

CT 03-154



LINDEN R. EVANS, P.E.  
Associate Counsel

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October 29, 2003

RECEIVED

OCT 30 2003

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

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

FAX Received OCT 29 2003

**Re: Complaint filed by Black Hills FiberCom, L.L.C., Complainant vs.  
Qwest Corporation, Respondent**

Dear Ms. Bonrud:

Enclosed for filing are the original and ten copies of the Complaint of Black Hills FiberCom, L.L.C. vs. Qwest Corporation. A copy of the Complaint has been sent to the Hughes County Sheriff for service upon CT Corporation, registered agent, as indicated on the Certificate of Service.

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

Sincerely,

BLACK HILLS CORPORATION

A handwritten signature in cursive script that reads 'Linden R. Evans'.

Linden R. Evans

Handwritten initials 'jmr' enclosed in a circular scribble.

Enclosure

RECEIVED

OCT 30 2003

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BLACK HILLS FIBERCOM, L.L.C., )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 QWEST CORPORATION, )  
 )  
 Respondent. )

Docket \_\_\_\_\_

COMPLAINT

FAX Received OCT 29 2003

Complainant, Black Hills FiberCom, L.L.C., pursuant to A.R.S.D.

§§20:10:01:02:03 and 20:10:01:07:01, for its complaint against the Respondent, Qwest Corporation, states and alleges as follows:

PARTIES

1. The full name and address of Complainant, Black Hills FiberCom, L.L.C.

("FiberCom"), are:

Black Hills FiberCom, L.L.C.  
809 Deadwood Avenue  
P.O. Box 2115  
Rapid City, SD 57709

2. The full name and corporate address of Respondent, Qwest Corporation

("Qwest"), are:

Qwest Corporation  
7800 East Orchard Road  
Englewood, CO 80111

3. Qwest's registered agent for service in South Dakota is:

CT Corporation System  
319 South Coteau Street  
Pierre, SD 57501

## **JURISDICTION**

4. The South Dakota Public Utilities Commission (“Commission”) has approved intrastate switched access service tariffs for both FiberCom and Qwest in accordance with ARSD 20:10:29 (Telecommunications Switched Access Charges), making disputes related to application of the tariffs the appropriate jurisdiction of the Commission.

## **COUNT ONE**

### **INTRODUCTION**

5. As it relates to this Complaint, FiberCom has one local calling area that encompasses four Qwest local calling areas.

6. In this proceeding, the Commission is respectfully called upon to correct certain invoices and billing errors for Internet Service Provider (“ISP”)-bound traffic between FiberCom and Qwest. The resolution of this dispute requires the application of Qwest’s intrastate switched access service tariff, as approved by the Commission.

7. The parties disagree on whether inter-carrier switched access services charges apply to ISP-bound calls initiated by FiberCom’s customers to ISPs within FiberCom’s local calling area, but between Qwest’s local exchanges.

8. More specifically, it is Qwest’s position that it may charge FiberCom inter-carrier switched access charges pursuant to its intrastate tariff when a FiberCom customer initiates a call to a Qwest-served ISP located within that customer’s local calling area but between Qwest’s local exchanges. FiberCom disagrees.

9. Significantly, however, Qwest simultaneously takes the position that all other ISP-bound calls, particularly when initiated by a Qwest Customer to a FiberCom-served ISP, are “interstate in nature” and subject solely to bill and keep compensation.

10. FiberCom’s and Qwest’s Interconnection Agreement, as amended, and the FCC Declaratory Order and Order on Remand, discussed infra, are also consistent with Qwest’s position that ISP-bound calls are “interstate in nature,” thus eliminating inter-carrier access charges for the traffic at issue in this Complaint. Finally, these are interstate calls because substantially all of the calls terminate outside of Qwest’s South Dakota exchanges.

## **FACTUAL BACKGROUND**

### **The Parties’ Local Calling Areas**

11. Qwest’s local calling areas include at least four (4) exchanges within the Northern Black Hills.

12. When FiberCom entered the telecommunications business as a facilities-based local exchange carrier (“LEC”), the Commission approved an expanded local calling area – as compared to Qwest. FiberCom’s local calling area (and comparable service area) encompasses four (4) of Qwest’s local exchanges located in the Northern Black Hills of South Dakota. FiberCom’s local calling area was approved by the Commission in Docket TC99-056. (Exhibit 1, attached.)

