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BEFORE THE ARIZONA CORPORATION COMMISSION

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BRENDA BURNS
Commissioner

Arizona Corporation Commission
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ROBERT BURNS
Commissioner

NOV 21 2014

SUSAN BITTER SMITH
Commissioner

DOCKETED BY

IN THE MATTER OF VENTANA)
CANYON ALLIANCE LLC (DBA THE)
LODGE AT VENTANA CANYON))
FORMAL COMPLAINT AGAINST)
TW TELECOM OF ARIZONA LLC)
_____)

DOCKET: T-03943A-14-0371

**MOTION TO DISMISS
AND ANSWER**

MOTION TO DISMISS

Pursuant to A.A.C. R14-3-106(H) and Rule 12(b), Arizona Rules of Civil Procedure, tw telecom of arizona llc ("tw telecom" or "Company") files this Motion to Dismiss the formal complaint filed by Andrea Randall on behalf of Ventana Canyon Alliance, LLC (dba The Lodge At Ventana Canyon) ("Lodge") dated October 13, 2014 (the "Complaint"). For the reasons set forth below, the Arizona Corporation Commission ("Commission") should dismiss the Lodge's Complaint.

I. BACKGROUND

The Lodge ordered "Complete T PRI Access" service from Xspedius Management Co. Switched Services, LLC, doing business as espire, on June 15, 2003. The service is tariffed in Arizona and may be found in the Commission's tariff file in tw telecom's Arizona C.C. Tariff

No. 7, section 10.23.28 ("Tariff"). The Tariff is publically available on the Commission website and is available on the tw telecom website at the following link:

<http://www.twtelecom.com/support-information/legal-information/tariffs-charges/tariffs-notifications-forms/>. Tariff sections referenced in this response are included as Attachment 1.

The Lodge paid espire and tw telecom approximately \$109,000 over approximately eleven years for this telecommunications service. These undisputed facts are the only facts required to dismiss this Complaint.

The following facts are not legally required for dismissal of the Complaint, but provide important contextual background information. Service to the Lodge was turned up by Xspedius and accepted by the Lodge on August 28, 2003. In 2007, Time Warner Telecom of Arizona, LLC acquired the assets of Xspedius and grandfathered all tariffed services, including the service provided to the Lodge. The name Time Warner Telecom of Arizona, LLC was changed to tw telecom of arizona llc in 2008. To provide this service, tw telecom leased the circuit from Qwest and paid Qwest/CenturyLink for the type 2 circuit required for the Ventana Canyon account during the entire period of service. Neither the Lodge, nor its telecommunication consultant, nor any other party, ever notified tw telecom of an interruption or degradation in service. The Lodge does not contend that it ever contacted tw telecom regarding degradation or interruption of service between 2004 and 2013, nor did it contact tw telecom to cancel service before June of 2014. The Lodge paid espire and tw telecom each month for approximately eleven years for the service.

II. LEGAL STANDARD

A Rule 12(b) motion to dismiss for failure to state a claim assumes the allegations of the complaint as true, but attacks the legal sufficiency of the complaint. Courts must assume the

truth of the factual allegations in the complaint and construe them in the light most favorable to the non-moving party. Doe ex rel. Doe v. State, 200 Ariz. 174, 175 ¶ 2, 24 P.3d 1269, 1270 (2001). Mere conclusory statements, however, are insufficient to state a claim upon which relief can be granted and dismissal is appropriate under ARCP 12(b)(6). Cullen v. Auto-Owners Ins. Co., 218 Ariz. 417, 420 ¶¶6-7, 189 P. 344, 346 (2008). Nor may a court speculate about hypothetical facts that might entitle the Plaintiff to relief. Id. ¶ 14. The Lodge's Complaint is replete with facts that do not change two undisputed facts: (1) the Lodge ordered and accepted service in 2003, and (2) between 2004 and June of 2014 the Lodge did not contact the Company to cancel the service or report any disruption or degradation of service. Given these two facts, fundamental and well accepted legal principles governing utility law require dismissal of the Complaint.

