

TC97-138  
DOCKET NO. \_\_\_\_\_

In the Matter of \_\_\_\_\_ IN THE MATTER OF THE  
\_\_\_\_\_ APPLICATION OF KCI LONG  
\_\_\_\_\_ DISTANCE, INC. FOR A CERTIFICATE  
\_\_\_\_\_ OF AUTHORITY TO PROVIDE  
TELECOMMUNICATIONS SERVICES IN  
SOUTH DAKOTA

## Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
8/1/97	Filed and Packaged;
8/7/97	TC Fax Filing;
9/5/97	Replacement Affid,
12/3/97	Order Granting COA;
12/3/97	Packet Closed

TC97-138

**KCI LONG DISTANCE, INC.**  
Department of Law

RECEIVED

AUG 01 1997

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

20 Corporate Woods Blvd.  
Albany, New York 12211  
(518) 462-1882 (telephone)  
(518) 463-9937 (facsimile)

July 30, 1997

Public Utilities Commission  
State of South Dakota  
500 E. Capitol Avenue  
Pierre, SD 57501

Attn: Harlan Best  
Deputy Director  
Fixed Utilities Division

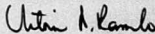
Re: KCI Long Distance, Inc.

Dear Mr. Best:

Enclosed for filing are an original and ten (10) copies of KCI's Application and Petition for a Certificate of Authority to provide telecommunications services as a reseller, together with KCI's initial long distance tariff and our check in the sum of \$250 as and for your filing fee. Please date-stamp the enclosed extra copy of the petition and tariff and return to us in the pre-paid self-addressed UPS envelope provided.

If you have any questions, please call me at the number listed above. Thank you.

Very truly yours,



Victoria A. Ramundo

**BEFORE THE  
STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION**

Application of KCI Long Distance, Inc. for a Certificate	)	
of Public Convenience and Necessity to Transact the	)	Docket No.
Business of a Reseller of Interexchange	)	
Telecommunications Services and for	)	
Approval of its Initial Tariff	)	

**APPLICATION OF KCI LONG DISTANCE, INC.**

KCI Long Distance, Inc. (hereinafter "KCI" or "Applicant") respectfully requests that the South Dakota Public Utilities Commission ("Commission") grant KCI authority to provide intrastate telecommunications services to the public within South Dakota through the resale of similar services offered by other interexchange carriers ("IXCs") in the state. Applicant further requests that the Commission approve its initial proposed tariff. KCI offers the following information in support of this application.

**Identification of the Applicant**

1. KCI maintains its headquarters at 5784 Widewaters Parkway, Syracuse, New York: 13202. The registered agent for service of process in South Dakota is CT Corporation System, 319 S. Coteau Street, Pierre, South Dakota 57501.
2. KCI is incorporated under the laws of the State of New York. A copy of the Company's Articles of Incorporation is attached hereto as Exhibit A. Applicant is qualified to transact business within the State of South Dakota as a foreign corporation. A copy of the qualifying document is set forth in Exhibit B hereto. KCI has no affiliations with any telecommunications utilities authorized to do business in South Dakota.

**Description of Authority Requested**

3. KCI seeks authority to operate as a reseller of intrastate telecommunications services to the public on a statewide basis. KCI seeks authority to offer a full range of "1+" interexchange telecommunications on a resale basis. Specifically, KCI seeks authority to provide WATS, 800, travel card, and debit card services.

4. KCI does not intend to provide 900 or 700 services.

5. Presently, KCI does not own, operate or control, directly or indirectly, any transmission facilities within South Dakota. KCI will offer service to its subscribers using facilities of the communications networks of WitTel, other facilities-based IXC's and the local exchange telephone companies ("LECs").

6. KCI has no plans at this time to construct any telecommunications transmission facilities within the State of South Dakota and seeks no construction authority by means of this Application. KCI will operate exclusively as a reseller.

7. KCI will abide by all rules governing telecommunications resellers which the Commission has promulgated or may promulgate in the future, unless application of such rules is specifically waived by the Commission.

**Proposed Services**

8. KCI is a long distance carrier that provides WATS and other services to small businesses and residential customers. KCI plans to direct market these services through a mass mailing program. KCI combines high quality services with very competitive rates, flexible end user billing, professional customer service and excellent management reporting to create a unique blend which meets the individualized needs of its targeted customers.

9. A further description of KCI's proposed service offerings and initial pricing are included in its initial proposed tariff which is attached as Exhibit C hereto.

10. KCI's rates will in most instances meet or beat those offered by AT&T in the state for similar services. In most instances, KCI's rates will be less than those offered by MCI and Sprint as well.

11. KCI has contracted with a well-known billing company, Profitec, Inc., to provide database management and billing services. Profitec is capable of consolidating multiple carrier traffic and rate plans on a single bill.

12. KCI operates an in-house customer service center with trained technicians available to answer questions or inquiries from customers. Customers may reach the service center toll-free by dialing 1-800-540-0388. Customer Service Technicians are available from 8:00 a.m. to 5:00 p.m. Monday through Friday. In addition, emergency calls are handled 24 hours a day, seven days a week. Customers can reach the emergency operator by dialing the same number.

13. KCI is committed to the use of ethical sales practices. All distributors of its products must commit in writing to market KCI's services in a professional manner, and to fairly and accurately portray KCI's services and the charges for them.

**Description and Fitness of Applicant**

14. KCI's officers and directors are as follows:

Kevin J. Kelly	President and Director
Brian P. Kelly	Chief Executive Officer and Director
William M. Kelly, Jr.	Vice President, Secretary, Treasurer and Director
Frank Harrigan	Director
William Jackson	Director

The business address and telephone number of KCI's officers and directors is:

KCI Long Distance, Inc.  
5784 Widewaters Parkway  
Syracuse, New York 13214  
(315) 449-0388

15. KCI is a privately-held corporation. Seventy-five percent of the company's stock is owned by KCI's directors. The remaining twenty-five percent is owned by several individuals.

16. The principals in KCI have extensive personal experience in the telecommunications industry. KCI and its predecessor company, Kelhorn Communications, Inc., have been providing service since 1993 in the New York and New Jersey area. KCI is also authorized to provide services in Colorado, Connecticut, Delaware, District of Columbia, Florida, Indiana, Iowa, Michigan, Montana, New Jersey, New York, Oregon, Rhode Island, Texas, Utah and Virginia. Applications are pending or are in the process of being filed in the remaining states.

17. KCI possesses adequate financial resources to provide the proposed services. Because KCI is a privately-held company, it does not release its financial information to the public.

#### **Public Interest Considerations**

18. KCI's entry into the South Dakota marketplace is in the public interest because KCI intends to make a uniquely attractive blend of service, quality, network management, network reporting and low rates available. Namely, KCI's offering ultimately will enable small business users and residents in South Dakota to obtain long distance services at rates which previously were available only to large corporations.

19. In addition to the direct benefits delivered to the public by its services, KCI's entry into the South Dakota marketplace will benefit the public indirectly by increasing the competitive pressure felt by existing IXCs, spurring them to lower costs and improve services in response.

#### **Requested Regulatory Treatment**

20. KCI is a non-dominant reseller of interexchange telecommunications services. KCI requests to be regulated by the Commission in the same relaxed fashion extended to other, similarly situated resellers.

**Initial Proposed Tariff**

21. KCI Proposes to offer service pursuant to the rules, regulations, rates and other terms and conditions included in KCI's initial proposed tariff which is attached hereto as Exhibit C. Billing, payment, credit and collection terms are set forth in Applicant's proposed tariff.

**Conclusion**

22. A decision by the Commission to grant KCI a Certificate of Public Convenience and Necessity is plainly in the public interest. KCI will introduce important new products at very competitive rates as well as enhance the competitiveness of the overall long distance market in South Dakota.

WHEREFORE, KCI respectfully requests that this Commission grant it authority to transact the business of a reseller of interexchange telecommunications services within the State of South Dakota, that the Commission regulate it in a streamlined fashion and that the Commission approve KCI's initial tariff effective on the date of the order granting authority.

Respectfully submitted,

KCI LONG DISTANCE, INC.

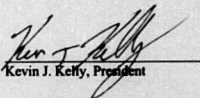
By: 

Kevin J. Kelly, President  
KCI Long Distance, Inc.  
5784 Widewaters Parkway  
Syracuse, New York 13214  
(315) 449-0388

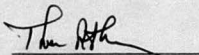
Dated this 29<sup>th</sup> day of July, 1997.

**VERIFICATION**

Kevin J. Kelly, being duly sworn upon oath deposes and says that he is the President of KCI Long Distance, Inc., a New York corporation; that he has read the above and foregoing and knows the contents thereof; that said contents are true in substance and in fact, except as to those matters stated upon information and belief, and as to those, he believes them to be true.

  
Kevin J. Kelly, President

Sworn and subscribed to  
before me this 29<sup>th</sup> day of  
July, 1997.

  
Notary Public

**THERESA A. ATKINS**  
Notary Public, State of New York  
No. 02AT5072990  
Qualified in Saratoga County 99  
Commission Expires February 10, 99

**EXHIBIT A**

**ARTICLES OF INCORPORATION**

**RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**KCI LONG DISTANCE INC.**

**Under Section 807 of the Business Corporation Law**

Thomas S. Squire, Esq.  
HISCOCK & BARCLAY, LLP  
Financial Plaza  
Post Office Box 4878  
Syracuse, New York 13221-4878  
Telephone (315) 422-2131

RESTATED CERTIFICATE OF INCORPORATION

OF

KCI LONG DISTANCE INC.

Under Section 807 of the Business Corporation Law

WE, KEVIN J. KELLY and WILLIAM M. KELLY, JR., being respectively the President and Secretary of KCI LONG DISTANCE INC. (the "Corporation"), in accordance with Section 807 of the New York Business Corporation Law, hereby certify, set forth and restate that:

- I. The name of the Corporation is KCI Long Distance Inc.
- II. The Certificate of Incorporation was filed by the Department of State of the State of New York under the name "Kellhorn Communications Inc." on December 2, 1991.
- III. The Certificate of Incorporation is hereby amended to effect the following amendments authorized by the New York Business Corporation Law:
  - A. The Certificate of Incorporation is hereby amended as authorized by Section 801 of the Business Corporation Law to change the aggregate number of shares which the Corporation shall have authority to issue from two million (2,000,000) shares, of which one million fifty thousand (1,050,000) shares are Class A Common Stock, par value \$0.0001 per share, and nine hundred fifty thousand (950,000) shares are Class B Common

Stock, par value \$0.0001 per share, to three million (3,000,000) shares, of which two million nine hundred ninety-nine thousand nine hundred ninety-eight (2,999,998) shares shall be Class A Common Stock, par value \$0.0001 per share, no (0) shares shall be Class B Common Stock, par value \$0.0001 per share, and two (2) shall be Class C Common Stock, par value \$0.0001 per share.

B. One million fifty thousand (1,050,000) shares of the Corporation's Class A Common Stock, par value \$0.0001 per share, are issued, which shares will not be changed. Four hundred nineteen thousand five hundred (419,500) shares of the Corporation's Class B Common Stock, par value \$0.0001 per share, are issued, which shares will be changed into four hundred nineteen thousand five hundred (419,500) shares of Class A Common Stock, par value \$0.0001 per share, at the rate of one Class A Common Share for each one of the presently issued Class B Common Shares. Five hundred thirty thousand five hundred (530,500) shares of the Corporation's Class B Common Stock, par value \$0.0001 per share, are unissued, which shares will be changed into five hundred thirty thousand five hundred (530,500) shares of the Corporation's Class A Common Stock, par value \$0.0001 per share, at the rate of one Class A Common Share for each one of the presently unissued Class B Common Shares. In addition, the Restated Certificate of Incorporation shall authorize the Corporation to issue an additional nine hundred ninety-nine thousand nine hundred ninety-eight (999,998) shares of Class A Common Stock, par value \$0.0001 per share, and two (2) shares of Class C Common Stock, par value \$0.0001 per share.

C. To accomplish the foregoing amendments, Article (3) of the Certificate of Incorporation is amended in its entirety, as set forth in full text in Article (3) of the restatement of the Certificate of Incorporation below.

IV. The text of the Certificate of Incorporation is hereby restated as amended to read as hereafter set forth in full:

- (1) The name of the Corporation is:

KCI LONG DISTANCE INC.

- (2) The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized pursuant to the Business Corporation Law of the State of New York. The Corporation is not to engage in any act or activity requiring any consents or approvals by law without such consent or approval first being obtained.

For the accomplishment of the aforesaid purposes, and in furtherance thereof, the Corporation shall have, and may exercise, all of the powers conferred by the Business Corporation Law upon corporations formed thereunder, subject to any limitations contained in Article 2 of said law or in accordance with the provisions of any other statute of the State of New York.

- (3) The aggregate number of shares which the Corporation shall have authority to issue is three million (3,000,000), divided into two (2) classes. The designation of each class, the number of shares of each class, and the par value of the shares of each class are:

<u>Number of Shares</u>	<u>Class</u>	<u>Par Value Per Share</u>
2,999,998	Class A Common	\$0.0001 par value
2	Class C Common	\$0.0001 par value

The relative rights, preferences, and limitations of the shares of each class are as follows:

The Class A Common Stock and the Class C Common Stock shall be of equal rank and shall entitle the holders thereof to the same rights and privileges, except as hereinafter expressly provided.

The holders of the Class A Common Stock and the Class C Common Stock shall be entitled to dividends, when, as and if declared by the Board of Directors of the Corporation, payable at such time or times as the Board of Directors may determine and any dividend declared by the Board of Directors shall be declared and paid upon the outstanding shares of Class A Common Stock and Class C Common Stock in equal amounts per share and without preference or priority of one class of stock over the other.

In the event of any liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary, all assets and funds of the Corporation available for distribution to its shareholders shall be distributed and paid over to the holders of the Class A Common Stock and Class C Common Stock in equal amounts per share and without preference or priority of one class of stock over the other.

The holders of the Class A Common Stock shall be entitled to one (1) vote per share, and the holders of Class C Common Stock shall be entitled to four million five hundred thousand (4,500,000) votes per share, both classes voting as one class on all matters to be voted on by shareholders, including the election of directors, except as otherwise expressly provided by law.

If at any time the Corporation shall pay a stock dividend or distribution on its Class A Common Stock, or split, subdivide, or combine the outstanding shares of its Class A Common Stock, the number of votes which a share of Class C Common Stock shall entitle the holder thereof to exercise shall be proportionately adjusted as of the date after the record date for such dividend, distribution, split, subdivision or combination so as to

maintain the relative voting power of the Class C Common Stock which existed prior to the occurrence of such event.

(4) The principal office of the Corporation is to be located in the County of Onondaga, State of New York.

(5) The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

John P. Sindoni, Esq.  
Hiscock & Barclay, LLP  
Post Office Box 4878  
Syracuse, New York 13221-4878

(6) The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by the provisions of paragraph (b) of Section 402 of the Business Corporation Law, as the same may be amended and supplemented.

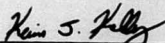
(7) The Corporation shall, to the fullest extent permitted by Article 7 of the Business Corporation Law, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said Article from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said Article, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which any person may be entitled under any Bylaw, resolution of shareholders, resolution of directors, agreement, or otherwise, as permitted by said Article, as to action in any capacity in which he/she served at the request of the Corporation, and shall continue as to any person who has ceased to act in any such capacity, and shall inure to the benefit of the heirs, executors, and administrators of any such person.

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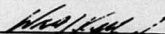
(8) No holder of shares of the Corporation of any class now or hereafter authorized, shall have any preemptive rights to subscribe for or purchase any shares of the Corporation of any class, now or hereafter authorized, or any options or warrants for such shares, or any rights to subscribe to or purchase such shares, or any securities convertible into or exchangeable for such shares which may at any time be issued, sold or offered for sale by the Corporation.

V. These amendments to, and this restatement of, the Certificate of Incorporation were authorized by the unanimous written consent, dated as of July 31, 1996, of the Board of Directors of the Corporation, followed by the unanimous written consent, dated as of July 31, 1996, of the holders of all outstanding shares entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned have executed this Restated Certificate of Incorporation and have affirmed it as true under penalties of perjury as of the 31st day of July, 1996.



\_\_\_\_\_  
KEVIN J. KELLY  
President



\_\_\_\_\_  
WILLIAM M. KELLY, JR.  
Secretary

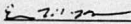
VERIFICATION  
OF  
RESTATED CERTIFICATE OF INCORPORATION

STATE OF NEW YORK       )  
                                  ) SS.:  
COUNTY OF ONONDAGA    )

KEVIN J. KELLY being duly sworn, deposes and says that he is the President of KCI Long Distance Inc., the Corporation named in the foregoing Restated Certificate of Incorporation; that he has read and signed the same; and that the statements therein are true.

  
\_\_\_\_\_  
KEVIN J. KELLY

Subscribed and sworn to before  
me this        day of July, 1996.

  
\_\_\_\_\_  
Notary Public

ERIN M. BROWN  
NOTARY PUBLIC STATE OF NEW YORK  
NO. 18R5055429  
QUALIFIED IN ONONDAGA COUNTY  
COMMISSION EXPIRES 02/12/97

Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

162 WASHINGTON AVENUE  
ALBANY, NY 12231

FILING RECEIPT

CITY NAME : KCI LONG DISTANCE INC.

CURRENT TYPE : AMENDMENT (DOMESTIC BUSINESS)  
STOCK RESTATED

COUNTY: ONONDAGA

SERVICE COMPANY : COLBY ATTORNEYS SERVICE COMPANY

SERVICE CODE: 08

FILED: 08/19/1996 DURATION: \*\*\*\*\* CASH #: 960819000462 FILM #: 960819000439

DRESS FOR PROCESS

REGISTERED AGENT



STOCK: 3000000 PV

FILER	FEES	95.00	PAYMENTS	95.00
THOMAS S. SQUIRE, ESQ.	FILING :	60.00	CASH :	0.00
HISCOCK & BARCLAY, LLP	TAX :	10.00	CHECK :	0.00
FINANCIAL PLAZA, POST OFFICE BOX 4878	CERT :	0.00	BILLED:	95.00
SYRACUSE, NY 13221-4878	COPIES :	0.00		
	HANDLING:	25.00	REFUND:	0.00

JS-1025 (11/89)

**RESTATED CERTIFICATE OF INCORPORATION**

**OF**

**KCI LONG DISTANCE INC.**

**Under Section 807 of the Business Corporation Law**

Thomas S. Squire, Esq.  
HISCOCK & BARCLAY, LLP  
Financial Plaza  
Post Office Box 4878  
Syracuse, New York 13221-4878  
Telephone (315) 422-2131

DC-08

RESTATED CERTIFICATE OF INCORPORATION

DC-08

OF

KCI LONG DISTANCE INC.

Under Section 807 of the Business Corporation Law

WE, KEVIN J. KELLY and WILLIAM M. KELLY, JR., being respectively the President and Secretary of KCI LONG DISTANCE INC. (the "Corporation"), in accordance with Section 807 of the New York Business Corporation Law, hereby certify, set forth and restate that:

- I. The name of the Corporation is KCI Long Distance Inc.
- II. The Certificate of Incorporation was filed by the Department of State of the State of New York under the name "Kelhorn Communications Inc." on December 2, 1991.
- III. The Certificate of Incorporation is hereby amended to effect the following amendments authorized by the New York Business Corporation Law:
  - A. The Certificate of Incorporation is hereby amended as authorized by Section 801 of the Business Corporation Law to change the aggregate number of shares which the Corporation shall have authority to issue from two million (2,000,000) shares, of which one million fifty thousand (1,050,000) shares are Class A Common Stock, par value \$0.0001 per share, and nine hundred fifty thousand (950,000) shares are Class B Common

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Stock, par value \$0.0001 per share, to three million (3,000,000) shares, of which two million nine hundred ninety-nine thousand nine hundred ninety-eight (2,999,998) shares shall be Class A Common Stock, par value \$0.0001 per share, no (0) shares shall be Class B Common Stock, par value \$0.0001 per share, and two (2) shall be Class C Common Stock, par value \$0.0001 per share.

B. One million fifty thousand (1,050,000) shares of the Corporation's Class A Common Stock, par value \$0.0001 per share, are issued, which shares will not be changed. Four hundred nineteen thousand five hundred (419,500) shares of the Corporation's Class B Common Stock, par value \$0.0001 per share, are issued, which shares will be changed into four hundred nineteen thousand five hundred (419,500) shares of Class A Common Stock, par value \$0.0001 per share, at the rate of one Class A Common Share for each one of the presently issued Class B Common Shares. Five hundred thirty thousand five hundred (530,500) shares of the Corporation's Class B Common Stock, par value \$0.0001 per share, are unissued, which shares will be changed into five hundred thirty thousand five hundred (530,500) shares of the Corporation's Class A Common Stock, par value \$0.0001 per share, at the rate of one Class A Common Share for each one of the presently unissued Class B Common Shares. In addition, the Restated Certificate of Incorporation shall authorize the Corporation to issue an additional nine hundred ninety-nine thousand nine hundred ninety-eight (999,998) shares of Class A Common Stock, par value \$0.0001 per share, and two (2) shares of Class C Common Stock, par value \$0.0001 per share.

01442222  
to accomplish the foregoing amendments, Article (3) of the Certificate of Incorporation is amended in its entirety, as set forth in full text in Article (3) of the statement of the Certificate of Incorporation below.

IV The text of the Certificate of Incorporation is hereby restated as amended to read as hereafter set forth in full:

**CERTIFICATE OF INCORPORATION /**

**OF**

**KCI LONG DISTANCE INC. /**

**Under Section 402 of the Business Corporation Law /**

(1) The name of the Corporation is:

KCI LONG DISTANCE INC.

(2) The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized pursuant to the Business Corporation Law of the State of New York. The Corporation is not to engage in any act or activity requiring any consents or approvals by law without such consent or approval first being obtained.

For the accomplishment of the aforesaid purposes, and in furtherance thereof, the Corporation shall have, and may exercise, all of the powers conferred by the Business Corporation Law upon corporations formed thereunder, subject to any limitations contained in Article 2 of said law or in accordance with the provisions of any other statute of the State of New York.

(3) The aggregate number of shares which the Corporation shall have authority to issue is three million (3,000,000), divided into two (2) classes. The designation of each class, the number of shares of each class, and the par value of the shares of each class are:

<u>Number of Shares</u>	<u>Class</u>	<u>Par Value Per Share</u>
2,999,998	Class A Common	\$0.0001 par value
2	Class C Common	\$0.0001 par value

The relative rights, preferences, and limitations of the shares of each class are as follows:

The Class A Common Stock and the Class C Common Stock shall be of equal rank and shall entitle the holders thereof to the same rights and privileges, except as hereinafter expressly provided.

