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INTEREXCHANGE TELECOMMUNICATIONS SERVICES

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**TITLE SHEET**

MISSOURI INTEREXCHANGE TELECOMMUNICATIONS TARIFF

OF

**Image Access, Inc. d/b/a NewPhone.**

This tariff contains the descriptions, regulations, and rates applicable to the furnishing of Competitive Intrastate Interexchange Telecommunications Services provided by Image Access, Inc. d/b/a NewPhone. ("NewPhone") within the State of Missouri.

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ISSUED DATE: April 14, 2004  
ISSUED BY: Jim R. Dry  
Image Access, Inc d/b/a New Phone  
3525 N. Causeway Blvd., Suite 501  
Metairie, Louisiana 70002

EFFECTIVE DATE: May 29, 2004

CANCELLED  
June 21, 2008  
LD-2008-0376  
Missouri Public  
Service Commission

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INTEREXCHANGE TELECOMMUNICATIONS SERVICES

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**EXPLANATION OF SYMBOLS**

The following are the only symbols used for the purposes indicated below:

**C** - To signify changed regulation.

**D** - Delete or discontinue.

**I** - Change Resulting in an increase to a Customer's bill.

**M** - Moved from another tariff location.

**N** - New

**R** - Change resulting in a reduction to a Customer's bill.

**T** - Change in text but No Change to Rate or Charge.

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**TARIFF FORMAT**

- A. Sheet Numbering** - Sheet numbers appear in the upper right corner of the sheet. Sheets are numbered sequentially. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be 14.1.
- B. Sheet Revision Numbers** - Revision numbers also appear in the upper right corner of each sheet. These numbers are used to determine the most current sheet version on file with the MPSC. For example, the 4th revised Sheet 14 cancels the 3rd revised Sheet 14. Because of various suspension periods, deferrals, etc. the MPSC follows in its tariff approval process, the most current sheet number on file with the Commission is not always the tariff sheet in effect.
- C. Paragraph Numbering Sequence** - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:
- 2.
  - 2.1.
  - 2.1.1.
  - 2.1.1.A.
  - 2.1.1.A.1.
  - 2.1.1.A.1.(a).
  - 2.1.1.A.1.(a).I.
  - 2.1.1.A.1.(a).I.(i).
  - 2.1.1.A.1.(a).I.(i).(1).
- D. Reserved for future use.**

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS**

**Access Line** - An arrangement that connects the Customer's location to a NewPhone switching center or point of presence.

**Authorized User** - A person, firm or corporation authorized by the Customer to be an end-user of the service of the Customer.

**Broadband** - A facility providing transmission capacity at a minimum of 200 kilobits per second in both directions.

**Calling Card** - A proprietary card through which service is accessed by dialing a company-provided access number, and which enables the Customer or User to place calls over the network and to have the charges for such calls billed to the Customer's account.

**Commission** - The Missouri Public Service Commission or MPSC.

**Company** - Whenever used in this tariff, "Company" refers to Image Access, Inc. d/b/a NewPhone., unless otherwise specified or clearly indicated by the context.

**Credit Card** - "Credit Card" means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain credit.

**Customer or Subscriber** - The person, firm, corporation or other entity which orders, cancels, amends or uses service and is responsible for payment of charges and compliance with the Company's tariff.

**Customer Dialed Calling Card Call** - A service whereby the End User dials all of the digits necessary to route and bill the call to a Calling Card.

**Customer Premises Equipment** - Terminal equipment, as defined herein, which is located on the Customer's premises.

**Deposit** - Refers to a cash or equivalent of cash security held as a guarantee for payment of the charges.

**ICB** - Individual Case Basis.

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, (CONT'D.)**

**IXC** - means interexchange carrier or interexchange company which is a carrier or company authorized by the Commission to provide long distance communications services within the State of Missouri.

**LATA** - A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 82-0192; or any other geographic area designated as a LATA in the National Exchange Carrier Association Tariff F.C.C. No. 4.

**LEC** - Local Exchange Company refers to the dominant, monopoly local telephone company in the area also served by the Company.

**Monthly Recurring Charges** - The monthly charges to the Customer for services, facilities and equipment, which continue for the agreed upon duration of the service.

**Network** - Refers to the Company's facilities, equipment, and services provided under this tariff.

**NewPhone** - Refers to Image Access, Inc. d/b/a NewPhone., the issuer of this tariff.

**Nonrecurring Charge ("ANRC")** - A charge assessed on a one-time basis or "per occasion" basis.

**NPA** - Numbering plan area or area code.

**Point of presence ("POP")** - means the location where an IXC has transmission equipment in a service area that serves as, or relays calls to, the interexchange network.

**Recurring Charges** - The monthly charges to the Customer for services, facilities and equipment which continue for the agreed upon duration of the service.

**Service(s)** - Refers to all telecommunications services and other services related thereto provided by the Company to Customers or Users.

