

TOHONO O'ODHAM UTILITY AUTHORITY
SCHEDULE OF RULES AND REGULATIONS

SECTION VIII
BUSINESS, COMMERCIAL, AND GOVERNMENTAL INTERNET SERVICE

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- I. Description Service Area
- A. TOUA provides internet and other non-regulated services at business, commercial, and governmental facilities within the geographic boundaries of the main Tohono O'odham Nation Reservation, which lies within the geographic boundaries Pima, Pinal and Maricopa counties.
 - B. TOUA does not provide internet and broadband services in San Lucy, Florence or the San Xavier District.
- II. Applicability
- The requirements of this section are applicable to Ethernet services and other non-regulated services offered to a business, commercial, and governmental facility through the Internet Department of TOUA. Requirements for digital subscriber line service are covered in Section VII – Local Telephone Service.
- III. Application and Service Agreement
- A. Each Applicant desiring Ethernet and other non-regulated broadband services offered by TOUA must submit an application identifying the service requested. Applicant for service must be at least eighteen (18) years of age and provide adequate identification, such as driver's license, tribal id and/or social security card and, where applicable, provide proof of authority to submit the application and request the service. Approved applicants will be required to sign a service agreement and may be required to pay a service deposit before service is supplied.
 - B. An Applicant must submit a district resolution with wording giving TOUA permission to establish ALL utility services. If an Applicant is requesting utility services on a land assignment that belongs to someone other than the Applicant, the Applicant must submit a notarized letter from the land assignee giving the Applicant permission to establish utility services on their land assignment.
 - C. If, for any reason, an Applicant, after signing an application and/or service agreement, does not take the requested or agreed upon service, Applicant shall reimburse TOUA for the expense incurred by reason of its endeavor to furnish such service(s).
 - D. The receipt of an Applicant's application for service does not, without

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more (i.e., approval of the application by TOUA), create a service agreement and shall not obligate TOUA to render the service applied for. If the service applied for cannot be supplied in accordance with the provisions of these rules and regulations, the liability of TOUA to the Applicant shall be limited to the return of any service deposit or aid of construction made by such Applicant.

- E. In cases where an Applicant was a previous customer of TOUA and that previous account is delinquent the Applicant's application for service will not be processed until the delinquent account is paid.
- F. Where service or facilities are limited, the following order of precedence shall apply:
 - 1. Application for service for a use directly connected with national defense or where war conditions are involved.
 - 2. Application for service for a use directly connected with cases of emergency involving the tribal government, public safety, health, or welfare.
 - 3. Application for service needed because of serious illness or where unreasonable hardship would otherwise result.
 - 4. Application for new business service.
 - 5. All other applications for service.

IV. Minimum Service Periods

- A. Unless otherwise specified elsewhere in this Section VIII or the Schedule of Rules, the minimum service period for all services offered in this tariff is one year (365 days) beginning on and including the day following the establishment of service.
- B. The minimum service period relates to each applicable unit of service, either on the initial or subsequent installations.

V. Transfer or Assignment of Service

Service previously furnished to one Customer may not be assumed by a new Customer without lapse in the rendition of service. The new Customer must

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execute a new service application and service agreement(s), if applicable.

VI. Office and Service Hours

- A. Regular business hours are Monday through Friday 8:00 A.M. - 4:30 P.M., excluding holidays. All work, requested by the Customer, due to unusual conditions or circumstances may be arranged, at the Customer's expense.
- B. Emergency service is performed 24 hours a day, seven days a week at no cost to the Customer. Reconnect requests for non-payment disconnects are NOT considered emergencies unless the Customer has submitted a medical exemption form to the collection department.

VII. Point of Delivery.

The point of delivery is the Customer's side of the demarcation point ("DMARK"), located on the Customer's side of TOUA's ONT (Optical Network Terminal) or equivalent. The DMARK location must be approved by TOUA and have electricity. A 120v outlet is required within 2 feet of the proposed ONT installation. In all cases, TOUA's ONT and TOUA Equipment (as defined below) shall be accessible to TOUA employees.

