

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

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CHICAGO, IL  
STAMFORD, CT  
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BRUSSELS, BELGIUM  
HONG KONG

AFFILIATE OFFICES  
BANGKOK, THAILAND  
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MANILA, THE PHILIPPINES  
MUMBAI, INDIA  
TOKYO, JAPAN

November 8, 2001

VIA FEDERAL EXPRESS

Ms. Blanca S. Bayo  
Director, Division of Records & Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

011542-J  
Check received with filing and forwarded to Fiscal for deposit. Fiscal to forward a copy of check to RAR with proof of deposit.  
COMMISSION CLERK  
NOV - 9 AM 10:18  
RECEIVED-FPSC  
Initials of person who forwarded check: [Signature]

Re: **Application of Yak Communications (America) Inc. for Authority to Provide Interexchange Telecommunications Service Between Points Within the State of Florida**

Dear Ms. Bayo:

Enclosed please find an original and six (6) copies of the Application of Yak Communications (America) Inc. for Authority to Provide Interexchange Telecommunications Service Between Points Within the State of Florida, for filing with the Florida Public Service Commission. Enclosed please also find a check in the amount of \$250.00 to cover the requisite filing fee. Please note, the financial statements attached to this Application as *Exhibit D* are filed **under seal**, and the Applicant respectfully requests confidential treatment thereof.

Enclosed please also find a duplicate copy of this filing and a self-addressed, stamped envelope. Please date-stamp the duplicate upon receipt and return it in the envelope provided. Please do not hesitate to contact me at (202) 887-1211 if you have any questions regarding this filing.

Respectfully submitted,

[Signature: Brett A. Freedson]

Brett Heather Freedson

Enclosures

RECEIVED & FILED  
[Signature]  
FPSC-BUREAU OF RECORDS

Application  
DOCUMENT NUMBER-DATE  
14267 NOV-9

Confidential  
DOCUMENT NUMBER-DATE  
14268 NOV-9  
FPSC-COMMISSION CLERK

**\*\* FLORIDA PUBLIC SERVICE COMMISSION \*\***

**DIVISION OF REGULATORY OVERSIGHT**  
**CERTIFICATION SECTION**

Application Form for Authority to Provide  
Interexchange Telecommunications Service  
Between Points Within the State of Florida

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Instructions

- ◆ This form is used as an application for an original certificate and for approval of assignment or transfer of an existing certificate. In case of an assignment or transfer, the information provided shall be for the assignee or transferee (See Page 16).
- ◆ Print or Type all responses to each item requested in the application and appendices. If an item is not applicable, please explain why.
- ◆ Use a separate sheet for each answer which will not fit the allotted space.
- ◆ Once completed, submit the original and six (6) copies of this form along with a non-refundable application fee of **\$250.00** to:

**Florida Public Service Commission  
Division of Records and Reporting  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850  
(850) 413-6770**

Note: **No filing fee is required** for an assignment or transfer of an existing certificate to another certificated company.

- ◆ If you have questions about completing the form, contact:

**Florida Public Service Commission  
Division of Regulatory Oversight  
Certification Section  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850  
(850) 413-6480**

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FORM PSC/CMU 31 (12/96)

Required by Commission Rule Nos. 25-24.470, 25-24.471, and 25-24.473, 25.24-480(2).

1. This is an application for (check one):
- Original certificate** (new company).
  - Approval of transfer of existing certificate:**  
Example, a non-certificated company purchases an existing company and desires to retain the original certificate of authority.
  - Approval of assignment of existing certificate:**  
Example, a certificated company purchases an existing company and desires to retain the certificate of authority of that company.
  - Approval of transfer of control:**  
Example, a company purchases 51% of a certificated company. The Commission must approve the new controlling entity.

2. Name of company:

Yak Communications (America) Inc. ("Yak" or "Applicant")

3. Name under which applicant will do business (fictitious name, etc.):

Yak Communications (America) Inc.

4. Official mailing address (including street name & number, post office box, city, state, zip code):

55 Town Centre Court, Suite 610

Scarborough, Ontario M1P 4X4 CANADA

5. Florida address (including street name & number, post office box, city, state, zip code):

Registered Agent: Dennis J. Olle, Esq.

2601 South Bayshore Drive, Suite 1600

Miami, Florida 33133

6. Select type of business your company will be conducting (check all that apply):

- Facilities based carrier** - company owns and operates or plans to own and operate telecommunications switches and transmission facilities in Florida.
- Operator Service Provider** - company provides or plans to provide alternative operator services for IXCs; or toll operator services to call aggregator locations; or clearinghouse services to bill such calls.
- Reseller** - company has or plans to have one or more switches but primarily leases the transmission facilities of other carriers. Bills its own customer base for services used.
- Switchless Rebiller** - company has no switch or transmission facilities but may have a billing computer. Aggregates traffic to obtain bulk discounts from underlying carrier. Rebills end users at a rate above its discount but generally below the rate end users would pay for unaggregated traffic.
- Multi-Location Discount Aggregator** - company contracts with unaffiliated entities to obtain bulk/volume discounts under multi-location discount plans from certain underlying carriers, then offers resold service by enrolling unaffiliated customers.
- Prepaid Debit Card Provider** – any person or entity that purchases 800 access from an underlying carrier or unaffiliated entity for use with prepaid debit card service and/or encodes the cards with personal identification numbers.

7. Structure of organization;

- |  |   |
|--|---|
| <input type="checkbox"/> Individual          | <input checked="" type="checkbox"/> Corporation |
| <input type="checkbox"/> Foreign Corporation | <input type="checkbox"/> Foreign Partnership    |
| <input type="checkbox"/> General Partnership | <input type="checkbox"/> Limited Partnership    |
| <input type="checkbox"/> Other _____         |   |

8. **If individual**, provide: NOT APPLICABLE.

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City/State/Zip:** \_\_\_\_\_

**Telephone No.:** \_\_\_\_\_ **Fax No.:** \_\_\_\_\_

**Internet E-Mail Address:** \_\_\_\_\_

**Internet Website Address:** \_\_\_\_\_

9. **If incorporated in Florida**, provide proof of authority to operate in Florida:

**A copy of the Articles of Incorporation for Yak Communications (America) Inc. is attached hereto as *Exhibit A*.**

(a) **The Florida Secretary of State Corporate Registration number:**  
P01000025574

10. **If foreign corporation**, provide proof of authority to operate in Florida: NOT APPLICABLE.

(a) **The Florida Secretary of State Corporate Registration number:**

11. **If using fictitious name-d/b/a**, provide proof of compliance with fictitious name statute (Chapter 865.09, FS) to operate in Florida: NOT APPLICABLE.

(a) **The Florida Secretary of State fictitious name registration number:**

12. **If a limited liability partnership**, provide proof of registration to operate in Florida: NOT APPLICABLE.

(a) **The Florida Secretary of State registration number:**

13. **If a partnership**, provide name, title and address of all partners and a copy of the partnership agreement. NOT APPLICABLE

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City/State/Zip:** \_\_\_\_\_

**Telephone No.:** \_\_\_\_\_ **Fax No.:** \_\_\_\_\_

**Internet E-Mail Address:** \_\_\_\_\_

**Internet Website Address:** \_\_\_\_\_

14. **If a foreign limited partnership**, provide proof of compliance with the foreign limited partnership statute (Chapter 620.0169, FS), if applicable. NOT APPLICABLE.

(a) **The Florida registration number:** \_\_\_\_\_

15. Provide **FEI Number** (if applicable): 98-0203422

16. Provide the following (if applicable):

- (a) Will the name of your company appear on the bill for your services?  
(  ) Yes\* (  ) No

\* Yak's customers will be billed by Billing Concepts, Inc., a third party billing service employed by Yak. All charges for long distance telecommunications services payable to Yak will appear on the monthly bill issued by the customers' local telecommunications service provider. For billing inquiries, customers may utilize the toll-free number for Billing Concepts Inc., 1-800-460-0556, which will appear on each monthly bill. However, all customer inquiries received at this toll-free number, with regard to charges billed by the Applicant, will be automatically routed to Yak's Call Centre as Yak intends that such inquiries be handled by its own customer service personnel.