The holders of the Class A Common Stock and the Class C Common Stock shall be entitled to dividends, when, as and if declared by the Board of Directors of the Corporation, payable at such time or times as the Board of Directors may determine and any dividend declared by the Board of Directors shall be declared and paid upon the outstanding shares of Class A Common Stock and Class C Common Stock in equal amounts per share and without preference or priority of one class of stock over the other.

In the event of any liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary, all assets and funds of the Corporation available for distribution to its shareholders shall be distributed and paid over to the holders of the Class A Common Stock and Class C Common Stock in equal amounts per share and without preference or priority of one class of stock over the other.

The holders of the Class A Common Stock shall be entitled to one (1) vote per share, and the holders of Class C Common Stock shall be entitled to four million five hundred thousand (4,500,000) votes per share, both classes voting as one class on all matters to be voted on by shareholders, including the election of directors, except as otherwise expressly provided by law.

If at any time the Corporation shall pay a stock dividend or distribution on its Class A Common Stock, or split, subdivide, or combine the outstanding shares of its Class A Common Stock, the number of votes which a share of Class C Common Stock shall entitle the holder thereof to exercise shall be proportionately adjusted as of the date after the record date for such dividend, distribution, split, subdivision or combination so as to

maintain the relative voting power of the Class C Common Stock which existed prior to the occurrence of such event.

(4) The principal office of the Corporation is to be located in the County of Onondaga, State of New York.

(5) The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

John P. Sindoni, Esq.  
Hiscock & Barclay, LLP  
Post Office Box 4878  
Syracuse, New York 13221-4878

(6) The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by the provisions of paragraph (b) of Section 402 of the Business Corporation Law, as the same may be amended and supplemented.

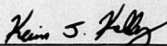
(7) The Corporation shall, to the fullest extent permitted by Article 7 of the Business Corporation Law, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said Article from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said Article, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which any person may be entitled under any Bylaw, resolution of shareholders, resolution of directors, agreement, or otherwise, as permitted by said Article, as to action in any capacity in which he/she served at the request of the Corporation, and shall continue as to any person who has ceased to act in any such capacity, and shall inure to the benefit of the heirs, executors, and administrators of any such person.

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(8) No holder of shares of the Corporation of any class now or hereafter authorized, shall have any preemptive rights to subscribe for or purchase any shares of the Corporation of any class, now or hereafter authorized, or any options or warrants for such shares, or any rights to subscribe to or purchase such shares, or any securities convertible into or exchangeable for such shares which may at any time be issued, sold or offered for sale by the Corporation.

V. These amendments to, and this restatement of, the Certificate of Incorporation were authorized by the unanimous written consent, dated as of July 31, 1996, of the Board of Directors of the Corporation, followed by the unanimous written consent, dated as of July 31, 1996, of the holders of all outstanding shares entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned have executed this Restated Certificate of Incorporation and have affirmed it as true under penalties of perjury as of the 31st day of July, 1996.



\_\_\_\_\_  
KEVIN J. KELLY  
President



\_\_\_\_\_  
WILLIAM M. KELLY, JR.  
Secretary

Y. S. DEPARTMENT OF STATE  
VISION OF CORPORATIONS AND STATE RECORDS

162 WASHINGTON AVE.  
ALBANY, NY 12231

RECEIPT

ENTITY NAME KCI LONG DISTANCE INC.

DOCUMENT TYPE AMENDMENT (DOMESTIC BUSINESS)

COUNTY ONONDAGA

SERVICE COMPANY COLEY ATTORNEYS SERVICE COMPANY

SERVICE CODE 00

FILED: 08/18/1998 DURATION: \*\*\*\*\* CASH \$ 760816000029 FILM \$

ADDRESS FOR PROCESS

REGISTERED AGENT



FILER	FEES	25.00	PAYMENTS	25.00
HISCOCK & BARCLAY, LLP	FILING	0.00	CASH	0.00
FINANCIAL PLAZA	TAX	0.00	CHECK	0.00
P.O. BOX 4878	CERT	0.00	BILLED	25.00
SYRACUSE, NY 13221-4878	COPIES	0.00		
	HANDLING	25.00		
			REFUND	0.00

15-1025 (11/89)

FILING RECEIPT

CITY NAME KCI LONG DISTANCE INC.

CURRENT TYPE AMENDMENT (DOMESTIC BUSINESS)  
STOCK PROVISIONS RESTATED

COUNTY ORON

SERVICE COMPANY COLBY ATTORNEYS SERVICE COMPANY

SERVICE CODE 00

FILED: 08/16/1996 DURATION \*\*\*\*\* CASH \$ 960816000445 FIRM \$ 960816000445

ADDRESS FOR PROCESS

REGISTERED AGENT



STOCK 2000000 PV

FILED	FEES	85.00	PAYMENTS	85.00
MISCOCK & BARCLAY, LLP	FILING	60.00	CASH	0.00
FINANCIAL PLANNING	TAX	0.00	CHECK	0.00
P.O. BOX 4000	CERT	0.00	BILLED	00.00
STRACUSE, NY 13221-4878	COPIES	0.00		
	HANDLING	25.00	REFUND	0.00

1025 (11/89)

000810000  
RESTATED CERTIFICATE OF INCORPORATION

OF

KCI LONG DISTANCE INC.

Under Section 807 of the Business Corporation Law

DC-08

WE, KEVIN J. KELLY and WILLIAM M. KELLY, JR., being respectively the President and Secretary of KCI LONG DISTANCE INC. (the "Corporation"), in accordance with Section 807 of the New York Business Corporation Law, hereby certify, set forth and restate that:

- I. The name of the Corporation is KCI Long Distance Inc.
- II. The Certificate of Incorporation was filed by the Department of State of the State of New York under the name "Kellhorn Communications Inc." on December 2, 1991.
- III. The Certificate of Incorporation is hereby amended to effect the following amendments authorized by the New York Business Corporation Law:
  - A. The Certificate of Incorporation is hereby amended as authorized by Section 801 of the Business Corporation Law to change the aggregate number of shares which the Corporation shall have authority to issue from two hundred (200) shares, of which one hundred fifty (150) shares are Class A Common Stock, without par value, and fifty (50) shares are Class B Common Stock, without par value, to two million (2,000,000) shares, of

which one million fifty thousand (1,050,000) shares shall be Class A Common Stock, par value \$0.0001 per share, and nine hundred fifty thousand (950,000) shares shall be Class B Common Stock, par value \$0.0001 per share.

B. One hundred five (105) shares of the Corporation's Class A Common Stock, without par value, are issued; which shares will be changed into one million fifty thousand (1,050,000) shares of Class A Common Stock, par value \$0.0001, at the rate of ten thousand new shares for each one of the presently issued shares. Forty-five (45) shares of the Corporation's Class A Common Stock, without par value, are unissued; which shares will be changed into four hundred fifty thousand (450,000) shares of Class B Common Stock, par value \$0.0001. Fifty (50) shares of the Corporation's Class B Common Stock, without par value, are unissued; which shares will be changed into five hundred thousand (500,000) shares of Class B Common Stock, par value \$0.0001, in each case at the rate of ten thousand unissued shares for each one of the presently unissued shares.

C. To accomplish the foregoing amendments, Article (3) of the Certificate of Incorporation is amended in its entirety, as set forth in full text in Article (3) of the restatement of the Certificate of Incorporation below.

D. Article (8) of the Certificate of Incorporation is added to eliminate preemptive rights of the shareholders of the Corporation.

IV. The text of the Certificate of Incorporation is hereby restated as amended to read as hereafter set forth in full:

CERTIFICATE OF INCORPORATION

OF

KCI LONG DISTANCE INC.

Under Section 402 of the Business Corporation Law ;

(1) The name of the Corporation is: \_\_\_\_\_

KCI LONG DISTANCE INC.

(2) The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized pursuant to the Business Corporation Law of the State of New York. The Corporation is not to engage in any act or activity requiring any consents or approvals by law without such consent or approval first being obtained.

For the accomplishment of the aforesaid purposes, and in furtherance thereof, the Corporation shall have, and may exercise, all of the powers conferred by the Business Corporation Law upon corporations formed thereunder, subject to any limitations contained in Article 2 of said law or in accordance with the provisions of any other statute of the State of New York.

(3) The aggregate number of shares which the Corporation shall have authority to issue is two million, divided into two (2) classes. The designation of each class, the number of shares of each class, and the par value, of the shares of each class are:

<u>Number of Shares</u>	<u>Class</u>	<u>Par Value Per Share</u>
1,050,000	Class A Common	\$0.0001 par value
950,000	Class B Common	\$0.0001 par value

The relative rights, preferences, and limitations of the shares of each class are as follows:

The Class A Common Stock and the Class B Common Stock shall be of equal rank and shall entitle the

holders thereof to the same rights and privileges, except as hereinafter expressly provided.

The holders of the Class A Common Stock and the Class B Common Stock shall be entitled to dividends, when, as and if declared by the Board of Directors of the Corporation, payable at such time or times as the Board of Directors may determine and any dividend declared by the Board of Directors shall be declared and paid upon the outstanding shares of Class A Common Stock and Class B Common Stock in equal amounts per share and without preference or priority of one class of stock over the other.

In the event of any liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary, all assets and funds of the Corporation available for distribution to its shareholders shall be distributed and paid over to the holders of the Class A Common Stock and Class B Common Stock in equal amounts per share and without preference or priority of one class of stock over the other.

The holders of the Class B Common Stock shall have no voting power, all rights to vote and all voting power being vested exclusively in the holders of the Class A Common Stock.

(4) The principal office of the Corporation is to be located in the County of Onondaga, State of New York.

(5) The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

John P. Sindoni, Esq.  
Hiscock & Barclay, LLP  
Post Office Box 4878  
Syracuse, New York 13221-4878

(6) The personal liability of the directors of the Corporation is hereby eliminated to the fullest extent permitted by the provisions of paragraph (b) of Section 402 of the Business Corporation Law, as the same may be amended and supplemented.

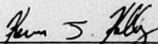
(7) The Corporation shall, to the fullest extent permitted by Article 7 of the Business Corporation Law, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said Article from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said Article, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which any person may be entitled under any Bylaw, resolution of shareholders, resolution of directors, agreement, or otherwise, as permitted by said Article, as to action in any capacity in which he/she served at the request of the Corporation, and shall continue as to any person who has ceased to act in any such capacity, and shall inure to the benefit of the heirs, executors, and administrators of any such person.

(8) No holder of shares of the Corporation of any class now or hereafter authorized, shall have any preemptive rights to subscribe for or purchase any shares of the Corporation of any class, now or hereafter authorized, or any options or warrants for such shares, or any rights to subscribe to or purchase such shares, or any securities convertible into or exchangeable for such shares which may at any time be issued, sold or offered for sale by the Corporation.

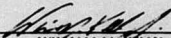
V. These amendments to, and this restatement of, the Certificate of Incorporation were authorized by the unanimous written consent, dated as of July 15, 1996, of the Board of Directors of the Corporation, followed by the unanimous written

consent, dated as of July 15, 1996, of the holders of all outstanding shares entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned have executed this Restated Certificate of Incorporation and have affirmed it as true under penalties of perjury as of the 15th day of July, 1996.



KEVIN J. KELLY  
President

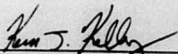


WILLIAM M. KELLY, JR.  
Secretary

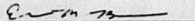
VERIFICATION  
OF  
RESTATED CERTIFICATE OF INCORPORATION

STATE OF NEW YORK           )  
  ) SS.:  
COUNTY OF ONONDAGA       )

KEVIN J. KELLY being duly sworn, deposes and says that he is the President of KCI Long Distance Inc., the Corporation named in the foregoing Restated Certificate of Incorporation; that he has read and signed the same; and that the statements therein are true.

  
\_\_\_\_\_  
Kevin J. Kelly

Subscribed and sworn to before  
me this        day of March, 1996.

  
\_\_\_\_\_  
Notary Public

ERIN M. BROWN  
NOTARY PUBLIC STATE OF NEW YORK  
NO. 18R055429  
QUALIFIED IN ONONDAGA COUNTY  
COMMISSION EXPIRES 02/12/98

N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

162 WASHINGTON AVENUE  
ALBANY, NY 12231

FILING RECEIPT

ENTITY NAME : KCI LONG DISTANCE INC.

DOCUMENT TYPE : AMENDMENT (DOMESTIC BUSINESS)  
STOCK PROCESS RESTATED

COUNTY : ONOH

SERVICE COMPANY : \*\* NO SERVICE COMPANY \*\*

SERVICE CODE : 00

FILED: 03/23/1995 DURATION: \*\*\*\*\* CASH : 950323000015 FIRM : 950323000015

ADDRESS FOR PROCESS

% JOHN P. SANDONI, ESQ., HISCOCK & BARCLAY, LLP  
POST OFFICE BOX 4878  
SYRACUSE, NY 13221-4878

REGISTERED AGENT

STOCK : 200 NPV



FILER	FEES		PAYMENTS	
HISCOCK & BARCLAY, LLP	FILING	85.00	CASH	85.00
FINANCIAL PLAZA, SUITE 9500	TAX	60.00	CHECK	0.00
SYRACUSE, NY 13221	CERT	0.00	BILLED	85.00
	COPIES	0.00		0.00
	HANDLING	25.00	REFUND	0.00

**RESTATED CERTIFICATE OF INCORPORATION**  
**OF**  
**KCI LONG DISTANCE INC.**

**Under Section 807 of the Business Corporation Law**

WE, KEVIN J. KELLY and WILLIAM M. KELLY, JR. being respectively the President and Secretary of KCI LONG DISTANCE INC. (the "Corporation"), in accordance with Section 807 of the New York Business Corporation Law, hereby certify, set forth and restate that:

- I. The name of the Corporation is KCI Long Distance Inc.
- II. The Certificate of Incorporation was filed by the Department of State of the State of New York on the 2nd day of December, 1991.

III. The Certificate of Incorporation, as amended heretofore, is hereby further amended to effect the following amendments authorized by the New York Business Corporation Law:

A. The Certificate of Incorporation is hereby amended as authorized by Section 801 of the Business Corporation Law to change the aggregate number of shares which the Corporation shall have authority to issue from 200 shares, without par value, to 150 shares of Class A Common Stock, without par value, and 50 shares of Class B Common Stock, without par value.

B. One hundred shares of the Corporation, without par value, all of one class, are issued and will be changed into one hundred shares of Class A Common Stock, without par value, at the rate of one new share for each one of the presently issued shares. One hundred shares of the Corporation, without par value, all of one class, are unissued; fifty of such shares will be changed into fifty shares of Class A Common Stock, without par value, and fifty of such shares will be changed into

fifty shares of Class B Common Stock, without par value, in each case at the rate of one new unissued share for each one of the presently unissued shares

C. To accomplish the foregoing amendments, Article (3) of the Certificate of Incorporation is amended in its entirety, as set forth in full text in Article (3) of the restatement of the Certificate of Incorporation below.

D. Article (5) of the Certificate of Incorporation, which sets forth the address to which the Secretary of State shall mail a copy of any process against the Corporation which may be served upon him pursuant to law, is amended in its entirety as set forth in full text in Article (5) of the restatement of the Certificate of Incorporation below.

IV. The text of the Certificate of Incorporation is hereby restated as amended to read as hereafter set forth in full:

- (1) The name of the Corporation is:

**KCI LONG DISTANCE INC.**

- (2) The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized pursuant to the Business Corporation Law of the State of New York. The Corporation is not to engage in any act or activity requiring any consents or approvals by law without such consent or approval first being obtained.

For the accomplishment of the aforesaid purposes, and in furtherance thereof, the Corporation shall have, and may exercise, all of the powers conferred by the Business Corporation Law upon corporations formed thereunder, subject to any limitations contained in Article 2 of said law or in accordance with the provisions of any other statute of the State of New York.

- (3) The aggregate number of shares which the Corporation shall have authority to issue is two hundred, divided into two (2) classes. The designation of each class, the number of shares of each class, and the par value, of the shares of each class are:

<u>Number of Shares</u>	<u>Class</u>	<u>Par Value Per Share</u>
150	Class A Common	no par value
50	Class B Common	no par value

The relative rights, preferences, and limitations of the shares of each class are as follows:

The Class A Common Stock and the Class B Common Stock shall be of equal rank and shall entitle the holders thereof to the same rights and privileges, except as hereinafter expressly provided.

The holders of the Class A Common Stock and the Class B Common Stock shall be entitled to dividends, when, as and if declared by the Board of Directors of the Corporation, payable at such time or times as the Board of Directors may determine and any dividend declared by the Board of Directors shall be declared and paid upon the outstanding shares of Class A Common Stock and Class B Common Stock in equal amounts per share and without preference or priority of one class of stock over the other.

In the event of any liquidation, dissolution, or winding up of the affairs of the Corporation, whether voluntary or involuntary, all assets and funds of the Corporation available for distribution to its shareholders shall be distributed and paid over to the holders of the Class A Common Stock and Class B Common Stock in equal amounts per share and without preference or priority of one class of stock over the other.

The holders of the Class B Common Stock shall have no voting power, all rights to vote and all voting power being vested exclusively in the holders of the Class A Common Stock.

(4) The principal office of the Corporation is to be located in the County of Onondaga, State of New York.

(5) The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

c/o John P. Sindoni, Esq.  
Hiscock & Barclay, LLP  
Post Office Box 4878  
Syracuse, New York 13221-4878

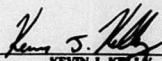
(6) The personal liability of the directors of the Corporation is

hereby eliminated to the fullest extent permitted by the provisions of paragraph (b) of Section 402 of the Business Corporation Law, as the same may be amended and supplemented.

(7) The Corporation shall, to the fullest extent permitted by Article 7 of the Business Corporation Law, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said Article from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said Article, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which any person may be entitled under any Bylaw, resolution of shareholders, resolution of directors, agreement, or otherwise, as permitted by said Article, as to action in any capacity in which he/she served at the request of the Corporation, and shall continue as to any person who has ceased to act in any such capacity, and shall inure to the benefit of the heirs, executors, and administrators of any such person.

V. These amendments to, and this restatement of, the Certificate of Incorporation were authorized by the unanimous written consent, dated as of March 15, 1995, of the Board of Directors of the Corporation, followed by the unanimous written consent, dated as of March 15, 1995, of the holders of all outstanding shares entitled to vote thereon.

IN WITNESS WHEREOF, the undersigned have executed this Certificate this 15<sup>th</sup> day of March, 1995.

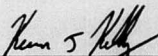
  
\_\_\_\_\_  
KEVIN J. KELLY  
President

  
\_\_\_\_\_  
WILLIAM M. KELLY, JR.  
Secretary

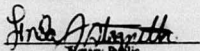
VERIFICATION  
OF  
RESTATED CERTIFICATE OF INCORPORATION

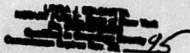
STATE OF NEW YORK     )  
                                  ) SS.:  
COUNTY OF ONONDAGA    )

KEVIN J. KELLY being duly sworn, deposes and says that he is the President of KCI Long Distance Inc., the Corporation named in the foregoing Restated Certificate of Incorporation; that he has read and signed the same; and that the statements therein are true.

  
\_\_\_\_\_  
Kevin J. Kelly

Subscribed and sworn to before me  
this 15<sup>th</sup> day of March, 1995.

  
\_\_\_\_\_  
Notary Public

 95

Y. S. DEPARTMENT OF STATE  
VISION OF CORPORATIONS AND STATE RECORDS

162 WASHINGTON AVENUE  
ALBANY, NY 12231

FILING RECEIPT

-----  
CORPORATION NAME: KCI LONG DISTANCE INC.

DOCUMENT TYPE : AMENDMENT (DOMESTIC BUSINESS)  
PROCESS NAME PROVISIONS

COUNTY: ONON

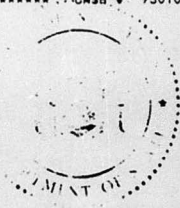
SERVICE COMPANY : \*\* NO SERVICE COMPANY \*\*

-----  
FILED: 01/05/1993 DURATION: \*\*\*\*\* CASH \$ 930105000006 FILM \$ 930105000006

ADDRESS FOR PROCESS

RICHARD F. TAYLOR, JR., ATTY.  
ONE LINCOLN CENTER, SUITE 710  
SYRACUSE, NY 13202

REGISTERED AGENT  
-----



FILER	FEES		PAYMENTS	
		60.00		60.00
RICHARD F. TAYLOR, JR., ESQ.	FILING :	60.00	CASH :	0.00
ONE LINCOLN CENTER, SUITE 710	TAX :	0.00	CHECK :	60.00
	CERT :	0.00	BILLED:	0.00
SYRACUSE, NY 13202	COPIES :	0.00		
	HANDLING:	0.00	REFUND:	0.00

-----  
1025 (11/89)

CERTIFICATE OF AMENDMENT

TO

CERTIFICATE OF INCORPORATION

OF

KELHORN COMMUNICATIONS INC.

UNDER SECTION 805 OF THE BUSINESS CORPORATION LAW

The undersigned, being President of Kelhorn Communications Inc., does hereby certify and set forth:

1. The name of the corporation (hereinafter called the "Corporation") is KELHORN COMMUNICATIONS INC.
2. The Certificate of Incorporation of the Corporation was filed by the Department of State on the 2nd Day of December, 1991.
3. The Certificate of Incorporation of the Corporation is hereby amended in the following respects:

(a) Paragraph (1) which sets forth the name of the Corporation is deleted and the following new paragraph (1) is substituted in lieu thereof:

- (1) The name of the Corporation is:

KCI LONG DISTANCE INC.

(b) Paragraph (5) of said certificate of incorporation sets forth, in part, the post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him. Such address is revised to read as follows:

c/o Richard F. Taylor, Jr.  
Attorney at Law  
One Lincoln Center, Suite 710  
Syracuse, NY 13202

- (c) A new paragraph (6) is hereby added to said certificate of incorporation as follows:

The personal liability of the directors of the Corporation is hereby eliminated to the fullest

8  
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4  
2  
2  
4  
2

extent permitted by the provisions of paragraph (b) of Section 402 of the Business Corporation Law, as the same may be amended and supplemented.

(d) A new paragraph (7) is hereby added to said certificate of incorporation as follows:

The Corporation shall, to the fullest extent permitted by Article 7 of the Business Corporation Law, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said Article from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said Article, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which any person may be entitled under an Bylaw, resolution of shareholders, resolution of directors, agreement, or otherwise, as permitted by said Article, as to action in any capacity in which he/she served at the request of the Corporation, and shall continue as to any person who has ceased to act in any such capacity, and shall inure to the benefit of the heirs, executors, and administrators of any such person.

