

TC97-0621

CH/45

TC97-062

DOCKET NO.

In the Matter of IN THE MATTER OF THE FILING BY
DAKOTA TELECOM, INC., DAKOTA
TELECOMMUNICATIONS SYSTEMS,
INC., AND DAKOTA COOPERATIVE
TELECOMMUNICATIONS, INC., FOR
INTERCONNECTION WITH FORT
RANDALL TELEPHONE COMPANY

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
6/3 97	Filed and Docketed;
6/5 97	TC 4 of Filings;
6/19 97	Petition to Intervene by DITC;
7/8 97	Request for Preliminary Rulings and Discovery;
7/11 97	Response to Request for Preliminary Rulings and Discovery;
7/29 97	Order granting Intervenor's Order finding letter not a bona fide request
7/31 97	Order for and Notice of Hearing and Procedural ^{discovery} ^(Michael J. Bradley)
8/13 97	Order finding that no resident attorney be admitted pro hac vice
8/13 97	Transcripts of all the hearings held on 7/15/97 and 7/18/97
8/14 97	Order suspending Order for and Notice of Hearing and Procedural Schedule
8/15 97	Supra Notice of Requests for Intervention;
10/3 97	Order finding letter is a bona fide request;
10/3 97	Order for and Notice of Hearing and Procedural Schedule;
10/22 97	Overruled Order for and Notice of Hearing and Procedural Schedule;
10/30 97	Scheduled Direct Testimony of Admiree;
10/30 97	Scheduled Direct Testimony of Bruce E. Hanson;
10/31 97	Scheduled Testimony of Thomas A. Hertz;
11/7 97	File Filed Exhibit 24 from DTI;
11/10 97	Transcript of Hearing held on 11/3/97;
11/12 97	File Filed Exhibit 25 from Thass + Barnett;
11/21 97	Settlement Agreement;
12/12 97	Order approving Settlement Agreement and Closing Docket;
12/13 97	Docket Closed.

0143.17.1
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PO BOX 66
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DAKOTA COOPERATIVE TELECOMMUNICATIONS, INC.

P.O. Box 66 • IRENE, SOUTH DAKOTA 57037

TELEPHONE (605) 263-3301

FAX (605) 263-3995

TC97-062

June 2, 1997

BY FAX AND FIRST CLASS MAIL

William Bullard, Executive Director
South Dakota Public Utilities Commission
501 East Capitol
Pierre, South Dakota 57501

RECEIVED

JUN 03 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: TC97- NOTICE OF REQUEST FOR INTERCONNECTION

Dear Mr. Bullard:

On behalf of Dakota Telecom, Inc., and Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc., ("Dakota"), I have enclosed the original and eleven copies of Dakota's NOTICE OF REQUEST FOR INTERCONNECTION for the above referenced docket.

Please file stamp and date the extra copy and return to Robert G. Marmet, attorney for Dakota, in the enclosed self-addressed stamped envelope. Thank you.

Sincerely,

Kristie Lyngstad
Administrative Assistant

Enclosure

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

JUN 11 1997

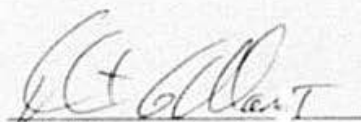
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE REQUEST BY)
DAKOTA TELECOM, INC.,)
DAKOTA TELECOMMUNICATIONS) Docket TC97-
SYSTEMS, INC., AND DAKOTA)
COOPERATIVE TELECOMMUNICATIONS,) NOTICE OF REQUEST
INC. FOR INTERCONNECTION WITH) FOR INTERCONNECTION
FORT RANDALL TELEPHONE COMPANY)

COME NOW DAKOTA TELECOM, INC., DAKOTA TELECOMMUNICATIONS
SYSTEMS, INC., AND DAKOTA COOPERATIVE TELECOMMUNICATIONS, INC., and
pursuant to 47 U.S.C. §251(f)(1)(B) notify the Public Utilities Commission of South Dakota of
the following:

1. Pursuant to the requirements of The Telecommunications Act of 1996, a party making a
bona fide request of a rural telephone company is required to notify the appropriate State
commission.
2. On or about 1 June, 1997, Dakota Telecom, Inc., Dakota Telecommunications Systems,
Inc., and Dakota Cooperative Telecommunications, Inc., (collectively "Dakota") sent a bona fide
request for interconnection services to Fort Randall Telephone Company. A copy of that request
is attached hereto as Exhibit "A".

Dated this 2nd day of June, 1997.



Robert G. Marmet
Attorney for Dakota
PO Box 66
Irene, SD 57037
(605) 263-3301 Phone
(605) 263-3995 Fax

0143.274

CERTIFICATE OF SERVICE

This is to certify that on this 2nd of June, 1997, a copy of the foregoing NOTICE OF REQUEST FOR INTERCONNECTION was served by fax and via United States first class mail, postage prepaid, on the parties listed below:

William Bullard
Executive Director
South Dakota Public Utilities
500 East Capitol
Pierre, South Dakota 57501-5070

Dated this 2nd day of June, 1997.

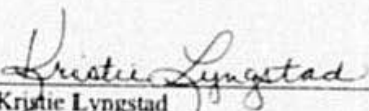

Kristie Lyngstad



EXHIBIT "A"

DAKOTA TELECOM, INC.
P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921

June 1, 1997

Wesley Hanson, President
Fort Randall Telephone Company
227 S. Main Street
Clara City, MN 56222-0800

Dear Mr. Hanson:

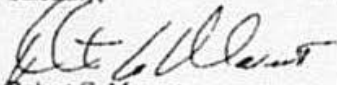
Pursuant to the provisions of the Communications Act of 1934, (47 U.S.C. §151 *et seq.*) as amended, and existing and future Federal Communications Commission ("FCC") and State rules, regulations and policies promulgated thereunder, Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc. ("Dakota") hereby request that Fort Randall Telephone Company ("Fort Randall") commence negotiations regarding those matters set forth in 47 U.S.C. §§251-252 between Fort Randall and Dakota in the following exchanges:

Centerville, South Dakota
Viborg, South Dakota.

Dakota requests that Fort Randall negotiate in good faith to achieve the interconnection of Dakota's existing and planned facilities and equipment. Thomas W. Hertz is hereby designated as the individual with authority to make binding representations on behalf of Dakota. Dakota hereby requests that Fort Randall designate an individual with comparable authority for purposes of these negotiations.

We look forward to finalizing interconnection agreements between Dakota and Fort Randall. If you have any questions, or need further information, please contact me at (605) 263-3301.

Sincerely,


Robert G. Marmet
Counsel

South Dakota
Public Utilities Commission
State Capitol 500 E. Capitol
Pierre, SD 57501-5070
Phone: (800) 332-1782
Fax: (605) 773-3809

TELECOMMUNICATIONS SERVICE FILINGS

These are the telecommunications service filings that the Commission has received for the period of:

05/30/97 through 06/05/97

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five days of this filing.

DOCKET NUMBER	TITLE/STAFF/SYNOPSIS	DATE FILED	INTERVENTION DEADLINE
NONCOMPETITIVE TELECOMMUNICATIONS FILINGS			
TC97-059	In The Matter Of The Establishment Of Switched Access Rates For West River Cooperative Telephone Company. (Staff: HB/KC) West River Cooperative filed cost study revenue requirements that are included in the Local Exchange Carrier Association switched access rate filing (TC97-061).	05/30/97	06/20/97
TC97-060	In The Matter Of The Establishment Of Switched Access Rates For South Dakota Network, Inc. (Staff: HB/KC) South Dakota Network filed cost study revenue requirements and tariff sheet revisions for a rate reduction in Centralized Equal Access and switched transport. South Dakota Network is requesting an effective date of July 1, 1997.	06/02/97	06/20/97
TC97-061	In The Matter Of The Establishment Of Switched Access Rates For The Local Exchange Carrier Association. (Staff: HB/KC) The purpose of these revisions is to implement the changes in rates as necessitated by member companies' revenue requirements as set forth in Commission filings.	06/02/97	06/20/97
TC97-063	In The Matter Of The Establishment Of Switched Access Rates For Valley Telecommunications Coop. Assn. (Staff: TS/KC) Valley Telecommunications filed cost study revenue requirements that are included in the Local Exchange Carrier Association switched access rate filing (TC97-061).	06/04/97	06/20/97
TC97-064	In The Matter Of The Establishment Of Switched Access Rates For Midstate Telephone Company. (Staff: BK/KC) Midstate Telephone filed cost study revenue requirements that are included in the Local Exchange Carrier Association switched access rate filing (TC97-061).	06/04/97	06/20/97
TC97-065	In The Matter Of The Establishment Of Switched Access Rates For McCook Cooperative Telephone Company. (Staff: HB/KC) McCook Cooperative filed cost study revenue requirements that are included in the Local Exchange Carrier Association switched access rate filing (TC97-061).	06/04/97	06/20/97
TC97-066	Application by Brookings Telephone to revise the franchise service territory map to reflect the new service territory as a result of annexation. The annexations include property being claimed by Brookings Telephone and property not being claimed by Brookings Telephone which will be served by Interstate Telecommunications Cooperative, Inc. (Staff: MB/TZ)	06/05/97	06/20/97

NOTICE OF REQUEST FOR INTERCONNECTION WITH A RURAL TELEPHONE COMPANY			
TC97-062	On or about June 1, 1997, Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc. (collectively Dakota) sent a bona fide request for interconnection services to Fort Randall Telephone Company. Pursuant to the requirements of The Telecommunications Act of 1996, a party making a bona fide request of a rural telephone company is required to notify the appropriate State commission. (Staff: HB/CH)	06/03/97	06/20/97

Important Notice: The Commission is compiling a list of internet addresses. If you have an internet address please notify the Commission by: E-mailing it to Terry Norum at terryn@puc.state.sd.us. Faxing the address to the Commission at: 605-773-3809.

TC 97-062

LAW OFFICES
MOSS & BARNETT

A PROFESSIONAL ASSOCIATION

4800 NORWEST CENTER
 90 SOUTH SEVENTH STREET
 MINNEAPOLIS, MINNESOTA 55402-4129

TELEPHONE (612) 347-0300
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347-0337

WRITER'S E-MAIL ADDRESS
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ARTHUR
 FRANKLIN C. FLETCHER
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 JAMES H. KENNEDY
 STANLEY B. STADEL
 THOMAS J. COLE
 PATRICK F. FLAHERTY
 JAYNE A. HERBERT

RECEIVED

JUN 10 1997

SOUTH DAKOTA PUBLIC
 UTILITIES COMMISSION

June 9, 1997

Robert G. Marnet
 Dakota Telecom, Inc.
 P.O. Box 127
 Irene, South Dakota 57037

Re: Interconnection Negotiations Between Dakota Telecom, Inc., Dakota
 Telecommunications Systems, Inc. and Fort Randall Telephone Company

Dear Robert:

This is to acknowledge receipt of your June 1, 1997 letter to Wesley Hanson, President of Fort Randall Telephone Company ("Fort Randall"), in which Dakota Telcom, Inc. ("DTI"), Dakota Telecommunications Systems, Inc. ("DTS"), and Dakota Cooperative Telecommunications, Inc. ("DCT") have requested that "negotiations commence regarding those matters set forth in 47 U.S.C. §§ 251-252" related to Fort Randall's Centerville and Viborg exchanges. While Fort Randall, through Bruce Hanson, is willing to begin discussions concerning such matters, for the below-described reasons, it is not willing, particularly based on the currently available information, to waive any of the rights granted to Fort Randall under the 1996 Telecommunications Act ("Act") or state law. Nor, for the below-described reasons, does Fort Randall accept the June 1, 1997 letter as meeting the requirements of a bona fide request under Section 251(f)(1) of the Act.

As you are aware, Fort Randall, in purchasing the Centerville, Viborg and Tabor exchanges from US WEST Communications, Inc. ("USWC"), did not waive its rights as an Rural Telephone Company ("RTC"), and the Settlement between DCT and USWC expressly recognizes that the prior ownership of those exchanges by USWC shall have no impact on Fort Randall's rights as an RTC. More specifically, the Settlement states in relevant part:

If Dakota makes a bona fide request to any Third Party Beneficiary [including Fort Randall] for interconnection in any of the New Exchanges, interconnection negotiations shall be conducted on the same basis, in terms of applicable



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Page 2

regulations, as if the initial request to a Third Party Beneficiary were the initial request by Dakota for interconnection in that exchange.

Fort Randall qualifies as an RTC pursuant to 47 U.S.C. § 153(a)(47).

The Act contains a number of special provisions designed to assure that competition in RTC service areas occurs in a manner that is consistent with the public interest. The Act recognizes that unfettered competition in RTC service areas would not be in the public interest, and that, while competition may occur in such areas, it is more important to address the needs of the public than it is to address the private needs of individual competitors. In recognition of those protections, the Certificates of Authority granted to DTI and DTS expressly withheld authorization to serve RTC service areas in advance of obtaining separate South Dakota Public Utilities Commission ("Commission") authority.¹ The purpose of the separate proceeding is to permit the Commission to determine what protections and limitations should apply to such competition, including the below-described Rural Market Protections of Section 253(f) and such other protections as it deems appropriate pursuant to Section 253(b) of the Act and state law. In apparent recognition of the need to obtain Commission authority to serve the Centerville and Viborg exchanges, DCT, DTI and DTS have given the Commission notice of their intent to provide competitive local services in those exchanges.

The proper application of various rural protections contained in the Act are best discussed in the context of a specific proposal, termed by the Act a bona fide request. Pursuant to Section 251(f)(1), absent a bona fide request and a ruling by the Commission that the bona fide request is not unduly economically burdensome, is technically feasible, and is consistent with the universal service goals of Section 254 of the Act, the provisions of Section 251(c) do not apply to an RTC (the "Rural Exemption"). The June 1, 1997 letter does not qualify as a bona fide request. That letter simply requests an interconnections agreement under the Act. Consequently, based on that letter, it is not possible to determine whether the wishes of DCT, DTI and DTS are unduly economically burdensome, technically feasible and consistent with the universal service goals.

Section 251(f)(1)(B) of the Act provides only 120 days from the date of a bona fide request for the Commission to determine whether to waive the Rural Exemption and, if a waiver is granted, to establish an implementation schedule for compliance. That is inadequate time, unless the request initiating the process contains sufficient detail to permit: the RTC to evaluate

¹ Similarly, while the Commission has declared that the requirements of SDCL § 49-31-21 do not apply to a previously approved local exchange carrier such as DCT, it also ruled that DCT would be required to obtain Commission approval before providing competitive local service in an RTC service area.

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whether it will voluntarily waive some or all of the Rural Exemption; the filing of comments and expert testimony explaining why the Rural Exemption should not be waived as to those matters deemed inappropriate for competition in an RTC service area; the development of an implementation schedule for issues where a waiver is granted; and the Commission to determine the matter and establish an implementation schedule for compliance.

The importance of determining DCT, DTI and DTS' intentions before starting a Commission review process under Section 251(f)(1)(B) is further demonstrated by the fact that if, for example, DCT, DTI and DTS are not seeking an interconnection agreement under Section 252(c) and, instead intend to interconnect and compete pursuant to the provisions of Section 252(a) and (b), the limited negotiations needed to implement those provisions can occur without a waiver of the Rural Exemption.²

Based on the information contained in your June 1, 1997 letter, Fort Randall cannot determine whether the Rural Exemption of Section 251(f)(1) is applicable or, if applicable, whether Fort Randall would need to avail itself of the Rural Exemption. Similarly, Fort Randall cannot determine whether there may be a need to seek a suspension or modification pursuant to Section 251(f)(2). Therefore, in order to assist Fort Randall and DCT, DTI and DTS and, if appropriate, the Commission with respect to evaluating these issues, Fort Randall has attached a list of questions to better define what type of interconnection is actually desired. While the list is detailed, it is a simple matter to answer "not applicable" to those issues that are not under consideration, and the requested information is unquestionably needed with respect to those items that are applicable.

Answering the attached questions will also assist Fort Randall in deciding whether to request the protections available under Section 253(f) (the "Rural Market Protections"). That Section provides:

It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply--
(1) to a service area served by a rural telephone company

² Depending on the specifics of the DCT, DTI, and DTS requests, Fort Randall would be entitled to seek a suspension or modification of the Section 252(b) obligations pursuant to Section 251(f)(2).

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Robert G. Marmet

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that has obtained an exemption, suspension, or modification of section 251(c)(4) that effectively prevents a competitor from meeting the requirements of section 214(e)(1); and (2) to a provider of commercial mobile services.

The service obligations of Section 214(e)(1) include:

A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received--

- (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (B) advertise the availability of such services and the charges therefor using media of general distribution.

Please advise whether DCT, DTI and DTS intend to meet the service obligations of an ETC in Fort Randall's Study Area. Fort Randall's Study Area includes: Centerville, Viborg, Tabor, Tyndall, Wagner, Lake Andes, and Hermosa. If the answer is yes, please explain in detail how it intends to satisfy those obligations, including:

- 1) What facilities DCT, DTI and DTS will use to support its services;
- 2) What types of customers will be offered DCT, DTI and DTS services;
- 3) Will DCT, DTI and DTS offer all of the services listed by the FCC as eligible for universal service fund support;
- 4) Will DCT, DTI and DTS offer all of the services listed by the FCC as eligible for universal service fund support to all customers throughout Fort Randall's entire study area;
- 5) If the answer to question 4 is in the affirmative, what evidence can DCT, DTI and DTS provide that its rates will support a finding that it is making a bona fide offering of its services to all customers;

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Robert G. Marmet

June 9, 1997

Page 5

6) How will DCT, DTI and DTS advertise the availability of their services and their rates;

7) Will rates be averaged throughout the study area; and

8) Will rates be averaged throughout each exchange.


Just as it is necessary to determine the role of the Rural Exemption prior to commencing negotiations, it is equally important to determine, in advance of negotiating an interconnection agreement, whether DCT, DTI and DTS will voluntarily assume the service obligations of the Rural Market Protections and, if not, whether the Commission should impose those obligations.

As noted earlier, the duty to negotiate an interconnection agreement does not begin unless and until the Commission establishes such a duty under Section 251(f)(1). Consequently, the June 1, 1997 letter requesting negotiations does not activate the schedule for negotiations under Section 252

Please call me so that we may discuss and develop a reasonable process for proceeding.

Very truly yours,

MOSS & BARNETT
A Professional Association


Michael J. Bradley

MJB/mjb

cc: The South Dakota Public Utilities Commission

Rolayne Wiest

Bruce Hanson

Rich Coit

113233/2FDD011.DOC1

Information Required To Constitute A Bona Fide Request

A. Points of Interconnection Requested

1) A list of the points, by exchange, at which interconnection with Fort Randall is requested, the time frames in which interconnection is requested, the interface and protocol standards and quantities of facilities to be interconnected at each of the following points within Fort Randall's network, as defined in 47 C.F.R. § 51.305(a)(2) of the FCC interconnection rules:

- (i) any line-side local switch interconnections;
- (ii) any trunk-side local switch interconnections;
- (iii) any trunk interconnection points for a tandem switch;
- (iv) any central office cross-connect points;
- (v) any out-of-hand signaling transfer points interconnections, including any interconnections to call-related databases;
- (vi) any points of access to unbundled network elements as described in 47 C.F.R. § 51.319; and
- (vii) any other points of interconnection.

2) A list of and description of any interconnection facilities that are requested that are of superior quality to that provided by Fort Randall to itself or of inferior quality to that provided by Fort Randall to itself, including interface or protocol standards, as described in Section 51.305(a)(4) of the FCC interconnection rules.

3) A statement that DCT, DTI and DTS are not requesting interconnection solely for the purpose of originating or terminating their interexchange traffic on Fort Randall's network within the meaning of Section 51.305(b) of the FCC interconnection rules.

4) Any two-way trunks requested, including locations, time frames and quantities within the meaning of Section 51.305(f) of the FCC interconnection rules.

B. Unbundled Elements Requested

A list of the unbundled network elements requested by exchange, the time frames at which unbundling of the elements is requested, the quantities of unbundled elements anticipated and which DCT, DTI and DTS commits to purchase, including, without limitation, the following as defined in Section 51.319 of the FCC interconnection rules:

- (a) Local Loops.
- (b) Network Interface Devices.
- (c) Switching Capability, including:
 - (1) Local Switching Capability;
 - (2) Tandem Switching Capability.

- (d) Interoffice Transmission Facilities.
- (e) Signaling Networks and Call-Related Databases, including:
 - (1) Signaling Networks;
 - (2) Call-Related Databases;
 - (3) Service Management Systems.
- (f) Operations Support Systems Functions.
- (g) Operator Services and Directory Assistance.

C. Collocation/Interconnection Methods Requested

1) A list of the points, by exchange, at which physical, virtual or meetpoint interconnection is requested, the time frames at which interconnection is requested, and the types and quantities of facilities to be interconnected within Fort Randall's network, including, but not limited to, the following as defined in Sections 51.321 and 51.323 of the FCC interconnection rules:

- (i) transmission equipment, including, but not limited to, optical terminating equipment and multiplexers;
- (ii) equipment being collocated to terminate basic transmission facilities;
- (iii) any copper or coaxial cable for which interconnection is requested; and
- (iv) any microwave transmission facilities for which interconnection is requested.

2) A list of any contractors that DCT, DTI and DTS seek to use for collocation of equipment.

D. Wholesale Rates

A list of the retail services of Fort Randall that DCT, DTI and DTS request at wholesale, within the meaning of 47 C.F.R. § 51.607, including:

- (i) identification of the customer classes to be served by DCT, DTI and DTS within the meaning of 47 C.F.R. § 51.613(a)(1); and
- (ii) any branding or unbranding that DCT, DTI and DTS requests with respect to any operator, call competition or directory assistance services to be purchased within the meaning of 47 C.F.R. § 51.613(c).

E. Number Portability

A statement of whether DCT, DTI and DTS are requesting that Fort Randall provide local number portability, the locations in which any local number portability is requested and the date by which local number portability is requested in each location.



DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND IA WATS 800-239-7501

TC97-062

RECEIVED

JUN 13 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

June 11, 1997

Michael J. Bradley
Moss & Barnett
4800 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402-4129

RE: Interconnection Negotiations Between Dakota Telecom, Inc.,
Dakota Telecommunications Systems, Inc. and Fort
Randall Telephone Company.

Dear Mike:

Thank you for your letter of June 9, 1997. The position you advocate was presented to the Federal Communications Commission ("FCC") by the United States Telephone Association, Anchorage Telephone Utility and others. The FCC declined to adopt those proposals in the First Report and Order In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. The FCC concluded that:

Given the pro-competitive focus of the 1996 Act, we find that rural LECs must prove to the state commission that they should continue to be exempt pursuant to section 251(f)(1) from requirements of section 251(c), once a bona-fide request has been made... We conclude that it is appropriate to place the burden of proof on the party seeking relief from otherwise applicable requirements. Moreover, the party seeking exemption, suspension, or modification is in control of the relevant information necessary for the state to make a determination regarding the request.

Dakota's request for interconnection with Fort Randall is a bona fide request for interconnection with a Rural Telephone Company. The request has been docketed as such by the South Dakota Public Utilities Commission. By filing its request with the Commission, Dakota has "come before the Commission in a separate proceeding". By sending your letter to the South Dakota Public Utilities Commission you have requested an exemption from interconnection requirements for Fort Randall. The 120 day clock for determination by the South Dakota Public Utilities Commission has begun to run.

Michael J. Bradley
June 11, 1997
Page 2

Dakota was granted its certificate as a competitive telecommunications provider at a time when US West provided service in Centerville and Viborg. Dakota has been lawfully serving customers in the Centerville and Viborg exchanges for over one year. The language you cite withholding authority to serve Rural Telephone Company service areas does not apply to the Centerville and Viborg exchanges. Furthermore, to date the South Dakota Public Utilities Commission has taken no action to impose requirements permitted by 47 USC 253(f) on competitive providers. Dakota will continue to serve those, and any other customers who request service, into the future.

If, in the future, the South Dakota Public Utilities Commission should impose such requirements upon telecommunications carriers competing in a service area served by a Rural Telephone Company, Fort Randall's continued exemption from its obligation to interconnect with Dakota, if granted, would effectively prevent Dakota from meeting the requirements of an eligible telecommunications carrier. In that case, no eligible telecommunications carrier requirements could be imposed on Dakota. At this time, no such requirements have been mandated by the Commission. Moreover, Dakota fully expects to meet the requirements of an Eligible Telecommunications Carrier on a facilities basis regardless of interconnection with Fort Randall.

Fort Randall and Dakota have an opportunity to develop a healthy competition consistent with the letter and the spirit of the Telecommunications Act of 1996. Negotiation, rather than litigation is the preferred method of achieving that end. The questions posed in the attachment to your letter are suitable issues for discussion as part of good faith negotiations and will be answered in that context. They are neither an appropriate condition precedent to negotiations nor are they a valid "pre-filing" requirement.

It is my understanding that negotiations have already begun between Bruce Hanson and several representatives of Dakota. Let not the posturing by those of trained at the bar stand in the way of those charged with running the telephone companies. If negotiations fail, we will each have ample opportunity to present our arguments to the State and Federal Commissions. In the meantime, let the businessmen make the best deals possible.

Sincerely,
Dakota Telecom, Inc.

By: 
Robert G. Marnet

cc: The South Dakota Public Utilities Commission
Rolayne Wiest
Tom Hertz

SDITC

South Dakota Independent
Telephone Coalition, Inc.

Richard D. Coit
Executive Director

Bette Dozier
Administrative Assistant

June 18, 1997

RECEIVED

JUN 19 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Mr. Bill Bullard, Executive Director
South Dakota Public Utilities Commission
State Capitol Building
Pierre, SD 57501

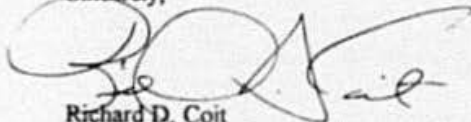
RE: TC97-062

Dear Bill:

Enclosed for filing you will find the original and ten copies of SDITC's Petition to Intervene in the above referenced docket.

Thank you for your assistance in this matter.

Sincerely,



Richard D. Coit
Executive Director and General Counsel



BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE REQUEST BY)
DAKOTA TELECOM, INC., DAKOTA)
TELECOMMUNICATIONS SYSTEMS, INC.) DOCKET TC97-062
AND DAKOTA COOPERATIVE)
TELECOMMUNICATIONS, INC. FOR)
INTERCONNECTION WITH FORT)
RANDALL TELEPHONE COMPANY)

SDITC Petition to Intervene

The South Dakota Independent Telephone Coalition ("SDITC") hereby petitions the Commission for intervention in the above captioned proceeding pursuant to SDCL 1-26-17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03 and 20:10:01:15.05. In support hereof, SDITC states as follows:

1. SDITC is an incorporated organization representing the interests of numerous cooperative, independent and municipal telephone companies operating throughout the State of South Dakota.

2. As expressly noted in the Bylaws of SDITC, duly adopted by the Coalition, "one of the primary purposes for the formation and existence of the South Dakota Independent Telephone Coalition is representation by the Coalition before the South Dakota Public Utilities Commission." The member companies of SDITC have delegated to the SDITC Board of Directors and its President the authority to intervene on their behalf in PUC proceedings which will or might potentially impact their common interests.

3. Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc. (hereinafter collectively referenced as "Dakota") have filed with the Commission a "Notice of Request for Interconnection" indicating that they have presented Fort Randall Telephone Company ("Fort Randall") with what they claim to be a "bona fide request for interconnection services" pursuant to the Telecommunications Act of 1996 (hereinafter referenced as "the Act"). The Notice filed by Dakota includes as an Exhibit the interconnection request presented by Dakota to Fort Randall which is a letter dated June 1, 1997.

4. The filing by Dakota which is alleged to initiate the process for reviewing Fort Randall's interconnection exemption as set forth in 47 U.S.C. § 251(f)(1)(B) raises certain issues that will require the Commission to interpret and apply the provisions of that Section as well as, possibly, other rural safeguard provisions in the Act that are of critical importance to all rural telephone companies in the State. Because these issues have not previously been addressed and because any decisions of the Commission in this case may be precedent setting and thereby affect future cases involving interconnection requests made to other rural telephone companies, SDITC member companies stand to be impacted by the outcome of this proceeding and have a pecuniary interest herein.

5. In regards to the request for interconnection made by Dakota, SDITC concurs in the position stated in Fort Randall's letter to the Commission dated June 9, 1997. The Dakota request which merely requests negotiations "regarding those matters set forth in 47 U.S.C. Sections 251-252" provides insufficient information to fairly constitute a bona fide request that would trigger the review of Fort Randall's interconnection exemption pursuant to § 251(f)(1)(B). The request contains inadequate information to even determine whether Dakota is seeking the type of interconnection services which fall under § 251(c) of the Act, or whether it is merely seeking interconnection pursuant to §§ 251(a) or 251(b) which would have no effect on the interconnection exemption extended to Fort Randall as a rural telephone company. Without additional information indicating what specific interconnection services Dakota is requesting and also information indicating whether or not Dakota will meet the service obligations of an eligible telecommunications carrier ("ETC") in competing in the Viborg and Centerville exchanges, Fort Randall is unable to determine at this time whether Dakota's request will require a review of the rural interconnection exemption established under § 251(f)(1); whether it will be necessary for Fort Randall to pursue additional modifications or suspension of federal interconnect requirement pursuant to § 251(f)(2); and/or whether the rural protections available under § 253(f) which authorize the Commission to impose ETC service obligations on all competitive carriers entering rural service areas should be pursued.

6. Dakota in requesting interconnection services should bear the responsibility to provide information which appropriately identifies the interconnection services desired and which indicates whether and how Dakota will meet ETC service obligations in providing its competitive local exchange services. Without such information, Fort Randall is immediately

disadvantaged in any process initiated pursuant to § 251(f)(1)(B) -- a process which must be completed within a period of 120 days. Principles of fairness dictate that the carrier requesting interconnection disclose a reasonable amount of information as part of its request. Given the short time period prescribed for reviewing the rural interconnection exemption, it is essential that the incumbent rural LEC be given sufficient information to promptly determine whether the exemption from 251(c) interconnection requirements is at issue and, if so, whether the request made would pose an undue economic burden, would be technically feasible and consistent with universal service requirements. Also, the incumbent rural LEC should be given information allowing it to make a fair determination as to what other rural safeguards provided for in the Act may be relevant to the process.

7. Based on all of the foregoing, SDITC as an authorized representative of its member companies, is an interested party to this proceeding seeks intervening party status.

Dated this 18th day of June, 1997

Respectfully submitted:

THE SOUTH DAKOTA INDEPENDENT
TELEPHONE COALITION

By 

Richard D. Coit

Executive Director and General Counsel


CERTIFICATE OF SERVICE

I hereby certify that an original and ten copies of SDITC's Petition to Intervene was delivered by the United States Postal Service via First Class Mail on the 18th day of June, 1997, to the following persons:

William Bullard Jr.
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, SD 57501

Robert G. Marmet
Attorney for Dakota Cooperative
Telecommunications, Inc.
PO Box 269
Center ville, SD 57014

Mike Bradley
Moss & Barnett
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402



Richard D. Coit
Executive Director
SDITC
207 East Capitol, Suite 206
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WALSH, E. (1972)
JOHN LAMBERT BUTTERFIELD
JOHN DE WILKINSON
MURPHY & S. LINDLEY
MURPHY & S. LINDLEY

KATHLEEN
 THOMPSON C. FLETCHER
 STEPHEN W. BRUCE
 JAMES H. BRIDGES
 STEPHEN W. BRUCE
 MICHAEL J. COLE
 D. LUCK & FLAMBERT
 MICHAEL J. COLE

July 8, 1997

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

RECEIVED

101-54-1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

FAX Received JUL 08 1997

Re: In the Matter of Request by Dakota Telecom, Inc., Dakota Telecommunications
Systems, Inc. and Dakota Cooperative Telecommunications, Inc. for
Interconnection with Fort Randall Telephone Company
Docket No.: TC97-062

Dear Mr. Buliard:

Enclosed please find an original and eleven copies of the Request for Declaratory Ruling and Discovery of Fort Randall Telephone Company in the above entitled Docket. Also enclosed is a Certificate of Service.

Very truly yours,

MOSS & BARNETT
A Professional Association

Michael J. Bradley
Michael J. Bradley

MJB/jjh
Enclosures

cc: All parties on service list
119019/1J%3011.DOC

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF A REQUEST BY DAKOTA
TELECOM, INC., DAKOTA
TELECOMMUNICATIONS SYSTEMS, INC. AND
DAKOTA COOPERATIVE TELECOMMUNICATIONS,
INC. FOR INTERCONNECTION WITH FORT
RANDALL TELEPHONE COMPANY

RECEIVED
JUL 10 1997
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

TC 97-062

FAX Received JUL 08 1997

REQUEST FOR DECLARATORY RULING AND DISCOVERY

In the attached June 1, 1997 letter, Dakota Telecom, Inc. ("DTI"), Dakota Telecommunications Systems, Inc. ("DTS") and Dakota Cooperative Telecommunications, Inc. ("DCT") requested that Fort Randall Telephone Company ("Fort Randall") commence negotiations for an interconnection agreement, for the purpose of initiating local competition in Fort Randall's Centerville and Viborg exchanges. Fort Randall is a Rural Telephone Company ("RTC") and, pursuant to 47 U.S.C. § 251(f)(1), is exempt from the obligation to negotiate an interconnection agreement (the "Rural Exemption"). However, after a bona fide request and an evidentiary proceeding, the South Dakota Public Utilities Commission ("Commission") may waive some or all of the Rural Exemption. A waiver may only occur if the Commission determines that the specific manner in which interconnection is requested: a) would not be unduly economically burdensome; b) is technically feasible; and c) is consistent with universal service goals. Fort Randall requests a declaratory ruling that the June 1, 1997 letter does not contain the information needed to draw any conclusions concerning the appropriateness of waiving the Rural Exemption and, therefore, does not qualify as a bona fide request.

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413-744-4428

The June 1 letter does not disclose any information concerning DCT/DTI/DTS' interconnection demands. As such, Fort Randall is unable to perform a reasoned analysis concerning the potential consequences flowing from the June 1 letter. Attached to this Petition is a list of the minimum information DCT/DTI/DTS should provide in a bona fide request.¹ The provision of such information as part of a bona fide request is required not only to provide Fort Randall with due process, it is also needed by the Commission at the outset of a waiver proceeding if it is to fairly and fully execute its duties under Section 251(f)(1).

In addition, Fort Randall requests that DCT/DTS/DTI answer certain discovery questions. Answers to these questions (set forth below) would assist the Commission in determining what conditions to impose on DCT/DTI/DTS' local service offerings. The answers will also assist the interconnection negotiations between DCT/DTI/DTS and Fort Randall.

I. FORT RANDALL QUALIFIES AS AN RTC.

Fort Randall qualifies as an RTC pursuant to 47 U.S.C. § 153(a)(47). DCT/DTI/DTS has stipulated that US WEST's prior ownership of the Centerville and Viborg exchanges, which are now owned by Fort Randall, did not affect Fort Randall's right to claim status as an RTC with respect to its services in those exchanges. Specifically, it was agreed that:

If Dakota makes a *bona fide* request to [Fort Randall] for interconnection in any of the New Exchanges, interconnection negotiations shall be conducted on the same basis, in terms of applicable regulations, as if the initial request to

¹ This information was previously requested from DCT/DTI/DTS by Fort Randall in its June 9, 1997 reply to the June 1, 1997 letter.

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[Fort Randall] was the initial request by Dakota for interconnection in that exchange.

II. AS AN RTC, FORT RANDALL IS EXEMPT FROM THE OBLIGATION TO NEGOTIATE AN INTERCONNECTION AGREEMENT UNLESS THAT EXEMPTION IS WAIVED BY THE COMMISSION.

The Telecommunications Act of 1996 ("Act") contains a number of special provisions designed to assure that competition in RTC service areas occurs in a manner that is consistent with the public interest. The Act recognizes that unfettered competition in RTC service areas would not be in the public interest, and that, while competition may occur in such areas, it is more important to address the needs of the public than it is to address the private needs of individual competitors. One of the special provisions applicable to RTCs is that such companies are, pursuant to Section 251(f)(1)(A), exempt from the obligation of having to negotiate an interconnection agreement under Section 251(c) of the Act:

(A) EXEMPTION- Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

(Emphasis added.)

That exemption may, however, be waived by the Commission pursuant to the provision of Section 251(f)(1)(B), which provides as follows:

24 (B) STATE TERMINATION OF EXEMPTION AND IMPLEMENTATION SCHEDULE- The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission. The State commission shall conduct an inquiry

for the purpose of determining whether to terminate the exemption under subparagraph (A). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

(Emphasis added.) This Section requires that the exemption determinations be individually made based on the demands and characteristics of the specific bona fide request. Consequently, the request must contain detailed information. It is significant that the Section requires the request to the RTC be a "bona fide" request as compared to the requirement of Section 252 and 251(c), which only require a "request." A bona fide request requires detail and specificity that go beyond evidence of "good faith," as the FCC noted in establishing the "bona fide request" requirements for schools, libraries, and rural health care providers. See Universal service Order, ¶¶ 252, 577 and 726 and Universal Service Rules 47 C.F.R. § § 54.504 and 54.603.

III. THE JUNE 1, 1997 LETTER DOES NOT QUALIFY AS A BONA FIDE REQUEST.

Section 251(f)(1) allows only 120 days from the date of a bona fide request for the Commission to determine whether to waive the Rural Exemption and, if a waiver is granted, to establish an implementation schedule for compliance. That is adequate time only if the request initiating the process contains sufficient detail, to permit: 1) the RTC to evaluate whether it will voluntarily waive some or all of the Rural Exemption; 2) the development of

comments and expert testimony explaining why the Rural Exemption should not be waived as to those matters deemed inappropriate for competition in an RTC service area; 3) the development of an implementation schedule for issues where a waiver is granted; and 4) the Commission to determine the matter and establish an implementation schedule for compliance. The June 1 letter is inadequate to meet these needs and, therefore, does not qualify as a bona fide request.

