

Z-Tel Communications, Inc.
601 South Harbour Island Boulevard, Suite 220
Tampa, Florida 33602

Kentucky Tariff No. 4
Original Sheet 1

WHOLESALE SERVICES

Z-TEL COMMUNICATIONS, INC.

REGULATIONS AND INTRASTATE CHARGES
APPLYING TO WHOLESALE SERVICES BETWEEN
CERTIFICATED CARRIERS AND THE COMPANY
IN THE STATE OF KENTUCKY

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

MAY 03 2002

PURSUANT TO 807 KAR 5:011,
SECTION 9 (1)

BY: Stephan Bull
SECRETARY OF THE COMMISSION

Effective: May 3, 2002

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Vice President - Regulatory Affairs
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WHOLESALE SERVICES

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WHOLESALE SERVICES

APPLICATION OF TARIFF

This tariff sets forth the terms and conditions applicable to the establishment of network wholesale services arrangements between Z-Tel Communications, Inc. and Co-Carriers within the State of Kentucky. Only an entity authorized by law and the Commission to resell wholesale services may purchase services under this tariff.

Except as otherwise provided by this tariff, a Customer purchasing a service under this tariff has all of the obligations that would be imposed by the retail tariff for such service upon the end user purchasing the service directly from the Company. Such obligations include, without limitation, the obligation to pay for the service, whether or not the Customer is being paid by its own end users. However, the rate charged for such service, when sold to a Customer under this tariff, is to be determined in accordance with this tariff, and is not directly governed by the prices set forth in the retail tariff.

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**EXPLANATION OF SYMBOLS, REFERENCE MARKS, AND
ABBREVIATIONS OF TECHNICAL TERMS USED IN THIS TARIFF**

The following symbols shall be used in this tariff for the purpose indicated below:

- C To signify changed regulation
- D To signify discontinued rate or regulation
- I To signify increased rate
- M To signify a move in the location of text
- N To signify new rate or regulation
- R To signify reduced rate
- S To signify reissued matter
- T To signify a change in text but no change in rate or regulation

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WHOLESALE SERVICES

1. Definitions

CLEC - Competitive Local Exchange Company.

Commission - Refers to the Kentucky Public Service Commission.

Company - Z-Tel Communications, Inc., issuer of this tariff.

Customer - Any telecommunications provider authorized by the Kentucky Public Service Commission to provide local exchange service in Kentucky.

End Users - Those users of the Customer's service.

LEC - Local Exchange Company.

Wholesale Service - Services made available by the Company to Commission certificated CLECs.

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WHOLESALE SERVICES

2. General

The Company will make available to certificated CLECs in the State of Kentucky, local exchange services, as identified herein, on a wholesale basis for Customers to resell to the Customer's end users.

2.1 Limitations

- A. Neither this tariff nor any actions taken by the Company or the Customer in compliance with this tariff, shall be deemed to create an agency or joint venture relationship between the Customer and the Company, or any relationship other than that of purchaser and seller.
- B. Neither this tariff, nor any actions taken by the Company or the Customer in compliance with this tariff, shall create a contractual, agency, or any other type of relationship between the Company and the Customer's end users, except for those delineated in Section 4.3.
- C. No licenses under patents (other than the limited license to use) is granted by the Company or shall be implied or arise by estoppel, with respect to any service offered under this tariff.
- D. End users may not purchase services under this tariff.
- E. The Company has no rights against, or obligations, liabilities, or duties to, the Customer's end users under this tariff, except for those delineated in Section 4.3.
- F. Services will be provided to Customers under this tariff only to the extent that the necessary facilities and necessary operational support systems, are available.

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WHOLESALE SERVICES

3. Limitations on Liability

- 3.1** Except as otherwise stated in this section, the liability of the Company for damages arising out of either: (1) the furnishing of its services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services or (2) the failure to furnish its service, whether caused by acts or omission, shall be limited to the extension of allowances to the Customer for interruptions in service as set forth in Section 6.4.
- 3.2** Except for the extension of allowances to the Customer for interruptions in service as set forth in Section 6.4, the Company shall not be liable to a Customer or third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages, including, but not limited to, loss of revenue or profits, for any reason whatsoever, including, but not limited to, any act or omission, failure to perform, delay, interruption, failure to provide any service or any failure in or breakdown of facilities associated with the service.
- 3.3** The liability of the Company for errors in billing that result in overpayment by the Customer shall be limited to a credit equal to the dollar amount erroneously billed or, in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.