4. This amendment to the certificate of incorporation of the Corporation was authorized by unanimous written consent of the directors of the Corporation on November 24, 1992 pursuant to Section 708 of the New York Business Corporation Law and the unanimous written consent of the shareholders of the Corporation on November 24, 1992 pursuant to Section 615 of the New York Business Corporation Law.

IN WITNESS WHEREOF, the undersigned have executed and signed this certificate this 24th day of November, 1992.

\_\_\_\_\_  
Vernon Berghorn  
President

\_\_\_\_\_  
Brian Kelly  
Secretary

\*\*\*\*\*

Verification of Signer of Certificate of Amendment  
to Certificate of Incorporation

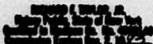
STATE OF NEW YORK            )  
                                  ) SS.:  
COUNTY OF ONONDAGA        )

Vernon Berghorn, being duly sworn, deposes and says that he is the person who signed the foregoing Certificate of Amendment to Certificate of Incorporation; that he signed the same in the capacity set opposite or beneath his signature thereon; that he has read the foregoing Certificate of Amendment to Certificate of Incorporation and knows the contents thereof; and that the statements contained therein are true to his own knowledge.

  
Vernon Berghorn, President

Subscribed and sworn to  
before me on November 24, 1992.

  
Notary Public



CERTIFICATE OF AMENDMENT TO  
CERTIFICATE OF INCORPORATION  
OF

KELHORN COMMUNICATIONS INC.

(Under Section 805 of the Business Corporation Law)

After filing, please return to:

Richard F. Taylor, Jr., Esq.  
One Lincoln Center, Suite 710  
Syracuse, New York 13202

Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

162 WASHINGTON AVENUE  
ALBANY, NY 12231

FILING RECEIPT

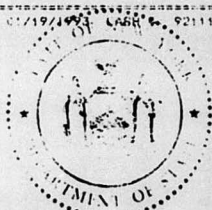
CORPORATION NAME KCI LONG DISTANCE INC.

DOCUMENT TYPE NAME RESERVATION (NEW) (DOM. BUSINESS)  
SERVICE COMPANY PRENTICE-HALL CORPORATION SYSTEM, INC.  
APPLICANT NAME RICHARD F. TAYLOR, JR. ATTY.

FILED: 11/17/1992 DURATION: 01/19/1993 CASH: 921117000491 FILE #: 92111700044

ADDRESS FOR PROCESS

REGISTERED AGENT



SUBMIT RECEIPT WHEN FILING CERTIFICATE

FILER	FEES	45.00	PAYMENTS	45.00
RICHARD F. TAYLOR, JR. ATTY.	FILING	20.00	CASH	0.00
ONE LINCOLN CENTER	TAX	0.00	CHECK	0.00
STE. 719	CERT	0.00	FILED	45.00
SYRACUSE, NY 13202	COPIES	0.00		
	HANDLING	25.00	REFUND	0.00

1025 (11/89)

RICHARD F. TAYLOR, JR.  
ATTORNEY AT LAW  
ONE LINCOLN CENTER  
SYRACUSE, NY 13202

NORSTAR BANK  
CLINTON SQUARE OFFICE  
SYRACUSE, NEW YORK 13211-4821  
30-71/24/2713

1680

12/28/92

PAY TO THE ORDER OF N.Y. Secretary of State

\*\*\*\*\*60.00

Sixty and 00/100\*\*\*\*\*

DOLLARS

The Department of State  
Division of Corporations  
162 Washington Avenue  
Albany, New York 12231

KCI Long Distance Inc.

.MO

⑈001680⑈ ⑆221371246⑆ 4501 004611⑈

162 WASHINGTON AVE.  
ALBANY, NY 12231

## FILING RECEIPT

CORPORATION NAME: KELHORN COMMUNICATIONS INC.

DOCUMENT TYPE INCORPORATION (DOM. BUSINESS)

COUNTY ONGO

SERVICE COMPANY INFOSEARCH, INC.

D 12/02/1991 DURATION PERPETUAL CASH : 911202000132 FILM : 911202000

DRESS FOR PROCESS

10 RICHARD A. RUSSELL, ESQ.  
10 WALTON STREET, 4TH FLOOR  
RACUSE, NY 13202

**REGISTERED AGENT**



STOCK 200 HPV

- ILER

## FEEES

160.00

## PAYMENTS

160.00

RICHARD A. RUSSELL, ESQ.  
20 WALTON ST., 4TH FLOOR

**FILING**

125.00

CASH

0.05

TAX

10.00

## CHECK

E. E.

**CERT**

0.00  
0.00

**BILLED**

180.0%

## HANDLING

23.00

REFUND

0.25

1025 (11/89)

014452248  
**CERTIFICATE OF INCORPORATION**

**OF**

**KELHORN COMMUNICATIONS INC.**

Under Section 402 of the Business Corporation Law

**FILER:**

Richard A. Russell, Esq.  
120 Walton Street, 4th Floor  
Syracuse, NY 13202  
Reference # R3391-857175

CERTIFICATE OF INCORPORATION

OF

KELHORN COMMUNICATIONS INC.

Under Section 402 of the Business Corporation Law

IT IS HEREBY CERTIFIED THAT:

- (1) The name of the Corporation is:

KELHORN COMMUNICATIONS INC.

(2) The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized pursuant to the Business Corporation Law of the State of New York. The Corporation is not to engage in any act or activity requiring any consents or approvals by law without such consent or approval first being obtained.

For the accomplishment of the aforesaid purposes, and in furtherance thereof, the Corporation shall have, and may exercise, all of the powers conferred by the Business Corporation Law upon corporations formed thereunder, subject to any limitations contained in Article 2 of said law or in accordance with the provisions of any other statute of the State of New York.

(3) The number of shares which the Corporation shall have the authority to issue is 200 Shares at no par value.

(4) The principal office of the corporation is to be located in the County of Onondaga, State of New York.

(5) The Secretary of State is designated as agent of the Corporation upon whom process against it may be served. The post office address to which the Secretary of State shall mail a copy of any process against the Corporation served upon him is:

The undersigned incorporator is of the age of eighteen years or older.

Joan Terry  
Joan Terry, Incorporator

500 Central Avenue, Albany, NY 12206  
Address

0144-2251

**EXHIBIT B**  
**CERTIFICATE OF AUTHORITY**

# State of South Dakota

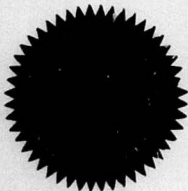


## OFFICE OF THE SECRETARY OF STATE

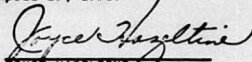
### CERTIFICATE OF AUTHORITY

I, JOYCE HAZELTINE, Secretary of State of the State of South Dakota, hereby certify that the Application for a Certificate of Authority of KCI LONG DISTANCE, INC. (NY) to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Corporation Acts, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issue this Certificate of Authority and attach hereto a duplicate of the application to transact business in this state under the name of KCI LONG DISTANCE, INC.



IN TESTIMONY WHEREOF, I have  
hereunto set my hand and  
affixed the Great Seal of the  
State of South Dakota, at  
Pierre, the Capital, this  
April 29, 1996.

  
JOYCE HAZELTINE  
Secretary of State

SECRETARY OF STATE  
STATE CAPITOL  
500 E. CAPITOL  
PIERRE, S.D. 57501-5077  
605-773-4845  
FAX (605) 773-4550

APPLICATION FOR CERTIFICATE OF AUTHORITY

RECEIVED

APR 29 1996

S.D. SEC. OF STATE

Pursuant to the provisions of SDCL 47-8-7, the undersigned corporation hereby applies for a Certificate of Authority to transact business in the State of South Dakota and for that purpose submits the following statement:

(1) The name of the corporation is KCI Long Distance, Inc.  
(Exact corporate name)

(2) If the name of the corporation does not contain the word "corporation", "company", "incorporated" or "limited" or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state is

(3) State where incorporated New York Federal Taxpayer ID# 6-1406403

(4) The date of its incorporation is December 2, 1991 and the period of its duration is Perpetual

(5) The address of its principal office in the state or country under the laws of which it is incorporated is  
5784 Widewaters Parkway, Syracuse, New York Zip Code 13214

(6) The street address, or a statement that there is no street address, of its proposed registered office in the State of South Dakota is c/o C T Corporation System, 319 S. Coteau Zip 57501  
and the name of its proposed registered agent in the State of South Dakota at that address is  
C T Corporation System

(7) The purposes which it proposes to pursue in the transaction of business in the State of South Dakota are: The resale of long distance services to residents and businesses

(8) The names and respective addresses of its directors and officers are:

Name	Officer Title	Street Address	City	State	Zip
<u>Kevin J. Kelly</u>	<u>President and</u>	<u>5784 Widewaters Parkway, Syracuse, New</u>			
	<u>Director</u>	<u>York 13214</u>			
<u>Brian P. Kelly</u>	<u>Chief Executive</u>	<u>5784 Widewaters Parkway, Syracuse, New</u>			
	<u>Officer and</u>	<u>York 13214</u>			
<u>William M. Kelly, Jr.</u>	<u>Vice President,</u>	<u>5784 Widewaters Parkway, Syracuse, New</u>			
	<u>Secretary</u>	<u>York 13214</u>			
<u>William Jackson</u>	<u>Director</u>	<u>5784 Widewaters Parkway, Syracuse, New</u>			
		<u>York 13214</u>			
<u>Frank Harrigan</u>	<u>Director</u>	<u>5784 Widewaters Parkway, Syracuse, New</u>			
		<u>York 13214</u>			

(9) The aggregate number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class is:

Number of shares	Class	Series	Par value per share or statement that shares are without par value
<u>150</u>	<u>Class A</u>	<u>Class A</u>	<u>No par value</u>
<u>50</u>	<u>Class B</u>	<u>Class B</u>	<u>No par value</u>

(10) The aggregate number of it issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, is:

Number of shares	Class	Series	Par value per share or statement that shares are without par value
105	Class A	Class A	No par value
42	Class B	Class B	No par value

(11) The amount of its stated capital is \$ 14,700

(12) This application is accompanied by a CERTIFICATE OF FACT duly acknowledged by the secretary of state or other officer having custody of corporate records in the state or country under whose laws it is

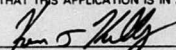
(13) That such corporation shall not directly or indirectly combine or make any contract with any incorporated company, foreign or domestic, through their stockholders or the trustees or assigns of such stockholders, or with any copartnership or association of persons, or in any manner whatever to fix the prices, limit the production or regulate the transportation of any product or commodity so as to prevent competition in such prices, production or transportation or to establish excessive prices therefor.

(14) That such corporation, as a consideration of its being permitted to begin or continue doing business within the State of South Dakota, will comply with all the laws of the said State with regard to foreign corporations.

The application must be signed by the chairman of the board of directors, or by the president or by another officer.

I DECLARE AND AFFIRM UNDER THE PENALTY OF PERJURY THAT THIS APPLICATION IS IN ALL THINGS, TRUE AND CORRECT.

Dated April 19 1996

  
(Signature) Kevin J. Kelly

President  
(Title)

State of New York  
County of Onondaga

On this 19<sup>th</sup> day of April, 1996, before me Erin M. Brown personally appeared Kevin J. Kelly, known to me, or proved to me, to be the President of the corporation that is described in and that executed the within instrument and acknowledged to me that such corporation executed same.

My commission expires: 2/12/98

  
(Notary Public)

Notarial Seal

ERIN M. BROWN  
NOTARY PUBLIC, STATE OF NEW YORK  
\*\*\*\*\* QUALIFIED IN ONONDAGA COUNTY \*\*\*\*\*  
COMMISSION EXPIRES 02/12/98

The consent of Appointment below must be signed by the registered agent

### CONSENT OF APPOINTMENT BY THE REGISTERED AGENT

I, C T Corporation System, hereby give my consent to serve as the  
(name of registered agent)

registered agent for KCI Long Distance, Inc.  
(corporate name)

Dated 4/24 19 96

C T CORPORATION SYSTEM  
By   
(signature of registered agent)  
DAN WAYNE CUMMINGS

State of New York  
Department of State

ss:

RECEIVED

APR 18 1996

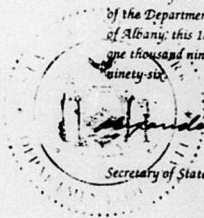
DEPARTMENT OF STATE

I hereby certify, that the certificate of incorporation of KCI LONG DISTANCE INC. was filed on 12/02/1991, under the name of KELHORN COMMUNICATIONS INC., with perpetual duration, and that I have made a diligent examination of the index of corporation papers filed in this Department for a certificate, order, or record of a dissolution, and upon such examination, I find no such certificate, order or record, and that so far as indicated by the records of this Department, such corporation is a subsisting corporation.

A Certificate of Amendment KELHORN COMMUNICATIONS INC., changing name to KCI LONG DISTANCE INC., was filed 01/05/1993.

\*\*\*

Witness my hand and the official seal  
of the Department of State at the City  
of Albany, this 18th day of April  
one thousand nine hundred and  
ninety-six.



Secretary of State

199604190201 59



ALICE GARCIA VELAZQUEZ, OF MEXICO

APR 11 1971

PLAN OF PAYMENT CHECK  
CHECK NO. 00115-01

DATE 4/11/71  
AMOUNT \$ 4.00  
B. STREDA

OT CORPORATION SYSTEM  
1633 BROADWAY  
NEW YORK NY 10019-

1000 BROADWAY, 10019 NEW YORK, N.Y.  
NOT LONG DISTANCE, INC.

TRANSACTION DESCRIPTION

AMOUNT

CERTIFICATE OF AUTHORITY .....S 40.00

# Secretary of State

State Capitol, Ste 204  
500 East Capitol Avenue  
Pierre, South Dakota  
57501-5070  
TDD (605) 773-5010



JOYCE HAZELTINE  
Secretary of State

TOM LECHEY  
Deputy

April 29, 1996

C T Corporation system  
Mr. Richard Goldstein  
1633 Broadway  
New York NY 10019

Re: KCI Long Distance, Inc.

Dear Mr. Goldstein:

We have received the Application for Certificate of Authority on behalf of the above named corporation together with the \$40 filing fee.

The application has been approved and filed. Enclosed is a Certificate of Authority attached to the duplicate along with our receipt.

SDCL 47-9-3 requires the filing of a corporate annual report with our office between the anniversary date of qualification and prior to the first day of the second month following. The first report is due the year following qualification. An annual report form will be mailed to the corporation for timely filing. Please contact our office if the corporate address changes or if the form is not received.

If this office can be of any assistance in the future, please feel free to contact us.

Sincerely,

Joyce Hazeltine  
Secretary of State

JH/BKW: C  
Enclosure

**EXHIBIT C**

**TARIFF**

**KCI LONG DISTANCE, INC.**

Tariff No. 1  
Original Page No. 1

---

**South Dakota Telecommunications Service**

Regulations, rates, and charges applicable  
to intrastate communications service furnished  
by KCI Long Distance, Inc. ("KCI")

Service is furnished by means of wire,  
terrestrial microwave radio, optical fibers,  
satellite circuits or a combination thereof.

Tariff No. 1

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**CHECK SHEET**

The title page and pages 1-44 inclusive of this Tariff are effective as of the date shown. Original and revised pages, as named below, comprise all changes from the original Tariff in effect on the date indicated.

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Issued by:Kevin J. Kelly, President; KCI Long Distance, Inc., 5784 Widewaters Parkway, Dewitt, NY  
13214, (315) 449-0388

**KCI LONG DISTANCE, INC.**

Tariff No. 1  
Original Page No. 5

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**CHECK SHEET (CONT'D)**

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36	Original
37	Original
38	Original
39	Original
40	Original
41	Original
42	Original
43	Original
44	Original

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Issued by:

Kevin J. Kelly, President; KCI Long Distance, Inc., 5784 Widewaters Parkway, Dewitt, NY  
13214, (315) 449-0388

---

CONCURRING, CONNECTING AND OTHER PARTICIPATING CARRIERS

CONCURRING CARRIERS:

No Concurring Carriers

CONNECTING CARRIERS:

No Connecting Carriers

OTHER PARTICIPATING CARRIERS

No Participating Carriers

---

Issued by:

Kevin J. Kelly, President; KCI Long Distance, Inc., 5784 Widewaters Parkway, Dewitt, NY  
13214, (315) 449-0388

---

EXPLANATION OF SYMBOLS

- (C) To signify changed regulation
- (D) To signify discontinued material
- (I) To signify rate or charge increase
- (M) To signify material relocated without change in text or rate
- (N) To signify new material
- (R) To signify reduction
- (S) To signify reissued material
- (T) To signify a change in text but no change in rate or regulation
- (Z) To signify a correction

---

APPLICABILITY

This Tariff contains the regulations and rates applicable to the provision of intrastate telecommunications services by Telergy (hereinafter "KCI" or "Company") between and among domestic points within the United States as specified herein.

**I. DEFINITIONS**

For the purpose of this Tariff, the following definitions will apply:

**Access Coordination**

Provides for the design, ordering, installation, coordination, pre-service testing, service turn-up and maintenance on a Company provided Local Access Channel.

**Administrative Change**

A change in Customer billing address or contact name.

**Alternate Access**

Alternate Access is a form of Local Access except that the provider of the Service is an entity, other than the Local Exchange Carrier, authorized or permitted to provide such Service. The charges for Alternate Access may be subject to private agreement rather than published or special Tariff if permitted by applicable governmental rules.

**Application for Service**

A standard Company order form which includes all pertinent billing, technical and other descriptive information which will enable the Company to provide a communication Service as required.

**ASR**

ASR (Access Service Request) means an order placed with a Local Access Provider for Local Access.

**Authorization Code**

A numerical sequence which enables a customer to access the carrier and which is used by the Company to identify the customer for billing purposes.

**Authorized User**

A person, firm, corporation or other entity that either is authorized by the Customer to receive or send communications or is placed in a position by the Customer, either through acts or omissions, to send or receive communications.

**Bandwidth**

The total frequency band, in hertz, allocated for a channel.

---

I. DEFINITIONS (Cont'd)

Bill Date

The date on which billing information is compiled and sent to the Customer.

Call

A completed connection between the Calling and Called Stations.

Called Station

The telephone number called.

Calling Station

The telephone number from which a Call originates.

Cancellation of Order

A Customer initiated request to discontinue processing a Service order, either in part or in its entirety, prior to its completion. Cancellation charges will be assessed for each Circuit-end or Dedicated Access line canceled from an order prior to its completion by KCI, under the following circumstances: (1) if the LEC has confirmed in writing to KCI that the Circuit-end or Dedicated Access line will be installed; or (2) if KCI has already submitted facilities orders to an interconnecting telephone company.

Channel or Circuit

A dedicated communications path between two or more points having a bandwidth or Transmission Speed specified in this Tariff and selected by a Customer.

Company

KCI Long Distance, Inc. ("KCI").

Customer

The person, firm, corporation or governmental unit which orders Service -- either for its own use, as a resale carrier or as a non-profit manager of a sharing group -- and which is responsible for the payment of charges and for compliance with Company Tariff regulations. The term Customer also includes an entity that remains pre-subscribed to the Company Service after its account(s) are removed from the Company's billing system, subsequently continues to use the Company's network, and is billed by a local exchange carrier for such use, or otherwise uses Service for which no other Customer is obligated to compensate Company.

I. DEFINITIONS (Cont'd)

Customer Premises/Customer's Premises

Locations designated by a Customer where Service is originated/terminated whether for its own communications needs or for the use of its resale customers.

Customer Provided Equipment

Telecommunications terminal equipment that is located at the Customer's residence or place of business.

DCS

DCS means Digital Cross-Connect System.

Debit Card

Debit Card means a pre-paid calling card product that allows the holder to obtain long distance telephone service equal to the unit value of the card rounded in whole numbers.

Dedicated Access/Special Access

Dedicated Local Access between the Customer's Premises or serving wire center and the Company's Point-of-Presence for origination or termination of Calls.

DS-0

DS-0 means Digital Signal Level 0 Service and is a 64 Kbps signal.

DS-1

DS-1 means Digital Signal Level 1 Service and is a 1.544 Mbps signal.

DS-0 with VF Access

DS-0 Service with VF Local Access facilities provides for the transmission of analog voice and/or data within 300 Hz to 3000 Hz frequency range.

DS-0 with DDS Access

DS-0 Service with DDS Local Access facilities provides for the transmission of digital data at speeds of 2.4, 4.8, 9.6 or 56 Kbps.

Due Date

The Due Date is the date on which payment is due.

---

**I. DEFINITIONS (Cont'd)****Exemption Certificate**

A written Customer designation which certifies that its dedicated facility should be exempted from the monthly Special Access Surcharge because the Service:

- (a) terminates on a device incapable of connecting KCI's network with the local exchange network; or
- (b) is associated with a Switched Access Service that is subject to Carrier Common Line charges; or
- (c) constitutes a Private Line facility used for Telex Service or radio or television transmissions, or,
- (d) is an open-end termination in a Local Exchange Carrier's switch of an FX line; or
- (e) is a termination that could not make use of a Local Exchange Carrier's common lines.

**Expedite**

A Service order initiated at the request of the Customer that is processed in a time period shorter than the KCI standard Service interval.

**FCC**

Federal Communications Commission.

**Individual Case Basis (ICB)**

Individual Case Basis (ICB) determinations involve situations where complex Customer-specific arrangements are required to satisfactorily serve the Customer. The nature of such Service requirements makes it difficult or impossible to establish general Tariff provisions for such circumstances. When it becomes possible to determine specific terms and conditions for such offerings, they will be offered pursuant to such terms and conditions.

**Installation**

The connection of a Circuit, Dedicated Access line, or port for new, changed or an additional Service.

**Interexchange Service**

Interexchange Service means that portion of a communications channel between a KCI-designated Point-of-Presence in one exchange and a Point-of-Presence in another exchange.

I. DEFINITIONS (Cont'd)

Interruption

A condition whereby the Service or a portion thereof is inoperative, beginning at the time of notice by the Customer to KCI that such Service is inoperative and ending at the time of restoration.

Kbps

Kilobits per second.

LATA (Local Access Transport Area)

A geographical area established for the provision and administration of communications Service of a Regional Bell Operating Company.

LDU

LDU is the long distance usage less bad debt, fraud and any other amounts due KCI.

Local Access

Local Access means the Service between a Customer Premises and an KCI designated Point-of-Presence.

Local Access Provider

Local Access Provider means an entity providing Local Access.

