

MARVIN D. TRUHE
ATTORNEY AT LAW

P.O. Box 8112
Rapid City, South Dakota 57709-8112

Telephone (605) 348-8530

Email: marvtruhe@aol.com

March 8, 2004

Karen Cremer
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 E. Capitol Avenue
Pierre, South Dakota 57501-5070

RECEIVED
MAR 09 2004
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

Tim Goodwin
Qwest Services Corporation
1801 California Street 47th Floor
Denver, CO 80202

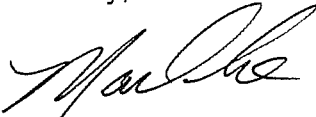
**Re: Complaint Filed by Black Hills FiberCom, L.L.C., Against
Qwest Corporation Regarding Intrastate Switched Access
Charges Applied to ISP-Bound Calls Which Complainant Claims is
Interstate in Nature; CT03-154**

Dear Counsel:

Enclosed please find a copy of Black Hills FiberCom's Answers to Qwest's Requests for Admissions and Interrogatories (Second Set). This is being served upon you electronically and by mail.

Thank you.

Sincerely,



Marvin D. Truhe

Enclosure

RECEIVED

MAR 09 2004

**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
)	BLACK HILLS FIBERCOM'S
)	ANSWERS TO QWEST'S
)	REQUESTS FOR
)	ADMISSIONS AND
)	INTERROGATORIES
		(SECOND SET)

Black Hills FiberCom, L.L.C. ("BHFC") hereby submits its Answers to the Combined Requests for Admissions and Interrogatories (Second Set) of Qwest Corporation ("Qwest").

ANSWERS TO REQUEST FOR ADMISSIONS

[Note: The term "traffic in dispute" as defined by Qwest in its Request for Admissions inaccurately defines the traffic that is the subject of BHFC's Complaint. Thus, as defined, BHFC would deny, for that reason, each Request for Admissions that uses that term, or the related term "disputed traffic." In order to respond meaningfully herein to Qwest's Requests for Admissions, the "traffic in dispute" or "disputed traffic" that is the subject of BHFC's Complaint is ISP-bound traffic initiated by BHFC's customers outside Qwest's Rapid City local calling area using an access number within Qwest's Rapid city local calling area which traffic is delivered to an ISP customer of Qwest and continues through the ISP server and terminates at the remote Internet sites accessed by the BHFC customers. Using that definition, BHFC responds as follows.]

REQUESTS FOR ADMISSION

Request for Admission 1: Admit that BHFC charges other carriers intrastate switched access rates for interexchange traffic originated in South Dakota and delivered to BHFC's Internet Service Providers ("ISP") Customers. If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 1:

Admits. Previously, BHFC's understanding was that the CABS and Cards records that Qwest provided BHFC for its use in billing switched intrastate access charges did not include these calls to our ISPs. Upon evaluation of the February 2004 call data, however, BHFC has learned that only the calls originated by Qwest customers have been excluded from the records Qwest provides BHFC to bill from. Therefore, there is minimal traffic being billed to other carriers (see attached Exhibit A report for February 2004). The call detail included 375 calls, totaling 2,959.25 minutes. The average duration per call is approximately 8 minutes (short for an ISP call). Six different long distance carriers apparently were billed for these calls in February 2004. Again, Qwest was not billed for these calls since they were not reported to BHFC by Qwest.

Request for Request for Admission 2: Admit that BHFC allows its ISP Customers to pay local business line rates for access service. If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 2:

Denies. BHFC has sold specially priced PRIs to its ISP customers.

Request for Admission 3: Admit that BHFC does not charge its ISP Customers interstate carrier access charges. If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 3:

Admits. All charges are included in the price of the PRIs that are used to connect the ISP with BHFC's switch and customers.

Request for Admission 4: Admit that for separations purposes, BHFC allocates to its intrastate services the traffic-sensitive costs associated with calls delivered to its ISP Customers. If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 4:

Denies. BHFC has not allocated its costs for establishing rates. The pricing is a result of a settlement wherein Qwest required BHFC to mirror its rates.

Request for Admission 5: Admit that BHFC's ISP Customers are end users within the meaning of 47 CFR § 69.2(m). If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 5: The answer depends on whether ISP customers are deemed to be carriers under that section, which section does not define the term. If the term carriers means only telecommunications companies then an ISP customer is not a carrier. If the term includes a provider of communication services, including internet services, then an ISP customer is a carrier.

Request for Admission 6: Admit that BHFC's ISP Customers are end users within the meaning of ARSD § 20:10:24:01(6). If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 6:

Denies. The ISP Customers do not use the telecommunications services for their own use. They bundle the services purchased from BHFC with other communications services and sell those services to their customers.

Request for Admission 7: Admit that BHFC's ISP Customers are end users within the meaning of ARSD § 20:10:29:07. If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 7:

The answer depends on whether ISP customers are deemed to be carriers under that section, which section does not define the term. If the term carriers means only telecommunications companies then an ISP customer is not a carrier. If the term includes a provider of communication services, including internet services, then an ISP customer is a carrier.

Request for Admission 8:

Admit that Public Utilities Commission of the State of South Dakota ("Commission") approval was required before BHFC imposed an additional charge to its customers who reside outside Qwest's Rapid City calling area, but within BHFC's calling area, and initiate calls to Qwest's ISP Customers (the "Qwest ISP Charge"). If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 8:

Denies. The Qwest ISP Charge was for "traffic in dispute" as defined above, which traffic is interstate in nature and thus not subject to, nor properly billable under the Commission approved intrastate switched access tariffs and rates, nor under the current interconnection agreement between BHFC and Qwest. Thus, because this traffic is interstate traffic, and not local traffic for purposes of our local calling area, BHFC did not

need the approval of the Commission prior to implementing an interstate long distance charge.

Request for Admission 9: Admit that BHFC has imposed an 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"). If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 9:

Admits. In January, 2003, BHFC initiated a new classification of interstate long distance and began charging customers for their minutes of use.

Request for Admission 10: Admit that BHFC did not obtain Commission approval before BHFC imposed the Qwest ISP Charge. If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 10:

Admits. However, BHFC gave the Commission written notice of its intended charge prior to implementing it.

Request for Admission 11: Admit that BHFC initiated the Qwest ISP Charge at least in part to cause AOL (and other ISP Customers of Qwest) to purchase Primary Rate Interfaces ("PRIs") from BHFC and not Qwest. If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 11:

Denies. The Qwest ISP Charge was initiated because BHFC was making substantial monthly payments to Qwest for the traffic in dispute which payments far exceeded the revenue BHFC was receiving from its customers for providing that service. This economic disadvantage was exacerbated by Qwest's refusal to pay BHFC for ISP-bound calls from Qwest customers within a LATA due to Qwest's position that those calls were interstate in nature. BHFC's intent was to recover its costs associated with this traffic.

