

FILE



RECEIVED-DOCKETING DIV

2008 AUG 15 AM 11:53

1567 E. 93rd Avenue
Merrillville, IN 46410
Phone (219) 650-5555
Toll Free 1-800-935-2181
Fax (219) 650-5545
www.pickmta.com

August, 11 2008

PUCO

Public Utilities Commission of Ohio
Attn: Docketing Division
180 East Broad Street
Columbus, OH 43215-3793

RE: Midwest Telecom of America, Inc Detariffing Application
Case No. 08-784-TIP-ATA

Dear Sir or Madam:

Pursuant to PUCO's decision to require detariffing of all regulated nonresidential Tier 2 services and all regulated toll services, Midwest Telecom of America, Inc. (MTA) has previously filed its complete detariffing application with the Commission.

PUCO staff has since followed up with MTA to indicate that certain revisions are needed to the MTA Service Guide included as part of the original application.

MTA has therefore revised its service guide. Enclosed are the original plus seven (7) copies of the MTA service guide. MTA respectfully requests for PUCO to dispose of the original service guide, and replace the original in its entirety with the enclosed document.

The revised MTA Service Guide is available for inspection at www.pickmta.com

Regards,
Midwest Telecom of America, Inc.

James Smutniak
Midwest Telecom of America, Inc.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician Date Processed 8/15/08

Midwest Telecom of America, Inc.

Service Guide

Updated as of August 1, 2008

This guide is applicable to the use of Midwest Telecom of America, Inc. applicable for Intrastate Telecommunications Services within the State of Ohio

Ohio Customers have certain rights and responsibilities under the Minimum Telephone Service Standards (Ohio Adm.Code 4901:1-5) (MTSS). These safeguards can be found in the Appendix to Ohio Adm.Code 4901:1-5-03, entitled "Telephone Customer Rights and Responsibilities". These rights and responsibilities include complaint handling, ordering or changing service, service repair, payment of bills, and disconnection and reconnection of service.

MTA Service Guide

MTA Service Guide: General Provisions

I. Applicability

1. The MTA Service Guide is designed as a replacement document to tariffs formerly on file at Public Utilities Commission of Ohio. The Service Guide describes MTA rates, terms and conditions applicable to Commercial Service Agreements between the Customer and MTA, including Service Agreements for Data Services and Interexchange Long Distance Services. Such rates, terms and conditions as described herein are inclusive of the Commercial Service Agreement between MTA and the Customer.
2. Any references herein to the term "MTA" and/or "The Company" refers to Midwest Telecom of America, Inc. The terms "MTA", "Midwest Telecom of America, Inc." and "The Company" may be used interchangeably throughout this Service Guide.
3. MTA reserves the right to change the provisions of this Service Guide from time to time. Notice of said changes may occur at MTA's option either via invoice notification, customer email notification, or updates as provided on MTA's website, accessible at www.pickmta.com/regulatory
4. **Dispute Resolution:** To the extent that the Customer wishes to dispute the provisions as described within this Service Guide, the Customer may take any of the following actions:
 - a. Write a letter of dispute to Midwest Telecom of America, delivered via certified mail or overnight delivery service, with return receipt verification, addressed to: Midwest Telecom of America, Inc. Attn: Vice President Regulatory Compliance, 1567 E. 93rd Ave, Merrillville, IN 46410. Upon receipt of the letter, MTA will promptly investigate the Customer's dispute and make every reasonable effort to work with the Customer to resolve any concerns to the mutual satisfaction of both parties.
 - b. Serve written notice of termination of the applicable Commercial Service agreement in accordance with the terms and conditions of said Commercial Service Agreement. The Customer may terminate the Commercial Service Agreement immediately while incurring liability applicable to the remaining term of the agreement as described in the Commercial Service Agreement. Or, the Customer may terminate the Commercial Service Agreement without liability at the end of the term of agreement by serving written notice of termination, not later than 90 days prior to the conclusion of the applicable

service term, delivered via certified mail or overnight delivery service with return receipt verification, addressed to: Midwest Telecom of America, Inc. Attn: Vice President Regulatory Compliance, 1567 E. 93rd Ave, Merrillville, IN 46410. within the applicable Commercial Service Agreement.