Local Exchange Carrier (LEC)

The local telephone utility that provides local telephone local exchange and access services.

Mbps

Megabits per second.

Multiplexing

Multiplexing, or "muxing," is the sequential combining of lower bit rate Private Line Services onto a higher bit rate Private Line Service for more efficient facility capacity usage or vice versa.

NA

Not available

---

I. DEFINITIONS (Cont'd)

N/C

No charge

Non-recurring Charges

Non-recurring Charges are one-time charges.

Payment Method

The manner in which the Customer designates as the means of billing charges for Calls using the Company's Services.

Physical Change

The modification of an existing Circuit, Dedicated Access line or port, at the request of the Customer, requiring some Physical Change or retermination.

PIN

PIN shall mean the unique authorization code or number assigned to each Debit Card.

Point-of-Presence (POP)

A Company designated location where a facility is maintained for the purpose of providing access to its Service.

Primary Route

The route which, in the absence of Customer-designated routing or temporary re-routing, would be used by KCI in the provision of Service.

Private Line

A dedicated transmission channel furnished to a customer without intermediate switching arrangements for full-time customer use.

Private Line Service

A dedicated full-time transmission Service utilizing dedicated access arrangements.

---

I. DEFINITIONS (Cont'd)

Rate Center

A specified geographical location used for determining mileage measurements.

Requested Service Date

The Requested Service Date is the date requested by the Customer for commencement of Service and agreed to by KCI.

Restore

To make Service operative following an interruption by repair, reassignment, re-routing, substitution of component parts, or otherwise, as determined by the carrier(s) involved.

Route Diversity

Two channels which are furnished partially or entirely over two physically separate routes.

RVD

RVD is the referral volume discount paid to a company or individual who qualifies for credit from long distance customers referred to KCI. The discount is equal to 2% of the referred qualified customer(s) billed long distance revenue less bad debt, fraud, taxes and service charges.

Service

Service means any or all Service(s) provided pursuant to this Tariff.

Service Commitment Period

The term elected by the Customer and stated on the Service order during which KCI will provide the Services subscribed to by the Customer.

Special Promotional Offerings

Special trial offerings, discounts, or modifications of its regular Service offerings which the Company may, from time to time, offer to its Customers for a particular Service. Such offerings may be limited to certain dates, times, and locations.

Start of Service Date

The Requested Service Date or the date Service first is made available by KCI whichever is later.

I. DEFINITIONS (Cont'd)

Tariff

The current Intrastate Services Tariff and effective revisions thereto filed by KCI with the Public Service Commission.

Transmission Speed

Data transmission speed or rate, in bits per seconds (bps).

Travel Card

A card issued by the Company which enables a KCI Customer to access the KCI network from any touch tone phone by dialing KCI's access number. Services charged to the KCI Travel Card will be billed to the Customer's established KCI account.

Twelve O'clock

In designating time, 12:00 a.m. refers to 12:00 Midnight and 12:00 p.m. refers to 12:00 Noon.

Two-way Conversation

A Two-way Conversation is a telephone conversation between or among two or more parties.

Unit

One Unit equals one (1) minute of long distance telephone service in the 48 contiguous states of the U.S.

VF

VF is voice frequency or voice-grade Service designed for private-line Service. Normal transmission is in the 300 hertz to 3000 hertz frequency band.

---

**II. RULES AND REGULATIONS****1. Description and Limitations of Services**

- 01 Services provided pursuant to this Tariff may be utilized only for the transmission of communications by Customers consistent with the terms of this Tariff the rules and regulations of the FCC and the requirements of the Communications Act of 1934, as amended.
- 02 The Company may require a Customer to sign an application form and to establish credit worthiness as a condition precedent to the initial establishment of Service. The Application shall state the date on which Service shall begin and the points between which Service is to be provided, the type of facilities required, and any special arrangements related thereto.
- 03 Any member of the general public (including any natural person or legally organized entity such as a corporation, partnership, or governmental body) is entitled to obtain Service under this Tariff, provided that KCI reserves the right to deny Service: (A) to any Customer that, in KCI's reasonable opinion, presents an undue risk of nonpayment and refuses to comply with the deposit requirements set forth in Section II.7.03, (B) in circumstances in which KCI has reason to believe that the use of the Service would violate the provisions of this Tariff or any applicable law or if any applicable law restricts or prohibits provision of the Service, or (C) if insufficient facilities are available to provide the Service (in such cases KCI shall take reasonable efforts to accommodate the needs of all potential Customers by means of facility improvements or purchases of capacity, if such efforts will, in KCI's opinion, provide KCI with a reasonable return on its expenditures), but only for so long as such unavailability exists.
- 04 KCI, when acting at the Customer's request and as its authorized agent, will make reasonable efforts to arrange for Service requirements, such as special routing, Diversity, Alternate Access, or circuit conditioning.
- 05 Service is offered in equal access exchanges subject to the availability of facilities and the provisions of this Tariff. KCI reserves the right to refuse to provide Service to or from any location where the necessary facilities and/or equipment are not available.
- 06 Service may be discontinued upon written notice to the Customer if:
  - a. the Customer is using the Service in violation of this Tariff; or
  - b. the Customer is using the Service in violation of the law or federal, state or local regulation, rules, orders or policy.
- 07 Service begins on the date that billing becomes effective and is provided on the basis of a minimum period of at least one month, 24 hours per day. For the purposes of computing charges in this Tariff, a month is considered to have 30 days.

---

**II. RULES AND REGULATIONS (cont'd)**

- .08 Service will be provided until canceled by the Customer. The Customer may cancel service at any time, but must do so with advance written notice to KCI.
- .09 Nothing herein, or in any other provision of this Tariff, or in any marketing materials issued by the Company shall give any person any ownership, interest, or proprietary right in any code or 800 number issued by the Company to its Customers.
- .10 The Company reserves the right to discontinue furnishing Services or billing options, upon written notice, when necessitated by conditions beyond its control. Conditions beyond the Company's control include, but are not limited to, a Customer's having Call volume or a calling pattern that, in the Company's opinion, is likely to be detrimental to the network or the Company's provision of Service or that results, or may result, in network blockage or other Service degradation which may adversely affect Service to the calling party, the Customer, or other Customers of the Company.
- .11 Service may be discontinued by the Company, without notice to the Customer, by blocking traffic to or from certain cities, or NXX exchanges, or by blocking Calls using certain Customer authorization codes such as Calling Card codes, when the Company deems it necessary to take such action to prevent unlawful use of its Service, to prevent Service degradation to other customers of the Company, and to ensure the integrity and reliability of the network. The Company will restore Service as soon as it can be provided without undue risk.
- .12 Except as otherwise provided in this Tariff or as specified in writing by the party entitled to receive Service, notices may be given orally or in writing to the persons whose names and business addresses appear on the executed Service order and the effective date of any notice shall be the date of delivery of such notice, not the date of mailing. By written notice, KCI or the Customer may change the party to receive notice and/or the address to which such notice is to be delivered. In the event no Customer or KCI address is provided in the executed Service order, notice shall be given to the last known business address of the Customer or, as appropriate.

**2. Other Terms and Conditions**

- .01 The name(s) of the Customer(s) desiring to use the Service must be stipulated in the application for Service.
- .02 The Customer agrees to operate the Company provided equipment in accordance with instructions of the Company or the Company's agent. Failure to do so will void the Company liability for interruption of Service and may make Customer responsible for damage to equipment pursuant to Section II.2.03 below.

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**II. RULES AND REGULATIONS (cont'd)**

- 03 Customer agrees to return to the Company all Company-provided equipment delivered to Customer within five (5) days of termination of the Service in connection with which the equipment was used. Said equipment shall be in the same condition as when delivered to Customer, normal wear and tear only excepted. Customer shall reimburse the Company, upon demand, for any costs incurred by the Company due to Customer's failure to comply with this provision.
- 04 A Customer shall not use any service mark or trademark of the Company or refer to the Company in connection with any product, equipment, promotion, or publication of the Customer without prior written approval of the Company.
- 05 In the event suit is brought or an attorney is retained by the Company to enforce the terms of this Tariff, the Company shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith. In any such proceeding, the amount of collection costs (including attorneys' fees) due the carrier will be determined by the Court.
- 06 The provision of Service will not create a partnership or joint venture between the Company and the Customer nor result in joint Service offerings to their respective Customers.
- 07 The rate or volume discount level applicable to a Customer for a particular Service or Services shall be the rate or volume discount level in effect at the beginning of the monthly billing period applicable to the Customer for the particular Service or Services. When a Service is subject to a minimum monthly charge, account charge, port charge or other recurring charge or Non-recurring Charge for intrastate Service, only one such charge shall apply per account and that charge shall be the intrastate charge. In the event that Service was provided for less than a month, monthly recurring charges will be pro-rated.
- 08 Service requested by Customer and to be provided pursuant to this Tariff shall be requested on KCI Service Order forms in effect from time to time or Customer's forms if such forms are accepted in writing by an authorized headquarters representative of KCI (collectively referred to as "Service Orders").
- 09 If an entity other than the Company (e.g., another carrier or a supplier) imposes charges on the Company in connection with a Service that entity's charges will be passed through to the Customer.

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**II. RULES AND REGULATIONS (cont'd)**

- .10 The Service Commitment Period for any Service shall be established by the Service Order relevant thereto and commence on the Start of Service Date. Upon expiration, each Service Commitment Period for such Service shall automatically be extended subject to written notice of termination by either KCI or Customer as of a date not less than thirty (30) days after delivery of said notice to the other. The charges for Interexchange Service during any such extension shall not exceed the then current KCI month-to-month charges applicable to such Service.

**3. Liability**

- .01 Except as provided otherwise in this Tariff, the Company shall not be liable to Customer or any other person, firm or entity for any failure of performance hereunder if such failure is due to any cause or causes beyond the reasonable control of the Company. Such causes shall include, without limitation, acts of God, fire, explosion, vandalism, cable cut, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States government or of any other government or of any civil or military authority, national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, preemption of existing Services to restore service in compliance with Part 64, Subpart D, Appendix A, of the FCC's Rules and Regulations, or circumstances described in paragraphs 1.03 and 1.10 of this Section II.
- .02 With respect to the Services contained herein and except as otherwise provided herein, the Company's liability shall not exceed an amount equal to the charge applicable to a one minute Call to the Called Station at the time the affected Call was made. If the initial minute rate is higher than the additional minute rate, the higher rate shall apply. For those Services with monthly recurring charges, the Company's liability is limited to an amount equal to the proportionate monthly recurring charges for the period during which Service was affected.
- .03 The Company is not liable for any act or omission of any other company or companies (including any Company affiliate that is a participating or concurring carrier) furnishing a portion of the Service or facilities, equipment, or Services associated with such Service.
- .04 The Customer is responsible for taking all necessary legal steps for interconnecting the Customer provided terminal equipment with the Company facilities. The Customer shall ensure that the signals emitted into the Company's network do not damage Company equipment, injure personnel or degrade Service to other Customers. The Customer is responsible for securing all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In addition, the customer shall comply with applicable LEC signal power limitations.

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II. RULES AND REGULATIONS (cont'd)

- .05 The Company may rely on Local Exchange Carriers or other third parties for the performance of other Services such as Local Access. Upon Customer request and execution and delivery of appropriate authorizing documents, the Company may act as agent for Customer in obtaining such other Services. Customer's liability for charges hereunder shall not be reduced by untimely installation or non-operation of Customer provided facilities and equipment.
- .06 The failure to give notice of default, to enforce or insist upon compliance with any of the terms or conditions herein, the waiver of any term or conditions herein, or the granting of an extension of time for performance by the Company or the Customer shall not constitute the permanent waiver of any term or condition herein. Each of the provisions shall remain at all times in full force and effect until modified in writing.
- .07 The Company shall not be liable to the Customer or any other person, firm or entity in any respect whatsoever as a result of mistakes, accidents, errors, omissions, interruptions, delays, or defects in Service (collectively "Defects"). Defects caused by or contributed to, directly or indirectly, by act or omission of Customer or its customers, affiliates, agents, representatives, invitees, licensees, successors or assigns or which arise from or are caused by the use of facilities or equipment of Customer or related parties shall not result in the imposition of any liability whatsoever upon the Company, and Customer shall pay to the Company any reasonable costs, expenses, damages, fees or penalties incurred by the Company as a result thereof, including costs of Local Access Providers' labor and materials. In addition, all or a portion of the Service may be provided over facilities of third parties, and the Company shall not be liable to Customer or any other person, firm or entity in any respect whatsoever arising out of Defects caused by such third parties. THE COMPANY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, PUNITIVE OR ANY OTHER DAMAGES, OR BUSINESS INTERRUPTION, FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF ANY DEFECTS OR ANY OTHER CAUSE. THE COMPANY'S LIABILITY, IF ANY, WITH REGARD TO THE DELAYED INSTALLATION OF THE COMPANY'S FACILITIES OR COMMENCEMENT OF SERVICE SHALL NOT EXCEED \$1,000. THIS WARRANTY AND THESE REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN THE EVENT OF AN INTERRUPTION IN SERVICE OR ANY DEFECT IN THE SERVICE WHATSOEVER, NEITHER KCI NOR ANY AFFILIATED OR UNAFFILIATED THIRD PARTY PROVIDER OR OPERATOR OF FACILITIES EMPLOYED IN THE PROVISION OF THE SERVICE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER.

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**II. RULES AND REGULATIONS (cont'd)**

- .08 With respect to the routing of Calls by KCI to public safety answering points or municipal Emergency Service providers, KCI liability, if any, will be limited to the lesser of: (a) the actual monetary damages incurred and proved by the Customer as the direct result of KCI's action, or failure to act, in routing the Call, or (b) the sum of \$1,000.00
- .09 In the event parties other than Customer (e.g., Customer's customers) shall have use of the Service directly or indirectly through Customer, then Customer agrees to forever indemnify and hold KCI and any affiliated or unaffiliated third-party provider or operator of facilities employed in provision of the Service harmless from and against any and all claims, demands, suits, actions, losses, damages, assessments or payments which may be asserted by said parties arising out of or relating to any Defects.
- .10 In the event that KCI is required to perform a Circuit redesign due to inaccurate information provided by the Customer; or, circumstances in which such costs and expenses are caused by the Customer or reasonably incurred by KCI for the benefit of the customer, the Customer is responsible for the payment of all such charges.
- .11 KCI is not liable for any defacement of or damage to, the premises of a customer resulting from the furnishing of services or the attachment of instruments, apparatus, and assorted wiring furnished by KCI on such customer's premises or by the installation or removal thereof, when such defacement or damage is not the result of KCI's negligence. No agents or employees of other participating carriers shall be deemed to be agents or employees of KCI without authorization.
- .12 The Carrier shall be indemnified and held harmless by the Customer against:
- a. claims for libel, slander, harassment, improper use of telecommunications service or facilities on or off Customer premises, infringement of copyright, unauthorized use of any trademark, trade name or service mark arising out of the material, data, information or other content transmitted over the Company's facilities;
  - b. claims for patent infringement arising from combining or connecting the Company's equipment or facilities with those of the Customer; and
  - c. all other claims arising out of any act or omission of the Customer or any person utilizing the Customer's codes, services, or facilities, with or without the consent or knowledge of the Customer.

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**II. RULES AND REGULATIONS (cont'd)****4. Cancellation of Service by a Customer**

- .01 If a Customer cancels a Service order before the Service begins, before completion of the minimum period, or before completion of some other period mutually agreed upon by the Customer and the Company, a charge will be levied upon the Customer for the non-recoverable portions of expenditures or liabilities incurred expressly on behalf of the Customer by the Company and not fully reimbursed by installation and monthly charges. If, based on a Service order by a Customer, any construction has either begun or been completed, but no Services provided, the non-recoverable costs of such construction shall be borne by the Customer. If a customer cancels a service order under a Term Plan (other than a 39 Month Term Plan) prior to the expiration of the Term, KCI will charge a cancellation charge equal to the 50% of the total remaining amount due under the contract.
- .02 Upon thirty (30) days' prior written notice, either Customer or KCI shall have the right, without cancellation charge or other liability, to cancel the affected portion of the Service, if KCI is prohibited by governmental authority from furnishing said portion, or if any material rate or term contained herein and relevant to the affected Service is substantially changed by order of the highest court of competent jurisdiction to which the matter is appeal, the Federal Communications Commission, or other local, state or federal government authority.

**5. Cancellation for Cause by the Company**

- .01 Upon nonpayment of any sum owing to the Company, or upon a violation of any of the provisions governing the furnishing of Service under this Tariff, the Company may, upon written notification to the Customer, without incurring any liability, immediately discontinue the furnishing of such Service. Customer shall be deemed to have canceled Service as of the date of such disconnection and shall be liable for any cancellation charges set forth in this Tariff.
- .02 Without incurring any liability, the Company may discontinue the furnishing of Service(s) to a Customer immediately and without notice if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or Services under the following circumstances:
- a. if the Customer refuses to furnish information to the Company regarding the Customer's credit-worthiness, its past or current use of common carrier communications Services or its planned use of Service(s);
  - b. if the Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of Customer communications Services, or its planned use of the Company Service(s);

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II. RULES AND REGULATIONS (cont'd)

- c. if the Customer states that it will not comply with a request of the Company for reasonable security for the payment for Service(s);
  - d. if the Customer has been given written notice by the Company of any past due amount (which remains unpaid in whole or in part) for any of the Company's communications Services to which the Customer either subscribes or had subscribed or used;
  - e. immediately upon written notice to the Customer of any sum thirty (30) days past due.
- .03 The discontinuance of Service(s) by the Company pursuant to this Section does not relieve the Customer of any obligations to pay the Company for charges due and owing for Service(s) furnished up to the time of discontinuance. The remedies set forth herein shall not be exclusive and the Company shall at all times be entitled to all rights available to it under either law or equity.

6. Use of Service

- .01 The Services offered herein may be used for any lawful purpose, including residential, business, governmental, or other use. There are no restrictions on sharing or resale of Services. However, the Customer remains liable for all obligations under this Tariff notwithstanding such sharing or resale and regardless of the Company's knowledge of same. **THE COMPANY SHALL HAVE NO LIABILITY TO ANY PERSON OR ENTITY OTHER THAN THE CUSTOMER AND ONLY AS SET FORTH IN SECTION II.3.** The Customer shall not use nor permit others to use the Service in a manner that could interfere with or degrade Services provided to others or that could harm the facilities or network of the Company or others.
- .02 Service furnished by the Company may be arranged for joint use or authorized use. The joint user or authorized user shall be permitted to use such Service in the same manner as the Customer, but subject to the following:
- a. One joint user or authorized user must be designated as the Customer.
  - b. All charges for the Service will be computed as if the Service were to be billed to one Customer. The joint user or authorized user which has been designated as the Customer will be billed for all components of the Service and will be responsible for all payments to the Company. In the event that the designated Customer fails to pay the Company, each joint user or authorized user shall be liable to the Company for all charges incurred as a result of its use of the Company's Service.

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**II. RULES AND REGULATIONS (cont'd)**

- 03 In addition to the other provisions in this Tariff, Customers reselling Company Services shall be responsible for all interaction and interface with their own subscribers or customers. The provision of the Service will not create a partnership or joint venture between KCI and Customer nor result in a joint communications Service offering to the Customers of either KCI or the Customer.
- 04 Service furnished by the Company shall not be used for any unlawful or fraudulent purposes.
- 05 The Customer will be billed directly by the LEC for certain Dedicated Access arrangements selected by the Customer for the provisioning of direct access arrangements. In those instances where the Company at the Customer's request may act as agent in the ordering of such arrangements, the Company will bill the Customer Local Access charges.
- 06 Any customer who obtains Service from the Company for the Customer's provision of a regulated or unregulated service to the Customer's customers, shall acquire sufficient facilities to support the Customer's service offering without exploiting the Company's Services or Facilities and without degrading the Company's Service or impairing the integrity of the Company's Network and Facilities.

**7. Payment Arrangements**

- 01 The Customer is responsible for payment of all charges for Services furnished to the Customer or its joint or authorized users. This responsibility is not changed due to any use, misuse, or abuse of the Customer's Service or Customer provided equipment by third parties, the Customer's employees, or the public.
- 02 The Company's bills are due upon receipt. Amounts not paid within 30 days from the Due Date of the invoice will be considered past due. Customers will be assessed a late fee on past due amounts in the amount of the lesser of one and one-half percent (1 1/2 %) per month or the maximum lawful rate under applicable state law. If a Customer presents an undue risk of nonpayment at any time, the Company may require that Customer to pay its bills within a specified number of days and to make such payments in cash or the equivalent of cash.

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II. RULES AND REGULATIONS (cont'd)

- .03 In determining whether a Customer presents an undue risk of nonpayment, the Company shall consider the following factors: (A) the Customer's payment history (if any) with the Company and its affiliates, (B) Customer's ability to demonstrate adequate ability to pay for the Service, (C) credit and related information provided by Customer, lawfully obtained from third parties or publicly available, and (D) information relating to Customer's management, owners and affiliates (if any). Customers who present such an undue risk may be required at any time to provide the Company a security deposit, in cash or the equivalent of cash, up to an amount equal to the applicable Installation charges, if any, and/or up to two months' actual or estimated usage charges for the Service to be provided. Such applicants or Customers may also be required, at any time, whether before or after the commencement of Service, to provide such other assurances of, or security for, the payment of the Company's charges for its Services as the Company may deem necessary, including, without limitation, advance payments for Service, third party guarantees of payment, pledges or other grants of security interests in the Customers' assets, and similar arrangements. The required deposit or other security may be increased or decreased by the Company as it deems appropriate in the light of changing conditions. In addition, the Company shall be entitled to require such an applicant or Customer to pay all its bills within a specified period of time, and to make such payments in cash or the equivalent of cash. In case of a cash deposit, simple interest at the rate of 5% per annum shall be credited or paid to the Customer while the deposit is held by the Company. At the Company's option, such deposit may be refunded to the Customer's account at any time.
- .04 Disputes with respect to charges must be presented to the Company in writing within thirty days from the date the invoice is rendered or such invoice will be deemed to be correct and binding on the Customer.
- .05 If a LEC has established or establishes a Special Access surcharge, the Company will bill the surcharge beginning on the effective date of such surcharge for Special Access arrangements presently in Service. The Company will cease billing the Special Access surcharge upon receipt of an Exemption Certificate or if the surcharge is removed by the LEC.
- .06 In the event the Company incurs fees or expenses, including attorneys' fees, in collecting, or attempting to collect, any charges owed the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

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**II. RULES AND REGULATIONS (cont'd)****8. Assignment**

The obligations set forth in this Tariff shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns, provided, however, that the Customer shall not assign or transfer its rights or obligations without the prior written consent of the company.