Request for Admission 12: Admit that the Commission did not have jurisdiction to consider BHFC's petition in Docket No. TC02-084. If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 12:

Denies. The Commission has jurisdiction to determine if a telecommunications carrier is violating any law, regulation, or matter over which the Commission has authority and control. Thus, for example, if BHFC's additional charges were in violation

of BHFC's Commission controlled tariff the Commission had jurisdictional authority to address the violation.

Request for Admission 13: Admit that the Commission had jurisdiction to consider BHFC's petition in Docket No. TC02-084. If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 13:

Admits. See Response to Request 12, above.

Request for Admission 14: Admit that charges for the Traffic in dispute in this case are a federal issue and not a state regulatory issue. If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 14:

Denies. Qwest has been billing Fiber-Com for the traffic in dispute at Qwest's intrastate switched access rates pursuant to Qwest's intrastate tariff (see Qwest's Answer to ¶ 28 of BHFC's Complaint). That intrastate tariff was approved and is governed by the Commission. BHFC alleges that Qwest is improperly billing the traffic in dispute as intrastate when in fact it is interstate in nature. The Commission has the jurisdiction and legal authority to address and rectify improper billings made pursuant to Commission controlled tariffs. The same would be true if Qwest had improperly billed local traffic as intrastate traffic.

Request for Admission 15: Admit that telecommunications traffic delivered to an ISP terminates at that ISP. If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 15:

Denies. The traffic delivered to an ISP continues through the ISP server and terminates at the remote Internet sites accessed by the originating customer.

Request for Admission 16: Admit that telecommunications traffic delivered to an ISP does not terminate at that ISP. If you do not admit this request, state the reason why such admission cannot be made.

Response to Request for Admission 16:

Admits. See Response to Request 15, above.

Request for Admission 17: Admit no state has required telecommunications carriers to charge interstate switched access rates for interexchange traffic originated in one state and delivered to ISPs located in that same state. If you do not admit this request, state the reason why such admission cannot be made.

Response to Admission 17:

BHFC has insufficient knowledge to admit or deny this request. BHFC has not made a study of what other states may have required (or allowed) carriers to charge as indicated. It is likewise unknown whether any other state Commission has ever been asked to address BHFC's unique situation, i.e., being one of a very limited number of overbuilders, and having a local calling area different from that of the other carrier at issue.

Request for Admission 18: Admit the Federal Communications Commission ("FCC") has not required telecommunications carriers to charge interstate switched access rates for interexchange traffic originated in one state and delivered to ISPs located in that same state. If you do not admit this request, state the reason why such admission cannot be made.

Response to Admission 18:

BHFC has insufficient knowledge to admit or deny this request. BHFC has not made a study of all FCC rulings to determine if it has required (or allowed) carriers to charge as indicated. The FCC has ruled, however, that this traffic does not terminate or end at the ISP, but instead is primarily interstate in nature.

ADDITIONAL INTERROGATORIES

Interrogatory 1: List all terminating switched access rates BHFC charges to telecommunications carriers for interexchange voice traffic originated in South Dakota and delivered to BHFC customers in South Dakota.

Answer to Interrogatory 1:

Attached as Exhibit B is BHFC's tariff.

Interrogatory 2: List all terminating switched access rates BHFC charges to telecommunications carriers for interexchange traffic originated in South Dakota and delivered to ISPs served by BHFC in South Dakota.

Answer to Interrogatory 2:

See Answer to Interrogatory 1.

Interrogatory 3 (a): Identify all carriers that have charged BHFC for terminating switched access in connection with inter exchange traffic originated in South Dakota and delivered to ISPs served by such carriers in South Dakota.

Answer to Interrogatory 3(a):

Qwest is the only carrier that BHFC has identified.

Interrogatory 3 (b): Of the carriers identified in response to (a) above, identify which carriers have charged BHFC intrastate rates, and which carriers have charged interstate rates.

Answer to Interrogatory 3(b):

Qwest has charged intrastate rates.

Interrogatory 4: List BHFC's ISP Customers as of (a) January 1, 2002; (b) July 1, 2002; (c) January 21, 2003; (d) July 1, 2003; and (e) January 1, 2004. Qwest will agree to a protective order strictly limiting the use and disclosure of this information. A proposed confidentiality agreement order is attached as Exhibit A.

Answer to Interrogatory 4:

FiberCom declines to provide this proprietary and confidential commercial information to Qwest. Furthermore, release of this competitive information could result in BHFC's loss of service to its ISP customers, which would only exacerbate the reason for this filed action.

Interrogatory 5: For each ISP Customer identified in response to Interrogatory 4 above, please state the revenue BHFC received from that customer for each month from January 2002 to the present.

Answer to Interrogatory 5:

FiberCom refuse to provide this information. See response to Interrogatory 4.

Interrogatory 6(a): Identify all communications between BHFC and AOL relating to the Qwest ISP Charge.

Answer to Interrogatory 6(a):

Attached are the following letters in response:

1. Exhibit C - June 4, 2002 letter from BHFC to AOL (earlier, attached as an exhibit to BHFC's Reply to Counterclaim)
2. Exhibit D - January 28, 2003 letter from AOL to BHFC
3. Exhibit E - February 3, 2003 letter from BHFC to AOL

Interrogatory 6(b): Identify all documents exchanged, provided, received, created, generated, revised, or reviewed in connection with each such communication, whether before, after, or during each communication identified in response to subpart (a). Alternatively, responsive documents may be produced.

Answer to Interrogatory 6(b):

All documents are subject to attorney work product privilege.

Interrogatory 7: Provide the information requested in Interrogatory 5 for any other ISP Customer of Qwest with which BHFC has had communications relating to the Qwest ISP Charge.

Answer to Interrogatory 7:

BHFC does not understand this interrogatory. Interrogatory 5 refers to BHFC's ISP customers, whereas this interrogatory refers to Qwest's ISP customers.

Interrogatory 8(a): List BHFC's revenues from the Qwest ISP Charge for each month since its inception.

Answer to Interrogatory 8(a):

Attached as Exhibit F is a document that provides this information.

Interrogatory 8(b): List the number of BHFC customers from whom BHFC collected the Qwest ISP Charge for each month since its inception.

Answer to Interrogatory 8(b):

See answer to Interrogatory 8(a) above.

Interrogatory 9: List the telephone numbers assigned to BHFC's ISP Customers that the ISP's customers call to access the internet.

Answer to Interrogatory 9:

BHFC declines to provide this information. See response to Interrogatory 4.

Interrogatory 10(a): Identify each person with knowledge of facts relevant to the issues, claims, counterclaims, defenses, or counter-defenses raised by the parties in this case. For each person identified, briefly describe the nature and the subject matter of that person's knowledge.

Answer to Interrogatory 10(a):

Kyle White (knowledge of BHFC's complaint and Qwest's counterclaim)
Ron Schaible (former employee, knowledge of BHFC's complaint and BHFC's implementation of the new interstate long distance charge)
Kim Schneider (knowledge of BHFC's charges and billing system)
Tim Hedman (knowledge of BHFC's efforts to inform customers of the new interstate long distance charge)
Denise Bussey (supports administration of switched data for BHFC's production of customer billings)
Others would have only peripheral knowledge of these issues.