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, (CONT'D.)**

**Service Commencement Date** - The first day following the date on which the Company notifies the Customer that the requested service or facility is installed, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order or this tariff, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and Customer may mutually agree on a substitute Service Commencement Date.

**Service Order** - The written request for Network Services executed by the Customer and the Company in the format devised by the Company. The signing of a Service Order by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this tariff, but the duration of the service is calculated from the Service Commencement Date.

**Telecommunications Service** - Telecommunications offered for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

**Telephone Company** - Denotes any individual, partnership, association, joint-stock company, trust, or corporation authorized by the appropriate regulatory bodies to engage in providing public switched communication service throughout an exchange area, and between exchange areas within the LATA.

**Terminal Equipment** - Devices, apparatus, and associated wiring, such as teleprinters, telephones, or data sets.

**Underlying Carrier** - means the provider of telecommunications services whose network is being utilized to transmit and receive the Customer's telecommunications traffic.

**Usage Based Charges** - Charges for calls which are based on increments of time, or number of messages completed over the local exchange network.

**User (or End User)** - Any person or entity that obtains the Company's services provided under this tariff, regardless of whether such person or entity is so authorized by the Customer.

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**SECTION 2 - RULES AND REGULATIONS**

**2.1 Undertaking of the Company**

NewPhone's services and facilities are furnished for communications originating at specified points within the state of Missouri under terms of this tariff.

NewPhone provides service in accordance with the terms and conditions set forth under this tariff. NewPhone may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities to allow connection of a Customer's location to the NewPhone network. The Customer shall be responsible for all charges due for such service arrangement.

The Company's services and facilities are provided on a pre-paid monthly basis unless otherwise provided, and are available twenty-four (24) hours per day, seven (7) days per week.

**2.1.1 Shortage of Equipment or Facilities**

- A. The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.
- B. The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

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**SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**

**2.1 Undertaking of the Company, (Cont'd.)**

**2.1.2 Terms and Conditions**

- A. Service is provided on the basis of a minimum period of at least thirty days, 24-hours per day. For the purpose of computing charges in this tariff, a month is considered to have thirty (30) days.
- B. Customers may be required to enter into written or verbal service orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this tariff. Customers will also be required to execute any other documents as may be reasonably requested by the Company.
- C. This tariff shall be interpreted and governed by the laws of the State of Missouri without regard for its choice of laws provision.
- D. Other carriers may not interfere with the right of any person or entity to obtain service directly from the Company. No person or entity shall be required to make any payment, incur any penalty, monetary or otherwise, or purchase any services in order to have the right to obtain service directly from the Company.
- E. To the extent that either the Company or any other carrier exercises control over available cable pairs, conduit, duct space, raceways, or other facilities needed by the other to reach a person or entity, the party exercising such control shall make them available to the other on terms equivalent to those under which the Company makes similar facilities under its control available to its Customers. At the reasonable request of either party, the Company and the other carrier shall jointly attempt to obtain from the owner of the property access for the other party to serve a person or entity.

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SECTION 2 - RULES AND REGULATIONS, (CONT'D.)

2.1 Undertaking of the Company, (Cont'd.)

2.1.2 Terms and Conditions, (Cont'd.)

G. Services offered by the Company are provided in one-month pre-paid increments.

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**INTEREXCHANGE TELECOMMUNICATIONS SERVICES**

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**SECTION 2 - RULES AND REGULATIONS, (CONT'D.)****2.1 Undertaking of the Company, (Cont'd.)****2.1.2 Terms and Conditions, (Cont'd.)**

1. The Company assumes no responsibility for the information obtained or otherwise available through the Service. All information accessed by the Customer through the Service is accessed and used at the Customer's own risk and the Company will have no liability whatsoever for any claims, losses, actions, damages, suits or proceedings arising out of or otherwise relation to the access of such information by the Customer. The Company has no obligation to monitor transmissions made on the service. However, the Company reserves the right to monitor such transmissions from time to time and to disclose the same as required to satisfy any applicable law, regulation or other lawful governmental request. The Company also reserves the right to remove any information or materials, in whole or in part, that it deems unacceptable, undesirable, or in violation of this tariff.
2. The Customer will be responsible for paying for all calls originating from the Customer's premises whether or not authorized by the Customer.
3. The Company will use its reasonable best efforts to provide the services ordered on or before the requested dates, however, because of the potential difficulties involved in interfacing with multiple vendors, there is no delivery guarantee. The Customer must be prepared to allow for installation when notified of the circuits being tested and released.
4. A Customer may not assign his or service or her agreement without the prior written consent of the Company.

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**SECTION 2 - RULES AND REGULATIONS, (CONT'D.)**

**2.2 Use of Service**

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

**2.3 Limitations of Service**

**2.3.1** Service is offered subject to the availability of the necessary facilities and equipment, or both facilities and equipment, and subject to the provisions of this tariff.