**9. Tax Adjustments**

- .01 All stated charges in this Tariff are computed by the Company exclusive of any federal, state, or local use, excise, gross receipts, sales or privilege taxes, duties, fees, or similar liabilities (other than general income or property taxes) whether charged to or against the Company or its Customer. Such taxes, fees, etc. shall be paid by the Customer in addition to the charges stated in this Tariff. All such taxes, duties, and fees shall each be shown as a separate line item on the Customer's monthly invoice.
- .02 A surcharge is imposed on all charges for Service originating at addresses in states which levy a gross receipts tax on KCI's operations. This surcharge is composed of a factor of the gross receipts tax and taxes imposed directly or indirectly upon KCI as measured by the gross receipts payments or revenues of intrastate access charge will be shown as a separate line item on the Customer's monthly invoice.

**10. Method for Calculation of Airline Mileage**

The airline mileage between two cities can be calculated using the Vertical (V) and Horizontal (H) coordinates of the serving wire centers associated with the Company's POP locations. The method for calculating the airline mileage is obtained by reference to AT&T's F.C.C. Tariff No. 10 according to the following formula:

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

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**II. RULES AND REGULATIONS (cont'd)**

Where V1 and H1 correspond to the V&H coordinates of City 1 and V2 and H2 correspond to the V&H coordinates of City 2.

Example:

	<u>V</u>	<u>H</u>
City 1	5004	1406
City 2	5987	3424

$$\sqrt{\frac{(5004 - 5987)^2 + (1406 - 3424)^2}{10}}$$

The result is 709.83 miles. Any fractional miles are rounded to the next higher whole number; therefore, the airline mileage for this example is 710 miles.

**11. Time of Day Rate Periods**

Time of Day Rate Periods are determined by the time of day at the location of the Calling station.

If applicable, the rate periods for KCI Direct Plans are as follows:

**Peak Rate Period:**

The Peak Rate Period shall be 7AM-7PM, Monday-Friday.

**Off-peak Rate Period**

The Off-peak Rate Period shall be from 7PM-7AM, Monday-Friday and Weekends. Off-peak rates are discounted 10% to 75% off Peak rates.

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**II. RULES AND REGULATIONS (cont'd)****12. Recognized National Holidays**

The following are Company Recognized National Holidays determined at the location of the calling station.

New Year's Day  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Day  
Christmas Day

The evening rate is used unless a lower rate normally would apply. When a Call begins in one rate period and ends in another, the rate in effect when the Call begins applies. In the event that a minute is split between two rate periods, the rate in effect at the start of that minute applies.

**13. Spec'l Customer Arrangements**

In cases where a customer requests a special or unique arrangement which may include engineering, conditioning, installation, construction, facilities, assembly, purchase or lease of facilities and/or other special Services not offered under this Tariff, the Company, at this option, may provide the requested Services. Appropriate recurring charges and/or Non-recurring Charges and other terms and conditions will be developed for the Customer for the provisioning of such arrangements.

**14. Inspection**

The Company may, upon notice, make such tests and inspections as may be necessary to determine that the requirements of this Tariff are being complied with in the Installation, operation or maintenance of Customer or the Company equipment. The Company may interrupt the Service at any time, without penalty to the Company, because of departure from any of these requirements.

**15. Testing and Adjustment**

Upon reasonable notice, the Channels provided by the Company shall be made available to the Company for such tests and adjustments as may be necessary to maintain them in satisfactory condition; no interruption allowance will be granted for the time during which such tests and adjustments are made.

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**II. RULES AND REGULATIONS (cont'd)****16. Interconnection with Other Carriers**

01. Service furnished by the Company may be connected with Services or facilities of another carrier. Such interconnection may be made at the Company POP or entrance site, at a POP of another carrier, or at the Customer Premises, joint user, or authorized user. Service furnished by the Company is not part of a joint undertaking with such other carriers.
02. Any special interface equipment or facilities necessary to achieve compatibility between the facilities of the Company and other participating carriers shall be provided at the Customer's expense. Upon the Customer's request and acting as its authorized agent, the Company will attempt to make the necessary arrangements for such interconnection.

**17. Customer Provided Equipment**

Customer Premises Circuit terminating equipment such as Channel Service Units (CSU's) and Multi-plexing equipment and any other terminal equipment such as telephone sets or systems shall be provided by the Customer and furnished and maintained at the Customer's expense, except as expressly provided otherwise in writing.

**18. Restoration of Service**

The use and restoration of Service in emergencies shall be in accordance with Part 64, Subpart D of the Federal Communications Commission's Rules and Regulations to the extent it is applicable, which specifies the priority system for such activities.

**19. Flexible Pricing**

Flexible Pricing sets minimum and maximum rates that can be charged for telephone service. The Company may change a specific rate within the range of the established minimum and maximum rates on one day's notice to customers and the Public Service Commission.

**Conditions**

- a. The Company reserves the right to change prices at any time subject to regulatory requirements by filing a revised Rate Attachment with the Commission.
- b. Individual written notice to Customers of rate changes shall be made in accordance with Commission regulations. Where there are no regulations, notification will be made in a manner appropriate to the circumstances involved.

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II. RULES AND REGULATIONS (cont'd)

- c. A rate shall not be changed unless it has been in effect for at least thirty (30) days.
- d. A customer can request that the Company disconnect service that is provided under the Flexible Pricing due to a price increase. The customer will be credited for the difference between the new price and the old price retroactive to the effective date of the price increase if the customer notifies the Company of its desire to disconnect service within 20 days of receiving notification of the price increase.

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**III. SERVICE OFFERINGS****1. Wide Area Telecommunications Services ("WATS")**

01 WATS is an intrastate high volume, bulk rate long distance service utilizing switched or dedicated access arrangements between the Customer's Premises and KCI's facilities for call origination. Call termination is completed through a combination of KCI facilities and LEC switched access arrangements.

**02 DS-O (Digital Signal Level 0) Service**

a. DS-O Service is an intrastate 64 Kbps dedicated digital Interexchange Channel Service. With analog Voice Frequency (VF) Local Access facilities, DS-O Service will support the transmission of analog voice and/or data within the frequency range of 300 - 3000 Hz.

**03 DS-1 (Digital Signal Level 1) Service**

a. DS-1 Service is a high capacity point-to-point Private Line Service designed for the simultaneous full-duplex transmission of digital signals at a nominal speed of 1.544 Mbps.

**04 Timing of Calls**

- a. Long distance usage charges are based on the actual usage of KCI's network. When the called party picks up is determined by hardware answer supervision in which the local telephone company sends a signal to the switch or the software utilizing audio tone detection. For billing purposes, calls are billed on conversation minutes and begin when called party answers and ends when the calling party hangs up. No charge will apply to incomplete calls, which include "ring busy" and "ring no answer calls," and such incomplete calls will not be knowingly charged to the Customer and, if charged in error, will be refundable to the Customer. KCI will determine that a call has been established by signal from the local telephone company.
- b. Duration of WATS calls are expressed in 6-second increments and billed in 6-second increments. All Calls are rounded to the next highest 6-second period.
- c. When answer supervision is unavailable and KCI has received a reasonable claim from the end user for a refund of KCI's charges for an uncompleted Call, KCI will reimburse the end user for the charges that KCI has billed for that Call.

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III. SERVICE OFFERINGS (cont'd)

.05 Referral Volume Discounts

Referred Volume Discounts are available under KCI Direct Plans.

- a. Customer(s) who participate in the Referral Volume Discount program can apply the discount to their long distance bill or elect to donate to a charity. The payment to charity will be made directly to KCI and recorded on customer(s) bill.
- b. Referral Volume discounts are made based on multilevel marketing plans. First level referrals are eligible for a referral discount up to 2% of LDU of the referred customer(s) net revenue.

**Example:** Customer A refers three customers with \$30 each per month in net revenue. Customer A receives a discount equal to 2% of \$90 or \$1.80 per month.

If Customer A is a business, then the business is eligible for a discount of 2% of all referred customers' eligible revenue and 2% of the revenue from customers referred by the business' referral customers.

**Example:** Business X has 200 employees and 100 associates who sign up for and receive long distance service from KCI. Some of these employees and associates refer additional customers (100 customers at \$10 per month revenue for this example) to KCI. The employees and associates average net revenue is \$10 per month. The business is entitled to 2% of the first referrals ( $300 \times \$10 \times .02 = \$60.00$ ) and 2% of the referred customers ( $100 \times \$10 \times .02 = \$20.00$ ). For each Customer referred, the discount is calculated at 2% of the LDU.

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**III. SERVICE OFFERINGS (cont'd)****2. WATS Rate Schedules**

- .01 The following are the minimum and maximum per minute usage charges which apply to all WATS calls. These charges are in addition to the Non-recurring Charges and Recurring Charges referred to in Sections .06 and .07 hereafter.
- .02 Switched Inbound Usage Rates ("800 Service")
- a. Switched inbound service permits inward calling (via 800 codes) to a specific location utilizing premium switched, Feature Group D access on both ends.
  - b. The following is a list of KCI Intrastate Switched Inbound Usage Plans. Except for KCI Direct Plan, all plans are based on a flat billing system and are billed in six (6) second increments with no minimum length of call and these rates remain constant regardless of time of day, mileage, holidays or any other factor, excluding usage. For KCI Direct Plans, a minimum length of call and Peak/Off-peak Rates may apply.
- (1) KCI Switched Gold Plan  
KCI Switched Gold Plan offers a flat rate of \$0.05 - \$0.10 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 1,000,000 minutes.
  - (2) KCI Switched Silver Plan  
KCI Switched Silver Plan offers a flat rate of \$0.06 - \$0.11 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 750,000 minutes.
  - (3) KCI Switched Platinum Plan  
KCI Switched Platinum Plan offers a flat rate of \$0.07 - \$0.12 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 500,000 minutes.
  - (4) KCI Switched Preferred Business Plan  
KCI Switched Preferred Business Plan offers a flat rate of \$0.08 - \$0.13 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 250,000 minutes.

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III. SERVICE OFFERINGS (cont'd)(5) KCI Switched Business Plan Plus

KCI Switched Business Plan Plus offers a flat rate of \$0.09 - \$0.14 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 100,000 minutes.

(6) KCI Switched Business Plan

KCI Switched Business Plan offers a flat rate of \$0.10 - \$0.15 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 50,000 minutes.

(7) KCI Switched Basic Plan

KCI Switched Basic Plan offers a flat rate of \$0.16 - \$0.22 per minute and is available to any Customer.

(8) KCI Switched Direct Plan

KCI Switched Direct Plan offers a flat rate of \$0.05-\$0.479 per minute and is available to any customer. KCI Switched Direct Plan customers also qualify for RVDs.

03 Dedicated Inbound Usage Rates

- a. Dedicated inbound service permits inward calling (via 800 codes) to a specific location featuring the use of a dedicated, special access type connection on the terminating end.
- b. The following is a list of Intrastate Dedicated Usage Plans. Except for KCI Direct Plan, all plans are based on a flat billing system and are billed in six (6) second increments with no minimum length of call and these rates remain constant regardless of time of day, mileage, holidays or any other factor, excluding usage. For KCI Direct Plans, a minimum length of call and Peak/Off-peak Rates may apply.

(1) KCI Dedicated Gold Plan

KCI Dedicated Gold Plan offers a flat rate of \$0.03 - \$0.09 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 1,000,000 minutes.

---

III. SERVICE OFFERINGS (cont'd)(2) KCI Dedicated Silver Plan

KCI Dedicated Silver Plan offers a flat rate of \$0.04 - \$0.10 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 750,000 minutes.

(3) KCI Dedicated Platinum Plan

KCI Dedicated Platinum Plan offers a flat rate of \$0.05 - \$0.11 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 500,000 minutes.

(4) KCI Dedicated Preferred Business Plan

KCI Dedicated Preferred Business Plan offers a flat rate of \$0.06 - \$0.12 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 250,000 minutes.

(5) KCI Dedicated Business Plan Plus

KCI Dedicated Business Plan Plus offers a flat rate of \$0.07 - \$0.13 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 100,000 minutes.

(6) KCI Dedicated Business Plan

KCI Dedicated Business Plan offers a flat rate of \$0.08 - \$0.14 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 50,000 minutes.

(7) KCI Dedicated Basic Plan

KCI Dedicated Basic Plan offers a flat rate of \$0.15 - \$0.18 per minute and is available to any Customer.

(8) KCI Dedicated Direct Plan

KCI Dedicated Direct Plan offers a flat rate of \$0.025 to \$0.299 per minute and is available to any customer. KCI Dedicated Direct Plan customers also qualify for RVDs. KCI Dedicated Direct Plans require the customer to have dedicated facilities.

---

III. SERVICE OFFERINGS (cont'd)04 Switched Outbound Usage Rates

- a. Switched outbound services permits outward calling utilizing premium switched Feature Group D access on both the originating and terminating end.
- b. The following is a list of KCI Intrastate Switched Outbound Usage Plans. Except for KCI Direct Plans, all plans are based on a flat billing system and are billed in six (6) second increments with no minimum length of call and these rates remain constant regardless of time of day, mileage, holidays or any other factor, excluding usage. For KCI Direct Plans, a minimum length of call and Peak/Off-peak Rates may apply.

(1) KCI Switched Gold Plan

KCI Switched Gold Plan offers a flat rate of \$0.05 - \$0.10 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 1,000,000 minutes.

(2) KCI Switched Silver Plan

KCI Switched Silver Plan offers a flat rate of \$0.06 - \$0.11 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 750,000 minutes.

(3) KCI Switched Platinum Plan

KCI Switched Platinum Plan offers a flat rate of \$0.07 - \$0.12 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 500,000 minutes.

(4) KCI Switched Preferred Business Plan

KCI Switched Preferred Business Plan offers a flat rate of \$0.08 - \$0.13 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 250,000 minutes.

(5) KCI Switched Business Plan Plus

KCI Switched Business Plan Plus offers a flat rate of \$0.09 - \$0.14 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 100,000 minutes.

---

III. SERVICE OFFERINGS (cont'd)(6) KCI Switched Business Plan

KCI Switched Business Plan offers a flat rate of \$0.10 - \$0.15 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 50,000 minutes.

(7) KCI Switched Basic Plan

KCI Switched Basic Plan offers a flat rate of \$0.16 - \$0.22 per minute and is available to any Customer.

(8) KCI Switched Direct Plan

KCI Switched Direct Plan offers a flat rate of \$0.05-\$0.479 per minute and is available to any customer. KCI Switched Direct Plan customers also qualify for RVDs.

05 Dedicated Outbound Usage Rates

- a. Dedicated outbound service permits outward calling to stations in diverse service areas. Dedicated outbound service is distinguished from other services by the existence of a dedicated, special access connection on one end.
- b. The following is a list of Intrastate Dedicated Outbound Usage Plans. Except for KCI Direct Plans, all plans are based on a flat billing system and are billed in six (6) second increments with no minimum length of call and these rates remain constant regardless of time of day, mileage, holidays or any other factor, excluding usage. For KCI Direct Plans, a minimum length of call and Peak/Off-peak rates may apply.

(1) KCI Dedicated Gold Plan

KCI Dedicated Gold Plan offers a flat rate of \$0.03 - \$0.09 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 1,000,000 minutes.

(2) KCI Dedicated Silver Plan

KCI Dedicated Silver Plan offers a flat rate of \$0.04 - \$0.10 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 750,000 minutes.

---

III. SERVICE OFFERINGS (cont'd)(3) KCI Dedicated Platinum Plan

KCI Dedicated Platinum Plan offers a flat rate of \$0.05 - \$0.11 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 500,000 minutes.

(4) KCI Dedicated Preferred Business Plan

KCI Dedicated Preferred Business Plan offers a flat rate of \$0.06 - \$0.12 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 250,000 minutes.

(5) KCI Dedicated Business Plan Plus

KCI Dedicated Business Plan Plus offers a flat rate of \$0.07 - \$0.13 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 100,000 minutes.

(6) KCI Dedicated Business Plan

KCI Dedicated Business Plan offers a flat rate of \$0.08 - \$0.14 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 50,000 minutes.

(7) KCI Dedicated Basic Plan

KCI Dedicated Basic Plan offers a flat rate of \$0.15 - \$0.18 per minute and is available to any Customer.

(8) KCI Dedicated Direct Plan

KCI Dedicated Direct Plan offers a flat rate of \$0.025-\$0.0299 per minute and is available to any customer. KCI Dedicated Direct Plan customers also qualify for RVDs. KCI Dedicated Direct Plans require the customer to have dedicated facilities.

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**.06 Non-recurring Charges**

- a. The following one-time non-recurring installation charges apply to all WATS offerings. These charges remain constant for all Customers, regardless of volume, time of day, mileage or any other factor. These charges are for coordination of services only and are in addition to any associated costs charged by outside vendors. These charges are billed to the Customer the month following the work performed.

---

III. SERVICE OFFERINGS (cont'd)

<u>Service/Access Arrangement</u>	<u>Charge</u>
Single Dedicated Inbound or Outbound T-1	\$100 per T-1
FX Installation	\$50 per location
Private/Leased Line Installation	\$50 per line
56K Line Installation	\$50 per line

07 Recurring Charges

- a. The following monthly Recurring charges for service apply as indicated and remain constant for all Customers, regardless of volume, time of day, mileage or any other factor. These charges are in addition to any usage charges (cost per minute) and Non-recurring charges for the Service. The charges are billed to the Customer one month in advance.

<u>Service /Access Arrangement</u>	<u>Charge</u>
FX line	\$50 per month per line
Private/Leased line	\$50 per month per line
56K line	\$50 per month per line
Monthly Summary Report	\$5 per report

3. Travel Card Services

Travel Card Service is a service which allows callers to utilize KCI's service when calling from a location other than their billed-to-number. KCI offers two distinct travel card services: calling card services and featureless travel card services. Calling card services offer a variety of calling options including information services such as sports, weather and horoscopes, as well as calling options such as conference calling and three way calls. Featureless travel cards offer only the ability to place a call. Calling card services may be accessed by dialing 800-950-0370, featureless travel card services may be accessed by dialing 888-624-1391. KCI Direct is only offered as a featureless travel card service.

---

**III. SERVICE OFFERINGS (cont'd)****4. Travel Card Rate Schedules****.01 Domestic Calling Card Rate Schedules**

- a. The following is a list of maximum Domestic Calling Card Rates. All plans are based on a flat rate billing system, 24 hours a day, 365 days per year, in six (6) second increments with a minimum of one minute per call. Calls with duration of 1 second or less will not be billed. Calls with duration of greater than 1 second and less than one minute will be charged for a full one (1) minute call.

**(1) KCI Calling Card Gold Plan**

KCI Calling Card Gold Plan offers a flat rate of \$0.25 per minute and no access charge. KCI Calling Card Gold Plan is available to any Customer whose total KCI long distance monthly volume exceeds 1,000,000 minutes.

<u>Initial Minute</u>	<u>Each Add'l 6 Seconds</u>	<u>Surcharge</u>
\$0.25	\$0.025	None

**(2) KCI Calling Card Silver Plan**

KCI Calling Card Silver Plan offers a flat rate of \$0.30 per minute and no access charge. KCI Calling Card Silver Plan is available to any Customer whose total KCI long distance monthly volume exceeds 750,000 minutes.

<u>Initial Minute</u>	<u>Each Add'l 6 Seconds</u>	<u>Surcharge</u>
\$0.30	\$0.030	None

**(3) KCI Calling Card Platinum Plan**

KCI Calling Card Platinum Plan offers a flat rate of \$0.35 per minute and no access charge. KCI Calling Card Platinum Plan is available to any Customer whose total KCI long distance monthly volume exceeds 500,000 minutes.

<u>Initial Minute</u>	<u>Each Add'l 6 Seconds</u>	<u>Surcharge</u>
\$0.35	\$0.035	None

**(4) KCI Calling Card Preferred Business Plan**

KCI Calling Card Preferred Business Plan offers a flat rate of \$0.25 per minute and a \$0.25 access charge. KCI Calling Card Preferred Business Plan is available to any Customer whose total KCI long distance monthly volume exceeds 250,000 minutes.

<u>Initial Minute</u>	<u>Each Add'l 6 Seconds</u>	<u>Surcharge</u>
\$0.25	\$0.025	\$0.25

---

III. SERVICE OFFERINGS (cont'd)(5) KCI Calling Card Basic Business Plan

KCI Calling Card Basic Business Plan offers a flat rate of \$0.25 per minute and a \$0.50 access charge. KCI Calling Card Basic Business Plan is available to any Customer.

<u>Initial Minute</u>	<u>Each Add'l 6 Seconds</u>	<u>Surcharge</u>
\$0.25	\$0.025	\$0.50

02. Domestic Featureless Travel Card Rate Schedule

- a. KCI Featureless Travel Card Basic Rate Plan is based on flat rate billing system, 24 hours a day, 365 days per year, in six (6) second increments with a minimum of one minute per call. Calls with a duration of under 1 second will not be billed. Calls with a duration of greater than 1 second and less than one minute will be charged for a full one (1) minute call.

(1) KCI Featureless Travel Card Basic Plan

KCI Featureless Travel Card Basic Plan offers a flat rate of \$0.135 per minute day rate and \$0.12 per minute evening/night/holiday rate with a \$0.20 access charge. KCI Featureless Travel Card Basic Plan is available to any customer utilizing the KCI Featureless Travel Cards.

	<u>Initial Minute</u>	<u>Each Add'l 6 Seconds</u>	<u>Surcharge</u>
Day Rate	\$0.135	\$0.0135	\$0.20
Night/Evening/Holiday Rate	\$0.120	\$0.0120	\$0.20

- b. KCI Featureless Travel Card Direct Plan is based on a flat rate billing system, 24 hours a day, 365 days per year, in six (6) second increments with a minimum of thirty (30) seconds per call. Calls with a duration of under 1 second will not be billed. Calls with a duration of greater than 1 second and less than thirty (30) seconds will be charged for a thirty (30) second call.

(1) KCI Featureless Travel Card Direct Plan

KCI Featureless Travel Card Direct Plan offers a flat rate of \$0.09 - \$0.29 per minute and no access charge. KCI Featureless Travel Card Direct Plan Customers are also eligible for RVDS.

---

**III. SERVICE OFFERINGS (cont'd)****5. KCI Term Plans**

KCI Term Plans offer a discount to any customer who commits to a 24 month or 36 month term for Switched 800 or Dedicated long distance services, as well as local and intralata services in ordinance with KCI's tariff P.S.C. No. 1. KCI Term Plans offer flat rates per minute and are billed in six (6) second increments with no minimum length of call. These rates remain constant regardless of the time of day, mileage, holidays or any other factor.