- (b) If not, who will bill for your services?

**Name:** Billing Concepts Inc.

**Title:** Andrea Salinas, Account Manager

**Address:** 7411 John Smith Drive, Suite 200

**City/State/Zip:** San Antonio, Texas 78229-4898

**Telephone No.:** (210) 949-7130 **Fax No.:** (210) 692-1498

**Internet E-Mail Address:** andrea.salinas@billingconcepts.com

**Internet Website Address:** www.billingconcepts.com

- (c) How is this information provided?

As noted above, the toll-free customer service number for Billing Concepts Inc. will be provided on each monthly bill issued by the customers' local telecommunications service provider on which charges payable to Yak for long distance services appear. However, all customer inquiries received at this toll-free number, with regard to charges billed by Yak, will be automatically routed to Yak's Call Centre, as Yak intends that such inquiries be handled by its own customer service personnel. In addition, all customers initiating contact with Yak's Call Centre, via Billing Concepts, Inc., will immediately receive the following direct contact information by which all future questions, concerns and complaints may be presented to the Applicant's customer service personnel:

Yak Communications (America) Inc.  
P.O. Box 55284  
Scarborough Town Post Office  
Scarborough, Ontario M1P 4Z7 CANANDA  
Toll-Free Customer Service Number 10159450

17. Who will receive bills for your service?

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Residential Customers | <input checked="" type="checkbox"/> Business Customers  |
| <input type="checkbox"/> PATS providers                   | <input type="checkbox"/> PATS station end-users         |
| <input type="checkbox"/> Hotels & motels                  | <input type="checkbox"/> Hotel & motel guests           |
| <input type="checkbox"/> Universities                     | <input type="checkbox"/> University dormitory residents |
| <input type="checkbox"/> Other: (specify) _____           |   |

18. Who will serve as liaison to the Commission with regard to the following?

(a) The application:

**Name:** Brett Heather Freedson, Esq.  
Kelley Drye & Warren LLP

**Title:** Attorney for Yak Communications (America) Inc.

**Address:** 1200 19<sup>th</sup> Street, N.W. Suite 500

**City/State/Zip:** Washington, D.C. 20036

**Telephone No.:** (202) 887-1211      **Fax No.:** (202) 955-9792

**Internet E-Mail Address:** bfreedson@kelleydrye.com

**Internet Website Address:** www.kelleydrye.com

(b) Official point of contact for the ongoing operations of the company:

**Name:** Ms. Robin Clarke

**Title:** Executive Administrator

**Address:** 55 Town Centre Court, Suite 610

**City/State/Zip:** Scarborough, Ontario M1P 4X4 CANADA

**Telephone No.:** (416) 279-1364      **Fax No.:** (416) 279-1371

**Internet E-Mail Address:** robin@yak.ca

**Internet Website Address:** www.yak.ca

(c) Complaints/Inquiries from customers:

**Name:** Ms. Robin Clarke

**Title:** Executive Administrator

**Address:** 55 Town Centre Court, Suite 610

**City/State/Zip:** Scarborough, Ontario M1P 4X4 CANADA

**Telephone No.:** (416) 279-1364 **Fax No.:** (416) 279-1371

**Internet E-Mail Address:** robin@yak.ca

**Internet Website Address:** www.yak.ca

19. List the states in which the applicant:

- (a) has operated as an interexchange telecommunications company.

The applicant has never operated as an interexchange telecommunications company in any state.

- (b) has applications pending to be certificated as an interexchange telecommunications company.

The Applicant is in the process of obtaining authorizations to provide resold interexchange telecommunication services nationwide. As of the date of filing this Application, Yak has applications pending to be certificated as an interexchange telecommunications company in Maryland, Illinois and Pennsylvania.

- (c) is certificated to operate as an interexchange telecommunications company.

As of the date of filing this Application, Yak is authorized to operate as an interexchange telecommunications company in Nevada, California and New York, and through registration or on an unregulated basis in Virginia, Texas, New Jersey and the District of Columbia. Yak also has provisional authority to operate as an interexchange telecommunications company in Pennsylvania, pending final approval of its application for interexchange authority.

- (d) has been denied authority to operate as an interexchange telecommunications company and the circumstances involved.

The Applicant has never been denied authority to operate as an interexchange telecommunications company in any state.



- (e) has had regulatory penalties imposed for violations of telecommunications statutes and the circumstances involved.

The Applicant has never had regulatory penalties imposed for violations of telecommunications statutes in any state.

- (f) has been involved in civil court proceedings with an interexchange carrier, local exchange company or other telecommunications entity, and the circumstances involved.

The Applicant has never been involved in civil court proceedings with an interexchange carrier, local exchange company or other telecommunications entity in any state.

20. Indicate if any of the officers, directors, or any of the ten largest stockholders have previously been:

- (a) adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings. If so, please explain.

No officer, director or stockholder of the Applicant has been adjudged bankrupt or mentally incompetent. No officer, director or stockholder of the Applicant has ever been found guilty of any felony or any crime, and there are no pending proceedings from which such actions may result.

- (b) an officer, director, partner or stockholder in any other Florida certificated telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

No officer, director or stockholder of the Applicant has previously been, or currently is, an officer, director, partner or stockholder in any other Florida certificated telephone company.

21. The applicant will provide the following interexchange carrier services (Check all that apply):

- a.  **MTS with distance sensitive per minute rates**

Method of access is FGA

Method of access is FGB

Method of access is FGD

Method of access is 800

- b.  **MTS with route specific rates per minute**

Method of access is FGA

Method of access is FGB

Method of access is FGD

Method of access is 800

- c.  **MTS with statewide flat rates per minute (i.e. not distance sensitive)**  
 Method of access is FGA  
 Method of access is FGB  
 Method of access is FGD  
 Method of access is 800
  - d.  **MTS for pay telephone service providers**
  - e.  **Block-of-time calling plan (Reach out Florida, Ring America, etc.).**
  - f.  **800 Service (Toll free)**
  - g.  **WATS type service (bulk or volume discount)**  
 Method of access is via dedicated facilities  
 Method of access is via switched facilities
  - h.  **Private Line services (Channel Services)**  
(For ex. 1.544 mbs., DS-3, etc.)
  - i.  **Travel Service**  
 Method of access is 950  
 Method of access is 800
  - j.  **900 service**
  - k.  **Operator Services**  
 Available to presubscribed customers  
 Available to non presubscribed customers (for example to patrons of hotels, students in universities, patients in hospitals)  
 Available to inmates
  - l. **Services included are:**  
 Station assistance  
 Person-to-person assistance  
 Directory assistance  
 Operator verify and interrupt  
 Conference Calling
22. Submit the proposed tariff under which the company plans to begin operation. Use the format required by Commission Rule 25-24.485 (example enclosed).

**The Applicant intends to provide resold interexchange telecommunications services pursuant to the terms and conditions set forth in its Proposed Tariff, attached hereto as *Exhibit B*.**

23. Submit the following:

- A. **Managerial capability;** gives resumes of employees/officers of the company that would indicate sufficient managerial experiences of each.
- B. **Technical capability;** give resumes of employees/officers of the company that would indicate sufficient technical experiences or indicate what company has been contracted to conduct technical maintenance.