The June 1 letter simply requests that negotiations for an interconnection agreement commence. Based on that letter, it is not possible to determine which, if any, of the wishes of DCT/DTI/DTS are unduly economically burdensome, technically feasible and consistent with the universal service goals. Similarly, Fort Randall cannot determine whether there may be a need to seek a suspension or modification pursuant to Section 251(f)(2).² It would be impossible for either Fort Randall or the Commission to proceed based on the available information.

The importance of determining DCT/DTI/DTS' intentions before the Commission commences its review under Section 251(f)(1)(B) is further demonstrated by the fact that, if, for example, DCT/DTI/DTS are not seeking an interconnection agreement under Section 252(c) and, instead intend to interconnect and compete pursuant to the provisions of Section 252(a) and (b), the limited negotiations needed to implement those provisions can occur without a waiver of the Rural Exemption.

² Depending on the specifics of the DCT, DTI, and DTS requests, Fort Randall would be entitled to seek a suspension or modification of the Section 252(b) obligations pursuant to Section 251(f)(2).

In recognition of these problems, and in an attempt to obtain the basic information needed to evaluate DCT/DTI/DTS' intentions, Fort Randall's June 9, 1997 response to DCT/DTI/DTS (a copy is attached) included a list of questions to better define the type of interconnection actually desired. While the list is detailed, it is a simple matter to answer "not applicable" to those issues that are not under consideration, and the requested information is unquestionably needed with respect to those items that are applicable.

DCT/DTI/DTS have not answered any of the questions posed in Fort Randall's June 9, 1997 letter. DCT/DTI/DTS' decision not to answer those questions is only a problem if the parties are currently subject to the 120 day time limit. If, however, it is determined that the June 1, 1997 letter does not qualify as a bona fide request, DCT/DTI/DTS may answer those questions at their leisure and convenience. Once they do so, and advise the Commission that a bona fide request has been made, the 120 day period for evaluating the appropriateness of waiving the exemption would commence.

Therefore, Fort Randall respectfully requests a declaratory ruling that DCT/DTI/DTS have not made a bona fide request and, therefore, the 120 day period under Section 251(f)(1) has not commenced.

IV. DISCOVERY SHOULD BE ORDERED TO DETERMINE WHAT CONDITIONS SHOULD APPLY TO ANY CERTIFICATE OF AUTHORITY GRANTED TO DCT/DTI/DTS.

The Certificates of Authority granted to DTI and DTS expressly withheld authorization to serve RTC service areas in advance of obtaining separate Commission

authority.³ The purpose of the separate proceeding is to permit the Commission to determine what protections and limitations should apply to such competition, including: a) the below-described Rural Market Protections of Section 253(f); and b) such other protections as the Commission deems appropriate pursuant to Section 253(b) of the Act and state law. In apparent recognition of the need to obtain Commission authority to serve the Centerville and Viborg exchanges, DCT, DTI and DTS have given the Commission notice of their intent to provide competitive local services in those exchanges.

Section 253(f) provides:

It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply--

- (1) to a service area served by a rural telephone company that has obtained an exemption, suspension, or modification of section 251(c)(4) that effectively prevents a competitor from meeting the requirements of section 214(e)(1); and
- (2) to a provider of commercial mobile services.

The service obligations of Section 214(e)(1) include:

A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received--

- (A) offer the services that are supported by Federal

³ Similarly, while the Commission has declared that the requirements of SDCL § 49-31-21 do not apply to a previously approved local exchange carrier such as DCT, it also ruled that DCT would be required to obtain Commission approval before providing competitive local service in an RTC service area.

universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
(B) advertise the availability of such services and the charges therefor using media of general distribution.

In evaluating whether to apply these service obligations on DCT, DTI and DTS, a reasonable starting point would be to determine their service intentions. More specifically, DCT, DTI and DTS should each be required, as a precondition to seeking authority to provide local telecommunications services in Fort Randall's service area, to separately answer the following questions:

1) Will the service obligations of an ETC be satisfied in Fort Randall's Study Area? Fort Randall's Study Area includes: Centerville, Viborg, Tabor, Tyndall, Wagner, Lake Andes, and Hermosa. If some other area will be served, please describe that area.

2) What (DCT/DTI/DTS) facilities would be used to support its services?

3) What types/classes of customers would be offered its services?

4) Will all of the services listed by the FCC as eligible for universal service fund support be offered throughout the area served?

5) Will all of the services listed by the FCC as eligible for universal service fund support be offered to all customers throughout Fort Randall's entire study area? If not, will they be offered in some other area (please describe the area)?

6) If the answer to part (5) is in the affirmative, what evidence can be provided that its rates are consistent with a finding that it is making a bona fide offering of its services to all customers?

7) How will the availability of services and rates be advertised?

8) How will customers be selected?

9) Will service offerings focus primarily on business customers?

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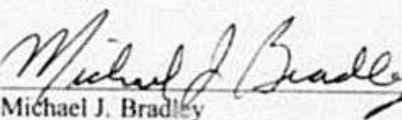
- 10) Will service offerings focus primarily on customers located close to its facilities?
- 11) Will rates be averaged throughout the study area or other service area?
- 12) Will rates be averaged throughout each exchange?

V. CONCLUSION.

The Commission should issue a declaratory ruling finding that the June 1, 1997 letter from Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc. and Dakota Cooperative Telecommunications, Inc. to Fort Randall Telephone Company does not qualify as a bona fide request. As such, the 120 day limitation for determining whether to waive the exemption from the obligations of Section 251(c) has not begun. In addition, the Commission should issue an Order requiring Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc. and Dakota Cooperative Telecommunications, Inc. to respond separately to the above discovery as a precondition to seeking authority to offer local services in Fort Randall's service area.

Dated: July 8, 1997

Respectfully submitted,

By 
Michael J. Bradley

MOSS & BARNETT
A Professional Association
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Telephone: 612-347-0337

Attorneys on Behalf of Fort Randall
Telephone Company



DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921

June 1, 1997

Wesley Hanson, President
Fort Randall Telephone Company
227 S. Main Street
Clara City, MN 56222-0800

Dear Mr. Hanson:

Pursuant to the provisions of the Communications Act of 1934, (47 U.S.C. §151 *et seq.*) as amended, and existing and future Federal Communications Commission ("FCC") and State rules, regulations and policies promulgated thereunder, Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc. ("Dakota") hereby request that Fort Randall Telephone Company ("Fort Randall") commence negotiations regarding those matters set forth in 47 U.S.C. §§251-252 between Fort Randall and Dakota in the following exchanges:

Centerville, South Dakota
Viborg, South Dakota.

Dakota requests that Fort Randall negotiate in good faith to achieve the interconnection of Dakota's existing and planned facilities and equipment. Thomas W. Hertz is hereby designated as the individual with authority to make binding representations on behalf of Dakota. Dakota hereby requests that Fort Randall designate an individual with comparable authority for purposes of these negotiations.

We look forward to finalizing interconnection agreements between Dakota and Fort Randall. If you have any questions, or need further information, please contact me at (605) 263-3301.

Sincerely,

Robert G. Marmet
Counsel

LAW OFFICES
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A PROFESSIONAL ASSOCIATION

4800 NORWEST CENTER
90 SOUTH SEVENTH STREET
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WRITER'S DIRECT DIAL NUMBER

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PATRICK P. PLAMBERT
LINDA A. HEDGECOCK

June 9, 1997

Robert G. Marmet
Dakota Telecom, Inc.
P.O. Box 127
Irene, South Dakota 57037

Re: Interconnection Negotiations Between Dakota Telecom, Inc., Dakota
Telecommunications Systems, Inc. and Fort Randall Telephone Company

Dear Robert:

This is to acknowledge receipt of your June 1, 1997 letter to Wesley Hanson, President of Fort Randall Telephone Company ("Fort Randall"), in which Dakota Telcom, Inc. ("DTI"), Dakota Telecommunications Systems, Inc. ("DTS"), and Dakota Cooperative Telecommunications, Inc. ("DCT") have requested that "negotiations commence regarding those matters set forth in 47 U.S.C. §§ 251-252" related to Fort Randall's Centerville and Viborg exchanges. While Fort Randall, through Bruce Hanson, is willing to begin discussions concerning such matters, for the below-described reasons, it is not willing, particularly based on the currently available information, to waive any of the rights granted to Fort Randall under the 1996 Telecommunications Act ("Act") or state law. Nor, for the below-described reasons, does Fort Randall accept the June 1, 1997 letter as meeting the requirements of a bona fide request under Section 251(f)(1) of the Act.

As you are aware, Fort Randall, in purchasing the Centerville, Viborg and Tabor exchanges from US WEST Communications, Inc. ("USWC"), did not waive its rights as an Rural Telephone Company ("RTC"), and the Settlement between DCT and USWC expressly recognizes that the prior ownership of those exchanges by USWC shall have no impact on Fort Randall's rights as an RTC. More specifically, the Settlement states in relevant part:

If Dakota makes a bona fide request to any Third Party Beneficiary [including Fort Randall] for interconnection in any of the New Exchanges, interconnection negotiations shall be conducted on the same basis, in terms of applicable



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MOSS & BARNETT
A PROFESSIONAL ASSOCIATION

Robert G. Marmet
June 9, 1997
Page 2

regulations, as if the initial request to a Third Party Beneficiary were the initial request by Dakota for interconnection in that exchange.

Fort Randall qualifies as an RTC pursuant to 47 U.S.C. § 153(a)(47).

The Act contains a number of special provisions designed to assure that competition in RTC service areas occurs in a manner that is consistent with the public interest. The Act recognizes that unfettered competition in RTC service areas would not be in the public interest, and that, while competition may occur in such areas, it is more important to address the needs of the public than it is to address the private needs of individual competitors. In recognition of those protections, the Certificates of Authority granted to DTI and DTS expressly withheld authorization to serve RTC service areas in advance of obtaining separate South Dakota Public Utilities Commission ("Commission") authority.¹ The purpose of the separate proceeding is to permit the Commission to determine what protections and limitations should apply to such competition, including the below-described Rural Market Protections of Section 253(f) and such other protections as it deems appropriate pursuant to Section 253(b) of the Act and state law. In apparent recognition of the need to obtain Commission authority to serve the Centerville and Viborg exchanges, DCT, DTI and DTS have given the Commission notice of their intent to provide competitive local services in those exchanges.

The proper application of various rural protections contained in the Act are best discussed in the context of a specific proposal, termed by the Act a bona fide request. Pursuant to Section 251(f)(1), absent a bona fide request and a ruling by the Commission that the bona fide request is not unduly economically burdensome, is technically feasible, and is consistent with the universal service goals of Section 254 of the Act, the provisions of Section 251(c) do not apply to an RTC (the "Rural Exemption"). The June 1, 1997 letter does not qualify as a bona fide request. That letter simply requests an interconnections agreement under the Act. Consequently, based on that letter, it is not possible to determine whether the wishes of DCT, DTI and DTS are unduly economically burdensome, technically feasible and consistent with the universal service goals.

Section 251(f)(1)(B) of the Act provides only 120 days from the date of a bona fide request for the Commission to determine whether to waive the Rural Exemption and, if a waiver is granted, to establish an implementation schedule for compliance. That is inadequate time, unless the request initiating the process contains sufficient detail to permit the RTC to evaluate

¹ Similarly, while the Commission has declared that the requirements of SDCL § 49-31-21 do not apply to a previously approved local exchange carrier such as DCT, it also ruled that DCT would be required to obtain Commission approval before providing competitive local service in an RTC service area.

MOSS & BARNETT

A PROFESSIONAL ASSOCIATION

Robert G. Marnet

June 9, 1997

Page 3

whether it will voluntarily waive some or all of the Rural Exemption; the filing of comments and expert testimony explaining why the Rural Exemption should not be waived as to those matters deemed inappropriate for competition in an RTC service area; the development of an implementation schedule for issues where a waiver is granted; and the Commission to determine the matter and establish an implementation schedule for compliance.

The importance of determining DCT, DTI and DTS' intentions before starting a Commission review process under Section 251(f)(1)(B) is further demonstrated by the fact that if, for example, DCT, DTI and DTS are not seeking an interconnection agreement under Section 252(c) and, instead intend to interconnect and compete pursuant to the provisions of Section 252(a) and (b), the limited negotiations needed to implement those provisions can occur without a waiver of the Rural Exemption.²

Based on the information contained in your June 1, 1997 letter, Fort Randall cannot determine whether the Rural Exemption of Section 251(f)(1) is applicable or, if applicable, whether Fort Randall would need to avail itself of the Rural Exemption. Similarly, Fort Randall cannot determine whether there may be a need to seek a suspension or modification pursuant to Section 251(f)(2). Therefore, in order to assist Fort Randall and DCT, DTI and DTS and, if appropriate, the Commission with respect to evaluating these issues, Fort Randall has attached a list of questions to better define what type of interconnection is actually desired. While the list is detailed, it is a simple matter to answer "not applicable" to those issues that are not under consideration, and the requested information is unquestionably needed with respect to those items that are applicable.

Answering the attached questions will also assist Fort Randall in deciding whether to request the protections available under Section 253(f) (the "Rural Market Protections"). That Section provides:

It shall not be a violation of this section for a State to require a telecommunications carrier that seeks to provide telephone exchange service or exchange access in a service area served by a rural telephone company to meet the requirements in section 214(e)(1) for designation as an eligible telecommunications carrier for that area before being permitted to provide such service. This subsection shall not apply--

(1) to a service area served by a rural telephone company

² Depending on the specifics of the DCT, DTI, and DTS requests, Fort Randall would be entitled to seek a suspension or modification of the Section 252(b) obligations pursuant to Section 251(f)(2).

MOSS & BARNETT
A PROFESSIONAL ASSOCIATION

Robert G. Marmet
June 9, 1997
Page 4

that has obtained an exemption, suspension, or modification of section 251(c)(4) that effectively prevents a competitor from meeting the requirements of section 214(e)(1); and
(2) to a provider of commercial mobile services.

The service obligations of Section 214(e)(1) include:

A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received--

- (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (B) advertise the availability of such services and the charges therefor using media of general distribution.

Please advise whether DCT, DTI and DTS intend to meet the service obligations of an ETC in Fort Randall's Study Area. Fort Randall's Study Area includes: Centerville, Viborg, Tabor, Tyndall, Wagner, Lake Andes, and Hermosa. If the answer is yes, please explain in detail how it intends to satisfy those obligations, including:

- 1) What facilities DCT, DTI and DTS will use to support its services;
- 2) What types of customers will be offered DCT, DTI and DTS services;
- 3) Will DCT, DTI and DTS offer all of the services listed by the FCC as eligible for universal service fund support;
- 4) Will DCT, DTI and DTS offer all of the services listed by the FCC as eligible for universal service fund support to all customers throughout Fort Randall's entire study area;
- 5) If the answer to question 4 is in the affirmative, what evidence can DCT, DTI and DTS provide that its rates will support a finding that it is making a bona fide offering of its services to all customers;

MOSS & BARNETT
A PROFESSIONAL ASSOCIATION

Robert G. Marmet
June 9, 1997
Page 5

- 6) How will DCT, DTI and DTS advertise the availability of their services and their rates;
- 7) Will rates be averaged throughout the study area; and
- 8) Will rates be averaged throughout each exchange.

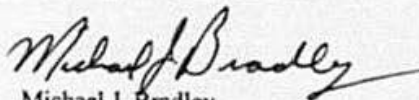
Just as it is necessary to determine the role of the Rural Exemption prior to commencing negotiations, it is equally important to determine, in advance of negotiating an interconnection agreement, whether DCT, DTI and DTS will voluntarily assume the service obligations of the Rural Market Protections and, if not, whether the Commission should impose those obligations.

As noted earlier, the duty to negotiate an interconnection agreement does not begin unless and until the Commission establishes such a duty under Section 251(f)(1). Consequently, the June 1, 1997 letter requesting negotiations does not activate the schedule for negotiations under Section 252.

Please call me so that we may discuss and develop a reasonable process for proceeding.

Very truly yours,

MOSS & BARNETT
A Professional Association



Michael J. Bradley

MJB/mjb
cc: The South Dakota Public Utilities Commission
Rolayne Wiest
Bruce Hanson
Rich Coit
J:\3233\2FDD01\DOC1

Information Required To Constitute A Bona Fide Request

A. Points of Interconnection Requested

1) A list of the points, by exchange, at which interconnection with Fort Randall is requested, the time frames in which interconnection is requested, the interface and protocol standards and quantities of facilities to be interconnected at each of the following points within Fort Randall's network, as defined in 47 C.F.R. § 51.305(a)(2) of the FCC interconnection rules:

- (i) any line-side local switch interconnections;
- (ii) any trunk-side local switch interconnections;
- (iii) any trunk interconnection points for a tandem switch;
- (iv) any central office cross-connect points;
- (v) any out-of-hand signaling transfer points interconnections, including any interconnections to call-related databases;
- (vi) any points of access to unbundled network elements as described in 47 C.F.R. § 51.319; and
- (vii) any other points of interconnection.

2) A list of and description of any interconnection facilities that are requested that are of superior quality to that provided by Fort Randall to itself or of inferior quality to that provided by Fort Randall to itself, including interface or protocol standards, as described in Section 51.305(a)(4) of the FCC interconnection rules.

3) A statement that DCT, DTI and DTS are not requesting interconnection solely for the purpose of originating or terminating their interexchange traffic on Fort Randall's network within the meaning of Section 51.305(b) of the FCC interconnection rules.

4) Any two-way trunks requested, including locations, time frames and quantities within the meaning of Section 51.305(f) of the FCC interconnection rules.

B. Unbundled Elements Requested

A list of the unbundled network elements requested by exchange, the time frames at which unbundling of the elements is requested, the quantities of unbundled elements anticipated and which DCT, DTI and DTS commits to purchase, including, without limitation, the following as defined in Section 51.319 of the FCC interconnection rules:

- (a) Local Loops.
- (b) Network Interface Devices.
- (c) Switching Capability, including:
 - (1) Local Switching Capability;
 - (2) Tandem Switching Capability.

- (d) Interoffice Transmission Facilities.
- (e) Signaling Networks and Call-Related Databases, including:
- (1) Signaling Networks;
 - (2) Call-Related Databases;
 - (3) Service Management Systems.
- (f) Operations Support Systems Functions.
- (g) Operator Services and Directory Assistance.

C. Collocation/Interconnection Methods Requested

1) A list of the points, by exchange, at which physical, virtual or meetpoint interconnection is requested, the time frames at which interconnection is requested, and the types and quantities of facilities to be interconnected within Fort Randall's network, including, but not limited to, the following as defined in Sections 51.321 and 51.323 of the FCC interconnection rules:

- (i) transmission equipment, including, but not limited to, optical terminating equipment and multiplexers;
- (ii) equipment being collocated to terminate basic transmission facilities;
- (iii) any copper or coaxial cable for which interconnection is requested; and
- (iv) any microwave transmission facilities for which interconnection is requested.

2) A list of any contractors that DCT, DTI and DTS seek to use for collocation of equipment.

D. Wholesale Rates

A list of the retail services of Fort Randall that DCT, DTI and DTS request at wholesale, within the meaning of 47 C.F.R. § 51.607, including:

- (i) identification of the customer classes to be served by DCT, DTI and DTS within the meaning of 47 C.F.R. § 51.613(a)(1); and
- (ii) any branding or unbranding that DCT, DTI and DTS requests with respect to any operator, call competition or directory assistance services to be purchased within the meaning of 47 C.F.R. § 51.613(c).

E. Number Portability

A statement of whether DCT, DTI and DTS are requesting that Fort Randall provide local number portability, the locations in which any local number portability is requested and the date by which local number portability is requested in each location.

Certificate of Service

RECEIVED

JUL 08 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

I hereby certify that an original and eleven copies of the above and foregoing Request for Declaratory Ruling and Discovery on behalf of Fort Randall Telephone Company were sent via facsimile and Federal Express on the 8th day of July, 1997, to the following:

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

FAX Received JUL 08 1997

and a true and correct copy was sent by Federal Express to the following:

Rolayne Wiest
South Dakota Public Utilities Commission
Capitol Building
500 East Capitol
Pierre, South Dakota 57501

and a true and correct copy by facsimile and/or Federal Express or Overnight Mail, postage prepaid, to the persons on the attached list.

Jean J. Hunsinger
Jean J. Hunsinger

Robert G. Marmet
P O Box 269
Centerville, SD 57014

Richard D. Coit
Executive Director
SDITC
St. Charles Hotel
207 E Capitol, Suite 206
Pierre, SD 57501

Bruce C. Hanson
Hanson Communications, Inc.
Box 800
Clara City, MN 56222-0800



DAKOTA COOPERATIVE TELECOMMUNICATIONS, INC.

P.O. Box 66 - IRENE, SOUTH DAKOTA 57037

TELEPHONE (605) 263-3301

FAX (605) 263-3995

RECEIVED

JUL 14 1997

BY FAX AND 1ST CLASS MAIL

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

July 11, 1997

William Bullard, Executive Director
South Dakota Public Utilities Commission
501 East Capitol
Pierre, South Dakota 57501

FAX Received JUL 11 1997

**RE: TC97-062 ANSWER TO REQUEST FOR DECLARATORY
RULING AND DISCOVERY**

Dear Mr. Bullard:

On behalf of Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., Dakota Cooperative Telecommunications, Inc., (collectively "Dakota"), I have enclosed the original and eleven copies of the ANSWER TO REQUEST FOR DECLARATORY RULING AND DISCOVERY for the above referenced docket. This ANSWER is being served to the parties listed on the service list this same date.

Please file stamp and date the extra copy and return to Robert G. Marmet, Dakota's attorney, in the enclosed self-addressed stamped envelope. Thank you.

Sincerely,

Kristie Lyngstad
Administrative Assistant

Enclosure

24. 7m. 4410

START

OF

RETAKE



DAKOTA COOPERATIVE TELECOMMUNICATIONS, INC.

P.O. Box 65 - IRENE, SOUTH DAKOTA 57037

TELEPHONE (605) 263-3301

FAX (605) 263-3995

RECEIVED

JUL 14 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BY FAX AND 1ST CLASS MAIL

July 11, 1997

William Bullard, Executive Director
South Dakota Public Utilities Commission
501 East Capitol
Pierre, South Dakota 57501

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Dear Mr. Bullard:

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Please file stamp and date the extra copy and return to Robert G. Marnet, Dakota's attorney, in the enclosed self-addressed stamped envelope. Thank you.

Sincerely,

A handwritten signature in cursive script, reading "Kristie Lyngstad".

Kristie Lyngstad
Administrative Assistant

Enclosure

44-38861-1420

END

OF

RETAKE

54-72-447-8
FAX Received JUL 11 1997

RECEIVED

JUL 14 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF FILING BY)
DAKOTA TELECOM, INC., DAKOTA)
TELECOMMUNICATIONS SYSTEMS,)
INC. AND DAKOTA COOPERATIVE)
TELECOMMUNICATIONS, INC.)
FOR INTERCONNECTION WITH)
FORT RANDALL TELEPHONE)
COMPANY)

TC97-062

ANSWER TO REQUEST
FOR DECLARATORY RULING
AND DISCOVERY

COME NOW DAKOTA TELECOM, INC. AND DAKOTA TELECOMMUNICATIONS SYSTEMS, INC. (collectively "Dakota"), AND DAKOTA COOPERATIVE TELECOMMUNICATIONS, INC. ("DCT"), and file the following Answer to Fort Randall Telephone Company's Request for Declaratory Ruling and Discovery dated July 8, 1997.

FACTS

Dakota Telecom, Inc. ("DTI") is building hybrid fiber optic/coaxial cable facilities in Centerville and Viborg, South Dakota which will allow customers in those communities to have access to high speed data, Internet and video telecommunications technology as well as competitive telephone service. (See Exhibit "A", attached hereto, and by this reference made a part hereof.) These new facilities will provide Centerville and Viborg residents with more advanced telecommunications technologies than are now available to residents of urban areas of the state. Those facilities are now approximately 60% complete, and will be in place and ready to provide telecommunications services to customers this fall. DTI seeks interconnection with Fort Randall Telephone Company ("Fort Randall") as a competitive local exchange company ("CLEC") to enable customers served by these new facilities to call and receive calls from Fort Randall customers in the same exchanges without incurring toll charges.

- 4
4. Dakota Telecommunications Systems, Inc. ("DTS") currently serves telephone customers who previously received services from US-West Communications, Inc. in the Centerville and Viborg exchanges. DTS seeks interconnection with Fort Randall as a CLEC to enable these customers to call and receive calls from Fort Randall customers in the same exchanges without incurring toll charges.

014. 715. 492-8

Dakota Cooperative Telecommunications, Inc. ("DCT") and US West Communications provided Extended Area Service ("EAS") between the Viborg exchange and several exchanges served by DCT prior to the purchase of the Viborg exchange by Fort Randall. The written agreement under which EAS was originally provided was canceled by US West prior to the Fort Randall purchase. DCT seeks an interconnection agreement for reciprocal compensation with Fort Randall to provide EAS services to customers served by Fort Randall and DCT by the most efficient and direct means which is technically and economically feasible.

DCT is constructing a fiber optic distance learning network and switching facility which will connect classrooms at eleven rural schools in southeastern South Dakota, the University of South Dakota and Children's Care Hospital and School to share educational resources through interactive video. DCT seeks an interconnection agreement with Fort Randall to provide distance learning services to the school in Tyndall through a combination of facilities owned by DCT and Fort Randall.

If the South Dakota Public Utilities Commission (the "Commission") decides to impose the restrictions on CLECs allowed by 47 U.S.C. §253(f), Dakota may need additional interconnection arrangements. At this point, the Commission has not imposed any requirements to serve in an area served by a rural telephone company. Depending upon the form of any requirements which are imposed, more interconnection services could be needed, including unbundled elements.

Dakota formally requested negotiations for interconnection with Fort Randall by letter dated June 1, 1997. Bruce Hanson, Fort Randall's negotiator, has had discussions with Dakota's General Manager, Systems Manager and Distance Learning Project Coordinator to explore EAS and distance learning interconnection arrangements. Discussions occurred both before and after the formal request by Dakota.

Fort Randall seeks a Commission ruling that Dakota's request for interconnection is not a bona fide request. Fort Randall seeks a delay in the deadline imposed by Congress for a Commission determination of Fort Randall's right to a continued exemption from certain interconnection obligations.

I. Dakota's requests for interconnection are made in good faith.

Fort Randall seeks a determination by the Commission that Fort Randall has not received a "bona fide request for interconnection" from Dakota Cooperative Telecommunications, Inc., Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc. for the purposes of application of 47 U.S.C. §251(f)(1). Fort Randall concedes that Dakota has made a request for interconnection. Thus, the issue is whether Dakota's request is "bona fide". Bona fide is Latin for good faith. Merriam Webster's College Dictionary, 1993, defines bona fide as follows:

adj [L., lit., in good faith] (1788) 1 : made in good faith without fraud or deceit <a bona fide offer to buy a farm> 2 : made with earnest intent : SINCERE 3 : neither specious nor counterfeit : GENUINE *syn* see AUTHENTIC

The term bona fide is used throughout the telecommunications statutes to distinguish legitimate acts from counterfeit.¹ "Bona fide request" is not some mysterious term. This Commission included a definition of "Bona fide request" in its draft of 1+ IntraLATA rules. ((Released for comment June 11, 1997))

(1) "Bona fide request," any written request by an interexchange carrier, other than the incumbent local exchange company's 1+ and 0+ predesignated intraLATA interexchange carrier, to a local exchange company for intraLATA equal access in an exchange.

The issue before the Commission is whether the request for interconnection made by Dakota is made in good faith. Dakota needs to interconnect with Fort Randall's network to adequately serve its customers. New facilities will be ready to serve customers this fall. The interconnection negotiations which Dakota commenced with a good faith request to Fort Randall on June 1, 1997 are intended to have agreements in place when the first call is made. It would be ironic if Dakota customers in Centerville and Viborg had to pay long distance toll charges to call their next door neighbors, as is currently the case for the DTS customer in the Centerville exchange.

II. Fort Randall is asking the Commission to impose, as conditions precedent to negotiation, requirements which the Federal Communications Commission specifically declined to adopt.

Fort Randall's response to Dakota's formal request for interconnection included an extensive list of questions. The requested information did not come from the individual designated as being the negotiator for Fort Randall, but rather came as part of a letter which claimed that answering a detailed list of technical questions was a precondition to a bona fide request for interconnection negotiations. Fort Randall now asks this Commission to place its regulatory imprimatur on this precondition which Fort Randall has simply made up.

The Federal Communications Commission ("FCC") was presented with the very issue which Fort Randall is presenting to this Commission. The FCC considered comments of parties, including the United States Telephone Association, Anchorage Telephone Utility and other rural LECs. The United States Telephone Association and other commenters sought to have the FCC clarify what constitutes a bona fide request under section 251(f)(1). Among the requirements which these parties sought to have imposed were exactly those which Fort Randall now contends are required to constitute a bona fide request: "points where interconnection is sought, specification of network components and quantities needed." In comments now being echoed by

¹ Cf. 47 U.S.C. §315: "bona fide newscast"; "bona fide news interview"; "bona fide news documentary"; "bona fide news event"; 47 U.S.C. §508: "bona fide contest of intellectual knowledge"; 18 U.S.C. §1305 "bona fide fishing or recreational event".

Fort Randall, Anchorage Telephone Utility argued that "rural LECs should not have to respond to requests that do not meet minimum criteria." ¶1257 *In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, (hereafter "First Report and Order").

Other commenters argued for a broad definition or no definition at all. First Report and Order, ¶1258. Ultimately, the FCC "decline(d) at this time to establish guidelines regarding what constitutes a bona fide request." First Report and Order, ¶1263. In declining to adopt guidelines the FCC concluded "there is no basis in the record for adopting other special rules, or limiting the application of our rules to smaller or rural LECs." None of the commenters argued, nor did the FCC even contemplate, that the Congressionally mandated 120 day deadline for State Commission action would be tolled while the incumbent quibbled over whether the request it received was bona fide or not.

Fort Randall is not arguing that Dakota is not actually planning to provide service in the Centerville and Viborg exchanges. Fort Randall is not arguing that the request is generic or too costly to consider. Fort Randall is quibbling about whether the letter requesting negotiations provided sufficient details of the interconnection which will result from the requested negotiations. Fort Randall is demanding, as a precondition to Commission consideration of their continued exemption, to know the ultimate result of the negotiations.

Dakota will abide by any valid rules for competition imposed by this Commission. Dakota's strategies for serving customers will necessarily depend upon the extent of Fort Randall's exemption from interconnection obligations, if any, and the nature of any additional obligations to be imposed on Dakota as a competitive provider in Fort Randall exchanges. Until these rules are determined and the technical limitations, if any, of Fort Randall's network are disclosed, Dakota cannot provide the kind of detail demanded by Fort Randall's attorney.

Fort Randall is not requesting that the rules be clarified. Fort Randall is requesting delay. Each day of delay accomplished by an incumbent is a day which keeps consumers bound to use the incumbent's services exclusively. Interconnection negotiations are negotiations, not litigation. Congress intended for small rural incumbents as well as large urban ones to engage in negotiations regarding interconnection. Dakota cannot negotiate with itself, nor can it intuit the nature of Fort Randall's network.

III. Discovery is neither appropriate nor necessary in this proceeding.

Fort Randall has asked this Commission to require Dakota to provide the responses to its questions propounded as a precondition to an interconnection request in the form of an order for Discovery. Such a discovery order would be entirely contrary to the letter and intent of the Telecommunications Act of 1996 and the regulations promulgated by the Federal Communications Commission.

In an effort to spur the process along, Dakota has attached to this Reply answers to the questions propounded by Fort Randall's attorney. (See Exhibit "B", attached hereto, and by this

reference made a part hereof.) This dialogue is an appropriate element of negotiations, but should not be a condition precedent to negotiations.

Fort Randall has designated Bruce Hanson as their negotiator in this matter. Mr. Hanson has not requested this information. The "Information Required To Constitute A Bona Fide Request" which accompanies both the Request for Declaratory Ruling and the letter from Fort Randall's attorney are interposed as barriers to competition rather than good faith negotiations. This Commission should reject these dilatory tactics and conduct its inquiry into Fort Randall's request for a continued exemption from the requirements of 47 U.S.C. §251(c) or begin mediation proceedings, if that is the effect of Fort Randall's request. Further delay is of no benefit to South Dakota consumers.

IV. The Commission must decide whether requirements permitted by 47 U.S.C. §253(f) will be imposed on competitive local exchange providers in areas served by rural telephone companies.

The ultimate issue before the Commission is whether consumers will have to wait for competition to come to rural South Dakota while incumbent phone companies force competitors to litigate every issue before this Commission. The benefits of competition will be enjoyed by consumers only when companies know that they can make investments and offer their services without regulators protecting the vested interests of incumbents to the detriment of consumer choice.

Dakota is making a significant investment to become a facilities-based competitor at a time when none of the many other companies which this Commission has certified as competitive local exchange carriers has even begun to provide any service at all. If Fort Randall is allowed to stop the clock while the lawyers debate the meaning of Latin phrases, the process will stretch on interminably.

Dakota announced in the Spring of 1996 that it would be serving the Centerville and Viborg exchanges with a state-of-the-art, fully digital hybrid fiber-coaxial telecommunications system. Fort Randall has known since before it elected to purchase these exchanges that it would face competition for its customers from a facilities-based competitor. Dakota has every intention of bringing its service to each and every customer who requests service in a manner which is consistent with sensible engineering practices and controlled growth. Dakota began serving customers in those exchanges as soon as it was permitted to do so under the South Dakota statutes. There is nothing illegitimate about Dakota's intentions to serve the telecommunications needs of consumers in Centerville and Viborg.

V. Fort Randall has the burden of showing that interconnection with Dakota is unduly economically burdensome, technically infeasible or inconsistent with Universal Service.

If Fort Randall believes that interconnection with Dakota will impose an unreasonable technical or economic burden, it can request a continued exemption or suspension of interconnection requirements imposed by the Telecommunications Act of 1996. The burden of proving such an unreasonable burden is on Fort Randall:

We conclude that it is appropriate to place the burden of proof on the party seeking relief from otherwise applicable requirements. Moreover, the party seeking exemption, suspension, or modification is in control of the relevant information necessary for the state to make a determination regarding the request. First Report and Order, ¶1263

The burden in these proceedings is placed squarely upon Fort Randall, not Dakota.

Conclusion.

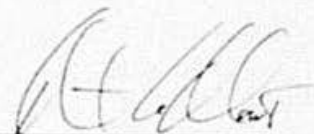
At this point, this matter is not a contested hearing before the Commission. Dakota has complied with the Telecommunications Act of 1996 by providing this Commission notice that it had made a bona fide request for interconnection with a Rural Telephone Company. This notification creates an obligation for this Commission to conduct an inquiry into the Rural Telephone Company's right to a continued exemption. By engaging in a semantic debate on the meaning of "bona fide", Fort Randall is attempting to elevate the form of the request over the substance of the law. This Commission must proceed with its inquiry, and Fort Randall must prove its entitlement.

If Fort Randall is not requesting a continued exemption, but is rather requesting that the Commission involve itself in the negotiations for interconnection, Dakota will participate in any mediated negotiations. If Fort Randall's filings are another in a series of delays interposed to deter competition, then this Commission should summarily reject its pleadings and allow Dakota to offer its services to the consumers in Centerville and Viborg, and let the consumers have a choice about which company will be their telecommunications provider.

WHEREFORE, Dakota requests that this Commission determine that the Interconnection Request made by Dakota on June 1, 1997 constituted a bona fide request for interconnection, as contemplated by the Telecommunications Act of 1996, and that the Commission further proceed to determine whether Fort Randall Telephone Company is entitled to a continued exemption under 47 U.S.C. §251(f).

1-58-7-11-97-044110

Dated this 11th day of July, 1997.



Dakota Telecom, Inc.
Dakota Telecommunications Systems, Inc.
Dakota Cooperative Telecommunications, Inc.
By: Robert G. Marmet
Kathleen Armstrong Marmet
PO Box 66
Irene, SD 57037
Phone (605) 263-3301
Fax (605) 263-3995

EXHIBIT "A"

STATE OF SOUTH DAKOTA)

: ss

COUNTY OF CLAY)

TARZAN A. MULLINIX, being first duly sworn, upon his oath deposes and says:


1. I am the outside plant supervisor for Dakota Cooperative Telecommunications, Inc. ("DCT"), in Irene, South Dakota. Along with my duties at DCT, I perform similar duties for Dakota Telecom, Inc. ("DTI") and Dakota Telecommunications Systems, Inc. ("DTS") subsidiaries of DCT.
2. I have supervised outside telephone and cable television plant construction for 10 years.
3. As part of my responsibilities I supervise the construction of facilities being installed by Dakota or by our contractor in Centerville and Viborg, South Dakota. I am familiar with the progress on these construction projects and am qualified to give an opinion on the progress of these projects.
4. Based upon my observations, the Viborg portion of the installation of the hybrid fiber-coaxial cable system, including trenching and splicing, is over 98% complete. In Centerville, my estimate is that the trenching part of the project is over 50% complete, with splicing having just begun. Neither system has been activated.
5. The network center building in Viborg is over 50% complete, with the switching equipment to be delivered in the next few weeks.
6. In my opinion, the system will be ready for customer use in the fall of 1997.
7. When activated, this system will provide customers with access to high speed Internet and data services, telephony and cable television programming.