**6. KCI Term Plan Rate Schedules**

<u>Switched Calls</u>	<u>Long Distance Rate</u>
Monthly (no local or intralata)	\$0.1190
24 month term plan local and intralata	\$0.1150
36 month term plan local and intralata	\$0.1090
39 month term plan local and intralata	\$0.1090
800 Service	Rate for monthly, 24 month and 36 month term plans apply plus \$0.01.
Dedicated Calls	\$0.075 plus cost of T1 Circuit.

**7. Debit Card Services**

Debit Card Service is a service which allows a customer to purchase minutes of service in Units (one Unit equals one intralata domestic minute; the Units applicable to non-domestic calls shall be provided by the Company upon request) for purposes of use or resale to a distributor or end-user, via a prepaid calling card. The holder of the Debit Card is assigned a PIN number for each prepaid calling card and a toll free number for customer service.

---

**III. SERVICE OFFERINGS (cont'd)****8. Debit Card Rate Schedule**

- 01 Debit Card Rates per Unit are based on the volume commitment of the contract. All rates are based on a flat rate billing system in one (1) Unit increments. Calls with a duration of one (1) domestic minute or less will be charged for one (1) full Unit.

VOLUME COMMITMENT	RATE PER DOMESTIC MINUTE/UNIT
Minimum of 24 million Units in 15 months	\$0.105
Minimum of 10 million Units in 15 months	\$0.115
Less than 10 million Units in 15 months	\$0.125

**9. Emergency Calls**

- 01 Customer shall configure its PBX or other switch vehicle from which a person places a call so that 911 emergency calls, where available, and similar emergency calls will be automatically routed to the emergency answering point for the geographical location where the call originated without the intervention of KCI.
- a. 911 calls are not routed but are completed through the local network. No billing applies to emergency calls.

**10. Special Promotional Offering**

The Company may, from time to time, engage in Special Promotional Offerings or Trial Service Offerings limited to certain dates, times or locations designed to attract new subscribers or increase subscriber usage. KCI will not have special promotional offerings for more than 90 days in any 12 month period. In all such cases, the rates charges will not exceed those specified herein.

**NEXT**

**DOCUMENT (S)**

**DISREGARD**

**BACKGROUND**

CONFIDENTIAL

1

KCI LONG DISTANCE, INC.

(315) 649-0388  
5784 WIDEWATERS PARKWAY  
SYRACUSE, NY 13216-3856

KEY BANK OF NEW YORK  
SYRACUSE, NY 13204  
80-38/213

00009277 9277

PAY  
TO THE  
ORDER  
OF:

\*\*\*\* TWO HUNDRED FIFTY & 00/100 DOLLARS

DATE

07/25/97

AMOUNT

\*\*\*\*\*\$250.00

South Dakota Public  
Utilities Commission

*Kevin Kelly*

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

⑈009277⑈ ⑆021300381⑆ 320210003994⑈

South Dakota  
Public Utilities Commission  
State Capitol 500 E. Capitol  
Pierre, SD 57501-5070  
Phone: (800) 332-1782  
Fax: (605) 773-3809

## TELECOMMUNICATIONS SERVICE FILINGS

These are the telecommunications service filings that the Commission has received for the period of:

**08/01/97 through 08/07/97**

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five days of this filing.

DOCKET NUMBER	TITLE/STAFF/SYNOPSIS	DATE FILED	INTERVENTION DEADLINE
<b>REQUEST FOR CERTIFICATE OF AUTHORITY</b>			
TC97-136	Application by ComTel Computer Corp. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/TZ) "ComTel proposes to offer long distance voice telecommunications services ... such as 1+ direct dial calling, switched in-bound toll free service, travel card, debit card services and directory assistance."	08/01/97	08/22/97
TC97-137	Application by Micro-Comm, Inc. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/KC) Micro-Comm proposes to offer "telecommunications services to subscribers for direct voice and data communications...". Micro-Comm will offer 1+, WATS, calling card, and debit card services.	08/01/97	08/22/97
TC97-138	Application by KCI Long Distance, Inc. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/KC) "KCI seeks authority to provide WATS, 800, travel card and debit card services. KCI does not intend to provide 900 or 700 services."	08/01/97	08/22/97
<b>FORMAL COMPLAINT FILED</b>			
TC97-139	Gemini Companies, Inc. vs U S WEST Communications. Gemini purchases Basic Public Access Lines from U S WEST and eight other local exchange companies in South Dakota. "U S WEST requires the use of metered, or message-based rate in areas where their equipment allows them to measure service. The effect of this requirement is that our average monthly U S WEST phone bills in South Dakota are \$10 to \$14 higher than our U S WEST monthly phone bills in the other states and \$22 per month higher than our monthly average of phone bills from the eight other South Dakota companies. In each case the service received is identical: basic dial tone with certain screening and blocking features. [Gemini] asks that the Commission mandate the use of the flat rate and eliminate the measured-service required rate." (Staff: DJ/CH)	07/28/97	NA

Important Notice: The Commission is compiling a list of internet addresses. If you have an internet address please notify the Commission by E-mailing it to Terry Norum at: [terryn@pucc.state.sd.us](mailto:terryn@pucc.state.sd.us) Faxing the address to the Commission at: 605-773-3809

**KCI LONG DISTANCE, INC.**  
**Legal Department**

20 Corporate Woods  
Albany, New York 12211  
(518) 462-1882 (telephone)  
(518) 463-9937 (facsimile)

**RECEIVED**

SEP - 5 1997

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

September 4, 1997

South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

Attn: Tammi Stangohr

RE: KCI Long Distance, Inc.  
SD PUC docket TC 97-138

Dear Ms. Stangohr:

In response to your letter dated August 27, 1997, we submit an original and ten (10) copies of a replacement tariff incorporating all of the changes you requested (including Commission information on page 26) and deleting debit card services. Please date-stamp and return the extra copy of the tariff in the self-addressed, stamped UPS envelope provided.

Thank you for your assistance and consideration.

Very truly yours,

*Victoria A. Ramundo*

Victoria A. Ramundo

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**KCI LONG DISTANCE, INC.®**

South Dakota Tariff No. 1

Original Page No. 1

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**South Dakota Telecommunications Service**

Regulations, rates, and charges applicable  
to intrastate communications service furnished  
by KCI Long Distance, Inc. ("KCI")

Service is furnished by means of wire,  
terrestrial microwave radio, optical fibers,  
satellite circuits or a combination thereof.

Tariff No. 1

**RECEIVED**

SEP - 5 1997

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

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Issued by:

Kevin J. Kelly, President; KCI Long Distance, Inc., 5784 Widewaters Parkway, Dewitt, NY  
13214, (315) 449-0388

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**CHECK SHEET**

The title page and pages 1-44 inclusive of this Tariff are effective as of the date shown. Original and revised pages, as named below, comprise all changes from the original Tariff in effect on the date indicated.

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**CHECK SHEET (CONT'D)**

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**CONCURRING, CONNECTING AND OTHER PARTICIPATING CARRIERS**

**CONCURRING CARRIERS:**

No Concurring Carriers

**CONNECTING CARRIERS:**

No Connecting Carriers

**OTHER PARTICIPATING CARRIERS:**

No Participating Carriers

---

**EXPLANATION OF SYMBOLS**

- (C) To signify changed regulation
- (D) To signify discontinued material
- (I) To signify rate or charge increase
- (M) To signify material relocated without change in text or rate
- (N) To signify new material
- (R) To signify reduction
- (S) To signify reissued material
- (T) To signify a change in text but no change in rate or regulation
- (Z) To signify a correction

---

**APPLICABILITY**

This Tariff contains the regulations and rates applicable to the provision of intrastate telecommunications services by KCI Long Distance, Inc. (hereinafter "KCI" or "Company") between and among domestic points within the United States as specified herein.

---

Issued by:

Kevin J. Kelly, President; KCI Long Distance, Inc., 5784 Widewaters Parkway, Dewitt, NY  
13214, (315) 449-0388

---

I. **DEFINITIONS**

For the purpose of this Tariff, the following definitions will apply:

**Access Coordination**

Provides for the design, ordering, installation, coordination, pre-service testing, service turn-up and maintenance on a Company provided Local Access Channel.

**Administrative Change**

A change in Customer billing address or contact name.

**Alternate Access**

Alternate Access is a form of Local Access except that the provider of the Service is an entity, other than the Local Exchange Carrier, authorized or permitted to provide such Service. The charges for Alternate Access may be subject to private agreement rather than published or special Tariff if permitted by applicable governmental rules.

**Application for Service**

A standard Company order form which includes all pertinent billing, technical and other descriptive information which will enable the Company to provide a communication Service as required.

**ASR**

ASR (Access Service Request) means an order placed with a Local Access Provider for Local Access.

**Authorization Code**

A numerical sequence which enables a customer to access the carrier and which is used by the Company to identify the customer for billing purposes.

**Authorized User**

A person, firm, corporation or other entity that either is authorized by the Customer to receive or send communications or is placed in a position by the Customer, either through acts or omissions, to send or receive communications.

**Bandwidth**

The total frequency band, in hertz, allocated for a channel.

---

**I. DEFINITIONS (Cont'd)**

**Bill Date**

The date on which billing information is compiled and sent to the Customer.

**Call**

A completed connection between the Calling and Called Stations.

**Called Station**

The telephone number called.

**Calling Station**

The telephone number from which a Call originates.

**Cancellation of Order**

A Customer initiated request to discontinue processing a Service order, either in part or in its entirety, prior to its completion. Cancellation charges will be assessed for each Circuit-end or Dedicated Access line canceled from an order prior to its completion by KCI, under the following circumstances: (1) if the LEC has confirmed in writing to KCI that the Circuit-end or Dedicated Access line will be installed; or (2) if KCI has already submitted facilities orders to an interconnecting telephone company.

**Channel or Circuit**

A dedicated communications path between two or more points having a bandwidth or Transmission Speed specified in this Tariff and selected by a Customer.

**Company**

KCI Long Distance, Inc. ("KCI").

**Customer**

The person, firm, corporation or governmental unit which orders Service -- either for its own use, as a resale carrier or as a non-profit manager of a sharing group -- and which is responsible for the payment of charges and for compliance with Company Tariff regulations. The term Customer also includes an entity that remains pre-subscribed to the Company Service after its account(s) are removed from the Company's billing system, subsequently continues to use the Company's network, and is billed by a local exchange carrier for such use, or otherwise uses Service for which no other Customer is obligated to compensate Company.

---

**I. DEFINITIONS (Cont'd)**

**Customer Premises/Customer's Premises**

Locations designated by a Customer where Service is originated/terminated whether for its own communications needs or for the use of its resale customers.

**Customer Provided Equipment**

Telecommunications terminal equipment that is located at the Customer's residence or place of business.

**DCS**

DCS means Digital Cross-Connect System.

**Debit Card**

Debit Card means a pre-paid calling card product that allows the holder to obtain long distance telephone service equal to the unit value of the card rounded in whole numbers.

**Dedicated Access/Special Access**

Dedicated Local Access between the Customer's Premises or serving wire center and the Company's Point-of-Presence for origination or termination of Calls.

**DS-0**

DS-0 means Digital Signal Level 0 Service and is a 64 Kbps signal.

**DS-1**

DS-1 means Digital Signal Level 1 Service and is a 1.544 Mbps signal.

**DS-0 with VF Access**

DS-0 Service with VF Local Access facilities provides for the transmission of analog voice and/or data within 300 Hz to 3000 Hz frequency range.

**DS-0 with DDS Access**

DS-0 Service with DDS Local Access facilities provides for the transmission of digital data at speeds of 2.4, 4.8, 9.6 or 56 Kbps.

**Due Date**

The Due Date is the date on which payment is due.

---

**I. DEFINITIONS (Cont'd)**

**Exemption Certificate**

A written Customer designation which certifies that its dedicated facility should be exempted from the monthly Special Access Surcharge because the Service:

- (a) terminates on a device incapable of connecting KCI's network with the local exchange network; or
- (b) is associated with a Switched Access Service that is subject to Carrier Common Line charges; or
- (c) constitutes a Private Line facility used for Telex Service or radio or television transmissions, or,
- (d) is an open-end termination in a Local Exchange Carrier's switch of an FX line; or
- (e) is a termination that could not make use of a Local Exchange Carrier's common lines.

**Expedite**

A Service order initiated at the request of the Customer that is processed in a time period shorter than the KCI standard Service interval.

**FCC**

Federal Communications Commission.

**Individual Case Basis (ICB)**

Individual Case Basis (ICB) determinations involve situations where complex Customer-specific arrangements are required to satisfactorily serve the Customer. The nature of such Service requirements makes it difficult or impossible to establish general Tariff provisions for such circumstances. When it becomes possible to determine specific terms and conditions for such offerings, they will be offered pursuant to such terms and conditions.

**Installation**

The connection of a Circuit, Dedicated Access line, or port for new, changed or an additional Service.

**Interexchange Service**

Interexchange Service means that portion of a communications channel between a KCI-designated Point-of-Presence in one exchange and a Point-of-Presence in another exchange.

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**I. DEFINITIONS (Cont'd)**

**Interruption**

A condition whereby the Service or a portion thereof is inoperative, beginning at the time of notice by the Customer to KCI that such Service is inoperative and ending at the time of restoration.

**Kbps**

Kilobits per second.

**LATA (Local Access Transport Area)**

A geographical area established for the provision and administration of communications Service of a Regional Bell Operating Company.

**LDU**

LDU is the long distance usage less bad debt, fraud and any other amounts due KCI.

**Local Access**

Local Access means the Service between a Customer Premises and an KCI designated Point-of-Presence.

**Local Access Provider**

Local Access Provider means an entity providing Local Access.

**Local Exchange Carrier (LEC)**

The local telephone utility that provides local telephone local exchange and access services.

**Mbps**

Megabits per second.

**Multiplexing**

Multiplexing, or "muxing," is the sequential combining of lower bit rate Private Line Services onto a higher bit rate Private Line Service for more efficient facility capacity usage or vice versa.

**NA**

Not available

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**I. DEFINITIONS (Cont'd)**

**N/C**

No charge

**Non-recurring Charges**

Non-recurring Charges are one-time charges.

**Payment Method**

The manner in which the Customer designates as the means of billing charges for Calls using the Company's Services.

**Physical Change**

The modification of an existing Circuit, Dedicated Access line or port, at the request of the Customer, requiring some Physical Change or retermination.

**PIN**

PIN shall mean the unique authorization code or number assigned to each Debit Card.

**Point-of-Presence (POP)**

A Company designated location where a facility is maintained for the purpose of providing access to its Service.

**Primary Route**

The route which, in the absence of Customer-designated routing or temporary re-routing, would be used by KCI in the provision of Service.

**Private Line**

A dedicated transmission channel furnished to a customer without intermediate switching arrangements for full-time customer use.

**Private Line Service**

A dedicated full-time transmission Service utilizing dedicated access arrangements.

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**I. DEFINITIONS (Cont'd)**

**Rate Center**

A specified geographical location used for determining mileage measurements.

**Requested Service Date**

The Requested Service Date is the date requested by the Customer for commencement of Service and agreed to by KCI.

**Restore**

To make Service operative following an interruption by repair, reassignment, re-routing, substitution of component parts, or otherwise, as determined by the carrier(s) involved.

**Route Diversity**

Two channels which are furnished partially or entirely over two physically separate routes.

**RVD**

RVD is the referral volume discount paid to a company or individual who qualifies for credit from long distance customers referred to KCI. The discount is equal to 2% of the referred qualified customer(s) billed long distance revenue less bad debt, fraud, taxes and service charges.

**Service**

Service means any or all Service(s) provided pursuant to this Tariff.

**Service Commitment Period**

The term elected by the Customer and stated on the Service order during which KCI will provide the Services subscribed to by the Customer.

**Special Promotional Offerings**

Special trial offerings, discounts, or modifications of its regular Service offerings which the Company may, from time to time, offer to its Customers for a particular Service. Such offerings may be limited to certain dates, times, and locations.

**Start of Service Date**

The Requested Service Date or the date Service first is made available by KCI whichever is later.

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**I. DEFINITIONS (Cont'd)**

**Tariff**

The current Intrastate Services Tariff and effective revisions thereto filed by KCI with the Public Service Commission.

**Transmission Speed**

Data transmission speed or rate, in bits per seconds (bps).

**Travel Card**

A card issued by the Company which enables a KCI Customer to access the KCI network from any touch tone phone by dialing KCI's access number. Services charged to the KCI Travel Card will be billed to the Customer's established KCI account.

**Twelve O'clock**

In designating time, 12:00 a.m. refers to 12:00 Midnight and 12:00 p.m. refers to 12:00 Noon.

**Two-way Conversation**

A Two-way Conversation is a telephone conversation between or among two or more parties.

**Unit**

One Unit equals one (1) minute of long distance telephone service in the 48 contiguous states of the U.S.

**VF**

VF is voice frequency or voice-grade Service designed for private-line Service. Normal transmission is in the 300 hertz to 3000 hertz frequency band.

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**II. RULES AND REGULATIONS**

**1. Description and Limitations of Services**

- .01 Services provided pursuant to this Tariff may be utilized only for the transmission of communications by Customers consistent with the terms of this Tariff the rules and regulations of the FCC and the requirements of the Communications Act of 1934, as amended.
- .02 The Company may require a Customer to sign an application form and to establish credit worthiness as a condition precedent to the initial establishment of Service. The Application shall state the date on which Service shall begin and the points between which Service is to be provided, the type of facilities required, and any special arrangements related thereto.
- .03 Any member of the general public (including any natural person or legally organized entity such as a corporation, partnership, or governmental body) is entitled to obtain Service under this Tariff, provided that KCI reserves the right to deny Service: (A) to any Customer that, in KCI's reasonable opinion, presents an undue risk of nonpayment and refuses to comply with the deposit requirements set forth in Section II.7.03, (B) in circumstances in which KCI has reason to believe that the use of the Service would violate the provisions of this Tariff or any applicable law or if any applicable law restricts or prohibits provision of the Service, or (C) if insufficient facilities are available to provide the Service (in such cases KCI shall take reasonable efforts to accommodate the needs of all potential Customers by means of facility improvements or purchases of capacity, if such efforts will, in KCI's opinion, provide KCI with a reasonable return on its expenditures), but only for so long as such unavailability exists.
- .04 KCI, when acting at the Customer's request and as its authorized agent, will make reasonable efforts to arrange for Service requirements, such as special routing, Diversity, Alternate Access, or circuit conditioning.
- .05 Service is offered in equal access exchanges subject to the availability of facilities and the provisions of this Tariff. KCI reserves the right to refuse to provide Service to or from any location where the necessary facilities and/or equipment are not available.
- .06 Service may be discontinued upon written notice to the Customer if:
  - a. the Customer is using the Service in violation of this Tariff; or
  - b. the Customer is using the Service in violation of the law or federal, state or local regulation, rules, orders or policy.
- .07 Service begins on the date that billing becomes effective and is provided on the basis of a minimum period of at least one month, 24 hours per day. For the purposes of computing charges in this Tariff, a month is considered to have 30 days.

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**II. RULES AND REGULATIONS (cont'd)**

- .08 Service will be provided until canceled by the Customer. The Customer may cancel service at any time, but must do so with advance written notice to KCI.
- .09 Nothing herein, or in any other provision of this Tariff, or in any marketing materials issued by the Company shall give any person any ownership, interest, or proprietary right in any code or 800 number issued by the Company to its Customers.
- .10 The Company reserves the right to discontinue furnishing Services or billing options, upon written notice, when necessitated by conditions beyond its control. Conditions beyond the Company's control include, but are not limited to, a Customer's having Call volume or a calling pattern that, in the Company's opinion, is likely to be detrimental to the network or the Company's provision of Service or that results, or may result, in network blockage or other Service degradation which may adversely affect Service to the calling party, the Customer, or other Customers of the Company.
- .11 Service may be discontinued by the Company, without notice to the Customer, by blocking traffic to or from certain cities, or NXX exchanges, or by blocking Calls using certain Customer authorization codes such as Calling Card codes, when the Company deems it necessary to take such action to prevent unlawful use of its Service, to prevent Service degradation to other customers of the Company, and to ensure the integrity and reliability of the network. The Company will restore Service as soon as it can be provided without undue risk.
- .12 Except as otherwise provided in this Tariff or as specified in writing by the party entitled to receive Service, notices may be given orally or in writing to the persons whose names and business addresses appear on the executed Service order and the effective date of any notice shall be the date of delivery of such notice, not the date of mailing. By written notice, KCI or the Customer may change the party to receive notice and/or the address to which such notice is to be delivered. In the event no Customer or KCI address is provided in the executed Service order, notice shall be given to the last known business address of the Customer or, as appropriate.

**2. Other Terms and Conditions**

- .01 The name(s) of the Customer(s) desiring to use the Service must be stipulated in the application for Service.
- .02 The Customer agrees to operate the Company provided equipment in accordance with instructions of the Company or the Company's agent. Failure to do so will void the Company liability for interruption of Service and may make Customer responsible for damage to equipment pursuant to Section II.2.03 below.

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**II. RULES AND REGULATIONS (cont'd)**

- .03 Customer agrees to return to the Company all Company-provided equipment delivered to Customer within five (5) days of termination of the Service in connection with which the equipment was used. Said equipment shall be in the same condition as when delivered to Customer, normal wear and tear only excepted. Customer shall reimburse the Company, upon demand, for any costs incurred by the Company due to Customer's failure to comply with this provision.
- .04 A Customer shall not use any service mark or trademark of the Company or refer to the Company in connection with any product, equipment, promotion, or publication of the Customer without prior written approval of the Company.
- .05 In the event suit is brought or an attorney is retained by the Company to enforce the terms of this Tariff, the Company shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith. In any such proceeding, the amount of collection costs (including attorneys' fees) due the carrier will be determined by the Court.
- .06 The provision of Service will not create a partnership or joint venture between the Company and the Customer nor result in joint Service offerings to their respective Customers.
- .07 The rate or volume discount level applicable to a Customer for a particular Service or Services shall be the rate or volume discount level in effect at the beginning of the monthly billing period applicable to the Customer for the particular Service or Services. When a Service is subject to a minimum monthly charge, account charge, port charge or other recurring charge or Non-recurring Charge for intrastate Service, only one such charge shall apply per account and that charge shall be the intrastate charge. In the event that Service was provided for less than a month, monthly recurring charges will be pro-rated.
- .08 Service requested by Customer and to be provided pursuant to this Tariff shall be requested on KCI Service Order forms in effect from time to time or Customer's forms if such forms are accepted in writing by an authorized headquarters representative of KCI (collectively referred to as "Service Orders").
- .09 If an entity other than the Company (e.g., another carrier or a supplier) imposes charges on the Company in connection with a Service that entity's charges will be passed through to the Customer.