**2.3.2** NewPhone reserves the right to discontinue or limit service when necessitated by conditions beyond its control, or when the Customer is using service in violation of provisions of this tariff, or in violation of the law.

**2.3.3** The Company does not undertake to transmit messages, but offers the use of its facilities when available, and will not be liable for errors in transmission or for failure to establish connections.

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SECTION 2 - RULES AND REGULATIONS (CONT'D.)

2.4 Liabilities of the Company

2.4.1 Limitations of Liability

- A. The provisions of this section do not apply to errors and omissions caused by willful misconduct, fraudulent conduct or violations of laws by the Company.
- B. In the event an error or omission is caused by the gross negligence of the Company, the liability of the Company shall be limited to and in no event exceed the sum of \$1,000.
- C. Except as provided in Paragraphs (A) and (B) of this Rule, the liability of the Company for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in any of the services or private line, alphabetical directory listings (excluding the use of bold type), and all other services shall in no event exceed an amount equal to the pro rata charges to the Customer for the periods during which the services or facilities area affected by the mistake, omission, interruption, delay, error or defect, provided, however, that where any mistake, omission, interruption, delay, error or defect of any one service or facility affects or diminishes the value of any other service, said liability shall include such diminution, but in no event shall exceed the total amount of the charges to the Customer for all services or facilities for the period affected by the mistake, omission, interruption, delay, error or defect.
- D. The Company shall not be liable for errors in transmitting, receiving or delivering oral messages by telephone over the lines of the Company and connecting utilities.
- E. The Utility shall have the right to make necessary repairs or changes in its facilities at any time and will have the right to suspend or interrupt service temporarily for the purpose of making the necessary repairs or changes in its system. When such suspension or interruption of service for any appreciable period is necessary, the Utility will give the customers who may be affected as reasonable notice thereof as circumstances will permit, and will prosecute the work with reasonable diligence, and, if practicable, at times that will cause the least inconvenience.

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SECTION 2 - RULES AND REGULATIONS (CONT'D.)

---

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

2.4.1 Limitations of Liability (Cont'd.)

- F. Except for the extension of allowances to the Customer for interruptions in Service as set forth in this tariff, the Company shall not be liable to a Customer or third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages, including, but not limited to, loss of revenue or profits, for any reason whatsoever, including, but not limited to, any act or omission, failure to perform, delay, interruption, failure to provide any Service or any failure in or breakdown of facilities associated with the Service.
  
- G. The liability of the Company for errors in billing shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.
  
- H. The Company shall not be liable for any claims for loss or damages involving:
  - 1. Any act or omission of: (1) the Customer, (2) any other entity furnishing Service, equipment or facilities for use in conjunction with Services or facilities provided by the Company; or (3) common carriers or warehousemen;
  
  - 2. Any delay or failure of performance or equipment due to causes beyond the Company's control, including but not limited to, acts of God, fires, floods, earthquakes, hurricanes, or other catastrophes; national emergencies, insurrections, riots, wars or other civil commotions; strikes, lockouts, work stoppages or other labor difficulties; criminal actions taken against the Company; unavailability, failure or malfunction of equipment or facilities provided by the Customer or third parties; and any law, order, regulation or other action of any governing authority or agency thereof;
  
  - 3. Any unlawful or unauthorized use of the Company's facilities and Services;

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

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

**2.4.1 Limitations of Liability, (Cont'd.)**

**H. (Cont'd.)**

4. Libel, slander, invasion of privacy or infringement of patents, trade secrets, or copyrights arising from or in connection with the transmission of communications by means of Company-provided facilities or Services; or by means of the combination of Company-provided facilities or Services with Customer-provided facilities or Services;
5. Breach in the privacy or security of communications transmitted over the Company's facilities;
6. Changes in any of the facilities, operations or procedures of the Company that render any equipment, facilities or Services provided by the Customer obsolete, or require modification or alteration of such equipment, facilities or Services, or otherwise affect their use or performance, except where reasonable notice is required by the Company and is not provided to the Customer, in which event the Company's liability is limited as set forth in this tariff;
7. Defacement of or damage to Customer premises resulting from the furnishing of Services or equipment on such premises or the installation or removal thereof;
8. Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected to the Company's facilities;

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INTEREXCHANGE TELECOMMUNICATIONS SERVICES

SECTION 2 - RULES AND REGULATIONS (CONT'D.)

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

2.4.1 Limitations of Liability, (Cont'd.)

H. (Cont'd.)

- 9. Any intentional, wrongful act of a Company employee when such act is not within the scope of the employee's responsibilities for the Company and/or is not authorized by the Company;
- 10. Any representations made by Company employees that do not comport, or that are inconsistent, with the provisions of this tariff;
- 11. Any noncompletion of calls due to network busy conditions as long as the Company is meeting the applicable service standards of the Commission;
- 12. Any calls not actually attempted to be completed during any period that Service is unavailable.