13. For purposes of billing its customers, FiberCom’s local calling area applies to calls made between FiberCom customers and to calls made by FiberCom’s customers to Qwest’s customers.

14. The disparity between FiberCom's and Qwest's local calling area presents a competitive situation in which Qwest has failed to correctly apply its intrastate tariff for ISP-bound traffic exchanged between a FiberCom customer in one Qwest exchange and a Qwest-served ISP in another Qwest exchange through a Rapid City access number (e.g., 342-XXXX) provided by a Qwest-served ISP to FiberCom's telephone customers.

### **The Parties' Initial Interconnection Agreement**

15. In November 1998, FiberCom and Qwest's predecessor, US West Communications, Inc., entered into an "Interconnection Agreement Between Black Hills FiberCom, Inc. (sic) and U.S. West Communications, Inc. for the State of South Dakota" ("Initial Interconnection Agreement"). The Commission approved the Initial Interconnection Agreement on January 6, 1999 in Docket No. TC98-205.

### **FCC's Orders Relative to ISP-Bound Traffic**

16. In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996 ("FCC Declaratory Order"), 14 F.C.C.R. 3689 (1999), vacated, Bell Atlantic Telephone Co. v. FCC, 206 F.3d 1 (2000), the FCC concluded that ISP traffic does not terminate at an ISP's modem, and should not be considered as comprising two distinct calls. Id. at 3698 (¶13). The FCC instead used an "end-to-end" analysis to conclude that ISP traffic was interstate. Id. at 3701-02 (¶18).

17. The FCC has further concluded that, applying the "end-to-end" analysis, calls to ISPs do not terminate at the ISP's local server, but instead continue to the "ultimate destination or destinations, specifically at a[n] Internet website that is often located in another state." Id. at ¶ 12. Based on this analysis, the FCC has reasoned that a

substantial portion of calls to ISPs are interstate and described ISP-bound traffic as interstate access service. Id. at ¶¶ 17 and 18.

18. The FCC has recognized that the existing inter-carrier compensation mechanisms for the delivery of ISP-bound traffic, in which the originating carrier pays the carrier that serves the ISP, has created opportunities for regulatory arbitrage and distorted the economic incentives related to competitive entry into the local exchange and exchange access markets. In the case of ISP-bound traffic, the FCC found that “such decisions are driven by regulatory opportunities that disconnect costs from end-user market decisions.” Implementation of the Local Competition Provisions In the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, 16 F.C.C.R. 9151 (2001) (“Order on Remand”), ¶ 5. The FCC has stated that the decision to move to bill and keep for dial-up traffic to ISPs was adopted to protect the RBOCs, including Qwest. Id. at ¶ 89.

19. The FCC Order on Remand went into effect on June 14, 2001.

### **Qwest’s Immediate Response to the FCC Orders**

20. Immediately after the FCC’s landmark decisions regarding ISP-bound traffic, Qwest requested the amendment of the Interconnection Agreement to reflect the intent of the FCC’s decision. As such, it is clear that Qwest intended that all ISP-bound traffic between the parties be treated in conformance with the FCC’s decisions.

### **September, 2001 Amendment to Interconnection Agreement**

21. Specifically, in response to the FCC’s Order on Remand, Qwest requested FiberCom to execute a 2001 amendment to the Interconnection Agreement to incorporate

the FCC's position that a rate cap would be placed on compensation for ISP-bound traffic and that such compensation would be phased out over time.

22. Accordingly, in September 2001, FiberCom and Qwest entered into an "Amendment to the Interconnection Agreement (effective June 14, 2001, the same as the effective date of the FCC Order on Remand) between Qwest Corporation and Black Hills FiberCom, L.L.C. for the state of South Dakota for Agreement Term, Existing Rules and Internet Service Provider Bound Traffic" ("2001 Amended Interconnection Agreement"). The Commission approved the 2001 Amended Interconnection Agreement on December 5, 2001 in Docket TC01-161.

23. The 2001 Amended Interconnection Agreement provides that FiberCom and Qwest will invoice each other according to specific inter-carrier rate caps, which rate caps were to phase out over time. This amendment to the Interconnection Agreement was made to adopt the FCC's ruling appearing in its Order on Remand. Nevertheless, Qwest continued to invoice FiberCom intrastate access rates for such traffic, which the 2001 Amended Interconnection Agreement clearly treats as "interstate in nature."