III. ARGUMENT

A. The Lodge Failed to Dispute the Billed Charges in Accordance with the Applicable Tariff and Voluntarily Paid the Charges.

If, as the Lodge now alleges, it experienced an interruption in service or never received service, it was obliged to dispute the bills it received from tw telecom in accordance with the dispute resolution provision of the Tariff. *Sommer v. Mountain States Tel. & Tel. Co.*, 21 Ariz.App. 385, 388, 519 P.2d 874, 877 (1974) (stating that telephone company tariffs constitute "part of the contract between" the telephone company and its customers). The Lodge was wholly able to assess whether it was receiving service under the Tariff and voluntarily paid its monthly bill. Section 2.4.1 of the Tariff requires that an interruption be "reported to or known by the Company" before the Company can be liable for any claim for damages. Even assuming for sake of argument that an interruption occurred, no interruption was reported to the Company by the Lodge or any other party. A plaintiff in an action or a party to a complaint may not "hide

behind its ignorance when reasonable investigation would have alerted it to the claim.” *Elm Retirement Center LP v. Callaway*, 226 Ariz. 287, 246 P.3d 938 (App. 2010); *see also Doe v. Roe*, 191 Ariz. 313, 324, 37 P.2d 951, 962 (1998) (plaintiffs have affirmative duty of due diligence to investigate potential claims).

Section 2.4.5 of the Tariff provides that the “Company will make no refund of overpayments by a Customer unless the claim for such overpayment has been submitted in accordance with Section 2.7.1 below.” Section 2.7.1 provides “[o]bjections to billed charges must be reported to the Company within 120 days of receipt of billing.” Section 2.7.1 further provides “[a]ny claim not filed within this time period shall be deemed waived.” The Complaint filed by the Lodge is a billing dispute, and resolution of such a dispute is dictated entirely by the Tariff. Repeatedly, the Lodge received and paid monthly bills never objecting (until June of 2014) to the billed charges. “It is well established that where a telephone company files rules and regulations with the Public Utilities Commission, such rules and regulations are binding upon all customers whether or not they agree to or have knowledge of their existence.” *Sommer*, 21 Ariz.App. 385, 387, 519 P.2d 874, 876.

Section 2.13.2.A of the Tariff provides that “credits pursuant to this section shall be Customer’s sole remedy for service interruption claims.” Further, “[n]o credit allowance will be made for any interruption in service ... [t]hat was not reported to the Company within thirty (30) days of the date that service was affected.” Tariff Section 2.13.2.F.8. The Lodge does not allege that it ever disputed any of the monthly bills it received from tw telecom, until June of 2014 (two months after they ceased paying for the service). Under the Tariff, assuming the Lodge experienced a service interruption or never received service, it was obliged to notify tw telecom within thirty (30) days of the service interruption. The Lodge’s failure to give tw telecom notice

causes the claim to be deemed waived. Tariff Section 2.7.1. The Lodge is barred from seeking a refund of the charges it paid. *See, e.g. MCI WorldCom, Inc. v. Teletower, Inc.*, 2002 WL 378424 (S.D.N.Y. Mar. 11, 2002) (court entered judgment in favor of carrier where tariff required customer to dispute bills within six months and no evidence in the record indicated customer had disputed the bills); *MFS Intern., Inc. v. International Telecom Ltd.*, 50 F. Supp. 2d. 517, 523 n. 14 (E.D. Va. 1999) (tariff required customer to dispute bill within 30 days or waive dispute; customer's failure to do so prevented it from collecting on claim).

Through this Complaint, the Lodge seeks to retroactively dispute bills that were sent monthly, with no fraud or misrepresentation, and were voluntarily paid. The tariff, which is binding on both tw telecom and the Lodge, bars such a claim.