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3. **Limitations on Liability, Cont.**

3.4 The Company shall be indemnified and held harmless by the Customer or its end users from and against all loss, liability, damage and expense, including reasonable counsel fees, due to:

- A. Any act or omission of: (a) the Customer, (b) any other entity furnishing service, equipment or facilities for use in conjunction with services or facilities provided by the Company; or (c) common carriers or warehousemen, except as contracted by the Company;
- B. Any delay or failure of performance or equipment due to causes beyond the Company's control, including but not limited to, acts of God, fires, floods, earthquakes, hurricanes, or other catastrophes; national emergencies, insurrections, riots, wars or other civil commotions; strikes, lockouts, work stoppages or other labor difficulties; criminal actions taken against the Company; unavailability, failure or malfunction of equipment or facilities provided by the Customer or third parties; and any law, order, regulation or other action of any governing authority or agency thereof;
- C. Any unlawful or unauthorized use of the Company's facilities and services;
- D. Libel, slander, invasion of privacy or infringement of patents, trade secrets, or copyrights arising from or in connection with the material transmitted by means of Company-provided facilities or services; or by means of the combination of Company-provided facilities or services;
- E. Breach in the privacy or security of communications transmitted over the Company's facilities;

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OF THE COMMISSION

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3. Limitations on Liability, Cont.

3.4 (Cont'd.)

- F. Changes in any of the facilities, operations or procedures of the Company that render any equipment, facilities or services provided by the Customer obsolete, or require modification or alteration of such equipment, facilities or services, or otherwise affect their use or performance, except where reasonable notice is required by the Company and is not provided to the Customer, in which event the Company's liability is limited as set forth in paragraph A. of this Subsection 3.4.
- G. Defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof;
- H. Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected to the Company's facilities;
- I. Any noncompletion of calls due to network busy conditions;
- J. Any calls not actually attempted to be completed during any period that service is unavailable;
- K. And any other claim resulting from any act or omission of the Customer or end users of the Customer relating to the use of the Company's services or facilities.

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3. **Limitations on Liability, Cont.**

- 3.5 The Company does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere.
- 3.6 THE COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.
- 3.7 Failure by the Company to assert its rights pursuant to one provision of this tariff does not preclude the Company from asserting its rights under other provisions.
- 3.8 **Directory Errors** - In the absence of gross negligence or willful misconduct, no liability for damages arising from errors or mistakes in or omissions of directory listings, or errors or mistakes in or omissions of listing obtainable from the directory assistance operator, including errors in the reporting thereof, shall attach to the Company. An allowance for errors or mistakes in or omissions of published directory listings or for errors or mistakes in or omissions of listing obtainable from the directory assistance operator shall be at the monthly tariff rate for each listing, or in the case of a free or no-charge directory listing, credit shall equal two times the monthly tariff rate for an additional listing, for the life of the directory or the charge period during which the error, mistake or omission occurs.

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3. **Limitations on Liability, Cont.**

3.9 **With respect to Emergency Number 911 Service:**

- A. This service is offered solely as an aid in handling assistance calls in connection with fire, police and other emergencies. The Company is not responsible for any losses, claims, demands, suits or any liability whatsoever, whether suffered, made instituted or asserted by the Customer or by any other party or person for any personal injury or death of any person or persons, and for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused by: (1) mistakes, omissions, interruptions, delays, errors or other defects in the provision of service, of (2) installation, operation, failure to operate, maintenance, removal, presence, condition, local or use of any equipment and facilities furnishing this service.
- B. Neither is the Company responsible for any infringement, nor invasion of the right of privacy of any person or persons, caused or claimed to have been caused directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, occasion or use of emergency 911 service features and the equipment associated therewith, or by any services furnished by the Company, including, but not limited to the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing emergency 911 service, and which arise out of the negligence or other wrongful act of the Company, the Customer, its users, agencies or municipalities, or the employees or agents of any one of them.

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WHOLESALE SERVICES

4. Responsibility of the Customer

4.1 Ordering Service

- A. The Customer shall be responsible for the accuracy and completeness of all provisioning requests and orders it submits.

The Company will not be responsible for service discrepancies resulting from the Customer's failure to place a service order or the placement of an incorrect service order. The Customer will remain responsible for charges for all services on a line until it submits an order to discontinue the provision of such services, whether or not the Customer's end user is still using such services.

- B. The Customer purchasing service under this tariff must place an order or otherwise establish service with the Company through the appropriate operational interfaces established by the Company. The Customer modifying or discontinuing an existing order or service must place an order or provide appropriate information to the Company through the appropriate operational interfaces established by the Company.
- C. All Customers must establish automated interfaces complying with the format specified by the Company in order to accommodate ordering, provisioning, billing and collections, customer service and account management functions.