#### **August, 2002 Amendment to Interconnection Agreement**

24. Additionally, the parties agreed, effective April 1, 2002, to execute the 2002 Amended Interconnection Agreement to incorporate the FCC's position that traffic ultimately delivered to ISP's is "interstate in nature" and should be exchanged on a bill and keep basis.

25. Accordingly, FiberCom and Qwest entered into an "Amendment to the Interconnection Agreement between Qwest Corporation and Black Hills FiberCom, L.L.C. for the State of South Dakota for Internet Service Provider Bound Traffic" ("2002

Amended Interconnection Agreement”). The Commission approved the 2002 Amended Interconnection Agreement on January 3, 2003 in Docket TC02-131.

26. The 2002 Amended Interconnection Agreement, at § 3.2.3, provides that, “The Parties agree that ISP Bound Traffic, effective April 1, 2002, shall be exchanged as Bill and Keep.” Again, Qwest requested that ISP-bound traffic be billed as bill and keep traffic, consistent with Qwest’s and the FCC’s position that such traffic is interstate in nature.

27. In addition to the above, Qwest’s position is also clearly set forth in its November 3, 2000 letter to FiberCom (Exhibit 2, attached), wherein it expressly rejects FiberCom’s billing of reciprocal compensation for local calls made by Qwest customers to dial-up ISPs served on FiberCom’s network. Qwest’s stated position is:

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. [Emphasis added.]

28. In direct contrast to the above clearly stated positions of Qwest on this issue, Qwest has continued to invoice FiberCom inter-carrier intrastate switched access charges for ISP-bound traffic. Clearly, if such traffic is not subject to local reciprocal compensation because it is “interstate in nature,” such traffic is likewise not subject to inter-carrier switched access service charges pursuant to Qwest’s intrastate tariff.



29. As a result, Qwest has incorrectly invoiced FiberCom for ISP-bound traffic that should not have been invoiced pursuant to Qwest's intrastate access service tariff.

30. Qwest's delivery of ISP-bound calls from FiberCom's Northern Black Hills customers to Qwest-served ISPs, and Qwest's delivery of ISP-bound calls from FiberCom's Rapid City-located customers to Qwest-served ISPs are the same. The only material difference is that Qwest invoices FiberCom for the former calls, but does not invoice FiberCom for the latter calls because Qwest chooses to treat only the latter calls as "interstate" calls. In addition, Qwest has thus demonstrated its ability to identify and separate ISP-bound calls.

#### **Attempts to Resolve Dispute**

31. After continual, unsuccessful, efforts to resolve this situation, finally, on June 30, 2003, FiberCom submitted a written dispute to Qwest demanding that Qwest refund previous overcharges and issue corrected invoices for all relevant inter-exchange ISP-bound traffic. That effort was likewise unsuccessful, and FiberCom has thus found it necessary to commence this adversarial proceeding.

#### **COUNT TWO**

32. FiberCom restates paragraphs 1 through 31 of its Complaint against Qwest.

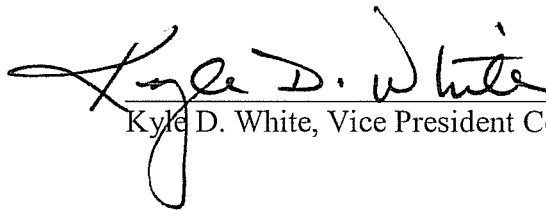
33. FiberCom alleges that the six year (6) statute of limitations period of SDCL § 15-2-13 (1) is controlling in this proceeding.

**PRAYER FOR RELIEF**

WHEREFORE, FiberCom respectfully requests that the Commission:

1. determine that the six (6) year statute of limitations period of SDCL § 15-2-13(1) applies to disputes that arise pursuant to Qwest's intrastate access tariff and FiberCom's claims herein;
2. determine that ISP-bound calls are "interstate in nature," and are not subject to intrastate switched access charges as imposed by Qwest;
3. determine the number of ISP-bound call minutes to which Qwest has applied intrastate switched access charges;
4. order Qwest to immediately issue revised invoices to FiberCom for all relevant invoicing periods, which shall reflect no charges for the ISP-bound calls at issue herein;
5. order Qwest to immediately issue FiberCom a cash refund in a sum that reflects the difference between the sum paid to Qwest for ISP-bound calls originated by FiberCom customers and the sum appropriately invoiced pursuant to paragraph 4, above, plus statutory interest; and
6. provide such other relief as the Commission deems just and appropriate.

