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227	Customer-specific Fibre Maintenance Services (Alberta only)	

ITEM		
227.1	Service Description	

This Item 227 tariff governs the provision of Maintenance Services by the Company to the Customer on specific fibre strands (the Customer Strands) and related Support Structures owned by the Customer which are identified in the Item 227 Customer-specific Fibre Maintenance Agreement (the Item 227 Agreement) and which are located within a fibre optic telecommunications network (the System) in which the Company owns Strands and an interest in the Support Structures in the System. The Company is the designated maintenance provider for the System.

Other Interest Holders who acquired Strands in the System are also Customers, individually, of this Item 227 service.

The Maintenance Services to be provided by the Company to the Customer pursuant to this Item are:

- Scheduled Maintenance Services, scheduled by the Company in accordance with the Company's standard practices, shall comprise the following preventive maintenance services to be delivered by the Company under the Item 227 Agreement:
 - a. Annual visual inspection of the route.
 - b. All cable locates referred to the Company by the Alberta One-Call program.
 - c. Annual inspection and repair of marker posts and signage.
- Emergency Maintenance and Restoration Services:

Such emergency maintenance and restoration services as may be necessary in the event of an Emergency Event to inspect, assess and repair the Customer Strands and related Support Structures such that, to the extent possible, the Customer Strands meet the fibre performance specifications agreed to by the Parties, on a 7 days per week, 24 hours per day basis. Such work shall include all trenching, fibre interconnection and splicing work and all conduit, vault and pole replacement work.

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ITEM 227.1 **Service Description – Continued**

Maintenance Services shall exclude the following:

- a. reasonable wear and tear;
- b. deterioration of characteristics of the Customer Strands and related Support Structures that occurs principally by reason of the passage of time; and
- c. any maintenance that would require capital expenditures to replace any material part of the Customer Strands or Support Structures (other than the repair of the Customer Strands and related Support Structures to make the Customer Strands operational in connection with an Emergency Event).

The Maintenance Services include non-forborne tariff items and forborne services as listed below:

- 1. The Company non-forborne labour rates: Network Diagnostic and Maintenance Services Tariff CRTC 18002, Item 1820).
- 2. Forborne services: none.

The Company is not supplying, nor is the Company obligated to supply, maintenance services related to:

- 1. the optronics or electronics or optical or electrical equipment which may be required to use the Customer Strands; and
- 2. shelters in which the equipment described in 1 above is contained or any equipment owned by the Customer and used in connection with the operation of such shelters.

Definitions

For the purposes of this Item 227 tariff, capitalized terms shall have the meanings ascribed to them in the body of this tariff or any other applicable Company tariff and in addition, the following terms shall have the meanings ascribed to them below:

“*Business Day*” means a day, excluding Saturdays, Sundays and statutory holidays in the Province of Alberta.

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Definitions - Continued

“Disposition” means an assignment, indefeasible right of use, sale, transfer, swap, lease, grant of rights or use or any other disposition.

“Emergency Event” means a failure of, or damage to, the Customer Strands or related Support Structures that adversely affects the operation of the Customer Strands.

“Interest Holders” means any person, including the Customer, the additional Customers and the Company, who holds an interest in the Strands in the System, whether by way of ownership interest, indefeasible right of use, leasehold interest or other arrangement.

“Interest Rate” means a per annum rate equal to 12.68% per annum, compounded monthly.

“Party” means each of the Company and the Customer (or, alternatively, other Interest Holders, as additional Customers individually, as the case may be) and “Parties” shall mean both of them.

“Proportionate Share” means with respect to a Party, for each Segment, the proportion that A bears to B, where A equals the number of Customer Strands and B equals the total number of Strands in the Segment, as applicable.

“Segment” means a route segment and spurs for which Maintenance Services are to be provided by the Company under this Item 227 tariff and the Item 227 Agreement.

“Strands” means strands of fibre optic cable.

“Support Structures” means, collectively, all infrastructure (other than shelters) necessary to support Strands including, without limitation, cable sheathing, conduit, troughing, pedestals, slack containers, poles and any equipment related thereto, but excluding Strands.

