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November 17, 2003

RECEIVED
NOV 18 2003
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Pam Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

VIA UPS OVERNIGHT

Re: In the Matter of the Complaint Filed by Black Hills FiberCom, L.L.C., Rapid City, South Dakota Against Qwest Corporation Regarding Intrastate Switched Access Charges Applied to ISP-Bound Calls Which Complainant Claims is Interstate in Nature
AT 03-154 (Our File No. 2104.129)

Dear Ms. Bonrud:

Please find enclosed for filing the original and ten (10) copies of Qwest's Answer and Counterclaim and Certificate of Service in this matter.

Sincerely yours,

BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.



Thomas J. Welk

TJW/vjj
Enclosure

cc: Linden Evans
Marvin Truhe
Kelly Frazier
Tim Goodwin
Larry Toll
Jon Lehner

RECEIVED

NOV 18 2003

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

**In the Matter of the Complaint Filed by
Black Hills FiberCom, L.L.C., Rapid City,
South Dakota Against Qwest Corporation
Regarding Intrastate Switched Access
Charges Applied to ISP-Bound Calls Which
Complainant Claims is Interstate in Nature**

CT 03-154

QWEST'S ANSWER AND
COUNTERCLAIM

Qwest Corporation ("Qwest") responds and answers the Complaint dated October 29, 2003 ("the Complaint") of Black Hills FiberCom, LLC ("BHFC") as set forth below. Qwest generally denies all of the allegations contained in the Complaint, except as expressly and specifically set forth in this Answer. For convenience of reference, Qwest's responses are numbered to correspond to each numbered paragraph of the Complaint.

Parties

1. Qwest lacks knowledge or information sufficient to form a belief as to the truth of ¶ 1 of the Complaint.
2. Qwest admits the allegations of ¶ 2 of the Complaint.
3. Qwest admits the allegations of ¶ 3 of the Complaint.

Jurisdiction

4. 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 a mandatory arbitration clause.¹ Qwest does not by this answer intend to waive its right to compel arbitration.

Although Qwest disagrees, the Complaint claims (e.g. ¶ 10 of the Complaint) that the disputed traffic is jurisdictionally interstate. The FCC may have jurisdiction, in the first instance, to resolve the question of whether the disputed traffic is indeed interstate, before this Commission may act.

Contemporaneously with the filing of this Answer Qwest has served discovery requests narrowly targeted towards determining jurisdiction, which are attached as Exhibit A, and identified as Qwest's Combined Requests for Admissions and Interrogatories (First Set).

Count One

Introduction

5. Qwest admits the allegations of ¶ 5 of the Complaint.

6. Qwest denies the allegations of ¶ 6 of the Complaint, for the reasons set forth in ¶ 4 of Qwest's Answer above.

7. Qwest admits that the parties disagree as to what charges apply to traffic originated by BHFC customers who reside outside of Qwest's local calling area in the Rapid City area. Qwest denies that it has made any billing errors. Qwest admits that its intrastate switched access tariff applies to the traffic in question, but denies that the Commission has the jurisdiction to grant the relief BHFC seeks, as set forth in ¶ 4 of Qwest's Answer above.

8. Qwest admits that it is Qwest's position that it may charge any carrier intrastate switched access rates consistent with its tariff for traffic initiated outside of a Qwest local calling area but within the State of South Dakota and delivered to any Qwest customer within that local

¹ An excerpt of the parties' interconnection agreement reflecting the agreed-to dispute resolution process is attached as Exhibit B .

calling area, including internet service providers (“ISPs”). This includes traffic initiated from areas that are within BHFC’s local calling area for the Rapid City area but that are not within Qwest’s Rapid City local calling area. Qwest also admits that BHFC appears to disagree.

9. Qwest denies the allegations of ¶ 9 of the Complaint. “Bill and keep” has no application to intrastate switched access charges, or to traffic that is initiated and delivered in different local calling areas, but only to reciprocal compensation arrangements for traffic that is initiated and completed within Qwest’s local calling areas as defined by the Commission, as set forth in the interconnection agreement between the parties. To the extent that the interconnection agreement between the parties is relevant to or governs the outcome of this dispute, then BHFC’s Complaint is subject to mandatory arbitration as set forth in ¶ 4 above.

10. Qwest denies the allegations of ¶ 10 of the Complaint. The interconnection agreement between the parties is irrelevant to the determination of whether switched access rates apply to the traffic in question. The interconnection agreement addresses only local traffic. The traffic in question is not local traffic. Moreover, to the extent that the interconnection agreement between the parties is relevant to or governs the outcome of this dispute, then BHFC’s Complaint is subject to mandatory arbitration as set forth in ¶ 4 above.

Factual Background

The Parties’ Local Calling Area

11. Qwest admits the allegations of ¶ 11 of the Complaint.
12. Qwest admits the allegations of ¶ 12 of the Complaint.
13. Qwest lacks knowledge or information sufficient to form a belief as to the truth of the allegations of ¶ 13 of the Complaint.
14. Qwest denies the allegations of ¶ 14 of the Complaint.

The Parties' Initial Interconnection Agreement

15. Qwest admits the allegations of ¶ 15 of the Complaint. Qwest denies, however, that any interconnection agreement between the parties is relevant to this dispute, and to the extent that the current interconnection agreement is relevant to or governs the outcome of this dispute, then BHFC's Complaint is subject to mandatory arbitration as set forth in ¶ 4 above.

FCC's Orders Relative to ISP-Bound Traffic

16. Qwest admits that the FCC made certain rulings in *Declaratory Ruling in the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98 (February 26, 1999) (the "FCC Declaratory Order"). BHFC's allegations concerning the FCC Declaratory Order are legal arguments that do not require a response, and the remaining allegations of ¶ 16 are therefore denied.

Perhaps most importantly, however, the issue of whether traffic traveling between local exchanges was subject to intrastate or interstate switched access charges was not before the FCC in those proceedings, and was not addressed in the *FCC Declaratory Order*. Finally, it is important to note that the *FCC Declaratory Order* was vacated by *Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1 (DC Cir. 2000).

17. Qwest incorporates its response to ¶ 16 as its response to ¶ 17 of the Complaint, because ¶ 17 asserts only legal arguments that do not require a response.

18. Qwest admits that the FCC made certain rulings in *Order on Remand in the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket No. 96-98, (April 17, 2001) (the "Order on Remand"). BHFC's allegations concerning the Order on Remand are legal

arguments that do not require a response, and the remaining allegations of ¶ 18 are therefore denied.

Perhaps most importantly, however, the issue of whether traffic traveling between local exchanges was subject to intrastate or interstate switched access charges was not before the FCC in those proceedings, and was not addressed in the *Order on Remand*. Finally, it is important to note that the *Order on Remand* was reversed, though not vacated, by *Worldcom, Inc. v. FCC*, 288 F.3d 429 (DC Cir. 2002).

19. Qwest admits the terms of the Order on Remand provide for an effective date of June 14, 2001.

Qwest's Immediate Response to the FCC Orders

20. Qwest admits it requested the amendment of several CLECs' interconnection agreements, including BHFC's interconnection agreements, shortly after the Order on Remand was issued. Qwest denies the remaining allegations of ¶ 20. Qwest denies, however, that any interconnection agreement between the parties is relevant to this dispute, and to the extent that the current interconnection agreement is relevant to or governs the outcome of this dispute, then BHFC's Complaint is subject to mandatory arbitration as set forth in ¶ 4 above.

September 2001 Amendment to Interconnection Agreement

21. Qwest admits it entered into an amendment to the interconnection agreement between BHFC and Qwest in September 2001. Qwest denies the remaining allegations of ¶ 21 of the Complaint. Qwest further denies that any interconnection agreement between the parties is relevant to this dispute, and to the extent that the current interconnection agreement is relevant to or governs the outcome of this dispute, then BHFC's Complaint is subject to mandatory arbitration as set forth in ¶ 4 above.

22. Qwest admits it entered into an amendment to the interconnection agreement between BHFC and Qwest in September 2001. Qwest denies the remaining allegations of ¶ 22 of the Complaint. Qwest further denies that any interconnection agreement between the parties is relevant to this dispute, and to the extent that the current interconnection agreement is relevant to or governs the outcome of this dispute, then BHFC's Complaint is subject to mandatory arbitration as set forth in ¶ 4 above.

23. Qwest denies the allegations of ¶ 23 of the Complaint. Qwest further denies that any interconnection agreement between the parties is relevant to this dispute, and to the extent that the current interconnection agreement is relevant to or governs the outcome of this dispute, then BHFC's Complaint is subject to mandatory arbitration as set forth in ¶ 4 above.

August 2002 Amendment to Interconnection Agreement

24. Qwest admits that BHFC and Qwest entered into an amendment to their interconnection agreement in August 2002. Qwest denies the remaining allegations of ¶ 24 of the Complaint. Qwest further denies that any interconnection agreement between the parties is relevant to this dispute, and to the extent that the current interconnection agreement is relevant to or governs the outcome of this dispute, then BHFC's Complaint is subject to mandatory arbitration as set forth in ¶ 4 above.

25. Qwest admits that BHFC and Qwest entered into an amendment of the current interconnection agreement in August 2002. Qwest denies the remaining allegations of ¶ 24 of the Complaint. Qwest further denies that any interconnection agreement between the parties is relevant to this dispute, and to the extent that the current interconnection agreement is relevant to or governs the outcome of this dispute, then BHFC's Complaint is subject to mandatory arbitration as set forth in ¶ 4 above.

26. Qwest admits that the current interconnection agreement contains terms concerning reciprocal compensation for local traffic. Qwest contends the Agreement speaks for itself, and denies the remaining allegations of ¶ 26 of the Complaint. Qwest agrees that BHFC and Qwest entered into an amendment of their current interconnection agreement in August 2002. Qwest denies the remaining allegations of ¶ 24 of the Complaint. Qwest further denies that any interconnection agreement between the parties is relevant to this dispute, and to the extent that the current interconnection agreement is relevant to or governs the outcome of this dispute, then BHFC's Complaint is subject to mandatory arbitration as set forth in ¶ 4 above.

27. Qwest admits sending the letter attached as Exhibit 2 to the Complaint in the context of a dispute surrounding the parties' then-effective interconnection agreement, but denies all remaining allegations of ¶ 27 of the Complaint. Qwest further denies that any interconnection agreement between the parties is relevant to this dispute, and to the extent that the current interconnection agreement is relevant to or governs the outcome of this dispute, then BHFC's Complaint is subject to mandatory arbitration as set forth in ¶ 4 above.

28. Qwest admits it continues to invoice BHFC intrastate switched access rates on the traffic in dispute, and that BHFC has paid much of these amounts. Qwest denies the remaining allegations of ¶ 28 of the Complaint.

29. Qwest denies the allegations of ¶ 29 of the Complaint.

30. Qwest denies the allegations of ¶ 30 of the Complaint.

Attempts to Resolve Dispute

31. Qwest admits the parties have engaged in settlement discussions prior to the filing of this Complaint. Pursuant to Rule 408 of the South Dakota Rules of Evidence, Qwest will not

comment further on these allegations, except to generally deny the remaining allegations of ¶ 31 of the Complaint.

Count Two

32. In response to BHFC's restatement of its allegations, Qwest restates its responses to ¶¶ 1-31 of the Complaint.

33. Qwest denies the allegations of ¶ 33 of the Complaint, which attempt to invoke the contractual period of limitations as controlling in this proceeding. Qwest further denies that any interconnection agreement between the parties is relevant to this dispute, and to the extent that the current interconnection agreement is relevant to or governs the outcome of this dispute, then BHFC's Complaint is subject to mandatory arbitration as set forth in ¶ 4 above.