**Collectively, the members of Yak's management team have significant experience in the critical functions of network operations, telecommunications product development, sales and marketing, business management and finance. Indeed, these individuals acquired such experience by their work in various segments of the telecommunications industry prior to assuming their managerial roles in the development of Yak Communications (Canada) Inc., which has thrived as a provider of long distance services in Canada since 1999. The brief biographies of Yak's management team, attached hereto as *Exhibit C*, demonstrate the managerial and technical competence of the Applicant.**

**As a reseller of interexchange telecommunications services, Yak will necessarily rely upon the technical quality of its underlying carriers, Teleglobe and Global One. However, Yak will take all possible steps to ensure that the services it provides meet or exceed the Commission's standards for quality.**

- C. **Financial capability.**

The application **should contain** the applicant's audited financial statements for the most recent 3 years. If the applicant does not have audited financial statements, it shall so be stated.

**As a newly formed company, the Applicant is currently unable to provide audited financial statements of its own. The Applicant will initially rely on the financial support of its affiliates, Yak Communications (USA) Inc. and Yak Communications (Canada) Inc., to provide the resold interexchange telecommunications services requested by this Application. Attached hereto as *Exhibit D* are: (1) copies of the audited financial statements of Yak Communications (Canada) Inc., for the period ended June 30, 2001, including Balance Sheet, Statement of Income, Statement of Deficit, Statement of Cash Flows, Schedule of Expenses and Auditor's Notes; (2) copies of the audited financial statements of Yak Communications (Canada) Inc., for the period ended June 30, 2000, including Balance Sheet, Statement of Income, Statement of Deficit, Statement of Cash Flows, Schedule of Expenses and Auditor's Notes; (3) copies of the audited financial statements of Yak Communications (Canada) Inc., for the period ended June 30, 1999, including Balance Sheet, Statement of Operations, Statement of Changes in Financial Position and Auditor's Notes; and (4) copies of the audited financial statements of Yak Communications (USA) Inc. and Subsidiary, for the period ended June 30, 1999, including Consolidated Balance Sheet, Consolidated Statement of Operations and Accumulated Deficit, Consolidated Statement of Cash Flows and Auditor's Notes. Please note, the Applicant submits these financial statements *under seal*, and respectfully requests confidential treatment thereof.**

The unaudited financial statements should be signed by the applicant's chief executive officer and chief financial officer affirming that the financial statements are true and correct and should include:

1. the balance sheet,
2. income statement, and
3. statement of retained earnings.

**NOTE:** *This documentation may include, but is not limited to, financial statements, a projected profit and loss statement, credit references, credit bureau reports, and descriptions of business relationships with financial institutions.*

Further, the following (which includes supporting documentation) should be provided:

1. **A written explanation** that the applicant has sufficient financial capability to provide the requested service in the geographic area proposed to be served.
2. **A written explanation** that the applicant has sufficient financial capability to maintain the requested service.
3. **A written explanation** that the applicant has sufficient financial capability to meet its lease or ownership obligations.

**With the support of its affiliates, Yak has sufficient financial capability to meet its lease obligations, to provide and maintain the resold interexchange telecommunications services requested by this Application, and to compete effectively in the market for such services in the State of Florida. As a reseller, the Applicant will not require the extraordinary financial resources necessary to deploy its own telecommunications facilities. Furthermore, the Applicant will have access to the financial resources generated by the telecommunications operations of its related entities, Yak Communications (USA) Inc. and Yak Communications (Canada) Inc., in Canada. As noted above, copies of the audited financial statements for Yak Communications (Canada) Inc., for the years 1999, 2000 and 2001, and Yak Communications (USA) Inc. and Subsidiary, for the year 1999, are attached hereto as *Exhibit D*. Please note, the Applicant submits these financial statements *under seal*, and respectfully requests confidential treatment thereof.**

THIS PAGE MUST BE COMPLETED AND SIGNED

**APPLICANT ACKNOWLEDGEMENT STATEMENT**

1. **REGULATORY ASSESSMENT FEE:** I understand that all telephone companies must pay a regulatory assessment fee in the amount of .15 of one percent of its gross operating revenue derived from intrastate business. Regardless of the gross operating revenue of a company, a minimum annual assessment fee of \$50 is required.
2. **GROSS RECEIPTS TAX:** I understand that all telephone companies must pay a gross receipts tax of two and one-half percent on all intra and interstate business.
3. **SALES TAX:** I understand that a seven percent sales tax must be paid on intra and interstate revenues.
4. **APPLICATION FEE:** I understand that a non-refundable application fee of \$250.00 must be submitted with the application.

**UTILITY OFFICIAL:**

**Charles Zwebner**

\_\_\_\_\_  
Print Name

**President, Chief Executive Officer**

\_\_\_\_\_  
Title

**(416) 296-7111**

**(416) 279-1371**

\_\_\_\_\_  
Telephone No.

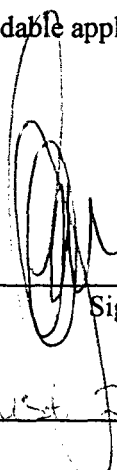
\_\_\_\_\_  
Fax No.

Address:

\_\_\_\_\_  
**Yak Communications (America) Inc.**

\_\_\_\_\_  
**55 Town Centre Court, Suite 610**

\_\_\_\_\_  
**Scarborough, Ontario M1P 4X4 CANADA**

  
\_\_\_\_\_  
Signature

August 29, 2001  
\_\_\_\_\_  
Date

**THIS PAGE MUST BE COMPLETED AND SIGNED**

**CUSTOMER DEPOSITS AND ADVANCE PAYMENTS**

A statement of how the Commission can be assured of the security of the customer's deposits and advance payments may be responded to in one of the following ways (applicant, please check one):

- ( X )            The applicant will **not** collect deposits nor will it collect payments for service more than one month in advance.
  
- (   )            The applicant intends to collect deposits, and/or advance payments for more than one month's service and will file and maintain a surety bond with the Commission in an amount equal to the current balance of deposits and advance payments in excess of one month. (The bond must accompany the application.)

**UTILITY OFFICIAL:**

**Charles Zwebner**

\_\_\_\_\_  
Print Name

**President, Chief Executive Officer**

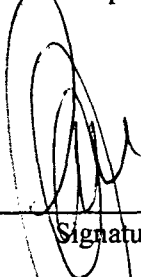
\_\_\_\_\_  
Title

**(416) 296-7111**

**(416) 279-1371**

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Fax No.



\_\_\_\_\_  
Signature

*August 29, 2001*

\_\_\_\_\_  
Date

Address:

\_\_\_\_\_  
Yak Communications (America) Inc.

\_\_\_\_\_  
55 Town Centre Court, Suite 610

\_\_\_\_\_  
Scarborough, Ontario M1P 4X4 CANADA

THIS PAGE MUST BE COMPLETED AND SIGNED

**AFFIDAVIT**

By my signature below, I, the undersigned officer, attest to the accuracy of the information contained in this application and attached documents and that the applicant has the technical expertise, managerial ability, and financial capability to provide interexchange telecommunications service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I attest that I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules and orders.

Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083."

**UTILITY OFFICIAL:**

**Charles Zwebner**

\_\_\_\_\_  
Print Name

**President, Chief Executive Officer**

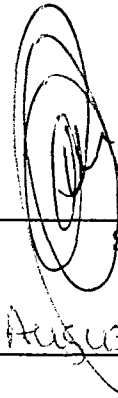
\_\_\_\_\_  
Title

**(416) 296-7111**

**(416) 279-1372**

\_\_\_\_\_  
Telephone No.

\_\_\_\_\_  
Fax No.



\_\_\_\_\_  
Signature

*August 29, 2001*

\_\_\_\_\_  
Date

Address:

\_\_\_\_\_  
Yak Communications (America) Inc.

\_\_\_\_\_  
55 Town Centre Court, Suite 610

\_\_\_\_\_  
Scarborough, Ontario M1P 4X4 CANADA

# CURRENT FLORIDA INTRASTATE SERVICES

Applicant **has** ( ) or **has not** ( X ) previously provided intrastate telecommunications services in Florida.