[Attached Schedule 1 gives supplementary information to this answer]

Interrogatory 10(b): Identify each person with responsibility for determining BHFC's policies concerning the rate(s) BHFC has charged for switched access traffic, both voice and ISP-bound, from January 1, 2002. For each person identified, briefly describe the nature of that person's responsibilities relating to switched access rates.

Answer to Interrogatory 10(b):

Kyle White
Ron Schaible

Interrogatory 10(c): Identify each person with responsibility for implementation and administration of the Qwest ISP Charge. For each person identified, briefly describe the nature of that person's responsibilities relating to the Qwest ISP charge.

Answer to Interrogatory 10(c):

Kim Schneider (billing system)
Tim Hedman (customer relations)
Denise Bussey (completed programming necessary to implement the charge)
Deb Wade (customer relations)

[Attached Schedule 1 gives supplementary information to this answer]

Interrogatory 11(a): Briefly explain the basis for applying the billing regime established by the FCC's "Order on Remand" described in paragraph 18 of BHFC's Complaint to the Traffic in dispute.

Answer to Interrogatory 11(a):

BHFC has not asked that the billing regime established by the FCC's "Order on Remand" be applied to this traffic. Instead, BHFC is asking the Commission to order a refund of Qwest's improperly billed charges under Qwest's intrastate tariff.

Interrogatory 11(b): Briefly explain the basis for the Commission's authority to apply the billing regime established by the FCC's Order on Remand to the Traffic in dispute. (Note: If you do not contend the Commission should impose the billing regime established by the FCC in the Order on Remand, you may so indicate in your answer and no further answer is required.)

Answer to Interrogatory 11(b):

Does not apply. See Answer to Interrogatory 11(a).

REQUESTS FOR PRODUCTION

Request for Production 1: Produce call detail records sufficient to identify the terminating switched access rates BHFC has charged to Qwest, identified by called party, from January 1, 2001 to the present.

Response to Request for Production 1:

By prior settlement, BHFC's charges are based upon Qwest's records, which records Qwest already has.

Request for Production 2: Produce all documents that contain, reflect, or relate to every communication between BHFC and Qwest relating to the Qwest ISP Charge.

Response to Request for Production 2:

BHFC is unaware of any such documents other than those which would have been exchanged pursuant to confidential settlement discussions with Qwest regarding this action.

Request for Production 3: Produce all documents that contain, reflect, or relate to every communication between BHFC and AOL relating to the Qwest ISP Charge.

Response to Request for Production 3:

Produced in response to Interrogatory 6(a).

[NOTE: Qwest had two Requests for Production numbered "3"; therefore, the following Request has been re-numbered "3A"]

Request for Production 3A: Produce all documents that contain, reflect, or relate to every communication between BHFC and any ISP that was, at the time of the communication, a customer of Qwest, relating to the Qwest ISP Charge.

Response to Request for Production 3A:

Produced in response to Interrogatory 6(a).

Request for Production 4: Produce all documents that contain, reflect, or relate to any protest, complaint, or dispute BHFC has raised with any other carrier that has charged BHFC intrastate switched access rates for intrastate, interexchange traffic delivered to ISPs served by BHFC.

Response to Interrogatory 4:

There are no such documents.

Request for Production 5: Produce call detail records sufficient to identify the terminating switched access rates BHFC has charged to carriers other than Qwest for interexchange, intrastate traffic delivered to ISPs served by BHFC, from January 1, 2001 to the present.

Response to Request for Production 5:

BHFC uses the call detail summaries provided monthly by Qwest for its intrastate switched access billings. Qwest has the call detail requested.

Request for Production 6: Produce all documents that contain, reflect, or relate to communications between Qwest and BHFC that relate to the issue of whether reciprocal compensation was due for Internet-bound traffic under the terms of any interconnection agreement between BHFC and Qwest.

Response to Request for Production 6:

Attached as Exhibit G is Qwest's November 3, 2000 letter to BHFC (earlier, attached as an exhibit to BHFC's Complaint). All other documents were part of confidential settlement discussions and will not be produced.

Request for Production 7: Produce all documents that contain, reflect, or relate to publicly filed communications authored, revised, submitted by, or subscribed to by BHFC (regardless of whether BHFC's participation in the creation, revision, or filing of such communications was by itself or in conjunction with other individuals or entities) that relate to the issue of whether reciprocal compensation was or should be due for Internet-bound traffic under the terms of any interconnection agreement between BHFC and Qwest.

Response to Request for Production 7:

BHFC does not understand this interrogatory .

Request for Production 8: Produce documents sufficient to demonstrate whether, for separations purposes, BHFC accounts for the traffic-sensitive costs associated with calls delivered to its ISP Customers as interstate costs, intrastate costs, or some combination thereof.

Response to Request for Production 8:

BHFC has not made a final classification of these costs because it has never prepared cost allocations for filing with the Commission.

Request for Production 9: For every ISP Customer of BHFC, produce all agreements and all invoices, charges, or bills relating to that ISP's access services and/or carrier access charges from January 1, 2002 to the current date.

Response to Request for Production 9:

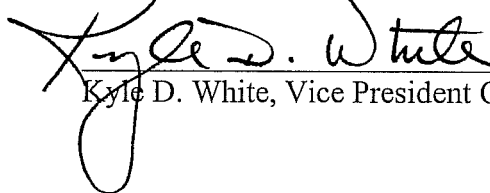
BHFC declines to produce the documents. See response to Interrogatory 4.

Request for Production 10: Produce all documents identified or referred to in response to any request for admission or interrogatory.

Response to Request for Production 10:

Except as refused, all documents we are aware of have been produced.

Signed this 8th day of March, 2004.

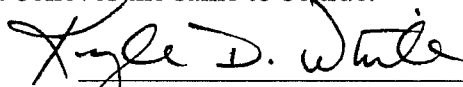


Kyle D. White, Vice President Corporate Affairs

State of South Dakota)
) ss.
County of Pennington)

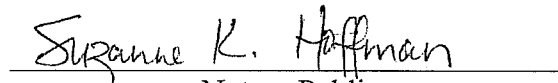
VERIFICATION

Kyle D. White, being first duly sworn upon his oath, deposes and states that he is the Vice President of Corporate Affairs for Black Hills FiberCom, L.L.C., Complainant herein, and has answered the foregoing Requests for Admissions to the best of his knowledge and information and believes the same to be true.



Kyle D. White, Vice President Corporate Affairs

Subscribed and sworn to before me this 8th day of March, 2004.



