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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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June 28, 2004

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Ms. Colleen E. Sevoid
Manager-Regulatory Affairs
Qwest Corporation
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Sioux Falls, SD 57194

Re: In the Matter of the Complaint filed by Black Hills FiberCom,
L.L.C., Rapid City, South Dakota, against Qwest Corporation
Regarding Intrastate Switched Access Charges Applied to
ISP-Bound Calls which Complainant Claims are Interstate
in Nature
Docket CT03-154

Dear Folks:

Enclosed each of you will find a copy of Staff's Brief with reference to the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Karen E. Cremer
Staff Attorney

KEC:dk
Enc.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED)
BY BLACK HILLS FIBERCOM, LLC, RAPID) STAFF'S BRIEF
CITY, SOUTH DAKOTA, AGAINST QWEST)
CORPORATION REGARDING INTRASTATE) CT03-154
SWITCHED ACCESS CHARGES APPLIED TO)
ISP-BOUND CALLS WHICH COMPLAINANT)
CLAIMS ARE INTERSTATE IN NATURE)

This brief is provided to the Commission for its consideration of the issue of jurisdiction as it arises in this matter.

The issue in this matter is whether the Commission has the jurisdiction to determine compensation for ISP-bound traffic.

It is Staff's opinion that the Commission has jurisdiction to determine compensation for ISP-bound traffic for the period prior to the release of the FCC's ISP Remand Order; thereafter, the Commission no longer has the authority to address the issue.

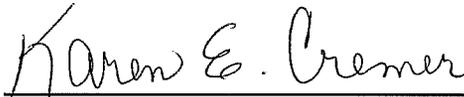
Staff's recommendation is based on paragraph 82 of the ISP Order which states as follows:

82. The interim compensation regime we establish here applies as carriers re-negotiate expired or expiring interconnection agreements. It does not alter existing contractual obligations, except to the extent that parties are entitled to invoke contractual change-of-law provisions. This Order does not preempt any state commission decision regarding compensation for ISP-bound traffic for the period prior to the effective date of the interim regime we adopt here. Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic, however, state commissions will no longer have authority to address this issue. For this same reason, as of the date this Order is published in the Federal Register, carriers may no longer invoke section 252(i) to opt into an existing interconnection agreement with regard to the rates paid for the exchange of ISP-bound traffic. Section 252(i) applies only to agreements arbitrated or approved by state commissions pursuant to section 252; it has no application in the context of an intercarrier

compensation regime set by this Commission pursuant to section 201.¹
(Emphasis added)

It is clear from the ISP Order that the Order applies on a **going-forward basis** only and it does not limit the Commission's jurisdiction to determine compensation for ISP-bound traffic for the period prior to the release of the Order.

Dated this 28th day of June, 2004.



Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Commission
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Pierre, SD 57501

CERTIFICATE OF SERVICE

I hereby certify that copies of Staff's Brief were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the addresses shown below on this the 28th day of June, 2004.

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¹*In re Implementation of the Local Competition Provision in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-bound Traffic*, Order on Remand and Report & Order, CC Docket No. 96-98, FCC No. 01-131 (rel. Apr. 27, 2001).

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A handwritten signature in black ink that reads "Karen E. Cremer". The signature is written in a cursive style with a horizontal line underneath it.

Karen E. Cremer
Staff Attorney