VIII. Furnishing Service

- A. Provision and Ownership of Service and TOUA Equipment
 - 1. The service provided and TOUA Equipment are the property of TOUA and are provided on the condition that such service and the TOUA Equipment must be installed, relocated, and maintained by TOUA, except as expressly provided in this tariff or any other applicable tariff, rule, or regulation. TOUA employees and agents may enter and/or access the Service Location at any reasonable hour to install, inspect, repair, or remove any item of TOUA Equipment.
 - 2. TOUA Equipment is and shall remain the property of TOUA regardless of where installed and nothing installed at the Service Location shall be considered a fixture or an addition to Customer's land, roof, property, or the Service Location. TOUA will not maintain or in any way be responsible for any software, cables, or hardware attached to the TOUA Equipment that are not installed by TOUA.

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- B. Return of TOUA Equipment
Upon expiration or termination of service and/or any contract, all TOUA Equipment provided to Customer must be returned to TOUA in good working condition, reasonable wear and tear excepted. If any TOUA Equipment is not returned to TOUA upon expiration or termination of service and/or any contract, Customer will be charged the replacement value of the TOUA Equipment.
- C. Duty to Protect
1. It is Customer's sole obligation to safely secure and reasonably protect TOUA Equipment from and against damage, abuse, and theft while at the Service Location.
 2. Customer shall not move, rearrange, disconnect, remove, repair, or otherwise tamper with any TOUA Equipment or permit others to do so without the prior written consent of TOUA. Customer shall not use, or permit the use of, TOUA Equipment for any purpose other than those purposes authorized by TOUA. Customer agrees not to take any action that would directly or indirectly impair TOUA's title to any TOUA Equipment furnished to Customer, nor expose TOUA to any claim, lien, suit, encumbrance, or legal process related to the use or possession of TOUA Equipment. Customer agrees to either pay TOUA's full repair costs or reimburse TOUA for the full, current-market replacement price of any lost, stolen, unreturned, damaged, sold, transferred, leased, encumbered, or assigned TOUA Equipment or part thereof, together with any costs incurred by TOUA in obtaining or attempting to obtain or regain possession of any such TOUA Equipment including, but not limited to, attorneys' fees.
- D. Emergency Procedures
The TOUA may make reasonable provisions to meet emergencies resulting from failure of service and may establish procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.
- E. Installation, Maintenance, and Repair of TOUA Equipment and Facilities
1. All ordinary expense of installation, maintenance, and repairs of TOUA Equipment and/or Facilities, unless otherwise specified in

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this tariff, is borne by TOUA subject to the following limitations:

- a) Where special conditions or requirements of the Customer involve unusual construction or installation costs, the Customer may be required to pay a reasonable proportion of such costs.
 - b) In case of damage, loss, theft, or destruction of any of TOUA Equipment or other TOUA property due to the negligence or willful act(s) of the Customer or other persons authorized by the Customer to use the service and not due to ordinary wear and tear, the Customer shall be required to pay the actual expense incurred by the TOUA in connection with replacement of the property or the expense incurred in restoring it to its original condition.
2. Customer shall allow TOUA all requested access to the Service Location and any other areas needed to access the Service Location, including to Customer's server room and the DMARK, to perform work, repairs and maintenance on TOUA Equipment. TOUA reserves the right to refuse to perform any installation or repair work. When necessary, TOUA may charge Customer for interior or exterior cable or wiring requested or required to complete the installation or repairs and such work shall be charged at TOUA's then current hourly rates.
 3. The Customer shall not (and shall not permit others to) install, disconnect, rearrange, remove, or attempt to repair any TOUA Equipment and/or Facilities , except upon the written consent of TOUA or as otherwise specified in TOUA's applicable tariffs. Customer is liable for losses experienced as a result of unauthorized tampering.
- F. **Work Performed Outside Regular Working Hours**
The rates and charges specified in this tariff contemplate that all work in connection with furnishing or rearranging service will be performed during regular working hours. Whenever a Customer requests that work be performed outside TOUA's regular working hours, or that work already started be interrupted, the Customer may be required to pay the amount of additional costs TOUA incurs as a result of the Customer's special

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requirements and such amounts will be owed in addition to the other rates and charges specified in this Tariff.

IX. Use of Service and TOUA Equipment and Related Facilities

A. Use of Service

Customer agrees not to (whether for a fee or without charge) reproduce, duplicate, copy, sell, transfer, trade, resell, re-provision, redistribute, or rent any part of the service. Further, the Customer shall not charge a fee to any other person or entity for use of the service or access to the service at the Customer's Service Location, including, but not limited to, reselling capabilities enabled or used by a specific application whether physical or virtual (including, without limitation, Voice Over Internet Protocol (VOIP) via wired, wireless, or other means.