If the answer is has, fully describe the following:

- a) What services have been provided and when did these services begin?

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- b) If the services are not currently offered, when were they discontinued?

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## UTILITY OFFICIAL:

**Charles Zwebner**

Print Name

**President, Chief Executive Officer**


Title

**(416) 296-7111**

**(416) 279-1372**

Telephone No.

Fax No.



Signature

August 29, 2001

Date

Address:

**Yak Communications (America) Inc.**

**55 Town Centre Court, Suite 610**

**Scarborough, Ontario M1P 4X4 CANADA**



**EXHIBIT A**

**ARTICLES OF INCORPORATION**

# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of YAK COMMUNICATIONS (AMERICA), INC., a Florida corporation, filed on March 8, 2001, as shown by the records of this office.

The document number of this corporation is P01000025574.

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Thirteenth day of March, 2001



CR2EO22 (1-99)

*Katherine Harris*

Katherine Harris  
Secretary of State

**ARTICLES OF INCORPORATION  
OF  
YAK COMMUNICATIONS (AMERICA), INC.**

FILED  
01 MAR -8 AM 8:49  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**ARTICLE I - NAME AND BUSINESS ADDRESS**

The name of this Corporation is Yak Communications (America), Inc. Its principal office address and business mailing address is 55 Town Centre, #610, Scarborough, Ontario, Canada M1P 4X4.

**ARTICLE II - DURATION**

The Corporation shall have a perpetual existence.

**ARTICLE III - PURPOSE**

The purpose of this Corporation is to engage in any activities or business permitted under the Laws of the United States and Florida.

**ARTICLE IV - CAPITAL STOCK**

The maximum number of shares which this Corporation is authorized to have outstanding at any time is 10,000 shares of common stock, having a par value of \$.01 per share.

**ARTICLE V - INITIAL  
REGISTERED OFFICE AND AGENT**

The street address of the initial registered office of this Corporation shall be 2601 South Bayshore Drive, Suite 1600, Miami, Florida 33133, and the initial registered agent of this Corporation at such office shall be Dennis J. Olle, Esq., who upon accepting this designation agrees to comply with the provisions of Chapters 48 and 607, Florida Statutes as amended from time to time, with respect to keeping an office open for service of process.

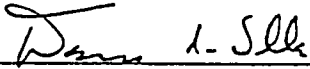
**ARTICLE VI - INITIAL BOARD OF DIRECTORS**

The initial Board of Directors shall consist of one member. The number of directors may be increased or decreased from time to time by vote of the Board of Directors, but in no case shall the number of directors be less than one nor more than nine. The name and address of the director constituting the initial Board of Directors is:

<u>Name</u>	<u>Address</u>
Charles Zwebner	55 Town Centre, #610 Scarborough, Ontario, Canada M1P 4X4

**ARTICLE VII - INCORPORATOR**

The name and street address of the person signing these Articles of Incorporation is:

<u>Name</u>	<u>Address</u>
Dennis J. Olle, Esq.	Adorno & Zeder, P.A. 2601 South Bayshore Drive Suite 1600 Miami, Florida 33133  _____ Dennis J. Olle, Esq., Incorporator

**EXHIBIT B**

**PROPOSED TARIFF**

**TITLE SHEET**

**FLORIDA TELECOMMUNICATIONS TARIFF**

This tariff contains the descriptions, regulations, and rates applicable to the furnishing of service and facilities for telecommunications services provided by Yak Communications (America) Inc., with principal offices at 610-55 Town Centre Court, Scarborough, ON M1P 4X4. This tariff applies for services furnished within the state of Florida. This tariff is on file with the Florida Public Service Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business.

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Effective: \_\_\_\_\_

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610 – 55 Town Centre Court  
Scarborough, ON M1P 4X4

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**CHECK SHEET**

The following sheets, inclusive of this Tariff, are effective as of the date shown. Original and revised sheets, as named below, comprise all changes from the original Tariff in effect on the date indicated.

<u>Sheet</u>	<u>Revision</u>	<u>Sheet</u>	<u>Revisions</u>
1	Original	29	Original
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**SYMBOLS SHEET**

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

- (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 or Regulation But No Change in Rate or Charge

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**TARIFF FORMAT SHEET**

- A. Sheet Numbering – Sheet numbers appear in the upper right corner of the sheet. Sheets are numbered sequentially. However, new sheets occasionally are added to the tariff. When a new sheet is added between sheets already in effect, a decimal is added to the sheet number. 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 Commission. For example, the 4<sup>th</sup> revised Sheet 14 cancels the 3<sup>rd</sup> revised Sheet 14. Because of various suspension periods, deferrals, etc. the Commission 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.
  - 2.1.1.1.
  - 2.1.1.1.A.
  - 2.1.1.1.A.(a).
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  - 2.1.1.1.A.(a).I.(i).
  - 2.1.1.1.A.(a).I.(i).(1).
- D. Check Sheets - When a tariff filing is made with the Commission an updated check sheet accompanies the tariff filing. The check sheet lists the sheets contained in the tariff, with a cross reference to the current revision number. When new sheets are added, the check sheet is changed to reflect the revision. All revisions made in a given filing are designated on the check sheet by an asterisk(\*). There will be no other symbols used on the check sheet if these are the only changes made to it. The tariff user should refer to the latest check sheet to find out if a particular sheet is the most current on file with the Commission.

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**SECTION 1. TECHNICAL TERMS AND ABBREVIATIONS**

Authorized User – Any person, firm, corporation or other entity accessing or utilizing the services furnished by the Company to the Customer.

Billed Party – The person or entity responsible for payment of the Company’s service. The Billed Party is the Customer associated with the Telephone Number used to place the call, with the following exceptions:

- (a) in the case of a calling card or credit card call, the Billed Party is the holder of the calling card or credit card used by the User; and
- (b) in the case of a collect or third party call, the Billed Party is the person responsible for the local telephone service at the telephone number that agrees to accept charges for the call.

Call – A completed connection between the calling and the called station.

Calling Station – The telephone number from which a call originates.

Called Station – The telephone number called.

Casual Calling (Dial-around) – Arrangement whereby long distance customer, not pre-subscribed to Company, dials a specified code (ie., 10-10-XXX) to access the Company’s interexchange services on an ad hoc basis.

Commission – Florida Public Service Commission.

Company – Yak Communications (America) Inc.

Customer – A person, firm, corporation, partnership or other business entity, including affiliates or divisions of the Customer, responsible for payment of charges to the Company and compliance with all terms and conditions of this Tariff.

Day – The period of time from 7:00 a.m. until (but not including) 7:00 p.m., Monday through Friday, as measured by local time at the location from which the call is originated.

Dial-around calling – See Casual Calling.

Evening – The period of time from 7:00 p.m. until (but not including) 11:00 p.m., Sunday through Friday and any time during a Holiday, as measured by local time at the location from which the call is originated.

Holiday – New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

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**SECTION 1. TECHNICAL TERMS AND ABBREVIATIONS (Cont'd)**

Night/Weekend ("N/Wkd") – The period of time from 11:00 p.m. until (but not including) 7:00 a.m., Monday through Friday, any time on Saturday and all day Sunday, except 7:00 p.m. until (but not including) 11:00 p.m., as measured by local time at the location from which the call is originated.

Off-Peak Period – Except as otherwise agreed between Company and Customer, the hours from 7:00 pm until but not including 7:00 am.

Peak Period - Except as otherwise agreed between Company and Customer, the hours from 7:00 am until but not including 7:00 pm.

Presubscribed Customers – Customers who have formally selected the Company as their interexchange services provider. The selection is programmed by the local exchange carrier so that these customers' long distance calls are routed automatically to the Company, without use of a special access code.

Service Order – A 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.