“Underlying Rights” means collectively all easements, rights-of-way, leases, licenses, authorizations, permits, arrangements and other agreements, whether written or otherwise, relating to the grant of rights and interest in, or access to, the real property underlying the System (including without limitation the Customer Strands) and access to Support Structures in connection therewith.

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ITEM 227.2 **Conditions of Service**

(N.B.: Unless stated otherwise, all Item 227.2 conditions apply equally to the Customer, or other Interest Holders as additional Customers individually, as the case may be.)

1. The Maintenance Services shall be provided under the terms and conditions of this tariff, General Terms of Service as specified in the Company General Tariff (CRTC 21461, Items 101 - 124) and the Item 227 Agreement. In the event of any conflict or inconsistency between this tariff and the provisions of any written or unwritten agreement or arrangement with the Customer relating to this service, the Company's tariffs shall take precedence.

2. Initial Contract Period:

The 5-year Maintenance Services shall commence on CRTC approved effective date for the introduction of Item 227, and unless earlier terminated in accordance with the Item 227 Agreement, shall continue for a period of 5 years till 2012 06 11 (such period is herein called the Term).

3. Renewal Term:

In the event the Customer desires to extend the Term, the Customer shall provide the Company with written notice not less than one hundred and eighty (180) days prior to the expiration of the then current term of the Item 227 Agreement. Any such renewal shall be for a term of five (5) years (the Renewal Term). Upon receipt of such notice, the Company shall review the costs associated with providing the Maintenance Services and the then current market rates for such Maintenance Services and the Company shall provide the Customer with a description of the Maintenance Fees for the Renewal Term and the Parties shall negotiate in good faith to reach agreement on the revised maintenance fees for the Renewal Term.

4. The Company is designated the exclusive provider for all Strands and Support Structures comprising the System for the Term.

5. The Company may subcontract any or all of the Company's duties or obligations to the Customer under this Item 227 tariff or the Item 227 Agreement to a qualified third-party contractor, provided that the Company shall remain obligated to the Customer during the Term for complying with any such duties or obligations.

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ITEM 227.2 **Conditions of Service - Continued**

6. In the event of a Disposition by the Customer of Strands to any Person, such Strands shall automatically be removed from the Item 227 Agreement, and Schedule “D” of the Item 227 Agreement shall be deemed to be amended accordingly, including a prorata reduction of the Maintenance Fees, without further action of the Parties.

7. The Customer shall at no time resell any Maintenance Services provided by the Company to the Customer under the Item 227 Agreement and shall not provide any maintenance services on the System (excluding maintenance in shelters) to any Person during the Term.

8. The Customer shall pay the following maintenance fees to the Company for the Maintenance Services:

a. Scheduled Maintenance Services:

Maintenance Fees for Scheduled Maintenance Services (as specified in Item 227.3) shall be calculated annually and payable by the Customer in advance.

b. Emergency Maintenance and Restoration Services:

i. The Company shall provide the Customer with an invoice for its Proportionate Share of the costs associated with Emergency Maintenance and Restoration Services as and when such costs are incurred by the Company during the Term; provided however, that if the Customer’s Proportionate Share of the costs with respect to a particular incident is reasonably anticipated by the Company to exceed \$50,000.00, the Company may require the Customer to prepay all or a portion of the anticipated costs.

ii. The Company’s out-of-pocket costs invoiced on a cost plus fifteen percent (15%) basis.

iii. The Company’s standard time and charge labour charges (as specified in Tariff CRTC 18002, Item 1820 – Network Diagnostic and maintenance Services) apply with respect to work undertaken by the Company.

The Company shall provide supporting documentation confirming the costs incurred by the Company in connection with the provision of Emergency maintenance and Restoration Services with any invoice delivered by the Company.