DEFENSES

1. BHFC's claims are subject to mandatory arbitration pursuant to the current interconnection agreement, which provides that in § XIX(A) that "[a]ny controversy or claims arising out of or relating to this Agreement or any breach hereof, shall be settled by arbitration in accord with the Commercial Arbitration Rules of the American Arbitration Association ("AAA")." To the extent that this claim arises out of or is related to the current interconnection agreement, this entire dispute must be settled by arbitration.
2. BHFC's claims are barred by the filed rate doctrine.
3. BHFC's claims are barred or limited by applicable statutes of limitation and laches.
4. BHFC's claims are barred by its unclean hands.
5. BHFC's claims for a refund are beyond the Commission's jurisdiction.
6. BHFC's claims are barred by estoppel.

QWEST'S COUNTERCLAIM RELATING TO THE QWEST ISP CHARGE

COUNT I

Assuming the Commission has jurisdiction over this dispute, Qwest brings this counterclaim under SDCL 49-13 and the laws of South Dakota as a compulsory counterclaim under SDCL 15-6-13(a).

1. At all times material, Qwest has valid existing contacts between Qwest and its customers, including AOL.

2. Upon information and belief on May 31, 2002 BHFC initiated, without the required Commission approval, a discriminatory, anti-competitive additional charge to its customers who reside outside Qwest's Rapid City calling area and initiate calls to ISPs served by Qwest (the "Qwest ISP Charge"). The Qwest ISP Charge has damaged Qwest's ability to attract and retain ISP customers in Rapid City, and establishes that BHFC has not been damaged or injured by Qwest's application of intrastate switched access rates to the disputed traffic.

3. The Qwest ISP Charge was implemented without Commission approval. BHFC initiated Docket TC02-084 for the express purpose of implementing the Qwest ISP Charge. A copy of BHFC's petition in TC02-084 is attached as Exhibit C. That petition asked the Commission to declare that Commission approval was not required to implement the Qwest ISP Charge, and if the Commission found that approval was required, asked the Commission to approve the Qwest ISP Charge.

4. The issue of whether BHFC needed prior Commission approval was raised in the Commission's open meeting on November 20, 2002, as indicated in the minutes (a copy is attached as Exhibit D) (emphasis in original):

Linn Evans, representing Black Hills FiberCom, L.L.C. (FiberCom), explained its application and requested a hearing. Rich Coit, representing SD

Telecommunications Association, having been granted intervention, stated its position and concerns. Ms. Wiest stated that Staff believes that FiberCom does need approval.

Chairman Burg moved that the Commission find that FiberCom does need approval and a hearing date will be set at a later time. Commissioner Nelson seconded and Commissioner Sahr concurred. Motion passed 3-0.

5. The Commission's order dated January 13, 2003 (attached as Exhibit E) echoed the finding that prior approval of the Qwest ISP charge was required:

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-76, 49-31-77, 49-31-81, and 49-31-85, and ARSD 20:10:01:34 and 20:10:32:11.

6. The Commission's vote on November 20, 2002, combined with the recitation in the January 13, 2003 order of these statutes and regulations (particularly ARSD 20:10:32:11, which requires CLECs like BHFC to provide "no less than the same local calling area" to its customers than Qwest provides, and requires Commission approval to offer a different local calling area), clearly concludes that prior approval of the Qwest ISP Charge was required.

7. In response to the Commission's November 20, 2002 vote and January 13, 2003 order, BHFC decided to withdraw its petition, but still instituted the Qwest ISP Charge.

8. Upon information and belief, BHFC does not apply any additional charge to calls initiated by its customers who reside outside Qwest's Rapid City calling area for initiating calls to Qwest customers other than ISPs, or any type of BHFC customers regardless of location in the Qwest or BHFC calling areas.

9. The imposition of the Qwest ISP Charge has damaged Qwest's ability to attract and retain ISP customers in Rapid City, and has led to decreased use of Qwest's services, and therefore decreased revenue, for Qwest's ISP customers that remain.

10. In addition, the Qwest ISP Charge creates improper, anticompetitive incentives for Qwest's ISP customers to migrate to BHFC.

11. The Qwest ISP Charge violates SDCL 49-31-11 because it unjustly discriminated against Qwest customers.

COUNT II

12. Qwest incorporates ¶¶ 1-11, inclusive, of Count I of Qwest's counterclaim.

13. The Qwest ISP Charge unjustifiably interfered with Qwest's contracts with current and potential customers.

14. As a result of BHFC's tortious interference with Qwest's existing and potential contractual and business relationships with ISP customers, Qwest has been damaged in an amount to be proved at the hearing.

COUNT III

15. Qwest incorporates ¶¶ 1-14, inclusive, of Qwest's counterclaim.

16. BHFC was and is unjustly enriched by the Qwest ISP charge, in an unknown amount to be established at the hearing.

WHEREFORE, Qwest respectfully requests that the Commission:

(1) If BHFC's claims relate to the current interconnection agreement, dismiss these proceedings and issue an order compelling this matter to arbitration;

(2) Deny all relief sought in BHFC's Complaint;

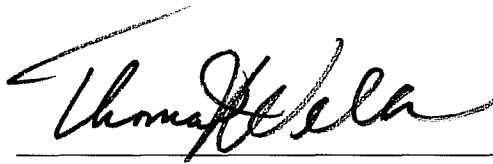
(3) Declare that BHFC's ISP Charge is unjustly discriminatory and anti-competitive.

(4) Require restitution of all amounts by which BHFC has been unjustly enriched as a result of the imposition of the Qwest ISP Charge,

(5) Award, pursuant to Qwest's counterclaim, damages to Qwest for its injuries resulting from the wrongful and willful imposition of the Qwest ISP Charge, and

(6) Provide such other and further relief as the Commission deems just.

Dated: November 17, 2003



Thomas J. Welk
BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.
P.O. Box 5015
Sioux Falls, SD 57117-5015
Telephone: (605) 336-2424

Tim Goodwin, Senior Attorney
QWEST SERVICES CORPORATION
1801 California Street 47th floor
Denver, CO 80202

ATTORNEYS FOR QWEST CORPORATION

CERTIFICATE OF SERVICE

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Greenfield, Pashby & Welk, L.L.P., and on the 17th day of November, 2003, true and correct copies of Qwest's Answer and Counterclaim, with attached Exhibits A, B, C, D and E were served, by United States first class mail, postage prepaid, on the following :

Kelly Frazier
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Linden R. Evans
Black Hills Corporation
P.O. Box 1400
Rapid City, SD 57709

Marvin D. Truhe
P.O. Box 8112
Rapid City, SD 57709



Thomas J. Welk

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

CT 03-154

**In the Matter of the Complaint Filed by
Black Hills FiberCom, L.L.C., Rapid City,
South Dakota Against Qwest Corporation
Regarding Intrastate Switched Access
Charges Applied to ISP-Bound Calls Which
Complainant Claims is Interstate in Nature**

**QWEST'S COMBINED REQUESTS
FOR ADMISSIONS AND
INTERROGATORIES (FIRST SET)**

**TO: BLACK HILLS FIBERCOM, LLC AND ITS ATTORNEYS, LINDEN R. EVANS AND
MARVIN D. TRUHE:**

Qwest Corporation ("Qwest"), pursuant to ARSD 20:10:01:22.02 and SDCL 15-6-36 and SDCL 15-6-33, serves the following requests for admissions and interrogatories upon Black Hills FiberCom, LLC ("BHFC") for answering within thirty (30) days of service:

Definitions

1. "*Traffic in dispute*" refers to traffic initiated by BHFC customers outside Qwest's Rapid City local calling area and delivered to an ISP customer of Qwest within Qwest's Rapid City local calling area.
2. "*Current interconnection agreement*" refers to the interconnection agreement between BHFC and Qwest, approved by the South Dakota Public Utilities Commission in Docket TC98-205, as amended from time to time since its original approval.

Requests for Admission

Request for Admission 1:

Admit that the current dispute outlined in your Complaint in this docket arises out of the current interconnection agreement. If you do not admit this request, state the reason why such admission cannot be made.

EXHIBIT

tabbles®

A

Request for Admission 2:

Admit that the traffic in dispute does not originate within Qwest's local calling area for Rapid City as defined by the South Dakota Public Utilities Commission ("Commission"). If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 3:

Admit that if the traffic in dispute is not subject to Qwest's intrastate switched access tariffs and rates, then the traffic is subject to Qwest's interstate switched access tariffs and rates. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 4:

Admit that the traffic in dispute is not originated and completed within the same local calling area as is provided by Qwest for local calls. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 5:

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

Request for Admission 6:

Admit that the disputed traffic is not subject to "bill and keep" under 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 disputed traffic is not subject to any reciprocal compensation arrangement 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 8:

Admit that the current interconnection agreement requires arbitration of this dispute if the dispute arises out of or relates to the current interconnection agreement. If you do not admit this request, state the reason why such admission cannot be made.

Request for Admission 9:

Admit that you contend the disputed traffic is interstate traffic. If you do not admit this request, state the reason why such admission cannot be made.

ADDITIONAL INTERROGATORIES

Interrogatory 1:

Where, relative to Qwest's local calling area for Rapid City as defined by the South Dakota Public Utilities Commission ("Commission"), is the traffic in dispute "completed" (as that term is used in the definition of "local traffic" in the current interconnection agreement)?

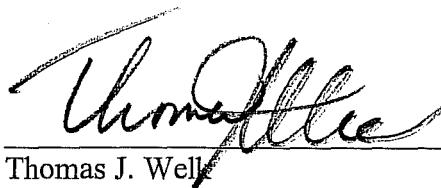
Interrogatory 2:

- (a) What is the appropriate rate to be applied to the traffic in dispute?
- (b) What is the source for selecting that rate?

Interrogatory 3:

- (a) Is the disputed traffic addressed under the current interconnection agreement?
- (b) By what provisions?
- (c) How is the disputed traffic classified under the current interconnection agreement?

Dated: November 17, 2003



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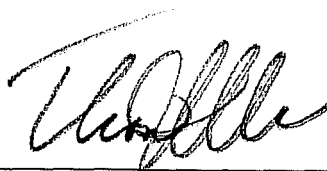
ATTORNEYS FOR QWEST CORPORATION

CERTIFICATE OF SERVICE

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Greenfield, Pashby & Welk, L.L.P., and on the 17th day of November, 2003, true and correct copies of Qwest's Combined Requests for Admissions and Interrogatories (First Set) were served via United States first class mail, postage prepaid, on the following :

Linden R. Evans
Black Hills Corporation
P.O. Box 1400
Rapid City, SD 57709

Marvin D. Truhe
P.O. Box 8112
Rapid City, SD 57709

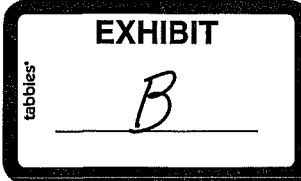


Thomas J. Welk

XIX. DISPUTE RESOLUTION AND BINDING ARBITRATION

The Parties agree that in the event of a default or violation hereunder, or for any dispute arising under this Agreement or related agreements the Parties may have in connection with this Agreement, the Parties shall first confer to discuss the dispute and seek resolution prior to initiating any dispute resolution action, or before authorizing any public statement about or authorizing disclosure of the nature of the dispute to any third party. Such conference shall occur at least at the Vice President level for each Party. In the case of USWC, its Vice President for Interconnection, or equivalent officer, shall participate in the meet and confer meeting, and Black Hills' equivalent officer, shall participate. In the event the Parties cannot resolve the dispute, they will employ the following procedure:

- A. Any controversy or claims arising out of or relating to this Agreement or any breach hereof, shall be settled by arbitration in accord with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Such arbitration shall be held in the State where the dispute arises or any other location to which the Parties agree. Written notice of intent to arbitrate shall be served on the opposing Party at least twenty (20) business days prior to the filing of such notice at the appropriate AAA regional office.
- B. The Parties agree to request an expedited hearing before the AAA and, if the AAA can arrange such, the hearing shall commence within sixty (60) days of the filing of the arbitration claim. If the AAA is not able to arrange for the hearing to be held within sixty (60) days of such filing, then the hearing shall commence on the AAA's first available date thereafter, but within ninety (90) days of the original filing of the arbitration claim. For disputes involving an alleged failure of a party to adhere to performance standards, the arbitrator shall issue a decision on the matter within ninety (90) days of the request for arbitration.
- C. Each Party shall bear its own costs and attorneys' fees, and the Parties shall share equally the fees and expenses of the arbitrator.
- D. The judgment upon the award rendered may be entered in the highest Court of the forum capable of rendering such judgment, either State or Federal, having jurisdiction and shall be deemed final and binding on both of the Parties.