B. The Lodge's Claim is barred by A.R.S. §40-365.

tw telecom is an Arizona public service corporation providing service pursuant to a certificate of convenience and necessity issued by the Commission on December 14, 2000 (Decision No. 63262). The services purchased by Ventana Canyon were tariffed services as described above. tw telecom was required to file the Tariff with the Commission and have it approved by the Commission. *See* A.R.S. §40-365. This approved tariff includes all rates and charges that affect or relate to service provided by tw telecom in Arizona. Title 42 of the Arizona Revised Statutes addresses reparation of "any rate, fare, toll, rental or charge made by any public service corporation":

All complaints concerning excessive or discriminatory charges shall be filed with the commission within two years from the time the cause of action accrues, and the action to enforce the order shall be brought within one year from the date of the order of the commission.

A.R.S. §40-248(B). tw telecom submits that the Tariff governs this billing dispute. If, however, the tariff were judged not to control, A.R.S. §40-248(B) limits recovery.

Section §40-248(B) limits tw telecom's liability for any over payment made by any customer, including Ventana Canyon, to two years. Each month Ventana Canyon paid the monthly fee for service, and allegedly did not receive the tariffed service, a claim could have accrued. This accrual date does not change simply because the Lodge failed to notice that it was not receiving service, or had an issue with the service rendered. A customer's failure to notice that a claim has accrued is not sufficient to reset the accrual date. *See Davel Commc'n, Inc. v. Qwest. Corp.* 451 F.3d 1037 (9th Cir. 2006) ("Davel was on inquiry notice that it might be paying excessive rates for fraud protection. . . Its cause of action therefore accrued at that time.") Davel's claims were not wholly barred because "[e]ach time Davel paid the non-NST-compliant state filed tariff, it was injured anew by Qwest's failure to file the required federal tariff." *Id., at 1092-1093* (citing "*MCI Telecomms. Corp. v. Teleconcepts, Inc.*, 71 F.3d 1086, 1101 (3d Cir.1995) (analogizing to installment contracts and coming to a similar conclusion with respect to 47 U.S.C. § 415(a), the federal statute of limitations applicable to actions by carriers)"). Each time Ventana Canyon paid tw telecom for services, Ventana Canyon accrued a claim for a refund if service was disrupted. Over time, the older claims fell off as time barred by the statute of limitations and new claims arose within the two year limitation period. Pursuant to A.R.S. §40-248(B), Ventana Canyon is barred, *under any theory*, from recovering a refund for payments made more than two years before the claim was filed.

CONCLUSION

Even assuming the truth of the substantive allegations in Lodge's Complaint, the claim fails as a matter of law. tw telecom has no obligation to repay voluntary payments received from a customer based on approved tariffed prices that were correctly billed. If the Lodge wished to cease receiving service (and bills) from tw telecom, it was free to cancel the service at any time,

as permitted under Section 2.8 of the Tariff. It never did. Because the Complaint fails as a matter of law, the Lodge is not entitled to relief as sought in the Complaint. For the foregoing reasons, Company respectfully requests that the Commission dismiss the Lodge's Complaint with prejudice.

ANSWER

tw telecom of arizona llc for its answer to the formal Complaint of Ventana Canyon Alliance, LLC (dba The Lodge At Ventana Canyon) filed with the Commission and served by the Commission on tw telecom on October 20, 2014, pursuant to A.A.C. R14-3-106H, admits, denies and alleges as follows:

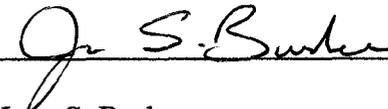
1. tw telecom denies each and every allegation of the Complaint
2. The Complainant ordered service from tw telecom's predecessor, espire, on June 15, 2003. Complainant never cancelled or reported difficulty with the service between 2004 and 2013.
3. The service ordered from and delivered to Complainant is tariffed in Arizona and may be found in the Commission's tariff file in tw telecom's Arizona C.C. Tariff No. 7, section 10.23.28.
4. No request to discontinue the service was made until July of 2014. Company ceased providing the service and discontinued all billing in response to the Customer's request to discontinue service.
5. tw telecom leased and paid for the circuit for the type 2 circuit required for the Ventana Canyon account during the entire period of service.