B. Use of TOUA Equipment and Related Facilities

No equipment, accessory, apparatus, circuit or device shall be attached to or connected with TOUA Equipment and/or Facilities unless such attachment or connection is approved by TOUA and such attachment or connection is in compliance with TOUA's technical standards, as established by the Internet Company. If any unauthorized or non-compliant attachment or connection is made, TOUA shall have the right to remove or disconnect the same, to suspend service during the continuance of said attachment or connection, or to disconnect service. The Customer shall be held responsible for the cost of correcting any impairment of service caused by the use of such attachments or connections and shall be billed for each service call made because of the use of such attachments or connections.

C. Unlawful, Abusive, or Fraudulent Use of Service

The service furnished is subject to the condition that it will not be used for any unlawful purpose. Service will be discontinued, after proper written notice, if any law enforcement agency, acting within its apparent jurisdiction, or other entity with proper authority advises in writing that such service is being used in violation of law. TOUA may refuse to furnish service when it has reasonable grounds to believe that such service will be used in violation of law.

D. Allowance for Interruptions

1. For the purpose of applying this provision, interruption shall mean

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the inability to send or receive data packets and loss of routing within the affected system/program/business, connecting to the Internet and loss of connection within the business. This includes the completion of calls either incoming or outgoing or both, that are directly connected via Ethernet (VoIP, SIP, etc.) Interruption does not include, and no credit allowance shall be given, for service difficulties such as reductions in speeds due to simultaneous users. .

2. In the event a customer's service is interrupted by TOUA, and it remains out of order for forty-eight (48) hours or longer after being reported to be out of order and after access to the Service Location is made available, appropriate adjustments or refunds shall be made to the Customer. The amount of adjustment or refund shall be determined on the basis of the known period of interruption, generally beginning from the time the service interruption is first reported. The refund to the Customer will generally be the pro rata part of the month's flat rate charges for the period of days and that portion of the service rendered useless or inoperative. The refund may be accomplished by a credit on a subsequent bill for service.
3. The credit allowance will not apply where service is interrupted by the negligence or willful act of the Customer or the failure of equipment and/or facilities provided by the Customer, or where the TOUA, pursuant to the terms of any applicable tariff, suspends or terminates service because of unlawful or improper use of the service, TOUA Equipment and/or Facilities, or any other reason covered by any applicable tariff.
4. No credit allowance shall be made for interruptions due to electric power failure where, by the provisions of this or any other applicable tariff, the Customer is responsible for providing electric power.
5. No credit allowance shall be made for interruptions caused by any person or entity other than TOUA. TOUA is not responsible for any malfunction of any service or TOUA Facility provided by any other carrier, act of God, fire, war, civil disturbance, Act of government or by any other cause beyond TOUA's control.

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X. Moving Service

- A. If Customer desires to move the service, Customer must place a moving service request with TOUA Telephone Services Department at least 30 days prior to relocating to avoid service interruption or unnecessary loss of service. This request must contain a date of service termination at the existing location, address and contact information for the new location, and start of service at the new location. A new district resolution with wording giving TOUA permission to establish ALL utility services may be required for the new location. Upon receiving the written request (email correspondence is acceptable) from the Customer, TOUA Telephone Services will execute a moving service order.
- B. With receipt of the moving service request, TOUA will perform a site visit and an evaluation of the proposed new location site to ensure 1) the proposed location has the adequate amount of space to move and install the necessary equipment, 2) TOUA can provide service to the desired location, and 3) construction will not take longer than 20 business days. Once TOUA has conducted its evaluation, a quote for moving the service will be provided to the Customer. Upon receipt of written acceptance or payment, TOUA will proceed with moving service for Customer and will complete the move within 20 business days unless Customer is notified otherwise. In the event TOUA is unable to provide service to the new location, both parties' obligations under any Agreement will be waived if the Customer returns to original location or until such time as recommendations for service installation have been exhausted, and No Early Termination Fees or other fees will apply. Customers who elect to return to the original location must return within thirty (30) days.
- C. If Customer moves or attempts to move or relocate the service except as provided above, Customer will be charged for any and all expenses associated with repairing any damage to TOUA Equipment and/or Facilities and may be charged other administrative fees. Further, should any construction be required for restoration of the service due to Customer's alteration or relocation of the service, the Customer will be charged for any and all hours and equipment at TOUA's current rate.