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF)
BLACK HILLS FIBERCOM, L.L.C., FOR A)
DECLARATORY RULING REGARDING)
ARSD § 20:10:32:11)

and)

Docket TC02-_____)

ALTERNATIVE PETITION FOR APPROVAL)
AN AMENDMENT TO BLACK HILLS)
FIBERCOM, L.L.C.'S LOCAL CALLING AREA)
PURSUANT TO ARSD § 20:10:32:11)

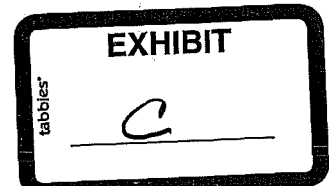
BLACK HILLS FIBERCOM, L.L.C.'S

**PETITION FOR A DECLARATORY RULING
REGARDING APPLICATION OF ARSD § 20:10:32:11**

and

**ALTERNATIVE PETITION FOR
APPROVAL OF AN AMENDMENT TO
BLACK HILLS FIBERCOM, L.L.C.'S
LOCAL CALLING EXCHANGE AREA
PURSUANT TO ARSD § 20:10:32:11**

Pursuant to the provisions of SDCL § 1-26-15 and ARSD § 20:10:01:34, Black Hills FiberCom, L.L.C. ("FiberCom") of 809 Deadwood Avenue, Rapid City, South Dakota 57702, hereby petitions the South Dakota Public Utilities Commission ("Commission") for a declaratory ruling as to the application of ARSD § 20:10:32:11 and, more specifically, whether FiberCom must seek the approval of the Commission to amend its local calling plan ("Petition").



In the event the Commission declares that it must approve FiberCom's proposed amendment to its local calling plan, FiberCom hereby alternatively petitions the Commission for approval of an amendment to its local calling area pursuant to ARSD § 20:10:32:11 ("Alternative Petition").

In support of its Petition and Alternative Petition, FiberCom states and alleges as follows.

Introduction

FiberCom is a competitive local exchange carrier providing telecommunications services to residential and business customers in the Northern Black Hills of South Dakota. FiberCom provides a local calling area that is different from the incumbent carrier, Qwest. FiberCom's Commission-approved local calling area allows its customers to make toll free telephone calls throughout FiberCom's service area, including "voice" calls and "data" calls "off-network"¹ to Qwest customers. On October 29, 1999, the Commission approved FiberCom's local calling exchange area in Docket No. TC99-056.

Approximately 400 FiberCom customers located in the Northern Black Hills are accessing America On-Line's ("AOL") Internet services via Rapid City telephone numbers as part of Internet services that AOL is purchasing from the incumbent, Qwest.² Consequently, FiberCom currently pays intraLATA charges (intrastate long distances charges) -- approximately \$0.05 per minute -- to Qwest when FiberCom's customers located outside of Rapid City connect to AOL or other similarly situated Internet Service Providers ("ISPs") served by telecommunication companies other than FiberCom. Currently, FiberCom does not pass these

¹ "Off-network" calls are calls made from FiberCom's telephone customers to parties (or ISPs) served by telecommunication companies other than FiberCom, e.g., Qwest.

² Similar to Black Hills customers that use AOL, Black Hills customers utilize other ISP providers that are "off-network" and utilize PRIs purchased from Qwest. However, the vast majority of the off-network ISP traffic for which Qwest invoices Black Hills results from ISP traffic terminated to AOL.

charges on to its customers. The charges incurred by FiberCom well exceed the revenue FiberCom receives for the telecommunications service provided to this group of 400 customers. Currently, Qwest charges FiberCom more than \$50,000 per month for the minutes that this group of 400 customers is connected to AOL or any other off-network ISP. This sum significantly exceeds the income that FiberCom receives from these particular customers.

Over the past several months, FiberCom has attempted to work with Qwest to resolve various ISP traffic issues, including the issue raised in this Petition and Alternative Petition. FiberCom's objective has been to determine a way to avoid the approximately \$600,000 that Qwest bills FiberCom each year for this particular traffic. Qwest has insisted that there is nothing that can be done in regard to the charges and that such charges are required by its Commission-approved tariff. Curiously, FiberCom very recently learned from AOL that AOL contracts with Qwest to provide the wholesale Internet services necessary to provide Internet access for AOL's customers located in western South Dakota. Consequently, it now seems clear why Qwest has been unwilling to work with FiberCom in resolving this issue – Qwest, unbeknownst to FiberCom until very recently, has significantly profited from FiberCom's situation without disclosing the fact to FiberCom that Qwest is contracted to be the facilitating ISP for AOL in Rapid City.

FiberCom has been successful in moving other ISPs to its network to avoid the interLATA charges. However, to date, FiberCom has been unsuccessful in causing AOL (or Qwest) to purchase the PRIs necessary to allow Northern Black Hills customers access to AOL within the community that they are located.³ Consequently, FiberCom has determined it

³ Attached hereto as Exhibit "1" is a June 4, 2002 letter from Black Hills to AOL describing the issue raised in this Petition and requesting contact from AOL. On June 11, 2002, an AOL representative contacted Black Hills; however, as of the date of this filing AOL and Black Hills have not reached an agreement as to how Black Hills may avoid the Qwest intraLATA charges. AOL has asked Qwest to review this situation on its behalf. As of this filing no contacts from Qwest have been received by FiberCom.

economically necessary to amend its local calling plan in relation to ISP traffic connecting to AOL and other similarly situated "off-network" ISPs.⁴ This action will in no way impact the free voice telephone calling area, which is a cornerstone of FiberCom's business. Nor will ISP (or data) traffic be impacted when FiberCom customers terminate to the FiberCom phone numbers of ISPs utilizing PRIs and/or collocation services connected to FiberCom's network. Rather, the only impact will result to data traffic that terminates to PRIs of ISPs that are not connected directly to FiberCom's network.

FiberCom's Petition for Declaratory Ruling

1. The Commission rule in question:

The pertinent Commission rule at issue is ARSD § 20:10:32:11, which provides as follows:

A telecommunications company that is granted authority to offer competitive local exchange services in an area where the incumbent local exchange carrier provides a certain local calling area may provide no less than the same local calling area to its customers. An alternative provider of local exchange services may, subject to commission approval, offer a different local calling area upon showing that it would not be contrary to universal service, public safety and welfare, quality of service, and consumer rights concerns.

2. The facts and circumstances which give rise to the issue to be answered by the Commission are:

On May 20, 1999, pursuant to ARSD § 20:10:32:11, FiberCom filed with this Commission in Docket No. TC99-056, an "Application of Black Hills FiberCom, L.L.C. To Offer A Different Local Calling Area Than That Which Is Provided By The Incumbent Local

⁴ Black Hills has been notifying several of the "heaviest" users of AOL as to this proceeding before the Commission. A copy of the letter being mailed to these customers is attached as Exhibit "2." Many of the "heaviest" users are connected to AOL nearly full time (or 24 hours per day). Black Hills is currently paying Qwest about \$0.05 per minute for this ISP traffic.

Exchange Carrier, U.S. West Consistent With ARSD 20:10:32:11" (hereinafter "1999 Application"). A copy of the 1999 Application and its exhibits are attached as Exhibit "3."

The 1999 Application sought the Commission's approval to provide extended area local service (no toll calls) between its customers and all other Northern Black Hills customers, including but not limited to U.S. West customers (now Qwest customers), and FiberCom customers, between the communities of Belle Fourche, Black Hawk, Deadwood, Lead, Piedmont, Rapid City, Spearfish, Sturgis, St. Onge and Whitewood. On October 29, 1999, the Commission entered its Order granting FiberCom approval to offer a different calling area in Docket No. TC99-056 ("1999 Order"). A copy of the 1999 Order is attached as Exhibit "4."

FiberCom proposes that its local calling plan be revised to address voice telecommunications services separately from data communications services. When FiberCom proposed in 1999 its current local calling plan, it did so in response to market demands to provide free voice conversations between parties located in Rapid City and other communities within the Northern Black Hills. Significant data traffic was not anticipated. However, now that FiberCom has constructed its telecommunications network and is serving over 20,000 customers with more than 40,000 phone lines, it is experiencing intra exchange traffic originated by FiberCom customers and terminated to Qwest-served ISPs that exceeds 50% of the total monthly minutes of use by all of FiberCom's customers (voice and data combined).

Although the Federal Communications Commission has determined that connections made by customers to ISPs are "interstate" in nature, Qwest invoices FiberCom as if these calls were "intrastate" long distance - approximately \$0.05 per minute. The charges are predominantly related to FiberCom customers in the Northern Black Hills connecting to AOL (and other "off-network" ISPs) on Qwest's network in Rapid City. FiberCom's monthly payments to Qwest for AOL's (and other off-network ISPs) 400 Northern Black Hills customers

exceed \$50,000, with about 60% of the charges attributed to 60 "high-use" customers. This situation, coupled with the fact that FiberCom will not be paid reciprocal compensation by Qwest for so-called "local" calls that are originated by FiberCom's customers and terminated to Qwest's ISP customers, has given rise to FiberCom's need to revise its local calling plan in this limited nature.

Approximately 400 of FiberCom's current telephone customers located in the Northern Black Hills are accessing AOL and other off-network ISPs through Rapid City telephone numbers attached to PRIs purchased by AOL and other ISPs from Qwest. In fact, FiberCom very recently became aware that AOL has contracted with Qwest to provide Internet access services to AOL's customers that use Rapid City access numbers. Consequently, FiberCom is paying intraLATA charges to Qwest when FiberCom customers connect to AOL and other similarly situated off-network ISPs. The approximately \$50,000 per month charges incurred by FiberCom will exceed the revenue FiberCom receives for the telecommunications service provided to these customers.

FiberCom has been successful in moving other ISPs to its network so as to avoid the interLATA charges from Qwest. However, to date, FiberCom has not been successful in causing AOL to purchase the PRIs necessary to allow the group of customers to access AOL in Rapid City without FiberCom incurring intraLATA charges from Qwest. Consequently, given the economic impact that FiberCom experiences due to the current arrangement, FiberCom has determined it necessary to amend its local calling plan in relation to the Northern Black Hills ISP traffic connecting to off-network ISPs.

This action will revise the local calling area only as to data telecommunications to off-network telecommunication equipment, and will not impact voice telephone calls in any way. Moreover, in addition to FiberCom's Internet services, there are at least eight ISPs currently

connected to FiberCom's network that provide Internet services to the Northern Black Hills communities. Consequently, a broad range of choices are available to the approximate 400 customers in regard to their ISP, including, of course, FiberCom.

FiberCom is sending letters by Federal Express to the approximately 60 "high use" AOL customers informing them of this potential change to FiberCom's local calling plan. To date, approximately 90 customers have received the letter and 35 customers have had follow up conversations with a representative of FiberCom. A sample copy of the letter mailed to these customers is attached as Exhibit "1." The letter informs the customer of FiberCom's economic concern and provides that it is FiberCom's intent to charge long distance charges for the customer's connections to ISPs that use Rapid City telephone numbers. The purpose of the letter is, of course, to provide plenty of notice to the possible change and to encourage FiberCom's telephone customers to consider alternative ISPs. The letter additionally encourages the customer to contact FiberCom with any questions they may have. FiberCom has received inquiries from several of these customers. Fortunately, these customers have understood the situation and have commonly requested information as to how they might switch to a local Internet service provider. However, it is anticipated that some customers will not be satisfied with the proposed amendment to FiberCom's local calling plan. Consequently, in addition to the letter, FiberCom is also attempting to telephone each customer so as to answer any questions and further explain FiberCom's economic situation in this matter.