I. The Company shall be indemnified, defended and held harmless by the Customer or User from and against any and all claims, loss, demands, suits, expense, or other action or any liability whatsoever, including attorney fees, whether suffered, made, instituted, or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any Company or Customer equipment or facilities or Service provided by the Company.

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INTEREXCHANGE TELECOMMUNICATIONS SERVICES

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SECTION 2 - RULES AND REGULATIONS (CONT'D.)

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

2.4.1 Limitations of Liability, (Cont'd.)

- J. The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere. The Company shall be indemnified, defended and held harmless by the Customer from and against any and all claims, loss, demands, suits, or other action, or any liability whatsoever, including attorney fees, whether suffered, made, instituted or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any equipment or facilities or the Service.
  
- K. The Company assumes no responsibility for the availability or performance of any cable or satellite systems or related facilities under the control of other entities, or for other facilities provided by other entities used for Service to the Customer, even if the Company has acted as the Customer's agent in arranging for such facilities or Services. Such facilities are provided subject to such degree of protection or non-pre-emptibility as may be provided by the other entities.
  
- L. Except as provided elsewhere in this tariff, any claim of whatever nature against the Company shall be deemed conclusively to have been waived unless presented in writing to the Company within thirty (30) days after the date of the occurrence that gave rise to the claim.

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

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

**2.4.1 Limitations of Liability, (Cont'd.)**

N. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE.

**2.5 Notification of Service-Affecting Activities**

**2.5.1** The Company relies on other telecommunications carriers for the provision of services in this tariff. The Company will not be performing any service-affecting activities for which notification would be expected or required.

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INTEREXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.10 Prohibited Uses**

- 2.10.1** The services the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.
- 2.10.2** The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and the Missouri Public Service Commission's regulations, policies, orders, and decisions.
- 2.10.3** The Company may block any signals being transmitted over its Network by Customers which cause interference to the Company or other users. Customer shall indemnify the Company for any claim, judgment or liability resulting from such blockage.
- 2.10.4** A Customer, joint user, or authorized user may not assign, or transfer in any manner, the service or any rights associated with the service without the written consent of the Company. The Company will permit a Customer to transfer its existing service to another entity if the existing Customer has paid all charges owed to the Company for regulated communications services. Such a transfer will be treated as a disconnection of existing service and installation of new service, and nonrecurring installation charges and other pre-paid charges as stated in this tariff will apply.

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INTEREXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.11 Responsibilities of the Customer**

**2.11.1 General**

- A. The Customer is responsible for placing any necessary orders; for complying with tariff regulations; for the placement of any stickers or tent cards provided by the Company or as required by law; and for assuring that Users comply with tariff regulations. The Customer shall ensure compliance with any applicable laws, regulations, orders or other requirements (as they exist from time to time) of any governmental entity relating to Services provided or made available by the Customer to Users. The Customer is also responsible for the payment of charges whether or not authorized by Customer.
- B. The Customer is responsible for charges incurred for special construction and/or special facilities which the Customer requests and which are ordered by the Company on the Customer's behalf.
- C. If required for the provision of the Company's Services, the Customer must provide any equipment space, supporting structure, conduit and electrical power without charge to the Company or another carrier.

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INTEREXCHANGE TELECOMMUNICATIONS SERVICES  
SECTION 2 - RULES AND REGULATIONS (CONT'D.)

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**2.11 Responsibilities of the Customer, (Cont'd.)**

**2.11.1 General, (Cont'd.)**

- D.** The Customer shall ensure that the equipment and/or system is properly interfaced with Company or other carrier facilities or Services, that the signals emitted into the Company's or other carrier's network are of the proper mode, bandwidth, power, and signal level for the intended use of the Customer and in compliance with local and federal law and that the signals do not damage equipment, injure personnel, or degrade Service to other Customers.

If the Customer fails to maintain the equipment and/or the system properly, with resulting imminent harm to Company equipment, personnel, or the quality of Service to other Customers, the Company may, upon written notice, require the use of protective equipment at the Customer's expense. If this fails to produce satisfactory quality and safety, the Company may, upon written notice, terminate the Customer's Service.

- E.** The Customer must pay the Company for replacement or repair of damage to the equipment or facilities of the Company caused by the negligent or willful acts or omissions of the Customer, Users, or others, by improper use of the Services, or by use of equipment provided by the Customer, Users, or others.
- F.** The Customer is responsible for payment of all charges for Services and equipment provided under this tariff.

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INTEREXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.11 Responsibilities of the Customer, (Cont'd.)**

**2.11.1 General, (Cont'd.)**

- G. The Customer is responsible for compliance with the applicable regulations set forth in this tariff.
- H. The Customer shall indemnify and save the Company harmless from all liability disclaimed by the Company as specified in this tariff, arising in connection with the provision of Service by the Company, and shall protect and defend the Company from any suits or claims against the Company and shall pay all expenses and satisfy all judgments rendered against the Company in connection herewith. The Company shall notify the Customer of any suit or claim against the Company of which it is aware.