Notary Public

(SEAL)


CERTIFICATE OF SERVICE

I hereby certify I am one of the counsel representing Black Hills FiberCom, L.L.C. in this matter and that on March 8th, 2004 a true and correct copy of the foregoing **Black Hills FiberCom's Answers to Qwest's Combined Requests for Admissions and Interrogatories (Second Set)**, with attached exhibits, was served via served electronically and via United States first class mail, postage prepaid, on the following:

Thomas J. Welk (tjwelk@bgpw.com)
Boyce, Greenfield, Pashby and Welk, L.L.P.
P.O. Box 5015
Sioux Falls, SD 57717-5015

Tim Goodwin, Senior Attorney (Tim.Goodwin@qwest.com)
Qwest Services Corporation
1801 California Street 47th floor
Denver, CO 80202

Karen Cremer (karen.cremer@state.sd.us)
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501



Marvin D. Truhe

This is summary of calls that BHFC billed to carriers terminating to BHFC ISPs for the month of February, 2004. Note that J = Interstate, Z=Unknown, 6 & 8 = Intrastate.

03/08/04 10:54:11 ISP Cellular CABS records for Feb PAGE 1

Carrier	Carrier	Stl	Total	Minutes
ID	Description	Cde	Calls	
0098		J	1	3.40
0222	MCI	J	117	1,547.62
0222	MCI	Z	25	14.95
0222	MCI	6	82	1,332.75
0222	MCI	8	133	487.57
0288	AT&T	J	304	2,110.95
0288	AT&T	Z	63	469.38
0288	AT&T	6	39	616.82
0288	AT&T	8	76	433.48
0333	Sprint Long Dis	J	61	137.85
0333	Sprint Long Dis	Z	22	32.75
0333	Sprint Long Dis	8	3	3.82
0432	LCI Internation	J	4	25.60
0432	LCI Internation	8	3	6.30
0444	Global Crossing	J	28	26.72
0444	Global Crossing	Z	48	40.33
0444	Global Crossing	6	5	5.92
0444	Global Crossing	8	14	40.87
0725	McLeoudUSA	J	13	22.20
0725	McLeoudUSA	8	15	19.30
0948	Switched Servic	Z	1	.82
5158		J	29	135.82
5158		Z	1	.98
5475		8	5	12.42

FINAL TOTALS

TOTAL	1,092	7,528.62
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EXHIBIT A



Black Hills Corporation

Kyle D. White

Vice President

Corporate Affairs

E-mail: kwhite@bh-corp.com

625 Ninth Street • P.O. Box 1400

Rapid City, SD 57709-1400

P (605) 721-2313

F (605) 721-2599

December 14, 2001

Ms. Debra Elofson
Executive Director
South Dakota Public Utilities Commission
500 East Capitol, First Floor
Pierre, South Dakota 57501

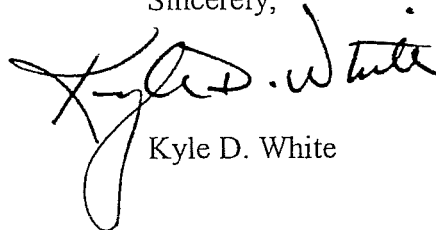
Dear Ms. Elofson:

Subject: Final Tariff Sheets for TC00-190

On October 18, 2001, the South Dakota Public Utilities Commission approved Black Hills FiberCom's switched access services tariff with an effective date of October 10, 2001. Enclosed are the original and one copy with the approved effective date.

If you have any questions regarding this filing, please contact me.

Sincerely,



Kyle D. White

KDW:MJH

c: Ron Schaible, Black Hills FiberCom
Greg Bernard, Morrill Thomas Nooney & Braun
Linn Evans, Corporate Attorney

EXHIBIT B

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

IN THE MATTER OF THE FILING BY BLACK)	ORDER GRANTING
HILLS FIBERCOM, L.L.C. FOR APPROVAL OF)	PETITION FOR WAIVER AND
ITS INTRASTATE SWITCHED ACCESS TARIFF)	APPROVING STIPULATION
AND FOR AN EXEMPTION FROM)	AND AGREEMENT
DEVELOPING COMPANY SPECIFIC COST-)	
BASED SWITCHED ACCESS RATES)	TC00-190

On November 22, 2000, the Public Utilities Commission (Commission) received a filing from Black Hills FiberCom, L.L.C. (FiberCom) for approval of its intrastate switched access tariff and for an exemption from developing company specific cost-based switched access rates. The tariff filing is a concurrence in the rates, terms and conditions of the current LECA Tariff No. 1, with the exception of the switched access rates which are based on a statewide average. The company is also requesting that the Commission exempt it from the requirement to develop intrastate switched access rates based on company specific costs. The company is requesting an effective date of November 22, 2000.

On November 23, 2000, the Commission electronically transmitted notice of the filing and the intervention deadline of December 8, 2000, to interested individuals and entities. Qwest Corporation (Qwest) filed a Petition for Leave to Intervene on December 6, 2000. At its regularly scheduled meeting of December 12, 2000, the Commission granted intervention to Qwest. On January 16, 2001, the Commission received a Motion for Continuance and Affidavit of Counsel from FiberCom. On October 1, 2001, the Commission received a revised switched access tariff from FiberCom. On October 1, 2001, the Commission received a Stipulation and Agreement to Settle Docket No. TC00-190.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 49-31, specifically 49-31-18 and 49-31-19 and ARSD Chapters 20:10:27 through 20:10:29, inclusive.

On October 10, 2001, the Commission considered FiberCom's request for approval of its intrastate switched access tariff no. 1 and a waiver from establishing switched access rates based on company specific costs. The Commission also considered the Stipulation and Agreement. The Commission voted to grant the petition for exemption from developing company specific cost-based switched access rates pursuant to ARSD 20:10:27:11. The Commission also granted FiberCom's request to waive ARSD 20:10:27:12 pursuant to ARSD 20:10:27:02. The Commission approved FiberCom's intrastate switched access tariff no. 1 as set forth in the Stipulation and Agreement. The Commission also voted to approve the Stipulation and Agreement, effective October 10, 2001, attached hereto as Exhibit A. The Commission further ordered that FiberCom, within three years of the date of this Order, file a petition to continue the exemption granted in this proceeding or file cost-based rates. The Commission voted to grant the petition for exemption as conditioned herein and approve the tariff. It is therefore

ORDERED, that FiberCom's petition to be exempt from establishing company specific cost-based switched access rates is granted and its intrastate switched access tariff no. 1, as amended, is approved; and it is further

STIPULATION AND AGREEMENT TO SETTLE DOCKET NO. TC00-190

This Stipulation and Agreement ("Agreement") is entered into by Qwest Corporation ("Qwest") and Black Hills FiberCom, L.L.C. ("FiberCom"). The parties hereby stipulate and agree as follows:

1. Currently pending before the South Dakota Public Utilities Commission ("Commission") is FiberCom's Request for Exemption from Development of Company-Specific Cost-Based Switched Access Rates, and application for approval of its Intrastate Switched Access Tariff No. 1 (Docket TC00-190).