XI. Termination of Service

- A. Early Termination of Service

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If the Customer elects to terminate the service prior to the expiration of any agreement term, an Early Termination Fee will be assessed. The Early Termination Fee will be an amount equal to the highest monthly fee paid during the term of the agreement multiplied by the remaining balance of the months in the agreement multiplied by ten percent (10%). For example, if 4 months remain in the term of the agreement, the calculation of the amount owed will be as follows: highest monthly rate x 4 x 0.10.

- B. Early Termination Due to Breach of Agreement by Customer
If the Customer's account is terminated by TOUA for non-payment or for any breach of the terms above, a Breach of Service Termination Fee will be assessed. The Breach of Service Termination Fee will be an amount equal to the highest monthly fee paid during the term of the agreement multiplied by the remaining balance of the months of the agreement multiplied by fifteen percent (15%). For example, if 4 months remain in the term of the agreement, the calculation of the amount owed will be as follows: highest monthly rate x 4 x 0.15.

XII. Liability of the TOUA

- A. Service Irregularities.
In general, there is no charge to the Customer for service calls related to malfunctions of TOUA's Equipment and other areas where TOUA is responsible. TOUA shall use reasonable diligence to supply or continue to supply service, but in the event service fails, is interrupted or becomes defective through acts of God or by the public enemy, or by accidents, strikes, labor troubles or by action of the elements, or for any other cause beyond the reasonable control of TOUA, it shall not be liable therefor. TOUA shall not be liable to the Customer for damages resulting from failures, interruptions or defects of service or any consequential damages sustained by the Customer by reason of any failure, interruption or defect of service.
- B. Indemnifying Agreement
Customer shall indemnify and hold harmless TOUA against: claims for libel, slander, or the infringement of copyright arising directly or indirectly from the material transmitted over TOUA Equipment and/or Facilities or the use thereof; claims for infringement of patents and/or copyrights arising from combination with, or use in connection with, TOUA Equipment and/or Facilities TOUA, apparatus and systems of the

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Customer; and any and all other claims arising out of any act or omission of the Customer in connection with the Customer's use of the service provided by TOUA.

- C. Defacement of Premises
TOUA is not liable for any defacement or damage to any property resulting from the furnishing of service or the installation, attachment, or removal of any TOUA Equipment and/or Facilities by TOUA.

XIII. Inspections.

- A. TOUA shall have the right, but shall not be obligated, to inspect any installation before the service is introduced, or at any later reasonable time, and reserves the right to refuse to provide service to any location not in compliance with any provision of the TOUA Rules and Regulations; but such inspection or failure to inspect or reject shall not be regarded as an assurance against defects in installation or an assurance of the quality or safety of equipment or their installation, and shall not render TOUA liable or responsible for any loss or damage to person or property resulting from defects in the installation, or from equipment, or the installation thereof, or from violation of TOUA's Rules and Regulations, or from accidents which may occur at the Service Location. The Customer further agrees to claim no damage on account of interruption of the service, it being understood that the rates charged to Customer do not contemplate uninterrupted service guarantees.
- B. To requests an inspection please call (520) 383-5855 or in person at TOUA office in Sells. Inspection requests may take up to 48 hours for processing and scheduling. Scheduled inspections require the presence of the Customer or a Customer's agent over the age of 18.

XIV. Key Terms

The following terms shall have the following definitions unless otherwise defined in any agreement between the Customer and TOUA.

- A. "DMARK" or "demarcation point" is the point at which which TOUA hands off service to Customer, through hard wire, virtually or other means at the Service Location.
- B. "Facilities" shall mean any and all TOUA business personal property (regardless of where located) which is part of the Internet service delivery

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system or any other utility service maintained and operated by TOUA, including (but not limited to) the TOUA Equipment.

- C. "Service Location" shall mean the residential dwelling, building, office, or premises serviced by TOUA, provided that:
1. for residential customers, the "Service Location" shall be the residential premises occupied by only a single family; and
 2. for all non-residential customers, the "Service Location" shall be the building or that portion of a building occupied by a single entity.
- D. "TOUA Equipment" shall mean specifically any and all facilities, equipment, or devices provided by TOUA at the Service Location(s) that are used to deliver the service including, but not limited to, all terminals, wires, modems, Optical Network Termination equipment (ONT), lines, circuits, ports, routers, gateways, switches, channel service units, data service units, cabinets, and racks.