**2.11.2 Liability of the Customer**

- A. The Customer will be liable for damages to the facilities of the Company and for all incidental and consequential damages caused by the negligent or intentional acts or omissions of the Customer, its officers, employees, agents, invites, or contractors where such acts or omissions are not the direct result of the Company's negligence or intentional misconduct.
- B. To the extent any damage is caused by any negligent or intentional act of the Customer as described in (A), preceding, the Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees, for (1) any loss, destruction or damage to property of any third party, and (2) any liability incurred by the Company to any third party pursuant to this or any other tariff of the Company, or otherwise, for any interruption of, interference to, or other defect in any service provided by the Company to such third party.

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INTEREXCHANGE TELECOMMUNICATIONS SERVICES

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.11 Responsibilities of the Customer, (Cont'd.)**

**2.11.2 Liability of the Customer, (Cont'd.)**

- C. The Customer shall not assert any claim against any other Customer or user of the Company's services for damages resulting in whole or in part from or arising in connection with the furnishing of service under this tariff including but not limited to mistakes, omissions, interruptions, delays, errors or other defects or misrepresentations, whether or not such other Customer or user contributed in any way to the occurrence of the damages, unless such damages were caused solely by the negligent or intentional act or omission of the other Customer or user and not by any act or omission of the Company. Nothing in this tariff is intended either to limit or to expand Customer's right to assert any claims against third parties for damages of any nature other than those described in the preceding sentence.

**2.12 Customer Liability for Unauthorized Use of the Network**

**2.12.1 Unauthorized Use of the Network**

- A. Unauthorized use of the Network occurs when: (1) a person or entity that does not have actual, apparent, or implied authority to use the Network, obtains the Company's Services provided under this tariff; or (2) a person or entity that otherwise has actual, apparent, or implied authority to use the Network, makes fraudulent use of the Network to obtain the Company's Services provided under this tariff, or uses specific services that are not authorized.

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.12 Customer Liability for Unauthorized Use of the Network, (Cont'd.)**

**2.12.1 Unauthorized Use of the Network, (Cont'd.)**

- B.** The term "fraudulent use" includes but is not limited to the following activities:
1. Using the Network to transmit a message, locate a person, or otherwise give or obtain information, without payment for the service;
  2. Using or attempting to use the Network with the intent to avoid payment, either in whole or in part, of any of the Company's tariffed charges by either rearranging, tampering with, or making connections not authorized by this tariff to any service components used to furnish the Company's Services or using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices;
  3. Toll free callers using the Network with the intent of gaining access to a Customer's outbound calling capabilities on an unauthorized basis; and
  4. Using fraudulent means or devices, tricks, schemes, false or invalid numbers, false credit devices or electronic devices to defraud or mislead callers.
- C.** Customers are advised that use of telecommunications equipment and Services, including that provided under this tariff, carries a risk of various forms of telecommunications fraud (including, but not limited to fraud perpetrated by Users who gain access to a Customer's facilities, account numbers, security or authorization codes, etc.). Customers should take all necessary steps to restrict access to their facilities, including the equipment and services provided hereunder, and to detect and prevent unauthorized use of the equipment and services provided by the Company under this tariff. Furthermore, Customers must notify the Company verbally or in writing of unauthorized use or charges appearing on the Customer's bill within 30 days of the billing date.

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.12 Customer Liability for Unauthorized Use of the Network, (Cont'd.)**

**2.12.2 Liability for Unauthorized Use**

- A. Except as provided for elsewhere in this tariff, the Customer is responsible for payment of all charges for Services provided under this tariff. This responsibility is not changed due to any use, misuse, or abuse of the Customer's service or Customer-provided equipment by Users or other third parties, the Customer's employees, or the public.
- B. The Customer is liable for all costs incurred as a result of unauthorized use of the Network, including Service charges and any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages. The Company will take reasonable steps, upon verbal or written notification that fraud has occurred, or is believed to have occurred, to assist the customer in identifying the nature and/or source of the fraud, and in terminating the fraudulent use of the Customer's service.
- C. The Customer is responsible for payment of any charges related to the suspension and/or termination of Service, and any charges for reconnection of Service, incurred as a result of unauthorized use of the Network.

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.12 Customer Liability for Unauthorized Use of the Network, (Cont'd.)**

**2.12.4 Liability for Credit Card Fraud**

The Customer is liable for the unauthorized use of the Network obtained through the fraudulent use of a Credit Card. The liability of the Customer for unauthorized use of the Network by Credit Card fraud may be limited by state or federal law, and the Customer shall seek indemnification from the organization or company issuing such card for unauthorized use thereof.

**2.14 Deposits**

The Company reserves the right to collect a deposit for customers who do not meet the company's credit standards or for whom credit information is unavailable. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation.