8. Dakota has also been constructing fiber optic network facilities for an interactive video distance learning project since the spring of 1996. Network facilities for distance learning will require interconnection with Fort Randall Telephone Company to reach one of the schools involved in the project. Construction of the fiber optic facilities for distance learning is approximately 65% complete.

Dated this 11th day of July, 1997.


Tarzan A. Mullinix

Subscribed and sworn to before me this 11th day of July, 1997.


Notary Public--South Dakota
My Commission Expires:

(SEAL)

KRUSTIE LYNGSTAD
Notary Public, South Dakota
My Commission Expires June 7, 2001

EXHIBIT "B"

ANSWERS OF DAKOTA TO QUESTIONS POSED BY FORT RANDALL

Question

- 1) Will the service obligations of an ETC be satisfied in Fort Randall's Study Area?
Fort Randall's Study Area includes: Centerville, Viborg, Tabor, Tyndall, Wagner, Lake Andes, and Hermosa. If some other area will be served, please describe that area.

Answer

- 1) Not immediately. If Eligible Telecommunications Carrier requirements are imposed by the South Dakota Public Utilities Commission ("PUC") and interconnection with Fort Randall Telephone Company makes it possible to do so, Dakota will meet those obligations. Dakota anticipates that the PUC will disaggregate the Fort Randall Telephone Company study area into contiguous geographic areas as recommended by the Federal Communications Commission in order to avoid imposing a barrier to competition.

Question

- 2) What (DCT/DTI/DTS) facilities would be used to support its services?

Answer

- 2) If no additional obligations are imposed by the Commission, DTI will use its hybrid fiber optic/coaxial cable facilities to serve customers in Viborg and Centerville. If additional obligations are imposed on DTI as a CLEC, initially a combination of Dakota facilities, together with unbundled elements leased from Fort Randall and other telecommunications carriers would be used to meet those requirements.

Question

- 3) What types/classes of customers would be offered its services?

Answer

- 3) All types and classes of customers will be served.

Question

- 4) Will all of the services listed by the FCC as eligible for universal service fund support be offered throughout the area served?

Answer

- 4) See # 1 and # 2 above.

Question

- 5) Will all of the services listed by the FCC as eligible for universal service fund support be offered to all customers throughout Fort Randall's entire study area? If not, will they be offered in some other area (please *sic* describe the area)?

Answer

- 5) See # 1 and # 2 above.

Question

6) If the answer to part (5) is in the affirmative, what evidence can be provided that its rates are consistent with a finding that it is making a bona fide offering of its services to all customers?

Answer

6) See # 1 and # 2 above.

Question

7) How will the availability of services and rates be advertised?

Answer

7) Through appropriate media of general circulation.

Question

8) How will customers be selected?

Answer

8) Services will be provided to all customers.

Question

9) Will service offerings focus primarily on business customers?

Answer

9) No.

Question

10) Will service offerings focus primarily on customers located close to its facilities?

Answer

10) Initially, until facilities can be extended to all customers, unless the Commission imposes additional service obligations, in which case those obligations will be met.

Question

11) Will rates be averaged throughout the study area or other service area?

Answer

11) All applicable requirements regarding rates will be met. In the event that additional service obligations are imposed, rates will be determined based upon terms contained in resale agreements.

Question

12) Will rates be averaged throughout each exchange.

Answer

12) All applicable requirements regarding rates will be met. In the event that additional service obligations are imposed, rates will be determined based upon terms contained in resale agreements.

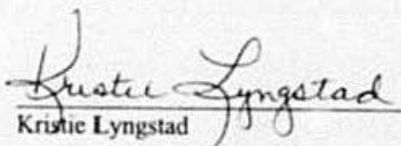
CERTIFICATE OF SERVICE

I, Kristie Lyngstad, hereby certify that on this 11th of July, 1997, I mailed by United States mail, first class postage prepaid, and sent via facsimile a true and correct copy of the foregoing ANSWER TO REQUEST FOR DECLARATORY RULING AND DISCOVERY to the parties listed below:

Michael J. Bradley
Moss & Barnett
4800 Norwest Center
90 S. Seventh Street
Minneapolis, MN 55402

Richard D. Coit
SDITC
PO Box 57
Pierre, SD 57501

Dated this 11th day of July, 1997.


Kristie Lyngstad

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

IN THE MATTER OF THE FILING BY DAKOTA)	ORDER GRANTING
TELECOM, INC., DAKOTA)	INTERVENTION; ORDER
TELECOMMUNICATIONS SYSTEMS, INC.,)	FINDING LETTER NOT A
AND DAKOTA COOPERATIVE)	BONA FIDE REQUEST
TELECOMMUNICATIONS, INC., FOR)	
INTERCONNECTION WITH FORT RANDALL)	TC97-062
TELEPHONE COMPANY)	

On or about June 1, 1997, Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc. (collectively Dakota) sent a request for interconnection services to Fort Randall Telephone Company. Pursuant to the requirements of the Telecommunications Act of 1996, a party making a request of a rural telephone company is required to notify the appropriate state Commission. On June 3, 1997, the South Dakota Public Utilities Commission (Commission) received Dakota's notice of request for interconnection.

On June 5, 1997, the Commission electronically transmitted notice of the filing and the intervention deadline of June 20, 1997, to interested individuals and entities.

On June 19, 1997, the Commission received a request for intervention from the South Dakota Independent Telephone Coalition (SDITC). On July 8, 1997, the Commission received a Request for Declaratory Ruling and a discovery request from Fort Randall Telephone Company. In its Request for Declaratory Ruling, Fort Randall asked the Commission to find that Dakota's June 1, 1997, letter requesting interconnection was not a bona fide request as required by 47 U.S.C. § 251(f)(1).

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 49-13 and 49-31, the Telecommunications Act of 1996, and ARSD 20:10.01.15.02 and .03.

On July 15, 1997, at its regularly scheduled meeting, the Commission considered the Petition to Intervene. The Commission found that the petition was timely filed and demonstrated good cause to grant intervention (Commissioner Schoenfelder, dissenting). The Commission also considered Fort Randall's Request for Declaratory Ruling and discovery request. After listening to arguments from the parties, the Commission deferred action on these requests.

At its July 18, 1997, ad hoc meeting, the Commission found that Dakota's June 1, 1997, request for interconnection from Fort Randall was not a bona fide request as required under 47 U.S.C. § 251(f)(1)(A) (Commissioner Schoenfelder, dissenting). The Commission found that the minimum requirement for a bona fide request is for the request to state under what subparts of sections 251(b) and/or 251(c) the request is being made. Dakota stated at Tuesday's meeting that it did not know if it was requesting interconnection pursuant to 47 U.S.C. § 251(b) or § 251(c) because it first needed to know if the Commission would require it to meet eligible telecommunications carrier (ETC) requirements pursuant to 47 U.S.C. § 253(f). The Commission concluded that since

Dakota did not know if it is requesting interconnection pursuant to section 251(c), then Fort Randall is unable to show the Commission that it should be allowed to keep its exemption from section 251(c) requirements. The Commission also directed the Executive Director to set a procedural schedule for the purpose of determining whether Dakota will be required to meet ETC requirements before being permitted to provide service in exchanges owned by Fort Randall.

It is therefore

ORDERED, that SDITC shall be granted intervention in this matter, and it is

FURTHER ORDERED, that the Commission finds that Dakota's June 1, 1997, letter is not a bona fide request as required by section 251(f)(1)

Dated at Pierre, South Dakota, this 29th day of July, 1997

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By	<u><i>Laska Schoenfelder</i></u>
Date	<u>7/30/97</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner
Dissenting

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

IN THE MATTER OF THE FILING BY DAKOTA)	ORDER FOR AND NOTICE
TELECOM, INC., DAKOTA)	OF HEARING AND
TELECOMMUNICATIONS SYSTEMS, INC.,)	PROCEDURAL SCHEDULE
AND DAKOTA COOPERATIVE)	
TELECOMMUNICATIONS, INC., FOR)	TC97-062
INTERCONNECTION WITH FORT RANDALL)	
TELEPHONE COMPANY)	

On June 3, 1997, Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc. (collectively Dakota) filed a Notice of Request for Interconnection with Fort Randall Telephone Company (Fort Randall) with the South Dakota Public Utilities Commission (Commission).

At its July 15, 1997, regularly scheduled meeting, the Commission granted intervention to SDITC. At a July 18, 1997, ad hoc meeting, the Commission found Dakota's request was not a bona fide request as required by 47 U.S.C. Section 251 (f)(1). The Commission further found that it would hold a hearing on whether Dakota shall be required to meet Eligible Telecommunications Carrier (ETC) requirements before being allowed to provide service in exchanges owned by Fort Randall.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, ARSD Chapter 20:10:01 and the Telecommunications Act of 1996 (Act). The Commission may rely upon any or all of these or other laws of this state in making its determination.

The issue at this hearing is whether Dakota shall be required to meet ETC requirements before being permitted to provide service in exchanges owned by Fort Randall.

The procedural schedule for the hearing shall be as follows:

The hearing on Dakota's request shall be held on August 26, 1997, at 9:00 a.m., at the Embassy 1 Room in the Holiday Inn City Centre located at 100 West 8th Street, Sioux Falls, South Dakota.

Dakota shall file testimony on or before August 11, 1997, Fort Randall shall file testimony on or before August 20, 1997.

Persons testifying will be subject to cross-examination by the parties. The order of the proceeding will be in the following sequence: (1) Dakota, (2) Fort Randall, and (3) Staff.

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The hearing is an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to attend and represent themselves or be represented by an attorney. However, such rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20.

The Commission, after examining the evidence and hearing testimony presented by the parties, shall make Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing the Commission may determine whether Dakota shall be required to meet ETC requirements before providing service in exchanges owned by Fort Randall. The Final Decision made by the Commission may be appealed by the parties to the Circuit Court and the South Dakota Supreme Court as provided by law. It is therefore

ORDERED that a hearing shall be held on whether Dakota shall be required to meet ETC requirements before providing service in exchanges owned by Fort Randall at the time and place specified above and that the parties shall file prefiled testimony on or before the dates specified above.

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

Dated at Pierre, South Dakota, this 31st day of July, 1997.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By	<u>Delaine Kicks</u>
Date	<u>7/31/97</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION
Commissioners Burg, Nelson and
Schoenfelder

William T. Bullard, Jr.
WILLIAM BULLARD, JR.
Executive Director



DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND IA WATS 800-239-7501

RECEIVED

AUG 15 1997

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

August 12, 1997

FAX Received AUG 12 1997

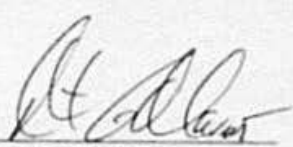
William Bullard
Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501-5070

Re: Procedural Schedule TC97-062

Dear Mr. Bullard:

Pursuant to your request I am, by this letter, requesting that the Public Utilities Commission of the State of South Dakota suspend the procedural schedule it has established in Docket TC97-062. Dakota Telecom, Inc. has appealed the two Orders issued by the PUC in this docket. Prior to the removal of this appeal from the Circuit Court of Hughes to Federal District Court, Dakota Telecom, Inc. had requested that the Circuit Court issue a stay of these proceedings.

Sincerely,
Dakota Telecom, Inc.
Dakota Telecommunications Systems, Inc.

By: 
Robert G. Marmet

LAW OFFICES
MOSS & BARNETT
A PROFESSIONAL ASSOCIATION

4800 NORTHWEST CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS, MINNESOTA 55402-4129

TELEPHONE (612) 347-0300
FACSIMILE (612) 339-6686

WRITER'S DIRECT ORAL NUMBER
347-0337

WRITER'S E-MAIL ADDRESS
BradleyM@moss-barnett.com

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N. SCOTT HERRICK
JAMES E. O'BRIEN
PAUL G. HENNING
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WILLIAM H. SCHER
WILLIAM A. HALL
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EDWARD J. JOHNSON
ROBERT J. LUND
JAMES A. RUBINSTEIN
THOMAS E. HERRAN
J. MICHAEL HERRICK

EDWARD J. BUCHHEIT
JOHN E. HENNING
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VINCENT M. MEYER
JAMES H. ROBINSON
PATRICK R. STABLE
HOWARD S. COLE
PATRICK P. PLANDER
WATSON A. HERRICK

August 11, 1997

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AUG 13 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

Re: In the Matter of Request by Dakota Telecom, Inc., Dakota Telecommunications
Systems, Inc. and Dakota Cooperative Telecommunications, Inc. for
Interconnection with Fort Randall Telephone Company
Docket No.: TC97-062

Dear Mr. Bullard:

Enclosed please find the Order Granting that Nonresident Attorney be Admitted Pro Hac
Vice for Michael J. Bradley in the above entitled Docket.

Very truly yours,

MOSS & BARNETT
A Professional Association

Michael J. Bradley
Michael J. Bradley

MJB/jjh
Enclosures
cc: Robert G. Marmet
Richard D. Coit
Bruce C. Hanson
119019/11963011.DOC



STATE OF SOUTH DAKOTA
COUNTY OF HUGHES
SIXTH JUDICIAL CIRCUIT

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AUG . . 1997

MICHAEL J. BRADLEY

In the Matter of the Petition That Michael J.)
Bradley be Permitted to Appear Before the)
South Dakota Public Utilities Commission)
in Administrative Hearings)

No. Bar 97-23

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AUG 13 1997

ORDER GRANTING THAT NONRESIDENT
ATTORNEY BE ADMITTED
PRO HAC VICE

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

The Motions that Michael J. Bradley be admitted pro hac vice to appear before the South Dakota Public Utilities Commission in the following administrative hearing conducted pursuant to S.D.C.L. ch. 1-26 are granted.

In the Matter of Request by Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc. and Dakota Cooperative Telecommunications, Inc. for Interconnection with Fort Randall Telephone Company
SDPUC Docket TC97-062

Dated: 8-5, 1997


Judge of Sixth Judicial Circuit


CLERK

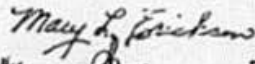

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123733/2NH1011.DOC

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO

FILED

AUG 05 1997


By May L. Erickson Clerk
Deputy

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

AUG 13 1997

IN THE MATTER OF THE FILING BY
DAKOTA TELECOM, INCORPORATED;
DAKOTA TELECOM SYSTEMS, INCORPORATED;
AND DAKOTA COOPERATIVE
TELECOMMUNICATIONS, INCORPORATED,
FOR INTERCONNECTION WITH
FORT RANDALL TELEPHONE COMPANY

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

TC97-062

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION
AD HOC MEETING

PROCEEDINGS: July 15, 1997
Capitol Building
Pierre, South Dakota

PUC COMMISSION: Jim Burg, Chairman
Laska Schoenfelder, Commissioner
Pam Nelson, Commissioner

COMMISSION STAFF
PRESENT: Rolayne Ailts Wiest

Reported by: Lori J. Grode, RMR

A P P E A R A N C E S

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For DTG:

Robert G. Marmet

P.O. Box 269

Centerville, SD 57014

For Ft. Randall:

Mike Bradley

4800 Norwest Center

Minneapolis, MN 55402-4119

For SDITC:

Richard D. Coit

P.O. Box 57

Pierre, SD 57501

P R O C E E D I N G S

CHAIRMAN BURG: 97-062, In the Matter of the Filing by Dakota Telecom, Incorporated, Dakota Telecommunications Systems, and Dakota Cooperative Telecommunications Company for Interconnection with Fort Randall Telephone Company.

The question being shall the Commission grant intervention to SDITC? Also shall the Commission approve the request for declaratory ruling until the Commission approves the request for discovery.

We will take those items one at a time. I will take up first shall the Commission grant intervention to SDITC. Any there any comments on that?

MR. COIT: Yes. This is Richard Coit of SDITC. We have filed for intervention in this matter given that it is the first case that involves potentially a review of the ruling of interconnect exemption extended to in this case Fort Randall and under 251(f)(1) of the Federal Act.

The issue that's up for today with the motion for declaratory ruling, I think, is a good example of the kinds of issues that the Commission is going to have to resolve in this case. It certainly involves an interpretation and application of 251(f)(1). And we

1 are certainly concerned about the decision that the
2 Commission has to make and what impact those would have
3 on other members, other rural telephone companies,
4 members of our coalition. So that's the basis for the
5 intervention, the fact that really this is the first
6 case that directly involves that section and a review
7 potentially of that section.

8 CHAIRMAN BURG: Mr. Marmet, any objections to
9 their intervention?

10 MR. MARMET: Yes, we do object. I think this
11 is a private negotiation between two parties. That
12 Mr. Coit's group, I believe, was a member of it. I
13 don't think that any decision that the Commission might
14 make would have any precedential (sic) value, so I
15 don't think that their participation is necessary. I
16 don't think they have a financial interest. I think
17 this thing is between Fort Randall and Dakota.

18 CHAIRMAN BURG: Thank you. Mr. Hanson, do
19 you have any comments?

20 MR. BRADLEY: Commissioners, I'd like to on
21 behalf of Fort Randall. We support the request by
22 SDITC for intervention and participation. We have not
23 yet talked about the actual negotiations. We're
24 talking about what conditions would be imposed on
25 Dakota's right to provide services for the Fort Randall

1 service area. And today we're talking about what is a
2 bona fide request as applied to rural telephone
3 companies, and that ruling does apply. Whatever you
4 determine today will affect not only Fort Randall, but
5 every other small LEC in this state.

6 CHAIRMAN BURG: That was Mike Bradley, wasn't
7 it?

8 MR. BRADLEY: It was, Commissioner.

9 CHAIRMAN BURG: Camron.

10 MR. HOSECK: Staff would resist the
11 intervention. Primarily staff's reason for this is
12 that the rule allows intervention to a person claiming
13 an interest. And the filing by SDITC in this case is
14 based upon two premises: One, that this is an issue of
15 first impression for this Commission. Secondly, that
16 it may be precedent setting. And in resisting this,
17 the staff would ask the Commission to look at this
18 matter of what constitutes an interest. The fact that
19 this is a new matter before this Commission, a matter
20 of first impression, I submit is not an interest as
21 such and it is not precedent setting in that the South
22 Dakota Supreme Court in the ITC versus Public Utilities
23 Commission has said that the Public Utilities
24 Commission is not bound by its prior administrative
25 decisions.

1 Is it a matter of representation? Staff
2 submits that it is not; that both of the parties here
3 are adequately represented by counsel. And also it
4 appears to be a situation where the facts are specific
5 to this case and that the parties that are directly
6 interested in this should be allowed to go to battle
7 directly against each other without the necessity of
8 intervention of SDITC.

9 CHAIRMAN BURG: Mr. Coit, do you have --

10 MR. COIT: Yes, if I could respond. I guess
11 first I'd like to respond to Mr. Marmet's comment that
12 because Fort Randall is a member of SDITC, SDITC itself
13 should not need to intervene in this case.

14 If you look at the Administrative Rules, I
15 don't think that the fact that we have interest in
16 common with one of the parties should deprive us of the
17 right to intervene. I do agree with staff that it's a
18 question what our interest is. I guess I have a hard
19 time, though, distinguishing this case from some of the
20 other interventions that have been granted to other
21 parties. Recently the Commission granted intervention
22 to AT&T in Dakota's request for an ETC designation on
23 the same grounds that I'm arguing here today, and that
24 is that it was the first case involving ETC
25 designations and they were concerned about the process

1 MR. BRADLEY: Just to reiterate what
2 Rich Coit said. If SDITC has been involved in all of
3 these proceedings, including the initial proceedings to
4 determine whether or not certificate should be given to
5 Dakota, this is just the next step. Now we're actually
6 applying that grant of authority to a rural telephone
7 company. They are a key player in this area.

8 CHAIRMAN BURG: Mr. Marmet, would you have
9 any additional comments?

10 MR. MARMET: I would state that I believe it
11 is going to be a case that needs determination by this
12 Commission every time there's a request made for
13 interconnection with a rural telephone company. This
14 is just that, a request for interconnection with a
15 rural telephone company. It's not some precedential
16 (sic) matter. Thank you very much.

17 CHAIRMAN BURG: Camron.

18 MR. HOSECK: Thank you, Mr. Chairman. Just
19 one comment more in the form of a rhetorical question
20 for SDITC And that is based on the past experiences
21 of this Commission if this matter is appealed into
22 court and somehow a deal with struck out there and a
23 settlement is reached, if the SDITC becomes an
24 intervenor in this, is there going to be any resistance
25 to the payment of costs and attorney's fees this

1 Commission incurs in going through such a deal? I
2 think that this is an interesting matter that the
3 Commission should look at in this case. Thank you.

4 CHAIRMAN BURG: Commission Counsel, do you
5 have any comments? I like to put you on the spot.

6 MS. WIEST: I think based on past Commission
7 precedent, we have allowed intervention such as this in
8 the past. Analogizing it, the case (inaudible) we did
9 go out in the arbitration docket. But in this case
10 here I see this as three different issues. The first
11 issue is the waiver of any exemption from 251(c),
12 whether the Commission will do that, the granting of
13 any suspension and modification from the requirements
14 of 251(d), and whether to impose ETC requirements on
15 the company. And in those three issues I could see
16 that SDITC would have an interest. So I would also say
17 that it will be an impact specific to the company's
18 involvement.

19 CHAIRMAN BURG: Commissioners, any comments?

20 COMMISSIONER NELSON: Well, I guess that I'm
21 going to move that the Commission grant the
22 intervention of SDITC because I do believe that they
23 have an interest in the outcome of this, and I do think
24 that future decisions would be affected, at least be
25 effective to them. So I think there is a legitimate

1 reason for them to intervene.

2 CHAIRMAN BURG: Okay. Any comments? I will
3 second the intervention. I do believe there are some
4 interests. We've always made that threshold fairly low
5 to be able to intervene if interest is shown. And I
6 think we can put weight on the consideration.

7 COMMISSIONER SCHOENFELDER: I'm going to
8 dissent and I'm going to dissent for the reason that in
9 every other interconnection agreement or negotiation or
10 arbitration that this Commission has entered into so
11 far, we have not allowed intervention. And the
12 difference for ETC designation under the Universal
13 Service Act, or the universal service portion of the
14 Act versus the interconnection are entirely different
15 matters. And I believe this is a request for
16 interconnection, at least that's what it seems to say
17 in my docket. And, therefore, I don't believe that the
18 third party intervention is necessary. I also believe
19 that this Commission can make a decision without an
20 intervention so I'm going to dissent.

21 CHAIRMAN BURG: Okay. Motion has been
22 granted on the two/one vote. Commissioner Schoenfelder
23 dissenting to allow intervention of SDITC in TC97-062.

24 The second item is shall the Commission
25 approve the request for declaratory ruling?

0143.17.24

1 Mr. Bradley, do you want to go first with
2 that?

3 MR. BRADLEY: Commissioner, thank you. This
4 is Mike Bradley on behalf of Fort Randall. The
5 Telecommunications Act of 1996 recognizes that not all
6 competition in rural telephone company service areas
7 would be in the public interest. Consequently, that
8 gives the Commission the ability to regulate the manner
9 in which such competition occurs, not to protect the
10 interests of either Fort Randall or the Dakotas, but
11 rather to protect the interest of the consumers.

12 Does that mean the Commission can or should
13 prevent rural competition of rural telephone company
14 service areas? Absolutely not. But the Commission
15 does have authority to limit the receipt of universal
16 service funding to a single rural exchange carrier.
17 And the Commission does have the authority to limit the
18 obligations imposed on Fort Randall due to the
19 competition by Dakotas. Commission could, for example,
20 limit Fort Randall's obligation of offering resale
21 based on a wholesale discount. That would prevent
22 overbilling of the network and preserve universal
23 service funding to support a main telecommunications
24 infrastructure.

25 Alternatively, the Commission could require

1 DCT, DTI, and DTS to supply all of their own facilities
2 while providing universal service funding to the
3 incumbent LEC, thus assuring the competition only
4 occurs whether economic support for it. What is the
5 best approach to take in this case? It requires Fort
6 Randall could argue general principles, but that
7 doesn't make sense. What would make sense would be to
8 find out specifically what interconnection services
9 DCT, DTI and DTS want Fort Randall to provide. Based
10 on those desires determine an appropriate response,
11 which response could be positive.

12 Such Fort Randall wants to approach this
13 problem in a reasoned and logical matter after
14 receiving the DCT, DTI and DTS June 1 letter, Fort
15 Randall on June 9th, sent a list of questions asking
16 for specific detail to what it is that DCT, DTI wants.
17 Its written reply to Fort Randall's motion submitted
18 just earlier this week, we have for the first time been
19 given a general overview of DCT, DTI, and DTS's plan.
20 But they still have declined to say what services, what
21 facilities, what if anything in the way of
22 interconnection they are requesting of Fort Randall.

23 DCT, DTI, DTS path of withholding information
24 it admits would be needed to be given to Fort Randall
25 during interconnection negotiations can occur without

1 penalty as long as there is no clock running at this
2 time. But if the 120-day clock has begun, then the
3 withholding of this information by Dakotas is very
4 detrimental both to Fort Randall and to the
5 Commission. The FCC has by rule placed the burden of
6 proof on Fort Randall to sustain the rule exemption.
7 More specifically, in order to maintain the rule
8 exemption, Fort Randall is required to demonstrate that
9 the specific request for interconnection is either
10 unduly burdensome, technically not feasible, or
11 inconsistent with the universal service goals.

12 It's not impossible to address those issues,
13 the specific request, until DCT, DTI, and DTS declare
14 their intentions. That contemplates those intentions
15 will occur in the form of a bone fide request. Section
16 251(f)'s use of the term bona fide request and in
17 strong contrast they use the unqualified term request,
18 Section 252 and 251(c). Bona fide request requires
19 detail specifically that goes beyond evidence of merely
20 simple good faith. As the FCC noted and recognized
21 when it established a list of information that schools,
22 libraries and rural health care providers must provide
23 and include in order to qualify their request for a
24 discount as a "bona fide request."

25 DCT, DTI, DTS quoted from selected portions

1 of the FCC's First Report and Order on Interconnection
2 and note that some parties requested that the FCC
3 adopted rule specify the information that should be
4 included to qualify its bona fide request. What the
5 Dakotas fail to mention is that the FCC in its MTRM,
6 paragraph 261 stated, "We tentatively conclude that the
7 state alone has authority to make determinations under
8 Section 251(f)." That authority under 251(f) includes
9 determining what constitutes a bona fide request.

10 Further, the Dakota's position that any good
11 faith request should qualify as a bona fide request was
12 also argued to the FCC, and the FCC did not adopt that
13 argument. Rather, the FCC left to the state Commission
14 to determine what would be required to constitute a
15 bona fide request stating, "We decline at this time to
16 establish guidelines regarding what constitutes a bona
17 fide request."

18 In addition, based on the information that
19 has been provided in the cross reply, it does not
20 appear to us that DCT, DTI, DTS has made a good faith
21 request to interconnect. Their reply merely requests
22 reciprocal compensation between DTI and DTS and Fort
23 Randall. Reciprocal compensation is provided for under
24 251(b) and therefore is not part of the rule exemption
25 of 251(c).

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1 Similarly, we're told that DCT wants to
2 interconnect EAS traffic. EAS traffic is not
3 competitive traffic, and it is not being provided
4 pursuant to 251(c). Finally, we're told that DCT is
5 constructing a distance learning project and wants Fort
6 Randall to help currently provide the necessary
7 facilities. That request is not under 251(c) in the
8 rule exemption, it's under Section 259, infrastructure
9 sharing, and is directly outside the requirements of
10 251(c). Therefore, Fort Randall respectfully requests
11 a declaration of the June 1 letter is not a bona fide
12 request.

13 Fort Randall also had requested limited
14 discovery with regard to DCT, DTI, and DTS's service
15 plan. Dakota has responded to those questions. Those
16 responses, however, do not provide any insight into the
17 interconnection service that's being requested from
18 Fort Randall. Therefore, Fort Randall continues to
19 request that DCT, DTI, DTS answer the information
20 requested on June 9th by Fort Randall with respect to
21 whatever interconnection services they actually
22 require.

23 Thank you. And I'll be happy to try to
24 answer your questions.

25 CHAIRMAN BURG: Question, Mike. You've

1 indicated that the June 1, you felt was not a bona fide
2 request. How about the responses that came in July?
3 Do they constitute a bona fide request?

4 MR. BRADLEY: The information that we
5 received in July was with response to the questions
6 addressing what were they going to provide in the way
7 of services. That goes to your separate proceeding
8 you're going to need to have in terms of deciding
9 whether to grant authority to the Dakotas and what
10 limitations you should impose on them in providing
11 service in the Centerville, Viborg, and other Fort
12 Randall Exchanges. They still haven't told us what
13 they want. They haven't told us that they want
14 unbundled switching services. They haven't told us if
15 they want trunk side or line side interconnection.
16 They have not gone through any of the issues that the
17 FCC has provided in a form of interconnection so that
18 we can make a determination on the facts of whether or
19 not it's technically financially feasible and what the
20 impact would be on the universal service.

21 CHAIRMAN BURG: Any other questions for
22 Mike? Okay. Mr. Marmet, response?

23 MR. MARMET: Yes, Commissioner Chairman. I
24 think what we heard here is half a negotiation. If
25 Fort Randall and Dakota were discussing these matters,

1 these things would all come to light.

2 The fact remains that Dakota has in good
3 faith requested for interconnection on June 1st. We
4 identified the exchanges that we wanted to interconnect
5 with. You can't go into any of the further details
6 until we know what this Commission is going to grant
7 exemption or continue the exemptions to Fort Randall.

8 If this Commission determines that because
9 Dakota has been serving those exchanges already, that
10 Fort Randall is not entitled to continue the exemption,
11 then Dakota need nothing more than interpreting the
12 agreement so our customers can call their customers.

13 If, on the other hand, exemptions are going
14 to be granted, then will the other surface that this is
15 all part of what should take place in negotiations.
16 Fort Randall is asking this Commission to stop the
17 clock, make us go back in time and guess at what
18 services we want from them.

19 All of the questions that Mr. Bradley set out
20 to be required to make a bona fide request are simply
21 made up out of the air. There is no such requirement.
22 We have identified the exchanges that we wanted to
23 interconnect with. We will know what services we need
24 after discussions and after Fort Randall decides
25 whether they want to claim the continued exemption or

1 suspension.

2 The thing that Dakota is doing in Centerville
3 and Viborg are intended to offer tentative services to
4 people in those exchanges. We want to serve those
5 customers. We made it clear as long ago as a year ago
6 that we wanted to serve those customers. Fort Randall
7 and SDITC opposed us at that time.

8 Earlier this year we asked to extend our
9 study area to include those exchange because we wanted
10 to serve those customers. Fort Randall and SDITC
11 opposed us at that stage. Fort Randall and SDITC are
12 opposing us at this stage, and I venture to guess will
13 continue to oppose us at every possible stage of the
14 proceedings.

15 Dakota wants to offer a choice to those
16 customers. That's all we're asking. We are not asking
17 this Commission to guarantee us any customers. We are
18 investing Dakota's money in those exchanges. All we
19 are asking is that we be told what the rules are and be
20 allowed to go in there, offer the services to those
21 customers, and let them decide, not this Commission
22 decide, which phone company they want to have provide
23 their services. I'll be happy to answer any questions.

24 CHAIRMAN BURG: Mr. Hoseck?

25 MR. HOSECK: Yes. Mr. Chairman, Members of

1 the Commission: My objection in this case is a little
2 bit more basic, and that is that I don't think that the
3 declaratory ruling is a proper device to be used in
4 this particular case and that the Commission cannot
5 issue a declaratory ruling. The basis for this is that
6 under the Administrative Procedures Act, specifically
7 1-26-15, it talks about declaratory rulings as to the
8 applicability of statutes, provisions, and rules or
9 orders of an agency. In other words, it has to do with
10 the applicability of those items.

11 As I read the motion for the declaratory
12 ruling, or the request for a declaratory ruling by Fort
13 Randall in this case, it calls for a factual
14 determination by this Commission that the information
15 is inadequate in Dakota's application and that this is
16 not a bona fide ruling -- not a bona fide request
17 rather. And normally declaratory rulings are not used
18 to resolve factual disputes. They are used to rule on
19 matters of law. And the question I would have here is
20 where is the applicability of a statute rule or agency
21 order in issue?

22 Based on that, I would suggest to the
23 Commission that this is not a proper matter to be
24 before the Commission and that the request for
25 declaratory ruling be dismissed. Thank you.

1 CHAIRMAN BURG: One question on that for
2 you. Is the determination in your opinion the
3 determination of the Commission as to when a bona fide
4 request is received and when the time starts?

5 MR. HOSECK: I think that that's probably a
6 matter that's kind of self executing. In other words,
7 when it hits the Commission's offices, probably then
8 the clock starts running.

9 CHAIRMAN BURG: Does not the Federal Act give
10 us the determination of what is bona fide?

11 MR. HOSECK: I don't see it as that. In
12 other words, I see it as one where the request comes
13 in, and if the Commission wishes to -- there was an
14 affidavit submitted with this. I believe it was within
15 Dakota's response, executed by your client manager,
16 that they are, in fact, constructing facilities within
17 these two exchanges. And if that's -- if a
18 determination of a bona fide request is deemed proper
19 by the Commission, then there are grounds to determine
20 that at this point in time.

21 However, as I see the issue as it's raised in
22 front of the Commission right now is whether or not you
23 ought to issue a declaratory ruling. And what I'm
24 saying is that under the statutes, under the
25 Administrative Procedures Act, it talks about the

1 applicability of a statute, rule, or order of an
2 agency. And I don't see a question of applicability
3 being raised here.

4 CHAIRMAN BURG: I guess I'd like a comment
5 from counsel, not necessarily a recommendation at this
6 time, but what is your interpretation of the Federal
7 Act? What constitutes a bona fide request? I think
8 that's really important at this point.

9 MS. WIEST: Well, I believe that is up to the
10 Commission. The Commission has the authority to decide
11 whether it is a bona fide request or not. And if there
12 is a fact specific, then there be a determination made
13 on the case by case basis. And in that respect, I
14 believe it was found here that this doesn't seem to
15 lend itself to a declaratory ruling. But if you talk
16 about receptive, I think that whether the Commission
17 makes the decision as a declaratory ruling or not, I
18 believe the Commission still must make the decision
19 whether this constitutes a bona fide request. You can
20 do that without issuing the declaratory ruling.

21 MR. COIT: May I comment briefly? I agree
22 with comments of the Commission counsel in terms of the
23 fact that the decision has to be made on the issue of
24 whether it's a bona fide request. And I guess our take
25 on that issue is that the Federal Act does use the word

1 bona fide. And if you look at the letter request that
2 was submitted, which according to Dakota triggers the
3 time line for review of the interconnection exemption,
4 all they said in there is that they want negotiations
5 for interconnection for those matters under 251 and
6 252.

7 If that's sufficient for a bona fide request,
8 there's no difference between a bona fide request and
9 any other request. I think there needs to be enough
10 information in there to give us some idea of what
11 services are being requested. Until we know whether
12 they're requesting unbundled elements, whether they're
13 requesting simply transport and termination agreements,
14 we don't even know whether the 251(c) interconnection
15 exemption is at issue.

16 And just looking at the request that is made,
17 I think that there has to be some evidence in terms of
18 some specific information in that request that gives us
19 some assurance that the request that we have is in good
20 faith. Dakota has presented a lot of information now
21 up to this point that might indicate that their request
22 is in good faith, it's a bona fide request, they intend
23 to provide service. But the key is they didn't provide
24 it when they made that first request, and that first
25 request starts the clock.

1 And to me, the bona fide request means
2 something. The FCC did not, even though it declined to
3 establish standards on its own of what a bona fide
4 request is, certainly left the Commission free in that
5 area to make decisions and establish standards if
6 that's what you wish to do.

7 CHAIRMAN BURG: Does bona fide to you mean
8 only in good faith, or is there more to it than that?

9 MR. COIT: I think it means good faith, but
10 unless there's some indication of what -- to me, good
11 faith is demonstrated by the company requesting
12 interconnection providing some information as to what
13 its plan is in terms of providing service. If they
14 can't -- if they don't even know what services they
15 want, I would question whether it's in good faith and
16 whether it's a bona fide request. So what we're asking
17 is that they provide some information within that
18 initial request giving us an idea of what services they
19 want. And until we know what services they want, I
20 don't think we can even tell whether 251(f)(1) and the
21 rule interconnect exemption even comes into play.

22 COMMISSIONER SCHOENFELDER: Well, Mr. Coit,
23 let me ask you this: 251(f)(1)(a) the exemption says
24 Subsection C of this section shall not apply to a rural
25 telephone company until, one, or, I, whatever it is,

1 the company has received a bona fide request for
2 interconnection services, or network elements. And I
3 think this does work for interconnection, does it not?

4 MR. COIT: Yes, it does.

5 COMMISSIONER SCHOENFELDER: That's all the
6 Act requires, is that right?

7 MR. COIT: I don't believe that. I think
8 that --

9 COMMISSIONER SCHOENFELDER: The language
10 doesn't speak for itself?

11 MR. COIT: Well, I think it says a request
12 for interconnection services or network elements. But
13 what I'm saying is that unless --

14 COMMISSIONER SCHOENFELDER: I just read it so
15 I know.

16 MR. COIT: I don't want to argue about it. I
17 just don't believe that -- I think the fact that it's
18 bona fide, they've got to provide some information to
19 give an indication of what they plan to do. Until we
20 know what they plan to do, I think we're at a
21 disadvantage in any process that's initiated to review
22 the interconnect exemption. We don't even know whether
23 it applies.

24 MR. BRADLEY: Mr. Chairman, can I comment
25 just very briefly?

1 CHAIRMAN BURG: Yes, Mike.

2 MR. BRADLEY: Really all we want to do is get
3 through this thing in the way it makes some sense. As
4 I heard Mr. Marmet's comment and read what they filed,
5 they basically said today if we are required to provide
6 DCT obligations, for example, all we want to terminate
7 an agreement, which is outside of the interconnection
8 and the rules exemption. But if we are going to have
9 to meet the service obligations of an ETC, then we may
10 need something else. We don't know what that something
11 else is, but we may not need something more than that.