II. General Terms and Conditions

1. **Unauthorized Use of Service:** The Customer is responsible for any unauthorized use of MTA Services, and is solely responsible for making payment to MTA for any charges resulting in unauthorized use.
2. **Price Changes:** MTA reserves the right to revise prices and charges for our service from time to time. Written notice of price increases may be provided in a billing insert, as a message printed on the MTA invoice, in a separate email, or other reasonable method at MTA's discretion. Unless required by law, MTA will not provide notice of changes to taxes or surcharges applicable to the Services. Should the Customer disagree with such price changes, the Customer's sole remedy is to invoke Dispute Resolution procedures as described in Part I, Section 4 of this Service Guide.
3. **Payments:** MTA invoices are due upon receipt. For overdue payments 30 days past the due date, MTA charges a 1.5% late payment fee, applied monthly to overdue amounts. If the Customer disputes any portion of the invoice, the Customer must pay the undisputed portions of the invoice, while serving notice of dispute via certified mail or overnight delivery service with return receipt verification addressed to: MTA, Attention Vice President Regulatory, 1567 E. 93rd Ave, Merrillville, IN 46410. The dispute letter should describe the nature and specific reasons for the dispute. MTA will follow the Dispute Resolution procedures as described in Part I, Section 4 of this Service Guide. The Customer waives any objection it may otherwise have to any charges if it fails to provide MTA with written notice of the dispute within sixty (60) calendar days of the date of the invoice. MTA and the Customer each agree to waive all rights of subrogation against one another in connection with the Services.
4. **Indemnification:** The Customer agrees to defend, indemnify and hold harmless MTA, its employees, officers, directors, vendors, agents, assignees, and successors from and against any and all claims, demands, actions, lawsuits, costs and expenses including reasonable attorneys' fees, arising from or related to any use of a Service, or any act, error, or omission in connection therewith by the Customer or any person authorized by the Customer to use the Service including but not limited to: matters relating to incorrect, incomplete or misleading information, defamation, libel, slander, invasion of privacy, identity theft, infringement of a copyright, trademark or other intellectual property, any defective product or Service or for any injury or damage to person or property caused by any service sold or distributed in connection with MTA

Service, or violation of any applicable law or regulation. This provision will continue to apply after cancellation or termination of MTA Service.

5. **Disclaimer of Warranties and Liability:** MTA Service is provided on an “as is” or “as available” basis without warranties, either express or implied, including but not limited to warranties of title or any implied warranties of merchantability or fitness for a particular purpose. MTA does not authorize any person or entity, including but not limited to, MTA employees, agents or representatives to make a warranty of any kind on behalf of MTA, and the Customer hereby agrees not to rely on any such statement. MTA does not warrant that any service will be uninterrupted or error free. Customer expressly agrees that operation and use of MTA service is at the Customer’s sole risk. Neither MTA or its employees, officers, directors, vendors, agents, assignees or successors shall have any liability for the operation use or malfunction of any Service, regardless of whether such parties have been advised of the possibility of such damages or liability. Further, the Customer agrees that it will not hold MTA responsible for any selection or retention of, or the acts or omissions of third parties in connection with any Service.
6. **Limitation of Liability:**
 - a. EXCEPT WHERE PROHIBITED BY LAW, THE CUSTOMER’S SOLE REMEDY FOR LOSS OR DAMAGE CAUSED BY OPERATION OR USE OF ANY SERVICE OR FOR DELAY, MALFUNCTION OR PARTIAL OR NONPERFORMANCE OF ANY SERVICE PROVIDED BY MTA, REGARDLESS OF THE FORM OF ACTION, WHETHER UNDER STATUTE OR IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, SHALL BE PAYMENT OF AN AMOUNT NOT IN EXCESS OF THE CHARGES PAID OR PAYABLE BY CUSTOMER TO MTA FOR SUCH SERVICE FOR THE PERIOD OF SUCH FAILURE, DELAY OR NONPERFORMANCE OCCURRED; PROVIDED, HOWEVER, IF IT IS DETERMINED THAT MTA NEGLIGENCE CAUSED INJURY TO A PERSON OR DAMAGE TO PROPERTY, MTA WILL BE LIABLE FOR NO MORE THAN THE LESSER OF THE AMOUNT OF DIRECT DAMAGES TO THE PERSON OR PROPERTY FOR WHICH MTA IS FOUND RESPONSIBLE, OR FOR THE SUM OF ONE THOUSAND DOLLARS (\$1,000).
 - b. CUSTOMER ACKNOWLEDGES THAT ALL SERVICE IS OF SUCH A NATURE THAT ANY MESSAGE MAY BE LOST FOR MANY REASONS, INCLUDING, BUT NOT LIMITED TO DIALING ERRORS, POWER FAILURES, MALFUNCTION OF WIRELINE OR WIRELESS TELEPHONE OR COMMUNICATIONS SERVICE AND EQUIPMENT AND ELECTRONIC INTERFERENCE. MTA SHALL NOT BE LIABLE FOR ANY REASON WHATSOEVER TO CUSTOMER FOR LOSS OF USE OF ANY OF THE SERVICES, THE CONTENT OF ANY MESSAGE, ANY FAILURE OR DELAY IN THE TRANSMISSION OR RECEIPT OF ANY MESSAGE, OR ANY INTERCEPTION, UNAUTHORIZED DISCLOSURE OR ANY OTHER