WHEREFORE, tw telecom requests that the Complaint be dismissed and that the Complainant's demands be denied. This matter can be resolved as a matter of law, without resort to discovery or hearing.

DATED this 21st day of November, 2014

LAW OFFICE OF JOAN S. BURKE, P.C.

By



Joan S. Burke
1650 North First Avenue
Phoenix, Arizona 85003

Attorney for Defendant tw telecom of arizona llc

**ORIGINAL and thirteen (13) copies
of the foregoing filed
this 21st day of November 2014 with:**

The Arizona Corporation Commission
Utilities Division –Docket Control
1200 W. Washington Street
Phoenix, AZ 85007

**Copy of the foregoing hand-delivered
this 21st day of November 2014 to:**

Steve Olea, Director
Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Janice Alward, Chief Counsel
Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

Lyn Farmer
Chief Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, AZ 85007

**Copy of the foregoing mailed and emailed
this 21st day of November 2014 to:**

John C. Hinderaker, Partner
Lewis Roca Rothgerber LLP
Suite 700
One South Church Avenue
Tucson, Arizona 85701-1611
Attorneys for Ventana Canyon Alliance, LLC,
(dba) The Lodge At Ventana Canyon

A handwritten signature in cursive script, appearing to read "John C. Hinderaker", is written over a horizontal line.

4842-5328-0288, v. 1

Tariff Pages

SECTION 10 – GRANDFATHERED SERVICES, (CONT'D.)

10.23 Grandfathered Maximum Rates, (Cont'd.)

10.23.28 Xspedius Complete T

<u>Complete T</u>	<u>Monthly Recurring</u>	
Complete T – DS1	\$2,000.00	
Complete T – PRI	\$2,000.00	
	<u>Monthly</u>	<u>Nonrecurring</u>
Additional charges will apply for the following components:		
<u>DID Termination Charges:</u>		
*Basic Feature Plan		
DID Trunk Termination, per line/trunk	\$20.00	
*Enhanced Feature Plan		
DID Trunk Termination, per line/trunk	\$20.00	
Enhanced DID Trunk Termination, per line.trunk	\$20.00	
<u>DID Number:</u>		
1 st Block of 20 DID numbers	\$20.00	
DID each additional block of 20 up to 500 numbers	\$20.00	
DID 500 + each additional block of 100 numbers	\$100.00	
<u>Feature Plans:</u>		
Basic Feature Plan (included in base price)	\$10.00	
Enhanced Feature Plan, per T1/PRI	\$150.00	
<u>Option Plans:</u>		
Complete T Basic Pack, per T1/PRI	\$300.00	
Complete T Bonus Pack, per T1/PRI	\$600.00	

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10475 Park Meadows Drive, Suite 400
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SECTION 10 – GRANDFATHERED SERVICES, (CONT'D.)

10.23 Grandfathered Maximum Rates, (Cont'd.)

10.23.28 Xspedius Complete T, (Cont'd.)

<u>Service</u>	<u>Monthly</u>	<u>Nonrecurring*</u>
<u>DSI Optional Custom Calling Features:</u>		
* Basic Feature Plan Custom Calling Features		\$20.00
Account Code – Non Validated	\$5.00	
Account Code – Validated	\$20.00	
Anonymous Call Rejection	\$20.00	
Automatic Call Back	\$5.00	
Automatic Recall	\$5.00	
Call Hold	\$5.00	
Call Forward Busy	\$5.00	
Call Forward No Answer	\$5.00	
Call Forward Variable	\$5.00	
Call Forwarding Additional Path	\$30.00	
Call Transfer	\$20.00	
Call Waiting	\$20.00	
Caller ID w/Name & Number	\$5.00	
Caller ID w/Number	\$20.00	
Distinctive Ringing	\$5.00	
DNIS (Dialed Number Identification Service)	\$20.00	
Incoming FX	\$100.00	
PBX Outbound Calling ID	\$20.00	
Remote Activation of Call Forwarding	\$5.00	
Remote Call Forwarding	\$20.00	
Remote Call Forwarding Additional path	\$30.00	
Speed Dial 8	\$5.00	
Speed Dial 30	\$20.00	
Three Way Calling	\$20.00	
Enhanced Voice Messaging (per mailbox)	\$20.00	
(9 or fewer mailboxes)		\$100.00
(10 or more mailboxes)		\$200.00
Fax Overflow	\$20.00	
Voice Mail (additional per mailbox)	\$20.00	
Voice Mail Pager Plus	\$20.00	