12 It seems to me that what we need to do first
13 is decide what is going to be the service obligations
14 the Commission is going to impose on Dakota. When
15 Dakota knows that, they can decide what point of
16 interconnection they want from my client. When we know
17 what form of interconnection requirement they want from
18 my client, then we can decide whether or not we need or
19 should apply for the continuation of the rule
20 exemption. What we've done is we've come at it from
21 the back end. You need to come at it from the front
22 end. We can't do that without the 120-day clock
23 ticking.

24 CHAIRMAN BURG: That's my concern is that we
25 the Commission have to determine whether to grant the

1 waiver or not of the rule exemption. And we've already
2 had a month and a half of that time frame gone. If we
3 do not have an adequate knowledge of a bona fide
4 request, how do we as the Commission know whether that
5 waiver should be exempted. I'm concerned about the
6 clock running, not for either one of the companies, but
7 for the decision that we have to make as to whether to
8 grant that waiver or not.

9 MR. MARMET: Mr. Chairman, Robert Marmet.
10 Congress said 120 days. The amount of time required
11 for this hearing is not within the control of Dakota.
12 The interconnection that Dakota has requested is in
13 order to serve consumers in the Centerville and Viborg
14 Exchanges. If Fort Randall wishes to have a continued
15 exemption burden upon them to prove it, I believe the
16 burden should be on them to claim it if they want to.
17 If Mr. Hanson and Mr. Hertz negotiate and discover that
18 there are elements that are needed that Fort Randall
19 believes are burdensome, technically not feasible, or
20 do not comply with the universal service requirements,
21 that's the time when they can claim those exemptions.
22 But today and unless there's a 120-day clock ticking,
23 there will be no negotiations.

24 Look at what took place with U S West and
25 AT&T. Everything was put off until the last minute,

1 until the nine months were almost done. Congress put
2 these deadlines in to give an incentive to companies to
3 come to these negotiating tables and to start
4 negotiating. If we start saying that unless a request
5 for interconnection is so detailed that a company can
6 figure out everything that it might do, then there will
7 never be a bona fide request because there will always
8 be one more item of information that they will be able
9 to claim that only if they had known that, they would
10 have thought something differently.

11 We made a request. We made a request in two
12 specific exchanges. We did not send a form letter to
13 every company in the state. We did not send a letter
14 to Fort Randall saying we want to interconnect in every
15 one of your exchanges. We specifically stated which
16 exchanges we wanted to interconnect in. And we will
17 interconnect in those exchanges under the rules that
18 this Commission sets out. This Commission does have to
19 indicate what rules this game will be played under.
20 And that is a burden to the Commission. We will
21 operate within those rules.

22 But if you say that the bona fide request
23 doesn't occur until all these details which are made up
24 out of old cloth, we will never get any
25 interconnection. The people in Centerville and Viborg

1 will be sitting there without a choice. And no company
2 will come into South Dakota, invest the kind of money
3 that Dakota has invested for competitive facilities,
4 not resale but competitive facilities, if they think
5 that they're going to have to send every request for
6 interconnection setting forth every point that might be
7 necessary, every line site, every trunk site, and every
8 piece of equipment that might be required, there will
9 be no incentive whatsoever for any company to come in
10 South Dakota. And we'll be stuck here with no
11 competition at all.

12 MS. WIEST: Mr. Marmet, without going into
13 any of those details, can you answer just the general
14 question, though? Are you requesting unbundled network
15 elements at this time under 251(c)?

16 MR. MARMET: Only if we have to in order to
17 meet ETC requirements. We intend to build out. We
18 intend to provide facilities services for all customers
19 within those exchanges. Specifically, we cannot build
20 them as fast as we might want to. At this time what we
21 want to do is to find out what the rules are. At this
22 time we wish to begin negotiations with Fort Randall to
23 find out what we can agree on and what we cannot agree
24 on.

25 MS. WIEST: So in order to know whether you

1 need to require unbundled network elements,, you would
2 need from this Commission first a finding as to whether
3 the Commission will impose ETC requirements on you?

4 MR. MARMET: Yes.

5 MS. WIEST: And if the Commission does not
6 impose ETC requirements, would you request it under
7 251(b)?

8 MR. MARMET: Yes.

9 CHAIRMAN BURG: Is that a separate issue?

10 MS. WIEST: I would take this under
11 advisement.

12 CHAIRMAN BURG: Okay. On the second item it
13 is recommended by the counsel that we take this under
14 advisement. Without objection that's what we will do.

15 MS. WIEST: And we hopefully will get back to
16 this hopefully this weekend. I'm not trying to delay
17 this time. I know about the 120 days.

18 MR. HOSECK: The declaratory ruling will be
19 acted on? You don't want to act on that either?

20 MS. WIEST: No, that's what I don't want to
21 act on.

22 CHAIRMAN BURG: The third one shall the
23 Commission approve request for discovery? Should that
24 be determined upon the second issue?

25 MS. WIEST: Yes. I would defer that one

1 also.

2 CHAIRMAN BURG: You would defer a decision on
3 that also. Any comments on the discovery request that
4 we should consider in the deliberations?

5 MR. BRADLEY: Mr. Chairman, Mike Bradley. It
6 may help to treat the attachment that I made to the
7 June 9th letter as a discovery request.

8 CHAIRMAN BURG: Okay. We will take those
9 second two items, the declaratory ruling and the
10 request for discovery, under advisement and try to get
11 back within the week.

12 (THE HEARING CONCLUDED AT THIS TIME.)
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1 STATE OF SOUTH DAKOTA)
2 COUNTY OF HUGHES)
3

4 I, Lori J. Grode, RMR, Notary Public, in and
5 for the State of South Dakota, do hereby certify that
6 the above hearing, pages 1 through 30, inclusive, was
7 mechanically recorded and later reduced to
8 typewriting.

9 I FURTHER CERTIFY that the foregoing
10 transcript of the said hearing is a true and correct
11 transcript to the best of my ability of the
12 tape-recording at the time and place specified
13 hereinbefore.

14 I FURTHER CERTIFY that I am not a relative or
15 employee or attorney or counsel of any of the parties,
16 nor a relative or employee of such attorney or counsel,
17 or financially interested directly or indirectly in
18 this action.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand and seal of office at Pierre, South Dakota, this
21 13th day of August, 1997.

22
23 
24 _____
25 Lori J. Grode, RMR

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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

AUG 13 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE FILING BY
DAKOTA TELECOM, INCORPORATED;
DAKOTA TELECOM SYSTEMS, INCORPORATED;
AND DAKOTA COOPERATIVE
TELECOMMUNICATIONS, INCORPORATED,
FOR INTERCONNECTION WITH
PORT RANDALL TELEPHONE COMPANY

TC97-062

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION
AD HOC MEETING

PROCEEDINGS: July 18, 1997
 Capitol Building
 Pierre, South Dakota

PUC COMMISSION: Jim Burg, Chairman
 Laska Schoenfelder, Commissioner
 Pam Nelson, Commissioner

COMMISSION STAFF
PRESENT: Rolayne Ailts Wiest

Reported by: Lori J. Grode, RMR

A P P E A R A N C E S

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For DTG:

Robert G. Marmet

P.O. Box 269

Centerville, SD 57014

For Ft. Randall:

Rick Johnson

4800 Norwest Center

Minneapolis, MN 55402-4119

For SDITC:

Richard D. Coit

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Pierre, SD 57501

P R O C E E D I N G S

CHAIRMAN BURG: Call to role on the phone.
Rick Johnson?

MR. JOHNSON: Yes.

CHAIRMAN BURG: Bruce Hanson? Tom Hertz?

MR. MARMET: He can't be with us this
morning.

CHAIRMAN BURG: Bob Marmet.

MR. MARMET: I am here.

CHAIRMAN BURG: Mary Lohnes?

MS. LOHNES: Present.

CHAIRMAN BURG: Is there anyone else? And
present in the room we have Rich Coit.

The single -- this is an ad hoc meeting. And
the single question before us today is in TC97-062, In
the Matter of the Filing by Dakota Telecom,
Incorporated; Dakota Telecom Systems, Incorporated; and
Dakota Cooperative Telecommunications, Incorporated,
for Interconnection with Fort Randall Telephone
Company.

The question being today shall the Commission
approve the request for declaratory ruling and shall
the Commission approve the request for discovery. Is
there a motion?

COMMISSIONER NELSON: Mr. Chairman, I have a

1 motion. I move the Commission find that Dakota's June
2 1, 1997, request for interconnection from Fort Randall
3 is not a bona fide request as required under Section
4 251(f)(1)(a). I believe that the minimum requirement
5 for a bona fide request is for the request to state
6 under the sub parts of the Sections 251(b) and/or
7 251(c) request that the request is being made.

8 Dakota stated at its Tuesday hearing that it
9 did not know if it was requesting interconnection
10 pursuant to 251(b) or 251(c) because it's first needed
11 to know if the Commission would require it to meet the
12 ETC requirements. Since Dakota does not know if it is
13 requesting an interconnection pursuant to 251(c), then
14 Fort Randall is obviously unable to show the Commission
15 that it should be allowed to keep its exemption from
16 251(c) requirements.

17 In order to keep the 251(c) exemptions, the
18 FCC has placed the burden on Fort Randall to prove the
19 Dakota's request unduly economically burdensome or
20 technically infeasible. This is, of course, impossible
21 if neither party yet knows if 251(c) is even a factor
22 in the request.

23 I further move that in this order that to
24 enable Dakota to determine whether it needs to request
25 interconnection pursuant to 251(b) or 251(c), that the

1 Commission determine on an expedited basis whether to
2 require Dakota to meet ETC requirements for the area it
3 is seeking to provide service to.

4 CHAIRMAN BURG: I'm going to second the
5 motion. I think that we have to make the ETC
6 determination in order to clarify for Dakota under what
7 section they do need to apply, and then we need -- then
8 Dakota needs to determine which section they want to
9 apply under, which, in turn, as is stated in the
10 motion, allows Fort Randall to determine whether they
11 will have economic hardships or infeasibility in order
12 to do it.

13 I think since this is the first one, we are
14 still feeling our way through it to just exactly how
15 this works. But given the 120-day limitation, I think
16 that 120 days has to start after we have the ETC
17 determination. And so I second the motion.

18 COMMISSIONER SCHOENFELDER: I'm going to
19 dissent. And I'm going to dissent because I think that
20 Dakota's request was a bona fide request. I think the
21 Commission is throwing up barriers that are
22 unnecessary, and it's in violation of the intent of the
23 Act where the Commission is going now.

24 The 120 days started when the request -- that
25 the bona fide request was. Now that Fort Randall has

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1 plenty of time to decide whether there's an ETC
2 designation or whether there's undo hardship to Fort
3 Randall. And I think that after -- with the two
4 companies could negotiate and meet and decide which
5 part of the Act they're going to come under and then
6 bring that to the Commission, it would expedite. And
7 then I think it would be much smoother and the consumer
8 would be much better served if and when we stop
9 throwing road blocks in the way of what the Act
10 intended us to do.

11 CHAIRMAN BURG: Okay. On a two to one vote,
12 it has been determined in TC97-062 that it does not
13 constitute a bona fide request. The second part of the
14 question becomes moot, the discovery question, given
15 this decision.

16 I would like to take up one other item on
17 this before we get done. It is there any objection or
18 any comment on the Commission opening hearing to
19 determine ETC for Dakota other than this docket? Does
20 anybody have any opinions or comments under that?
21 Because we want to do it on an expedited basis.

22 I guess I'll start with you Bob Marmet. Do
23 you have any comments on whether you feel it should be
24 done in this docket or some other way?

25 MR. MARMET: I'm ready any time you are.

1 I'll be there Monday if you want me to. .

2 CHAIRMAN BURG: It won't be Monday.

3 MR. MARMET: I'll be there Tuesday if you
4 like.

5 CHAIRMAN BURG: Rick Johnson, do you have any
6 comments as far as Fort Randall on whether we could do
7 under this docket or otherwise?

8 MR. JOHNSON: No, Chairman Burg. I think so
9 long as you keep the issue up squarely, whether you do
10 it in this docket or another, it really doesn't matter
11 much.

12 CHAIRMAN BURG: Rich, you guys intervened so
13 do you have any comments?

14 MR. COIT: I have no comment.

15 CHAIRMAN BURG: So we can set a procedural
16 schedule? I mean I would direct the executive director
17 to establish a procedural schedule under this docket
18 for determination of ETC status for Dakota, and then we
19 will proceed from there.

20 Is there anything else to come before the
21 Commission?

22 MR. MARMET: Mr. Chairman, could you clarify
23 whether what is being done is being determined whether
24 Dakota needs to meet the requirements of an eligible
25 telecommunications carrier as is set forth in the Act,

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117
102
1 or whether we would be designated an eligible carrier?

2 MS. WIEST: You have to meet the
3 requirements.

4 MR. MARMET: Are we going to be talking about
5 exchanges, or are we going to be talking about the
6 entire rules of operation?

7 MS. WIEST: That, I believe, is how Dakota
8 was to present its case.

9 MR. MARMET: At least to the exchanges, that
10 would be how we present our case.

11 MS. WIEST: Right. I'm just saying that the
12 Act itself mentions the service area of the company
13 that you want to serve in. And so I guess it's up to
14 both parties to argue that issue.

15 MR. MARMET: Okay.

16 CHAIRMAN BURG: That's what I think we'll
17 need to be determining in the hearing.

18 MR. MARMET: Can you give me some kind of
19 idea of what kind of expedited schedule we're talking
20 about? I mean in a month?

21 CHAIRMAN BURG: We really don't. We've got a
22 lot of things on the calendar, and we'll have to just
23 find a time when we can get it in. We will do it as
24 soon as we can though.

25 MR. MARMET: We do understand, but we have

1 customers who want to get signed up for our service.
2 We have the fiber in the ground. And we're ready to
3 hook this stuff up, so the quicker the better as far as
4 we're concerned.

5 MS. WIEST: Bill Bullard, our director, said
6 he will set up a procedural schedule this afternoon.

7 MR. MARMET: That's terrific.

8 MR. JOHNSON: Chairman Burg, Fort Randall has
9 a question regarding discovery as to whether or not
10 your schedule will make an appropriation for the party
11 to do discovery back and forth.

12 CHAIRMAN BURG: On ETC?

13 MR. JOHNSON: Yes.

14 MR. MARMET: This is a question of law, it's
15 not a question of fact. I don't see any purpose for
16 discovery.

17 MS. WIEST: Well, as with all the procedural
18 schedules, we usually don't set up any type of
19 discovery request. The parties can make discovery
20 requests if they want, but it's up to the Commission
21 whether to grant them.

22 MR. JOHNSON: Thank you.

23 CHAIRMAN BURG: Anything else? If not, thank
24 you very much.

25 (THE HEARING CONCLUDED AT THIS TIME.)

1 STATE OF SOUTH DAKOTA)

2)

3 COUNTY OF HUGHES)

4 I, Lori J. Grode, RMR, Notary Public, in and
5 for the State of South Dakota, do hereby certify that
6 the above hearing, pages 1 through 9, inclusive, was
7 tape-recorded and reduced to typewriting.

8 I FURTHER CERTIFY that the foregoing
9 transcript of the said hearing is a true and correct
10 transcript to the best of my ability of the
11 tape-recording at the time and place specified
12 hereinbefore.

13 I FURTHER CERTIFY that I am not a relative or
14 employee or attorney or counsel of any of the parties,
15 nor a relative or employee of such attorney or counsel,
16 or financially interested directly or indirectly in
17 this action.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and seal of office at Pierre, South Dakota, this
20 11th day of August, 1997.

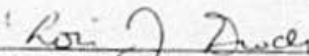
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Lori J. Grode, RMR

8143-17-105

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY DAKOTA)	ORDER SUSPENDING
TELECOM, INC., DAKOTA)	ORDER FOR AND NOTICE
TELECOMMUNICATIONS SYSTEMS, INC.,)	OF HEARING AND
AND DAKOTA COOPERATIVE)	PROCEDURAL SCHEDULE
TELECOMMUNICATIONS, INC., FOR)	
INTERCONNECTION WITH FORT RANDALL)	TC97-062
TELEPHONE COMPANY)	

On June 3, 1997, Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc. (collectively Dakota) filed a Notice of Request for Interconnection with Fort Randall Telephone Company (Fort Randall) with the South Dakota Public Utilities Commission (Commission).

At its July 15, 1997, regularly scheduled meeting, the Commission granted intervention to SDITC. At a July 18, 1997, ad hoc meeting, the Commission found Dakota's request was not a bona fide request as required by 47 U.S.C. Section 251(f)(1). The Commission further found that it would hold a hearing on whether Dakota shall be required to meet Eligible Telecommunications Carrier (ETC) requirements before being allowed to provide service in exchanges owned by Fort Randall. On July 31, 1997, the Commission issued an Order For and Notice of Hearing and Procedural Schedule setting deadlines for submission of prefiled testimony and further setting a hearing on this matter for August 26, 1997.

On August 4, 1997, Dakota filed an appeal of this matter to the Circuit Court, Sixth Judicial Circuit and sought a stay in these proceedings. On August 8, 1997, Fort Randall and intervenor SDITC filed for removal of the appeal to United States District Court, District of South Dakota. Dakota has requested that the Commission suspend these proceedings in light of these appeals. It is therefore

ORDERED that the procedural schedule for the hearing in this matter which was scheduled for August 26, 1997, in Sioux Falls, South Dakota, shall be suspended until further notice.

Dated at Pierre, South Dakota, this 14th day of August, 1997.

<p align="center">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By <u>Nelson Kalbs</u></p> <p>Date <u>8/14/97</u></p> <p align="center">(OFFICIAL SEAL)</p>
--

BY ORDER OF THE COMMISSION:
Commissioners Burg, Nelson and
Schoenfelder

William J. Bullard, Jr.
WILLIAM BULLARD, JR.
Executive Director



DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND IA WATS 800-239-7501

TC97-062

RECEIVED

AUG 15 1997

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

August 12, 1997

William Bullard
Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501-5070

Re: Second notice of requests for interconnection between Fort Randall
Telephone Company and Dakota Telecom, Inc. and Dakota
Telecommunications Systems, Inc.

Dear Mr. Bullard:

Pursuant to 47 USC §251(f) the South Dakota Public Utilities Commission is hereby notified that Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc. ("Dakota") have again, in good faith, requested interconnection, services and network elements from Fort Randall Telephone Company ("Fort Randall"). Enclosed are copies of letters sent by Dakota to Bruce Hanson, who has been designated as the interconnection contact person for Fort Randall, and a copy of a recent letter to Dakota from Mike Bradley, an attorney for Fort Randall.

Dakota is requesting interconnection, services and network elements for the purpose of serving customers in the Centerville and Viborg exchanges now served by Fort Randall. Dakota's new facilities in these exchanges will soon be complete and capable of providing advanced telecommunications services to Centerville and Viborg customers on a competitive basis. Interconnection with Fort Randall facilities is necessary to enable Dakota's new customers in Centerville and Viborg to connect with Fort Randall's customers in the same area.

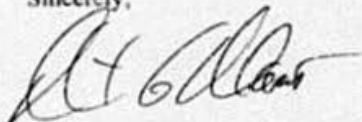
As the enclosed reply correspondence from Mr. Bradley makes clear, Fort Randall is claiming exemption from the obligation to negotiate in good faith regarding interconnection.

William Bullard
South Dakota Public Utilities Commission
August 12, 1997

page 2

Dakota hereby requests the South Dakota Public Utilities Commission to conduct the inquiry required by 47 USC §251(f)(1)(B) to determine whether the exemption of Fort Randall should be terminated.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. G. Marmet", with a long horizontal flourish extending to the right.

Robert G. Marmet

Enclosures.



DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
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MN AND IA WATS 800-239-7501

July 28, 1997

Bruce Hanson, Treasurer
Fort Randall Telephone Company
227 S. Main Street
Clara City, MN 56222-0800

Dear Mr. Hanson:

As part of the continuing negotiations initiated with my letter dated 1 June, 1997, I am enclosing as "Attachment 1", a list of elements which, at this time, represent the best reasonable estimate by Dakota Telecom, Inc. ("DTI") and Dakota Telecommunications Systems, Inc. ("DTS"), of the scope of their request for interconnection to be negotiated or arbitrated between DTI/DTS and Fort Randall Telephone Company.

The attached list is intended as a point of beginning for the negotiations. As we have discussed earlier, the primary focus of DTI/DTS is to provide service to the Centerville, South Dakota and Viborg, South Dakota exchanges. DTI/DTS intend to serve all customers within these exchanges with all services supported by Universal Service Fund. However, in order to prepare for eventualities beyond our control, DTI/DTS wish to enter into negotiations which may cover interconnection throughout Fort Randall Telephone Company's entire service area.

We look forward to negotiating and finalizing interconnection agreements between DTI/DTS and Fort Randall. If you have any questions, or need further information, please contact me at (605) 263-3301.

Sincerely,
Dakota Telecom, Inc.
Dakota Telecommunications Systems, Inc.

By: 
Robert G. Marmet

Enclosure

ATTACHMENT 1

A. Points of interconnection:

- (1) Yes ☒ No ☐ line-side interconnections
(2) Yes ☒ No ☐ trunk-side interconnections
(3) Yes ☒ No ☐ tandem trunk interconnections
(4) Yes ☒ No ☐ central office cross-connects
(5) Yes ☒ No ☐ out-of-band signaling transfer points, including call-related databases
(6) Yes ☒ No ☐ points of access to unbundled network elements
(7) Yes ☒ No ☐ interconnection facilities with specifications different from the incumbent LEC's facilities
(8) Yes ☒ No ☐ two-way trunks

B. Unbundled elements:

- (1) Yes ☒ No ☐ local loops, including sub-loop unbundling
(2) Yes ☒ No ☐ network interface devices
(3) Yes ☒ No ☐ local or tandem switching
(4) Yes ☒ No ☐ interoffice transmission facilities
(5) Yes ☒ No ☐ signaling networks and call-related databases, including service management systems
(6) Yes ☒ No ☐ operations support systems
(7) Yes ☒ No ☐ operator services and directory assistance

C. Collocation:

- (1) Yes ☒ No ☐ physical, including
a. Yes ☒ No ☐ transmission equipment
b. Yes ☒ No ☐ equipment used to terminate transmission equipment
(2) Yes ☒ No ☐ virtual
(3) Yes ☒ No ☐ meet point

D. Wholesale services:

- (1) Yes ☒ No ☐ residential
(2) Yes ☒ No ☐ business
(3) Yes ☒ No ☐ unbranded or rebranded call completion
(4) Yes ☒ No ☐ unbranded or rebranded operator
(5) Yes ☒ No ☐ unbranded or rebranded directory assistance

E. Number portability:

- (1) Yes ☒ No ☐



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P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND IA WATS 800-239-7501

August 12, 1997

Bruce Hanson, Treasurer
Fort Randall Telephone Company
227 S. Main Street
Clara City, MN 56222-0800

Dear Mr. Hanson:

By this letter Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc., (collectively "Dakota") seek to continue the negotiations begun by letter dated 1 June, 1997 from Robert G. Marmet, on behalf of Dakota, to Wesley Hanson, on behalf of Fort Randall Telephone Company ("Fort Randall"). As you are aware, by letter dated June 9, 1997, attorney Michael J. Bradley, on behalf of Fort Randall, named you as the individual with authority to bind Fort Randall in negotiations concerning the request by Dakota.

Now, in furtherance of the negotiations commenced on 1 June, 1997, or independently, as an initial request for interconnection, Dakota hereby makes the following requests:

1. Dakota requests that Fort Randall immediately commence negotiations to fulfill its duty pursuant to 47 U.S.C. § 251(a) in order to permit the interconnection, directly or indirectly, between the facilities and equipment of Dakota and Fort Randall.
2. Dakota requests that, pursuant to 47 U.S.C. § 251(b)(1), Fort Randall commence negotiations regarding resale of services in the Centerville and Viborg exchanges.
3. As a part of these negotiations, Dakota requests that Fort Randall determine whether it is technically feasible, using the equipment presently in use in the Centerville and Viborg exchanges, to permit Fort Randall to provide Dakota with number portability.
4. Pursuant to 47 U.S.C. § 251(b)(3) & (4), Dakota requests that Fort Randall include as a part of these negotiations the issues of dialing parity and access to its rights of way in the Centerville and Viborg exchanges.
5. Dakota specifically requests that Fort Randall commence negotiations pursuant to 47 U.S.C. § 251(b)(5) on the subject of reciprocal compensation arrangements for exchange of traffic between Fort Randall's Viborg and Centerville exchanges and Dakota's Centerville and Viborg exchanges.
6. Dakota specifically requests that Fort Randall commence negotiations in good faith pursuant to 47 U.S.C. § 251(c)(1) on items (2) through (5), above. Dakota hereby warrants that it will conduct its negotiations in good faith as well.
7. Pursuant to 47 U.S.C. § 251(c)(2) Dakota requests that Fort Randall provide facilities and equipment for transmission and routing of telephone exchange service and exchange access at any technically feasible point in the Fort Randall's Centerville and

Viborg exchanges, with quality at least equal to that which Fort Randall is providing itself, and upon terms and conditions and at rates which are just and reasonable and not discriminatory. To facilitate these negotiations, Dakota requests that Fort Randall provide to Dakota, in a format which is customarily used in the industry, a diagram of the Centerville and Viborg exchanges which will allow Dakota's engineers to ascertain where Dakota will be requesting points of interconnection. Dakota also requests that Fort Randall provide quotes for transmission and routing services.

8. Pursuant to 47 U.S.C. § 251(c)(3) Dakota requests that Fort Randall provide unbundled access at any technically feasible point in the Fort Randall's Centerville and Viborg exchanges, upon terms and conditions and at rates which are just and reasonable and not discriminatory. To facilitate these negotiations, Dakota requests that Fort Randall provide Dakota with a list of all network elements which Fort Randall is capable of unbundling. Dakota also requests that Fort Randall provide quotes for prices of each network element.
9. Pursuant to 47 U.S.C. § 251(c)(4) Dakota requests that Fort Randall offer to it for resale at wholesale rates any telecommunications service which Fort Randall provides at retail to any subscribers who are not telecommunications carriers. Dakota further requests that Fort Randall provide to Dakota a list such services and the wholesale prices for these services.
10. Pursuant to 47 U.S.C. § 251(c)(5) Dakota requests that Fort Randall make a part of its interconnection agreements with Dakota recognition of the duty which Fort Randall has under the Telecommunications Act of 1996 to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using Fort Randall's facilities or networks, as well as any other changes that would affect the interoperability of those facilities and networks.
11. Pursuant to 47 U.S.C. § 251(c)(6) Dakota requests collocation so that the facilities which Dakota has in the Centerville and Viborg exchanges can be interconnected with Fort Randall's facilities in those exchanges. Please provide Dakota with floor plans and descriptions of equipment in use in those exchanges so that Dakota may determine whether physical or virtual collocation is necessary for interconnection. Please provide pricing as well as terms and conditions.

Anticipating a prompt resolution of all unresolved issues, I look forward to continuing these negotiations with your company.

Sincerely,
Dakota Telecom, Inc.
Dakota Telecommunications Systems, Inc.

By: T.W. Hertz
Thomas W. Hertz
CEO and President

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MOSS & BARNETT

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4800 NORWEST CENTER
90 SOUTH SEVENTH STREET
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WYATT A. HENNING

August 4, 1997

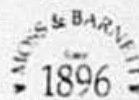
Robert G. Marmet
Dakota Telecom, Inc.
P O Box 127
Irene, SD 57037

Re: Request For Interconnection

Dear Robert:

Fort Randall Telephone Company ("Fort Randall") has received your letter of July 28, 1997, in which Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc. ("DTI/DTS") indicated that, depending on the conditions imposed on DTI/DTS by the South Dakota Public Utilities Commission ("SDPUC"), they may want the full menu of possible interconnection services under the Telecommunications Act. The letter further states that the communications are "part of the continuing negotiations initiated with [the] June 1, 1997" letter. As you are aware, Fort Randall is not required to negotiate with DTI/DTS unless the SDPUC waives Fort Randall's Rural Exemption. Furthermore, negotiations cannot commence until DTI/DTS explain which services they actually want. Therefore, these communications are not part of the negotiation process. Rather, they are part of the process of determining how competitive services should be offered.

DTI/DTS have indicated that they would prefer to only offer services in the Centerville and Viborg exchanges, and that they intend to offer services to all customers located in those exchanges. However, without additional details concerning how DTI/DTS intend to accomplish their goals, Fort Randall cannot determine whether it should assert the Rural Exemption. That is particularly the case when all of the answers on Attachment I to the June 28th letter were "yes". It is, for example, extremely doubtful that DTI/DTS actually want physical collocation, virtual collocation and meet point interconnection in the



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A PROFESSIONAL ASSOCIATION

Robert G. Marnet
August 4, 1997
Page 2

Centerville and Viborg exchanges. Therefore, Fort Randall asks that DTI/DTS (and any relevant affiliate) answer the following questions so that progress toward the goal of actually providing competitive services may occur.

In answering these questions, please assume the SDPUC agrees to the following conditions:

- 1) Competitive service would be limited to the Centerville and Viborg exchanges.
- 2) DTI/DTS would be required to offer their services to all customers, and the out-of-town rates must be set at a level that demonstrates that the offer is legitimate. The ability to offer services to all customers must be met within twelve months of initially offering service within the exchanges (the fact that DTI/DTS may be serving one or more customers at this time is not viewed by Fort Randall to be competitive local service within the meaning of this question).
- 3) DTI/DTS would be required to offer local access (including local usage), dual tone multi-frequency signaling or its equivalent, access to long distance service, access to local operator services, access to 911 services, and access to directory assistance.
- 4) DTI/DTS would be required to offer the same local calling scope, including EAS, as Fort Randall currently offers.
- 5) DTI/DTS would not qualify for universal service fund support.

Based on the above assumptions please answer the following questions:

I. Points of Interconnection.

For each point of interconnection answered "yes" in your June 28, 1997 letter:

A) List those which would still be answered "yes" under the above assumptions. In answering this question and other questions below, it is important that DTI/DTS take into consideration that the Centerville and Viborg exchanges are served by remotes. Those remotes do not have direct trunking abilities. The Centerville and Viborg remotes currently home on a US WEST Host switch. By the end of this year, Fort Randall intends to serve those exchanges using a Lucent switch located in its Wagner central office. It is the Wagner switch which will have the capability of providing terminating services to DTI/DTS.

MOSS & BARNETT
A PROFESSIONAL ASSOCIATION

Robert G. Marnet
August 4, 1997
Page 3

- B) For each interface determined still applicable under subpart (A), state:
- 1) The interface and protocol standards to be used.
 - 2) The anticipated quantities.
 - 3) The time frames for providing the services.
 - 4) Will interconnection occur in Wagner? If not: a) where would interconnection occur; and b) who does DTI/DTS anticipate would provide the facilities needed to transport the traffic: i) between the point of interconnection and Wagner; and ii) between Wagner and Centerville/Viborg?
- C) If two-way trunks are desired, provide the locations, time frames and quantities desired.

II. Unbundled elements.

For each of the unbundled elements answered "yes" in your June 28, 1997 letter:

- A) List those which would still be answered "yes" under the above assumptions.
- B) With respect to unbundling loops:
- 1) Do DTI/DTS intend to order unbundled loops?
 - 2) Do DTI/DTS intend to order unbundled network interface devices ("NIDs") without also ordering the unbundled loops connected to the NIDs?
 - 3) Do DTI/DTS intend to request subloop unbundling? If the answer to this subpart is "yes", please describe the specific segments of the loops being requested.

0143-17-115

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Robert G. Marmet

August 4, 1997

Page 4

- C) For each unbundled element determined still applicable under subparts (A) and (B), state:

- 1) The anticipated quantities.
- 2) The time frames for providing the services.

III. Collocation.

For each of the collocation options answered "yes" in your June 28, 1997 letter:

- A) List those which would still be answered "yes" under the above assumptions (including the fact that the serving switch is in Wagner).
- B) If meet point interconnection is requested, indicate the meet point.
- C) If physical interconnection is requested, indicate the specific space, electrical and other facilities being requested.
- D) If virtual collocation is being requested, describe the interconnection facilities being requested and the location of the meet point with DTI/DTS' facilities.
- E) With respect to the transmission equipment, state the optical terminating equipment and multiplexers being requested.
- F) State whether the interconnection with DTI/DTS' facilities would be over copper, fiber, or coaxial cable.
- G) State the quantities of the facilities to be interconnected.
- H) State the time frame for the interconnection.

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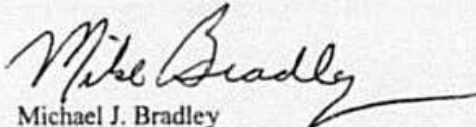
Robert G. Marmet
August 4, 1997
Page 5

IV. Wholesale Services.

For each of the wholesale service options answered "yes" in your June 28, 1997 letter, list those which would still be answered "yes" under the above assumptions.

Very truly yours,

MOSS & BARNETT
A Professional Association


Michael J. Bradley

MJB/mjb
123844/2NK4011.DOC

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September 8, 1997

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PATRICK F. FLAHERTY
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William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

RECEIVED

SEP 09 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

FAX Received SEP 08 1997

Re: Request By Dakota For A Waiver Of The Rural Exemption
Docket No. TC-97-062

Dear Mr. Bullard:

On August 15, 1997, Dakota Telcom, Inc. and Dakota Telecommunications Systems, Inc. ("Dakota") filed a letter with the South Dakota Public Utilities Commission ("Commission") asserting that an August 12, 1997 letter sent to Fort Randall Telephone Company satisfied the requirements of a bona fide request under 47 U.S.C. § 251(f)(1). If the letter constitutes a bona fide request, Fort Randall must determine whether it will assert its right to an exemption from the provisions of 47 U.S.C. § 251(c), and the Commission must determine whether to waive Fort Randall's exemption. Section 251(f)(1) provides 120 days to complete the process. Fort Randall strongly believes that the August 12 letter was not a bona fide request. It does nothing more than assert that Dakota is requesting every possible form of unbundled service possible. Dakota cannot possibly need the range of services it has demanded, and this form of gamesmanship is not helpful to any of the parties. Nonetheless, based on discussions with Dakota, there is reason to believe that Dakota is seeking some unbundled services and does require interconnection. Therefore, Fort Randall stipulates to the start of the 120 day period.¹

Fort Randall is proceeding with all due speed to determine what interconnection services it is capable of providing, what network changes would be required to make other services

¹ Dakota did not serve the August 15, 1997 notice on Fort Randall or SDITC until September 4, 1997. The 120 day period for determining the waiver should run from that date rather than August 15. This would have the effect of giving the Commission until January 2, 1998 to resolve this issue (as contrasted to December 13, 1997).

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A PROFESSIONAL ASSOCIATION

William Bullard
September 5, 1997
Page 2

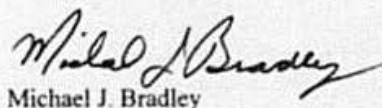
possible, and the host of other related issues that Dakota's request raises. This process is made more difficult by the fact that it is the first such request anyone the size of Fort Randall has had to face. Some of the issues that need to be addressed include: 1) the fact that the Centerville and Viborg exchanges are remote switches; 2) the current host switch is owned and operated by US WEST Communications, Inc.; 3) the inability to offer mechanized support systems; 4) the importance of maintaining security over the switch operations for switches that are usually unmanned; 5) the problems associated with billing systems that were not designed to differentiate between carriers using unbundled switching services; and 6) how to determine the cost for each of the various services.

Fort Randall has already held meetings with its accountants, engineers, and billing service providers, and has had informal discussions with US WEST Communications. It is doubtful that Fort Randall will be able to identify all of the problems until early November. Further, before bringing these problems to the Commission, one or more meetings with Dakota should occur to determine whether Dakota accepts whatever limitations have been identified. If issues remain unresolved, Fort Randall would need to prepare a filing with the Commission, including possible testimony, outlining the reasons for retaining the rural exemption with respect to those matters.

Therefore, Fort Randall respectfully requests that the Commission develop a schedule that allows Fort Randall to file its objection to the waiver of its rural exemption no earlier than November 14, 1997.

Very truly yours,

MOSS & BARNETT
A Professional Association


Michael J. Bradley

cc: Rolayne Wiest, Rich Coit, Bruce Hanson, Robert Marmet
MJB/mjb
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Certificate of Service

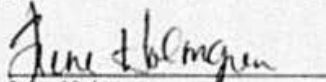
I hereby certify that an original and eleven copies of the above and foregoing Response to Request by Dakota for a Waiver of the Rural Exemption on behalf of Fort Randall Telephone Company were sent via facsimile and Federal Express on the 8th day of September, 1997, to the following:

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

and a true and correct copy was sent by facsimile to the following:

Rolayne Wiest
South Dakota Public Utilities Commission
Capitol Building
500 East Capitol
Pierre, South Dakota 57501

and a true and correct copy by facsimile and/or Federal Express or Overnight Mail, postage prepaid, to the persons on the attached list.