UNAUTHORIZED USE OF A MESSAGE. CUSTOMER AGREES THAT IN ALL CIRCUMSTANCES MTA AND ITS SUPPLIERS AND/OR VENDORS AND MANUFACTURERS SHALL NOT BE LIABLE FOR LOST PROFITS, LOSS OF INFORMATION, LOSS OF SIGNAL, OR TOLL FRAUD. MTA SHALL HAVE NO LIABILITY TO THE CUSTOMER OR TO ANY THIRD PARTY FOR THE ACCURACY, TIMELINESS OR FOR THE CONTINUED AVAILABILITY OF ANY MTA SERVICE. THIS EXCLUSION OF DAMAGE ENCOMPASSES WITHOUT LIMITATION, ANY LOSS OF BUSINESS OR REVENUES; LOSS OF DATA; LOSS OF USE OF ANY ASSOCIATED DEVICES; COSTS OF CAPITAL; COSTS OF SUBSTITUTE SERVICES OR REPLACEMENT SERVICES; DOWNTIME COSTS; AND CLAIMS BY THE CUSTOMER FOR SUCH DAMAGES. **THIS APPLIES WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN. THIS EXCLUSION OF DAMAGES ALSO APPLIES, WITHOUT LIMITATION TO CUSTOMER'S INABILITY TO USE OR ACCESS THE NETWORK OR OTHER MTA FACILITIES, OR FOR ANY PART THEREOF, EITHER SEPARATELY OR IN COMBINATION WITH OTHER COMMUNICATION FACILITIES, OR IN CONNECTION WITH ANY SERVICE PERFORMED OR NOT PERFORMED BY MTA OTHER THAN UNDER THIS AGREEMENT, OR A THIRD PARTY. EXCEPT WHERE PROHIBITED BY LAW, MTA WILL IN NO EVENT BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR CONNECTED TO THE PROVISION, OPERATION OR USE OF SERVICES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE, ERROR, MISTAKE OR OMMISSION ON THE PART OF MTA OR ITS AFFILIATES, SUBSIDIARIES, EMPLOYEES, AGENTS OR VENDORS), STRICT LIABILITY OR OTHERWISE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE CUSTOMER AGREES THAT MTA SHALL NOT BE RESPONSIBLE OR LIABLE FOR ANY TYPES OF DAMAGES ARISING FROM OR RESULTING FROM ANY ACCIDENT OR INJURY CAUSED BY OPERATION OR FAILURE OF ANY SERVICES. THE CUSTOMER ACKNOWLEDGES THAT THE PRICING OF SERVICES PROVIDED TO THE CUSTOMER BY MTA REFLECTS THE INTENT OF THE PARTIES TO LIMIT MTA'S LIABILITY AS PROVIDED HEREIN.**

- c. IN THE EVENT THAT THE LIMITATION OF LIABILITIES OR REMEDIES AVAILABLE AS SET FORTH IN THIS DOCUMENT, IN MTA TARIFFS, OR IN MTA COMMERCIAL SERVICE AGREEMENTS ARE FOUND TO BE UNENFORCEABLE FOR ANY REASON , OR THAT ANY CUSTOMER REMEDIES AS DESCRIBED HEREIN FAIL FOR THEIR ESSENTIAL PURPOSE, THE CUSTOMER EXPRESSLY AGREES THAT UNDER NO CIRCUMSTANCES SHALL MTA'S TOTAL LIABILITY TO THE CUSTOMER, OR TO ANY PARTY CLAIMING BY, THROUGH, OUR UNDER THE CUSTOMER FOR ANY CAUSE WHATSOEVER, AND

REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, IN THE AGGREGATE EXCEED THE AMOUNT OF CHARGES PAID THE CUSTOMER FOR ANY SERVICE PROVIDED BY MTA.

- d. NO LIABILITY FOR DAMAGES FROM ERRORS OR OMISSIONS OF DIRECTORY LISTINGS, OR LISTINGS OBTAINED FROM THE DIRECTORY SERVICES OPERATOR SHALL ATTACH OR APPLY TO MTA. IN CASE OF LISTING FOR WHICH A CHARGE HAS BEEN ASSESSED BY MTA, LIABILITY SHALL BE LIMITED TO THE MONTHLY RATE FOR EACH SUCH LISTING FOR THE PERIOD CHARGED.
- e. THIS SECTION 6 WILL SURVIVE AND CONTINUE TO APPLY AFTER MTA SERVICES ARE TERMINATED BY EITHER THE CUSTOMER OR MTA.
- f. NOTHING IN THIS SECTION 6 LIMITS ACTUAL DAMAGES THAT ARE CONCLUSIVELY DETERMINED TO BE THE DIRECT RESULT OF MTA'S WILLFULL, INTENTIONAL AND MALICIOUS CONDUCT.