3. The precise issue to be answered by the Commission's declaratory ruling:

FiberCom respectfully requests that the Commission provide a declaratory ruling as to the following issue:

Must FiberCom obtain the Commission's approval, pursuant to the provisions of ARSD § 20:10:32:1), prior to FiberCom charging its customers for utilizing non-network ISP services through Rapid City telephone numbers attached to PRIs purchased from Qwest?

Discussion

FiberCom respectfully submits that the issue presented in this matter relates solely to FiberCom's local calling plan, and consequently, the Commission's 1999 approval of FiberCom's local calling geographic area will not be amended in any way. FiberCom is committed to providing its customers with free local voice communications between the listed communities of the Northern Black Hills.

FiberCom seeks to amend only that portion of its local calling plan that pertains to data telecommunications traffic that is terminated to off-network communication equipment. Of the more than 20,000 FiberCom customers, approximately 400 customers (or 2%) will be impacted by this exception to FiberCom's local calling plan.

Further, because FiberCom seeks only to amend its local calling plan to create an exception to a plan that it has offered over the past three years, and which continues to be a plan that provides greater local services than the incumbent, Qwest, FiberCom respectfully submits that approval of the plan by the Commission is not required pursuant to ARSD § 20:10:32:11.

Moreover, FiberCom will continue to provide substantially more than the minimum telecommunication services required pursuant to ARSD § 20:10:32:10, which states:

A telecommunications company providing local exchange services shall, at minimum, make the following available to each customer:

- (1) Access to the public switched network;
- (2) Access to emergency services such as 911 or enhanced 911;
- (3) Access to a local directory and directory assistance;
- (4) Access to operator services;
- (5) Telecommunications relay service capability or access necessary to comply with state and federal regulations;
- (6) Nonpublished service upon written or verbal request of the customer;
- and
- (7) Access to interexchange services.

FiberCom's proposed amendment to its local calling plan will not in any manner impact the minimum requirements that must be provided by telecommunications companies. Consequently, FiberCom respectfully submits that it is not necessary that the Commission approve the proposed amendment to FiberCom's plan.

**Alternative Petition for Approval Of An Amendment To Black Hills FiberCom, L.L.C.'s
Local Calling Exchange Area Pursuant To ARSD § 20:10:32:11**

Should the Commission determine that FiberCom must obtain the approval of the Commission prior to amending its local calling plan, FiberCom respectfully requests that the Commission alternatively determine that FiberCom's amendment to its local calling plan "would not be contrary to universal service, public safety and welfare, quality of service, and consumer rights concerns." ARSD § 20:10:32:11.

FiberCom proposes the following definition for its new local calling area: FiberCom will provide extended area service (no toll calls) for person-to-person voice telecommunications service for its customers to all other customers, including but not limited to Qwest customers, and FiberCom customers, between the communities of Belle Fourche, Black Hawk, Deadwood, Lead, Piedmont, Rapid City, Spearfish, Sturgis, St. Onge, and Whitewood.

Data telecommunications service calls, including calls to ISPs initiated by FiberCom's customers to parties served by telecommunications companies other than FiberCom, will be subject to a local calling area designed to match Qwest's offering. The local calling area for data telecommunications initiated by FiberCom customers to non-FiberCom customers is:

- Belle Fourche Aladdin, Wyoming
 Colony, Wyoming
 Fruitdale, South Dakota
 Nisland, South Dakota

- Black Hawk Box Elder, South Dakota
 Ellsworth Air Force Base, South Dakota
 Hermosa, South Dakota

- Hill City, South Dakota
 - Keystone, South Dakota
 - Piedmont, South Dakota
 - Rapid City, South Dakota
- Deadwood
 - Beulah, Wyoming
 - Lead, South Dakota
 - Spearfish, South Dakota
 - Whitewood, South Dakota
- Lead
 - Beulah, Wyoming
 - Deadwood, South Dakota
 - Spearfish, South Dakota
 - Whitewood, South Dakota
- Piedmont
 - Black Hawk, South Dakota
 - Box Elder, South Dakota
 - Ellsworth Air Force Base, South Dakota
 - Hermosa, South Dakota
 - Hill City, South Dakota
 - Keystone, South Dakota
 - Rapid City, South Dakota
- Rapid City
 - Black Hawk, South Dakota
 - Box Elder, South Dakota
 - Ellsworth Air Force Base, South Dakota
 - Hermosa, South Dakota
 - Hill City, South Dakota
 - Keystone, South Dakota
 - Piedmont, South Dakota
- Spearfish
 - Beulah, Wyoming
 - Deadwood, South Dakota
 - Lead, South Dakota
 - Whitewood, South Dakota
- Sturgis
 - None
- St. Onge
 - None
- Whitewood
 - Deadwood, South Dakota
 - Lead, South Dakota
 - Spearfish, South Dakota
 - Beulah, Wyoming

FiberCom respectfully submits that such an amendment would not jeopardize in any significant way universal service, public safety and welfare, quality of service, or consumer rights concerns. The plan offered by FiberCom to the citizens of the Northern Black Hills would remain an attractive option to the plan currently offered by Qwest. Because the proposed amendment to FiberCom's plan would be no less than the plan provided by Qwest, FiberCom respectfully submits that the amended plan, as described above, should be determined to not be contrary to universal service, public safety and welfare, quality of service, and consumer rights concerns, pursuant to ARSD § 20:10:32:11.

Conclusion

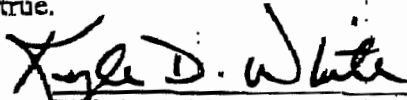
FiberCom submits that, because the amendment to FiberCom's plan as proposed herein does not impact the geographic local calling area relative to voice traffic and data traffic is equivalent to the local calling area offered by Qwest, the Commission's approval of the amended plan is not required pursuant to ARSD § 20:10:32:11. Consequently, FiberCom respectfully requests that the Commission declare that it may amend its local calling plan as proposed herein without the approval of the Commission.

Alternatively, should the Commission declare that FiberCom's proposed amendment to its local calling plan is an amendment requiring Commission approval pursuant to ARSD § 20:10:32:11, FiberCom respectfully requests that the Commission determine that the amended local calling area proposed by FiberCom would not be contrary to universal service, public safety and welfare, quality of service or consumer rights concerns and is approved.

Respectfully submitted this 28th day of June 2002.

STATE OF SOUTH DAKOTA)
)
COUNTY OF PENNINGTON)

Kyle D. White, being first duly sworn on his oath, deposes and says: That he is the Vice President of Corporate Affairs of Black Hills FiberCom, L.L.C., named in the within and foregoing Application; that he has read the same and knows the contents thereof to be true of his own knowledge except as to those matters therein stated on information and belief, and as to such matters, he believes it to be true.



Kyle D. White

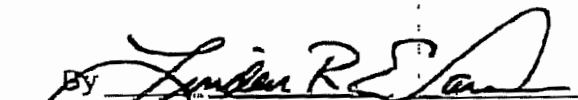
Subscribed and sworn to before me this 28th day of June 2002.



Notary Public



BLACK HILLS FIBERCOM, L.L.C.

By 

Linder R. Evans
Associate Counsel

P.O. Box 1400
Rapid City, South Dakota 57709-1400
T: (605) 721-2305
F: (605) 721-1550



Black Hills FiberCom

No One Else Has Our Connections

P.O. Box 2115 • 809 Deadwood Avenue • Rapid City, SD 57709

ph. (605) 721-2000 • fax (605) 342-1693

www.blackhillsfiber.com

June 4, 2002

VIA FEDERAL EXPRESS

Mr. Ray Oglethorpe
President
America On Line
75 Rockefeller Plaza
New York, New York 10019

Dear Mr. Oglethorpe:

Subject: South Dakota A.O.L. Customer Issues (400 A.O.L. Customers at Risk)

Black Hills FiberCom is a competitive local exchange carrier offering telecommunications services to residential and business customers in Rapid City and the Northern Black Hills of South Dakota. We offer a local calling area that is different from our competitor, Qwest. This calling area allows our customers to make toll free calls throughout our service area, including calls off-network to Qwest customers.

Approximately 400 of our Northern Black Hills customers are accessing your services through Rapid City phone numbers attached to PRIs purchased from Qwest. The result is that Black Hills FiberCom is paying intra latta charges to Qwest when our customers connect to A.O.L. These charges will exceed the revenue we receive for the telecommunications service provided to this group of customers.

We have been unsuccessful in identifying and contacting the party within your company responsible for purchasing the PRIs customers use to access A.O.L. in Rapid City. Unless we can move these connections to our network, we will begin causing our customers to move to another ISP with facilities on our network or pay 7.9 cents per minute for their connections to A.O.L.'s Rapid City access numbers.

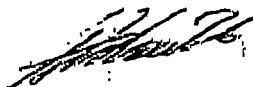
We offer attractive PRI pricing and, with the exception of A.O.L, have been successful in selling PRI and collocation services to the major ISPs serving this area. We believe we can both save you operating costs and allow you to retain your 400 Northern Black Hills customers. We have run out of patience with this situation and will implement changes to our local area calling for ISP bound calls in the very near future.

Mr. Ray Oglethorpe
Page 2
June 4, 2002

Unless we have a meaningful contact from A.O.L. by June 10, we will continue contacting our Northern Black Hills customers that use A.O.L. regarding their need to consider the selection of a new ISP for their Internet access.

If you have any questions regarding our situation or if you want specifics regarding PRI and collocation services from Black Hills FiberCom, please contact me.

Sincerely,



Ronald Schaible
Sr. VP & General Manager

RS/rmh

c: Linn Evans, Attorney
David Colburn, AOL Ex. V.P., President Business Development
Neil Smith, AOL Ex. V.P., Member Services
Matt Korn, AOL Ex. V.P., Network and Data Center Operations



Black Hills FiberCom

No. One Else Has Our Connections

P.O. Box 2115 - 809 Deadwood Avenue - Rapid City, SD 57709

ph. (605) 721-2000 - fax (605) 342-1693

www.blackhillsfiber.com

IMPORTANT BILLING NOTICE - DECISION REQUIRED

May 31, 2002

Dear [REDACTED]

Thank you for choosing Black Hills FiberCom as your communications service provider. As a result of your commitment to us, you have made us the dominant provider in our market area.

This letter is direct to you as it concerns certain new charges that you may incur as a result of your Internet Service Provider ("ISP"). Given that on June 14, 2001, the Federal Communications Commission ("FCC") decreed Internet traffic to be interstate in nature and the fact that we are subject to long distance charges for terminating this traffic to other carriers, is causing us to make a policy change that will regrettably constitute a billing change to your account if left unattended. Black Hills FiberCom has filed with the South Dakota Public Utilities Commission in order to revise its local calling area, so that data traffic to customers off of our network (including calls to ISPs) will no longer be free when the call is made between Qwest local exchanges. Effective July 1, 2002, we will begin billing for "off-net Internet and data traffic" that is not served by our network. Specifically dial-up Internet activity directed to another non-local ISP will incur a long distance charge. The problem is almost exclusively with America On-Line ("AOL"). We have attempted to establish services directly with AOL to avoid these costs, but have been unsuccessful and have little or no hope for future resolution.

We have run a trial/test billing for this traffic and noticed that you would incur charges that I expect would surprise you. You have several options to avoid these charges including moving to one of our on-net ISPs, those operating on our network (i.e., RapidNet, E-Net, Mato, BlackHills.com, Rushmore On-Line, Inttec/Visionary Computing) or any other ISP located in your community. Should you choose to have us be your Internet Service Provider, we will pay your last AOL bill and connect you to our high-speed Internet service without any installation charges.

This in no way affects the free telephone (voice) calling area that we have established throughout the Northern Black Hills and Rapid City. We are committed and proud to provide all of our customers with the best service and best value. If you have any questions on this matter, please feel free to contact us at 721-2000 (please ask for Tim Hedman).

Sincerely,

Ronald Schaible
Sr. VP & General Mgr.