User – Customer or any Authorized User.

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**SECTION 2. RULES AND REGULATIONS**

**2.1 Undertaking of the Company**

- 2.1.1 The Company's services and facilities are furnished for communications originating at specified points within the state of Florida under the rates and regulations of this Tariff, except as otherwise negotiated between a Customer and the Company.
- 2.1.2 The rates and regulations contained in this Tariff apply only to the services furnished by the Company and do not apply, unless otherwise specified, to the lines, facilities or services provided by a local exchange telephone company or other Common Carrier for use in accessing the services of the Company.
- 2.1.3 The Company may act as the Customer's agent for ordering access connection facilities provided by other carriers or entities when authorized by the Customer, to allow connection of a Customer's location to the Company's network. The Customer shall be responsible for all charges due for such service arrangement.
- 2.1.4 The Company's services and facilities are provided on a monthly basis unless ordered on a longer term basis, and are available twenty-four hours per day, seven days per week.

**2.2 Severability**

In the event that any one or more of the provisions contained in this Tariff shall for any reason be held to be invalid, illegal or unenforceable in any respect under the laws of the jurisdiction governing the entire Tariff, such invalidity, illegality or unenforceability shall not affect any other provision of this Tariff, and this Tariff shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.3 Limitations of Service**

- 2.3.1 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.
- 2.3.2 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.
- 2.3.3 Customers reselling or rebilling services must have a Certificate of Public Convenience and Necessity as an interexchange carrier from the Florida Public Service Commission.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.4 Use and Availability of Service**

- 2.4.1 Service shall not be used for any unlawful purpose, nor used in such a manner as to interfere unreasonably with the use of service by any other Users.
- 2.4.2 The use of the Company's services without payment for service or attempting to avoid payment for service by fraudulent means or devices, false or invalid numbers, or false calling or credit cards is prohibited.
- 2.4.3 The Company does not transmit messages pursuant to this Tariff, but its services may be used for that purpose.
- 2.4.4 The Company's services may be denied for nonpayment of charges or for other violations of the terms and conditions set forth in this Tariff.
- 2.4.5 The Company reserves the right to refuse service to individuals under the age of 18 and may require proof of age prior to initiating service.
- 2.4.6 The use of the Company's services to make calls which might reasonably be expected to frighten, abuse, torment, or harass another is prohibited.
- 2.4.7 Service temporarily may be refused or limited because of system capacity limitations, and is subject to transmission limitations caused by natural (including atmospheric, geographic or topographic) or artificial conditions adversely affecting transmission.
- 2.4.8 Service to any or all Customers may be temporarily interrupted or curtailed due to equipment modifications, upgrades, relocations, repairs and similar activities necessary for proper or improved operations.
- 2.4.9 Customers may be required to enter into written 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 the Tariff. Customers also will be required to execute any other documents as may be reasonably requested by the Company.
- 2.4.10 Except as otherwise agreed between the Company and Customer, at the expiration of the initial term specified in a Service Order, or in any extension thereof, service shall continue on a month to month basis at the then current rates unless terminated by either party upon 30 days' written notice. Any termination shall not relieve Customer of its obligation to pay any charges incurred under the service order and this Tariff prior to termination. The rights and obligations which by their nature extend beyond the termination of the term of the Service Order shall survive such termination.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.5 Liabilities of the Company**

- 2.5.1 Because the Company has no control of communications content transmitted over its system, and because of the possibility of errors incident to the provision and use of its service, service furnished by the Company is subject to the terms, conditions and limitations herein specified.
- 2.5.2 The Company shall not be liable for any delay or failure of performance or equipment as a result of causes beyond its control, including but not limited to: (a) delays caused by the other party or (b) acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, court or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; strikes, lockouts, work stoppages, or other labor difficulties; and (c) third party nonperformance (including the failure of performance for reasons beyond the control of common carriers, interexchange carriers, local exchange carriers, suppliers and subcontractors), or other cause beyond its reasonable control, including failures or fluctuations in electrical equipment, and such nonperformance shall not be deemed a violation of this Tariff or of the application for service or grounds for termination of service. Both parties retain all rights of recourse against any third parties for any failures which may create a force majeure condition for the other party.
- 2.5.3 The Company shall not be liable for (a) any act or omission of any entity furnishing to the Company or to the Company's Customer's facilities or equipment used for interconnection with network services; or (b) for the acts or omissions of common carriers or warehousemen even if the Company has acted as the Customer's agent in arranging such facilities or services. No agents or employees of other participating carriers shall be deemed to be agents or employees of the Company without written authorization.
- 2.5.4 The Company shall not be liable for any damages or losses resulting from or caused by (a) the act, omission, fault or negligence of the Customer; (b) the failure or malfunction of Customer-provided equipment or facilities; or (c) claims against the Customer by any other party.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.5 Liabilities of the Company (Cont'd)**

- 2.5.5 The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited, unless otherwise ordered by the Commission, 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.
- 2.5.6 The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnifies and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this Section 2.5.6 as a condition precedent to such installations.
- 2.5.7 The Company is not liable for any damages, including toll usage charges, the Customer may incur as a result of the unauthorized use of its telephone facilities. This unauthorized use of the Customer's facilities includes, but is not limited to, the placement of calls from the Customer's premises, and the placement of calls through Customer-provided equipment that are transmitted or carried on the Company network. Company may work with Customers to recommend possible solutions to reduce unauthorized use of their facilities. However, Company does not warrant or guarantee that its recommendations will prevent all unauthorized use, and the Customer is responsible for controlling access to, and use of, its own telephone facilities.
- 2.5.8 The Company shall not be liable for and the Customer shall indemnify and hold the Company harmless against any claims for loss or damages involving
- (a) Protection of the Customer's transmission facilities or equipment from unauthorized access, or for any unauthorized access to or alteration, theft or destruction of Customer's data files, programs, procedure or information through accident, fraudulent means or devices or any other method;

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.5 Liabilities of the Company (Cont'd)**

- (b) Changes in any of the facilities, operations or procedures of the Company that: (1) render any equipment, facilities or services provided or utilized by the User obsolete; (2) require modification or alteration of such equipment, facilities or services; or (3) otherwise affect use or performance of such equipment, facilities or services except where reasonable notice is required by the Company and is not provided to the Customer.
  - (c) Defacement of or damage to the Customer's Premises or personal property resulting from the furnishing of services or equipment on such Premises or the installation or removal thereof, when such defacement or damage is not the result of Company's negligence. The Customer will indemnify and hold harmless Company from any claims of the owner of the Customer's premises or other third party claims for such damages.
  - (d) Any wrongful act of a Company employee where such act is not authorized by the Company and is not within the scope of the employee's responsibilities for the Company;
  - (e) Any noncompleted Calls due to network busy conditions; and
  - (f) Any Calls not actually attempted to be completed during any period that service is unavailable.
  - (g) Libel, slander or infringement of copyright arising directly or indirectly from the material transmitted over facilities provided by the Company;
  - (h) Infringements of patents arising from combining apparatus and systems of the Customer with facilities provided by the Company;
  - (i) Any act or omission in connection with provision of 911, E911, or similar services;
  - (j) Any representations made by a Company employee that do not comport with or that are inconsistent with the provisions of this Tariff.
- 2.5.9 The Customer shall reimburse the Company for all costs, expenses and fees incurred by the Company in its defense against claims set forth in Section 2.5.8.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.5 Liabilities of the Company (Cont'd)**