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WHOLESALE SERVICES

4. Responsibility of the Customer, Cont'd

- 4.2** The Customer shall provide to the Company any information that is reasonably necessary to enable the Company to fulfill its obligations under this tariff and any contract arrangement the two parties may enter into.
- 4.3** Where a Customer discontinues its provision of service to its end users, for any reason, except for customer specific credit or payment problems, the Customer must send advance written notice of such discontinuance to the Company. Such notice must include a verification that the Customer has notified its end users of the discontinuance, and must state the date on which such end user notice was mailed. If the Customer fails to provide notice, the Company will provide continuous service to the discontinued customers followed by a notice that end user's carrier is no longer providing service and that the end user needs to make other arrangements for local service. If the end user fails to make other arrangements, the Company may continue to service the end user at the Company's retail rates and not under this tariff. The Customer must provide the Company with any information necessary to enable the Company to assume the end user accounts.
- 4.4** To the extent reasonably necessary for the planning of the Company's facilities and operations, the Customer shall provide, on request, forecasts of the approximate number of units of telephone exchange service and other services that the Customer expects to require in particular geographic areas. Such forecasts shall be considered confidential by the Company.
- 4.5** The Customer is responsible for prompt payment of bills for wholesale service. The Company may bill in advance charges for all services to be provided during the ensuing billing period except for charges associated with service usage unless such charges are billed on a forecasted basis to be trued-up at an agreed upon cycle with the Customer.
- 4.6** The Customer is responsible for the payment of any regulatory fees including but not limited to 911, 711, 311, relay services and Universal Service or Targeted Accessibility Funds. The Customer is responsible for the payment of sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated), excluding taxes on the Company's net income, imposed on or based upon the provision of sale of local services.

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5. Refusal and Discontinuance of Service

In addition to any contract termination and penalty clauses, the Company reserves the right to the following:

- 5.1** The Company reserves the right to refuse an application for service from a Customer that is substantially owned, directly or indirectly, by an entity who is indebted to the Company for services previously furnished until the indebtedness is satisfied. The circumstances in which a Customer shall be deemed to be substantially owned, directly or indirectly, by an indebted entity, shall include situations in which the entities are substantially owned directly or indirectly, by the same entity or entities.
- 5.2** If the Customer fails to comply with the rules and regulations of this tariff, or if it fails to pay any sum owing to the Company for more than thirty (30) days beyond the date of rendition of the bill for service, or if the Customer fails to comply with the terms and conditions of the contract for service, then the Company may, on ten (10) days written notice by overnight or certified U S Mail to the person designated by the Customer to receive such notice of non-compliance, refuse additional applications for service and/or refuse to complete any pending orders for service by the non-complying Customer at any time thereafter. If the Company does not refuse additional applications for service on the date specified in the ten (10) days notice, and the Customer's noncompliance continues, nothing contained herein shall preclude the Company's right to refuse additional applications for service to the non-complying Customer without further notice.
- 5.3** If the Customer fails to comply with the rules and regulations of this tariff, or if it fails to pay any sum owing to the Company for more than thirty (30) days beyond the date of rendition of the bill for service, or if the Customer fails to comply with the terms and conditions of the contract for service, then the Company may, on fifteen (15) days written notice by overnight or certified U S Mail to the person designated by the Customer to receive such notice of non-compliance, discontinue the provision of existing services to the non-complying Customer at any time thereafter. In the case of such discontinuance, all applicable charges, including termination charges, shall become due. If the Company does not discontinue the provision of the services involved on the date specified in the fifteen (15) days notice, and the Customer's noncompliance continues, nothing contained herein shall preclude the Company's right to discontinue the provision of the services to the non-complying customer without further notice.

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WHOLESALE SERVICES

5. Refusal and Discontinuance of Service, Cont'd.

- 5.4 The Company may discontinue service or cancel an application for service without notice in the event the Company is prohibited from furnishing services by order of a court or other government authority having jurisdiction.
- 5.5 In the event of fraudulent use of the Company's network, by the Customer and/or the Customer's end users, including but not limited to fraudulent end user orders for transfer of service, the Company will discontinue service without notice and/or seek legal recourse to recover all costs involved in enforcement of this provision.
- 5.6 The Company will not be required to seek payment from the Customer's end users prior to terminating the Customer's service or pursuing any other remedies for nonpayment by the Customer. The Customer will thus be a direct obligor of the Company, and not guarantor or surety for any obligations of the Customer's end user.
- 5.7 The Customer agrees to abide by all Commission rules and regulations, FCC rules and regulations and all applicable state and federal statutes and regulations, including but not limited to, rules regarding slamming and cramming.