June Holmgren

0143
17
129

Robert G. Marmet
P O Box 269
Centerville, SD 57014

Richard D. Coit
Executive Director
SDITC
St. Charles Hotel
207 E Capitol, Suite 206
Pierre, SD 57501

Bruce C. Hanson
Hanson Communications, Inc.
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Clara City, MN 56222-0800



Dakota Telecommunications Group
29705 453rd Ave.
Irene, South Dakota 57045-0066
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RECEIVED

SEP 10 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

September 8, 1997

William Bullard, Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, South Dakota

FAX Received SEP 08 1997

Re: Interconnection with Ft. Randall Telco
TC 97-062

Dear Mr. Bullard:

Mr. Bradley's letter of September 8, 1997 adds another tiresome and predictable verse to Ft. Randall's continuing lament about the horrors of competition in rural areas. Dakota has clearly stated its intentions to become a facilities-based provider of competitive local exchange services (and backed them up with its actions to construct the system) since well before Ft. Randall purchased the Viborg and Centerville exchanges from U S West. Ft. Randall seems intent on throwing up as many regulatory and legal road blocks as it can find to prevent the customers in Viborg and Centerville from having the benefits of a competitive environment. Ft. Randall also seems convinced that without interconnection there can be no competition. They are wrong.

Dakota does not need any of Ft. Randall's facilities to provide local exchange services in the Viborg and Centerville exchanges. Dakota's only requirement for interconnection is essentially identical to an EAS (Extended Area Service) agreement between local exchange carriers for the exchange of local traffic. Ft. Randall and Dakota already have physical interconnection for the exchange of existing traffic via EAS circuits. It would be a technically simple matter to formally add what is needed here. Dakota is willing to enter exactly the same kind of physical interconnection agreement it now has with U S West (and approved by the SDPUC) for reciprocal, symmetrical exchange of EAS-type traffic. Unfortunately, Ft. Randall obfuscates this very simple situation with reams of peripheral, non-relevant argument.

Dakota formally asked for interconnection by its letter of June 1, 1997, using the same format as was successfully used to commence interconnection negotiations with U S West earlier this year, and which the FCC declined to expand for rural companies (Sec. 1257-1263, *In the Matter of Implementation of Local Competition Provision in the Telecommunications Act of 1996*, CC Docket No. 96-98). Ft. Randall managed to convince the South Dakota Commission that the request was not bona fide, however, and therefore should not be processed at that time, pending a more exact determination of what Ft. Randall thought was relevant. A second request was sent July 28, 1997. Dakota submitted a third request on August 12, 1997 stating that if the Commission required Dakota to serve in all Ft. Randall exchanges in South Dakota, then it need full interconnection capabilities in those areas where facilities were not being built. Ft. Randall's

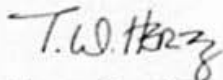
September 8, 1997

current letter (September 8) expresses surprise and consternation at Dakota's request, and now pleads for an extended schedule to even consider the request.

This is not rocket science. Dakota is building facilities in Viborg and Centerville, and needs only to formalize existing EAS-type interconnection arrangements. Ft. Randall, which had only one isolated exchange in the Black Hills of South Dakota prior to its purchase of additional telephone exchanges from US West, now seeks to seduce the Commission into believing that its entire South Dakota service area is sacrosanct, and that Dakota cannot serve any of it without serving all of it, contiguous or not. The FCC has directly addressed this issue, and said that an approach like Ft. Randall seeks to take here is not appropriate (Sec. 190, *In the Matter of the Federal-State Joint Board in Universal Service*, CC Docket No. 97-157). Letting Ft. Randall hide behind its flawed interpretation of the rules to protect its monopoly position is not only inconsistent with the spirit of competition and letter of the law, it is bad, very bad for consumers.

The Commission made its pro-competitive stance clear when it ruled that South Dakota law prohibiting competitive facilities cannot stand under the weight of the 1996 Telecom Act in Docket TC 96-127. Dakota began construction of its facilities in the Viborg and Centerville exchanges prior to the time that US West sold them to Ft. Randall. Dakota finds it inconceivable that the Commission would now succumb to disingenuous arguments and procrastination by an assignee of US West, especially one which knew exactly what it was getting when it bought the exchanges (and conditioned its agreement with US West accordingly).

Sincerely,



Thomas Hertz, CEO

cc: Mike Bradley, Rich Coit

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WRITER'S FAX/AL ADDRESS
BradleyM@mooss-barnett.com

September 24, 1997

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TC 97-062
RECEIVED
SEP 26 1997
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Thomas Hertz
Chief Executive Officer
Dakota Telecommunications Group
29705 453rd Ave
Irene, South Dakota 57045-0066

Re: Form Of Interconnection; Authority To Offer Service In Centerville and Viborg;
and Universal Service Funding

Dear Mr. Hertz:

The purpose of this letter is to respond to your letter of September 8, 1997 and to accept the form of interconnection proposed in that letter. Based on the position set forth in that letter, Fort Randall believes that a stipulated resolution of both the interconnection and certification issues with respect to Dakota's provision of competitive local service in Centerville and Viborg can be achieved and submitted to the South Dakota Public Utilities Commission ("Commission").

I. Interconnection Through Meet Point Facilities And Reciprocal Compensation As Proposed In Your August 8 Letter Would Be Acceptable To Fort Randall.

Your letter of August 8 includes Dakota's first response to Fort Randall's repeated requests to specify the type of interconnection that Dakota actually needs. In that letter, Dakota indicates that it only wants an "EAS" type interconnection. In contrast, Dakota's June 28, 1997 and August 12, 1997 letters to Fort Randall both requested virtually every possible form of interconnection and service. Because many services and interconnections could be extremely difficult and/or costly for Fort Randall to provide, we have been engaged in the difficult task of determining which of those services would be technically feasible, not economically unreasonable, and consistent with universal service. That process has not been completed



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Page 2

because of the wide array of complex problems uncovered. However, in Dakota's September 8 letter to the Commission, you stated:

Dakota does not need any of Fort Randall's facilities to provide local exchange services in the Viborg and Centerville exchanges. Dakota's only requirement for interconnection is essentially identical to an EAS (Extended Area Service) agreement between local exchange carriers for the exchange of local traffic. . . . Dakota is willing to enter exactly the same kind of physical interconnection agreement it now has with US West (and approved by the SDPUC) for reciprocal, symmetrical exchange of EAS-type traffic.

We are proceeding on the belief that this statement accurately reflects Dakota's position, since you have been designated by Dakota as "the individual with authority to make binding representations on behalf of Dakota." (See Dakota's June 1, 1997 letter to Wes Hanson.) Fort Randall is willing and able to provide that type of interconnection.

More specifically, Fort Randall can provide: 1) meet-point facilities half way between Fort Randall's Centerville and Viborg switches and Dakota's switch; 2) reciprocal compensation for local traffic, and 3) number portability using remote call forwarding or direct inward dialing. Dakota would necessarily need to provide facilities between its switch and the meet points and provide an NXX specific to Centerville and a separate NXX specific to Viborg.

Fort Randall is in the process of reviewing the US WEST/Dakota interconnection agreement referenced by Dakota, along with other interconnection agreements, and will develop an interconnection agreement and a reciprocal terminating rate to make a specific proposal to Dakota.

II. Fort Randall's Position Is Subject To The Establishment Of Service Requirements That Will Prevent Discrimination Between Customers.

At this time, Dakota's Certificate of Authority does not permit it to offer service in exchanges operated by a rural telephone company. At Dakota's request, the proceeding to determine the service obligations which should be imposed as a condition on granting Dakota authority to serve Centerville and Viborg was stayed by the Commission. Fort Randall believes that, based on prior representations made by Dakota, this issue could also be resolved without further litigation. More specifically, Fort Randall will stipulate that the appropriate Dakota affiliate should receive a certificate of authority to serve local customers in Centerville and Viborg, subject to the following service requirements:

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Page 3

- 1) Dakota must, within a reasonable period of time (nine months from the date Dakota first begins providing service under the Certificate), offer its service on a nondiscriminatory basis to all customers in the Centerville and Viborg exchanges; and
- 2) Dakota must offer a local calling scope to customers no less than is currently offered by Fort Randall.

While your August 8 letter does not explicitly state that Dakota would offer its services to all customers located within those exchanges, Dakota has repeatedly stated that intent. For example, in a June 11, 1997 letter, Dakota represented that it will offer its services to all customers in those exchanges, saying in part:

Dakota fully expects to meet the requirements of an Eligible Telecommunications Carrier on a facilities basis regardless of interconnection with Fort Randall.

This service commitment was reaffirmed in a July 11 brief to the Commission, wherein it was represented:

Dakota has every intention of bringing its services to each and every customer who requests service in a manner which is consistent with sensible engineering practices and controlled growth.

Based on these representations, we assume that Dakota does not intend to discriminate between customers in the towns of Centerville and Viborg and customers in the countryside around those towns. Further, for Dakota's pledge to offer nondiscriminatory service to all customers to be meaningful, service to customers must include adequate notice of availability to all potential customers, rates between customers in town and in the countryside must be comparable, and Dakota's service must be available to all customers within a reasonable period of time.

A. Dakota Should Be Obligated to Offer Its Services To All Customers Within The Centerville And Viborg Exchanges.

Fort Randall's legal obligation to provide service to all customers has a significant impact on Fort Randall's cost of service. In order to prevent unfair discrimination between customers and severe adverse impacts on customers in the higher cost parts of these exchanges, Dakota should accept the same obligation to offer service to all customers in these exchanges. Otherwise, competition could have a severe adverse impact on the affordability of rates for the 38 percent of residential and 9 percent of business customers located outside the towns of Centerville and Viborg. In recognition of this fact, 47 U.S.C. § 253 allows the Commission to

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Thomas Hertz
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impose minimum service obligations on competitive local exchange carriers offering services in rural telephone company service areas.

Fort Randall has conducted a preliminary analysis of the cost of providing service in its study area. The information is based on application of US WEST Communications, Inc.'s ("USWC") BCPM model, which the Commission used to develop the unbundled element rates that USWC must offer AT&T. That costing model is able to break down costs for varying densities. Twenty-eight percent of Fort Randall's customers reside in the lowest density area (0 to 10) and have a cost per access line of \$117.27.¹ The remaining 72 percent of the customers in Centerville and Viborg exchanges reside in areas with a density of 11 to 50, and have a cost per access line of \$79.85.²

Thus, there is a loop cost differential of \$37.42 between the more dense and less dense service areas. If Dakota is allowed to serve only the more dense and shorter loop in-town areas of these exchanges, it will have an overwhelming cost advantage.

With these cost advantages, it should be assumed that Dakota would be able to price its services significantly below Fort Randall's rates and obtain at least 50 percent of the in-town customers (approximately 32 percent of Fort Randall's customers and more than 32 percent of Fort Randall's revenues). The impact of losing only the low-cost customers would serve to increase Fort Randall's weighted cost of service, increasing Dakota's overall cost advantage.

In addition, 81 percent of the business customers are located in the lower cost in-town area. Consequently, if Dakota is allowed to focus its efforts in the lower-cost service areas, it will also position itself to receive a disproportionate higher than average portion of the revenues available from business customers. Both Centerville and Viborg have one business customer that purchases approximately 10 percent of the business access lines and also purchases a disproportionate amount of long distance service.

In contrast, if Dakota offers its services on a uniform basis to all customers, Fort Randall's customer losses should be spread over the full range of the cost of service, and Dakota

¹ This cost includes both loop and switching costs. Under the Hatfield 3.1 model, using the four exchanges Fort Randall initially purchased, the unbundled loop cost for this density would be \$99.26.

² The Hatfield model does not have a corresponding density level. The second smallest density level is 5 to 100 (twice that of the USWC BCPM), and develops an unbundled loop cost of \$27.47 for Fort Randall's initially purchased exchanges.

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Page 5

should have an average cost of service that is reasonably comparable to Fort Randall's. While the loss of customers would obviously adversely affect Fort Randall and rates could still increase due to the loss of some economies and the need to recover fixed costs over fewer customers, the overall impact should be much less than if Dakota is allowed to cherry pick customers.

B. Dakota Should Provide All Potential Customer With Notice Of The Availability Of Its Services.

To make the availability of service meaningful, reasonable notice to customers is needed. Customers cannot be expected to take a service which is not made known to them. The duty to providing notice of availability should be acceptable to Dakota unless Dakota intends to restrict availability.

C. The Rates Offered In Town And In The Countryside Should Be Reasonably Comparable.

To make the availability of service meaningful, it is also essential that the rates between customers remain reasonably comparable, and that Dakota not impose different rate obligations, such as special construction charges. If, for example, out-of-town monthly rates were \$20 higher than rates in town, the result would likely be that no out-of-town customer would accept service. In this way, Dakota could manipulate the acceptance of its service to avoid serving the higher cost out-of-town customers. The result would be the same unreasonable discrimination and adverse impact on the average cost of serving the remaining customers as if Dakota had not offered its services except to low-cost customers.

D. Service Should Be Offered To All Customers Within A Reasonable Period Of Initial Offerings.

Because Dakota will be providing service using its own facilities, it is unlikely that it can offer service to all customers immediately. However, it is also important that Dakota have a reasonable deadline to begin offering its services to all customers. Dakota should be able to meet that obligation within nine months of first offering service after the Commission issues Dakota a Certificate of Authority. Nine months would provide sufficient time for Dakota to install its facilities.

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Thomas Hertz
September 25, 1997
Page 6

E. Dakota Should Offer The One Option That Has No Smaller Local Calling Scope, Including EAS, Than Customers Currently Receive.

Centerville has EAS to Viborg; and Viborg has EAS to Beresford, Centerville, Flyger, Hurley, Irene, Davis, and Mayfield. While EAS benefits a majority of the customers, a competitor could acquire those customers not economically benefited by EAS by simply offering those customers (which represent a sizable minority) local service without EAS. In order to compete with such a service offering, Fort Randall would need to offer a comparable service. The remaining customers of Fort Randall would necessarily see an increase in the EAS additive to make up for the lost EAS revenues. That, in turn, would make the EAS option uneconomical to additional customers, with a spiral that would eventually end with Fort Randall offering EAS as a high-priced premium service, thus eliminating the intended purpose of EAS.

Fort Randall's existing EAS routes have the following rate consequences:

Exchange	Residential rate	Business rate
Viborg	\$0.70	\$2.40
Centerville	\$0.70	\$2.40

To assure Fort Randall's ability to continue offering EAS, Dakota should be required to have the same local service obligation as Fort Randall.³

III. Fort Randall Does Not Agree That There Should Be More Than One Universal Service Recipient In Centerville And Viborg.

While Fort Randall is willing to agree to provide the form of interconnection requested by Dakota and to the grant of a certificate to compete, we wish to make it clear that Fort Randall does not agree that Dakota should, at any time, receive Universal Service funding for competition in the Centerville and Viborg exchanges. You should be aware that Fort Randall

³ The reasonableness of this requirement is further demonstrated by the fact that the Commission conditioned its approval of US WEST's sale of these exchanges on Fort Randall continuing to offer all existing EAS service. Docket TC96-125, Decision and Order Regarding the Sale, dated October 24, 1996.

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Thomas Hertz
September 25, 1997
Page 7

will vigorously oppose any request by Dakota to receive federal or state Universal Service funding for its local service offerings in Centerville and Viborg.

Pursuant to 47 U.S.C. § 214(e), Dakota may only receive federal Universal Service funding if: 1) it meets the service obligations of an eligible telecommunications carriers in all of Fort Randall's service area; and 2) the Commission finds that authorizing more than one eligible telecommunications carrier is consistent with the public interest convenience and necessity. Dakota does not satisfy the first requirement, and the Commission should find that allowing multiple eligible telecommunications carriers to receive federal universal service support would be contrary to the public interest.

Dakota has voluntarily elected to place facilities only in the Centerville and Viborg exchanges. Fort Randall's study area is much larger than Centerville and Viborg. Fort Randall is required to provide facilities, not only in Centerville and Viborg, but also in Tabor, Tyndall, Wagner, Lake Andes and Hermosa. Once Fort Randall replaces the US WEST host switch with a new host switch in Wagner (occurring in the first quarter of 1998), it will operate all of its exchanges, except the Hermosa exchange, as a single integrated operation out of Wagner. By selecting two out of the seven exchanges to install facilities, Dakota has engaged in a form of cherry picking, made possible only because of Dakota's other exchange facilities. Under any other circumstance, Dakota's decision to duplicate facilities in exchanges averaging only 667 access lines would be unthinkable because it is terribly uneconomic and wasteful. The Federal Universal Service Fund was never intended to subsidize such selective competition.

Nor did Congress intend to provide Universal Service funding to competitors in situations where the consequence must necessarily be an increase in the rates of the incumbent Eligible Telecommunications Carrier's customers. A rate increase would be inevitable because the grant of Universal Service funding to Dakota would necessarily mean the loss of such funding to Fort Randall. If Dakota cannot economically provide competitive services using its own facilities without receiving Universal Service Fund support, it should abandon its plans to overbuild the network and purchase Fort Randall's services for resale. Universal Service funding should act as a check on uneconomical facilities, rather than as an economic incentive that drives up local rates.

Therefore, Fort Randall will oppose the grant of any Universal Service funding to Dakota for its operations in Centerville and Viborg. Such funding would not only violate federal law by granting funding to a provider serving less than Fort Randall's entire study area, it would also jeopardize the very purpose of the Universal Service funding -- to assure the support of state-of-the-art, affordable service in rural areas.

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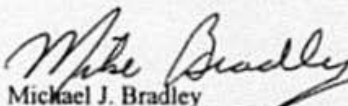
Thomas Hertz
September 25, 1997
Page 8

IV. Conclusion.

Fort Randall will proceed to prepare a proposed interconnection agreement permitting meet-point reciprocal compensation. Dakota will still need to obtain the Commission's authority to offer local competitive service in Centerville and Viborg, and Fort Randall is offering to stipulate to very reasonable basic service obligations. Finally, Dakota is on notice that it proceeds at its own risk by installing facilities that should not receive Universal Service Fund support.

Very truly yours,

MOSS & BARNETT
A Professional Association



Michael J. Bradley

Attorneys on behalf of Fort Randall Telephone Co.

MJB/mjb
cc: William Bullard
Rolayne Wiest
Robert Marmet
Bruce Hanson
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132589/2%81011.DOC



DAKOTA TELECOM, INC.

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TC 97-062

September 25, 1997

Michael J. Bradley
MOSS & BARNETT
Attorney for Fort Randall Telephone Co.
4800 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402-4129

RECEIVED
SEP 29 1997
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: Negotiations between Dakota Telecom, Inc. and Fort Randall Telephone Co.

Dear Mike:

Thank you for your letter of September 24, 1997 directed to Tom Hertz. It had been my understanding that Bruce Hanson, Treasurer of Hanson Communications in Clara City, Minnesota, was the individual with authority to make binding representations on behalf of Fort Randall. Please clarify the identity of Fort Randall's designated negotiator. Pending such clarification, Dakota Telecom, Inc., on behalf of itself and Dakota Telecommunications Systems, Inc. (collectively "Dakota") will assume your authority, and treat your letter as a part of the continuing negotiations which were begun on June 1, 1997.

From your letter it appears that there are several areas which offer promise in these negotiations. Other areas appear to rest upon legal assumptions with which Dakota cannot agree, and which, it appears, will ultimately have to be resolved by the appropriate regulatory authorities. Nonetheless, in the spirit of good faith negotiations, Dakota remains committed to seeking a mutually agreeable contractual resolution to as many disputes as possible.

With reference to the specific points raised by your letter, I offer the following responses:

I. Interconnection through Meet Point Facilities

A meet point arrangement for the interconnection of Dakota's traffic with Fort Randall's makes sense. What is not clear from your letter is where Fort Randall proposes to meet. As you may be unfamiliar with the geography, "half way between Fort Randall's Centerville and Viborg switches and Dakota's switch" would be out in the country, either in crop land or in a rural highway ditch. For the sake of the continuing good health of both Fort Randall's and Dakota's employees, a meet point in a more accessible location

should be considered. Dakota has facilities in both Centerville and Viborg and would be willing to build facilities right up to, or even into Fort Randall's local offices in those towns.

We look forward to discussing the issues of reciprocal compensation for local traffic and number portability. Prices and availability of these services are of great interest to Dakota.

Dakota understands that it must provide facilities between its switch and Fort Randall's meet point or switch. Dakota has obtained an NXX for each of the Centerville and Viborg exchanges.

II. Establishment of Service Requirements

Legitimate service requirements imposed by the South Dakota Public Utilities Commission consistent with the Communications Act of 1934, as amended, will be met by Dakota.

Dakota has said in the past, and reiterates here, that it intends to serve all customers in these exchanges. A nine month gestation period is appropriate for many species of mammal. It may, or may not, be appropriate for engineering and constructing rural telecommunications facilities. A date by which Dakota will be able to serve any customer in the Centerville or Viborg exchange does not seem to be an appropriate item for negotiating in an interconnection agreement.

Several of the other obligations suggested by Fort Randall appear to be Eligible Telecommunications Carrier ("ETC") requirements. Entering into a Stipulation with Fort Randall which imposes ETC requirements as part of an interconnection agreement does not seem to be appropriate.

Issues such as mirroring extended area service ("EAS"), advertising of availability and town and country rates or construction charges are issues which are internal marketing decisions. For Dakota to stipulate to vesting control of these matters in an incumbent competitor does not make any business sense, and is not required by any regulatory statute or rule.

III. Universal Service


Dakota has every intention of seeking ETC status in the Centerville and Viborg exchanges. Your position regarding Fort Randall's study area as the minimum service area for purposes of ETC status is acknowledged. Dakota's position is that the Fort Randall study area must be disaggregated into contiguous areas.

In order to evaluate your statement that "Dakota should abandon its plans to overbuild the network and purchase Fort Randall's services for resale" it will be necessary to know

what discount from retail prices Fort Randall is offering to Dakota. Please forward those prices along with the prices for unbundled network elements in the Centerville and Viborg exchanges along with the same prices for Tabor, Tyndall, Wagner, Lake Andes and Hermosa.

I look forward to your reply and to continuing these negotiations.

Sincerely,
Dakota Telecom, Inc.



Robert G. Marmet

cc: William Bullard
✓ Rolayne Wiest

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

IN THE MATTER OF THE FILING BY DAKOTA	) ORDER FINDING LETTER IS
TELECOM, INC., DAKOTA	) A BONA FIDE REQUEST
TELECOMMUNICATIONS SYSTEMS, INC.,)
AND DAKOTA COOPERATIVE	) TC97-062
TELECOMMUNICATIONS, INC., FOR)
INTERCONNECTION WITH FORT RANDALL)
TELEPHONE COMPANY)

On June 3, 1997, Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc. (collectively Dakota) filed a Notice of Request for Interconnection with Fort Randall Telephone Company (Fort Randall) with the South Dakota Public Utilities Commission (Commission).

At its July 15, 1997, regularly scheduled meeting, the Commission granted intervention to the South Dakota Independent Telephone Coalition (SDITC). At a July 18, 1997, ad hoc meeting, the Commission found Dakota's request was not a bona fide request as required by 47 U.S.C. § 251(f)(1). The Commission further found that it would hold a hearing on whether Dakota shall be required to meet Eligible Telecommunications Carrier (ETC) requirements before being allowed to provide service in exchanges owned by Fort Randall. On July 31, 1997, the Commission issued an Order For and Notice of Hearing and Procedural Schedule setting deadlines for submission of prefiled testimony and further setting a hearing on this matter for August 26, 1997.

On August 4, 1997, Dakota filed an appeal of this matter to the Circuit Court, Sixth Judicial Circuit and sought a stay in these proceedings. On August 8, 1997, Fort Randall and intervenor SDITC filed for removal of the appeal to United States District Court, District of South Dakota. Although no stay had been granted by any court, Dakota did not file its written testimony on August 11, 1997, as required by the Commission's procedural schedule. On August 12, 1997, the Commission received a letter from Dakota requesting that the Commission suspend the hearing scheduled to determine whether Dakota shall be required to meet ETC requirements before being allowed to provide service in exchanges owned by Fort Randall. Based on this request, the procedural schedule was suspended.

On August 15, 1997, the Commission received a letter from Dakota entitled "Second notice of requests for interconnection between Fort Randall Telephone Company and Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc." The Commission also received letters Dakota sent to Fort Randall. In its July 28, 1997, letter to Fort Randall, Dakota stated that it "intends to serve all customers within [the Centerville and Viborg] exchanges with all services supported by Universal Service Fund." Dakota also stated that it intended to "enter into negotiations which may cover interconnection throughout Fort Randall Telephone Company's entire service area." In its August 12, 1997, letter to Fort Randall, Dakota specifically requested negotiations pursuant to 47 U.S.C. §§ 251(a), 251(b)(1), (3), (4), and (5), and 251(c)(1), (2), (3), (4), (5), and (6).

On September 8, 1997, the Commission received a letter from Fort Randall stating that although it did not believe that the August 12, 1997, letter, constituted a bona fide request, it agreed to stipulate to the start of the 120 day period as provided for by 47 U.S.C. § 251(f)(1)(B).

At its September 9, 1997, meeting, the Commission considered whether Dakota's August 12, 1997, letter was a bona fide request. Fort Randall reiterated its position as stated in its September 8, 1997, letter. SDITC stated that it did not oppose the Commission finding that the letter began the 120 day period. The Commission voted unanimously to find that Dakota's letter which was received by the Commission on August 15, 1997, was a bona fide request and thus the 120 day time period began on August 15, 1997. The Commission further directed the Executive Director to set a procedural schedule.

It is therefore

ORDERED, that Dakota's letter received by the Commission on August 15, 1997, constitutes a bona fide request pursuant to 47 U.S.C. § 251(f)(1)(A).

Dated at Pierre, South Dakota, this 3rd day of October, 1997.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By

Date

(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 FILING BY DAKOTA)
TELECOM, INC., DAKOTA)
TELECOMMUNICATIONS SYSTEMS, INC.,)
AND DAKOTA COOPERATIVE)
TELECOMMUNICATIONS, INC., FOR)
INTERCONNECTION WITH FORT RANDALL)
TELEPHONE COMPANY)

ORDER FOR AND NOTICE
OF HEARING AND
PROCEDURAL SCHEDULE

TC97-062

On June 3, 1997, Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc. (collectively Dakota) filed a Notice of Request for Interconnection with Fort Randall Telephone Company (Fort Randall) with the South Dakota Public Utilities Commission (Commission).

At its July 15, 1997, regularly scheduled meeting, the Commission granted intervention to the South Dakota Independent Telephone Coalition (SDITC). At a July 18, 1997, ad hoc meeting, the Commission found Dakota's request was not a bona fide request as required by 47 U.S.C. Section 251(f)(1). The Commission further found that it would hold a hearing on whether Dakota shall be required to meet Eligible Telecommunications Carrier (ETC) requirements before being allowed to provide service in exchanges owned by Fort Randall.

On August 4, 1997, Dakota filed an appeal of this matter to the Circuit Court, Sixth Judicial Circuit. On August 8, 1997, Fort Randall and intervenor SDITC filed for removal of the appeal to the United States District Court, District of South Dakota. On August 14, 1997, at Dakota's request, the Commission suspended the procedural schedule for the hearing in this matter.

This matter again came before the Commission at its September 9, 1997, regular meeting, at which time it found that Dakota's request for interconnection dated August 15, 1997, to be a bona fide request and it further directed the Executive Director to establish a procedural schedule.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, ARSD Chapter 20.10.01 and the Telecommunications Act of 1996 (Act). The Commission may rely upon any or all of these or other laws of this state in making its determination.

The issue at this hearing is whether Fort Randall as a rural telephone company shall be entitled to retain an exemption under 47 U.S.C. 251(f)(1) for its service territory.

The procedural schedule for the hearing shall be as follows:

Simultaneous prefiled testimony shall be filed by all parties on or before October 29, 1997.

The hearing in this matter shall be held on November 3 and 4, 1997, starting at 1:30 p.m., on November 3, 1997, in Room LCR-1, State Capitol Building, 500 East Capitol, Pierre, South Dakota.

Persons testifying will be subject to cross-examination by the parties. The order of the proceeding will be in the following sequence: (1) Fort Randall, (2) Dakota, and (3) Staff.

The hearing is an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to attend and represent themselves or be represented by an attorney. However, such rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20.

The Commission, after examining the evidence and hearing testimony presented by the parties, shall make Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing, the Commission may determine whether Fort Randall shall be entitled to a statutory exemption, pursuant to 47 U.S.C. § 251(f)(1). It is therefore

ORDERED that a hearing shall be held on the issues at the time and place stated above.

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

Dated at Pierre, South Dakota, this 3 day of October, 1997.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By	<u>William K. Kelle</u>
Date	<u>10/3/97</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:
Commissioners Burg, Nelson and
Schoenfelder

William T. Bullard, Jr.
WILLIAM BULLARD, JR.
Executive Director

TC 97-062

LAW OFFICES
MOSS & BARNETT

A PROFESSIONAL ASSOCIATION

4800 NORTHWEST CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS, MINNESOTA 55402-4129

TELEPHONE (612) 347-0300

FACSIMILE (612) 339-6686

WRITER'S DIRECT DIAL NUMBER

347-0337

WRITER'S E-MAIL ADDRESS
BradleyM@moss-barnett.com

October 13, 1997

RECEIVED

OCT 16 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Mr. Thomas Hertz
Dakota Telecommunications Group
29705 - 453rd Avenue
PO Box 66
Irene, SD 57037-0066

Dear Mr. Hertz:

As requested in your September 8, 1997 letter, attached is a proposed contract for reciprocal compensation and interconnection using "EAS" type arrangements. The contract is based on the agreement Dakota entered into with US WEST Communications, Inc. ("USWC"), as modified to reflect the limited services Dakota has requested.

You will note that the contract contains an effective date of March 1, 1998. That is the estimated date for Fort Randall Telephone Company ("Fort Randall") to begin serving the Centerville and Viborg exchanges using its new Host switch out of its Wagner exchange. If Dakota desires an earlier effective date, it will be necessary for Fort Randall to make special arrangements with USWC, and the associated added costs would need to be separately addressed.

Mr. Marmet, in a letter dated September 25, 1997, requested that Fort Randall provide the wholesale discount at which it would offer its services for resale. Fort Randall has determined that its wholesale discount, applying the avoided cost principles of the Telecommunications Act of 1996, would be 8.8 percent. However, before Fort Randall could provide services for resale, it would require significant changes to the current billing system. Fort Randall has received a quote from its billing service provider of between \$46,500 and \$49,500 (depending on the level of billing detail Dakota would desire) to make



MOSS & BARNETT

A PROFESSIONAL ASSOCIATION

Mr. Thomas Hertz

October 13, 1997

Page 2

the changes needed to support resale. Therefore, if Dakota wishes to order services for resale, it would be necessary to negotiate an acceptable method for recovering those costs.

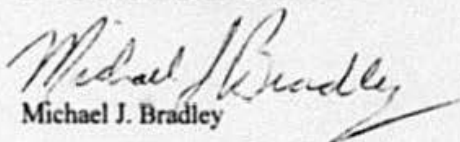
Finally, Mr. Marmet requested that Fort Randall provide rates for unbundled service elements. That request is not supported by your September 8, 1997 letter. However, Fort Randall has determined that the cost of providing an unbundled loop for customers within the towns of the two exchanges would be \$70.38 and \$108.09 for customers located outside the town areas. These rates were determined using the BCPM costing model. The switching rate would be the same as is contained in the attached Interconnection Agreement.

Based on your September 8, 1997 letter, Dakota has not requested any services that would require Fort Randall to assert its exemption from the requirements of Section 251(c). Therefore, Fort Randall believes that there are no rural exemption issues on which it could submit testimony on October 29, 1997, or on which an evidentiary hearing could be conducted related to the rural exemption.

Very truly yours,

MOSS & BARNETT

A Professional Association



Michael J. Bradley

MJB/mjb

137006/2XPQ011.DOC

Enclosure

cc: William Bullard (w/o encl.)
Rolayne Wiest (w/o encl.)
Bruce Hanson (w/encl.)
Richard D. Coit (w/encl.)



TC97-062
DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND IA WATS 800-239-7501

October 14, 1997

William Bullard
Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501-5070

RECEIVED

OCT 16 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: Facilities based competitive local telephone service

Dear Mr. Bullard:

This letter will serve to inform the South Dakota Public Utilities Commission that Dakota Telecom Inc. will begin providing dial tone in the Centerville, Harrisburg, Tea and Viborg exchanges November 1, 1997. New Dakota Telecom Inc. facilities in these communities will provide consumers with advanced telecommunications services, including high speed data service.

Dakota Telecom Inc. believes it has met all applicable requirements to begin providing consumers in these communities with a choice of telecommunications providers.

Sincerely,

Thomas W. Hertz
President/CEO
Dakota Telecom, Inc.

cc: Bruce Hanson, Fort Randall Telephone Company
Mike Bradley, Attorney for Fort Randall
Bill Heaston, Attorney for US West Communications, Inc.

LAW OFFICES
MOSS & BARNETT

A PROFESSIONAL ASSOCIATION

4800 NORWEST CENTER

90 SOUTH SEVENTH STREET

MINNEAPOLIS, MINNESOTA 55402-4129

TELEPHONE (612) 347-0300

FACSIMILE (612) 339-6666

WRITER'S CREDIT CARD NUMBER

347-0337

WRITER'S E-MAIL ADDRESS
BradleyM@moss-barnett.com

October 16, 1997

BERNARD J. KATZ
PAUL VAN VAGENBERG
MICHAEL L. PLANKEN
THOMAS A. KELLER III
W. SCOTT HERRICK
JAMES R. O'BRIEN
PAUL D. NEWMAN
EDWARD L. WOOD
WILLIAM W. RUTTER
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CHARLES A. PARSONS JR.
EDWARD J. JOHNSON
ROBERT J. LEE
JAMES A. BURKHARDT
THOMAS R. GORAN
J. MICHAEL HERRICK

EDWARD J. BLUMBERG
JOHN R. HENDRICKS
MICHAEL J. ANDERSON
JEFFREY L. MATHSON
THOMAS J. SHROVER
DAVID P. JENSEN
CURTIS D. SMITH
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MICHAEL R. LUTZ
MATTHEW M. MEYER

ARTIST
WILLIAM C. FLETCHER
JAMES W. MOSE
JAMES H. HENNING
STANLEY A. STAM
EDWARD S. COLE
PATRICK F. FLAHERTY
WALTER A. HERRICK

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

Re: Dakota Telecom, Inc. Provision of Service in Centerville and Viborg Exchanges
Docket No.: TC97-062

Dear Mr. Bullard:

The purpose of this letter is to address two issues: 1) the pending hearing on November 3 and 4, 1997, related to the Rural Telephone Company Exemption ("Rural Exemption"); and 2) the service obligations of Dakota Telecom, Inc. in the Centerville and Viborg exchanges.

The South Dakota Public Utilities Commission ("Commission") noticed a hearing for November 3 and 4, 1997, to address whether to waive the Rural Exemption granted to Fort Randall Telephone Company ("Fort Randall") under Section 251(f)(1) of the 1996 Federal Telecommunications Act. Subsequently, Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc. clarified the specific services they were requesting from Fort Randall. Based on that request, Fort Randall has determined that it can provide the requested services and does not need to invoke the Rural Exemption. Therefore, it does not appear that the Commission will need to determine, at this time, whether to grant Fort Randall an exemption from the interconnection obligations of Section 251(c). As such, the previously scheduled November 3 and 4, 1997 hearing is no longer required, at least with respect to the Rural Exemption issue.

If Dakota Telecom, Inc. or Dakota Telecommunications Systems, Inc. should, at a later date, issue a bona fide request for additional services, Fort Randall will, at that time, evaluate whether the Rural Exemption should be maintained with respect to that service.

RECEIVED

OCT 20 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION



MOSS & BARNETT

A PROFESSIONAL ASSOCIATION

William Bullard

October 16, 1997

Page 2

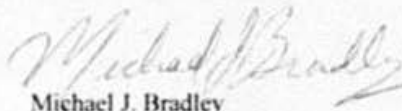
The second purpose of this letter is to discuss the October 14, 1997 letter from Thomas W. Hertz, President and CEO of Dakota Telecom, Inc. In that letter, Mr. Hertz indicates an intent to begin providing service by no later than November 1, 1997, in the Centerville and Viborg exchanges. At this time, the certificate of authority granted to Dakota Telecom, Inc. does not permit it to offer services in exchanges operated by a Rural Telephone Company.

Initially, the Commission noticed a proceeding to determine the service obligations which should be imposed on Dakota Telecom, Inc.'s service offerings in the Centerville and Viborg exchanges. On August 12, 1997, the Commission received a letter from Dakota Telecom, Inc. requesting that the Commission suspend the hearing scheduled to determine whether Dakota Telecom, Inc. should be required to meet the service obligations authorized under the 47 U.S.C. § 253(f). Based on that request, the procedural schedule was suspended.

In light of the October 14, 1997 letter, Fort Randall requests that the proceeding to determine the service obligations to be imposed on Dakota Telecom, Inc. be rescheduled. Further, Fort Randall requests that the Commission advise Dakota Telecom, Inc. not to begin providing "dial tone" in Centerville and Viborg without first complying with the Commission's Order requiring a determination of the service obligations related to these Rural Telephone Company exchanges.

Very truly yours,

MOSS & BARNETT
A Professional Association



Michael J. Bradley

MJB/jjh

cc: Rolayne Wiest
Thomas W. Hertz
Bruce C. Hanson
Richard D. Coit

138063/2Y13011.DOC



DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND IA WATS 800-239-7501

TC97-062

October 17, 1997

RECEIVED
OCT 20 1997
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

William Bullard
Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, South Dakota 57501

Dear Mr. Bullard:

The October 16 1997 letter sent to the Commission by Michael Bradley on behalf of Fort Randall Telephone Company ("Fort Randall") has been forwarded to me for a response.