RS:leb

Attach

EXHIBIT 2

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Application of Black Hills FiberCom, L.L.C., to Provide a Different Local Calling Area Than That Which is Provided by the Incumbent Local Exchange Carrier)

Docket No. _____

APPLICATION OF BLACK HILLS FIBERCOM, L.L.C.
TO OFFER A DIFFERENT LOCAL CALLING AREA
THAN THAT WHICH IS PROVIDED BY THE INCUMBENT
LOCAL EXCHANGE CARRIER, U. S. WEST
CONSISTENT WITH ARSD 20:10:32:11

Black Hills FiberCom, L.L.C. ("Black Hills"), submits this application, consistent with the provisions of ARSD 20:10:32:11, to provide a different local calling area than that which is provided by U. S. West and, in support of its application and consistent with the provisions of ARSD 20:10:32:11, states as follows:

1. Black Hills FiberCom, L.L.C., through its predecessor in interest, was originally granted a Certificate of Authority from the South Dakota Public Utilities Commission ("Commission") on August 5, 1998, which has been transferred to Black Hills consistent with the Commission Order dated May 5, 1999.

2. Black Hills proposes to provide competitive local exchange services in an area presently served by the incumbent local exchange carrier, U. S. West, in the communities of Belle Fourche, Black Hawk, Deadwood, Lead, Piedmont, Rapid City, Spearfish, Sturgis, St. Onge, and Whitewood.

3. Black Hills proposes to provide extended area service (no toll calls) for its customers to all other customers, including but not limited to U.S. West customers, and Black Hills customers, between the communities of Belle Fourche, Black Hawk, Deadwood, Lead, Piedmont, Rapid City, Spearfish, Sturgis, St. Onge, and Whitewood.

4. Presently, the communities identified in paragraph 3 and/or served by U.S. West have free calls only within the local calling areas identified below:

- Belle Fourche
Aladdin, Wyoming
Colony, Wyoming
Fruitdale, South Dakota
Nisland, South Dakota

- Black Hawk
 - Box Elder, South Dakota
 - Ellsworth Air Force Base, South Dakota
 - Herrnosa, South Dakota
 - Hill City, South Dakota
 - Keystone, South Dakota
 - Piedmont, South Dakota
 - Rapid City, South Dakota

- Deadwood
 - Beulah, Wyoming
 - Lead, South Dakota
 - Spearfish, South Dakota
 - Whitewood, South Dakota

- Lead
 - Beulah, Wyoming
 - Deadwood, South Dakota
 - Spearfish, South Dakota
 - Whitewood, South Dakota

- Piedmont
 - Black Hawk, South Dakota
 - Box Elder, South Dakota
 - Ellsworth Air Force Base, South Dakota
 - Herrnosa, South Dakota
 - Hill City, South Dakota
 - Keystone, South Dakota
 - Rapid City, South Dakota

- Rapid City
 - Black Hawk, South Dakota
 - Box Elder, South Dakota
 - Ellsworth Air Force Base, South Dakota
 - Herrnosa, South Dakota
 - Hill City, South Dakota
 - Piedmont, South Dakota

- Spearfish
 - Beulah, Wyoming
 - Deadwood, South Dakota
 - Lead, South Dakota
 - Whitewood, South Dakota

- Sturgis
 - None

- St. Onge
 - None

• Whitewood

Deadwood, South Dakota
Lead, South Dakota
Spearfish, South Dakota
Bculah, Wyoming

5. The local calling area proposed by Black Hills is not contrary to the universal service, public safety and welfare, quality of service, or consumer rights to the communities in which Black Hills will provide service, as the customer will have a choice of continuing its service through U. S. West as the local exchange carrier or, alternatively, by agreeing to the service provided by Black Hills. Black Hills' extended area service will provide a free local calling area between Rapid City to the north, inclusive of Spearfish and Sturgis and everything in between. Extended area service has been a point of contention and concern for the citizens of the Northern Hills and their incumbent local exchange carrier over the last several years, and Black Hills proposes to provide these customers an alternative to the calling area presently served by U. S. West.

WHEREFORE, Black Hills respectfully requests that the Commission enter an Order authorizing Black Hills to provide a local exchange service area different than that which is presently served by U. S. West, the incumbent local exchange carrier, consistent with the provisions of ARSD-20:10:32:11.

Dated this 20th day of May, 1999.

BLACK HILLS FIBERCOM, L.L.C.

By Kyle D. White
Its Vice President of Marketing and Regulatory
Affairs

STATE OF SOUTH DAKOTA)
)
COUNTY OF PENNINGTON)

Kyle D. White, being first duly sworn on his oath, deposes and says: That he is the Vice President of Marketing and Regulatory Affairs of Black Hills FiberCom, L.L.C., named in the within and foregoing Application; that he has read the same and knows the contents thereof to be

true of his own knowledge except as to those matters therein stated on information and belief, and as to such matters, he believes it to be true.

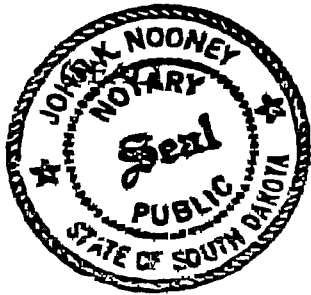
Kyle D. White

Kyle D. White

Subscribed and sworn to before me this 24th day of May, 1999.

John X. Nooney

Notary Public



MY COMM. EXPIRES
7/12/2001

assignment, lease, or transfer of a certificate of authority to provide local exchange services, the commission shall consider the criteria set forth in § 20:10:32:06.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-71, 49-31-76.

20:10:32:09. Suspension or revocation of certificate of authority. Failure of any provider of local exchange service to comply with applicable requirements set forth in this chapter, other terms and conditions imposed on its certification by the commission, or other applicable rules or laws may result in the suspension or revocation of the provider's certificate of authority to provide local exchange services.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-75, 49-31-76.

20:10:32:10. Service obligations of all providers. A telecommunications company providing local exchange services shall, at minimum, make the following available to each customer:

- (1) Access to the public switched network;
- (2) Access to emergency services such as 911 or enhanced 911;
- (3) Access to a local directory and directory assistance;
- (4) Access to operator services;
- (5) Telecommunications relay service capability or access necessary to comply with state and federal regulations;
- (6) Nonpublished service upon written or verbal request of the customer; and
- (7) Access to interexchange services.

Source: 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-31-76.

Law Implemented: SDCL 49-31-3, 49-31-75, 49-31-76.

20:10:32:11. Local calling scope for alternative providers. A telecommunications company that is granted authority to offer competitive local exchange services in an area where the incumbent local exchange carrier provides a certain local calling area may provide no less than the same local calling area to its customers. An alternative provider of local exchange services may, subject to commission approval, offer a different local calling area upon showing that it would not be contrary to universal service, public safety and welfare, quality of service, and consumer rights concerns.

Source: 25 SDR 89, effective December 27, 1998.

Rapid City Local Calling Region

There is no long distance charge on calls from your community to those listed below it, if dialed without operator assistance. Just dial the listed number.

Ardmore (453, 459) to:
Hot Springs (745, 890, 891, 899)
Oelrichs (825, 535)
Wind Cave Nat'l Park (745)

Belle Fourche (832) to:
Aladdin, WY (896)*
Colony, WY (898)*
Fruddale (892)
Nioland (257)

Balvidera (344) to:
Kadoka (837)
Longvalley (462)

Black Hawk (787) to:
Box Elder (923)
Ellsworth Air Force Base (385)
Hermosa (255)
Hill City (574)
Keystone (666)
Piedmont (787)
Rapid City (341, 342, 343, 348, 355, 361, 368, 369, 380, 393, 394, 399, 431, 877)

Box Elder (923) to:
Black Hawk (787)
Ellsworth Air Force Base (385)
Hermosa (255)
Hill City (574)
Keystone (666)
Piedmont (787)
Rapid City (341, 342, 343, 348, 355, 361, 368, 369, 380, 393, 394, 399, 431, 877)

Buffalo Gap (833) to:
Hot Springs (745, 890, 891, 899)
Oral (424)
Wind Cave Nat'l Park (745)

Creighton (457) to:
Quinn (386)
Wall (279)

Deadwood (578, 631, 920) to:

Bainth, WY (643)*
Lead (580, 584, 588, 591)
Spearfish (631, 639, 640, 641, 642, 644, 645)
Whitewood (289)

Erving (985) to:
Faith (957)
Faith rural (739)
Maurine (748)

Faith (957) & Faith Rural (739) to:
Erving (985)
Maurine (748)

Hermosa (255) to:
Black Hawk (787)
Box Elder (923)
Ellsworth Air Force Base (385)
Hill City (574)
Piedmont (787)
Rapid City (341, 342, 343, 348, 355, 361, 368, 369, 380, 393, 394, 399, 431, 877)

Hill City (574) to:
Black Hawk (787)
Box Elder (923)
Ellsworth Air Force Base (385)
Hermosa (255)
Keystone (666)
Piedmont (787)
Rapid City (341, 342, 343, 348, 355, 361, 368, 369, 380, 393, 394)

Hot Springs (745, 890, 891, 899) to:
Ardmore (453, 459)
Buffalo Gap (833)
Oelrichs (825, 535)
Oral (424)
Wind Cave Nat'l Park (745)

Interior (433) to:
Kyle (455)
Longvalley (462)
Pine Ridge (867)
Quinn (386)
Wall (279)

Kadoka (837) to:
Balvidera (344)
Longvalley (462)

* These customers are in Wyoming. When calling long distance to these numbers, use area code 307.

Rapid City Local Calling Region

4) to:
 187)
 Force Bible (385)
 1)
 3)
 7)
 4, 342, 343, 348,
 355, 381, 388, 389, 390, 393,
 394, 399, 431, 877)
 (745, 890,
 459)
 333,
 635)
 Park (745)
 3) to:
 32)
 37)
 7) to:
 2)
 When calling
 to these
 area code 307.

Keystone (666) to:
 Black Hawk (787)
 Box Elder (923)
 Ellsworth Air Force Base (385)
 Hill City (574)
 Piedmont (787)
 Rapid City (341, 342, 343, 348,
 355, 381, 388, 389, 390, 393,
 394, 399, 431, 877)

Kyle (455) to:
 Interior (433)
 Longvalley (482)
 Pine Ridge (867)

Lead (580, 584, 588, 591) to:
 Baulah, WY (643)
 Deadwood (578, 631, 920)
 Spearfish (638, 640, 641, 642,
 644, 645)
 Whitewood (269)

Longvalley (482) to:
 Belvidere (344)
 Interior (433)
 Kadoka (837)
 Kyle (455)
 Pine Ridge (867)

Maurine (748) to:
 Enning (985)
 Faith (967)
 Faith rural (739)

Midland (843) to:
 Philip (859)

Milesville (544) to:
 Philip (859)

New Underwood (754) to:
 Wicksville (798)

Newell (456) to:
 Niland (257)
 Vale (456)

Niland (257) to:
 Aladdin, WY (896)
 Belle Fourche (892)
 Colony, WY (896)
 Fruitdale (892)
 Newell (456)
 Vale (456)

Oelrichs (825, 835) to:
 Ardmore (453, 459)
 Hot Springs (745, 890, 891, 899)
 Oral (424)
 Wind Cave Nat'l Park (745)

Oral (424) to:
 Buffalo Gap (833)
 Hot Springs (745, 890, 891, 899)
 Oelrichs (825, 835)
 Wind Cave Nat'l Park (745)

Philip (859) to:
 Midland (843)
 Milesville (544)

Piedmont (787) to:
 Black Hawk (787)
 Box Elder (923)
 Ellsworth Air Force Base (385)
 Hermosa (255)
 Hill City (574)
 Keystone (666)
 Rapid City (341, 342, 343, 348,
 355, 381, 388, 389, 390, 393,
 394, 399, 431, 877)

Pine Ridge (867) to:
 Interior (433)
 Kyle (455)
 Longvalley (482)
 Whitclay (862)

Quinn (386) to:
 Creighton (457)
 Interior (433)
 Wall (279)

**Rapid City (341, 342, 343,
 348, 355, 381, 388,
 389, 390, 393, 394,
 399, 431, 877) to:**
 Black Hawk (787)
 Box Elder (923)
 Ellsworth Air Force Base (385)
 Hermosa (255)
 Hill City (574)
 Keystone (666)
 Piedmont (787)

**Spearfish (638, 640, 641,
 642, 644, 645) to:**
 Baulah, WY (643)
 Deadwood (578, 631, 920)
 Lead (580, 584, 588, 591)
 Whitewood (269)

Vale (456) to:
 Newell (456)
 Niland (257)

* These customers are in Wyoming. When calling long distance to these numbers, use area code 307.