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SECTION 2 - RULES AND REGULATIONS (CONT'D.)

**2.15 Taxes and Fees**

For all services, state and local taxes (i.e. gross receipts tax, sales tax, municipal utilities tax) are listed as separate line items and are not included in the quoted rates. Other governmental assessments, fees, license, or other similar taxes or fees imposed upon the Company may be added pro rata, insofar as practical, to the rates and charges stated in the Company's rate schedules or may be listed as separate line items on the customer bills. Company shall add to the bills of the Customers an amount sufficient to recover any such tax or fee.

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SECTION 2 - RULES AND REGULATIONS (CONT'D.)

**2.16 Payment Arrangements**

**2.16.1 Payment for Service**

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer prior to service.

The Customer is responsible, on a pre-paid basis, for the payment of federal excise taxes, state and local sales and use taxes and similar taxes imposed by governmental and regulatory jurisdictions, all of which shall be separately designated on the Company's invoices. The Company will not separately charge for the Missouri gross receipts tax on the Company's invoice for local services. Any taxes imposed by a local jurisdiction (e.g., county and municipal) will only be recovered from those Customers residing in the affected jurisdictions.

**2.16.2 Billing and Collection of Charges**

The Customer is responsible for payment of all charges incurred by the Customer or other users for services and facilities furnished to the Customer by the Company.

- A. The Company shall present invoices monthly to the Customer, in advance of the month in which service is provided. No service will be provided until payment is made for the following month.
- B. When service does not begin on the first day of the month, or end on the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have thirty (30) days.

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.16 Payment Arrangements, (Cont'd.)**

**2.16.2 Billing and Collection of Charges, (Cont'd.)**

- C. Billing of the Customer by the Company will begin immediately prior to the expiration of the current month of service to allow the customer to pre-pay for the following month of service.
- D. The Customer should notify the Company of any disputed items on an invoice within thirty (30) days of receipt of the invoice. If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the Missouri Public Service Commission in accordance with the Commission's rules of procedure.

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)****2.16 Payment Arrangements, (Cont'd.)****2.16.3 Discontinuance of Service for Cause**

The Company may discontinue service without liability for the following reasons provided in this Section. Customers will be provided five (5) days written notice prior to discontinuance unless otherwise indicated.

Upon the Company's discontinuance of service to the Customer under Section 2.16.3(A) or 2.16.3(B), the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable.

- A. Upon nonpayment of any amounts owing to the Company, the Company may discontinue or suspend service without incurring any liability.
- B. Upon violation of any of the other material terms or conditions for furnishing service the Company may discontinue or suspend service without incurring any liability if such violation continues during that period.
- C. Upon any governmental prohibition or governmental required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.
- D. Without notice in the event of unauthorized use of telephone service.

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SECTION 2 - RULES AND REGULATIONS (CONT'D.)

2.16 Payment Arrangements, (Cont'd.)

2.16.3 Discontinuance of Service for Cause, (Cont'd.)

- E. Without notice in the event of Customer use of equipment or services in such a manner as to adversely affect the Company's service to others.
- F. In the event of tampering with equipment or services furnished by the company.

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.16 Payment Arrangements, (Cont'd.)**

**2.16.4 Notice to Company for Cancellation of Service**

Customers desiring to terminate service shall provide the Company notice of desire to terminate service. Cancellation notice will be provided to the Company according to the terms of this tariff.

**2.16.5 Cancellation of Application for Service**

- A. Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install or provide the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service begun.

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)****2.16 Payment Arrangements, (Cont'd.)****2.16.7 Return Check Charge**

The Company reserves the right to assess a return-check charge not to exceed \$25.00 whenever a check or draft presented for payment of service is not accepted by the institution on which it is written. This charge applies each time a check is returned to the Company by a bank for insufficient funds.

**2.17 Allowances for Interruptions in Service****2.17.1 General**

- A. A credit allowance will be given when service is interrupted, except as specified in Section 2.17.2 following. A service is interrupted when it becomes inoperative to the Customer, e.g., the Customer is unable to transmit or receive, because of a failure of a component furnished by the Company under this tariff. The Company reserves the right to periodically review and modify its credit allowance policy.
- B. An interruption period begins when the Customer reports a service, facility or circuit to be inoperative and, if necessary, releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.

**SECTION 2 - RULES AND REGULATIONS (CONT'D.)****2.17 Allowances for Interruptions in Service, (Cont'd.)****2.17.1 General, (Cont'd.)**

- C. If the Customer reports a service, facility or circuit to be interrupted but declines to release it for testing and repair, or refuses access to its premises for test and repair by the Company, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service, facility or circuit considered by the Company to be impaired.