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ITEM
227.2**Conditions of Service - Continued**

9. In addition to the amounts payable pursuant to Item 227.2.8 above, the Customer shall be responsible to pay directly or reimburse the Company for all other sums, costs, fees and expenses as a result of any work performed by the Company at the request of the Customer under the Item 227 Agreement which does not comprise part of the Maintenance Services. The Company shall provide supporting documentation confirming costs incurred by the Company in connection with the provision of such work by the Company.
10. If the Customer fails to pay the Company any amount due and payable under the Item 227 Agreement when due then, in addition to any other rights and remedies that the Company may have, the Customer shall pay interest on such unpaid amount at the Interest Rate. Notwithstanding the foregoing, no interest shall accrue on any payment that is disputed in good faith by the Customer while such dispute is pending. If such dispute is later resolved in favour of the Company, such amount shall bear interest from the date when due until paid at the Interest Rate, both before and after any court judgment or arbitration award in respect of the same.
11. Either the Company or the Customer may terminate the Maintenance Services and the Item 227 Agreement, and its obligations thereunder, if any other Party fails in a material respect to perform its obligations under the Item 227 Agreement, where such failure has not been remedied within sixty (60) days after delivery of written notice of default to the non-defaulting Party, or where such failure is not capable of being remedied within a sixty (60) day period, within such longer time as is appropriate, provided the defaulting Party is continuing in good faith during such time to remedy the failure.

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	12. Notwithstanding Item 227.2.11, if the Customer fails to pay the Company an amount payable under this Item 227 tariff and the associated Item 227 Agreement within the time specified in the Item 227 Agreement, then the Company:	
	a. shall be entitled to immediately suspend all or a portion of the Maintenance Services and any other work being undertaken by the Company under this Item 227 tariff and the Item 227 Agreement upon delivery of written notice to the Customer;	
	b. shall be entitled to terminate the Item 227 Agreement and the Maintenance Services in its entirety if the Customer is in arrears on the annual Maintenance Fees for Scheduled Maintenance Services for ninety (90) days or longer upon delivery of written notice to the Customer; and	
	c. may pursue any other remedies which it may have at law or under the Item 227 Agreement.	
	13. The obligation of the Company to provide Maintenance Services is subject, in all respects, to the Underlying Rights and any access restrictions respecting the System or the lands on which the System is located imposed by the Underlying Rights or by applicable landowners or governmental authorities.	
	14. In the event that the Company recovers monies from a third-party in respect of damage caused to the System as a result of an Emergency Event affecting a Segment, the Company shall reimburse or, at the Customer's option, credit the Customer for any Maintenance Fees paid by the Customer to the Company in respect of Emergency maintenance and Restoration Services for such Segment related to the Emergency Event on a Proportionate Share Basis.	

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ITEM 227.3 **Rates**

The Customer (and other Interest Holders, as additional Customers individually, as the case may be) shall pay to the Company the following rates and charges and is subject to all applicable terms and conditions of the Company’s tariffs, including this Item 227 tariff. Such rates and charges are in addition to any other rates and charges that may be applicable.

1. Maintenance Fees:

- a. Maintenance Fees for Scheduled Maintenance Services (see Item 227.1 for service specifics): An annual amount of \$240.00* per route kilometre (Route-Km) for the Customer Strands per year; (* The charges payable shall be prorated for any portion of a year during which they are payable.)
- b. Fees for Scheduled Maintenance Services which exceed specified cost amounts: For any Scheduled Maintenance Services which require the Company to incur a cost exceeding \$10,000.00 plus taxes per item (or an aggregate total of \$32,000.00 per year), the Customer shall pay to the Company the Customer’s Proportionate Share of such costs based on a cost plus fifteen percent (15%) model for the portion of the costs exceeding \$10,000.00 per item (or the costs exceeding a total of \$32,000 per year); and
- c. Fees for Emergency Maintenance and Restoration Services (see Item 227.1 for service specifics): For Emergency Maintenance and Restoration Services, the Customer shall pay to the Company the Customer’s Proportionate Share of the costs associated with such services in accordance with Item 227.2.8.b. (See also Item 227.2.14.)

2. Other Charges: See Item 227.2.9.