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II. **RULES AND REGULATIONS** (cont'd)

- 10 The Service Commitment Period for any Service shall be established by the Service Order relevant thereto and commence on the Start of Service Date. Upon expiration, each Service Commitment Period for such Service shall automatically be extended subject to written notice of termination by either KCI or Customer as of a date not less than thirty (30) days after delivery of said notice to the other. The charges for Interexchange Service during any such extension shall not exceed the then current KCI month-to-month charges applicable to such Service.

3. **Liability**

- 01 Except as provided otherwise in this Tariff, the Company shall not be liable to Customer or any other person, firm or entity for any failure of performance hereunder if such failure is due to any cause or causes beyond the reasonable control of the Company. Such causes shall include, without limitation, acts of God, fire, explosion, vandalism, cable cut, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States government or of any other government or of any civil or military authority, national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, preemption of existing Services to restore service in compliance with Part 64, Subpart D, Appendix A, of the FCC's Rules and Regulations, or circumstances described in paragraphs 1.03 and 1.10 of this Section II.
- 02 With respect to the Services contained herein and except as otherwise provided herein, the Company's liability shall not exceed an amount equal to the charge applicable to a one minute Call to the Called Station at the time the affected Call was made. If the initial minute rate is higher than the additional minute rate, the higher rate shall apply. For those Services with monthly recurring charges, the Company's liability is limited to an amount equal to the proportionate monthly recurring charges for the period during which Service was affected.
- 03 The Company is not liable for any act or omission of any other company or companies (including any Company affiliate that is a participating or concurring carrier) furnishing a portion of the Service or facilities, equipment, or Services associated with such Service.
- 04 The Customer is responsible for taking all necessary legal steps for interconnecting the Customer provided terminal equipment with the Company facilities. The Customer shall ensure that the signals emitted into the Company's network do not damage Company equipment, injure personnel or degrade Service to other Customers. The Customer is responsible for securing all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In addition, the customer shall comply with applicable LEC signal power limitations.

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II. RULES AND REGULATIONS (cont'd)

- .05 The Company may rely on Local Exchange Carriers or other third parties for the performance of other Services such as Local Access. Upon Customer request and execution and delivery of appropriate authorizing documents, the Company may act as agent for Customer in obtaining such other Services. Customer's liability for charges hereunder shall not be reduced by untimely Installation or non-operation of Customer provided facilities and equipment.
- .06 The failure to give notice of default, to enforce or insist upon compliance with any of the terms or conditions herein, the waiver of any term or conditions herein, or the granting of an extension of time for performance by the Company or the Customer shall not constitute the permanent waiver of any term or condition herein. Each of the provisions shall remain at all times in full force and effect until modified in writing.
- .07 The Company shall not be liable to the Customer or any other person, firm or entity in any respect whatsoever as a result of mistakes, accidents, errors, omissions, interruptions, delays, or defects in Service (collectively "Defects"). Defects caused by or contributed to, directly or indirectly, by act or omission of Customer or its customers, affiliates, agents, representatives, invitees, licensees, successors or assigns or which arise from or are caused by the use of facilities or equipment of Customer or related parties shall not result in the imposition of any liability whatsoever upon the Company, and Customer shall pay to the Company any reasonable costs, expenses, damages, fees or penalties incurred by the Company as a result thereof, including costs of Local Access Providers' labor and materials. In addition, all or a portion of the Service may be provided over facilities of third parties, and the Company shall not be liable to Customer or any other person, firm or entity in any respect whatsoever arising out of Defects caused by such third parties. THE COMPANY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, PUNITIVE OR ANY OTHER DAMAGES, OR BUSINESS INTERRUPTION, FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF ANY DEFECTS OR ANY OTHER CAUSE. THE COMPANY'S LIABILITY, IF ANY, WITH REGARD TO THE DELAYED INSTALLATION OF THE COMPANY'S FACILITIES OR COMMENCEMENT OF SERVICE SHALL NOT EXCEED \$1,000. THIS WARRANTY AND THESE REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES OR REMEDIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN THE EVENT OF AN INTERRUPTION IN SERVICE OR ANY DEFECT IN THE SERVICE WHATSOEVER, NEITHER KCI NOR ANY AFFILIATED OR UNAFFILIATED THIRD PARTY PROVIDER OR OPERATOR OF FACILITIES EMPLOYED IN THE PROVISION OF THE SERVICE SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER.

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**II. RULES AND REGULATIONS (cont'd)**

- .08 If KCI routes calls to public safety answering points or municipal Emergency Service providers, KCI liability, if any, will be limited to the lesser of: (a) the actual monetary damages incurred and proved by the Customer as the direct result of KCI's action, or failure to act, in routing the Call, or (b) the sum of \$1,000.00. KCI does not offer directory assistance.
- .09 In the event parties other-than Customer (e.g., Customer's customers) shall have use of the Service directly or indirectly through Customer, then Customer agrees to forever indemnify and hold KCI and any affiliated or unaffiliated third-party provider or operator of facilities employed in provision of the Service harmless from and against any and all claims, demands, suits, actions, losses, damages, assessments or payments which may be asserted by said parties arising out of or relating to any Defects.
- .10 In the event that KCI is required to perform a Circuit redesign due to inaccurate information provided by the Customer; or, circumstances in which such costs and expenses are caused by the Customer or reasonably incurred by KCI for the benefit of the customer, the Customer is responsible for the payment of all such charges.
- .11 KCI is not liable for any defacement of or damage to, the premises of a customer resulting from the furnishing of services or the attachment of instruments, apparatus, and assorted wiring furnished by KCI on such customer's premises or by the installation or removal thereof, when such defacement or damage is not the result of KCI's negligence. No agents or employees of other participating carriers shall be deemed to be agents or employees of KCI without authorization.
- .12 The Carrier shall be indemnified and held harmless by the Customer against:
  - a. claims for libel, slander, harassment, improper use of telecommunications service or facilities on or off Customer premises, infringement of copyright, unauthorized use of any trademark, trade name or service mark arising out of the material, data, information or other content transmitted over the Company's facilities;
  - b. claims for patent infringement arising from combining or connecting the Company's equipment or facilities with those of the Customer; and
  - c. all other claims arising out of any act or omission of the Customer or any person utilizing the Customer's codes, services, or facilities, with or without the consent or knowledge of the Customer.

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**II. RULES AND REGULATIONS (cont'd)****4. Cancellation of Service by a Customer**

- 01 If a Customer cancels a Service order before the Service begins, before completion of the minimum period, or before completion of some other period mutually agreed upon by the Customer and the Company, a charge will be levied upon the Customer for the non-recoverable portions of expenditures or liabilities incurred expressly on behalf of the Customer by the Company and not fully reimbursed by Installation and monthly charges.

If, based on a Service order by a Customer, any construction has either begun or been completed, but no Services provided, the non-recoverable costs of such construction shall be borne by the Customer. If a customer cancels a service order under a Term Plan prior to the expiration of the Term, KCI will charge a cancellation charge equal to the 50% of the total remaining amount due under the contract.

- 02 Upon thirty (30) days' prior written notice, either Customer or KCI shall have the right, without cancellation charge or other liability, to cancel the affected portion of the Service, if KCI is prohibited by governmental authority from furnishing said portion, or if any material rate or term contained herein and relevant to the affected Service is substantially changed by order of the highest court of competent jurisdiction to which the matter is appeal, the Federal Communications Commission, or other local, state or federal government authority.

**5. Cancellation for Cause by the Company**

- 01 Upon nonpayment of any sum owing to the Company, or upon a violation of any of the provisions governing the furnishing of Service under this Tariff, the Company may, upon written notification to the Customer, without incurring any liability, immediately discontinue the furnishing of such Service. Customer shall be deemed to have canceled Service as of the date of such disconnection and shall be liable for any cancellation charges set forth in this Tariff.

- 02 Without incurring any liability, the Company may discontinue the furnishing of Service(s) to a Customer immediately and without notice if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or Services under the following circumstances:

- a. if the Customer refuses to furnish information to the Company regarding the Customer's credit-worthiness, its past or current use of common carrier communications Services or its planned use of Service(s);
- b. if the Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of Customer communications Services, or its planned use of the Company Service(s);

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**II. RULES AND REGULATIONS (cont'd)**

- c. if the Customer states that it will not comply with a request of the Company for reasonable security for the payment for Service(s);
  - d. if the Customer has been given written notice by the Company of any past due amount (which remains unpaid in whole or in part) for any of the Company's communications Services to which the Customer either subscribes or had subscribed or used;
  - e. immediately upon written notice to the Customer of any sum thirty (30) days past due.
- .03 The discontinuance of Service(s) by the Company pursuant to this Section does not relieve the Customer of any obligations to pay the Company for charges due and owing for Service(s) furnished up to the time of discontinuance. The remedies set forth herein shall not be exclusive and the Company shall at all times be entitled to all rights available to it under either law or equity.

**6. Use of Service**

- .01 The Services offered herein may be used for any lawful purpose, including residential, business, governmental, or other use. There are no restrictions on sharing or resale of Services. However, the Customer remains liable for all obligations under this Tariff notwithstanding such sharing or resale and regardless of the Company's knowledge of same. **THE COMPANY SHALL HAVE NO LIABILITY TO ANY PERSON OR ENTITY OTHER THAN THE CUSTOMER AND ONLY AS SET FORTH IN SECTION II.3.** The Customer shall not use nor permit others to use the Service in a manner that could interfere with or degrade Services provided to others or that could harm the facilities or network of the Company or others.
- .02 Service furnished by the Company may be arranged for joint use or authorized use. The joint user or authorized user shall be permitted to use such Service in the same manner as the Customer, but subject to the following:
- a. One joint user or authorized user must be designated as the Customer.
  - b. All charges for the Service will be computed as if the Service were to be billed to one Customer. The joint user or authorized user which has been designated as the Customer will be billed for all components of the Service and will be responsible for all payments to the Company. In the event that the designated Customer fails to pay the Company, each joint user or authorized user shall be liable to the Company for all charges incurred as a result of its use of the Company's Service.

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**II. RULES AND REGULATIONS (cont'd)**

- .03 In addition to the other provisions in this Tariff, Customers reselling Company Services shall be responsible for all interaction and interface with their own subscribers or customers. The provision of the Service will not create a partnership or joint venture between KCI and Customer nor result in a joint communications Service offering to the Customers of either KCI or the Customer.
- .04 Service furnished by the Company shall not be used for any unlawful or fraudulent purposes.
- .05 The Customer will be billed directly by the LEC for certain Dedicated Access arrangements selected by the Customer for the provisioning of direct access arrangements. In those instances where the Company at the Customer's request may act as agent in the ordering of such arrangements, the Company will bill the Customer Local Access charges.
- .06 Any customer who obtains Service from the Company for the Customer's provision of a regulated or unregulated service to the Customer's customers, shall acquire sufficient facilities to support the Customer's service offering without exploiting the Company's Services or Facilities and without degrading the Company's Service or impairing the integrity of the Company's Network and Facilities.

**7. Payment Arrangements**

- .01 The Customer is responsible for payment of all charges for Services furnished to the Customer or its joint or authorized users. This responsibility is not changed due to any use, misuse, or abuse of the Customer's Service or Customer provided equipment by third parties, the Customer's employees, or the public.
- .02 The Company's bills are due upon receipt. Amounts not paid within 30 days from the Due Date of the invoice will be considered past due. Customers will be assessed a late fee on past due amounts in the amount of the lesser of one and one-half percent (1 1/2%) per month or the maximum lawful rate under applicable state law. If a Customer presents an undue risk of nonpayment at any time, the Company may require that Customer to pay its bills within a specified number of days and to make such payments in cash or the equivalent of cash.

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**II. RULES AND REGULATIONS (cont'd)**

- .03 In determining whether a Customer presents an undue risk of nonpayment, the Company shall consider the following factors: (A) the Customer's payment history (if any) with the Company and its affiliates, (B) Customer's ability to demonstrate adequate ability to pay for the Service, (C) credit and related information provided by Customer, lawfully obtained from third parties or publicly available, and (D) information relating to Customer's management, owners and affiliates (if any). Customers who present such an undue risk may be required at any time to provide the Company a security deposit, in cash or the equivalent of cash, up to an amount equal to the applicable Installation charges, if any, and/or up to two months' actual or estimated usage charges for the Service to be provided. Such applicants or Customers may also be required, at any time, whether before or after the commencement of Service, to provide such other assurances of, or security for, the payment of the Company's charges for its Services as the Company may deem necessary, including, without limitation, advance payments for Service, third party guarantees of payment, pledges or other grants of security interests in the Customers' assets, and similar arrangements. The required deposit or other security may be increased or decreased by the Company as it deems appropriate in the light of changing conditions. In addition, the Company shall be entitled to require such an applicant or Customer to pay all its bills within a specified period of time, and to make such payments in cash or the equivalent of cash. In case of a cash deposit, simple interest at the rate of 5% per annum shall be credited or paid to the Customer while the deposit is held by the Company. At the Company's option, such deposit may be refunded to the Customer's account at any time.
- .04 Customers may reach an in-house service center toll-free by dialing 1-800-449-0388. Customer Service Technicians are available from 8:00 a.m. to 5:00 p.m. Monday through Friday. In addition, emergency calls are handled 24 hours a day; seven days a week. Customers can reach the emergency operator by dialing the same number. Disputes with respect to charges must be presented to the Company in writing within thirty days from the date the invoice is rendered or such invoice will be deemed to be correct and binding on the Customer. Customers may also contact the South Dakota Public Utilities Commission for resolution of a conflict at 500 East Capitol Street, Pierre, South Dakota 57501-5070, (605) 773-3201, (800) 332-1782.
- .05 If a LEC has established or establishes a Special Access surcharge, the Company will bill the surcharge beginning on the effective date of such surcharge for Special Access arrangements presently in Service. The Company will cease billing the Special Access surcharge upon receipt of an Exemption Certificate or if the surcharge is removed by the LEC.
- .06 In the event the Company incurs fees or expenses, including attorneys' fees, in collecting, or attempting to collect, any charges owed the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.

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**II. RULES AND REGULATIONS (cont'd)****8. Assignment**

The obligations set forth in this Tariff shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns, provided, however, that the Customer shall not assign or transfer its rights or obligations without the prior written consent of the company.

**9. Tax Adjustments**

- .01 All stated charges in this Tariff are computed by the Company exclusive of any federal, state, or local use, excise, gross receipts, sales or privilege taxes, duties, fees, or similar liabilities (other than general income or property taxes) whether charged to or against the Company or its Customer. Such taxes, fees, etc. shall be paid by the Customer in addition to the charges stated in this Tariff. All such taxes, duties, and fees shall each be shown as a separate line item on the Customer's monthly invoice.
- .02 A surcharge is imposed on all charges for Service originating at addresses in states which levy a gross receipts tax on KCI's operations. This surcharge is composed of a factor of the gross receipts tax and taxes imposed directly or indirectly upon KCI as measured by the gross receipts payments or revenues of intrastate access charge will be shown as a separate line item on the Customer's monthly invoice.

**10. Method for Calculation of Airline Mileage**

The airline mileage between two cities can be calculated using the Vertical (V) and Horizontal (H) coordinates of the serving wire centers associated with the Company's POP locations. The method for calculating the airline mileage is obtained by reference to AT&T's F.C.C. Tariff No. 10 according to the following formula:

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

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**II. RULES AND REGULATIONS (cont'd)**

Where V1 and H1 correspond to the V&H coordinates of City 1 and V2 and H2 correspond to the V&H coordinates of City 2.

Example:

	<u>V</u>	<u>H</u>
City 1	5004	1406
City 2	5987	3424

$$\sqrt{\frac{(5004 - 5987)^2 + (1406 - 3424)^2}{10}}$$

The result is 709.83 miles. Any fractional miles are rounded to the next higher whole number; therefore, the airline mileage for this example is 710 miles.

**11. Time of Day Rate Periods**

Time of Day Rate Periods are determined by the time of day at the location of the Calling station.

If applicable, the following rate periods apply.

**Peak Rate Period:**

The Peak Rate Period shall be 7AM-7PM, Monday-Friday.

**Off-peak Rate Period**

The Off-peak Rate Period shall be from 7PM-7AM, Monday-Friday and Weekends. Off-peak rates are discounted 10% to 75% off Peak rates.

**Day:** From 8:00 AM to 5:00 PM Monday - Friday

**Evening:** From 5:00 PM to 11:00 PM Sunday - Friday

**Night:** From 11:00 PM to 8:00 AM Everyday

**Weekend:** From 8:00 AM to 11:00 PM Saturday  
From 8:00 AM to 5:00 PM Sunday

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**II. RULES AND REGULATIONS (cont'd)**

**12. Recognized National Holidays**

The following are Company Recognized National Holidays determined at the location of the calling station.

New Year's Day  
Memorial Day  
Independence Day  
Labor Day  
Thanksgiving Day  
Christmas Day

The off-peak/evening rate is used unless a lower rate normally would apply. When a Call begins in one rate period and ends in another, the rate in effect when the Call begins applies. In the event that a minute is split between two rate periods, the rate in effect at the start of that minute applies.

**13. Special Customer Arrangements**

In cases where a customer requests a special or unique arrangement which may include engineering, conditioning, installation, construction, facilities, assembly, purchase or lease of facilities and/or other special Services not offered under this Tariff, the Company, at this option, may provide the requested Services. Appropriate recurring charges and/or Non-recurring Charges and other terms and conditions will be developed for the Customer for the provisioning of such arrangements.

**14. Inspection**

The Company may, upon notice, make such tests and inspections as may be necessary to determine that the requirements of this Tariff are being complied with in the Installation, operation or maintenance of Customer or the Company equipment. The Company may interrupt the Service at any time, without penalty to the Company, because of departure from any of these requirements.

**15. Testing and Adjustment**

Upon reasonable notice, the Channels provided by the Company shall be made available to the Company for such tests and adjustments as may be necessary to maintain them in satisfactory condition; no interruption allowance will be granted for the time during which such tests and adjustments are made.

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**II. RULES AND REGULATIONS (cont'd)**

**16. Interconnection with Other Carriers**

01. Service furnished by the Company may be connected with Services or facilities of another carrier. Such interconnection may be made at the Company POP or entrance site, at a POP of another carrier, or at the Customer Premises, joint user, or authorized user. Service furnished by the Company is not part of a joint undertaking with such other carriers.
02. Any special interface equipment or facilities necessary to achieve compatibility between the facilities of the Company and other participating carriers shall be provided at the Customer's expense. Upon the Customer's request and acting as its authorized agent, the Company will attempt to make the necessary arrangements for such interconnection.

**17. Customer Provided Equipment**

Customer Premises Circuit terminating equipment such as Channel Service Units (CSU's) and Multiplexing equipment and any other terminal equipment such as telephone sets or systems shall be provided by the Customer and furnished and maintained at the Customer's expense, except as expressly provided otherwise in writing.

**18. Restoration of Service**

The use and restoration of Service in emergencies shall be in accordance with Part 64, Subpart D of the Federal Communications Commission's Rules and Regulations to the extent it is applicable, which specifies the priority system for such activities.

**19. Flexible Pricing**

Flexible Pricing sets minimum and maximum rates that can be charged for telephone service. The Company may change a specific rate within the range of the established minimum and maximum rates on one day's notice to customers and the Public Service Commission.

**Conditions**

- a. The Company reserves the right to change prices at any time subject to regulatory requirements by filing a revised Rate Attachment with the Commission.
- b. Individual written notice to Customers of rate changes shall be made in accordance with Commission regulations. Where there are no regulations, notification will be made in a manner appropriate to the circumstances involved.

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**II. RULES AND REGULATIONS (cont'd)**

- c. A rate shall not be changed unless it has been in effect for at least thirty (30) days.
- d. A customer can request that the Company disconnect service that is provided under the Flexible Pricing due to a price increase. The customer will be credited for the difference between the new price and the old price retroactive to the effective date of the price increase if the customer notifies the Company of its desire to disconnect service within 20 days of receiving notification of the price increase.

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III. SERVICE OFFERINGS

1. Wide Area Telecommunications Services ("WATS")

- .01 WATS is an intrastate high volume, bulk rate long distance service utilizing switched or dedicated access arrangements between the Customer's Premises and KCI's facilities for call origination. Call termination is completed through a combination of KCI facilities and LEC switched access arrangements.
- .02 DS-O (Digital Signal Level 0) Service
  - a. DS-O Service is an intrastate 64 Kbps dedicated digital Interexchange Channel Service. With analog Voice Frequency (VF) Local Access facilities, DS-O Service will support the transmission of analog voice and/or data within the frequency range of 300 - 3000 Hz.
- .03 DS-1 (Digital Signal Level 1) Service
  - a. DS-1 Service is a high capacity point-to-point Private Line Service designed for the simultaneous full-duplex transmission of digital signals at a nominal speed of 1.544 Mbps.
- .04 Timing of Calls
  - a. Long distance usage charges are based on the actual usage of KCI's network. When the called party picks up is determined by hardware answer supervision in which the local telephone company sends a signal to the switch or the software utilizing audio tone detection. For billing purposes, calls are billed on conversation minutes and begin when called party answers and ends when the calling party hangs up. No charge will apply to incomplete calls, which include "ring busy" and "ring no answer calls," and such incomplete calls will not be knowingly charged to the Customer and, if charged in error, will be refundable to the Customer. KCI will determine that a call has been established by signal from the local telephone company.
  - b. Duration of WATS calls are expressed in 6-second increments and billed in 6-second increments. All Calls are rounded to the next highest 6-second period.
  - c. When answer supervision is unavailable and KCI has received a reasonable claim from the end user for a refund of KCI's charges for an uncompleted Call, KCI will reimburse the end user for the charges that KCI has billed for that Call.

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III. **SERVICE OFFERINGS** (cont'd)

.05 Referral Volume Discounts

Referred Volume Discounts are available under KCI Direct Plans.

- a. Customer(s) who participate in the Referral Volume Discount program can apply the discount to their long distance bill or elect to donate to a charity. The payment to charity will be made directly to KCI and recorded on customer(s) bill.
- b. Referral Volume discounts are made based on multilevel marketing plans. First level referrals are eligible for a referral discount up to 2% of LDU of the referred customer(s) net revenue.

**Example:** Customer A refers three customers with \$30 each per month in net revenue. Customer A receives a discount equal to 2% of \$90 or \$1.80 per month.

