

## 25. Liability

- 25.1 As used in this Section 25, "Service Failure" means a failure to comply with a direction to install, restore or terminate Services under this Agreement, a failure to provide Services under this Agreement, and failures, mistakes, omissions, interruptions, delays, errors, defects or the like, occurring in the course of the provision of any Services under this Agreement.
- 25.2 Except as otherwise stated in Sections 25.3 and 25.5, the liability, if any, of a Party, a Party's Affiliates, and the directors, officers and employees of a Party and a Party's Affiliates, to the other Party, the other Party's Customers, and to any other person, for Claims arising out of a Service Failure shall not exceed an amount equal to the pro rata applicable monthly charge for the Services that are subject to the Service Failure for the period in which such Service Failure occurs.
- 25.3 In no event shall the parties waive liability in contract, tort, strict liability, warranty or otherwise, for any special, incidental or consequential damages, such as but not limited to, service failure, breach, delay or failure in performance, disruption, loss of product, loss of use of the equipment or system, non-operation or increased expense of operation of other equipment or systems, cost of capital, or cost of purchase or replacement equipment, systems, or power. Dispute resolution over any such claims shall be initiated pursuant to the Dispute Resolution provisions under this Agreement.
- 25.3.1 Loss of anticipated profits or revenue, or other commercial or economic loss, however, shall not be available as a remedy, even if the party whose liability is excluded by this Section has been advised of the possibility of such damages.
- 25.4 Section 25.1 through 25.3 shall apply regardless of the form of a claim or action, whether statutory, in contract, warranty, strict liability, tort (including but not limited to, negligence of a Party), or otherwise.
- 25.5 Nothing contained in Sections 25.1 through 25.4 shall exclude or limit liability:
- 25.5.1 under Sections 20, Indemnification, or 41, Taxes;
- 25.5.2 for any obligation to indemnify, defend and/or hold harmless that a Party may have under this Agreement;
- 25.5.3 for damages arising out of or resulting from bodily injury to or death of any person, or damage to, or destruction or loss of, tangible real and/or personal property of any person, or Toxic or Hazardous Substances, to the extent such damages are otherwise recoverable under Applicable Law;

- 25.5.4 for a claim for infringement of any patent, copyright, trade name, trade mark, service mark, or other intellectual property interest;
- 25.5.5 under Section 258 of the Act or any order of FCC or the Commission implementing Section 258; or
- 25.5.6 under the financial incentive or remedy provisions of any service quality plan required by the FCC or the Commission.
- 25.6 In the event that the liability of a Party, a Party's Affiliate, or a director, officer or employee of a Party or a Party's Affiliate, is limited and/or excluded under both this Section 25 and a provision of an applicable Tariff, the liability of the Party or other person shall be limited to the smaller of the amounts for which such Party or other person would be liable under this Section or the Tariff provision.
- 25.7 Each party shall, in its tariffs and other contracts with its Customers, provide that in no case shall the other Party, the other Party's Affiliates, or the directors, officers or employees of the other Party or the other Party's Affiliates, be liable to such Customers or other third-persons for any special, indirect, incidental, consequential, reliance, exemplary, punitive or other damages, arising out of a Service Failure.
- 25.8 In any action to enforce or interpret the terms of this Agreement, the prevailing party shall be awarded, in addition to any other remedy or compensation, its attorneys' fees and costs, including fees of expert witnesses.