*Nonrecurring charges waived if features ordered upon initial installation of Xspedius.

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SECTION 10 – GRANDFATHERED SERVICES, (CONT'D.)

10.23 Grandfathered Maximum Rates, (Cont'd.)

10.23.28 Xspedius Complete T, (Cont'd.)

<u>Services</u>	<u>Monthly</u>	<u>Nonrecurring</u>
<u>DS1 Optional Custom Calling Features:</u>		
*Enhanced Feature Plan or Pack Custom Calling Features		\$20.00
Account Code – Non Validated	\$5.00	
Account Code – Validated	\$20.00	
Call Forwarding Additional Path	\$30.00	
Incoming FX	\$100.00	
Remote Call Forwarding	\$20.00	
Remote Call Forwarding Additional path	\$30.00	
Enhanced Voice Messaging (per mailbox)	\$20.00	
(9 or fewer mailboxes)		\$100.00
(10 or more mailboxes)		\$200.00
Fax Overflow	\$20.00	
Voice Mail (additional per mailbox)	\$20.00	
Voice Mail Pager Plus	\$20.00	
<u>PRI Optional Custom Calling Features:</u>		
Basic Feature Plan Custom Calling Features		
Call by Call, per PRI	\$100.00	
Caller ID w/ Name & Number, PRI	\$100.00	
Incoming FX	\$100.00	
Redirecting Number on PRI	\$100.00	
Enhanced Feature Plan or Pack Custom Calling Features		
Call by Call, Per PRI	\$100.00	
Incoming FX	\$100.00	
Redirecting Number on PRI	\$100.00	

*Nonrecurring charges waived if features ordered upon initial installation of Xspedius.

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SECTION 10 – GRANDFATHERED SERVICES, (CONT'D.)

10.23 Grandfathered Maximum Rates, (Cont'd.)

10.23.28 Xspedius Complete T, (Cont'd.)

Ancillary Services	<u>Monthly</u>	<u>Nonrecurring</u>
<u>Directory Assistance</u>		
Non-Published	\$20.00	
Non-Listed	\$5.00	
Each additional Directory Assistance call	\$20.00	
Long Distance Directory Assistance	\$5.00	
Long Distance Directory Assistance with call completion	\$5.00	
800 Directory Assistance Listing, per 800 number	\$30.00	
<u>Vanity Number Service</u>		
Vanity Number, per number	\$20.00	\$50.00
<u>Toll Free Service</u>		
Toll Free Payphone Blocking, per number	\$500.00	\$500.00
<u>Moves/Adds/Changes (MACS)</u>		<u>Nonrecurring</u>
		<u>Charge</u>
Complete T Installation 1 year term		\$3,000.00
Complete T Installation 2 year term		\$3,000.00
Complete T Installation 3 year term		\$2,000.00
Change to Complete T, without premises visit		\$100.00, per order
Change to Complete T, with premises visit		\$500.00, per order
Change to add DID Trunk Termination		\$50.00, per order
Change to add Voice feature		\$20.00, per order
Change to CSR		\$40.00 per order
Change to add PRI feature		\$20.00 per order
Change to add Newsfeed		\$20.00 per ckt
Change to add Primary DNS		\$50.00 per ckt
Change to add Optional Calling Plans (LATAwide, EAS, Corridor...)		\$20.00 per ckt
PIC change		\$20.00 per WTN
Voice Mail installation		\$20.00 per mailbox
Voice Mail Pager Plus installation		\$20.00 per mailbox
Fax Overflow installation		\$20.00 per mailbox
Enhanced Voice Messaging 9 or less mailboxes		\$100.00 per order
Enhanced Voice Messaging 10 or more mailboxes		\$200.00 per order

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SECTION 2 - GENERAL REGULATIONS, (CONT'D.)