- 2.5.10 The Company is not liable to Customers for interruptions in service except as set forth in Section 2.16 of this Tariff.
- 2.5.11 The Company shall be indemnified, defended, and held harmless by the Customer against any claim, loss or damage arising directly or indirectly from use of services, involving but not limited to claims for libel, slander, invasion of privacy, or infringement of copyright, arising from either the Customer's own communications or from any content or other use of the services provided to Customer, whether authorized by the Customer or not, including infringement of patents arising from combining apparatus and systems of the Customer or a third party with facilities provided by the Company.
- 2.5.12 Unless ordered otherwise by the Commission, the entire liability for any claim, loss, damage or expense arising out of mistakes, omissions, interruptions, delays, errors or defects in the service, the transmission of the service, or failures or defects in facilities furnished by the Company, occurring in the course of furnishing service, from any cause whatsoever shall in no event exceed sums actually paid to Company by Customer for the specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the event(s) giving rise to the claim. Except in instances of gross negligence or willful misconduct of the Company's agents or employees, the Company shall not be liable for any direct, indirect, consequential, special, actual or punitive damages, or for any lost profits of any kind or nature whatsoever arising out of any defects or any other cause, including loss of profits or revenues suffered by a Customer as a result of interrupted or unsatisfactory service, even if the Company has been advised of the possibility of such damages.
- 2.5.13 The Company shall not be liable for injury to property 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.
- 2.5.14 THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN. The Company does not authorize anyone to make a warranty of any kind on its behalf and the Customer should not rely on any such statements.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.6 Notification of Service-Affecting Activities**

2.6.1 The Company will provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include, but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the customer may not be possible.

**2.7 Ownership of Facilities**

2.7.1 Title to all facilities provided in accordance with this Tariff remains in the Company, its agents or contractors.

2.7.2 The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of, and compliance by the Customer with, the regulations contained in this Tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.

**2.8 Prohibited Uses**

2.8.1 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.

2.8.2 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 Commission regulations, policies, orders, and decisions.

2.8.3 The Company may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.

2.8.4 The Company shall use reasonable efforts to maintain facilities and equipment that it furnishes to the Customer. The Customer may not, nor may Customer permit others to rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.8 Prohibited Uses (Cont'd)**

- 2.8.5 The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided the Customer.
- 2.8.6 Equipment the Company provides or installs at the Customer Premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the Company provided it.
- 2.8.7 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.
- 2.8.8 The Company shall not be responsible for the installation, operation, or maintenance of any customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this Tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this Tariff and to the maintenance and operation of such facilities. Subject to this responsibility, the Company shall not be responsible for:
- (a) the transmission of signals by Customer provided equipment or for the quality of, or defects in, such transmission; or
  - (b) the reception of signals by Customer provided equipment.

**2.9 Nonroutine Installation**

- 2.9.1 At the Customer's request, installation and/or maintenance may be performed outside the Company's regular business hours, or in hazardous locations. In such cases, charges based on the cost of the actual labor, material, or other costs incurred by or charged to the Company will apply. If installation is started during regular business hours but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.10 Obligations of the Customer**

2.10.1 The Customer shall be responsible for:

- (a) placing any necessary orders, complying with Tariff regulations and assuring that Users comply with Tariff regulations. The Customer shall ensure compliance with any applicable laws, regulations, orders or other requirements of any governmental entity relating to services provided by the Company to the Customer or made available by the Customer to another User. The Customer also is responsible for the payment of charges for all Calls originated at the Customer's numbers which are not collect, third party, calling card, or credit card calls.
- (b) taking all necessary legal steps for interconnecting Customer-provided terminal equipment or communications systems with Company's facilities or services. Customer shall ensure that the equipment and/or system is properly interfaced with Company's facilities or services; that the signals emitted into Company-provided network facilities are of the mode, bandwidth, power, signal level or other technical parameters for the intended use of the Customer and in compliance with the criteria set forth in this Tariff, and that the signals do not damage equipment, injure personnel or degrade service to other Customers. If Customer fails to maintain the equipment and/or system properly, with resulting imminent harm to Company's personnel or quality of service to other Customers, 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, Company may, upon written notice, terminate the Customer's service.
- (c) payment of all charges incurred to the Calling Station regardless of which party terminates the service. The Customer shall reimburse the Company for all costs, expenses and fees incurred by the Company in collecting such charges.
- (d) 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.
- (e) damage to or loss of the Company's facilities or equipment caused by the acts or omissions of the Customer; or the Customer's officers, employees, agents or contractors, or the noncompliance by the Customer with these regulations; or by fire or theft or other casualty on the Customer Premises, unless caused by the gross negligence or willful misconduct of the employees or agents of the Company;

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.10 Obligations of the Customer (Cont'd)**

- (f) providing at no charge, as specified from time to time by the Company, any needed personnel, equipment, space and power to operate Company facilities and equipment installed on the premises of the Customer Premises, and the level of heating and air conditioning necessary to maintain the proper operating environment on such premises;
- (g) obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduits necessary for installation of fiber optic cable and associated equipment used to provide services to the Customer from the cable building entrance or property line to the location of the equipment space described in Section 2.10.1(f). Any costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company-provided facilities, shall be borne entirely by, or may be charged by the Company to, the Customer;
- (h) arranging access to its Premises at times mutually agreeable to the Company and the Customer when required for Company personnel to install, repair, maintain, program, inspect or remove equipment associated with the provision of the Company's services.
- (i) not creating or allowing any liens or other encumbrances to be placed on the Company's equipment or facilities.

2.10.2 The Customer agrees, except where the events, incidents or eventualities set forth in this sentence are the result of the Company's gross negligence or willful misconduct, to release, indemnify and hold harmless the Company against any and all loss, claims, demands, suits or other action or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer or by any other party or person, for any personal injury to or death of any person or persons, or for any loss of or damage to any property, whether owned by the Customer or others. The Customer shall reimburse the Company for all costs, expenses and fees incurred by the Company in its defense against such actions.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.11 Claims**

2.11.1 With respect to any service or facility provided by the Company, Customer shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses related to, arising from or for:

- (a) any loss, destruction or damage to property of the Company or any third party, or the death or injury to persons, including, but not limited to, employees or invitees of either party, to the extent caused by or resulting from the negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees;
- (b) any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from any act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between Customer and Company;
- (c) providing a safe place to work and complying with all laws and regulations regarding the working conditions on the premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company's employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g. friable asbestos) prior to any construction or installation work; or
- (d) complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to, the location of Company facilities and equipment in any Customer premises or the rights-of-way for which Customer is responsible under Section 2.10.1(g); and granting or obtaining permission for Company agents or employees to enter the premises of the Customer at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.12 Customer Equipment and Channels**

- 2.12.1 A Customer may transmit or receive information or signals via the facilities of the Company.
- 2.12.2 Customer terminal equipment on the Customer Premises, and the electric power consumed by such equipment shall be provided by and maintained at the expense of the Customer.
- 2.12.3 The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by the connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.
- 2.12.4 Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing services and the channels, facilities, or equipment of others shall be provided at the Customer's expense.
- 2.12.5 The Company's services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections.

**2.13 Inspections**

- 2.13.1 Upon suitable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.12.3 for the installation, operation, and maintenance of Customer-provided facilities, equipment, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.13 Inspections (Cont'd)**

2.13.2 If the protective requirements for Customer provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm.

**2.14 Payment Arrangements**

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

**2.14.1 Taxes**

2.14.1.1 The Customer is responsible for the payment of any sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) (excluding taxes on the Company's net income) imposed on or based upon the provision, sale or use of services.

2.14.1.2 All state and local taxes (i.e. gross receipts tax, sales tax, municipal utilities tax) shall be listed on the Customer's bill as separate line items and are not included in quoted rates.