If Customer A is a business, then the business is eligible for a discount of 2% of all referred customers' eligible revenue and 2% of the revenue from customers referred by the business' referral customers.

**Example:** Business X has 200 employees and 100 associates who sign up for and receive long distance service from KCI. Some of these employees and associates refer additional customers (100 customers at \$10 per month revenue for this example) to KCI. The employees and associates average net revenue is \$10 per month. The business is entitled to 2% of the first referrals ( $300 \times \$10 \times .02 = \$60.00$ ) and 2% of the referred customers ( $100 \times \$10 \times .02 = \$20.00$ ). For each Customer referred, the discount is calculated at 2% of the LDU.

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**III. SERVICE OFFERINGS (cont'd)**

**2. WATS Rate Schedules**

- .01 The following are the minimum and maximum per minute usage charges which apply to all WATS calls. These charges are in addition to the Non-recurring Charges and Recurring Charges referred to in Sections .06 and .07 hereafter.
- .02 Switched Inbound Usage Rates ("800 Service")
- a. Switched inbound service permits inward calling (via 800 codes) to a specific location utilizing premium switched, Feature Group D access on both ends.
  - b. The following is a list of KCI Intrastate Switched Inbound Usage Plans. Except for KCI Direct Plan, all plans are based on a flat billing system and are billed in six (6) second increments with no minimum length of call and these rates remain constant regardless of time of day, mileage, holidays or any other factor, excluding usage. For KCI Direct Plans, a minimum length of call and Peak/Off-peak Rates may apply.
    - (1) KCI Switched Gold Plan

KCI Switched Gold Plan offers a flat rate of \$0.05 - \$0.10 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 1,000,000 minutes.
    - (2) KCI Switched Silver Plan

KCI Switched Silver Plan offers a flat rate of \$0.06 - \$0.11 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 750,000 minutes.
    - (3) KCI Switched Platinum Plan

KCI Switched Platinum Plan offers a flat rate of \$0.07 - \$0.12 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 500,000 minutes.
    - (4) KCI Switched Preferred Business Plan

KCI Switched Preferred Business Plan offers a flat rate of \$0.08 - \$0.13 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 250,000 minutes.

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**III. SERVICE OFFERINGS (cont'd)**

(5) **KCI Switched Business Plan Plus**

KCI Switched Business Plan Plus offers a flat rate of \$0.09 - \$0.14 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 100,000 minutes.

(6) **KCI Switched Business Plan**

KCI Switched Business Plan offers a flat rate of \$0.10 - \$0.15 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 50,000 minutes.

(7) **KCI Switched Basic Plan**

KCI Switched Basic Plan offers a flat rate of \$0.16 - \$0.22 per minute and is available to any Customer.

(8) **KCI Switched Direct Plan**

KCI Switched Direct Plan offers a flat rate of \$0.05-\$0.479 per minute and is available to any customer. KCI Switched Direct Plan customers also qualify for RVDs.

**.03 Dedicated Inbound Usage Rates**

- a. Dedicated inbound service permits inward calling (via 800 codes) to a specific location featuring the use of a dedicated, special access type connection on the terminating end.
  - b. The following is a list of Intrastate Dedicated Usage Plans. Except for KCI Direct Plan, all plans are based on a flat billing system and are billed in six (6) second increments with no minimum length of call and these rates remain constant regardless of time of day, mileage, holidays or any other factor, excluding usage. For KCI Direct Plans, a minimum length of call and Peak/Off-peak Rates may apply.
- (1) **KCI Dedicated Gold Plan**

KCI Dedicated Gold Plan offers a flat rate of \$0.03 - \$0.09 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 1,000,000 minutes.

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**III. SERVICE OFFERINGS (cont'd)**

(2) **KCI Dedicated Silver Plan**

KCI Dedicated Silver Plan offers a flat rate of \$0.04 - \$0.10 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 750,000 minutes.

(3) **KCI Dedicated Platinum Plan**

KCI Dedicated Platinum Plan offers a flat rate of \$0.05 - \$0.11 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 500,000 minutes.

(4) **KCI Dedicated Preferred Business Plan**

KCI Dedicated Preferred Business Plan offers a flat rate of \$0.06 - \$0.12 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 250,000 minutes.

(5) **KCI Dedicated Business Plan Plus**

KCI Dedicated Business Plan Plus offers a flat rate of \$0.07 - \$0.13 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 100,000 minutes.

(6) **KCI Dedicated Business Plan**

KCI Dedicated Business Plan offers a flat rate of \$0.08 - \$0.14 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 50,000 minutes.

(7) **KCI Dedicated Basic Plan**

KCI Dedicated Basic Plan offers a flat rate of \$0.15 - \$0.18 per minute and is available to any Customer.

(8) **KCI Dedicated Direct Plan**

KCI Dedicated Direct Plan offers a flat rate of \$0.025 to \$0.299 per minute and is available to any customer. KCI Dedicated Direct Plan customers also qualify for RVDs. KCI Dedicated Direct Plans require the customer to have dedicated facilities.

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**III. SERVICE OFFERINGS (cont'd)**

**.04 Switched Outbound Usage Rates**

- a. Switched outbound services permits outward calling utilizing premium switched Feature Group D access on both the originating and terminating end.
- b. The following is a list of KCI Intrastate Switched Outbound Usage Plans. Except for KCI Direct Plans, all plans are based on a flat billing system and are billed in six (6) second increments with no minimum length of call and these rates remain constant regardless of time of day, mileage, holidays or any other factor, excluding usage. For KCI Direct Plans, a minimum length of call and Peak/Off-peak Rates may apply.

- (1) **KCI Switched Gold Plan**

KCI Switched Gold Plan offers a flat rate of \$0.05 - \$0.10 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 1,000,000 minutes.

- (2) **KCI Switched Silver Plan**

KCI Switched Silver Plan offers a flat rate of \$0.06 - \$0.11 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 750,000 minutes.

- (3) **KCI Switched Platinum Plan**

KCI Switched Platinum Plan offers a flat rate of \$0.07 - \$0.12 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 500,000 minutes.

- (4) **KCI Switched Preferred Business Plan**

KCI Switched Preferred Business Plan offers a flat rate of \$0.08 - \$0.13 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 250,000 minutes.

- (5) **KCI Switched Business Plan Plus**

KCI Switched Business Plan Plus offers a flat rate of \$0.09 - \$0.14 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 100,000 minutes.

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**III. SERVICE OFFERINGS (cont'd)**

**(6) KCI Switched Business Plan**

KCI Switched Business Plan offers a flat rate of \$0.10 - \$0.15 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 50,000 minutes.

**(7) KCI Switched Basic Plan**

KCI Switched Basic Plan offers a flat rate of \$0.16 - \$0.22 per minute and is available to any Customer.

**(8) KCI Switched Direct Plan**

KCI Switched Direct Plan offers a flat rate of \$0.05-\$0.479 per minute and is available to any customer. KCI Switched Direct Plan customers also qualify for RVDs.

**.05 Dedicated Outbound Usage Rates**

- a. Dedicated outbound service permits outward calling to stations in diverse service areas. Dedicated outbound service is distinguished from other services by the existence of a dedicated, special access connection on one end.
- b. The following is a list of Intrastate Dedicated Outbound Usage Plans. Except for KCI Direct Plans, all plans are based on a flat billing system and are billed in six (6) second increments with no minimum length of call and these rates remain constant regardless of time of day, mileage, holidays or any other factor, excluding usage. For KCI Direct Plans, a minimum length of call and Peak/Off-peak rates may apply.

**(1) KCI Dedicated Gold Plan**

KCI Dedicated Gold Plan offers a flat rate of \$0.03 - \$0.09 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 1,000,000 minutes.

**(2) KCI Dedicated Silver Plan**

KCI Dedicated Silver Plan offers a flat rate of \$0.04 - \$0.10 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 750,000 minutes.

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III. SERVICE OFFERINGS (cont'd)

(3) KCI Dedicated Platinum Plan

KCI Dedicated Platinum Plan offers a flat rate of \$0.05 - \$0.11 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 500,000 minutes.

(4) KCI Dedicated Preferred Business Plan

KCI Dedicated Preferred Business Plan offers a flat rate of \$0.06 - \$0.12 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 250,000 minutes.

(5) KCI Dedicated Business Plan Plus

KCI Dedicated Business Plan Plus offers a flat rate of \$0.07 - \$0.13 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 100,000 minutes.

(6) KCI Dedicated Business Plan

KCI Dedicated Business Plan offers a flat rate of \$0.08 - \$0.14 per minute and is available to any Customer whose total KCI long distance monthly volume exceeds 50,000 minutes.

(7) KCI Dedicated Basic Plan

KCI Dedicated Basic Plan offers a flat rate of \$0.15 - \$0.18 per minute and is available to any Customer.

(8) KCI Dedicated Direct Plan

KCI Dedicated Direct Plan offers a flat rate of \$0.025-\$0.0299 per minute and is available to any customer. KCI Dedicated Direct Plan customers also qualify for RVDs. KCI Dedicated Direct Plans require the customer to have dedicated facilities.

.06 Non-recurring Charges

- a. The following one-time non-recurring installation charges apply to all WATS offerings. These charges remain constant for all Customers, regardless of volume, time of day, mileage or any other factor. These charges are for coordination of services only and are in addition to any associated costs charged by outside vendors. These charges are billed to the Customer the month following the work performed.

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**III. SERVICE OFFERINGS (cont'd)**

<u>Service/Access Arrangement</u>	<u>Charge</u>
Single Dedicated Inbound or Outbound T-1	\$100 per T-1
FX Installation	\$50 per location
Private/Leased Line Installation	\$50 per line
56K Line Installation	\$50 per line

**.07 Recurring Charges**

- a. The following monthly Recurring charges for service apply as indicated and remain constant for all Customers, regardless of volume, time of day, mileage or any other factor. These charges are in addition to any usage charges (cost per minute) and Non-recurring charges for the Service. The charges are billed to the Customer one month in advance.

<u>Service /Access Arrangement</u>	<u>Charge</u>
FX line	\$50 per month per line
Private/Leased line	\$50 per month per line
56K line	\$50 per month per line
Monthly Summary Report	\$5 per report

**3. Travel Card Services**

Travel Card Service is a service which allows callers to utilize KCI's service when calling from a location other than their billed-to-number. KCI offers two distinct travel card services: calling card services and featureless travel card services. Calling card services offer a variety of calling options including information services such as sports, weather and horoscopes, as well as calling options such as conference calling and three way calls. Featureless travel cards offer only the ability to place a call. Calling card services may be accessed by dialing 800-950-0370, featureless travel card services may be accessed by dialing 888-624-1391. KCI Direct is only offered as a featureless travel card service.

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**III. SERVICE OFFERINGS (cont'd)**

<u>Service/Access Arrangement</u>	<u>Charge</u>
Single Dedicated Inbound or Outbound T-1	\$100 per T-1
FX Installation	\$50 per location
Private/Leased Line Installation	\$50 per line
56K Line Installation	\$50 per line

**.07 Recurring Charges**

- a. The following monthly Recurring charges for service apply as indicated and remain constant for all Customers, regardless of volume, time of day, mileage or any other factor. These charges are in addition to any usage charges (cost per minute) and Non-recurring charges for the Service. The charges are billed to the Customer one month in advance.

<u>Service /Access Arrangement</u>	<u>Charge</u>
FX line	\$50 per month per line
Private/Leased line	\$50 per month per line
56K line	\$50 per month per line
Monthly Summary Report	\$5 per report

**3. Travel Card Services**

Travel Card Service is a service which allows callers to utilize KCI's service when calling from a location other than their billed-to-number. KCI offers two distinct travel card services: calling card services and featureless travel card services. Calling card services offer a variety of calling options including information services such as sports, weather and horoscopes, as well as calling options such as conference calling and three way calls. Featureless travel cards offer only the ability to place a call. Calling card services may be accessed by dialing 800-950-0370, featureless travel card services may be accessed by dialing 888-624-1391. KCI Direct is only offered as a featureless travel card service.

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**III. SERVICE OFFERINGS (cont'd)****4. Travel Card Rate Schedules****.01 Domestic Calling Card Rate Schedules**

- a. The following is a list of maximum Domestic Calling Card Rates. All plans are based on a flat rate billing system, 24 hours a day, 365 days per year, in six (6) second increments with a minimum of one minute per call. Calls with duration of 1 second or less will not be billed. Calls with duration of greater than 1 second and less than one minute will be charged for a full one (1) minute call.

**(1) KCI Calling Card Gold Plan**

KCI Calling Card Gold Plan offers a flat rate of \$0.25 per minute and no access charge. KCI Calling Card Gold Plan is available to any Customer whose total KCI long distance monthly volume exceeds 1,000,000 minutes.

<u>Initial Minute</u>	<u>Each Add'l 6 Seconds</u>	<u>Surcharge</u>
\$0.25	\$0.025	None

**(2) KCI Calling Card Silver Plan**

KCI Calling Card Silver Plan offers a flat rate of \$0.30 per minute and no access charge. KCI Calling Card Silver Plan is available to any Customer whose total KCI long distance monthly volume exceeds 750,000 minutes.

<u>Initial Minute</u>	<u>Each Add'l 6 Seconds</u>	<u>Surcharge</u>
\$0.30	\$0.030	None

**(3) KCI Calling Card Platinum Plan**

KCI Calling Card Platinum Plan offers a flat rate of \$0.35 per minute and no access charge. KCI Calling Card Platinum Plan is available to any Customer whose total KCI long distance monthly volume exceeds 500,000 minutes.

<u>Initial Minute</u>	<u>Each Add'l 6 Seconds</u>	<u>Surcharge</u>
\$0.35	\$0.035	None

**(4) KCI Calling Card Preferred Business Plan**

KCI Calling Card Preferred Business Plan offers a flat rate of \$0.25 per minute and a \$0.25 access charge. KCI Calling Card Preferred Business Plan is available to any Customer whose total KCI long distance monthly volume exceeds 250,000 minutes.

<u>Initial Minute</u>	<u>Each Add'l 6 Seconds</u>	<u>Surcharge</u>
\$0.25	\$0.025	\$0.25

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**III. SERVICE OFFERINGS (cont'd)****(5) KCI Calling Card Basic Business Plan**

KCI Calling Card Basic Business Plan offers a flat rate of \$0.25 per minute and a \$0.50 access charge. KCI Calling Basic Business Plan is available to any Customer.

<u>Initial Minute</u>	<u>Each Add'l 6 Seconds</u>	<u>Surcharge</u>
\$0.25	\$0.025	\$0.50

**02. Domestic Featureless Travel Card Rate Schedule**

- a. KCI Featureless Travel Card Basic Rate Plan is based on flat rate billing system, 24 hours a day, 365 days per year, in six (6) second increments with a minimum of one minute per call. Calls with a duration of under 1 second will not be billed. Calls with a duration of greater than 1 second and less than one minute will be charged for a full one (1) minute call.

**(1) KCI Featureless Travel Card Basic Plan**

KCI Featureless Travel Card Basic Plan offers a flat rate of \$0.135 per minute day rate and \$0.12 per minute evening/night/holiday rate with a \$0.20 access charge. KCI Featureless Travel Card Basic Plan is available to any customer utilizing the KCI Featureless Travel Cards.

	<u>Initial Minute</u>	<u>Each Add'l 6 Seconds</u>	<u>Surcharge</u>
Day Rate	\$0.135	\$0.0135	\$0.20
Night/Evening/Holiday Rate	\$0.120	\$0.0120	\$0.20

- b. KCI Featureless Travel Card Direct Plan is based on a flat rate billing system, 24 hours a day, 365 days per year, in six (6) second increments with a minimum of thirty (30) seconds per call. Calls with a duration of under 1 second will not be billed. Calls with a duration of greater than 1 second and less than thirty (30) seconds will be charged for a thirty (30) second call.

**(1) KCI Featureless Travel Card Direct Plan**

KCI Featureless Travel Card Direct Plan offers a flat rate of \$0.09 - \$0.29 per minute and no access charge. KCI Featureless Travel Card Direct Plan Customers are also eligible for RVDs.

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**III. SERVICE OFFERINGS (cont'd)****5. KCI Term Plans**

KCI Term Plans offer a discount to any customer who commits to a 24 month or 36 month term for Switched 800 or Dedicated long distance services, as well as local and intralata services in ordinance with KCI's tariff P.S.C. No. 1. KCI Term Plans offer flat rates per minute and are billed in six (6) second increments with no minimum length of call. These rates remain constant regardless of the time of day, mileage, holidays or any other factor.

**6. KCI Term Plan Rate Schedules**

<u>Switched Calls</u>	<u>Long Distance Rate</u>
Monthly (no local or intralata)	\$0.1190
24 month term plan local and intralata	\$0.1150
36 month term plan local and intralata	\$0.1090
800 Service	Rate for monthly, 24 month and 36 month term plans apply plus \$0.01.
Dedicated Calls	\$0.075 plus cost of T1 Circuit.

**7. Debit Card Services**

Debit Card Service is a service which allows a customer to purchase minutes of service in Units (one Unit equals one intralata domestic minute; the Units applicable to non-domestic calls shall be provided by the Company upon request) for purposes of use or resale to a distributor or end-user, via a prepaid calling card. The holder of the Debit Card is assigned a PIN number for each prepaid calling card and a toll free number for customer service.

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**III. SERVICE OFFERINGS (cont'd)****8. Debit Card Rate Schedule**

- .01 Debit Card Rates per Unit are based on the volume commitment of the contract. All rates are based on a flat rate billing system in one (1) Unit increments. Calls with a duration of one (1) domestic minute or less will be charged for one (1) full Unit.

VOLUME COMMITMENT	RATE PER DOMESTIC MINUTE/UNIT
Minimum of 24 million Units in 15 months	\$0.105
Minimum of 10 million Units in 15 months	\$0.115
Less than 10 million Units in 15 months	\$0.125

**9. Emergency Calls**

- .01 Customer shall configure its PBX or other switch vehicle from which a person places a call so that 911 emergency calls, where available, and similar emergency calls will be automatically routed to the emergency answering point for the geographical location where the call originated without the intervention of KCI.
- a. 911 calls are not routed but are completed through the local network. No billing applies to emergency calls.

**10. Special Promotional Offering**

The Company may, from time to time, engage in Special Promotional Offerings or Trial Service Offerings limited to certain dates, times or locations designed to attract new subscribers or increase subscriber usage. KCI will not have special promotional offerings for more than 90 days in any 12 month period. In all such cases, the rates charges will not exceed those specified herein.

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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF )  
KCI LONG DISTANCE, INC. FOR A )  
CERTIFICATE OF AUTHORITY TO PROVIDE )  
TELECOMMUNICATIONS SERVICES IN )  
SOUTH DAKOTA )

**ORDER GRANTING  
CERTIFICATE OF  
AUTHORITY  
  
TC97-138**

On August 1, 1997, the Public Utilities Commission (Commission), in accordance with SDCL 49-31-3 and ARSD 20:10:24:02, received an application for a certificate of authority from KCI Long Distance, Inc. (KCI).

KCI proposes to operate as a reseller of intrastate telecommunications services such as WATS, 800, travel card, and debit card services. A proposed tariff was filed by KCI. The Commission has classified long distance service as fully competitive.

On August 7, 1997, the Commission electronically transmitted notice of the filing and the intervention deadline of August 22, 1997, to interested individuals and entities. No petitions to intervene or comments were filed and at its regularly scheduled September 25, 1997, meeting, the Commission considered KCI's request for a certificate of authority. Commission Staff recommended granting a certificate of authority, subject to the condition that KCI not offer a prepaid calling card or require deposits or advance payments without prior approval of the Commission.

The Commission finds that it has jurisdiction over this matter pursuant to Chapter 49-31, specifically 49-31-3 and ARSD 20:10:24:02 and 20:10:24:03. The Commission finds that KCI has met the legal requirements established for the granting of a certificate of authority. KCI has, in accordance with SDCL 49-31-3, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. The Commission approves KCI's application for a certificate of authority, subject to the condition that KCI not offer a prepaid calling card or require deposits or advance payments without prior approval of the Commission. As the Commission's final decision in this matter, it is therefore

ORDERED, that KCI's application for a certificate of authority is hereby granted, subject to the condition that KCI not offer a prepaid calling card or require deposits or advance payments without prior approval of the Commission. It is

FURTHER ORDERED, that KCI shall file informational copies of tariff changes with the Commission as the changes occur.

Dated at Pierre, South Dakota, this 3rd day of October, 1997.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By Nelani Laska  
Date 10/8/97

(OFFICIAL SEAL)

**BY ORDER OF THE COMMISSION:**

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner

On August 1, 1997, the Public Utilities Commission (Commission) in accordance with SDCL 49-31-3 and ARSD 20:10:24:02, received an application for a certificate of authority from KCI Long Distance, Inc. (KCI).

KCI proposes to operate as a reseller of intrastate telecommunications services such as WATS, 800, travel card, and debit card services. A proposed tariff was filed by KCI. The Commission has classified long distance service as fully competitive.

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The Commission finds that it has jurisdiction over this matter pursuant to Chapter 49-31, specifically 49-31-3 and ARSD 20:10:24:02 and 20:10:24:03. The Commission finds that KCI has met the legal requirements established for the granting of a certificate of authority. KCI has, in accordance with SDCL 49-31-3, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. The Commission approves KCI's application for a certificate of authority, subject to the condition that KCI not offer a prepaid calling card or require deposits or advance payments without prior approval of the Commission. As the Commission's final decision in this matter, it is therefore

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The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Nelani Lelko

Date: 10/8/97

(OFFICIAL SEAL)

**BY ORDER OF THE COMMISSION:**

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner

**SOUTH DAKOTA PUBLIC UTILITIES  
COMMISSION**

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**CERTIFICATE OF AUTHORITY**

To Conduct Business As A Telecommunications Company  
Within The State Of South Dakota

Authority was Granted September 25, 1997  
Docket No. TC97-138

*This is to certify that*

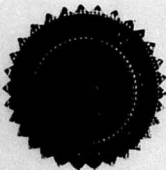
**KCI LONG DISTANCE, INC.**

*is authorized to provide telecommunications services in South Dakota.*

This certificate is issued in accordance with SDCL 49-31-3 and ARSD 20:10:24.02, and is subject to all of the conditions and limitations contained in the rules and statutes governing its conduct of offering telecommunications services.

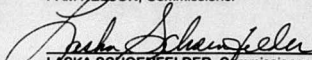
Dated at Pierre, South Dakota, this 3rd day of October, 1997.

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION:**



  
JAMES A. BURG, Chairman

  
PAM NELSON, Commissioner

  
LASKA SCHOENFELDER, Commissioner