Rapid City Local Calling Region

There is no long distance charge on calls from your community to those listed below if dialed without operator assistance. Just dial the listed number.

Wall (279) to
Craighton (457)
Interior (433)
Quinn (386)
Wasta (993)
Wasta (993) to
Wall (279)
Wicksville (798)

Whiterwood (269) to
Baulch, WY (643)
Dardwood (578, 831, 820)
Lead (580, 584, 588, 891)
Spearfish (839, 840, 841, 842,
844, 845)

Wicksville (798) to
New Underwood (754)
Wasta (993)
Wind Cave Nat'l Park
(745) to
Hot Springs (745, 890, 891, 899)

*These customers are in Wyoming. When calling long distance to these numbers, use area code 307.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF)
BLACK HILLS FIBERCOM, L.L.C. FOR)
APPROVAL TO OFFER A DIFFERENT LOCAL)
CALLING AREA)

ORDER GRANTING
APPROVAL TO OFFER A
DIFFERENT CALLING AREA
TC99-056

On May 21, 1999, the South Dakota Public Utilities Commission (Commission) received an application from Black Hills FiberCom, L.L.C. (Black Hills). According to its application, Black Hills submitted the application pursuant to the provisions of ARSD 20:10:32:11, to provide a different local calling area than that which is provided by U S WEST Communications, Inc. (U S WEST).

On May 27, 1999, the Commission electronically transmitted notice of the filing and the intervention deadline of June 11, 1999, to interested individuals and entities. On June 11, 1999, U S WEST filed a Petition for Leave to Intervene. At its regularly scheduled June 22, 1999, meeting, the Commission granted U S WEST's request for intervention. On July 23, 1999, U S WEST filed Interrogatories and a Request for Production of Documents. Black Hills filed its response on August 25, 1999. At its regularly scheduled meeting of October 19, 1999, the Commission considered this matter. Black Hills explained its application. U S WEST stated that it did not oppose the granting of the application. Commission Staff recommended approval of the application.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31 and ARSD 20:10:32:11. The Commission found that Black Hills had shown that the different calling area would not be contrary to universal service, public safety and welfare, quality of service, and consumer rights concerns. It is therefore

ORDERED, that the application of Black Hills for a different local calling area is hereby approved.

Dated at Pierre, South Dakota, this 29th day of October, 1999.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Alaine Kelsch</u>
Date:	<u>10/29/99</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

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

IN THE MATTER OF THE PETITION OF)	ORDER PERMITTING
BLACK HILLS FIBERCOM, L.L.C. FOR A)	WITHDRAWAL OF FILING
DECLARATORY RULING REGARDING ARSD)	AND CLOSING DOCKET
20:10:32:11 AND ALTERNATIVE PETITION)	
FOR APPROVAL OF AN AMENDMENT TO)	TC02-084
BLACK HILLS FIBERCOM, L.L.C.'S LOCAL)	
CALLING AREA PURSUANT TO ARSD)	
20:10:32:11)	

On July 1, 2002, the Public Utilities Commission (Commission) received from Black Hills FiberCom, L.L.C. (FiberCom) a Petition for a Declaratory Ruling Regarding Application of ARSD 20:10:32:11 (Petition) and Alternative Petition for Approval of an Amendment to Black Hills FiberCom L.L.C.'s Local Calling Exchange Area Pursuant to ARSD 20:10:32:11 (Alternative Petition). In its Petition, FiberCom requests that the Commission find that FiberCom does not need to obtain Commission approval prior to FiberCom charging its customers for utilizing non-network ISP services through Rapid City telephone numbers attached to PRIs purchased from Qwest. If the Commission determines that FiberCom must obtain approval, then FiberCom requests in its Alternative Petition that the Commission approve the proposed amendment to FiberCom's local calling plan.

On July 3, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of July 11, 2002, to interested individuals and entities. On July 11, 2002, the Commission received a Petition to Intervene from the South Dakota Telecommunications Association (SDTA). At its July 23, 2002, meeting, the Commission granted intervention to SDTA.

On January 17, 2003, the Commission received a letter from FiberCom requesting that its Petition be withdrawn.

At its regularly scheduled March 18, 2003, meeting, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-76, 49-31-77, 49-31-81, and 49-31-85, and ARSD 20:10:01:34 and 20:10:32:11. The Commission found that FiberCom's request to withdraw its filing is reasonable and closed the docket. It is therefore

ORDERED, that FiberCom shall be permitted to withdraw its filing, and it is further

ORDERED, that this docket is closed.

Dated at Pierre, South Dakota, this 25th day of March, 2003.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Delaine Kolbo</u>
Date:	<u>3/26/03</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner

South Dakota Public Utilities Commission Meeting

Wednesday, November 20, 2002; 10:00 A.M. - 12:00 P.M.

State Capitol Building, Room 412

Pierre, South Dakota

MINUTES OF THE COMMISSION MEETING

MORNING SESSION

Chairman Jim Burg called the meeting to order. Also present were Commissioner Pam Nelson; Commissioner Bob Sahr; Executive Director Debra Elofson; Commission Advisor Greg Rislov; Commission Counsel John J. Smith; Commission Attorney Rolayne Ailts Wiest; Staff Attorney Karen Cremer; Staff Analysts Harlan Best, Dave Jacobson, Heather Forney, Keith Senger, and Michele Farris; and Administrative Secretary Mary Giddings.

Also present were Rich Coit, SD Telecommunications Association; and Cheri McComsey Wittler, court reporter.

Joining the meeting by telephone were Talbot Wieczorek and Jim Blundell, Western Wireless; Colleen Sevoid, Larry Toll, Mary Hobson and Tim Goodwin, Qwest Corporation; Joe Schuele, Martin Group; Marv Sorensen and Jean Calligan, MidAmerican Energy Company; Mary Lohnes, Midcontinent Communications; Janet Browne, AT&T; Linn Evans, Black Hills FiberCom; and Robert A. Fogg, Jr., complainant.

Administration**1. APPROVAL OF THE MINUTES OF THE COMMISSION MEETING HELD ON OCTOBER 17, 2002. (Staff: Mary Giddings.)**

Chairman Burg moved to approve the minutes of the October 17, 2002, Commission meeting. Commissioner Nelson seconded and Commissioner Sahr concurred. Motion passed 3-0.

Consumer Issues**1. STATUS REPORT ON CONSUMER UTILITY INQUIRIES AND COMPLAINTS RECENTLY RECEIVED BY THE COMMISSION. (Consumer Affairs: Mary Healy.)**

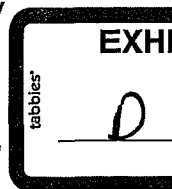
Ms. Cremer presented an update on inquiries and complaints received since the last Commission meeting.

2. IN THE MATTER OF DISMISSING DOCKETS CT01-047; CT02-026; CT02-030;

CT01-047 IN THE MATTER OF THE COMPLAINT FILED BY MILLENNIALINK D/B/A DAKOTA INTERNET, SIOUX FALLS, SOUTH DAKOTA, AGAINST QWEST CORPORATION REGARDING BILLING AND SERVICE QUALITY ISSUES. (Staff Analyst: Mary Healy, Staff Attorney: Karen Cremer.)

CT02-026 IN THE MATTER OF THE COMPLAINT FILED BY JUDY CALLAWAY ON BEHALF OF MIDWEST TIRE AND MUFFLER, INC., RAPID CITY, SOUTH DAKOTA, AGAINST MCLEODUSA TELECOMMUNICATIONS SERVICES, INC. REGARDING POOR QUALITY OF CUSTOMER SERVICE, FAILURE TO TRANSFER SERVICE TO NEW CARRIER AND DISPUTED BILLING. (Staff Analyst: Mary Healy, Staff Attorney: Karen Cremer.)

CT02-030 IN THE MATTER OF THE COMPLAINT FILED BY JEANETTE STEARNS ON BEHALF OF LANGE & SPEIDEL BOOKKEEPING & TAX SERVICE, BELLE FOURCHE, SOUTH DAKOTA,



AGAINST QWEST CORPORATION REGARDING BILLING. (Staff Analyst: Mary Healy, Staff Attorney: Karen Cremer.)

Chairman Burg moved to dismiss the complaints and close the dockets in CT01-047, CT02-026, and CT02-030. Commissioner Nelson seconded and Commissioner Sahr concurred. Motion passed 3-0.

3. CT02-021 IN THE MATTER OF THE COMPLAINT FILED BY CHRISTOPHER A. CUTLER ON BEHALF OF RECREATIONAL ADVENTURES CO., HILL CITY, SOUTH DAKOTA, AGAINST AT&T COMMUNICATIONS OF THE MIDWEST, INC. REGARDING FAILURE TO PROVIDE SERVICE. (Staff Analyst: Mary Healy, Staff Attorney: Karen Cremer.)

Ms. Cremer recommended that action be deferred to the December 2002 Commission meeting. Action was deferred.

4. CT02-032 CT02-032 IN THE MATTER OF THE COMPLAINT FILED BY ROBERT A. FOGG, JR., MARTIN, SOUTH DAKOTA, AGAINST CELLULARONE REGARDING BILLING. (Staff Analyst: Mary Healy, Staff Attorney: Karen Cremer.)

Talbot Wieczorek, representing CellularOne/Western Wireless, argued that there were no genuine issues as to any material facts in the case and requested that the summary judgement be approved.

Chairman Burg moved that the Commission take under advisement the decision on the motion of CellularOne for a Summary Judgement with the time and place to be noticed to the parties. Commissioner Sahr seconded and Commissioner Nelson concurred. Motion passed 3-0.

5. CT02-033 IN THE MATTER OF THE COMPLAINT FILED BY DENISE HAERTER, SIOUX FALLS, SOUTH DAKOTA, AGAINST MCIWORLD.COM AND QWEST CORPORATION REGARDING UNAUTHORIZED SWITCHING OF SERVICES. (Consumer Affairs: Mary Healy, Attorney: Karen Cremer.)

Ms. Cremer recommended that MCI's motion to dismiss be granted noting that Qwest agreed that a clerical error had been made.

Commissioner Nelson moved to grant MCI's motion to dismiss. Commissioner Sahr seconded and Chairman Burg concurred. Motion passed 3-0.

Telecommunications

1. TC98-146 IN THE MATTER OF THE FILING BY GCC LICENSE CORPORATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer.)

Ms. Wiest recommended a procedural schedule as follows: Changes made and submitted by December 2, 2002; comments by SDTA and Staff by December 12, 2002; reply comments by Western Wireless due December 17; and put on the agenda for the December 19, 2002, Commission meeting. Ms. Cremer noted that Staff and Western Wireless are working on recommended changes. Chairman Burg recommended that the procedural schedule recommended by Ms. Wiest be followed. No action was taken.

2. TC01-165 IN THE MATTER OF THE ANALYSIS INTO QWEST CORPORATION'S COMPLIANCE WITH SECTION 271(C) OF THE TELECOMMUNICATIONS ACT OF 1996. (Staff Analyst: Harlan Best, Staff Attorney: Karen Cremer.)

Chairman Burg stated that reopening the record at this point would accomplish very little. Moreover, scheduling another hearing and briefing schedule would most likely significantly delay this proceeding. The Commission as well as AT&T will have an opportunity to comment before the FCC

concerning Qwest's new section 272 affiliate. Chairman Burg also stated that acceptance of PO-20 on an interim basis does not eliminate the opportunity to make changes to this PID during the six-month review.