**2.14.2 Billing and Collection of Charges**

Except as otherwise negotiated between the Company and a Customer, the following terms and conditions shall apply:

2.14.2.1 The Customer is responsible for payment of all charges incurred by the Customer or by other users, with or without appropriate authorization from the Customer, for services and facilities furnished to the Customer by the Company. The Customer shall not be excused from paying the Company for such services on the basis that the use of the service was unauthorized.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.14 Payment Arrangements (Cont'd)**

**2.14.2 Billing and Collection of Charges (Cont'd)**

2.14.2.2 The Company shall present invoices to the Customer monthly for Usage Charges and any applicable Recurring Charges, and these charges shall be due and payable within 30 days after the invoice is mailed. In its sole discretion, the Company may arrange to invoice through a Customer's local exchange carrier, pursuant to the latter's billing cycle.

**2.14.2.3 Billing of Presubscribed Customers**

In addition to the preceding requirements of this Section 2.14.2, the following terms and conditions shall apply to presubscribed Customers:

2.14.2.3.A Service is provided on the basis of a minimum period of at least one month, 24-hours per day. For the purpose of computing charges in this Tariff, a month is considered to have 30 days.

2.14.2.3.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 30 days.

2.14.2.3.C Billing of the Customer by the Company will begin on the service commencement date, which is the first day following the date on which the Company notifies the Customer that the service or facility is available for use, except that the service commencement date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this Tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.14 Payment Arrangements (Cont'd)**

**2.14.3 Deposits & Advance Payments**

At this time, the Company will not collect deposits or advance payments from its Customers, but reserves its right to do so at a future date. Should the Company undertake to collect deposits and/or advance payments, it will do so pursuant to applicable state and federal regulations.

**2.14.4 Disconnection of Service**

The Company may disconnect service or cancel an application for service, with ten (10) days' written notice and without incurring any liability, for any of the following reasons:

- 2.14.4.1 Failure of the Customer to pay a non-disputed delinquent account;
- 2.14.4.2 Failure of the Customer to make satisfactory arrangements to pay arrearages or meet the requirements of a payment agreement;
- 2.14.4.3 Failure of the Customer to permit the Company to have reasonable access to its equipment, facilities, service connections or other property;
- 2.14.4.4 Failure of the Customer to provide the Company with adequate assurances that an unauthorized use or practice will cease;
- 2.14.4.5 Customer violation of any regulation governing the service under this Tariff, or a violation of any law, rule, or regulation of any government authority having jurisdiction over the service;
- 2.14.4.6 Customer fraud or material misrepresentation of identity for purpose of obtaining telephone service;
- 2.14.4.7 Failure of the Customer to adhere to contractual obligations with the Company; or
- 2.14.4.8 Where the Company is prohibited from furnishing services by order of a court or other government authority having jurisdiction.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.14 Payment Arrangements (Cont'd)**

**2.14.4 Disconnection of Service (Cont'd)**

The Company may terminate service *without notice* to the Customer for any of the following occurrences:

- 2.14.4.9 Customer's maintenance or operation of its equipment in such a manner as to adversely affect the Company's equipment or service to others;
- 2.14.4.10 Customer non-compliance with any provision of this Tariff which results in threatening the safety of a person or the integrity of the service delivery system of the Company;
- 2.14.4.11 The existence of a condition on the Customer's premises determined by the Company to be hazardous;
- 2.14.4.12 Customer tampering with the Company's equipment or service;
- 2.14.4.13 Customer's unauthorized or illegal use of the Company's service or equipment.

The Company may refuse to provide dial-around or "casual calling" services to Customers based upon nonpayment of charges for services previously provided and/or Customer non-compliance with or violation of (a) any of the terms and conditions of this Tariff or (b) applicable state and federal regulations governing the services provided under this Tariff.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.14 Payment Arrangements (Cont'd)**

**2.14.5 Cancellation of Application for Service**

Applications for service may be cancelled, prior to commencement of services, subject to the following conditions:

2.14.5.1 Where, prior to receiving notice of cancellation, the Company incurs any expense installing or preparing to install the service or in connection with special construction, or where special arrangements of facilities or equipment have begun, a charge equal to the costs incurred, less net salvage, applies. In such cases, the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.

2.14.5.2 In no case shall the charges exceed the sum of (a) the charge for the minimum period of service ordered, including installation charges, and (b) all charges levied by other parties against the Company that would have been chargeable to the Customer had service begun.

**2.14.6 Cancellation of Service Order**

Service Orders upon which delivery has commenced may not be cancelled except as specified in the applicable Service Order and subject to the cancellation payment identified for the contracted minimum call volume.

**2.14.7 Changes in Service Requested**

If the Customer makes or requests material changes in circuit engineering, equipment specifications, service parameters, premises locations, or otherwise materially modifies any provision of the application for service, the Customer's installation fee shall be adjusted accordingly.

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**SECTION 2. TERMS AND CONDITIONS (Cont'd)**

**2.15 Disputed Charges**

2.15.1 All bills are presumed accurate, and shall be binding on the Customer unless objection is received by the Company within thirty days. A disputed charge may be brought to the Company's attention by verbal or written notification. All charges remain due and payable at the due date, although the Customer is not required to pay *any disputed charges* during the time period in which the Company conducts its investigation into the charges. The undisputed portion and subsequent bills must be paid on a timely basis, or the service may be subject to disconnection.

In the event that a billing dispute between the Customer and the Company for service furnished to the Customer cannot be settled with mutual satisfaction, the Customer may take the following course of action:

2.15.1.1 The Customer may request, and the Company will provide, an in-depth review of the disputed amount. During the period that the disputed amount is under investigation, the Company shall not pursue any collection proceedings or assess late fees with regard to the disputed amount.

2.15.1.2 If there is still a disagreement about the disputed amount after investigation and review by the Company, the Customer may file an appropriate complaint with the Public Service Commission. The address of the Commission is:

2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

2.15.2 Billing inquiries may be directed to the Company toll free at (800) 460-0556.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.16 Interruption of Service**

2.16.1 Interruptions in service, which are not due to the negligence of, or noncompliance with the provisions of this Tariff by, the Customer or the operation or malfunction of the facilities, power or equipment provided by the Customer, will be credited to the Customer as set forth in this Section 2.16. for the part of the service that the interruption affects.

**2.16.2 Credit for Interruptions**

2.16.2.1 A credit allowance will be made when an interruption occurs because of a failure of any component furnished by the Company under this Tariff. 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 inoperative but declines to release it for testing and repair, it is considered to be impaired, but not interrupted. No credit allowance will be made for a service facility or circuit considered by the Company to be impaired.

2.16.2.2 For calculating credit allowances, every month is considered to have 30 days. A credit allowance is applied on a pro rata basis against the rate applicable to the service and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.

2.16.2.3 At the Customer's request, a credit allowance for a continuous interruption of service for more than twenty-four (24) hours will be made in an amount to be determined by the Company on a case-by-case basis.

2.16.2.4 In the event a presubscribed Customer is affected by such interruption for a continuous period of less than twenty-four (24) hours, no adjustments will be made.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.16 Interruption of Service (Cont'd)**

**2.16.3 Limitations on Allowances**

No credit allowance will be made for:

- (a) interruptions due to the negligence of, or noncompliance with the provisions of this Tariff by, the Customer, authorized user, joint user, or other common carrier providing service connected to the service of the Company;
- (b) interruptions due to the negligence of any person other than the Company, including but not limited to the Customer or other common carriers connected to the Company's facilities;
- (c) interruptions due to the failure of power, equipment, systems or services not provided by the Company;
- (d) interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- (e) interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- (f) interruptions of service 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; and
- (g) interruption of service due to circumstances or causes beyond the control of Company.
- (h) interruptions that occur or continue to occur due to the Customer's failure to authorize replacement of any element of special construction; and
- (i) interruptions that were not reported to the Company within thirty (30) days of the date that service was affected.

2.16.4 In addition to any credits for service interruptions issued pursuant to the provisions of this Section 2.16, the Company may issue credits to Customers reporting other service problems.