With regard to Mr. Bradley's assertion that Dakota does not have authority to serve consumers in Centerville and Viborg:

The Certificate of Authority granted to Dakota Telecom, Inc. ("DTI") and Dakota Telecommunications Systems, Inc. ("DTS") contain language which Mr. Bradley has repeated characterized as granting incumbent rural telephone companies an exclusive franchise within their service areas. The language upon which Fort Randall relies is contained in Conclusions of Law III and IV from Dockets TC95-087 and TC96-050. Those paragraphs read as follows:

III

The Commission grants DTI [DTS] a statewide Certificate of Authority to provide telecommunications services, including local exchange services. However, with respect to rural telephone companies, DTI [DTS] will have to come before the Commission in another proceeding before being able to provide service in that rural service area pursuant to 47 U.S.C. § 253(f) which allows the Commission to require a company that seeks to provide service in a rural service area to meet the requirements in 47 U.S.C. § 214(e)(1) for designation as an eligible telecommunications carrier. In addition, the granting of statewide certification will not affect the modifications for rural telephone companies found in 47 U.S.C. § 251(f).

IV

The Commission declines to apply the exception for rural telephone companies as listed in Conclusions of Law III to the eight exchanges US WEST has proposed to sell to other local exchange carriers in South Dakota. The Commission finds that those exchanges are not currently owned and operated by a rural telephone company as defined in 47 U.S.C. §153, subsection 47. Therefore, the provisions in the Federal Telecommunications Act are not currently applicable to these exchanges.

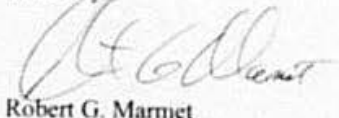
The former U S WEST exchanges, including Centerville, Viborg, were specifically excluded from the Commission's limitations on the statewide grant of authority. Furthermore, DTS has been providing service in these exchanges since July of 1996. Dakota has complied with the letter and the spirit of the Commission's Orders regarding competition. Fort Randall's continued attempts to use the Commission's powers to protect its monopoly and preclude consumers in Centerville and Viborg from having a choice of providers is well documented in the record.

With regard to Mr. Bradley's statement that the Commission inquiry into Fort Randall's continued exemption from interconnection obligations "is no longer required":

The Telecommunications Act of 1996 provides that "the State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption" upon receipt of notice of a bona fide request made to a rural telephone company. The Commission has determined that Dakota's request of September 15, 1997 was a bona fide request. The statutory language is mandatory. If Fort Randall is a rural telephone company within the meaning of the Act, it has been granted an exemption by operation of law under 47 USC §251(f)(1)(B). Notice of Dakota's bona fide request for interconnection with Fort Randall facilities in Centerville and Viborg triggered the requirement for an inquiry by the South Dakota Public Utilities Commission with regard to *terminating the existing rural exemption*.

Mr. Bradley's statement that Fort Randall "does not need to invoke the Rural Exemption" does not eliminate the need for a determination as to whether the exemption should be terminated, but rather would support a determination by the Commission that the exemption should be terminated.

Sincerely,



Robert G. Marnet

cc: Michael J. Bradley
Rolayne Wiest

SDITC

South Dakota Independent
Telephone Coalition, Inc.

Richard D. Coit
Executive Director

Bette Dozier
Administrative Assistant

October 17, 1997

Mr. William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, SD 57501

RECEIVED
OCT 20 1997
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: Dakota Telecom, Inc. Provision of Service in the Centerville and Viborg Exchanges
Docket No. TC97-062

Dear Mr. Bullard:

The purpose of this letter is to inform the Commission that SDITC supports the requests made by Fort Randall Telephone ("Fort Randall") in its letter to the Commission dated October 16, 1997.

Dakota Telecom Inc. ("Dakota") has indicated by its letter to the Commission dated October 14, 1997, that it will begin providing "dial tone" services in various South Dakota exchanges, including the Centerville and Viborg exchange areas owned by Fort Randall on November 1, 1997. Dakota states specifically that it "believes that it has met all applicable requirements" to begin providing such services.

This statement by Dakota is obviously incorrect. Dakota has not met all "applicable requirements" and it should be restrained from providing competitive local exchange services in Centerville and Viborg until the Commission has had an opportunity to determine what service obligations should be imposed on Dakota as a condition to its entry into the rural exchanges. The certification orders issued with respect to Dakota Telecom, Inc. and Dakota Telecom Systems, Inc., include language making it very clear that either of the companies, before providing service in any rural service area, would have to come back before the Commission in another proceeding allowing the Commission to address not just the rural interconnection exemption under 47 U.S.C. § 251(f) but also the issue of what service obligations should be imposed pursuant to 47 U.S.C. § 253(f). Currently, the exchanges of Centerville and Viborg are owned by a rural telephone company and accordingly the rural safeguard provision set forth in the certification orders is plainly applicable to Dakota's competitive entry into the exchanges.

Dakota's plan to commence providing local service in the exchanges as of November 1, 1997, is in violation of the previous certification orders. The Commission had previously scheduled a proceeding to address the issue of what service obligations should be imposed on Dakota



pursuant to § 253(f), but at Dakota's request, the proceeding was suspended. Now Dakota intends to provide competitive LEC services in the Centerville and Viborg exchanges prior to the Commission having an opportunity to address the service obligation issue. Dakota's actions to this point are clearly intended to circumvent the Commission's authority and avoid the implementation of any rural safeguards provided for under the Federal Telecommunications Act.

Dakota should be prevented from providing any local exchange services in the Centerville and Viborg exchanges until such time that the Commission has acted in accord with the referenced certification orders. As Fort Randall has requested in its letter, Dakota should be advised that it may not commence providing competitive local exchange service in the exchanges as of November 1, 1997, and the Commission should again schedule a proceeding to address the issue of what service obligations should be imposed on Dakota pursuant to 47 U.S.C. § 253(f).

Sincerely,

A handwritten signature in dark ink, appearing to read 'Richard D. Coit', is written over a horizontal line.

Richard D. Coit
Executive Director and General Counsel

cc: Rolayne Wiest
Thomas W. Hertz
Bruce C. Hanson
Jack Brown

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

IN THE MATTER OF THE FILING BY DAKOTA) TELECOM, INC., DAKOTA) TELECOMMUNICATIONS SYSTEMS, INC.,) AND DAKOTA COOPERATIVE) TELECOMMUNICATIONS, INC., FOR) INTERCONNECTION WITH FORT RANDALL) TELEPHONE COMPANY)	AMENDED ORDER FOR AND NOTICE OF HEARING AND PROCEDURAL SCHEDULE TC97-062
--	--

On June 3, 1997, Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc. (collectively Dakota) filed a Notice of Request for Interconnection with Fort Randall Telephone Company (Fort Randall) with the South Dakota Public Utilities Commission (Commission).

At its July 15, 1997, regularly scheduled meeting, the Commission granted intervention to the South Dakota Independent Telephone Coalition (SDITC). At a July 18, 1997, ad hoc meeting, the Commission found Dakota's request was not a bona fide request as required by 47 U.S.C. Section 251 (f)(1). The Commission further found that it would hold a hearing on whether Dakota shall be required to meet Eligible Telecommunications Carrier (ETC) requirements before being allowed to provide service in exchanges owned by Fort Randall.

On August 4, 1997, Dakota filed an appeal of this matter to the Circuit Court, Sixth Judicial Circuit. On August 8, 1997, Fort Randall and intervenor SDITC filed for removal of the appeal to the United States District Court, District of South Dakota. On August 14, 1997, at Dakota's request, the Commission suspended the procedural schedule for the hearing in this matter.

This matter again came before the Commission at its September 9, 1997, regular meeting, at which time it found that Dakota's request for interconnection dated August 15, 1997, to be a bona fide request and it further directed the Executive Director to establish a procedural schedule.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, ARSD Chapter 20:10:01 and the Telecommunications Act of 1996 (Act). The Commission may rely upon any or all of these or other laws of this state in making its determination.

The first issue at this hearing is whether Fort Randall as a rural telephone company shall be entitled to retain an exemption under 47 U.S.C. 251(f)(1) for its service territory. At its October 22, 1997, ad hoc meeting, the Commission considered whether to include as an issue whether the Commission shall require Dakota to meet the requirements of an Eligible Telecommunications Carrier. After listening to the arguments of the parties, the Commission voted to expand the scope of the hearing to include this issue. Therefore, the second issue at this hearing is whether the Commission shall require Dakota to meet the requirements of an Eligible Telecommunications Carrier before being allowed to provide service in exchanges owned by Fort Randall.

The procedural schedule for the hearing shall be as follows:

Simultaneous prefiled testimony shall be filed by all parties on or before October 30, 1997.

The hearing in this matter shall be held on November 3 and 4, 1997, starting at 1:30 p.m., on November 3, 1997, in Room 464, State Capitol Building, 500 East Capitol, Pierre, South Dakota.

Persons testifying will be subject to cross-examination by the parties. The order of the proceeding will be in the following sequence: (1) Fort Randall, (2) Dakota, and (3) Staff.

The hearing is an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to attend and represent themselves or be represented by an attorney. However, such rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20.

The Commission, after examining the evidence and hearing testimony presented by the parties, shall make Findings of Fact, Conclusions of Law, and a Final Decision. As a result of the hearing, the Commission may determine whether Fort Randall shall be entitled to a statutory exemption, pursuant to 47 U.S.C. § 251(f)(1), and whether Dakota shall be required to meet the requirements of an Eligible Telecommunications Carrier before being allowed to provide service in exchanges owned by Fort Randall. It is therefore

ORDERED that a hearing shall be held on the issues at the time and place stated above.

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

Dated at Pierre, South Dakota, this 22nd day of October, 1997.

014133-752299

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By

W. J. Burgh

Date

10-22-97

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:
Commissioners Burg, Nelson and
Schoenfelder

William Bullard, Jr.

WILLIAM BULLARD, JR.

Executive Director

SDITC

South Dakota Independent
Telephone Coalition, Inc.

Richard D. Coit
Executive Director

Bette Dozier
Administrative Assistant

October 30, 1997

RECEIVED

OCT 30 1997

Mr. William Bullard, Executive Director
SD Public Utilities Commission
State Capitol Building
Pierre, SD 57501

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: Docket TC97-062, In the Matter of the Filing of Dakota Telecommunications
Group for Interconnection with Fort Randall Telephone Company

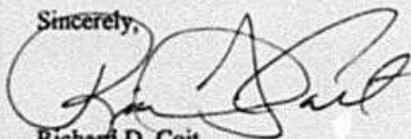
Dear Bill:

Enclosed for filing in the above referenced matter is a copy of SDITC's prefiled direct testimony. The original along with 10 copies are being sent to the Commission via overnight mail.

A copy has also been sent by FAX transmission and by overnight mail to the other parties.

Thank you for your assistance in filing and distributing our testimony to Commissioners and Staff.

Sincerely,



Richard D. Coit
SDITC Executive Director and General Counsel



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October 30, 1997

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

Re: In the Matter of Request by Dakota Telecom, Inc., Dakota Telecommunications
Systems, Inc. and Dakota Cooperative Telecommunications, Inc. for
Interconnection with Fort Randall Telephone Company
Docket No.: TC97-062

Dear Mr. Bullard:

Enclosed please find an original and eleven copies the Prefiled Direct Testimony of
Bruce C. Hanson filed on behalf of Fort Randall Telephone Company in the above entitled
Docket. Also enclosed is a Certificate of Service.

Very truly yours,

MOSS & BARNETT
A Professional Association

Michael J. Bradley
Michael J. Bradley

MJB/jjh
Enclosures
cc: All parties on service list
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TO: William Bullard DATE: 10/10/27

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FROM: Michael J. Bradley
Attorney/Legal Assistant

COMMENTS: We are unable to fax the map, it will be with the hard copies following by Federal Express.

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October 30, 1997

William Bullard
 Executive Director
 South Dakota Public Utilities Commission
 State of South Dakota
 500 East Capitol
 Pierre, South Dakota 57501

Re: In the Matter of Request by Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc. and Dakota Cooperative Telecommunications, Inc. for Interconnection with Fort Randall Telephone Company
 Docket No.: TC97-062

Dear Mr. Bullard:

Enclosed please find an original and eleven copies the Prefiled Direct Testimony of Bruce C. Hanson filed on behalf of Fort Randall Telephone Company in the above entitled Docket. Also enclosed is a Certificate of Service.

Very truly yours,

MOSS & BARNETT
 A Professional Association

Michael J. Bradley
 Michael J. Bradley

MJB/jjh
 Enclosures
 cc: All parties on service list
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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY DAKOTA)
TELECOM, INC., DAKOTA TELECOMMUNICATIONS)
SYSTEMS, INC., AND DAKOTA COOPERATIVE)
TELECOMMUNICATIONS, INC. FOR INTERCONNECTION)
WITH FORT RANDALL TELEPHONE COMPANY)

TC97-062

PREFILED DIRECT TESTIMONY OF
BRUCE C. HANSON

1 Q. Please state your name and business address.

2 A. Bruce C. Hanson, Hanson Communications Incorporated, Clara City, Minnesota.

3 Q. By whom are you employed and what is your position?

4 A. I am Treasurer of Hanson Communications, which operates two independent telephone
5 companies in South Dakota -- Mt. Rushmore Telephone Company and Fort Randall
6 Telephone Company ("Fort Randall"). I am also treasurer of Fort Randall which
7 currently operates seven exchanges in South Dakota.

8 Q. What is your educational and professional background?

9 A. I have a Bachelor of Arts degree from Bethel College, located in Minnesota. I have been
10 employed in a variety of positions within the telephone companies owned and operated
11 by Hanson Communications and, for approximately, sixteen years I have been
12 responsible for the financial and business operations of these companies. As such, I have
13 a solid basis for estimating the likely financial and business consequences of different
14 types of local competition in Fort Randall's service area.

15 Q. What is the purpose of your testimony?

16 A. To address the issue of the Rural Exemption provided by Section 251(f)(1) of the Federal
17 Telecommunications Act of 1996 ("Act") as it applies to the services requested by Dakota
18 Telecom, Inc. and Dakota Telecommunications Systems, Inc. ("DTI/DTS"); and to make
19 recommendations concerning the service obligations that may be imposed, pursuant to
20 Section 253(b) and (f), on DTI/DTS with respect to their proposal to offer competitive
21 local telecommunications services in Fort Randall's service area.

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SUMMARY

Q. Please summarize your testimony.

A. It is important that the South Dakota Public Utilities Commission ("Commission") exercise the authority granted to it under the Federal Telecommunications Act to assure that local competition in the Fort Randall service area is in the public interest. With respect to the Rural Exemption from the requirements of Section 251(c) of the Act, Fort Randall should not be required to provide unbundled elements or services unless it would not be unduly economically burdensome, is technically feasible, and is consistent with universal service principals. As I will explain, Fort Randall is not, at this time, requesting an exemption from the services DTI/DTS have requested. Should DTI/DTS later make a bona fide request for additional services, Fort Randall would need to evaluate that request on its specific facts.

With respect the service obligations that should be imposed by the Commission on DTI/DTS, pursuant to Section 253(b) and (f), the minimum obligations and service conditions the Commission should impose are as follows: 1) DTI/DTS should be required, within a reasonable time of initiating service, to offer basic telecommunications services to all customers; 2) out-of-town rates should be competitive with Fort Randall's out-of-town rates; and 3) DTI/DTS should be required to offer the same local calling scope, including EAS, as Fort Randall is required to offer. (Collectively the service obligations of an "Eligible Telecommunications Carrier" or "ETC".)

Finally, DTI/DTS have indicated the intent to obtain universal service funding to support the cost of their network. In contrast, Fort Randall does not currently qualify for

1 universal service funding. Ironically, DTI/DTS' decision to duplicate Fort Randall's
2 existing network may result in Fort Randall qualifying for such funding. If it does
3 qualify, those funds will be needed to protect universal service and should not be diverted
4 to DTI/DTS. The public should not be required to subsidize DTI/DTS' decision to
5 overbuild in these very rural exchanges. DTI/DTS should only build those facilities that
6 are economically viable without a public subsidy.

7 The Rural Exemption

8 Q. What is the Rural Exemption?

9 A. In recognition that unregulated competition would not be in the public interest,
10 particularly in the service areas of Rural Telephone Companies, Congress established
11 different obligations on both the incumbent local exchange carrier ("ILEC") and on the
12 competitive local exchange carrier ("CLEC"). The Rural Exemption relates to the
13 process for determining the obligations of the ILEC. The Service Obligations of Section
14 253(b) and (f) relate to the obligation of the CLEC.

15 Q. Is Fort Randall a Rural Telephone Company?

16 A. Yes. A Rural Telephone Company is defined under the Act, 47 U.S.C. § 153(37). Fort
17 Randall would qualify under any of the four alternative definitions. For example, Fort
18 Randall has _____ access lines, significantly fewer than the 50,000 access line limit for a
19 Rural Telephone Company.

20 Q. What provisions of the Act relate to the Rural Exemption?

1 A. Fort Randall's attorneys will discuss these provisions in our brief to the Commission.
2 They advise me that the largest local exchange carriers are required to comply with the
3 interconnection obligations of Section 251(c), which provides:

4 In addition to the duties contained in subsection (b), each incumbent
5 local exchange carrier has the following duties:

6 (1) DUTY TO NEGOTIATE- The duty to negotiate in good faith in
7 accordance with section 252 the particular terms and conditions of agreements
8 to fulfill the duties described in paragraphs (1) through (5) of subsection (b)
9 and this subsection. The requesting telecommunications carrier also has the
10 duty to negotiate in good faith the terms and conditions of such agreements.

11 (2) INTERCONNECTION- The duty to provide, for the facilities and
12 equipment of any requesting telecommunications carrier, interconnection with
13 the local exchange carrier's network --

14 (A) for the transmission and routing of telephone exchange
15 service and exchange access;

16 (B) at any technically feasible point within the carrier's network;

17 (C) that is at least equal in quality to that provided by the local
18 exchange carrier to itself or to any subsidiary, affiliate, or any other party to
19 which the carrier provides interconnection; and

20 (D) on rates, terms, and conditions that are just, reasonable, and
21 nondiscriminatory, in accordance with the terms and conditions of the
22 agreement and the requirements of this section and section 252.

23 (3) UNBUNDLED ACCESS- The duty to provide, to any requesting
24 telecommunications carrier for the provision of a telecommunications service,
25 nondiscriminatory access to network elements on an unbundled basis at any
26 technically feasible point on rates, terms, and conditions that are just,
27 reasonable, and nondiscriminatory in accordance with the terms and conditions
28 of the agreement and the requirements of this section and section 252. An
29 incumbent local exchange carrier shall provide such unbundled network
30 elements in a manner that allows requesting carriers to combine such elements
31 in order to provide such telecommunications service.

32 (4) RESALE- The duty--

33 (A) to offer for resale at wholesale rates any telecommunications
34 service that the carrier provides at retail to subscribers who are not
35 telecommunications carriers; and

36 (B) not to prohibit, and not to impose unreasonable or
37 discriminatory conditions or limitations on, the resale of such
38 telecommunications service, except that a State commission may, consistent
39 with regulations prescribed by the Commission under this section, prohibit a
40 reseller that obtains at wholesale rates a telecommunications service that is

1 available at retail only to a category of subscribers from offering such service
2 to a different category of subscribers.

3 (5) NOTICE OF CHANGES- The duty to provide reasonable public
4 notice of changes in the information necessary for the transmission and routing
5 of services using that local exchange carrier's facilities or networks, as well as
6 of any other changes that would affect the interoperability of those facilities
7 and networks.

8 (6) COLLOCATION- The duty to provide, on rates, terms, and
9 conditions that are just, reasonable, and nondiscriminatory, for physical
10 collocation of equipment necessary for interconnection or access to unbundled
11 network elements at the premises of the local exchange carrier, except that the
12 carrier may provide for virtual collocation if the local exchange carrier
13 demonstrates to the State commission that physical collocation is not practical
14 for technical reasons or because of space limitations.

15
16 In recognition that these burdens may not be in the public interest with respect to
17 competition in the service areas of Rural Telephone Companies, Congress provided an
18 exemption from these requirements, which I have been advised is contained in Section
19 251(f), and also a process for waiving that exemption if the specific request is not unduly
20 economically burdensome, is technically feasible and is consistent with the goals of
21 universal service. That provision reads as follows:

22 (f) EXEMPTIONS, SUSPENSIONS, AND MODIFICATIONS-
23 (1) EXEMPTION FOR CERTAIN RURAL TELEPHONE
24 COMPANIES-

25 (A) EXEMPTION- Subsection (c) of this section shall not apply
26 to a rural telephone company until (i) such company has received a bona fide
27 request for interconnection, services, or network elements, and (ii) the State
28 commission determines (under subparagraph (B)) that such request is not
29 unduly economically burdensome, is technically feasible, and is consistent
30 with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

31 (B) STATE TERMINATION OF EXEMPTION AND
32 IMPLEMENTATION SCHEDULE - The party making a bona fide request of
33 a rural telephone company for interconnection, services, or network elements
34 shall submit a notice of its request to the State commission. The State
35 commission shall conduct an inquiry for the purpose of determining whether to
36 terminate the exemption under subparagraph (A). Within 120 days after the
37 State commission receives notice of the request, the State commission shall

1 terminate the exemption if the request is not unduly economically burdensome,
2 is technically feasible, and is consistent with section 254 (other than
3 subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption,
4 a State commission shall establish an implementation schedule for compliance
5 with the request that is consistent in time and manner with Commission
6 regulations.
7

8 Q. Are determinations with respect to the waiver of the Rural Exemption specific to the
9 actual request for services?

10 A. Absolutely. This is demonstrated by several portions of the above statute. First, in order
11 to trigger a request for the waiver of the Rural Exemption, the request must be "bona
12 fide". Because a CLEC could request a broad range of network access configurations and
13 related services, a bona fide request must necessarily be limited to the specific network
14 configurations and services actually needed. A request for network configurations and
15 services that are not needed would obviously not be a bona fide request.

16 Second, until the CLEC actually states the network configurations and services
17 needed, the Rural Telephone Company cannot determine whether satisfying the request
18 would be unduly economically burdensome, technically feasible, and consistent with
19 universal service goals.

20 Third, if the Commission waives the Rural Exemption, it must "establish an
21 implementation schedule for compliance with the request". That would not be possible if
22 there has been no request for the specific network configuration or services which the
23 Commission is to require; and certainly, the Rural Telephone Company should not be
24 required to invest in network changes that are unnecessary.

25 Q. What services have DTI/DTS actually requested?

1 A. On August 12, 1997, DTI/DTS sent a request asserting the need for every possible
2 network configuration and service imaginable. Fort Randall, on September 8, 1997,
3 responded pointing out that the request was not realistic, that "Dakota cannot possibly
4 need the range of services it has demanded", and asked DTI/DTS to describe the specific
5 network configurations and services actually being requested. Tom Hertz, CEO of
6 DTI/DTS, on September 8, 1997, sent a reply letter, which modified the earlier broader
7 demand for services stating:

8 Dakota does not need any of Fort Randall's facilities to provide local exchange
9 services in the Viborg and Centerville exchanges. Dakota's only requirement
10 for interconnection is essentially identical to an EAS (Extended Area Service)
11 agreement between local exchange carriers for the exchange of local traffic.
12 Dakota is willing to enter into exactly the same kind of physical
13 interconnection agreement it now has with US WEST for reciprocal,
14 symmetrical exchange of EAS-type traffic.
15

16 In response, Fort Randall has provided the requested EAS type agreement.

17 In a letter dated September 25, 1997, DTI/DTS restated that they did not wish any
18 other services beyond the interconnection services listed in its September 8, 1997 letter.
19 In that same letter DTI/DTS asked, for informational purposes only, what Fort Randall's
20 wholesale discount rate would be. That rate, along with the start-up cost associated with
21 the billing changes required to provide services at wholesale has also been sent to
22 DTI/DTS. Finally, as an after thought, DTI/DTS asked what the costs of unbundled
23 network elements would be. Because DTI/DTS have not requested any such services,
24 and has no current intention of purchasing any such services, these latter requests are not
25 bona fide requests. Fort Randall has, for informational purposes provided DTI/DTS with
26 a loop cost, a switching cost, and a transport cost.

1 Fort Randall has received no requests for services other than the "EAS type"
2 interconnection and transport to which we have already responded. Fort Randall can do
3 nothing more at this time. It cannot foresee any other service for which DTI/DTS would
4 have a bona fide need. If DTI/DTS have a bona fide need for additional services or
5 network configurations, it will need to expressly tell Fort Randall.

6 Based on the services actually requested, Fort Randall can provide those services.
7 Consequently, the Commission should find, based on information currently available to
8 Fort Randall, that Fort Randall has not requested an exemption from the obligations of
9 the Act. Fort Randall, of course, may revisit the appropriateness of an exemption should
10 new services or network configurations be demanded.

11 Q. If a waiver is granted for one service or obligation under Section 251(c), does that result
12 in the loss of the entire Rural Exemption?

13 A. No. Just as the appropriateness of a waiver must be based on the specific services and
14 network configurations requested, and a CLEC can make new requests as its needs
15 develop or change, the waiver of the exception for one service or network configuration
16 obligations does not prevent the Commission from upholding the exemption as it relates
17 to a different service or network configuration.

18 For example, it may be possible to support the provision of unbundled loops. It
19 would be an entirely different matter if the CLEC were to ask for subloop unbundling,
20 thus stranding portions of the loop investment. Such a request would very likely be
21 inconsistent with universal service goals.

1 Similarly, Fort Randall must offer a wholesale discount as a condition of requiring a
2 carrier to meet the Eligible Telecommunications Carrier service obligations of
3 Section 253(f), which I discuss later in this testimony. The singling out of that
4 interconnection obligation, which is contained in Section 251(c)(4), clearly demonstrates
5 that relinquishing the exemption from one Section 251(c) obligation does not result in the
6 waiver of the exemption for any other provision of Section 251(c).

7 Section 253 Service Obligations

8 Q. What provisions within the Act give the Commission authority to impose the service
9 obligations you are recommending on DTI/DTS and to deny DTI/DTS authority to
10 receive universal service fund support?

11 A. Fort Randall's attorneys will discuss these provisions in our brief to the Commission.

12 They advise me that the relevant provisions include:

13 47 U.S.C. § 253(b), which provides:

14 STATE REGULATORY AUTHORITY- Nothing in this section shall
15 affect the ability of a State to impose, on a competitively neutral basis and
16 consistent with section 254, requirements necessary to preserve and advance
17 universal service, protect the public safety and welfare, ensure the continued
18 quality of telecommunications services, and safeguard the rights of consumers.

19
20 47 U.S.C. § 253(f), which provides in part:

21 RURAL MARKETS- It shall not be a violation of this section for a
22 State to require a telecommunications carrier that seeks to provide telephone
23 exchange service or exchange access in a service area served by a rural
24 telephone company to meet the requirements in section 214(e)(1) for
25 designation as an eligible telecommunications carrier for that area before being
26 permitted to provide such service. This subsection shall not apply--
27 (1) to a service area served by a rural telephone company that has obtained an
28 exemption, suspension, or modification of section 251(c)(4) that effectively
29 prevents a competitor from meeting the requirements of section 214(e)(1) . . .

47 U.S.C. § 253(c)(1) and (2), which provide in part:

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS- A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received--

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS- A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

A. Service Area Obligations.

Q. These Sections authorize the Commission to impose certain service obligations on

DTU/DTS within Fort Randall's study area. What is Fort Randall's study area?

A. The FCC requires Fort Randall to have a single, state-wide study area that includes the service area of Fort Randall's affiliate Mt. Rushmore. A single study area has been required to prevent a company from segregating its high-cost areas into a separate area for the purpose of receiving universal service funding and setting interstate access rates.

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Attached to my testimony, as Attachment A, is a map of the South Dakota telephone company exchange areas. The map has been marked to indicate the Hermosa, Lake Andes, Wagner, Tyndall, Tabor, Centerville and Viborg exchanges operated by Fort Randall, along with the Keystone exchange operated by Mt. Rushmore.

A review of the map shows that the Keystone and Hermosa exchanges are geographically close. Both exchanges are managed out of the Keystone exchange and, by the first quarter of 1998, the Hermosa exchange will use a remote switch which homes onto the Keystone host switch. The Lake Andes, Wagner, Tyndall, Tabor, Centerville and Viborg exchanges are managed out of the Wagner exchange. By the end of first quarter in 1998, each of these exchanges will be served by a remote switch which homes on to the Wagner host switch.

Q. Does DTI/DTS want to offer services in the entire Fort Randall service area?

A. No. DTI/DTS have indicated that they only want to serve the Centerville and Viborg exchanges. The attached map of the Telephone Company exchange areas demonstrates that those exchanges are completely surrounded by the Dakota Cooperative Telecommunications, Inc. ("DCT") service area. DCT is an affiliate of DTI/DTS. By limiting their service offerings to customers within the Centerville and Viborg exchanges, DTI/DTS can gain economies that would not be available if they were to install facilities in Fort Randall's entire study area.

DTI/DTS are seeking to overbuild a part of the system, which it hopes to finance, in part, through universal service funding. At the current time, Fort Randall does not receive universal service funding. However, as DTI/DTS construct their own network,

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1 this could result in Fort Randall qualifying for universal service funding. It would be
2 ironic if subsidies must be paid due to the creation of a duplicative network. However, if
3 Fort Randall qualifies for this funding, it will be needed to support universal service, and
4 those funds should not be diverted to DTI/DTS.

5 DTI/DTS should not be allowed to divert universal service funding from Fort Randall,
6 which must provide facilities to serve all of the potential customers in all of its
7 exchanges. By denying DTI/DTS universal service funding, DTI/DTS will have an
8 economic incentive to only build those facilities which can be supported without a
9 subsidy. The public should not be asked to fund DTI/DTS' voluntary decision to
10 overbuild in this very remote and rural area.

11 Q. What purpose would be served by the Commission imposing the ETC requirements
12 authorized by Section 253(f) on a competitor in a Rural Telephone Company service
13 area?

14 A. The ETC requirements serve the purpose of imposing some of the same service
15 obligations and, therefore, costs on a competitor that regulation imposes on the Rural
16 Telephone Company. For example, if the ETC requirements are imposed, a competitor
17 would be precluded from coming into an area and only serving the most lucrative
18 customers or the most lucrative exchanges. Such a practice, known as "cherry picking",
19 would drive up the average cost of serving the remaining customers and threaten the
20 ability of the Rural Telephone Company to offer universal service at an affordable rate.
21 By imposing some of the same service obligations on the CLEC as are imposed on the
22 ILEC, all else being equal, both companies should have the same average cost of service,

1 and competition should occur based on actual differences in service capabilities and
2 underlying costs, rather than based on unequal service obligations.

3 Q. Should the Commission impose the service obligations of an ETC on DTI/DTS?

4 A. Yes. However, there are different service areas in which the Commission could impose
5 the ETC obligations. Under one option, DTI/DTS could be required to serve the
6 Hermosa exchange. The justification for requiring DTI/DTS to serve the Hermosa
7 exchange would be to reflect the cost consequences of the FCC's decision requiring Fort
8 Randall to average the Hermosa exchange costs in with the exchange costs in the other
9 six exchanges for interexchange access and universal service funding purposes.

10 However, the cost of providing service in Hermosa is not directly affected by the cost
11 of providing service out of the Wagner exchange. Consequently, Fort Randall would not
12 be disadvantaged if DTI/DTS were not to serve customers in the Hermosa exchange, if
13 DTI/DTS are not allowed to receive universal service funding to support its facilities.

14 On the other extreme, DTI/DTS could limit their services to the Centerville and
15 Viborg exchanges. In that instance, DTI/DTS would have significantly different average
16 costs than Fort Randall. Centerville and Viborg would be "cherry picked", not because of
17 their economic value in terms of particular customer markets, but rather, because of their
18 lower than average cost for DTI/DTS to serve as a facilities-based provider. If DTI/DTS
19 were, for example, required to offer facilities-based competition in the Tabor, Tyndall,
20 Wagner and Lake Andes exchanges, the cost of service would increase very significantly.

21 Clearly, if DTI/DTS are allowed to selectively serve Fort Randall's exchanges,
22 federal law would not allow DTI/DTS to receive universal service funding, because they

1 would not satisfy the ETC obligations throughout Fort Randall's services territory.

2 Further, while the FCC has indicated a willingness to consider disaggregating
3 noncontiguous service areas into separate study areas, the six southeastern exchanges
4 served by Fort Randall should not be broken into separate study areas. They should be
5 considered contiguous. They are all served out Wagner where the host switch will be
6 located, and Fort Randall's service costs cannot fairly be disaggregated to treat
7 Centerville and Viborg as independent cost centers.

8 Q. Should the Commission establish a reasonable time period for providing service within
9 the service area?

10 A. Yes. An obligation to serve must necessarily include an appropriate time period.

11 DTI/DTS should be required to provide service throughout the service area within
12 24 months. This is sufficient time to allow DTI/DTS to begin offering services
13 throughout the service area.

14 **B. Service Obligations Within Exchanges Served.**

15 Q. Regardless of the service area obligations imposed on DTI/DTS, are there service
16 obligations that should apply to DTI/DTS in every exchange DTI/DTS serves?

17 A. Yes. Fort Randall has significant service obligations that affect its cost of service. It is
18 important that the same basic service obligations be imposed on DTI/DTS. If such
19 requirements are not imposed on DTI/DTS, it could be devastating to Fort Randall's
20 ability to continue providing quality service at an affordable rate using state-of-the-art
21 equipment. More specifically, DTI/DTS should be required to:

- 1 1. Offer basic services to all customers on a nondiscriminatory basis.
2 2. Set a rate that demonstrates that the offering is legitimate.
3 3. Provide adequate notice of its service offerings to all potential customers.
4 4. Ensure that the local calling scope is at least the same as that provide by Fort Randall.

5 1. **Basic Services Should Be Offered To All Customers On A**
6 **Nondiscriminatory Basis.**
7

8 Q. Why should DTI/DTS be required to offer its services to all customers in the exchanges it
9 serves?

10 A. Unless these service obligations are met by DTI/DTS, I am concerned about Fort
11 Randall's ability to continue providing quality service, at an affordable rate, using
12 state-of-the art technology. Absent the obligation to provide basic non-discriminatory
13 service to all customers at reasonable rates, I am concerned that Fort Randall could be left
14 with the sole responsibility of serving the 38 percent of its residential and nine percent of
15 its business customers that are located outside the towns of Centerville and Viborg.

16 It is also possible that Fort Randall could be solely responsible for serving all
17 residential customers. The result of such an unequal service burden would be very bad
18 for the more rural and residential customers -- the rates Fort Randall needed to charge its
19 remaining customers would increase dramatically, universal service would be adversely
20 affected, and the ability of Fort Randall to invest in new technology would be severely
21 limited.

22 Q. Please explain.

1 A. There are several factors that could lead to the harms I described. First, Fort Randall has
2 a fairly traditional rate design. Its rates are as follows:

Exchange	Residential		Single Line Business	
	Rates	Access lines	Rates	Access Lines
Viborg	\$12.70	509	\$26.00	93
Centerville	\$12.70	634	\$26.00	97

8 This rate design reflects the difference in the value of the service to the two classes of
9 customers. It also reflects the difference in the two classes' ability to pay. Using this
10 type of rate differential between residential and business customers has fostered universal
11 service. As is apparent, the residential rate is set below the average rate, while the
12 business rate is set above the average rate.

13 If a competitor is allowed to serve only business customers, it will easily be able to
14 undercut Fort Randall's business rate and obtain an unfair advantage -- one which is not
15 based on differences in the cost of service of Fort Randall and the competitor. Obviously,
16 if a competitor serves only business customers, Fort Randall will lose the corresponding
17 above-average revenues forcing Fort Randall to raise the rates of its remaining customers.
18 However, the Commission's Order in Docket TC96-125 prohibits Fort Randall from
19 increasing any rate, including residential rates, for at least 18 months. Consequently, in
20 the interim, DTI/DTS would have the ability to cherry pick business customers, and Fort
21 Randall would have no way to recover the lost revenues needed to sustain service to the
22 remaining customers.

1 Q. Could DTI/DTS decide to only serve selected business customers and, if so, what would
2 be the consequences of such selective service?

3 A. Yes. A competitor could decide to serve only one or two business customers in each
4 exchange, which would be highly lucrative to the competitor, would provide benefits to
5 those few customers, but would be very harmful to the remaining 1,333 customers. In
6 both Centerville and Viborg, a single customer purchases approximately 10 percent of the
7 business access lines and is also responsible for a disproportionate amount of long
8 distance access revenues. Competitors like DTI/DTS, which have an affiliated long
9 distance carrier, could even decide to price their local business rates to serve such
10 customers at a very reduced rate, or even below cost, in order to obtain the profitable long
11 distance business.

12 Q. Would it be possible for a competitor to offer service within the town areas of the
13 exchanges without offering service in the surrounding more rural areas?

14 A. Absolutely. This is possibly the biggest concern, and is a real possibility, if the
15 competing carrier is not required to provide non-discriminatory service to all customers at
16 reasonable rates. DTI operates a cable company within the towns of Centerville, Tabor
17 and Viborg. Therefore, DTS, through its affiliate, already has facilities going past the
18 customers living within those towns. According to a newspaper article, DTI provides
19 video services to over 270 of Viborg's residents. DTI has no facilities to the telephone
20 customers residing outside of the towns. If DTI or DTS elected to serve customers using
21 DTI's cable facilities, they would have facilities passing the homes of approximately

1 62 percent of the residential and 91 percent of the business customers within those two
2 exchanges.

3 The consequences of a policy allowing a competitor to focus on serving within the
4 town, while leaving Fort Randall with the duty to serve more rural customers, would be
5 very harmful. Customers residing outside of the towns have a significantly higher cost of
6 service than those residing within the towns. Using the US WEST Communications, Inc.
7 BCPM methodology, Fort Randall has determined that the cost of a loop in its more rural
8 service areas is \$108.09 compared to a cost of \$70.38 for an unbundled loop within the
9 towns.