Chairman Burg moved to deny AT&T's motion to reopen and supplement the record. Commissioner Nelson seconded and Commissioner Sahr concurred. Motion passed 3-0.

Chairman Burg moved to grant Qwest's request and accept PID PO-20 on an interim basis. Commissioner Sahr seconded and Commissioner Nelson concurred. Motion passed 3-0.

Chairman Burg moved that the Commission find that since Qwest has just recently formed a new section 272 affiliate, the details of which are not in the record before the Commission, the Commission should make no recommendation to the FCC on this issue. Commissioner Sahr seconded and Commissioner Nelson concurred. Motion passed 3-0.

Chairman Burg moved that the Commission find that when the results of the ROC OSS test and Qwest's commercial performance data are reviewed in their entirety, Qwest has demonstrated that it has substantially met the statutory and FCC standards concerning OSS. Commissioner Sahr seconded and Commissioner Nelson concurred. Motion passed 3-0.

Chairman Burg moved that the Commission find that in order for this Commission to find that Qwest's entry into the interLATA market is in the public interest, Qwest shall make the following changes to its QPAP:

- 1) Qwest shall remove the cap on payments to others under the QPAP;**
- 2) Qwest shall remove the Tier 2 payment triggers and Tier 2 payments will apply in any individual month;**
- 3) Qwest shall remove the cap on payment escalation;**
- 4) Qwest shall delete line four of section 11.3.2 relating to disbursements from the South Dakota Discretionary Fund in order to be consistent with section 7.5;**
- 5) Qwest shall eliminate the requirement in section 11.3 regarding the appointment of a person to administer the Fund;**
- 6) In section 2.1.1, Qwest shall change the phrase "established by the state regulatory commission" to "administered by the state regulatory commission;"**
- 7) Qwest shall remove the 100% cap for interval measures;**
- 8) Qwest shall submit its summary format for bill credits;**
- 9) Qwest shall change its audit provisions to the language provided in the Commission's written order and make any corresponding revisions to section 11;**
- 10) Qwest shall change its dispute resolution language to provide that the Commission shall resolve disputes;**
- 11) Qwest shall change its six month review provisions to the language provided in the Commission's written order;**
- 12) Qwest shall change its offset provision to the language as adopted in North Dakota;**
- 13) Qwest shall delete section 17.0 which states that the QPAP is a voluntary offer;**
- 14) Qwest shall revise section 16.6 to provide that Qwest may petition the Commission to phase out the QPAP if it exits the interLATA market or its section 272 affiliate is eliminated;**
- 15) Qwest shall add a provision prohibiting Qwest from recovering QPAP payments from increased rates;**
- 16) Qwest shall add a provision regarding successor language;**
- 17) Qwest shall submit its proposed model amendment for CLECs that incorporates the QPAP into a CLEC interconnection agreement;**
- 18) Qwest shall provide payment estimates prior to any section 271 approval.**

Commissioner Sahr seconded and Commissioner Nelson concurred. Motion passed 3-0.

Natural Gas

1. NG02-008 IN THE MATTER OF THE APPLICATION BY MIDAMERICAN ENERGY COMPANY FOR REVISION OF ITS NATURAL GAS TRANSPORTATION TARIFFS. (Staff Analyst : Dave Jacobson, Staff Attorney: Kelly Frazier)

Jean Calligan, representing MidAmerican Energy Company, explained the revision of its Natural Gas Transportation Tariff and answered Commission questions. Mr. Jacobson recommended that the revisions be approved with an effective date of December 1, 2002.

Chairman Burg moved to approve MidAmerican's tariff sheets with an effective date of December 1, 2002. Commissioner Nelson seconded and Commissioner Sahr concurred. Motion passed 3-0.

Meeting adjourned until 1:30 p.m.

South Dakota Public Utilities Commission Meeting

Wednesday, November 20, 2002; 1:30 P.M.

State Capitol Building, Room 412

Pierre, South Dakota

MINUTES OF THE COMMISSION MEETING AFTERNOON SESSION

Chairman Jim Burg called the meeting to order. Also present were Commissioner Pam Nelson; Commissioner Bob Sahr; Executive Director Debra Eloffson; Commission Advisor Greg Rislov; Commission Counsel John J. Smith; Commission Attorney Rolayne Ailts Wiest; Staff Attorneys Karen Cremer and Kelly Frazier; Staff Analysts Harlan Best, Dave Jacobson, Heather Forney, Keith Senger, and Michele Farris; Transportation/Warehouse Director Bob Knadle; and Administrative Secretary Mary Giddings.

Also present were Jim Wilcox and Dave Hageman, Xcel Energy; Rich Coit, SD Telecommunications Association; Tom Harmon and Dick Howard, SD Association of County Commissioners; and Cheri McComsey Wittler, court reporter.

Joining the meeting by telephone were Colleen Sevold and Jeff Carmon, Qwest Corporation; Joe Schuele, Martin Group; Kent Larson, Xcel Energy; Gale Fisher, Fisher Law Firm; Mary Lohnes, Midcontinent Communications; Karen Huizenga, Dave Blomquist and Kristi Holm, MidAmerican Energy Company; Linn Evans, Black Hills FiberCom; Doug Eidahl, James Valley Cooperative/Northern Valley Communications; Jim Billion, Brown County State's Attorney Office; Don Phillips, Pennington County 911; Gary Colwell, Minnehaha County and the City of Sioux Falls; and Roslyn Bullion, complainant.

Consumer Issues

1. CN02-001 In the Matter of the Complaint filed by Roslyn Bullion, Dell Rapids, South Dakota, against MidAmerican Energy Company Regarding a Billing Dispute. (Staff Analyst: Mary Healy Staff Attorney: Kelly Frazier.)

Gale Fischer, representing Roslyn Bullion, requested that the additional evidence submitted by Ms. Bullion be admitted as evidence. Kristi Holm, representing MidAmerican Energy Company, argued that the new testimony should not be allowed. Mr. Frazier noted that the Commission closed evidence at the end of the hearing but stated that he had no objection to admitting the evidence from Ms. Bullion.

Chairman Burg moved that the additional factual evidence submitted by both parties following the October 15, 2002, hearing on this matter should not be admitted into evidence in the case and that the evidentiary record in this case be limited to the evidence presented and admitted at the hearing. This

ruling would exclude from evidence MidAmerican Energy Company's Exhibit 2 to its Post-Hearing Brief and those portions of Complainant's post-hearing submittals that contain new factual written testimony. Those portions of Complainant's post-hearing submittals that constitute argument as to the evidence received at the hearing shall be considered as closing argument. Commissioner Nelson seconded and Commissioner Sahr concurred. Motion passed 3-0.

Chairman Burg moved that the Commission find and conclude that Complainant had the burden of proving the issues raised by the complaint, that the evidence does not support finding in favor of the Complainant on any of the seven issues raised by the complaint and that a preponderance of the evidence supports finding for MidAmerican Energy Company. He further moved that the Commission decide in favor of MidAmerican Energy Company on all seven issues raised by Complainant's complaint and that the Commission issue Findings of Fact, Conclusions of Law and Final Decision so reflecting. Commissioner Nelson seconded and Commissioner Sahr concurred. Motion passed 3-0.

Telecommunications

1. TC02-041 IN THE MATTER OF THE APPLICATION OF EPHONE TELECOM, INC. FOR A CERTIFICATE OF AUTHORITY TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICES IN SOUTH DAKOTA. (Staff Analyst: Michele Farris, Staff Attorney: Kelly Frazier.)

Ms. Farris noted that the application for a Certificate of Authority had been withdrawn and recommended that the docket be closed.

Chairman Burg moved to allow ePHONE Telecom, Inc. to withdraw its application for a Certificate of Authority and he further moved to close the docket. Commissioner Nelson seconded and Commissioner Sahr concurred. Motion passed 3-0.

2. TC02-056 IN THE MATTER OF THE FILING FOR APPROVAL OF AN AGREEMENT FOR TERMS AND CONDITIONS FOR INTERCONNECTION, UNBUNDLED NETWORK ELEMENTS, ANCILLARY SERVICES AND RESALE OF TELECOMMUNICATIONS SERVICES BETWEEN QWEST CORPORATION AND NOW COMMUNICATIONS OF SOUTH DAKOTA, INC. (Staff Attorney: Kelly Frazier.)

Mr. Frazier recommended that the interconnection agreement be approved.

Commissioner Nelson moved to approve the interconnection agreement. Chairman Burg seconded and Commissioner Sahr concurred. Motion passed 3-0.

3. TC02-057 IN THE MATTER OF THE APPLICATION OF ICG TELECOM GROUP, INC. FOR A CERTIFICATE OF AUTHORITY TO PROVIDE LOCAL EXCHANGE SERVICES IN SOUTH DAKOTA. (Staff Analyst: Michele Farris, Staff Attorney: Kelly Frazier.)

Ms. Farris recommended that ICG Telecom Group, Inc. be granted a Certificate of Authority subject to a continuous \$25,000 surety bond and subject to rural safeguards.

Commissioner Nelson moved to grant ICG Telecom Group, Inc. a Certificate of Authority subject to a continuous \$25,000 surety bond and subject to rural safeguards. Chairman Burg seconded and Commissioner Sahr concurred. Motion passed 3-0.

4. TC02-084 TC02-084 IN THE MATTER OF THE PETITION OF BLACK HILLS FIBERCOM, L.L.C. FOR A DECLARATORY RULING REGARDING ARSD 20:10:32:11 AND ALTERNATIVE PETITION FOR APPROVAL OF AN AMENDMENT TO BLACK HILLS FIBERCOM, L.L.C.'S LOCAL CALLING AREA PURSUANT TO ARSD 20:10:32:11. (Staff Attorney: Rolayne Wiest)

Linn Evans, representing Black Hills FiberCom, L.L.C. (FiberCom), explained its application and requested a hearing. Rich Coit, representing SD Telecommunications Association, having been

granted intervention, stated its position and concerns. Ms. Wiest stated that Staff believes that FiberCom does need approval.

Chairman Burg moved that the Commission find that FiberCom does need approval and a hearing date will be set at a later time. Commissioner Nelson seconded and Commissioner Sahr concurred. Motion passed 3-0.

5. TC02-092 IN THE MATTER OF THE APPLICATION OF AIRNEX COMMUNICATIONS, INC. FOR A CERTIFICATE OF AUTHORITY TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICES IN SOUTH DAKOTA. (Staff Analyst: Dave Jacobson, Staff Attorney: Karen Cremer.)

Mr. Jacobson recommended that Airnex Communications, Inc. be granted a Certificate of Authority with restrictions from offering prepaid calling cards, accepting advance payments or customer deposits.

Commissioner Nelson moved to grant a Certificate of Authority to Airnex Communications, Inc. with restrictions from offering prepaid calling cards, accepting advance payments or customer deposits. Commissioner Sahr seconded and Chairman Burg concurred. Motion passed 3-0.

6. TC02-110 IN THE MATTER OF THE FILING FOR APPROVAL OF TRANSFER OF CERTIFICATE OF AUTHORITY FROM PREMIERE COMMUNICATIONS, INC. TO VOICECOM TELECOMMUNICATIONS, LLC. (Staff Analyst: Keith Senger, Staff Attorney: Kelly Frazier.)

Mr. Senger recommended that action be deferred. Action was deferred.

7. TC02-160 IN THE MATTER OF THE APPLICATION OF ALL-STAR ACQUISITION CORPORATION FOR A CERTIFICATE OF AUTHORITY TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICES IN SOUTH DAKOTA. (Staff Analyst: Michele Farris, Staff Attorney: Kelly Frazier.)

Ms. Farris recommended that All-Star Acquisition Corporation be granted a Certificate of Authority with a waiver of ARSD 20:10:24:02(08) and with restrictions from offering prepaid calling cards, accepting advance payments or customer deposits.

