoing indemnity may apply. Failure to so notify the indemnifying party shall not relieve such party of any liability or responsibility, except to the extent that such failure prejudices the ability of the indemnifying party to defend any action or claim. The indemnifying party shall have the right to defend against such liability or assertion in which event the indemnifying party shall give written notice to the indemnified party of acceptance of the defense of such claim and the identity of counsel selected by the indemnifying party. Until such time as indemnifying party provides such written notice of acceptance of the defense of such claim, the indemnified party shall defend such Claim, at the expense of the indemnifying party, subject to any right of the indemnifying party, to seek reimbursement for the costs of such defense in the event that it is determined that indemnifying party had no obligation to indemnify the indemnified party for such Claim. The indemnifying party shall have exclusive right to control and conduct the defense and settlement of any such claims subject to consultation with the Indemnified Party. The indemnifying party shall not be liable for any settlement by the indemnified party unless such indemnifying party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.

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1. GENERAL (cont'd)

(N)

B. TERMS AND CONDITIONS (cont'd)

Liabilities (cont'd)

Liabilities Between Parties (cont'd)

At any time, an indemnified party shall have the right to refuse a compromise or settlement and, at such refusing party's cost, to take over such defense; provided that in such event the indemnifying party shall not be responsible for, nor shall it be obligated to indemnify the relevant indemnified party against, any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the indemnifying party, the relevant indemnified party shall be entitled to participate with the indemnifying party in such defense if the claim requests equitable relief or other relief that could affect the rights of the indemnified party and also shall be entitled to employ separate counsel for such defense at such indemnified party's expense. If the indemnifying party does not accept the defense of any indemnified claim as provided above, the relevant indemnified party shall have the right to employ counsel for such defense at the expense of the indemnifying party. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each Party shall be available to the other party with respect to any such defense, subject to any applicable restrictions and limitations set forth elsewhere in this Tariff.

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1. GENERAL (cont'd)

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B. TERMS AND CONDITIONS (cont'd)

Liabilities (cont'd)

Liabilities Between Parties (cont'd)

The telecommunications carrier may, at its discretion, provide in its tariffs or other contracts for services under this Part with its end users, that in no case shall the Company be liable to the telecommunications carrier's end users or any third parties for any Consequential Damages, whether foreseeable or not, and regardless of notification by the telecommunications carrier of the possibility of such damages. To the extent that a telecommunications carrier elects not to place in its tariffs or contracts such limitation(s) of liability, and the Company incurs a loss as a result thereof, such telecommunications carrier shall indemnify and reimburse the Company for that portion of the loss that would have been limited had the telecommunications carrier included in its tariffs and contracts the limitation(s) of liability that the Company included in its own retail tariffs at the time of such loss. Nothing in this Part shall be deemed to create a third party beneficiary relationship with the telecommunications carrier's end users.

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