10 Therefore, if DTL/DTS were allowed to serve only in-town customers, Fort Randall
11 would have a much higher average cost of service than would its competitor. This would
12 force Fort Randall to adopt zone pricing -- driving up the cost of service in the areas
13 outside the town in order to make it possible for Fort Randall to compete for the in-town
14 customers. Fort Randall would also need to abandon its policy of not charging for line
15 extensions required to serve new rural customers. Thus, new rural customers could face
16 construction charges of thousands of dollars in order to obtain a connection.

17 In summary, if competitors are allowed to select the customers they will pursue, select
18 the scope of the local calling area, or limit the geographic area in which service will be
19 offered within the service area of the Rural Telephone Company, a few customers may
20 benefit, but the more rural customers and those customers the competitors elect not to
21 serve (mostly residential) would see higher rates. This would adversely affect universal

1 service. It may also become impossible for Fort Randall to continue providing high
2 quality, state-of-the-art service in the future.

3 Q. What can the Commission do to prevent these adverse consequences?

4 A. Require DTI/DTS to offer its services to all customers at competitive rates within the
5 exchanges it serves.

6 Q. Is there a time period within which DTI/DTS should be required to provide service to all
7 customers within a particular exchange?

8 A. Yes. I previously testified that DTI/DTS should provide service throughout the service
9 area within 24 months. A different service obligation should apply to the offering of
10 service within a particular exchange. DTI/DTS should be required to offer service to all
11 customers within an exchange within 12 months of initially offering service within that
12 exchange. This is sufficient time to allow DTI/DTS to install all necessary facilities
13 within the exchange, and is the maximum period that DTI/DTS should be allowed to
14 engage in selective service offerings.

15 **2. DTI/DTS' Rates Should Demonstrate A Willingness To Serve All**
16 **Customers.**

17
18 Q. Why should the Commission require that the rate be set such that offering to all
19 customers is legitimate?

20 A. If, for example, DTI/DTS were to impose a uniform construction charge of 50 cents per
21 foot to customers located more than 100 feet from its feeder cable, the cost of DTI/DTS'
22 service to more rural customers would not be comparable to the cost of service for

1 in-town customers, and Fort Randall would be left with the duty to serve the higher cost
2 out-of-town customers.

3 Similarly, if DTI/DTS were, for example to offer an out-of-town rate that was five
4 dollars higher than Fort Randall's comparable rate while offering an in-town rate that was
5 five dollars lower than Fort Randall's comparable rate, we should expect to see DTI/DTS
6 win the majority of the lower cost in-town customers while leaving Fort Randall with the
7 duty to serve the higher cost out-of-town customers.

8 If, on the other hand, DTI/DTS are obligated to make a competitive service offering
9 to all customers within the exchange, they would be required to have a competitively
10 comparable offering in rural areas. That, in turn, should result in DTI/DTS having
11 comparable average cost-of-service obligations and prevent an unfair advantage based on
12 selective customer offerings.

13 **3. DTI/DTS Should Be Required To Give Adequate Notice Of Its**
14 **Service Offerings To All Potential Customers.**
15

16 Q. Why should DTI/DTS be required to provide adequate notice of its service offerings to all
17 potential customers?

18 A. The goal is to prevent DTI/DTS from gaining an unfair advantage as a result of selective
19 customer offerings. Just as price differences could be used to select the lowest cost
20 customers, marketing efforts targeting only lower cost customers could have the same
21 result. Consequently, DTI/DTS should take reasonable steps to notify all customers of
22 the availability of their service.

4. **DTI/DTS Should Be Required To Offer The Same Local Calling Scope.**

Q. Could a competitor find a niche by simply offering local service without extended area service ("EAS")?

A. Yes. Another competitive advantage could be obtained by unbundling EAS. Centerville has EAS to Viborg; and Viborg has EAS to Beresford, Centerville, Flyger, Hurley, Irene, Davis, and Mayfield. While EAS benefits a majority of the customers, a competitor could acquire those customers not economically benefited by simply offering those customers (which represent a sizable minority) local service without EAS. The remaining customers of Fort Randall would see an increase in rates to make up the lost EAS revenues, which would make the EAS option uneconomical to additional customers, with a spiral that would eventually end up with Fort Randall offering EAS as a high priced premium service, thus, eliminating the intended purpose of EAS.

The existing rates include the following EAS components in the basic rates:

<u>Exchange</u>	<u>Residential Rate</u>	<u>Business Rate</u>
Viborg	\$0.70	\$2.40
Centerville	\$0.70	\$2.40

Q. What can the Commission do to minimize the risks you have described?

A. Require DTI/DTS to have at least the same local service area calling scope as Fort Randall. That is a particularly reasonable requirement in light of the obligation imposed on Fort Randall by the Order in Docket TC96-125 to continue offering the existing EAS services.

1 C. **Conclusion**

2 Q. Would the imposition of ETC service obligations be in the public interest?

3 A. Yes. If the CLEC is required to satisfy the service obligations of an ETC: a) both the
4 competitor and the Rural Telephone Company would have similar average costs,
5 supplying a comparable range of services; b) the existing rate design, which is designed
6 to support universal service goals, could be retained; and c) to the extent Fort Randall
7 loses customers under these conditions, it would not lose only the "winners", rather, Fort
8 Randall should lose a mix of customers, such that the revenue losses should come closer
9 to matching Fort Randall's average revenues per customer, which would also better
10 match any offsetting cost savings.

11 Competition is a reality. But it should occur in a way that protects higher-cost
12 customers from harm and that benefits all of the customers, both business and residential,
13 in-town and out-of-town.

14 **Universal Service Funding**

15 Q. Are you asking that the Commission determine DTI/DTS' entitlement to future universal
16 service funding in this proceeding?

17 A. No. My purpose in discussing universal service funding is to demonstrate that the service
18 obligations under Section 253(f) stand separate and apart from the universal service
19 funding issues to be decided at some future date under Section 214(c).

20 My previous testimony has demonstrated that the ETC service obligations are needed
21 to support Fort Randall's ability to continue providing affordable, quality, state-of-the-art

1 services. Consequently, those service standards should be imposed without regard to the
2 question of whether DTI/DTS should later qualify for universal service funding.

3 Further, it is important to remember that DTI/DTS have voluntarily elected to provide
4 its services using its own facilities. It could have simply provided service in these
5 exchanges through resale of Fort Randall's services. DTI/DTS should not be allowed to
6 receive a subsidy because of their decision to create an uneconomic and duplicative
7 system in a very rural service area.

8 It is also important to note that the only facilities DTI/DTS intend to install are
9 located in the Centerville and Viborg exchanges. DTI/DTS have no interest in providing
10 facilities-based service in Fort Randall's other exchanges. DTI/DTS' service decisions
11 are based on the proximity of their affiliated local exchange company DCT and DTI's
12 cable television facilities. In contrast, Fort Randall is required to provide facilities-based
13 service in all of its exchanges.

14 Fort Randall cannot be expected to meet its service obligations throughout its service
15 area if DTI/DTS are allowed to funnel away universal service support for its
16 unnecessarily duplicative facilities.

17 Q. Does this conclude your testimony?

18 A. Yes.

Certificate of Service

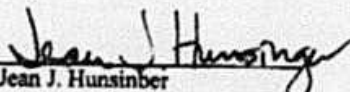
I hereby certify that an original and eleven copies of the above and foregoing Prefiled Direct Testimony of Bruce C. Hanson on behalf of Fort Randall Telephone Company were sent via facsimile and Federal Express on the 30th day of October, 1997, to the following:

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

and a true and correct copy was sent by Federal Express to the following:

Rolayne Wiest
South Dakota Public Utilities Commission
Capitol Building
500 East Capitol
Pierre, South Dakota 57501

and a true and correct copy by facsimile and/or Federal Express or Overnight Mail to the persons on the attached list.


Jean J. Hunsinber

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:17
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**Dakota
Telecommunications
Group, Inc.****Fax****To:** William Bullard**From:** Kathy Marnet**Fax:** 6057733809**Page:** 16**Phone:** 773-3201**Date:** October 31, 1997**Re:** Prefiled Testimony TC97-062**CC:**

Enclosed is the Prefiled Testimony of Thomas W. Hertz in TC97-062. Please consider this service by fax.

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

FAX Received OCT 31 1997

IN THE MATTER OF THE FILING BY)
DAKOTA TELECOM, INC. , DAKOTA)
TELECOMMUNICATIONS SYSTEMS, INC.,)
AND DAKOTA COOPERATIVE)
TELECOMMUNICATIONS, INC. FOR)
INTERCONNECTION WITH FORT)
RANDALL TELEPHONE COMPANY)

TC97-062

PREFILED TESTIMONY

OF

THOMAS W. HERTZ

October 31, 1997

1 Q. Please state your name, occupation and address.

2
3 A. My name is Tom Hertz, and I am President and Chief Executive Officer of Dakota
4 Telecommunications, Inc., East Highway 46, P.O. Box 127, Irene, South Dakota 57037. I
5 am also President and Chief Executive Officer of Dakota Telecommunications Group,
6 Inc., of which Dakota Telecom, Inc. is a wholly owned subsidiary.

7 Q. How long have you been in a management position for Dakota Telecom, Inc.?

8 A. Since October, 1995.

9 Q. What was your position prior to being employed to manage Dakota Telecom, Inc.
10 and its parent company?

11 A. I practiced law with the firm of Ulmer, Hertz & Bertsch, P.C., Menno, South Dakota
12 from January 1, 1978 until October, 1995. I was outside legal counsel for DTI and its
13 parent corporation, Dakota Cooperative Telecommunications, Inc., now Dakota
14 Telecommunications Group, Inc. from mid-1978 until I assumed the positions noted in
15 my answer to the first question above.

16 Q. In your capacity as the CEO of Dakota Telecom, Inc., are you familiar with the
17 factual and legal background which gives rise to this controversy?

18 A. I am.

19 Q. What is your view of the issues to be decided by the Commission in this proceeding?

20 A. On March 12, 1996, Dakota Telecom, Inc. filed a Petition for Registration and Authority
21 to Construct Facilities. The original Petition referred to construction in Tea, South
22 Dakota, and other U S WEST Communications, Inc. owned exchanges.
23 The Public Utilities Commission of the State of South Dakota ("Commission") issued its
24 Certificate of Authority to Dakota Telecom, Inc. "To Conduct Business As A
25 Telecommunications Company Within The State Of South Dakota as authorized by the
26 Final Order and Decision Granting A Certificate Of Authority Dated 10/22/96." ("Final
27 Order").

Paragraph III of the Conclusions of Law of the Final Order states as follows:

The Commission grants DTI a statewide Certificate of Authority to provide telecommunications services, including local exchange services. However, with respect to rural telephone companies, DTI will have to come before the Commission in another proceeding before being able to provide service in that rural service area pursuant to 47 U.S.C. §253(f) which allows the Commission to require a company that seeks to provide service in a rural service area to meet the requirements in 47 U.S.C. §214(e)(1) for designation as an eligible telecommunications carrier. In addition, the granting of statewide certification will not affect the exemptions, suspensions, and modifications for rural telephone companies found in 47 U.S.C. §251(f).

Paragraph IV of the Conclusions of Law of the Final Order states as follows:

The Commission declines to apply the exception for rural telephone companies as listed in Conclusion of Law III to the eight exchanges U S WEST has proposed to sell to other local exchange carriers in South Dakota. The Commission finds that those exchanges are not currently owned and operated by a rural telephone company as defined in 47 U.S.C. §153, subsection 47. Therefore, the provisions in the Federal Telecommunications Act relating to rural telephone companies are not currently applicable to these exchanges.

In the Spring of 1996 Dakota Telecom, Inc. began engineering and construction of state-of-the-art hybrid fiber optic/coaxial cable ("HFC") facilities to serve customers in southeast South Dakota, including Centerville and Viborg, South Dakota. The main facility is located in Viborg, South Dakota. Viborg and Centerville are located in two of the eight local exchanges which are referred to in Paragraph 6., above.

During the hearings held by the South Dakota Public Utilities Commission relative to the application of Dakota Telecom, Inc. for a Certificate of Authority, I testified that Dakota Telecom, Inc. was planning to provide local telephone service in both the Centerville and Viborg exchanges. At the time I testified Fort Randall Telephone Company had apparently agreed to purchase those exchanges from U S WEST

1 Communications, Inc. Fort Randall Telephone Company and the South Dakota
2 Independent Telephone Coalition ("SDITC") participated in the aforementioned Public
3 Utilities Commission hearings.

4 Subsequent to the issuance of Certificate of Authority to Dakota Telecom Inc.,
5 Fort Randall Telephone Company did purchase the Centerville and Viborg exchanges
6 from US WEST Communications, Inc. On or about June 1, 1997, Fort Randall began to
7 operate the Centerville and Viborg exchanges.

8 By letter dated June 1, 1997, Dakota Telecom, Inc. requested interconnection negotiations
9 with Fort Randall Telephone Company. Fort Randall Telephone Company is a "rural
10 telephone company" as defined by 47 USC §153(47). Dakota Telecom Inc. submitted
11 notice of the letter requesting interconnection to the South Dakota Public Utilities
12 Commission, as provided in 47 USC §251(f)(1)(B).

13 Fort Randall sought and was granted a declaratory ruling by the Commission that
14 Dakota Telecom, Inc.'s June 1, 1997 request for interconnection was not a bona fide
15 request for purposes of 47 USC §251(f)(1)(A). Dakota Telecom Inc. has appealed that
16 ruling to the Circuit Court of Hughes County, South Dakota (Civ. 97-292).

17 In the same docket, and at approximately the same time, the South Dakota Public Utilities
18 Commission "found that it would hold a hearing on whether Dakota shall be required to
19 meet Eligible Telecommunications Carrier (ETC) requirements before being allowed to
20 provide service in exchanges owned by Fort Randall."

21 Dakota Telecom, Inc. has appealed the Order For And Notice Of Hearing And Procedural
22 Schedule entered by the Commission on the 31st day of July, 1997, which set a hearing

1 for August 26, 1997 and ordered Dakota to file testimony on or before August 11, 1997
2 and Fort Randall to file testimony on or before August 20, 1997.

3 Dakota filed its Notice of Appeal on August 4, 1997. On August 8, 1997, Fort
4 Randall and SDITC, an Intervenor in the Commission proceeding removed the matter to
5 the United States District Court for the District of South Dakota ("District Court"). On
6 September 25, 1997, the District Court entered its Order of Remand remanding the matter
7 back to Hughes County Circuit Court.

8 On August 15, 1997, Dakota sent Fort Randall another request for
9 interconnection. On September 9, 1997 the Commission found that the August 15
10 request was a bona fide request as required by 47 U.S.C. §251(f)(1).

11 Subsequent to the filing of the appeal referred to in Paragraph 13., above, the
12 Commission entered another Order For And Notice Of Hearing And Procedural Schedule
13 in the same docket which is the subject of Dakota Telecom Inc.'s appeal. This new Order
14 set a hearing for November 3rd and 4th, 1997, on the issue of "whether Fort Randall as a
15 rural telephone company shall be entitled to retain an exemption under 47 U.S.C.
16 251(f)(1) for its service territory". The Commission ordered simultaneous prefiled
17 testimony to be filed by all parties on or before October 29, 1997.

18 By letter dated October 14, 1997, Dakota Telecom, Inc. notified the Commission
19 that it intended to begin providing "dial tone" to customers in Centerville and Viborg on
20 November 1, 1997. Fort Randall and SDITC responded by requesting that the
21 Commission prevent Dakota from providing local telecommunications services in the
22 Centerville and Viborg exchanges "without first complying with the Commission's Order

1 requiring a determination of the service obligations related to these Rural Telephone
2 Company exchanges".

3 At an *ad hoc* hearing October 22, 1997, held with less than one day's faxed notice
4 to Dakota Telecom, Inc., the Commission decided to "include as an issue [at the
5 November 3rd and 4th hearing] whether the Commission shall require Dakota [Telecom,
6 Inc.] to meet the requirements of an Eligible Telecommunications Carrier...before being
7 allowed to provide services in exchanges owned by Fort Randall." The procedural
8 schedule was amended to require prefiled testimony to be filed on or before October 30,
9 1997. The Amended Order for and Notice of Hearing and Procedural Schedule was
10 issued that same day.

11 The hearing scheduled for November 3rd and 4th, Monday and Tuesday of next
12 week, is noticed as an adversary proceeding pursuant to Chapter 1-26.
13 By its Order For And Notice Of Hearing And Procedural Schedule entered on the 31st day
14 of July, 1997, the Commission asserts the authority to impose upon Dakota, as a
15 condition of providing competitive service in Centerville and Viborg, requirements
16 established by the Telecommunications Act of 1996 to qualify for Universal Service Fund
17 support. 47 USC §214. The Commission lacks subject matter jurisdiction to impose such
18 a condition because it has no statutory authority to do so under either federal or state
19 statutes.

20 Prior to November 1996, I practiced as an attorney in proceedings before the
21 Commission for more than fifteen years. I am familiar with the statutes and regulations
22 governing the Commission. I am also familiar with the Telecommunications Act of
23 1934, as amended, the federal statutes governing regulation of telecommunications.

1 The South Dakota legislature has given the Commission regulatory jurisdiction with
2 regard to classifying telecommunications services and pricing of noncompetitive services,
3 tariffs, complaints, unjust discrimination, neglect, or violation of state law and certificates
4 of authority to provide telecommunications services. SDCL §49-31-21 requires
5 Commission approval of construction of new telecommunications facilities, but that
6 statute has been found by the Commission to be preempted by the Telecommunications
7 Act of 1996. (TC96-150, Order Partially Dismissing Complaint dated September 24,
8 1996. Attached hereto as "Exhibit I") The powers and duties of the Commission have
9 been spelled out in considerable detail by the legislature, with guidelines and standards as
10 required by the state constitution. No state statute authorizes the Commission to impose
11 ETC requirements as a condition of providing service.

12 The Telecommunications Act of 1996 was passed by the United States Congress
13 to provide for a pro-competitive, cost-regulatory national policy to accelerate private sector
14 deployment of advanced telecommunications and information technologies and services
15 by opening all telecommunications markets to competition.

16 IN GENERAL.---No State or local statute or regulation, or other State or
17 local legal requirement, may prohibit or have the effect of prohibiting the
18 ability of any entity to provide any interstate or intrastate
19 telecommunications service. 47 USC §253(a).

20
21 A few very limited exceptions to the general rule follow this sweeping mandate.

22 Included in the exceptions is subsection 47 USC 253(f), which states:

23 RURAL MARKETS.---It shall not be a violation of this section for a State
24 to require a telecommunications carrier that seeks to provide telephone
25 exchange service or exchange access in a service area served by a rural
26 telephone company to meet the requirements in section 214(e)(1) for
27 designation as an eligible telecommunications carrier for that area before
28 being permitted to provide such service...

1
2 Section 214(e) requires a company to offer certain services throughout its "service area".
3 Those services include: voice grade access to the public switched network, free local
4 usage, dual tone multi-frequency signaling, single party service, access to emergency
5 services, access to operator services, access to interexchange services, access to directory
6 assistance and toll limitation to qualifying low-income customers.

7 Congress has permitted, but not required, the State of South Dakota to impose the section
8 214(e)(1) requirements on companies seeking to compete in areas served by incumbent
9 rural telephone companies.

10 The Order For and Notice of Hearing and Procedural Schedule issued by the
11 Commission on July 31, 1997 states that the issue at the hearing is "whether Dakota shall
12 be required to meet ETC requirements before being permitted to provide service in
13 exchanges owned by Fort Randall."

14 The Amended Order For and Notice of Hearing and Procedural Schedule issued by the
15 Commission on October 22, 1997 states that "the second issue at this hearing is whether
16 the Commission shall require Dakota to meet the requirements of an Eligible
17 Telecommunications Carrier before being allowed to provide service in exchanges owned
18 by Fort Randall."

19 Both the July 31 Notice and the October 22 Notice assert jurisdiction "pursuant to
20 SDCL Chapters 1-26 and 49-31, ARSD Chapter 20:10:01 and the Telecommunications
21 Act of 1996 (Act)."

22 Neither Notice specifies the sections of the Telecommunications Act upon which
23 the Commission bases its jurisdiction. SDCL §1-26-17 (2) and (3) require a statement of

1 the jurisdiction under which the hearing is being held and a reference to the particular
2 section of the statute involved.

3 Although the Notices fall short of the statutory requirement, the language in each
4 is nearly identical to the permitted 47 USC §253(f) restrictions. Without explicitly stating
5 that it is doing so, the Commission is attempting to exercise the powers which Congress
6 delegated to "a State," rather than to a "State commission."

7 The Communications Act of 1934, as amended, contains define terms. Both "State" and
8 "State commission" are defined terms.

9 Section 3 [47 USC Section 153]. Definitions

10 For the purposes of this Act, unless the context otherwise requires.—

11 State.--The term "State" includes the District of Columbia and the
12 Territories and possessions.

13 State commission.--The term "State commission" means the commission,
14 board, or official (by whatever name designated) which under the laws of
15 any state has regulatory jurisdiction with respect to intrastate operations of
16 carriers.

17
18 The Commission is a "State commission" for purposes of the Communications Act of
19 1934 as amended. The plain language of the Communications Act of 1934 establishes
20 that Congress saw a distinction between "States" and "State commissions".

21 Throughout the Act, different duties are delegated to "State commissions" and to
22 "States". By proposing to impose restrictions reserved to a "State" without a grant of
23 authority from the state legislature to do so, the South Dakota "State commission", the
24 Public Utilities Commission, has exceeded its jurisdiction.

25 The federal Telecommunications Act of 1996 became law in February of 1996.
26 The 1997 South Dakota Legislature, aware of the changes in federal law, considered, and
27 passed legislation relating to telecommunications. The legislature specifically considered

1 and rejected legislation which would have imposed restrictions upon telephone
2 companies providing service in rural telephone company service areas as permitted under
3 47 USC §253(f).

4 South Dakota House Bill 1227 was entitled "An Act to revise certain provisions
5 regarding the regulating of telecommunications services, to provide for a universal
6 service fund, to provide for contributing to the fund and to establish the use of the fund."
7 It was first read in the House and referred to the House State Affairs Committee on
8 January 31, 1997. Section 13 of the bill proposed to amend SDCL chapter 49-31 to
9 include the following language:

10 If the applicant proposes to provide any local exchange service in an area
11 served by a rural telephone company, the applicant shall satisfy the service
12 obligations of an eligible telecommunications carrier, unless the
13 commission determines that the requirement is not in the public interest
14 and a waiver is granted by the commission pursuant to section 14 of this
15 Act.

16
17 Section 14 would have allowed an exception to the ETC requirement where the
18 incumbent rural telephone company had obtained an exemption to its interconnection
19 obligation. The proposed language of the requirement to meet ETC requirements and the
20 opportunity for waivers is drawn almost directly from the 47 USC §253(f). Section 14,
21 the waiver section, provided that the hearing was to be held pursuant to chapter 1-26, and
22 established standards for the grant of waivers.

23 South Dakota House Bill 1256 was entitled "An Act to revise certain provisions
24 relating to the regulation of telecommunications companies." It was first read in the
25 House and referred to the State Affairs Committee on February 3, 1997. It provided:

26 Except as provided in the United States Code, title 47, section 253(f) as of
27 February 8, 1996, if the applicant proposes to provide any local exchange

1 service in an area served by a rural telephone company, the applicant is
2 required to satisfy the service obligations of an eligible
3 telecommunications carrier as set forth in the United States Code, title 47,
4 section 214(e), as of February 8, 1996. However, an applicant may
5 petition the commission for a waiver from the requirements of satisfying
6 the service obligations of an eligible telecommunications carrier. The
7 commission may grant the waiver if it determines, after notice and hearing
8 pursuant to chapter 1-26, that the waiver would be in the public interest,
9 that it would not adversely impact universal service, that prices for local
10 exchange service would be just, reasonable, and affordable, and that
11 quality of service would be continued.
12

13 I was present in person when the House State Affairs Committee met to consider both
14 bills on February 19, 1997. Proponents of HB 1227 included the Chairman of the Public
15 Utilities Commission and its General Counsel. The Chairman of the Public Utilities
16 Commission was also listed as a proponent of HB 1256 on the Committee's Official
17 Testimony Sign-up Sheet. A motion was made to amend HB 1227 to delete everything
18 after the enacting clause and replace it with new language. This new language contained
19 no mention of eligible telecommunications carrier requirements as a condition precedent
20 to service in a rural telephone company service area. This Motion carried on a voice vote.
21 A further motion was made to add language to 49-31 which would have granted the
22 Commission "all powers necessary, including promulgating rules pursuant to chapter 1-
23 26, to implement and comply with the provisions of the federal Telecommunications Act
24 of 1996..." This amendment failed on a voice vote.

25 At that same Committee meeting, HB 1256, the second bill which contained the
26 mandated rural protections was deferred until the 41st legislative day

27 The telecommunications legislation that did pass the 1997 South Dakota
28 Legislature contained the following language:

1 It is the intent of the Legislature that all of the future rules, policies,
2 actions, and decisions of the State of South Dakota and all its political
3 subdivisions, and the actions and decisions of its offices and employees,
4 shall be made consistent with and further the purposes and directives of §§
5 49-31-60 through 49-31-68, inclusive. Any rule, policy, action, decision,
6 or directive from a regulatory agency shall consider input from common
7 carriers, including local exchange carriers, and others; allow economic
8 deployment of technology; encourage maximum cooperation among
9 facilities providers; and consider a fair return on the investment made by
10 facility providers to implement §§49-31-60 through 49-31-68, inclusive.
11 SDCL §49-31-60.

12 The South Dakota legislature has stated its intention that state policies and actions should
13 be consistent with a law which did not include the very type of restrictions which the
14 Commission now proposes to impose on Dakota. The action which the Commission now
15 proposes to consider would not only violate the letter of its legislative mandate, but
16 would also be contrary to the pro-competitive spirit of both the federal
17 Telecommunications Act of 1996 and the newly enacted "policy that will guide and direct
18 the creation of a telecommunications infrastructure across South Dakota" SDCL §47-31-
19 60 *et seq.*

20 The legislature did not impose the type of restrictions permitted by 47 USC
21 253(f). The legislature did not grant the Commission the power to impose such
22 restrictions. The legislature has provided very specific delegated authority to the
23 Commission which does not include the authority it now proposes to exercise on an *ad*
24 *hoc* basis.

25 The Commission lacks subject matter jurisdiction to take the action it proposes.
26 If the Commission proceeds with the proposed action beyond its jurisdiction, Applicant
27 will be irreparably harmed by being prevented from conducting its lawful business in the
28 Centerville and Viborg exchanges.

1 Q. Assuming that the Commission is found to have subject matter jurisdiction to
2 impose ETC requirements, what service area would be appropriate for DTI in
3 providing service in Centerville and Viborg?

4 A. The Commission should disaggregate the Fort Randall Study Area to contiguous areas,
5 which in this case would result in a service area of Centerville and Viborg, which are
6 contiguous with each other, but geographically separated from the remainder of the Fort
7 Randall service area.

8 Q. Does that conclude your testimony?

9 A. Yes it does.

10

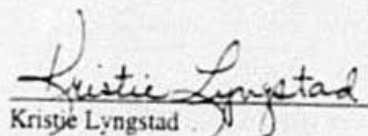
CERTIFICATE OF SERVICE

I, Kristie Lyngstad, do hereby certify that I am the authorized representative of Dakota Telecom, Inc., and that on October 31 1997, I faxed a true and correct copy of the foregoing PREFILED TESTIMONY OF THOMAS W. HERTZ to:

Richard Coit
SD Independent Telephone Coalition
P.O. Box 57
Pierre, SD 57501
FAX: (605) 224 1637

William Bullard
Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501
(605) 773 3809

Michael J. Bradley
Moss & Barnett
4800 Norwest Center - 90 S. 7th St.
Minneapolis, MN 55402-4129
(612) 339 6686


Kristie Lyngstad



DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND IA WATS 800-239-7501

November 6, 1997

Mr. William Bullard, Executive Director
South Dakota Public Utilities Commission
State Capitol
500 East Capitol
Pierre, South Dakota 57501-5070

RE: TC97-062

Dear Mr. Bullard;

On behalf of Dakota Telecom, Inc., ("DTI") a wholly owned subsidiary of Dakota Telecommunications Group, Inc., ("DTG"), I have enclosed ten copies of the LATE FILED EXHIBIT #24 for docket TC97-062.

Sincerely,

Kristie Lyngstad
Administrative Assistant

Enclosures

cc: Rich Coit
Michael Bradley

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DTI's new cable system offers:

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FAMILY	10
*KELO	11
KSCB	12
*KSFY	13
HBO	17
SHOWTIME	18
DISNEY	27
*WTBS	28
*TNT	29
*TNN	30
*USA	31
*NICKELODEON	32
CNN	33
DISCOVERY	34
MSC	35
ESPN	36
ESPN II	37
*CMT	38
*VH-1	39
*MTV	40
AMC	41
CARTOON	42
THE LEARNING CHANNEL	43
SCI-FI	44
HISTORY	46
NICKELODEON TV-LAND	47
HEADLINE NEWS	48
C-SPAN	49
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www.dtg.com

from
Dakota Telecom, Inc.

DTI is a wholly-owned subsidiary company of
Dakota Telecommunications Group, Inc. (DTG).



TRANSFORMING COMMUNICATIONS

Dakota Telecom, Inc. (DTI)

At Dakota Telecom, Inc. we're more than just a phone and cable company. We're part of your community.

As a business partner, we bring you high-quality telephone and cable television services.

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DTI is a wholly-owned subsidiary company of Dakota Telecommunications Group, Inc. (DTG).

Dakota Telecom, Inc.

P.O. Box 66
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800-239-7501
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We utilize the fastest modems on the market to provide you the fastest access and the quickest download times.



**Unlimited Internet
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This special offer includes:

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Other Available Internet Packages: (monthly charges)

(These packages require account activation.)

- Casual Access (10 hours/month) - \$8.95
- Guaranteed Access (25 hours/month) - \$14.95
- Unlimited Access - \$17.95

Account Activation: (one-time charge)

Basic Activation - \$15.00 (for users with their own software)

Deluxe Activation - \$19.95 (includes a licensed version of Microsoft Internet Explorer and a pre-configured dial-up kit.)

Long Distance

Your long distance should be simple and affordable.
DTG has a long distance plan especially for you.

13¢ per minute

One guaranteed rate
24 hours a day, 7 days a week

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Call time is calculated in six-second intervals instead of full minutes,
so you're not paying for time you're not using!

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We also provide a detailed long distance analysis at no cost for businesses.
Special term rates are available. Please call 888-269-4DTG to talk to one of
our Communications Consultants.

PLEASE NOTE:

Regulations require written authorization to switch from your
current long distance provider to DTG's plan. Signing the form that
accompanies this brochure serves as written authorization.



If you purchase long distance service from DTG, you can get
Unlimited Internet Access for \$14.95/month.

INFORMATION & SIGN-UP MEETINGS

**You may already have our Cable TV service...
now see what else we can do for you!**

Come visit with us about the new communication opportunities
available from Dakota Telecom, Inc. (DTI).

VIBORG

Wednesday, November 5

7:00-8:30 p.m.

Viborg School Gymnasium

CENTERVILLE

Saturday, November 15

9:00-10:30 a.m.

Centerville School Gymnasium

Wednesday, November 19

1:30-2:30 p.m.

Senior Citizens' Center

DTI invites you to attend any of the above listed meetings. We will answer
any questions you may have and give you the opportunity to sign up for any
of the services listed in this brochure.

*Refreshments will be served and everyone gets a FREE gift
just for coming!*



Sign up for DTI Cable TV or Telephone service at one
of these meetings and receive a service certificate for
\$25 OFF your first month's bill!

We look forward to seeing you at one of our community meetings!

Local Telephone

DTI offers both residential and business local telephone service at very competitive prices.

PLEASE NOTE:

When you switch to DTI, your telephone number will change. The first three numbers, the prefix, will change. For your convenience, the last four digits will remain the same.

For Centerville:

You live in Centerville and your telephone number is 563-1234. When you switch to DTI telephone service, your telephone number will be **552-1234**.

For Viborg:

You live in Viborg and your telephone number is 326-4321. When you switch to DTI telephone service, your telephone number will be **766-4321**.

Centerville & Viborg: If you want DTI to provide your local telephone service and want to keep your current long distance provider, you need to contact your current long distance provider and tell them your new telephone number.

Special Offer!

Pick one custom calling package
FREE for 3 months!

Package A- Call Waiting, Call Forwarding & Speed Calling (8 numbers)

Package B- Caller ID*, 3-Way Calling & Call Waiting

*Caller ID feature requires Caller ID box

You may choose either of the packages and enjoy the features **FREE** for three months. After the three-month free trial, you may decide to purchase the features package, purchase another features package, or drop the package.

Residential Telephone

Required (monthly) Charges:

Residence Access	\$12.75
Residence Access Line	3.50
State of SD Impaired Tax	0.15
County 911 Tax	0.75
Total	\$17.15*

Business Telephone

Required (monthly) Charges:

Single Line	Two or more Lines
Business Access	Business Access
Business Access Line (single) 3.50	Business Access Line 6.00/per line
State of SD Impaired Tax 0.15	State of SD Impaired Tax 0.15
County 911 Tax 0.75	County 911 Tax 0.75
Total (single line) \$21.90*	Example Total (double line) \$48.80*

* Example totals do not include applicable sales tax.

Add-on Options

Optional (monthly) Charges:

I/O Wiring Maintenance	\$1.00
Touch Tone Line Access	FREE
Unlisted Phone Number	0.50
Extra Listing	0.35
Rotary Hunt (per line)	3.00

FREE for 3 Months!

Custom Calling Features

Package A- Call Waiting, Call Forwarding & Speed Calling (8 numbers)

Package B- Caller ID, 3-Way Calling & Call Waiting

Special Offer!

If you purchase local telephone service from DTI, you can get Unlimited Internet Access for \$14.95/month.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

NOV 10 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

TC97-062

IN THE MATTER OF THE FILING BY
DAKOTA TELECOM, INCORPORATED;
DAKOTA TELECOM SYSTEMS, INCORPORATED;
AND DAKOTA COOPERATIVE
TELECOMMUNICATIONS, INCORPORATED,
FOR INTERCONNECTION WITH
FORT RANDALL TELEPHONE COMPANY

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS: November 3, 1997
Room 464
Capitol Building
Pierre, South Dakota

PUC COMMISSION: Jim Burg, Chairman
Laska Schoenfelder, Commissioner
Pam Nelson, Commissioner

COMMISSION STAFF
PRESENT:

Rolayne Ailts Wiest
Camron Hoseck
Steven Wegman
Bob Knadle
Harlan Best
Charlie Bolle

Reported by: Lori J. Grode, RMR

A P P E A R A N C E S

For DTI: Robert G. Marmet
P.O. Box 66
Irene, SD 57037

For Ft. Randall: Michael J. Bradley
Moss & Barnett
4800 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-4129

For SDITC: Richard D. Coit
P.O. Box 57
Pierre, SD 57501

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21	25	Late-filed by Hanson, Access Lines in exchanges

22
23
24
25

P R O C E E D I N G S

CHAIRMAN BURG: I'll begin the hearing for Docket TC97-062, In the Matter of the Filing by Dakota Telecom, Incorporated, Dakota Telecommunications Systems, Incorporated, and Dakota Cooperative Telecommunications, Incorporated, for Interconnection with Fort Randall Telephone Company.

The time is approximately 1:30 p.m., and the date is November 3rd, 1997. The location of the hearing is Room 464 State Capitol Building, Pierre, South Dakota.

I am Jim Burg Commission Chairman. Commissioners Laska Schoenfelder and Pam Nelson are also present. I am presiding over this hearing.

The Commission has jurisdiction pursuant to SDCL Chapter 49-31 including 49-31-3, 49-31-7, 49-31-7.1, 49-31-11, and 49-31-15, and the 1996 Telecommunications Act, including 47 U.S.C. Sections 214, 251, 252 and 253.

This hearing was noticed pursuant to the Commission's Order For and Notice of Hearing and Procedural Schedule issued October 3rd, 1997, and Amended Order for the Notice of Hearing and Procedural Schedule issued October 22nd, 1997.

The first issue at this hearing is whether

1 Fort Randall, as a rural telephone company, shall be
2 entitled to retain an exemption under 47 U.S.C.
3 251(f)(1) for its service territory. The second issue
4 at this hearing is whether the Commission shall require
5 Dakota to meet the requirements of an eligible
6 telecommunications carrier before being allowed to
7 provide service in exchanges owned by Fort Randall.

8 All parties have the right to be present and
9 to be represented by an attorney. All persons so
10 testifying will be sworn in and subject to
11 cross-examination by the parties. The Commission's
12 final decisions may be appealed by parties to the State
13 Circuit Court and State Supreme Court.

14 Rolayne Wiest will act as Commission
15 counsel. She may provide recommended rulings on
16 procedural and evidentiary matters. The Commission may
17 overrule its counsel's preliminary rulings throughout
18 this hearing. If not overruled, the preliminary
19 rulings will become final rulings. I will turn this
20 hearing over to Rolayne at this time.

21 MS. WIEST: At this time I'll take
22 appearances of the parties. Dakota.

23 MR. MARMET: Robert Marmet appearing for
24 Dakota Telecommunications Systems, Inc., Dakota
25 Telecom, and Dakota Telecommunications Group.

1 MS. WIEST: Fort Randall.

2 MR. BRADLEY: Mike Bradley representing Fort
3 Randall Telephone Company.

4 MS. WIEST: SDITC.

5 MR. COIT: Richard Coit here appearing as
6 counsel for the South Dakota Independent Telephone
7 Coalition.

8 CHAIRMAN BURG: Staff.

9 MR. HOSECK: Camron Hoseck on behalf of
10 staff.

11 MS. WIEST: Do any of the parties care to
12 make any opening statements at this time?

13 MR. MARMET: I have a number of preliminary
14 motions which I'm going to take somewhat out of order.

15 I note from the Notice that the Chairman read
16 that it's different from the Amended Notice of Hearing
17 and Procedural Schedule that I received. And I am
18 handing to the Court Reporter an original application
19 pursuant to SDCL 1-26-17. I have previously supplied
20 Mr. Bradley and Mr. Coit with copies of this.