Chairman Burg moved to grant a Certificate of Authority to All-Star Acquisition with a waiver of ARSD 20:10:24:02(08) and with restrictions from offering prepaid calling cards, accepting advance payments or customer deposits. Commissioner Nelson seconded and Commissioner Sahr concurred. Motion passed 3-0.

8. TC02-163 IN THE MATTER OF THE APPLICATION OF BUYERS UNITED INC. FOR A CERTIFICATE OF AUTHORITY TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICES IN SOUTH DAKOTA. (Staff Analyst: Michele Farris, Staff Attorney: Kelly Frazier.)

Ms. Farris recommended that Buyers United Inc. be granted a Certificate of Authority with restrictions from offering prepaid calling cards, accepting advance payments or customer deposits and with an effective date of November 22, 2002.

Commissioner Nelson moved to grant a Certificate of Authority to Buyers United Inc. with the restrictions from offering prepaid calling cards, accepting advance payments or customer deposits and with an effective date of November 22, 2002. Commissioner Sahr seconded and Chairman Burg concurred. Motion passed 3-0.

9. TC02-168 IN THE MATTER OF THE FILING FOR APPROVAL OF AN AMENDMENT TO AN INTERCONNECTION AGREEMENT BETWEEN MCLEODUSA TELECOM DEVELOPMENT, INC. F/K/A DAKOTA TELECOM, INC. AND PRAIRIEWAVE TELECOMMUNICATIONS, INC. AND QWEST

CORPORATION F/K/A U S WEST COMMUNICATIONS, INC. (Staff Attorney: Kelly Frazier.)

Mr. Frazier recommended that the transfer be approved.

Chairman Burg moved to approve the transfer of the Interconnection Agreement. Commissioner Sahr seconded and Commissioner Nelson concurred. Motion passed 3-0.

10. TC02-170 IN THE MATTER OF THE FILING BY NORTHERN VALLEY COMMUNICATION FOR AN EXEMPTION FROM DEVELOPING COMPANY SPECIFIC COST-BASED SWITCHED ACCESS RATES. (Staff Analyst: Heather Forney, Staff Attorney: Karen Cremer.)

Ms. Forney recommended that the exemption extension be approved with a three-year time limit to either file cost-based rates or file a petition to continue the exemption.

Chairman Burg moved to approve the exemption extension with a three-year time limit to either file cost-based rates or petition to continue the exemption. Commissioner Nelson seconded and Commissioner Sahr concurred. Motion passed 3-0.

11. TC02-174 IN THE MATTER OF THE FILING BY QWEST CORPORATION FOR APPROVAL OF REVISIONS TO ITS EXCHANGE AND NETWORK SERVICES TARIFF. (Staff Analyst: Heather Forney, Staff Attorney: Karen Cremer.)

Don Phillips, Pennington County 911, explained the intervention. Tom Harmon, representing the SD Association of County Commissioners, and Jim Billion, Brown County State's Attorney, explained their respective interventions. Ms. Cremer recommended that intervention be granted to Brown County, Pennington County, Minnehaha County, the City of Sioux Falls, and the SD Association of County Commissioners.

Chairman Burg moved to grant intervention to Brown County, Pennington County, Minnehaha County, the City of Sioux Falls, and the SD Association of County Commissioners. Commissioner Sahr seconded and Commissioner Nelson concurred. Motion passed 3-0.

12. TC02-175 IN THE MATTER OF THE APPLICATION OF INTELECALL COMMUNICATIONS, INC. FOR A CERTIFICATE OF AUTHORITY TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS SERVICES IN SOUTH DAKOTA. (Staff Analyst: Keith Senger, Staff Attorney: Kelly Frazier.)

Mr. Senger recommended that Intelcall Communications, Inc. be granted a Certificate of Authority with a waiver of ARSD 20:10:24:02(08); with restrictions from offering prepaid calling cards, accepting advance payments or customer deposits; and with an effective date of December 31, 2002.

Commissioner Nelson moved to grant Intelcall Communications, Inc. a Certificate of Authority with a waiver of ARSD 20:10:24:02(08); with restrictions from offering prepaid calling cards, accepting advance payments or customer deposits; and with an effective date of December 31, 2002. Chairman Burg seconded and Commissioner Sahr concurred. Motion passed 3-0.

13. TC02-177 IN THE MATTER OF THE FILING BY MIDCONTINENT COMMUNICATIONS, INC. FOR APPROVAL OF ITS INTRASTATE SWITCHED ACCESS TARIFF AND FOR AN EXEMPTION FROM DEVELOPING COMPANY SPECIFIC COST-BASED SWITCHED ACCESS RATES. (Staff Analyst: Heather Forney, Staff Attorney: Karen Cremer.)

Ms. Forney recommended that Midcontinent Communications, Inc. be granted waivers of ARSD 20:10:27:11 and ARSD 20:10:27:12 with a three-year time limit to either file cost-based rates or file

a petition to continue the exemption, and to approve revised switched access rates. .

Chairman Burg moved to grant Midcontinent Communications, Inc. waivers of ARSD 20:10:27:11 and ARSD 20:10:27:12 with a three-year time limit to either file cost-based rates or file a petition to continue the exemption. Chairman Burg also moved to approve revised switched access rates. Motion passed 3-0.

Electric

1. EL02-019 IN THE MATTER OF THE FILING BY XCEL ENERGY FOR APPROVAL OF ITS 2001 ECONOMIC DEVELOPMENT ANNUAL REPORT AND 2002 ECONOMIC DEVELOPMENT PLAN. (Staff Analyst: Heather Forney, Staff Attorney: Kelly Frazier.)

Jim Wilcox, representing Xcel Energy, explained the report. Ms. Forney recommended that the 2001 economic development report and 2002 budget be approved.

Commissioner Nelson dissented, stating "Xcel Energy (Xcel) first filed these economic development plans five years before I took office. I understand the economic development plan blueprint was developed during settlement between our staff and employees of Northern States Power Company, Xcel's predecessor. Rate payers and utility would each contribute \$50,000 annually; the utility would develop a plan to spend the money; and this Commission would get its say through an approval process. The idea was that economic development would be a benefit for both customer and company. The Commission subsequently approved the settlement, and annual filings have been made.

I have approved past filings of these plans. I believe these plans can be a beneficial tool. The trick is to transform the money into an economic development tool. We have seen Xcel offer a variety of programs designed to do just that. I understand some may have yielded more immediate returns than others, and I understand how some projects require a longer-term view as benefits may be difficult to measure. One must keep an open, imaginative mind and one must exhibit a degree of patience with results.

Last year we approved a plan that gave Xcel wide spending latitude for the bulk of the money. Over 60% was in a 'pot' dubbed the 'Economic Assistance Program.' We relied on Xcel's discretion to appropriately ladle the cash out of the pot and into the hands of worthy economic causes.

My dissent arises because I think at least some of the cash was 'ladled' to programs that have little, if any hope of economic development return. Specifically, I believe donating \$5,000 to the SD Tech Summit is more appropriately labeled as a political contribution than an economic development contribution. Yes, these types of events have been funded in the past, with approval. There was some hope of benefit. I no longer see the value. I have neither seen nor heard of any concrete positive results from past summits. We learn from the past, and then we must act. My dissent from the majority approval does just that. I further recommend the percentage of discretionary economic funds, because it has grown so large, be kept under closer scrutiny by this Commission. It appears the reporting and approval process should be expanded to require Commission approval before large amounts are doled out from the fund."

Chairman Burg moved to approve Xcel's 2001 economic development plan and 2002 economic development budget. Commissioner Sahr seconded and Commissioner Nelson dissented. Motion passed 2-1.

2. EL02-022 IN THE MATTER OF THE FILING BY MIDAMERICAN ENERGY FOR APPROVAL OF DEPARTURE FROM ELECTRIC ENERGY ADJUSTMENT CLAUSE. (Staff Analyst: Dave Jacobson, Staff Attorney: Kelly Frazier.)

Karen Huizenga, representing American Energy Company, explained the waiver. Mr. Jacobson recommended that the waiver be approved with the conditions that: 1) Approval of this request is a one time, case specific approval and any future deviation from filed EECA tariffs must be filed for and approved by the Commission before implementation. 2) The EECA currently tariffed is not changed by this approval. 3) No precedent is created by approval of this request. 4) MidAmerican shall agree and respond to reporting requirements as directed by Staff.

Chairman Burg moved to approve MidAmerican's request for a nonpermanent waiver of specific wording of MidAmerican's Electric Energy Cost Adjustment Tariff to permit flow through of capacity savings to customers with the conditions recommended by Staff. Commissioner Sahr seconded and Commissioner Nelson concurred. Motion passed 3-0.

3. XCEL ELECTRIC RELIABILITY STUDY. (Commission Analyst: Greg Rislov.)

Dave Hagemann, Xcel engineer, reported Xcel's response to the electric reliability study done by Power System Engineering (PSE). Kent Larson, representing Xcel, further explained improvements made. Chairman Burg, Commissioner Nelson and Mr. Rislov questioned the report and requested that Xcel provide answers to the study questions of reliability posed by PSE. This is to be done at a Commission meeting in December. Mr. Rislov will work with Xcel.

Meeting adjourned.

Mary R. Giddings
Administrative Secretary

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

IN THE MATTER OF THE PETITION OF)	ORDER FOR AND NOTICE
BLACK HILLS FIBERCOM, L.L.C. FOR A)	OF HEARING
DECLARATORY RULING REGARDING ARSD)	
20:10:32:11 AND ALTERNATIVE PETITION)	TC02-084
FOR APPROVAL OF AN AMENDMENT TO)	
BLACK HILLS FIBERCOM, L.L.C.'S LOCAL)	
CALLING AREA PURSUANT TO ARSD)	
20:10:32:11)	

On July 1, 2002, the Public Utilities Commission (Commission) received from Black Hills FiberCom, L.L.C. (FiberCom) a Petition for a Declaratory Ruling Regarding Application of ARSD 20:10:32:11 (Petition) and Alternative Petition for Approval of an Amendment to Black Hills FiberCom L.L.C.'s Local Calling Exchange Area Pursuant to ARSD 20:10:32:11 (Alternative Petition). In its Petition, FiberCom requests that the Commission find that FiberCom does not need to obtain Commission approval prior to FiberCom charging its customers for utilizing non-network ISP services through Rapid City telephone numbers attached to PRIs purchased from Qwest. If the Commission determines that FiberCom must obtain approval, then FiberCom requests in its Alternative Petition that the Commission approve the proposed amendment to FiberCom's local calling plan.

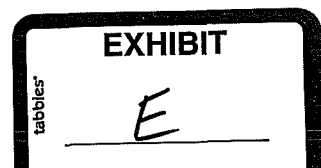
On July 3, 2002, the Commission electronically transmitted notice of the filing and the intervention deadline of July 11, 2002, to interested individuals and entities. On July 11, 2002, the Commission received a Petition to Intervene from the South Dakota Telecommunications Association (SDTA). At its July 23, 2002, meeting, the Commission granted intervention to SDTA.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-76, 49-31-77 , 49-31-81, and 49-31-85, and ARSD 20:10:01:34 and 20:10:32:11.

A hearing shall be held on January 24, 2003, beginning at 9:00 A.M., in the Governor's Inn Meeting Room, 700 West Sioux, Pierre, South Dakota. All persons testifying will be subject to cross-examination by the parties.

The issue at the hearing is whether the proposed change to FiberCom's local calling area as set forth on pages 9 and 10 of the Alternative Petition should be approved pursuant to ARSD 20:10:32:11.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an



attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Commission shall determine whether the proposed change to FiberCom's local calling area as set forth on pages 9 and 10 of the Alternative Petition should be approved pursuant to ARSD 20:10:32:11. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing shall be held at the time and place specified above on the issue of whether the proposed change to FiberCom's local calling area as set forth on pages 9 and 10 of the Alternative Petition should be approved pursuant to ARSD 20:10:32:11.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 13th day of January, 2003.

<p>CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

GARY HANSON, Commissioner

ROBERT K. SAHR, Commissioner