2.3 Use

Services provided under this tariff may be used for any lawful purpose for which the service is technically suited.

2.4 Liabilities of the Company

2.4.1 The liability of the Company for direct damages or personal injury caused by its willful misconduct or gross negligence which is the sole legal cause of damage or injury is not limited by this tariff. With respect to any other claim or suit, by a Customer or by any others, for damages associated with acts or omissions involving initiation, installation, provision, moving, changing, termination, maintenance, repair, errors, omissions, delays, interruption or restoration of any service or facilities offered under this tariff, the Company's liability, if any, is limited to 1/30 of the monthly charge for service affected for each 24-hour period during which such failure of service occurs and is reported to or known by the Company. In addition, Customer credits for interrupted service will be issued, where applicable, in accordance with the provisions of Section 2.13.

2.4.2 In no event will Company be responsible for consequential damages or lost profits suffered by Customer.

2.4.3 The Company is not liable for any act or omission of any other company or companies furnishing a portion of the service which service or equipment is related to the Service supplied by the Company, but is not furnished by the Company. No agents or employees of other carriers shall be deemed to be agents or employees of the Company.

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SECTION 2 - GENERAL REGULATIONS, (CONT'D.)

2.4 Liabilities of the Company, (Cont'd.)

2.4.4 The Company shall be indemnified and held harmless by the Customer against:

- A. Claims for libel, slander, infringement of copyright or unauthorized use of any trade mark, trade name or service mark arising out of the material, data, information, or other content transmitted by the Customer over the Company's facilities; and
- B. Claims for patent infringement arising from combining or connecting the Company's facilities with apparatus and systems of the Customer;
- C. All claims of any kind by Customer's end users; and
- D. All other claims (including, without limitation, claims for damage to any business or property, or injury to, or death of, any person) arising out of any act or omission of the Customer in connection with any service provided by the Company.

2.4.5 The Company will make no refund of over-payments by a Customer unless the claim for such overpayment has been submitted in accordance with Section 2.7.1 below.

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SECTION 2 - GENERAL REGULATIONS, (CONT'D.)

2.7 Payment and Credit Regulations

2.7.1 Payment Arrangements

The Customer is responsible for payment of all charges for services and equipment furnished to the Customer for transmission of calls via the Company's Network. The Customer agrees to pay to the Company any cost(s) incurred as a result of any delegation of authority resulting in the use of the Customer's communications equipment and/or network services which result in the placement of calls via the Company's Network. The Customer agrees to pay the Company or its authorized agent any and all cost(s) incurred as a result of the use of the service arrangement, including calls which the Customer did not individually authorize.

Billing for services begins on the date the Company notifies the Customer that service has been installed and tested by the Company and is available for the Customer's use ("Service Commencement Date"). Charges for Services, including applicable federal, state, and local taxes, will be billed in advance, except for charges based on usage, which will be billed one month in arrears. Charges are due within thirty (30) days from the date of the bill, but in no event later than the commencement of the next billing period.

Objections to billed charges must be reported to the Company within 120 days of receipt of billing. Any claim not filed within this time period shall be deemed waived. Claims must include all supporting documentation and may be submitted online at <http://customers.twtelecom.com/disputes/> or by telephone at 1-800-565-8982. The Company shall make adjustments to the Customer's invoice to the extent that circumstances existing which reasonably indicate that such changes are appropriate.