III. State Universal Service and Regulatory Fees

- 1. When a state, state agency or political subdivision of the state imposes a regulatory fee or assessment including, but not limited to, State Universal Service, or Public Utility Fee upon MTA in connection the services MTA provides to the Customer, the amounts of such fees or assessments will be billed to Customer in the taxing jurisdiction based on the place of primary use.
- 2. State regulatory fees or assessments are located with the intrastate tariffs or the state-specific service guides.

IV. Federal Universal Service and other Federal Regulatory Fees.

1. The Federal Universal Service Charge is an undiscountable monthly charge. The charge is equal to Customer's total net Applicable Charges (as defined below), after application of all applicable discounts and credits, multiplied by the Federal Universal Service Charge percentage. This percentage will be equal to the quarterly Universal Service Fund contribution factor established by the FCC (subject to rounding) in effect as of the bill date. The applicable quarterly contribution factor is found at <http://www.fcc.gov/omd/contribution-factor.html/>. Applicable Charges consist of all charges for jurisdictionally interstate (including international) telecommunications services. This charge is not a tax, nor is it a requirement that MTA assess such charges on customer's invoices. MTA, like other telecommunications carriers, has chosen to pass through such charges on our customer's invoices.
2. The Administrative Expense Fee is an undiscountable monthly charge applicable as a percentage of interstate and international telecommunications charges. The percentage billed by MTA on customer invoices is 1.2%. The Administrative Expense Fee recovers a portion of MTA's internal costs associated with compliance Federal Communications Commission. The charge is assessed as a result of a Decision by the FCC rendered on December 13, 2002, which allows telecommunication carriers to assess the fee beginning on April 1, 2003. This charge is not considered to be a tax, nor is it a requirement that MTA assess such charges on customer's invoices. MTA, like other telecommunications carriers, has chosen to assess such charges on customer's invoices.
3. Telecommunications Relay Service fee is an undiscountable monthly charge applicable as a percentage of interstate and international telecommunications charges. The percentage billed by MTA on customer invoices is 1.59%. The TRS is a fund that is supervised by the FCC and administered by the National Exchange Carriers Association. It was authorized by the Americans with Disabilities Act, and provides funding for equipment and services to speech and hearing-impaired individuals. This charge is not considered to be a tax nor is it a requirement that MTA assess such charges on customer's invoices. MTA, like other telecommunications carriers, has chosen to assess such charges on customer invoices.

V. Pre-subscribed Interexchange Carrier Charge.

1. The Presubscribed Interexchange Carrier Charge (PICC) is a monthly recurring charge applicable for each long distance switched access line. The line status determination is based on available MTA and/or incumbent local exchange carrier

information. If MTA cannot determine the line status based on available information, the multi-line charge applies.

2. The assessment for this charge is shown in the table below:

Presubscribed Interexchange Carrier Charge (PICC)	
Line Status	Assessment
Single Line	\$3.25
Multi Line	\$3.25
Centrex Line	\$0.80
BRI Line	\$0.00
PRI Line	\$0.00

VI. Interstate Interexchange Long Distance Voice Services.

1. Toll Free Services - Toll-Free calls may originate (a) from the US (or from Customer-designated NPAs within the US), (b) from Canada (or from Customer-designated NPAs within Canada), (c) from Mexico (or from Customer-designated Mexican Service Areas), and/or (d) from Customer-designated countries (other than Canada, Mexico, or the US) from which MTA toll-free calling is available. For calls originated from the US or Canada, toll-free calls are dialed by the calling party using a Toll-Free Number. For calls originating outside the US or Canada, toll-free calls are dialed by the calling party using an International Freephone Number supplied to the Customer by the MTA account manager available by calling 1-800-935-2181.
 - a. Domestic rates applicable to the 48 contiguous States are shown on the applicable MTA Commercial Service Agreement.
 - b. Standard rates for toll free calling originating from
 - Canada: .25 per minute
 - Alaska .36 per minute
 - Hawaii. .36 per minute
 - US VI/Pu: .36 per minute
 All billed in 6 second increments after the initial billing increment of 30 seconds.

VII. Miscellaneous Charges.

1. A Payphone Surcharge is applicable whenever a Customer's toll free number is answered for a call originating from a payphone. The Surcharge, per occasion, is .56.