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**SECTION 2. RULES AND REGULATIONS (Cont'd)**

**2.17 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, after receiving any required approvals from the Public Service Commission, assign its rights and duties (a) to any subsidiary, parent company or affiliate of the Company, (b) pursuant to any sale or transfer of the assets of the Company, or (c) pursuant to any financing, merger or reorganization of the Company.

**2.18 Notices and Communications**

2.18.1 The Customer shall designate on the Service Order 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.

2.18.2 The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that Company may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.

2.18.3 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.

2.18.4 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.

**2.19 Temporary Promotional Programs**

2.19.1 The Company may establish temporary promotional programs wherein it may waive or reduce non-recurring or recurring charges, to introduce present or potential Customers to a service not previously received by the Customers. Insofar as required by Commission regulations, the Company will file notice of its proposed promotions with the Commission.

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**SECTION 3. DESCRIPTION OF SERVICE**

**3.1 Timing of Calls**

3.1.1 The Customer's long distance usage charge is based on the actual usage of the Company's network. Usage begins when the called party picks up the receiver (i.e. when two-way communication, often referred to as "conversation time" is possible). When the called party picks up the receiver is determined by standard industry methods generally in use for ascertaining such, including hardware answer supervision in which the local telephone company sends a signal to the switch or software utilizing audio tone detection. When software answer supervision is employed, up to sixty (60) seconds of ringing is allowed before it is billed as usage of the network. A call is terminated when the calling party or called party hangs up.

**3.2 Computation of Charges**

**3.2.1 Billing Increments**

The minimum call duration for billing purposes is one minute for a connected call. All calls beyond one minute are billed in one-minute increments.

**3.2.2 Per Call Billing Charges**

For billing purposes, all charges per call will be rounded up to the nearest penny.

**3.2.3 Credit for Incomplete Calls and Wrong Numbers**

The Company will not knowingly charge for incomplete calls or wrong numbers. Upon the Customer's request and proper verification, the Company shall promptly adjust and credit the Customer's account for charges or payment for any such calls.

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**SECTION 3. DESCRIPTION OF SERVICE (Cont'd)**

**3.3 Calculation of Distance**

Usage charges for all mileage sensitive products are based on the airline distance between rate centers associated with the originating and terminating points of the call.

The airline mileage between rate centers is determined by applying the formula below to the vertical and horizontal coordinates associated with the rate centers involved. The Company uses the rates centers that are produced by Bell Communications Research in the NPA-NXX V & H Coordinates Tape and Bell's NECA Tariff No. 4.

FORMULA:

The square root of:

$$\frac{(V1-V2)^2+(H1-H2)^2}{10}$$

**3.4 Minimum Call Completion Rate**

A Customer can expect a call completion rate (number of calls completed/number of calls attempted) of not less than ninety percent (90%) during peak use periods for all Feature Group D services ("1+" dialing).

**3.5 Service Offerings**

**3.5.1 1+ Long Distance**

1+ Long Distance Service is a dedicated or switched long distance message telecommunications service provided between points located within the State. Except as otherwise stated, 1+ Long Distance calls are billed in one-minute increments.

**3.5.2 Casual Calling Long Distance**

Casual Calling is a long distance service which a customer, not pre-subscribed to the Company, may obtain by dialing a specified code (10-10-XXX) to access the Company's interexchange services on an ad hoc basis. Except as otherwise stated, these calls are billed in one-minute increments.

**3.5.3 Toll Free Long Distance**

[Reserved for Future Use.]

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**SECTION 4. RATES**

4.1 **1+ Long Distance**

Per minute \$0.10  
All calls are billed in full minute increments.

4.2 **Casual Calling Long Distance**

Per minute \$0.10  
All calls are billed in full minute increments.

4.3 **Toll Free Service**

[Reserved for Future Use.]

4.4 **Late Payment Charges**

If any portion of the payment due for undisputed charges is not received by the Company on or before the date due, or if any portion of the payment is received by the Company in funds which are not immediately available, then the Customer's account shall be delinquent, and a late payment penalty shall be due to the Company. The due date shall be no earlier than thirty (30) days after the invoice is mailed. The late payment penalty shall be the portion of the payment not received by the due date, multiplied by a late factor of 1.5% of the total monthly bill.

4.5 **Special Rates for Persons with Disabilities**

4.5.1 **Directory Assistance**

There shall be no charge for up to fifty (50) calls per billing cycle from lines or trunks serving persons with disabilities. The Company shall charge the prevailing tariff rates for every call in excess of fifty (50) within a single billing cycle.

4.5.2 **Persons with Hearing and Speech Impairments**

For TDD users, intrastate toll message rates shall be Evening rates for Daytime calls, and Night rates for Evening and Night calls.

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**SECTION 4. RATES (Cont'd)**

**4.5 Special Rates for Persons with Disabilities (Cont'd)**

**4.5.3 Telecommunications Relay Service**

For the purpose of billing intrastate toll calls received from the relay service, the Company will discount relay service calls by fifty percent (50%) off of the otherwise applicable rate for a voice non-relay call, except that where either the calling or called party indicates that either party is both hearing and visually impaired, the call shall be discounted sixty percent (60%) off of the otherwise applicable rate for a voice non-relay call. The above discounts apply only to the time-sensitive elements of a charge for the call and shall not apply to per call charges, such as a credit card surcharge.

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**EXHIBIT C**

**MANAGEMENT BIOGRAPHIES**

## **MANAGEMENT BIOGRAPHIES FOR YAK COMMUNICATIONS (AMERICA) INC.**

### **Charles Zwebner:**

#### **Founder, President, Chief Executive Officer**

Prior to founding Yak Communications (America) Inc. in 1998, Mr. Zwebner served as the President of CardCaller Canada Inc. ("CardCaller"), and as a member of CardCaller's Board of Directors, for six years. Mr. Zwebner founded CardCaller in 1992, and remained significantly involved in the corporation's design, development, production, and manufacture of the first Canadian fixed amount prepaid multilingual telephone calling card. Prior to founding CardCaller, Mr. Zwebner served as Vice President of the Mortgage Department of Concinnity Corporation, Inc. from 1987-1992, where he handled underwriting, management, and syndication of residential and commercial mortgage portfolios. Mr. Zwebner holds a B.A. in Computer Science and Business Administration from York University.

### **Robin Clarke:**

#### **Executive Administrator**

Ms. Clarke has several years of management experience in the telecommunications industry. Prior to joining Yak Communications (America) Inc., Ms. Clarke managed several major telecommunications projects, including the establishment of a new "One Plus" department, the creation of a telecommunications customer billing program, and the installation of Automated Banking Machines in the white label marketplace. Ms. Clarke also served as a customer service representative for a telecommunications service reseller.

### **Margaret Noble:**

#### **Controller**

Since her accreditation as a Certified Management Accountant in 1985, Ms. Noble has held various accounting and strategic planning positions in the high technology, entertainment, and telecommunications industries. In particular, Ms. Noble worked to implement accounting systems and procedures for Dome Productions and Magnetic North prior to joining Yak Communications (America) Inc. Ms. Noble also served as an Advisor for the Accounting & Financial Management Advisory Committee for Centennial College, in Scarborough, Ontario. At the present time, Ms. Noble serves as the Treasurer for the United Way of Ajax/Pickering.

### **Jaquie Capote:**

#### **Switch and Network Engineering**

Ms. Capote has an extensive background in systems design, planning, maintenance, and hardware and software installation, configuration and integration. Prior to joining Yak Communications (America) Inc., Ms. Capote was employed by AT&T Canada, most recently as a supervisor and systems administrator. Ms. Capote earned a degree in Computer Programming from Seneca College in 1992. Ms. Capote is further recognized as a Certified Technician for the Harris 20-20 Switch and as a Telecommunications Specialist by Centennial College.

**EXHIBIT D**

**FINANCIAL STATEMENTS**

**CONFIDENTIAL & PROPRIETARY**

**FILED UNDER SEAL**