2. It is FiberCom's position in Docket TC00-190 that pursuant to ARSD 20:10:27:11, FiberCom should be exempted from developing intrastate switched access rates based on company-specific costs, as required by the Commission's regulations for the following reasons: FiberCom is a start-up competitive local exchange carriers ("CLEC") that has started operations in Rapid City and some of the northern Black Hills communities. FiberCom currently does not have one year of usable historical test data, as required by ARSD 20:10:27:14, to establish company-specific cost-based switched access rates. Additionally, the process of determining company-specific cost-based rates would require FiberCom to predict future additional customers, traffic usage, and the allocated investment, expenses and revenue for an undetermined customer profile. This would be very difficult for FiberCom to do at this time. Furthermore, such estimates would be unlikely to produce accurate results or rates. Requiring cost-based rates of FiberCom would create excessive costs for FiberCom without any benefit to FiberCom's customers.

3. It is also FiberCom's position in Docket TC 00-190 that if granted an exemption pursuant to ARSD 20:10:27:11, FiberCom may concur in and adopt the rates, terms and conditions

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OCT 01 2001

SOUTH DAKOTA PUBL

- (a) FiberCom shall amend its application for tariff approval in Docket TC00-190 to propose originating and terminating switched access rates which match the originating and terminating switched access rates charged by Qwest in Qwest's Access Services Tariff filed with and approved by the Commission. FiberCom's amended application shall be in the form of Appendix A attached hereto.
- (b) Qwest shall withdraw its intervention in Docket TC00-190 and shall take no position on FiberCom's Request for Exemption under ARSD 20:10:27:11 and shall take no position on FiberCom's application for tariff approval with amended proposed switched access rates.
- (c) If the Commission approves FiberCom's intrastate switched access tariff as agreed to herein, then FiberCom will, within three (3) years of the entry of the Order approving such tariff either file a petition to continue the exemption granted under ARSD 20:10:27:11 or file cost based rates.

9. The parties acknowledge and agree that this Agreement is a compromise of the positions which would be asserted if the matter is litigated. Accordingly, evidence of conduct or statements made in negotiations and discussions in connection with this Agreement shall not be admissible in any proceeding.

10. It is specifically understood and agreed by both parties that each party's rights and obligations under this Agreement are contingent upon the Commission's approval of all material provisions of FiberCom's amended application for approval of its Intrastate Switched Access Tariff, and that this Agreement shall not become effective and shall be of no force and effect until the Commission issues a final Order accepting and approving this Agreement.

11. The parties have entered into this Agreement as an integrated document and urge the Commission to adopt it in its entirety. Accordingly, in the event any part or all of this Agreement is modified or rejected by the Commission, each party reserves the right, upon written notice to the Commission and all other parties within five (5) days of the effective date of the final written Commission Order, to withdraw from this Agreement without being bound by its terms in this or any

BLACK HILLS FIBERCOM, LLC
RAPID CITY, SOUTH DAKOTA

TARIFF NO. 1
Original Title Page

SOUTH DAKOTA SWITCHED ACCESS SERVICES

A. CONCURRENCE IN RATES, TERMS AND CONDITIONS OF LOCAL EXCHANGE
CARRIER ASSOCIATION, INC. TARIFF NO. 1

1. Black Hills FiberCom, LLC concurs in the rates, terms and conditions, except as noted below, of Local Exchange Carrier Association, Inc. Tariff No. 1 governing Intrastate Access Service as filed by the Local Exchange Carrier Association, Inc. in the State of South Dakota. Black Hills FiberCom, LLC concurs in the current Local Exchange Carrier Association, Inc. Tariff No. 1 as of November 22, 2000 as shown by the attached TARIFF CHECKLIST pages. The only exceptions to this concurrence are the attached pages 17-1 and 17-4, which replace the current Local Exchange Carrier Association, Inc. Tariff No. 1 pages 17-1 and 17-4.
2. Black Hills FiberCom, LLC hereby expressly reserves the right to cancel or void this statement of concurrence at any time consistent with state law and the best interests of Black Hills FiberCom, LLC by filing a replacement tariff with the South Dakota Public Utilities Commission.

Issued: September 19, 2001

Effective: October 10, 2001

By: Vice President of Corporate Affairs
PO Box 2115
Rapid City, SD 57709

Appendix A
LOCAL EXCHANGE CARRIER ASSOCIATION, INC.

TARIFF NO. 1
3rd Revised Checklist Page 2
Cancels 2nd Revised Checklist Page 2

TARIFF CHECKLIST
All Pages Are Original Unless Otherwise Noted

<u>Page</u>	<u>Revision Number</u>	<u>Page</u>	<u>Revision Number</u>	<u>Page</u>	<u>Revision Number</u>
3-14		6-9	1 st	6-48	
3-15		6-10	1 st	6-49	
3-16	1 st *	6-11		6-50	
3-17	1 st *	6-12		6-51	
		6-13		6-52	
4-1		6-14	1 st	6-53	
		6-15	1 st	6-54	1 st
5-1		6-16		6-55	1 st *
5-2		6-17		6-56	1 st *
5-3		6-18	1 st	6-57	
5-4		6-19		6-58	
5-5		6-19.1	1 st *	6-59	
5-6	1 st	6-20		6-60	
5-7		6-21		6-61	
5-8	1 st *	6-22		6-62	
5-9		6-23		6-63	
5-10		6-24		6-64	
5-11		6-25		6-65	
5-12		6-26		6-66	
5-13		6-27	1 st *	6-67	
5-14		6-28		6-68	
5-15		6-29		6-69	1 st *
5-16		6-30		6-70	
5-17		6-31		6-71	
5-18		6-32		6-72	
5-19		6-33		6-73	
5-20		6-34		6-74	1 st *
5-21		6-35		6-75	
5-22		6-36		6-76	
5-23		6-37		6-77	
		6-38		6-78	
6-1		6-39		6-79	
6-2		6-40	1 st *	6-80	
6-3		6-41		6-81	
6-4		6-42		6-82	2 nd *
6-5	2 nd *	6-43		6-83	1 st *
6-6	1 st	6-44		6-84	1 st *
6-7	1 st	6-45		6-85	
6-8	1 st	6-46	1 st *	6-86	
		6-47			

*New This Issue

Issued: November 30, 1998

Effective: January 1, 1999

By: Dean Anderson
President
P.O. Box 920
Clear Lake, SD 57226

BLACK HILLS FIBERCOM, LLC
RAPID CITY, SOUTH DAKOTA

TARIFF NO. 1
Original Page 17-1

SOUTH DAKOTA SWITCHED ACCESS SERVICES

17. Rates and Charges

17.1 Common Line Access Service

17.1.1 Carrier Common Line Access Service Rate

Regulations concerning Carrier Common Line Access
are set forth in Section 3. Preceding.

Per Access Minute \$0.038905

17.1.2 Reserved for Future Use



Black Hills FiberCom

No One Like How 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.