Signed this 29<sup>th</sup> day of October, 2003.



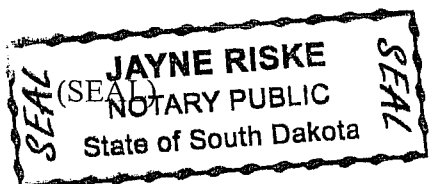
\_\_\_\_\_  
Kyle D. White, Vice President Corporate Affairs

STATE OF SOUTH DAKOTA    )  
   ) ss:  
 COUNTY OF PENNINGTON    )

Kyle D. White, Vice President Corporation Affairs, of Black Hills FiberCom, L.L.C., being first duly sworn upon his oath says that he is the person above named; that he has read the above and foregoing instrument, understands the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated upon information and belief, and as to such matters, he believes the same to be true.

*Kyle D. White*  
 \_\_\_\_\_  
 Kyle D. White, Vice President Corporation Affairs

Subscribed and sworn to before me this 29<sup>th</sup> day of October, 2003.



*Jayne Riske*  
 \_\_\_\_\_  
 Notary Public, South Dakota

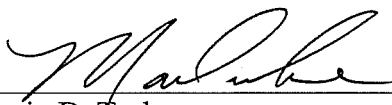
BLACK HILLS FIBERCOM, L.L.C.

By: *Linden R. Evans*  
 \_\_\_\_\_  
 Linden R. Evans  
 Black Hills Corporation  
 PO Box 1400  
 Rapid City, South Dakota 57709-1400  
 (605) 721-2305  
 Attorney for Complainant

By: *Marvin D. Truhe*  
 \_\_\_\_\_  
 Marvin D. Truhe, Attorney at Law  
 P.O. Box 8112  
 Rapid City, South Dakota 57709  
 (605) 348-8530  
 Attorney for Complainant

**CERTIFICATE OF SERVICE**

I hereby certify that on October 29, 2003, a true and correct copy of the foregoing Complaint (and attached exhibits) was sent by Federal Express overnight delivery to the Hughes County Sheriff's Office, 3200 East Highway 34, Suite 10, Pierre, South Dakota, for service upon CT Corporation System as registered agent for Qwest Corporation, at 319 South Coteau Street, Pierre, South Dakota.



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Marvin D. Truhe

**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
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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 29<sup>th</sup> day of October, 1999.

<b>CERTIFICATE OF SERVICE</b>
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>Hilaine Kalbs</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 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
  - 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
  - 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

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.

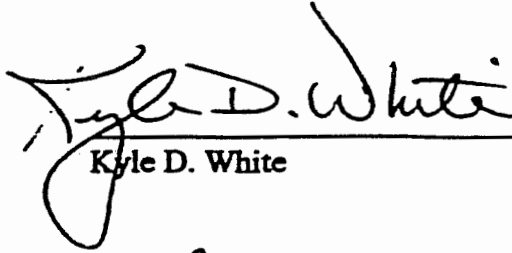
By Kyle D. White  
Its Vice President of Marketing and Regulatory Affairs

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

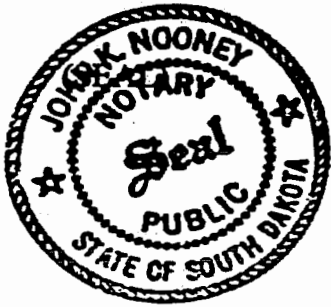


true of his own knowledge except as to those matters therein stated on information and belief,  
and as to such matters, he believes it to be true.

  
\_\_\_\_\_  
Kyle D. White

Subscribed and sworn to before me this 20<sup>th</sup> day of May, 1999.

  
\_\_\_\_\_  
Notary Public



MY COMM. EXPIRES  
7/12/2001

Ed Melichar, Senior Access Manager NE/SD  
 1314 Douglas On-The-Mall, 14<sup>th</sup> Floor  
 Omaha, Nebraska 68102  
 Phone: 402-422-5094  
 FAX: 402-422-4128  
 Email: [emelich@qwest.com](mailto: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	23,919,637	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.			
	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 Melich".