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WHOLESALE SERVICES

6. Responsibility of the Company

6.1 Billing

- A. The Company will establish a billing date for each Customer account. Billing is calculated in U S dollars. Customers are required to provide payment in Immediately Available U S Funds.
- B. The bill will cover non-usage sensitive service charges for the ensuing billing period for which the bill is rendered and any adjustments and credits. Usage charges will be billed in arrears unless the parties have agreed, via contract, that forecasted usage charges may be billed. Forecasted usage charges may also be billed in the event the Customer is greater than sixty (60) days past due on bills for two consecutive billing periods.
- C. If any portion of the payment is received by the Company after the payment date, or if any portion of the payment is received by the Company in funds which are not immediately available to the Company, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor the greater of 2% or the maximum rate as allowed by law. Immediately Available U S Funds denotes a corporate or personal check drawn on a bank account and funds which are available for use by the receiving party on the same day on which they are received and include U S Federal Reserve bank wire transfers, U S Federal Reserve note (paper cash), U S Coins and U S Postal money orders.

6.2 Customer Deposits

- A. The Company may require any Customer which has previously made a late payment or has an outstanding balance, or which parent company or holding company or successor entity has a history of late payments to the Company, or which does not have established credit, to make a deposit prior to or at any time after the provision of a service under this tariff, or a contracted service which stems from the authority granted in this tariff.
- B. A deposit required under this section may not exceed the actual of forecasted rates and charges for the service(s) for a two month period.
- C. Payment of a deposit does not relieve the Customer from its obligations to comply with the Company's regulations regarding the prompt payment.

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WHOLESALE SERVICES

6. Responsibility of the Company, Cont'd.

6.2 Customer Deposits, Cont'd.

- D** At such time as the provision of service to the Customer is terminated, the amount of the deposit will be credited to the Customer account and any credit balance which may remain will be refunded.
- E.** Such a deposit will be refunded or credited to the account when the Customer has established credit to the satisfaction of the Company.
- F.** Interest on deposits is set at the late payment fee referenced in this tariff.

6.3 Billing Disputes

- A.** In the event that a billing dispute occurs concerning any charges billed to the Customer by the Company, all undisputed amounts must be paid in order to avoid termination of service. All disputed amounts must be paid to an independent third-party escrow agent identified by the Company while resolution of the dispute occurs, in order to avoid termination of service.
- B.** The Customer must submit a documented claim for the disputed amount. The Customer will submit all documentation as may reasonably be required to support the claim. All claims must be submitted to the Company within 90 days of receipt of billing for those services. If the Customer does not submit a claim as stated above, the Customer waives all rights to filing a claim thereafter. Unless disputed, the invoice shall be deemed to be correct and payable in full by the Customer.
- C.** If the dispute is resolved in favor of the Customer and the Customer has withheld the disputed amount, no interest credits or penalties will apply.
- D.** If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the Kentucky Public Service Commission in accordance with the Commission's rules of procedure. The address of the Commission is as follows:
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602
1-800-772-4636

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6. Responsibility of the Company, Cont'd.

6.4 Interruptions in Service

Service interruption allowances and similar rebates or remedies will be available to Customers with respect to wholesale services to the same extent and under the same circumstances as they would be available to the Company's end users under the primary tariffs for such services.

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7. Operation, Maintenance and Engineering

The Company and the Customer are each individually responsible for the installation, operation, and maintenance of the equipment and facilities on their own respective networks. The Company and the Customer will perform functions for each other which are reasonable necessary to engineer, install, maintain, and administer the facilities subject to this arrangement.

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8. Wholesale Services, Rates and Charges

8.1 Option 1 Package

Option 1 Package is a package or bundle of telecommunications services including local service, selected custom calling features and voice mail¹

Package Price for Standard Service Option 1

Primary Line, per month \$75.00

Secondary Line, per month \$75.00

Service Connection Fee, one-time charge per line:

Primary Line \$125.00

Secondary Line \$125.00

Option 1 Package includes the following:

1. Local line and unlimited local calling
2. Custom Calling Features: Call Forwarding, Caller ID with Name, Call Waiting with Caller ID with Name, Three-Way Calling and Speed Calling.

8.2 The following Company retail services shall not be offered under this tariff.

- A. Promotional offerings are not available as a wholesale service.
- B. Services which are grandfathered are not available as wholesale services.
- C. Lifeline service is not available as a wholesale service.
- D. Schools and libraries discount program and health care providers support program are not available as wholesale services.

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¹ Voice mail is not regulated by the Commission.

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8. Wholesale Services, Rates and Charges, Cont'd.

8.3 Contract Services

In addition, services and combinations of services are available on a contract basis to telecommunications carriers certificated by the Commission. All Contract Service Arrangements are non-discriminatory and may include volume commitments and minimum term periods.

Rates for Contract Service Arrangements will be developed on a case-by-case basis in response to a bona fide request from a Customer or prospective Customer for service which vary from tariffed arrangements. Contract Service Arrangement rates will be offered to Customers in writing and will be made available to similarly situated Customers. A summary of each Contract Service Arrangement offered pursuant to this paragraph will be available to the Commission, in accordance with the Commission rules on confidentiality, upon request.

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