EXHIBIT C

Mr. Ray Oglethorpe

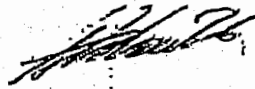
Page 2

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/mh

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

LATHAM & WATKINS LLP

Boston	New Jersey
Brussels	New York
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Frankfurt	Orange County
Hamburg	Paris
Hong Kong	San Diego
London	San Francisco
Los Angeles	Silicon Valley
Milan	Singapore
Moscow	Tokyo
	Washington, D.C.

January 28, 2003

VIA FACSIMILE 615-342-1693 AND CERTIFIED U.S. MAIL

Ronald Schaible
Sr. VP & Gen. Mgr.
Black Hills FiberCom
809 Deadwood Avenue
Rapid City, South Dakota 57708

Re: Your Letter to AOL Members

Dear Mr. Schaible:

I write on behalf of America Online, Inc. ("AOL"). It has come to AOL's attention that you recently sent a letter to certain AOL members in South Dakota on or about January 3, 2002, announcing that Black Hills FiberCom will begin to charge AOL members long distance fees to access their Internet service and wrongfully urging AOL's customers to terminate their business relationship with AOL.

In your letter, you state that Black Hills FiberCom has decided to charge its customers long-distance fees for "off-net Internet and data traffic" that is not served by [Black Hills FiberCom's] network," including, specifically, dial-up Internet activity directed to AOL. You then suggest that AOL is responsible for the imposition of these long-distance charges because it will not establish services directly with Black Hills FiberCom. Finally, you advise AOL members that they will incur significant long-distance charges unless they discontinue their Internet service with AOL and select an ISP approved by Black Hills FiberCom.

Your letter raises serious legal issues that AOL wishes to bring to your attention. As an initial matter, your letter falsely suggests that AOL is to blame for the imposition of the long distance charges. As you personally have explained previously to an AOL representative, Black Hills FiberCom has made a unilateral business decision to charge long distance fees for calls to AOL's access numbers in order to recoup its expense for those calls. AOL played no part in the decision to discriminate against AOL members served by Black Hills FiberCom. Indeed, you made this intent clear when you threatened AOL that Black Hills FiberCom would impose the long distance charges upon AOL's members unless AOL agreed to contract with Black Hills FiberCom for an AOL access number on its network. Accordingly, your statement to AOL members constitutes a false representation of fact in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)(1). By urging AOL's members to terminate their business

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relationship with AOL on the basis of this false statement, Black Hills FiberCom is engaging in unfair competition and has wrongfully interfered with AOL's business relationship with its members.

Second, Black Hills FiberCom's new policy of charging long-distance rates for calls to ISPs served by competing carriers violates provisions of the Federal Communications Act of 1934, as amended ("Communications Act"), and the implementing rules of the Federal Communications Commission ("FCC"), which are designed to foster competition in local telecommunications markets from new entrants, such as Black Hills FiberCom itself. Sections 201, 202, and 251(b) of the Communications Act, 47 U.S.C. §§ 201, 202, 251(b), and the FCC's rules implementing these sections require Black Hills FiberCom to provide its services in a just, reasonable, and nondiscriminatory manner and, specifically, to provide dialing parity to competing telecommunications service providers. Taken together, these statutes prohibit Black Hills FiberCom from establishing local calling areas or toll charges that discriminate in favor of your own local exchange subscribers and against subscribers to local exchange services provided by any other local exchange competitor, including Qwest, whether these calls carry voice or data traffic. Black Hills FiberCom has violated, at a minimum, these sections by discriminating against calls made by its customers to customers of Qwest, such as AOL.

Third, Black Hills seems to have intentionally and improperly exploited its ability to monitor its customers' telephone calls to identify and compile AOL's membership list for the purpose of sending your letter. The Communications Act and the FCC's rules prohibit Black Hills FiberCom from using customer proprietary network information ("CPNI"), which includes information concerning your customer's calling patterns or telephone numbers called, to market ISP services without the customer's approval. Unless Black Hills FiberCom has obtained the necessary approvals, your letter sent selectively to AOL subscribers to market the services of other ISPs, including your affiliate, BlackHills.com, violates Section 222 of the Communications Act, 47 U.S.C. § 222, and Section 64.2005(b) of the FCC's rules, 47 C.F.R. § 64.2005(b).

In order to rectify these violations of federal and state law, AOL demands that Black Hills FiberCom immediately cease and desist from contacting AOL's members to encourage them to terminate their AOL service and to subscribe for Internet access from Black Hills FiberCom's approved ISPs. AOL also demands that Black Hills FiberCom immediately suspend its unlawful plan to charge AOL members long distance fees for calls to AOL access numbers on Qwest's local exchange. AOL further demands that Black Hills FiberCom promptly destroy all data, information or documents collected or compiled by Black Hills FiberCom that consist of or contain AOL's proprietary membership information.

AOL takes matters affecting its members very seriously. Accordingly, it requests that Black Hills FiberCom certify in writing within seven (7) days that it has complied with AOL's requests. In addition, AOL asks that Black Hills FiberCom certify that it will not improperly contact AOL's members or disseminate false and misleading statements about AOL, and that it is in compliance with the Communications Act and FCC rules. AOL also requests that Black Hills FiberCom identify each AOL member to whom Black Hills FiberCom sent its letter on or about January 3, 2003, announcing its new long distance policy for calls to AOL's access numbers. In the event FiberCom elects not to provide the

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requested certification and/or to identify the contacted AOL members within that time, AOL will have no choice but to consider any and all of its legal options, including, but not limited to, initiating a legal action against Black Hills FiberCom seeking damages and injunctive relief and/or filing a complaint with the FCC for violations of the Communications Act.

Sincerely,


Everett C. Johnson



Black Hills Corporation

Steven J. Helmers

General Counsel &

Corporate Secretary

E-mail: shelmers@bh-corp.com

625 Ninth Street • P.O. Box 1400

Rapid City, SD 57709-1400

Telephone: (605) 721-2303

FAX: (605) 721-2550

February 3, 2003

VIA FACSIMILE: (202) 637-2201

Everett C. Johnson, Jr., Esq.
Latham & Watkins
555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20004-1304

Re: January 28, 2003 Correspondence

Dear Mr. Johnson:

Mr. Schaible has provided me with a copy of your January 28, 2003 letter, and requested that I respond. Although your letter takes an adversarial approach that Black Hills FiberCom ("FiberCom") sought to avoid, we are pleased that AOL offers to initiate a dialogue with respect to an important matter to FiberCom. We hope that a dialogue can continue, and that a mutually beneficial resolution to this matter can be reached.

It may be beneficial to first discuss the circumstance created by Qwest – South Dakota's sole RBOC and the exclusive provider of Internet access services for AOL in South Dakota. The AOL traffic at issue is between local toll areas – FiberCom's local toll area and Qwest's local toll area. Qwest has provided AOL customers located in our market with access numbers that terminate *within* Qwest's Rapid City, South Dakota local toll area (i.e., the access numbers have Rapid City, South Dakota prefixes) and are "toll-free" only to AOL customers located within Qwest's Rapid City local toll area. Thus, FiberCom customers, and similarly situated Qwest customers, located *outside* of Qwest's Rapid City local toll area are limited to dialing AOL access numbers (provided by Qwest) with Rapid City prefixes. Under this circumstance, a certain amount of AOL-bound traffic originates *outside* of Qwest's Rapid City local toll area and terminates *inside* Qwest's Rapid City local toll area.