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- D. The Customer shall be responsible for the payment of service charges as set forth herein for visits by the Company's agents or employees to the premises of the Customer when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

**2.17.2 Limitations of Allowances**

No credit allowance will be made for any interruption in service:

- A. 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;
- B. Due to the failure of power, equipment, systems, connections or services not provided by the Company;
- C. Due to circumstances or causes beyond the reasonable control of the Company;
- D. 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;

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.17 Allowances for Interruptions in Service, (Cont'd.)**

**2.17.2 Limitations of Allowances, (Cont'd.)**

- E.** A service will not be deemed to be interrupted if a Customer continues to voluntarily make use of the such service.
- F.** That was not reported to the Company within thirty (30) days of the date that service was affected.

**2.17.3 Use of Another Means of Communications**

If the Customer elects to use another means of communications during the period of interruption, the Customer must pay the charges for the alternative service used.

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.17 Allowances for Interruption in Service, (Cont'd.)**

**2.17.4 Application of Credits for Interruptions in Service**

- A. The credit ISSUED shall in no event exceed an amount equivalent to the proportionate charge to the Customer for the period of service during which the event that gave rise to the claim for a credit occurred. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption.
- B. For calculating credit allowances, every month is considered to have thirty (30) days.
- C. A credit allowance will be given for interruptions of one hour or more. Two or more interruptions of thirty (30) minutes or more during any one 24-hour period shall be combined into one cumulative interruption.

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## SECTION 2 - RULES AND REGULATIONS (CONT'D.)

## 2.17 Allowances for Interruption in Service, (Cont'd.)

## 2.17.4 Application of Credits for Interruptions in Service, (Cont'd.)

## D. Interruptions of 24 Hours or Less

| Length of Interruption                        | Amount of Service To Be Credited |
|-----------------------------------------------|----------------------------------|
| Less than<br>60 minutes                       | None                             |
| 60 minutes up to but not<br>including 3 hours | 1/10 Day                         |
| 3 hours up to but not<br>including 6 hours    | 1/5 Day                          |
| 6 hours up to but not<br>including 9 hours    | 2/5 Day                          |
| 9 hours up to but not<br>including 12 hours   | 3/5 Day                          |
| 12 hours up to but not<br>including 15 hours  | 4/5 Day                          |
| 15 hours up to but not<br>including 24 hours  | One Day                          |

## E. Interruptions Over 24 Hours

Interruptions over 24 hours will be credited 1/5 day for each 3-hour period or fraction thereof. No more than one full day's credit will be allowed for any period of 24 hours.

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)****2.18 Cancellation of Service/Termination Liability**

If a Customer cancels a service order or terminates services before the completion of the term or where the Customer breaches the terms in the service contract, Customer may be requested by the Company to pay to Company termination liability charges, which are defined below. These charges shall become due and owing as of the effective date of the cancellation or termination and be payable within thirty days of notice from the Company.

**2.18.1 Cancellation of Service by the Customer**

- A.** In the event Company fails to substantially cure any material default or failure of performance under this tariff within thirty (30) days after Company's receipt of Customer's written notice describing with reasonable specificity such alleged material default of failure of performance, then Customer may terminate the service for cause by giving Company a written notice of termination within fifteen (15) days after the expiration of said thirty (30) day period.
- B.** If a Customer cancels Service or terminates Services before the completion of the term for any reason whatsoever other than (1) permitted under A. above; or (2) other than a service interruption (as defined in herein), Customer agrees to pay to Company the following sums which shall become due and owing as of the effective date of the cancellation or termination and be payable within thirty days of the cancellation or termination, all costs, fees and expenses incurred in connection with:
1. any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer, plus

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.18 Cancellation of Service/Termination Liability, (Cont'd.)**

**2.18.1 Cancellation of Service by the Customer, (Cont'd.)**

**B. (Cont'd.)**

2. damages and costs incurred by Company in connection with Customer's cancellation or termination of the Services, including, without limitation, court costs, reasonable attorneys' fees and interest on past due amounts.

**C.** All cancellations of service must be submitted in writing, clearly stating the name of the Customer and the location for which cancellation is being requested, the authorized signature of the Customer, and the services to be cancelled. The date the cancellation notice is received will be considered the cancellation date.

**D.** The Company reserves the right to terminate an agreement or suspend service for reasons as set forth in Section 2 of this tariff.

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.19 Transfers and Assignments**

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties to a) any subsidiary, parent company or affiliate of the Company; b) pursuant to any sale or transfer of substantially all the assets of the Company; or c) pursuant to any financing, merger or reorganization of the Company.

**2.20 Notices and Communications**

**2.20.1** The Customer shall designate on the service request an address to which the Company shall mail or deliver all notices and other communications, except that Customer may also designate a separate address to which the Company's bills for service shall be mailed.

**2.20.2** The Company shall designate on the service request an address to which the Customer shall mail or deliver all notices and other communications.

**2.20.3** Except as otherwise stated in this tariff, all notices or other communications required to be given pursuant to this tariff will be in writing. Notices and other communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following placement of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.

