

SECTION 3 - UNDERTAKING OF THE COMPANY (Cont.)

3.2 Shortage of Equipment or Facilities

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

3.3 Terms and Conditions

1. Service is provided on the basis of a minimum period of at least one month, 24-hours per day. For the purpose of computing charges in the tariffs of MCImetro, a month is considered to have 30 days.
2. Customers may be required to enter into written service orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in the tariffs of MCImetro. Customer will also be required to execute any other documents as may be reasonably requested by MCImetro.
3. At the expiration of the initial term specified in each Service Order, or in any extension thereof, service shall continue on a month to month basis at the then current rates unless terminated by either party. Any termination shall not relieve Customer of its obligation to pay any charges incurred under the service order and the tariff, of MCImetro prior to termination. The rights and obligations which by their nature extend beyond the termination of the term of the service order shall survive such termination.
4. In any action between the parties to enforce any provision of the tariffs of MCImetro, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.

SECTION 3 - UNDERTAKING OF THE COMPANY (Cont.)

5. Service may be terminated upon written notice to the Customer in accordance with Customer Standards and Billing Practices - Residential Telephone Service, issued by the Michigan Public Service Commission, Part 5, Discontinuation of Service; Part 6, Hearings; Settlement Agreements; and, Part 7, Commission Appeal Procedure.
6. The tariffs of MCImetro shall be interpreted and governed by the laws of the State of Michigan without regard for its choice of laws provision.

3.4 Liability of MCImetro

1. The liability of MCImetro for damages arising out of the furnishing of its Services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or rise of these services or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of allowances for interruption as set forth in Section 7, following. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of MCImetro. MCImetro will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer or User as a result of any MCImetro service, equipment or facilities, or the acts or omissions or negligence of MCImetro's employees or agents.
2. MCImetro shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, Fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over MCImetro, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties

SECTION 3 - UNDERTAKING OF THE COMPANY (Cont.)

3.4 Liability of MCImetro

3. MCImetro shall not be liable for any act or omission of any entity furnishing to MCImetro or to MCImetro's Customers or Users facilities or equipment used for or with the services MCImetro offers.
4. MCImetro shall not be liable for any damages or losses due to the fault or negligence of the Customer or User or due to the failure or malfunction of Customer- or User-provided equipment or facilities.
5. MCImetro does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnifies and holds MCImetro harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal presence, condition, location, or use of any installation so provided. MCImetro reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this paragraph as a condition precedent to such installations.
6. MCImetro is not liable for any defacement of or damage to Customer or User premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of MCImetro's agents or employees.
7. The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid MCImetro by Customer for the specific services giving rise to the claim. No action or proceeding against MCImetro shall be commenced more than one year after the service is rendered.

SECTION 3 - UNDERTAKING OF THE COMPANY (Cont.)

3.4 Liability of MCImetro

8. MCImetro MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOP, A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH IN ITS TARIFFS.

3.5 Notification of Service-Affecting Activities

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

3.6 Provision of Equipment and Facilities

1. MCImetro shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in the tariffs of MCImetro. MCImetro does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.
2. MCImetro shall use reasonable efforts to maintain only the facilities and equipment that it furnishes to the Customer. The Customer may not, nor may Customer permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by MCImetro, except upon the written consent of MCImetro.
3. MCImetro may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided the Customer.

SECTION 3 - UNDERTAKING OF THE COMPANY (Cont.)

3.6 Provision of Equipment and Facilities (Cont.)

4. Equipment MCImetro provides or installs at the Customer Premises for use in connection with the services MCImetro offers shall not be used for any purpose other than that for which MCImetro provided it.
5. The Customer shall be responsible for the payment of service charges as set forth herein for visits by MCImetro's agents or employees to the Premises of the Customer or User when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than MCImetro, including but not limited to the Customer or User,
6. MCImetro shall not be responsible for the installation, operation, or maintenance of any Customer- or User-provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to file tariffs of MCImetro, the responsibility of MCImetro shall be limited to the furnishing of facilities offered under the tariff of MCImetro and to the maintenance and operation of such facilities. Subject to this responsibility, MCImetro shall not be responsible for:
 - (a) the transmission of signals by Customer provided equipment or for the quality of, or defects in, such transmission; or
 - (b) the reception of signals by Customer-provided equipment.

3.7 Non-routine Installation

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

3.8 Ownership of Facilities

Title to all facilities provided in accordance with the tariffs of MCImetro remains in MCImetro, its agents or contractors.