Because Qwest provides AOL's South Dakota customers with only Rapid City access numbers, Qwest charges AOL customers intrastate long distance rates if they call from outside Qwest's local Rapid City exchange. We understand that Qwest, as AOL's exclusive provider of Internet access services in South Dakota, then directs this traffic to AOL in Denver, Colorado.

Similarly, Qwest also charges FiberCom "intrastate access charges" if a FiberCom customer located *outside* of Qwest's Rapid City local toll area connects to AOL through the local access numbers in Rapid City.. Because Qwest (as AOL's ISP) has been unwilling to treat the termination of these calls as "local traffic" under our Interconnection Agreement and continues to charge FiberCom intrastate access charges for this traffic, FiberCom has deemed it necessary to take measures to

Energy, communications...and you.

www.blackhillscorp.com

EXHIBIT E

recoup these Qwest charges. FiberCom only seeks to recover its costs with respect to this traffic. Qwest assesses the same intrastate access charges on FiberCom for calls placed to other ISPs having local access numbers provided by Qwest in Rapid City. It should be noted that Rapid City is within FiberCom's expanded local toll area, but Qwest refuses to consider as "local" any traffic that originates outside Qwest's much smaller local toll area.

As to the allegations contained in your letter, FiberCom has not targeted AOL or its customers specifically nor did FiberCom urge AOL customers to terminate their relationship with AOL. FiberCom simply informed its customers that, because Qwest has chosen to charge FiberCom intrastate access charges for ISP traffic that originates outside of Qwest's limited, local toll area, FiberCom must pass these charges on to its customers. Despite repeated attempts over several years to resolve this issue, neither AOL nor Qwest (until the receipt of your letter) demonstrated any significant recognition of this situation. Since these charges from Qwest are approximately \$0.05 per minute, FiberCom cannot continue to incur these expenses and remain a competitive provider of local telephone service. Accordingly, FiberCom has chosen to bill its customers for ISP traffic that Qwest deems to be subject to its intrastate access charges. Contrary to your argument that FiberCom's billing practices are discriminatory to customers of other local exchange carriers, it is Qwest that has elected to impose "access charges" on local traffic originated by customers of FiberCom. It is hardly discriminatory for FiberCom to pass through charges it incurs from other carriers to those customers who are directly responsible for those charges. Nothing in the Communications Act or the FCC's Rules requires FiberCom to subsidize AOL's local presence in this market to the detriment of FiberCom's other local exchange service customers.

Also, contrary to your assertions, we do not perceive our actions in this matter as having "threatened" AOL or as having misrepresented the situation to AOL's customers. During our two conversations with AOL representatives, we stated that this matter between Qwest and FiberCom could be avoided if AOL (1) requested and Qwest agreed to provide AOL's customers with numbers deemed "local" by Qwest in other portions of the state, or (2) contracts with FiberCom for direct access numbers. It is not a "threat", in our view, to offer options for resolving this important matter. In fact, we presume AOL could increase its customer base throughout this area if Internet users could connect to AOL without incurring long distance charges. Our letter to customers correctly noted that we have been unsuccessful in establishing a direct connection to AOL that would avoid the need to pay intrastate access charges to Qwest, and that customers can avoid incurring long-distance charges when accessing the Internet by using any ISP that is on FiberCom's network or that is otherwise "local" to the customer. However, as long as Qwest can benefit from the current arrangement by assessing per-minute intrastate access charges for all Internet-bound traffic that originates outside of its limited Rapid City toll area, it apparently has no impetus to work with FiberCom to resolve this matter. Consequently, we are compelled to address the situation directly with our customers.

Moreover, your letter alleges that we have unlawfully exploited our ability to monitor customer calls to identify and compile AOL's membership list. Be assured, FiberCom has not created a list of AOL customers. FiberCom uses its own customer information to bill its customers and to provide them with call record details for all interstate and intrastate long distance traffic. AOL's traffic is no different. As you know, FiberCom's letter was not directed strictly to AOL customers. Rather, the

Everett Johnson, Jr., Esq.

February 3, 2003

Page 3 of 3

letter was simply a billing notice to FiberCom's customers that have connected to one or more Rapid City Internet access numbers provided by Qwest and for which Qwest has been charging FiberCom intrastate access charges. While calls to the AOL access numbers in Rapid City have generated the largest portion of ISP access charges to FiberCom under Qwest's billing policy, FiberCom's billing change is not limited to AOL customers.

Finally, and most importantly, we truly hope that we can move toward a mutually beneficial and acceptable resolution to the situation presented by Qwest's determination to assess per-minute charges on FiberCom for traffic originating on FiberCom's network outside of Rapid City and terminating at AOL's local access numbers in Rapid City. We, of course, acknowledge and take seriously AOL's threat of litigation. While we are prepared to defend our position in this matter – especially, upon the peculiar facts presented and the unique relationship between Qwest and AOL in this market, – it seems apparent that all parties would mutually benefit through implementation of any one of several relatively simple solutions. We whole-heartedly welcome that opportunity. Your assistance in this regard is most appreciated.

Sincerely,



Steven J. Helmers

Cc: Ron Schaible

Revenue Customers billed by month for ISP traffic at .059 per minute. (January 2003 - February 2004)

Year	Month	Revenue Billed	Credits for disputes	Net Revenue from ISP Traffic	Customers Billed each month
2003	1	\$ 2,236.10	\$ -	\$ 2,236.10	?
	2	\$ 1,468.03	\$ (2,239.69)	\$ (771.66)	89
	3	\$ 2,425.78	\$ (762.26)	\$ 1,663.52	129
	4	\$ 731.33	\$ (663.10)	\$ 68.23	51
	5	\$ 4.32	\$ (808.64)	\$ (804.32)	3
	6	\$ 322.78	\$ (12.10)	\$ 310.68	36
	7	\$ 263.54	\$ -	\$ 263.54	34
	8	\$ 493.70	\$ (283.63)	\$ 210.07	41
	9	\$ 190.10	\$ (234.42)	\$ (44.32)	25
	10	\$ 299.76	\$ (117.39)	\$ 182.37	21
	11	\$ 78.37	\$ -	\$ 78.37	19
	12	\$ 130.37	\$ -	\$ 130.37	29
2004	1	\$ 574.52	\$ -	\$ 574.52	20
	2	\$ 198.17	\$ (421.16)	\$ (222.99)	19
		\$ 9,416.87	\$ (5,542.39)	\$ 3,874.48	

SCHEDULE 1

Supplementary information for Answers to Interrogatories 10(a) and 10(c)

KYLE WHITE

(a) Full name:

Kyle Dean White

(b) Job title and employer at the time of the events complained of in this case

Vice President of Corporate Affairs for Black Hills Corporation

(c) Present or last known residence address and telephone number

3907 Parkridge Drive, Rapid City, SD 57701
(605) 721-1529

(d) Present or last known job title and business address

Vice President of Corporate Affairs
Black Hills Corporation
625 Ninth St.
Rapid City, SD 57701

(e) Present or last known employer

See (d), above

(f) Employment with you (FiberCom), if any, of such person.