**2.20.4** The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by following the procedures for giving notice set forth herein.

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.22 Tests, Pilots, Promotional Campaigns and Contests**

The Carrier may conduct special tests or pilot programs and promotions at its discretion to demonstrate the ease of use, quality of service and to promote the sale of its services. The tests or pilot programs will be submitted to the Missouri Public Service Commission for approval. The Carrier may also waive a portion or all processing fees or installation fees for winner of contests and other occasional promotional events sponsored or endorsed by the Carrier. From time to time the Company may waive all processing fees for a Customer.

**2.23 Interconnection**

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

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**SECTION 2 - RULES AND REGULATIONS (CONT'D.)**

**2.25 Other Rules**

The Company may temporarily suspend service without notice to the Customer, by blocking traffic to certain cities or NXX exchanges, or by blocking calls using certain Personal Account codes when the Company deems it necessary to take such action to prevent unlawful use of its service. The Company will restore service as soon as service can be provided without undue risk of fraud.

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**SECTION 3 - DESCRIPTION OF SERVICE**

**3.1 General**

NewPhone is a common carrier providing intrastate interexchange telecommunications services to Customers for transmission of voice, data, and other types of telecommunications within the State of Missouri. The charges for NewPhone's services may vary by the time of day, day of week, duration of the call, product type, volume, and term commitment.

The Company's services are available twenty-four (24) hours per day, seven (7) days a week. Intrastate service is offered in conjunction with interstate service.

**3.2 Timing of Calls**

**3.2.1** Billing for calls placed over the Company's network is based in part on the duration of the call as follows, unless otherwise specified in this tariff:

**3.2.2** Call timing begins when the called party answers the call (i.e., when two way communications are established). Answer detection is based on standard industry answer detection methods, including hardware and software answer detection.

**3.2.3** Chargeable time for calls ends when one of the parties disconnects from the call.

**3.2.4** Minimum call duration periods and increments for billing purposes vary by service option and are described with each individual service offering.

**3.2.5** No charges apply to incomplete calls.

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**SECTION 3 - DESCRIPTION OF SERVICE, (CONT'D.)**

**3.3 Time of Day Rate Periods**

**3.3.1 Determination of Rate Periods**

Unless otherwise indicated, rates for service are not time-of-day or distance sensitive.

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**SECTION 3 - DESCRIPTION OF SERVICE, (CONT'D.)**

**3.4 NewPhone Basic Long Distance Service**

NewPhone Basic Long Distance Service is provided as an option available for customers who pre-pay for the service. Customers will dial a toll free number, type an access code and then dial the desired telephone number. Timing of the call begins when the called parties answers Calls are billed in one (1) minute increments.

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**SECTION 4 - RATES AND CHARGES**

**4.1 NewPhone Basic Long Distance Service**

|                                   |         |
|-----------------------------------|---------|
| <u>Connection rate - per call</u> | \$ 0.50 |
| <u>Rate per minute</u>            | \$ 0.09 |

**SECTION 5.0- MISCELLANEOUS SERVICES AND CHARGES**

**5.1 Directory Assistance**

A Directory Assistance charge applies per directory assistance call. The Customer may make two (2) requests for a telephone number per call. The Directory Assistance Charge applies regardless of whether the Directory Assistance operator is able to supply the requested number.

|                                   |        |
|-----------------------------------|--------|
| Each Directory Assistance Call    | \$0.85 |
| Surcharge for Operator Assistance | \$0.30 |

**5.2 Reserved for Future Use**

**SECTION 6.0- MISCELLANEOUS SERVICES AND CHARGES**

**6.1 Reserved for Future Use**

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**SECTION 7 - PROMOTIONAL OFFERINGS**

**7.1 Special Promotions**

The Carrier may from time to time engage in special promotional trial service offerings of limited duration (not to exceed ninety days on a per Customer basis for non-optional, recurring charges) designed to attract new subscribers or to increase subscriber awareness of a particular tariff offering.

These promotions will be submitted to the Missouri Public Service Commission for approval.

**7.2 Discounts**

The Company may, from time to time as reflected in the price list, offer discounts based on monthly volume (or, when appropriate, "monthly revenue" commitment may also be included in the tariff).

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**SECTION 8 – EXCHANGES TO BE SERVED**

New Phone intends to serve all exchanges in the State of Missouri under this competitive intrastate interexchange tariff.

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**SECTION 9 – COMMISSION RULES AND STATUTES TO BE WAIVED**

New Phone has requested waiver of the following Commission Rules and Statutes:

**STATUTES**

392.210.2

392.240.1

392.270

392.280

392.290

392.300.2

392.310

392.320

392.330

392.340

**COMMISSION RULES**

4 CSR 240-3.545(2) (C)

4 CSR 240-3.550(5) (C)

4 CSR 240-10.020

4 CSR 240-30.040

4 CSR 240-33.030

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