



LINDEN R. EVANS, P.E.
Associate Counsel

Telephone: (605) 721-2305
Facsimile: (605) 721-2550
Email: levans@bh-corp.com

November 26, 2003

RECEIVED

DEC 01 2003

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Ms. Pamela Bonrud
Executive Director
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 E. Capitol Avenue
Pierre, South Dakota 57501-5070

**Re: Complaint filed by Black Hills FiberCom, L.L.C., Against Qwest Corporation
Regarding Intrastate Switched Access Charges Applied to ISP-Bound Calls Which
Complainant Claims is Interstate in Nature
CT03-154**

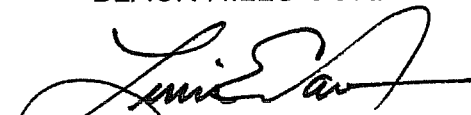
Dear Ms. Bonrud:

Enclosed for filing are the original and one copy of Black Hills FiberCom's Combined Requests for Admissions and Interrogatories (First Set). A copy has been sent to opposing counsel as indicated on the Certificate of Service.

Thank you very much and please call me with any question you may have.

Sincerely,

BLACK HILLS CORPORATION



Linden R. Evans

/skh

Enclosure
cc w/ encl: Thomas Welk
Tim Goodwin

RECEIVED

DEC 01 2003

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

In the Matter of the Complaint Filed by Black Hills) CT 03-154
FiberCom, L.L.C., Rapid City, South Dakota) **FIBERCOM'S COMBINED**
Against Qwest Corporation Regarding Intrastate) **REQUESTS FOR ADMISSIONS**
Switched Access Charges Applied to ISP-Bound) **AND INTERROGATORIES**
Calls Which Complainant Claims is Interstate in) **(FIRST SET)**
Nature)

TO: QWEST CORPORATION, AND ITS ATTORNEYS, THOMAS J. WELK AND
TIM GOODWIN:

Black Hills FiberCom, L.L.C. ("FiberCom") pursuant to SDCL 15-6-36 and ARSD

20:10:01:22.01 serves the following Requests for Admissions and Interrogatories upon

Qwest Corporation ("Qwest") for answering within thirty (30) days of service:

Definitions

1. "Internet Service Provider ("ISP") -bound traffic" refers to calls delivered to an ISP and terminating at remote Internet sites.
2. "Traffic in dispute" refers to ISP-bound traffic initiated by Fibercom's customers outside Qwest's Rapid City local calling area using an access number within Qwest's Rapid city local calling area which traffic is delivered to an ISP customer of Qwest and continues through the ISP server and terminates at the remote Internet sites accessed by the FiberCom customers.
3. "Current interconnection agreement" refers to the interconnection agreement between FiberCom and Qwest, approved by the South Dakota Public Utilities Commission ("Commission") in Docket TC98-205, as amended from time to time since its original approval.

4. “Current dispute” refers to the claims made in FiberCom’s Complaint wherein FiberCom alleges that Qwest has improperly billed “traffic in dispute” as being subject to Qwest’s intrastate switched access service tariffs that were approved by the Commission.

5. “FCC Order on Remand” refers to the decision of the Federal Communications Commission (FCC) entitled Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-bound Traffic, 16 F.C.C.R. 9151 (2001) which had an effective date of June 14, 2001.

Request for Admissions

Request for Admission 1:

Admit that the traffic in dispute was, and is, being billed by Qwest pursuant to Qwest’s intrastate switched access service tariffs that were approved by the Commission. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 2:

Admit that the Commission has the jurisdictional authority to determine whether the traffic in dispute that Qwest is billing as intrastate traffic, is in fact intrastate traffic. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 3:

Admit that the Commission has the jurisdictional authority to determine whether the traffic in dispute is in fact interstate, rather than intrastate, traffic. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 4:

Admit that the Commission has the jurisdictional authority to determine if the traffic in dispute is properly subject to the Commission approved intrastate switched access service

tariffs of Qwest. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 5:

Admit that if it is determined that the traffic in dispute was improperly billed by Qwest pursuant to the Commission approved intrastate switched access service tariffs of Qwest, the Commission has jurisdictional authority to order Qwest to reimburse FiberCom for the improperly billed charges. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 6:

Admit that the traffic in dispute is not subject to any reciprocal compensation arrangement or inter-carrier compensation contained in the current interconnection agreement. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 7:

Admit that the traffic in dispute is not addressed in the current interconnection agreement. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 8:

If the traffic in dispute is not intrastate traffic, admit that the traffic in dispute should have been billed by Qwest pursuant to Qwest's interstate switched access service tariffs and rates as approved by the FCC. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 9:

If the traffic in dispute is not intrastate traffic, admit that the traffic in dispute should have been billed by Qwest pursuant to the billing regime set forth in the FCC Order on Remand. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 10:

Admit that in September, 2001 Qwest and FiberCom executed an amendment to the current interconnection agreement entitled Amendment to the Interconnection Agreement between Qwest Corporation and Black Hills FiberCom., L.L.C. for the State of South Dakota for Agreement Term, Existing Rules and Internet Service Provider (“ISP”) Bound (“September, 2001, ISP Amendment”) which states in pertinent part in Attachment 2, section 3.1 that: “Qwest and Black Hills elect to exchange ISP-bound traffic at the FCC ordered rates pursuant to the FCC ISP Order, effective June 14, 2001 . . .” If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 11:

Admit that the “FCC ISP Order” referenced in the September, 2001, ISP Amendment is the same as the “FCC Order on Remand” as defined herein. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 12:

Admit that Qwest requested the September, 2001, ISP Amendment. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 13:

Admit that one reason Qwest requested the September, 2001 Amendment is that Qwest contended that ISP-bound traffic should be treated as predominantly interstate in nature for billing purposes. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 14:

Admit that in September, 2002 Qwest and FiberCom executed an amendment to the current interconnection agreement entitled Amendment to the Interconnection Agreement between Qwest Corporation and Black Hills FiberCom., L.L.C. for the State of South Dakota for Agreement Term, Existing Rules and Internet Service Provider (“ISP”) Bound (“September, 2002, ISP Amendment”) which states in pertinent part in Section 3.2.3 on page 1 that: “The Parties agree that ISP Bound Traffic, effective April 1, 2002, shall be exchanged as bill and keep.”

Request for Admission 15:

Admit that Qwest requested the September, 2002, ISP Amendment. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 16:

Admit that one reason Qwest requested the September, 2002 Amendment is that Qwest contended that ISP-bound traffic should be treated as predominantly interstate in nature for billing purposes. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 17:

Admit that if the ISP-bound traffic referred to in the current interconnection agreement is treated as interstate in nature for billing purposes, then ISP-bound traffic between local calling areas within the state of South Dakota should likewise be treated as interstate in nature for billing purposes. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 18:

Admit that for the time period between at least November, 2000 to July, 2002 Qwest refused to pay reciprocal compensation charges billed to them by FiberCom for ISP-bound traffic initiated by Qwest's customers within Qwest's Rapid City local calling area using an access number within that local calling area which traffic was delivered to an ISP customer of FiberCom and which traffic continued through the ISP server and terminated at the remote Internet sites accessed by the Qwest customers. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 19:

Admit that one of the stated reasons that Qwest refused to pay the charges referred to in Request for Admission 18 is that Qwest contended that the ISP-bound traffic was interstate in nature and thus not subject to reciprocal compensation charges. If you do not admit this request, state the reason why such admission cannot be made.

INTERROGATORIES

Interrogatory 1:

¶ 4 of Qwest's Answer to the Complaint states in pertinent part that, "Qwest admits the South Dakota Public Utilities Commission ("Commission") has approved intrastate tariffs for both Qwest and BHFC, but denies that this dispute is solely or primarily related to such tariffs, and denies that this dispute is subject to the jurisdiction of this Commission. Rather, although the Complaint is not clear as to the legal theories underlying the relief it seeks, the tenor of the Complaint and the relief BHFC seeks indicates their claim arises at least in part under the interconnection agreement between the parties, which is subject to mandatory arbitration."

- a. What is this dispute "solely or primarily related to," if not to the tariffs?
- b. Does Qwest contend that the relief sought "arises in least in part under the interconnection agreement"?
- c. If your answer to sub-paragraph (b) is in the affirmative, what is the legal basis for that contention?
- d. If the current dispute is not subject to the jurisdiction of the Commission as alleged by Qwest, what entity does Qwest contend has jurisdiction over the dispute?
- e. What, if any, other entities does Qwest contend have jurisdiction over the current dispute (in addition to the entity listed in answer to sub-paragraph (d) above)?

Interrogatory 2:

Does Qwest contend that the Commission has jurisdiction over the claims raised in its Counterclaim?

Interrogatory 3:

If your answer to Interrogatory 2 is in the negative, state why Qwest contends the Commission does not have jurisdiction.

Interrogatory 4:

Please identify all persons, with titles, who either assisted or were consulted during the preparation of your responses to these Requests for Admissions and Interrogatories, identifying such person or persons for each of your responses.

BLACK HILLS FIBERCOM, L.L.C.

By: 

Linden R. Evans

Black Hills Corporation

PO Box 1400

Rapid City, South Dakota 57709-1400

(605) 721-2305

Attorney for Complainant

By: 

Marvin D. Truhe, Attorney at Law

P.O. Box 8112

Rapid City, South Dakota 57709

(605) 348-8530

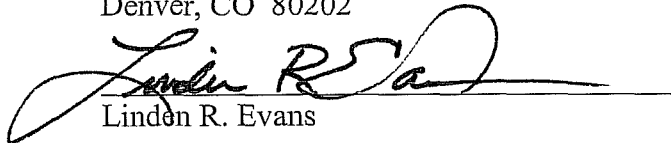
Attorney for Complainant

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2003, a true and correct copy of the foregoing FiberCom Combined Requests for Admissions and Interrogatories (First Set) were served via United States first class mail, postage prepaid, on the following:

Thomas J. Welk
Boyce, Greenfield, Pashby and Welk, L.L.P.
P.O. Box 5015
Sioux Falls, SD 57717-5015

Tim Goodwin, Senior Attorney
Qwest Services Corporation
1801 California Street 47th floor
Denver, CO 80202


Linden R. Evans