No direct employment, but have held titles within Black Hills FiberCom under my corporate responsibilities.

KIMBERLY SCHNEIDER

(a) Full name:

Kimberly Ann Schneider

(b) Job title and employer at the time of the events complained of in this case

Billing Manager

(c) Present or last known residence address and telephone number
22606 Merchen Rd, Rapid City, SD 57702
605-355-0880

(d) Present or last known job title and business address;

Billing Manager
809 Deadwood Ave, Rapid City, SD 57702

(e) Present or last known employer

Black Hills FiberCom

RONALD SCHAI BLE

(a) Full name:

Ronald D. Schaible

(b) Job title and employer at the time of the events complained of in this case

Sr. Vice President & General Manager
Black Hills FiberCom
(from January through October 2003, when he retired)

(c) Present or last known residence address and telephone number;

11329 Black Forest Road
Lead, SD 57754
(605) 584-3821

(d) Present or last known job title and business address;

N/A - Retired

(e) Present or last known employer

N/A - Retired

(f) Employment with you (FiberCom), if any, of such person.

Fall of 1998 until October 2003

DENISE BUSSEY

(a) Full name:

Denise Annette Bussey

(b) Job title and employer at the time of the events complained of in this case

Programmer/Consultant

(c) Present or last known residence address and telephone number;

777 Cypress Knoll DR
OFallon MO 63366
636-561-4974

(d) Present or last known job title and business address;

Same as above

(e) Present or last known employer; and

Self employed Kings Telecommunications

(f) Employment with you (FiberCom), if any, of such person.

Employed as a consultant

TIMOTHY HEDMAN

(a) Full name:

Timothy Carl Hedman

(b) Job title and employer at the time of the events complained of in this case

Sales/Marketing- Black Hills FiberCom

(c) Present or last known residence address and telephone number;

3618 Wisconsin Ave
Rapid City, South Dakota. 57701

(d) Present or last known job title and business address;

Black Hills FiberCom Yellow Pages Collections/ Phone Book Distribution
Black Hills FiberCom
809 Deadwood Avenue
Rapid City, South Dakota 57709

(e) Present or last known employer

Black Hills FiberCom

DEBRA WADE

(a) Full name:

Debra Wade

(b) Job title and employer at the time of the events complained of in this case

Collections Lead, Black Hills FiberCom

(c) Present or last known residence address and telephone number;

3901 Canyon Dr Rapid City, 57702

(d) Present or last known job title and business address

Collections Lead, 809 Deadwood Ave Rapid City, 57702

(e) Present or last known employer

Black Hills FiberCom

Ed Melichar, Senior Access Manager NE/SD
 1314 Douglas On-The-Mall, 14th Floor
 Omaha, Nebraska 68102
 Phone: 402-422-5094
 FAX: 402-422-4128
 Email: emelich@qwest.com



November 3, 2000

Ms. Kim Schneider, Billing Administrator
 Black Hills FiberCom
 P.O. Box 2115
 809 Deadwood Avenue
 Rapid City, SD 57709

Dear Ms. Schneider:

Qwest Corporation is in receipt of your invoices (#1101) dated September 30, 2000 and (#1102) dated September 30, 2000 requesting total payment of \$435,527.59 for local reciprocal compensation charges. Qwest has reviewed these bills and does not feel that payment is due under the terms of our Interconnection Agreement with Black Hills FiberCom (BHFC). Our conclusion is based on the following:

- A. The Interconnection Agreement between BHFC and Qwest defines local traffic as "... traffic originated on the network of an LEC in a LATA and completed directly between that LEC's network and the network of another LEC in that same LATA, within the same local calling area as is provided by the incumbent LEC for local calls in that LATA." Qwest has determined that the majority of the traffic included on your invoices was delivered to an Internet Service Provider (ISP). Consequently, that traffic does not terminate to a LEC within the same local calling area. Instead, the ISP continues the communication to terminate it in a distant local calling area at a server that is generally located outside of the calling area in which the call originated. As such, Internet related traffic is predominately interstate in nature, and thus is not subject to local reciprocal compensation charges under our Agreement.
- B. After removal of the ISP traffic, the local traffic volumes are substantially reduced. This table contains our analysis:

Traffic Terminated to BHFC from Qwest (110)		Qwest DATA Source: CroSS7 System		
	BHFC Billed Minutes	Qwest Orig. Min. Local + ISP	Internet Minutes	Qwest Local Minutes
April, 2000	19,413,774	20,717,404	19,860,710	856,694
May, 2000	20,066,227	10,745,807	10,168,167	577,640
June, 2000	20,074,511	11,119,838	10,326,915	792,923
2nd Quarter	59,554,512	42,583,049	40,355,792	2,227,257
July, 2000	21,287,006	18,478,167	16,611,654	1,866,513
August, 2000	22,986,935	22,714,422	20,268,968	2,445,454
September, 2000	21,719,999	23,919,537	21,366,701	2,552,837
3rd Quarter	65,993,940	65,112,126	58,247,322	6,864,804
Traffic Terminated to Qwest from BHFC (119)				
	BHFC Measured Min.			
April, 2000	1,555,978	1,539,976	695,600	844,376
May, 2000	1,943,134	964,517	362,088	602,429
June, 2000	2,402,287	1,241,999	475,641	766,359
2nd Quarter	5,901,399	3,746,492	1,533,329	2,213,163
July, 2000	3,038,667	2,489,662	1,112,288	1,377,374
August, 2000	3,734,306	3,353,249	1,535,604	1,817,645
September, 2000	3,882,316	3,857,060	1,847,225	2,009,835
3rd Quarter	10,655,289	9,699,970	4,495,117	5,204,853

With the Internet related traffic removed, paragraphs X.A.1.A.1 and X.A.1.A.4 of our Agreement must be considered. Paragraph X.A.1.A.1 states that if the traffic between BHFC and Qwest, on a quarterly basis, is in balance (plus or minus 5%) then no compensation will be paid for calls terminated during the following quarter. It is clear from the table above that the second quarter traffic is in balance; therefore, no compensation is due either party for the third quarter. Furthermore, paragraph X.A.1.A.4 states that notwithstanding the other contractual considerations, no measurements or compensation are due either party until total monthly traffic between the parties exceeds six million minutes per month. That threshold has not yet been reached.

Simply stated: Qwest will pay for traffic that is truly local in nature if such traffic can be justifiably billed under the provisions of our current interconnection agreement. To date, we do not believe the provisions of the contract have been met.

If you have any questions or concerns regarding this issue, please feel free to call me at 402-422-5094.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ed Melnick".