Upon termination of service for any reason, all amounts due from the Customer to the Company, including, but not limited to, charges for services rendered and termination liability as provided in this tariff, shall become immediately due and payable by the Customer.

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SECTION 2 - GENERAL REGULATIONS, (CONT'D.)

2.13 Service Level Standards for Local Exchange Services, (Cont'd.)

2.13.2 Credit Allowance for Interruption of Service

- A. The Company will credit the Customer as set forth below for interruptions in service which is provided entirely on the Company's network not due to the negligence of or non-compliance with the provisions of this tariff by the Customer, nor to the operations or malfunction of the facilities, power, or equipment provided by the Customer. A credit allowance will be made when an interruption occurs because of a failure of any component furnished and maintained by Company hereunder. The issuance of credits pursuant to this section shall be Customer's sole remedy for service interruption claims.
- B. An interruption period begins when the Customer reports a service, facility or circuit to be interrupted and releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative. If the Customer reports a service, facility or circuit to be inoperable, but refuses to release it for testing and repair or does not provide the Company with access to the Customer's premises, it is considered impaired but not interrupted.
- C. The Customer must obtain a trouble ticket by calling 1-866-654-4630 for transport services, or 1-866-654-4624 for switched services. The Company will issue a credit for service interruptions, if applicable, in accordance with this tariff. The duration of the interruption is determined solely by the date and time the trouble ticket was opened and closed out as a resolved issue. Credits will not be issued unless a trouble ticket exists for the facility, service or circuit in question.
- D. For calculating allowances, every month is considered to have 30 days. A credit allowance is applied on a pro-rata basis and is dependent upon the length of the interruption. Only those facilities or services on the interrupted portion of the circuit will receive a credit.
- E. If two or more trouble tickets have been opened for a particular service in a 30-day period, and the cause of outage is determined to be in the Company's network or system equipment, such service will be deemed a Chronic Trouble Service. If a third trouble ticket is opened on a Chronic Trouble Service within thirty (30) days of the second trouble ticket, the Customer may disconnect the affected service without incurring termination liability.

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SECTION 2 - GENERAL REGULATIONS, (CONT'D.)

2.13 Service Level Standards for Local Exchange Services, (Cont'd.)

2.13.2 Credit Allowance for Interruption of Service

- F. No credit allowance will be made for any interruption in service:
1. Due to the negligence of or noncompliance with the provisions of this tariff by any person or entity other than the Company, including but not limited to the Customer;
 2. Due to the failure of power, equipment, systems, connections or services not provided by the Company;
 3. Due to any Force Majeure event circumstances or causes beyond the reasonable control of the Company;
 4. During any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting interruptions;
 5. A service will not be deemed to be interrupted if a Customer continues to voluntarily make use of the such service. If the service is interrupted, the Customer can get a service credit, use another means of communications provided by the Company or utilize another service provider;
 6. During any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
 7. That occurs or continues due to the Customer's failure to authorize replacement of any element of special construction; and
 8. That was not reported to the Company within thirty (30) days of the date that service was affected.

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SECTION 2 - GENERAL REGULATIONS, (CONT'D.)

2.8 Cancellation by Customer

Unless a Customer has purchased service under a term agreement plan, the service may be cancelled at any time by contacting the Company. The minimum service period for service not furnished under a terms plan for which monthly charges apply is thirty days. The Customer must provide proper identification when ordering or canceling service.

2.9 Interconnection

Service furnished by the Company may be connected with the services or facilities of other carriers. Such service or facilities, if used, are provided under the terms, rates and conditions of the other carrier or by applicable interconnection agreements. The Customer is responsible for all charges billed by other carriers for use in connection with the Company's service. Any special interface equipment or facilities necessary to achieve compatibility between carriers is the responsibility of the Customer.

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Issued by: Lyndall Nipps, Vice President - Regulatory Affairs
10475 Park Meadows Drive, Suite 400
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APPROVED FOR FILING
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