21 And by this motion I am requesting that the
22 South Dakota Public Utilities Commission provide Dakota
23 with a statement in compliance with SDCL 1-26-17(2) and
24 (3) making reference to the particular sections and
25 regulations under which this hearing is being held.

1 From what the Chairman indicated, there are additional
2 sections being cited under the South Dakota law, and
3 particular sections of the federal law were being
4 cited.

5 Those had not been provided to me prior to
6 this hearing. And so on that basis, I would request
7 that I be given additional time to conduct further
8 legal research and that the hearing be continued at the
9 conclusion of the testimony so that I will have an
10 opportunity to examine both the evidence and my
11 client's position under those statutes.

12 The second part of my motion requests that
13 the South Dakota Public Utilities Commission provide
14 Dakota with a statement in compliance with SDCL
15 1-26-17(4), which is a statement setting forth a more
16 definite detailed statement of the matters asserted in
17 this hearing. In particular, Dakota requests that the
18 standards which the Commission will use to arrive at a
19 decision regarding the issue of whether Dakota shall be
20 required to meet eligible telecommunication
21 requirements be articulated.

22 The third point under this motion is that
23 Dakota hereby requests that the South Dakota Public
24 Utilities Commission provide Dakota with a statement in
25 compliance with 1-26-17(5) in which the Commission

1 specify what actions it believes are authorized by law
2 to come about as a result of these hearings.

3 And the fourth request, that once this
4 information has been provided, that Dakota be allowed
5 sufficient time to review the statements, prepare
6 testimony and argument, and have the hearing continued
7 to another day so that we can meet the burdens that are
8 created by these additional statutory sections and by
9 the additional issues, or an articulation of the issues
10 which we are required to prove here today.

11 That's my motion. That's my initial motion.

12 MS. WIEST: Any comments from any other
13 parties?

14 MR. BRADLEY: Mike Bradley. This is an
15 evidentiary hearing, and the issues being raised here
16 are legal arguments. With regard to statutes to the
17 extent they're relevant, they can be raised in a brief
18 afterwards without delaying this hearing.

19 MS. WIEST: Any other comments?

20 MR. COIT: My only comment would be that we
21 just received all of these motions from Dakota. We
22 really haven't had too much time to review the
23 motions. And that we agree with Mr. Bradley's
24 statements that these really raise legal issues.

25 With respect to paragraph number one, I

1 believe the Commission has already clarified in its
2 opening statement opening this hearing which statutes
3 are being relied on for authority to conduct the
4 review, this evidentiary process.

5 With respect to paragraph number two, Dakota
6 requests that certain standards be articulated as to
7 the issue of Dakota meeting ETC requirements. That is
8 an awfully vague request. It certainly hadn't
9 indicated what standards it believes needs to be
10 articulated. We would oppose the motion.

11 MR. MARMET: If I might clarify, I'm not
12 asking the hearing be delayed today. I'm asking the
13 hearing not be closed, but that in light of these
14 statutory provisions that were cited by the Chairman at
15 the outset of this hearing, I was not provided with
16 those statutory references in the Amended Order and
17 Notice of Hearing and Procedural Schedule. The statute
18 1-26-17 is clear if this is a contested hearing, my
19 client is entitled to have this information provided to
20 it prior to the hearing. I'm willing to go ahead with
21 the hearing today, but I do request that the hearing
22 not be closed, but that it be continued at its
23 conclusion so that I can meet whatever new burdens are
24 placed on my client.

25 MS. WIEST: Any other comments?

1 MR. HOSECK: Staff will have its own motion
2 when the appropriate time rolls around to us.

3 MS. WIEST: At this time, since Mr. Marmet is
4 asking that the hearing be continued at the end of
5 today's testimony, I would ask that the Commission
6 defer action on this motion until the end of the
7 testimony today.

8 CHAIRMAN BURG: Do you need a motion?

9 MS. WIEST: No. I'm just asking for a
10 deferral.

11 CHAIRMAN BURG: Okay. Granted.

12 MS. WIEST: Next motion.

13 MR. MARMET: Next motion: I'm again handing
14 the original to the Court Reporter. This is an
15 application for rehearing. By this motion Dakota is
16 requesting that the Public Utilities Commission,
17 pursuant to ARSD 20:10:01.30.01 reconsider its ruling
18 of October 22nd, 1997, where it added the second issue
19 to be heard at this hearing today. The contention that
20 supports this motion is that this Commission is
21 exceeding its jurisdiction.

22 Referring specifically so that you can follow
23 along on your papers, paragraph three, the
24 Telecommunications Act of 1996 delegates some
25 regulatory responsibilities to the state Commission of

1 each state. The Telecommunications Act of 1996 allows
2 some acts to be done by a state. The power to impose
3 requirements of 47 U.S.C. Section 253(f) is reserved to
4 a state. Because there's been no specific grant of
5 state statutory authority to the Commission, if the
6 Commission is acting, as the Chairman has indicated
7 that it is, pursuant to 47 U.S.C. Section 253, it is
8 exercising powers which it has not been granted. The
9 authority to establish whether or not such requirements
10 shall be imposed belongs to the legislature until such
11 time as it has delegated its authority to act.

12 Secondarily, if the Commission does have the
13 delegated authority, it should follow rule making
14 proceedings to arrive at the answer to the second
15 question that it has posed in these hearings; that is,
16 whether Dakota should have to meet the requirements of
17 an eligible telecommunications carrier.

18 The Commission also previously granted a
19 certificate of authority to Dakota to provide local
20 service statewide. The exchanges now at issue were not
21 owned by a rural telephone company at the time that
22 Dakota -- and there is a typographical error in that
23 paragraph, at the time "that" rather than at the time
24 "the" Dakota was granted authority. The order which
25 granted Dakota authority specifically excluded these

1 exchanges from the language which would have required
2 Dakota to seek additional authority before beginning
3 service in those exchanges. The Commission has not
4 amended that order to change its exclusion of those
5 exchanges. Furthermore, Dakota was already serving
6 customers in the exchanges in question prior to the
7 purchase of those exchanges by Fort Randall.

8 Based on these circumstances, or any one of
9 them, the Commission should rehear the matter to
10 determine, one, whether it has jurisdiction to
11 determine whether Dakota should be required to meet
12 eligible telecommunications carrier requirements; two,
13 whether it should be doing so on an ad hoc hearing
14 basis or should be pursuing rule making proceedings;
15 and, third, whether the exchanges are still excluded by
16 the order which granted Dakota's certificate of
17 authority. That's my second motion.

18 MS. WIEST: Any comments from any of the
19 parties?

20 MR. BRADLEY: Briefly. First of all, the
21 legal argument has, of course, already been answered by
22 the Commission to the Court; and I won't spend any time
23 on that point. With regard to the issue of ownership
24 of the exchanges, at the time the order was issued, the
25 Court -- the Commission declined to rule on the nature

1 of those, the rights that applied to those exchanges in
2 either direction, noting that at that time they were
3 owned by U S West, as of June 1st they were owned by
4 Fort Randall Telephone Company. Dakota Telecom, Inc.,
5 has sent a notice saying that they intend to provide
6 service in a local dial tone basis for the first time
7 on November 1st, which is several months after
8 ownership became effective with Fort Randall.
9 Therefore, I think this motion should be denied.

10 MS. WIEST: Any other comments?

11 MR. COIT: Yes, just briefly. I would
12 respond to, first, with regard to the application, just
13 generally, it doesn't seem to be the appropriate time
14 for an application for rehearing. The Commission
15 hasn't rendered any really final decisions in this
16 docket as of yet that we believe are even appealable
17 decisions. So this certainly isn't the time for an
18 application for rehearing.

19 In addition, paragraph four, which speaks of
20 the Commission having to conduct some rule making in
21 regard to imposing ETC service requirements under
22 253(f), as we've indicated in our testimony that will
23 later be submitted today, those types of determinations
24 are factual determinations; and the Commission really
25 needs to look at those on a case-by-case basis and rule

1 making. While rule making may at some point be, I
2 guess, preferable to give the Commission some guidance
3 on how it is to conduct these proceedings, it certainly
4 isn't a prerequisite to the Commission ordering 253(f)
5 obligations on competitive carriers.

6 Finally, we concur with the statements of
7 Mr. Bradley in response to paragraph five. The
8 language of the certification order certainly did not
9 exclude Dakota forever from the 253(f) safeguards. The
10 language, I think, specifically talks about the fact
11 that that particular safeguard was not currently
12 applicable. And as Mr. Bradley has pointed out, Dakota
13 has recently sent notice to the Commission indicating
14 that it intends to commence, or it intended to commence
15 providing dial tone as of November 1st. And that being
16 the case, we believe the provisions are applicable.

17 MS. WIEST: I would recommend that the
18 Commission deny the application for rehearing.

19 CHAIRMAN BURG: Yeah. I mean --

20 MS. WIEST: Why don't you vote on that one.

21 CHAIRMAN BURG: I move that we do deny it.

22 COMMISSIONER NELSON: I would second it.

23 COMMISSIONER SCHOENFELDER: I'll concur.

24 CHAIRMAN BURG: Just a clarification. That
25 request for rehearing was of the ad hoc hearing, is

1 that what the request was?

2 MR. MARMET: It was a rehearing of the
3 decision to add the second issue.

4 CHAIRMAN BURG: Right, because I wasn't sure
5 from a comment whether that was clear.

6 MR. MARMET: No, sir, that was what it was.
7 Thank you. I'm not sure whether this is the time to
8 make this motion, but in order to speed along the
9 process later on in the afternoon, I will do that now.
10 And if you wish to reserve ruling on this to the end,
11 that's not anything I would object to.

12 That is an application for additional
13 hearings. In the event the South Dakota Public
14 Utilities Commission determines that one of the issues
15 it must consider in determining whether Dakota should
16 be required to meet eligible telecommunications carrier
17 requirements prior to providing service in exchanges
18 owned by Fort Randall Telephone Company is that the
19 public interest be considered, then I would request
20 that the Commission hold hearings in Centerville and
21 Viborg, South Dakota, to allow the public to provide
22 testimony concerning the issue of public interest.

23 MS. WIEST: Any comments?

24 MR. BRADLEY: Just it's an issue of merit.
25 The issue is we're talking about eligible

1 telecommunications carrier duties. If imposed on
2 Dakota, they would provide rights to the citizens of
3 Centerville and Viborg. What would the citizens of
4 Viborg -- why would they possibly oppose ETC
5 obligations on Dakota? From the standpoint of
6 assisting Dakota, I don't think it would provide them
7 with any useful information.

8 MR. MARMET: In fact, it's intended to assist
9 the Commission. If the Commission determines that a
10 measure of public interest is part of the standard
11 which Dakota must meet, then Dakota would like the
12 opportunity to present evidence from the people in
13 those exchanges.

14 MS. WIEST: Any other comments?

15 CHAIRMAN BURG: Question. Why just
16 Centerville and Viborg? Would not -- if ETC
17 requirements, would they -- might they not affect
18 public interest in areas other than Centerville and
19 Viborg?

20 MR. MARMET: Well, they certainly would, but
21 Dakota is at this point asking the Commission to limit
22 its certification, if any is found, to Centerville and
23 Viborg.

24 CHAIRMAN BURG: You're requesting public
25 interest hearings, and shouldn't the Commission be

1 taking the public interest for all effective parties?

2 MR. MARMET: Absolutely. And that goes to my
3 previous motion, which I think this should all be done
4 on rule making proceedings rather than on a
5 case-by-case basis. The question of whether eligible
6 telecommunications carrier requirements should be
7 imposed on any CLEC is an issue that will arise again
8 and again within the state. If the Commission holds
9 hearings on a case-by-case basis, it will be
10 increasingly difficult. It would lead to numerous
11 appeals. The question will always be was this done on
12 a competitively neutral basis? As I would submit, the
13 legislature is the body that should be deciding on a
14 statewide basis whether these obligations should or
15 shouldn't be imposed. You, as a Commission, would then
16 be creating rules on how this would go about.

17 CHAIRMAN BURG: Okay.

18 MS. WIEST: I recommend that the Commission
19 defer action on that motion.

20 CHAIRMAN BURG: Agreed.

21 MS. WIEST: Anything else?

22 MR. MARMET: Yes, but this is the last one.
23 This is an application for leave to make additional
24 motions. Due to the short time between the date upon
25 which the issues were expanded and this hearing, and

1 due to the unknown nature of Commission rulings and on
2 other motions and applications filed by Dakota, Dakota
3 requests permission to file additional motions and
4 application throughout the course of this hearing and
5 during the briefing period to follow.

6 MS. WIEST: I'll recommend deferral on this
7 motion. Are there any other motions that any of the
8 parties would like to make at this time?

9 MR. HOSECK: Staff would have one if the
10 people from Hanson did not have one.

11 MS. WIEST: Go ahead.

12 MR. HOSECK: Well, at this time staff is
13 going to make a motion to dismiss this action and to
14 close this docket on the basis that there is no
15 controversy here for the Commission to decide or that
16 is properly before the Commission. It would appear
17 from the filings in this matter that what is before the
18 Commission is essentially an EAS, an extended area
19 service type interconnection agreement. To my
20 knowledge, the agreement has not been filed with the
21 Commission. And even if it had, it would look as if
22 this question of the rural exemption is one that is not
23 ripe for determination at this time and is premature.
24 That's the basis of our motion. Thank you.

25 MS. WIEST: Any comments?

1 MR. BRADLEY: With regard this hearing, is
2 for two issues: One is with the rural exemption, and I
3 have no quarrel with staff's interpretation. We do not
4 believe that we have received a request for a service
5 which involves the exercise of rural exemptions and of
6 such have not asked for any and do not therefore oppose
7 the solutions sought by staff. But we've not yet heard
8 the testimony from Dakota on that point. And then, of
9 course, there is the second issue which apparently is
10 contested, which is the ETC service obligations.

11 MS. WIEST: Any other comments?

12 MR. MARMET: Well, much as I've fought long
13 and hard to make this hearing not happen today, I will
14 resist staff's application. The purpose of this
15 hearing is mandated by the Federal Telecommunications
16 Act 251 -- or 251(f)(1)(B). This Commission has
17 determined that a bona fide request was made. It then
18 is obligated within 120 days after the Commission has
19 received notice of that request to either terminate the
20 exemption if the request is not unduly economically
21 burdensome, if -- is technically feasible and is
22 consistent with Section 254.

23 So I believe that there is an obligation on
24 the Commission's part to proceed. Dakota has made a
25 bona fide request, and notwithstanding the other

1 parties' interpretation of what Dakota is requesting,
2 we are requesting a full range of services. And so the
3 Commission does have to determine whether to continue
4 the exemption. The exemption exists by statute.

5 As to the second question, I'd agree with
6 staff that there is no purpose to go on to determine
7 Dakota -- or Dakota's obligation to provide ETC
8 services.

9 MS. WIEST: Staff is requesting dismissal on
10 both issues?

11 MR. HOSECK: Yes.

12 MS. WIEST: I recommend the motion be denied.

13 CHAIRMAN BURG: I'll move we deny the
14 motion.

15 COMMISSIONER NELSON: I'd second.

16 COMMISSIONER SCHOENFELDER: I'll concur.

17 MS. WIEST: Any other motions? Do any of the
18 parties wish to make an opening statement?

19 Mr. Marmet?

20 MR. MARMET: I'll reserve my opening
21 statement.

22 MS. WIEST: Any other parties, opening
23 statements? You may call your first witness.

24 MR. BRADLEY: Bruce Hanson.
25

1 BRUCE HANSON,

2 called as a witness, being first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BRADLEY:

6 Q. Would you please state and spell your full
7 name?

8 A. Bruce Hanson, B-r-u-c-e H-a-n-s-o-n.

9 Q. And you are employed by?

10 A. Hanson Communications.

11 Q. And your position with Hanson Communications?

12 A. I'm the corporate treasurer for Hanson.

13 Q. What's your relationship with Fort Randall?

14 A. I'm also the corporate treasurer for Hanson.

15 Hanson is a wholly-owned subsidiary of Han -- I mean

16 Fort Randall is a wholly-owned subsidiary of Hanson.

17 Q. How many exchanges does Fort Randall operate?

18 A. Seven.

19 Q. How many access lines does Fort Randall
20 operate?

21 A. 5,810.

22 Q. On average, that's about 830 access lines per
23 exchange?

24 A. That's probably right, yes.

25 Q. Would you please give us a general

1 description of those exchanges?

2 A. The exchanges are -- all of them are in rural
3 areas. Five, six of them are located in the south
4 central or southeastern part of the state. They serve,
5 you know, principally small towns that have small
6 businesses catering primarily to agriculture.

7 Q. Give us a kind of a sense of size. What's an
8 800 exchange? Is it large?

9 A. My view -- well, I think the view would be a
10 small telephone exchange.

11 Q. And Centerville has less than 830; it has 602
12 access lines?

13 A. Yes.

14 Q. And Viborg has 731 access lines?

15 A. Yes.

16 Q. Congress enacted special protections for
17 rural telephone companies. Is there any physical
18 characteristic of the Fort Randall exchanges that are
19 size, their geography, the income levels, anything that
20 you can think of which would justify a conclusion that
21 Congress did not intend to have the rural protections
22 apply to the Fort Randall exchanges?

23 A. No. In my mind the characteristics of a
24 small telephone company, I mean, that would be ideally
25 suited to all the communities that we serve.

1 Q. U S West once owned the Centerville and
2 Viborg exchanges. Does that past ownership in any way
3 effect the consequences of competition on those
4 exchanges in terms of revenues or cost of service?

5 A. No, they're irrelevant.

6 Q. Have you provided DTI a proposed
7 interconnection agreement?

8 A. Yes, I have.

9 Q. What services were included in that
10 interconnection agreement?

11 A. Basically a reciprocal compensation type EAS
12 type agreement.

13 Q. Why did you provide an interconnection
14 agreement that was limited to providing the
15 interconnection facility and a reciprocal compensation
16 rate for terminating traffic?

17 A. Because that's what they asked for.

18 Q. Does the proposed interconnection agreement
19 contain a rate for resale of wholesale?

20 A. No.

21 Q. Have you provided DTI with a proposed rate if
22 you were to offer such a service?

23 A. Yes, information only basis.

24 Q. Why did you provide that?

25 A. They asked for planning purposes subject to

1 what was going to go on here what the rate may be.

2 Q. Does the proposed interconnection agreement
3 contain a rate for unbundled network elements?

4 A. Yes. Oh, the agreement?

5 Q. The agreement.

6 A. No, no.

7 Q. Have you provided DTI with a suggested rate
8 for any unbundled elements?

9 A. Yes.

10 Q. What was that?

11 A. Provided a rate for loop, switched, and
12 something else. I'm sorry I can't think of it.

13 Q. Transport?

14 A. Transport, I'm sorry.

15 Q. Why would you have provided those rates?

16 A. The switched and the transport rates are part
17 and parcel to the reciprocal comp agreement. The other
18 one was as a result of a request for information.

19 Q. Now, providing a quote for those -- by
20 providing a quote for those services, has Fort Randall
21 actually agreed to provide those services?

22 A. No. They weren't asked for it.

23 Q. If DTI were later to ask Fort Randall to
24 provide an unbundled loop, would you first ask the
25 Commission to determine the appropriate price for that

1 loop before making a decision whether to honor the
2 request?

3 A. Yes.

4 Q. Why is that?

5 A. One of the prong tests associated with
6 determining whether or not we wanted to take advantage
7 of the exemption has to deal with economics. And a
8 situation could occur where the price that was used for
9 that service would be too low for us to adequately
10 provide service and we couldn't do it.

11 Q. And if the price was too low, would that have
12 any impact on universal service?

13 A. Yes.

14 Q. Would a request for subloop unbundling have a
15 different impact on your company and thus service to
16 remaining customers than would unbundling of just the
17 loop?

18 A. Yes.

19 Q. Why is that?

20 A. Subloop unbundling is basically taking the
21 loop or the cable that goes from the central office out
22 to the home. If we were to break that loop, along the
23 process there would be stranded investment from the
24 point where the loop was broken back to say the central
25 office. So there would be some standard investment

1 that would need to be picked up somewhere else.

2 Q. Is Fort Randall willing to waive the
3 exemption from providing resale at a wholesale price?

4 A. Only in conjunction with issues related to
5 ETC we would. Yeah, if ETC was part and parcel of the
6 same game we would.

7 Q. Why if ETC is required would you be willing
8 to waive that particular rural exemption?

9 A. Because it would basically put us on
10 something on the same cost structure. We would be able
11 to -- kind of a level playing field approach, I guess,
12 would be more than anything else.

13 Q. Has DTI requested any services so far that
14 involves the waiver of Fort Randall's exemption under
15 Section 251(c)?

16 A. No.

17 Q. If the Commission decides that DTI should
18 meet the ETC service obligations and DTI decides that
19 it desires additional services of Fort Randall, what
20 should DTI do?

21 A. Again, they would submit to us a letter, more
22 than likely it would be the start of it, asking or
23 telling us specifically what they'd want; and then from
24 that point we would respond.

25 Q. If Fort Randall determines that the requested

1 service shouldn't be required of them, what would you
2 do?

3 A. Options under the law come to you folks and
4 present the issue in terms of what services they're
5 offering and ask for either an exemption or some type
6 of a waiver.

7 Q. Shift our attention to the issue of service
8 obligations. The Act allows the Commission to require
9 Dakota to offer its services to all customers within
10 the service area. And you've asked the Commission
11 impose several very specific obligations. You've asked
12 that DTI offer its services to all customers within the
13 service area within 24 months and all customers within
14 an exchange within 12 months. Isn't that asking for
15 more than is required under federal law?

16 A. I think basically what I was going at in
17 terms of placing those numbers out was to at least
18 within a reasonable time set a time frame to find out
19 whether or not it's actually being done. Saying you're
20 going to do something and actually doing something is
21 two different things. Given the fact that a
22 construction season, a full year would encompass a full
23 construction season seems to be appropriate.

24 Q. Why did you select 24 months than 12 months?

25 A. Like I say, it provides us with a complete

1 season, or Dakota with a complete season to provide
2 construction of the facility is all.

3 Q. If DTI decides to offer its services using
4 only its own facilities rather than through resale, are
5 those still reasonable time limits?

6 A. Yes.

7 Q. Have you proposed that out of town rates be
8 comparable or competitive with Fort Randall's out of
9 town rates?

10 A. Yes.

11 Q. Now, first of all, you aren't asserting the
12 rates have to be as high as your rights, are you?

13 A. No.

14 Q. They could be lower than yours?

15 A. Yes.

16 Q. Isn't this a form, though, of regulation of
17 competition?

18 A. Again, what we're trying to do is -- you
19 know, part of our desire is if competition is going to
20 be offered, let's make sure it's offered throughout the
21 exchanges on an equal basis so that customers within
22 town and outside of town would be able to benefit from
23 competition. And so, you know, keeping the rates equal
24 would certainly do that, or not having a distinction
25 between a town and a rural rate.

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1 Q. You've proposed DTI be obligated to offer at
2 least the same local calling scope as Fort Randall.
3 Isn't that a form of regulation of competition?

4 A. Again, I think it comes back to the issue of
5 something of a level playing field. We've been asked,
6 or we've been required by the Commission to retain the
7 existing local calling scope once we purchased these
8 exchanges and we haven't had any problem with that.
9 All we're saying is that should be the base line, not
10 necessarily the limit, in terms of what local calling
11 scope they could have, but at least in terms of
12 portability. If one customer went to another location,
13 they wouldn't be comparing apples to oranges.

14 Q. DTI has proposed if any ETC obligations be
15 limited to Centerville and Viborg because they're
16 contiguous, while the other Fort Randall exchanges are
17 not. Is that really a relative distinction in this
18 case?

19 A. I'm sorry?

20 Q. Is the contiguous nature of those two
21 exchanges compared to the geographic location of the
22 remaining Fort Randall exchanges, is that relevant in
23 this case?

24 A. I don't think so. In my mind it isn't,
25 primarily because we have -- in the southeastern part

1 of the state we have three actually contiguous areas.
2 Centerville and Viborg sit by themselves. Tabor and
3 Tyndall sit by themselves, and Wagner and Lake Andes
4 sit by themselves. All of those six exchanges and
5 three noncontiguous areas are served out of one host.
6 Well, the end of the first quarter of January they'll
7 be served out of one host, our Wagner host switch.

8 Q. And what's the relevance of that?

9 A. The relevance? Disaggregating costs within a
10 host, having multiple hosts, it might be easier to be
11 able to distinguish costs between different
12 geographical areas. But where you have one common host
13 that has all the common trunks coming to it, it becomes
14 more difficult to disaggregate investment costs
15 associated with maintaining that investment. Just
16 becomes harder. And as a function, our offices operate
17 out of Wagner. Our people are dispatched out of
18 Wagner. So it would be a bit of an accounting
19 nightmare to begin disaggregating those three separate
20 contiguous areas to keep track of costs.

21 Q. You've discussed universal service funding in
22 your testimony. Has DTI requested universal service
23 funding?

24 A. Well, I'm not sure specifically in this case,
25 but they have in other cases attempted to -- or the

1 reasons for some of their actions have been to secure
2 universal service fund support for the construction of
3 facilities, you know, dating back to their request for
4 an expansion of their study area to include Centerville
5 and Viborg. One of the foundations of their argument
6 was that they had investment in those communities and
7 they had to make sure that those -- that investment was
8 included for universal service funding support.

9 Q. Why have you addressed universal service
10 funding in your testimony?

11 A. Primarily because Dakota brought it up in
12 terms of saying we need to offer X amount of services.
13 We need to take a look at disaggregating your
14 noncontiguous service area so we can make sure we can
15 collect universal service support in the exchanges that
16 we want to serve.

17 Q. In your opinion, if a company is providing
18 services that meet the ETC service obligation, should
19 they automatically receive universal service funding
20 for those services?

21 A. As long as they provide those services
22 throughout the entire study area of a particular
23 exchange, no. Let me think that through. No, let me
24 think. Give me a minute. I got to think that little
25 math. (Pause.) No, no, they do not. They shouldn't.

1 I think there's a distinction between what's going on
2 with the CLEC and what goes on with a LEC.

3 Q. You prefiled testimony in this case?

4 A. Yes.

5 Q. It's been marked as Exhibit 2. Do you have
6 any corrections, additions, or deletions to that
7 testimony?

8 A. Yeah. Yes, I do. On page three, line 18,
9 there was a line inadvertently missed. The number that
10 should have been inserted where that underline is
11 5,810.

12 Q. If I were to ask you the same questions today
13 that were asked in your testimony, would your answers
14 be the same?

15 A. Yes, they would.

16 MR. BRADLEY: I have no further questions.

17 MS. WIEST: Mr. Marmet?

18 MR. MARMET: Thank you.

19 CROSS-EXAMINATION

20 BY MR. MARMET:

21 Q. Good afternoon, Mr. Hanson.

22 A. Hi.

23 Q. Could you tell me what the exchanges are that
24 Fort Randall operates?

25 A. The exchanges that we operate are

1 Centerville, Viborg, Tabor, Tyndall, Lake Andes,
2 Wagner, and Hermosa.

3 Q. And how many access lines are in each of
4 those exchanges?

5 A. Oh, I didn't bring that.

6 Q. But --

7 A. We could certainly provide it to you.

8 Q. All right. The total is 5,810?

9 A. Yes.

10 Q. There's an affiliated company, Mt. Rushmore,
11 I believe?

12 A. Yes.

13 Q. What exchanges do they operate?

14 A. They operate only one exchange, the town of
15 Keystone, South Dakota.

16 Q. And how many access lines in that?

17 A. This time of year? About 380.

18 Q. And you mentioned a parent company, Hanson
19 Communications. What exchanges do they operate?

20 A. They don't operate any exchanges.

21 Q. Are there other subsidiary companies?

22 A. Yes.

23 Q. That operate them?

24 A. Yes.

25 Q. What would those companies be?

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1 A. Starbuck Telephone Company, it's
2 S-t-a-r-b-u-c-k, located in Starbuck, Minnesota; Clara
3 City Telephone Company, C-l-a-r-a, City Telephone
4 Company; Sacred Heart Telephone Company; and Zumbrota,
5 Z-u-m-b-r-o-t-a, Telephone Company.

6 Q. In Zumbrota?

7 A. Minnesota, yes, all named after towns.

8 Q. And approximately how many access lines?

9 A. In total?

10 Q. Yes.

11 A. About 6,000.

12 Q. For those four?

13 A. For all of the -- all of those properties are
14 located in Minnesota, and we're about evenly split
15 between Minnesota and South Dakota in size.

16 Q. When did Fort Randall agree to purchase
17 Centerville and Viborg exchanges?

18 A. Nine -- well, I don't remember the exact
19 date. It would be just prior to when we had acquired
20 the other exchanges, so probably in May of '96? Is
21 that right? Yeah, '96.

22 Q. Is it a fair statement to say that you knew
23 that Dakota was going to be competing in those
24 exchanges when you bought them?

25 A. Yes.

1 Q. Did you know that Dakota owned the cable TV
2 franchises in Centerville and Viborg when you purchased
3 the telephone exchanges there?

4 A. When we agreed to purchase them, no. Shortly
5 after that, the public meetings, I knew.

6 Q. Do you know if Dakota provides cable TV in
7 any other Fort Randall exchange?

8 A. No, I don't know. Oh, I'm sorry, yes, I do
9 know. In Tabor and maybe Tyndall, but I'm not sure.

10 Q. I'm going to ask you to look at what's been
11 marked but not entered as Exhibit No 11. This was a
12 letter that Mr. Bradley supplied to the Court
13 Reporter. I don't have a copy of that in front of me
14 so can you identify it on the record, please? Do you
15 recognize it, should be my first question?

16 A. Yes.

17 Q. What is it?

18 A. It's a letter dated August 12th from Dakota
19 Telecom from Tom Hertz seeking continued negotiations.

20 Q. And generally what is it asking for?

21 A. I'm not sure exactly what it's asking for,
22 but I think what it's attempting to do is the
23 indication on the letter is that it's furthering
24 negotiations commenced from a June 1st letter. But, I
25 guess, you know, Tom is here. He could tell you what.

1 Q. How did you take it?

2 A. Not really much. I mean we were spending
3 more time concentrating on determining whether or not
4 what was really to come of the June 1st letter. And
5 although this provided some information, it just didn't
6 provide what we needed.

7 Q. It doesn't ask that you commence negotiations
8 on the obligations imposed by Section 251(b)(1)?

9 MR. BRADLEY: I'm going to object on the
10 grounds each of these letters, which I have hope to
11 have admitted, speak for themselves. And once they're
12 in the record they can be used by counsel in an
13 appropriate manner.

14 MR. MARMET: Certainly. I'll move its
15 admittance.

16 MR. BRADLEY: At the appropriate time I'm
17 going to move all of those letters of admission.

18 MR. MARMET: If you're going to object to me
19 moving those letters, I'm going to have to somehow --

20 MR. BRADLEY: Could we find what all the
21 numbers are on those we had marked and move them all at
22 once?

23 MR. MARMET: I have no objection.

24 MS. WIEST: Could I see those? Okay. Just
25 so people can write it down, Exhibit 4 is the Order in

1 TC96-050. Exhibit 5 is a Settlement Agreement between
2 U S West and DCT, DTI, and DTS.

3 MR. BRADLEY: Rolayne, you should have a list
4 here which describes each of those, hopefully making
5 your life easier. If not, I'll give you one.

6 MR. MARMET: With regard to Exhibit No. 5, I
7 honestly don't recall whether we had any kind of a
8 confidentiality agreement with U S West on that, so I
9 would --

10 MR. BRADLEY: I'm not aware of any.

11 MR. MARMET: So I would request that it be
12 treated as a confidential exhibit.

13 MR. BRADLEY: Since it was shared with us
14 without any confidentiality on that --

15 MR. MARMET: I'm talking about outside of the
16 parties here. Obviously you do. Obviously Mr. Bradley
17 is aware of those terms.

18 MR. BRADLEY: I do have two extra sets.

19 MS. WIEST: Would you give one copy to Bill?
20 Okay. Exhibit 6 is a letter requesting negotiations
21 for interconnection in Centerville and Viborg to
22 Mr. Hanson from Mr. Marmet.

23 CHAIRMAN BURG: Can we get the dates on
24 those, Rolayne?

25 MS. WIEST: Dated 6-1-97. Exhibit 7, a

1 letter to Mr. Marmet from Mr. Bradley, dated 6-9-97.
2 Exhibit 8 is another letter dated 6-11-97 to
3 Mr. Bradley from Mr. Marmet. Nine is another letter to
4 Mr. Hanson from Mr. Marmet dated 7-28-97. Number 10 is
5 a letter to Mr. Marmet from Mr. Bradley dated 8-4-97.
6 Number 11 is the letter dated 8-12-97 to Mr. Hanson
7 from Mr. Hertz. Number 12 is a Second Notice of
8 Request for Interconnection to Mr. Bullard from
9 Mr. Marmet, dated 8-12-97. And Number 13 is a letter
10 to Mr. Hertz from Mr. Bradley dated 8-21-97.

11 Number 14 is a letter to Mr. Bullard from
12 Mr. Bradley dated 9-8-97. Number 15 is a letter to
13 Mr. Bullard from Mr. Hertz dated 9-8-97. Number 16 is
14 a letter to Mr. Hertz from Mr. Bradley dated 9-24-97.
15 Number 17 is a letter to Mr. Bradley from Mr. Marmet
16 dated 9-25-97. Exhibit 18 is a letter, or is a
17 transmittal of the proposed EAS agreement to Mr. Hertz
18 from Mr. Bradley dated 10-13-97.

19 Exhibit 19 is a Notice of Intent to Offer
20 Dial Tone Service to Mr. Bullard from Mr. Hertz dated
21 10-14-97. Number 20 is a response to a letter to
22 Mr. Bullard from Mr. Bradley dated 10-16-97. 21 is
23 another letter to Mr. Bullard from Mr. Marmet dated
24 10-17-97. 22 is another letter to Mr. Marmet from
25 Mr. Bradley dated 10-21-97. And 23 is a reply to a

1 letter to Mr. Bradley from Mr. Marmet dated 10-23-97.

2 MR. BRADLEY: At this point I would like to
3 move the admission of Exhibits 4 through 23.

4 MS. WIEST: Does anybody need any time to
5 look these over before I rule on this? Are there any
6 objections?

7 MR. MARMET: I would simply reiterate that I
8 would request confidential treatment for Number 4
9 limited to --

10 MR. BRADLEY: You mean Number 5.

11 MR. MARMET: I'm sorry, Number 5, yes.

12 MS. WIEST: And there's no objection to
13 Exhibits Number 4 through 23 then?

14 MR. MARMET: No objections.

15 MS. WIEST: So Exhibits 4 through 23 have
16 been offered and admitted. Exhibit 5 will be treated
17 confidentially within this docket.

18 MR. MARMET: While we await copies, I could
19 go on to some other matters.

20 MS. WIEST: Go ahead.

21 Q. Mr. Hanson, I've got a couple questions about
22 some of the numbers that you've presented in your
23 testimony. You make a reference to some unbundled
24 rates: \$70 for residential, \$104.00 for business. Are
25 you familiar with the numbers that I'm talking about?

1 A. Are you talking about page 18?

2 Q. Thank you. Yes, I am. Did you run those
3 numbers yourself?

4 A. No, I did not.

5 Q. Did your cost study people run those numbers?

6 A. Yeah. We have an accounting firm, Olson
7 Theilan & Company in St. Paul that ran the BCPM of
8 models. They had them on their equipment.

9 Q. And if I'm to understand this right, this is
10 suggesting that the forward-looking cost for your area
11 is \$108.00 in rural areas, \$70.38 in town areas?

12 A. Yes.

13 Q. Is that a month?

14 A. Yes.

15 Q. How much is your retail charge for
16 residential service either in town or out of town?

17 A. \$12.70.

18 Q. And that's consistent in town and out of
19 town?

20 A. Yes.

21 Q. Are you telling the Commission that you're
22 losing that much money every month?

23 A. No. The BCPM models, in our estimation,
24 attempt to establish a price for the loop. Beyond the
25 \$12.70 that we charge our customers for local access,

1 we also charge the interexchange carriers for long
2 distance access. So the balance of the revenue
3 requirement that we have to make up is made up of a
4 combination of both the charge for local service plus
5 the access.

6 Q. Your access rate is seven cents a minute,
7 isn't it?

8 A. For intrastate purposes, yes.

9 Q. So you're telling the Commission that on each
10 line with seven cents a minute you're making up a
11 difference between \$12.70?

12 A. No. What I'm saying is that there is a
13 distinction between we also have business rates.
14 Business rates are at a higher rate than residential
15 rates. In addition to that we have other services that
16 we offer to our customers: call waiting, Caller ID,
17 voice mail, most of the vertical features associated
18 with that loop also.

19 Q. And you charge extra for those services?

20 A. Yes, we do.

21 Q. Is it a fair statement, then, that the BCMP
22 (sic) price is not related to your cost?

23 A. No, that isn't a fair -- well BCPM is not
24 related to cost. It's traditionally not related to
25 cost. It's related to pricing services on a

1 forward-looking basis.

2 Q. But it has nothing do with your actual cost,
3 is that a fair statement?

4 A. It doesn't have any relationship to anybody's
5 costs.

6 Q. But anybody isn't here. You're the only one
7 who is here. It has nothing to do with your cost, is
8 that a fair statement?

9 A. It has everything to do with our
10 forward-looking pricing structure for services that
11 would be offered.

12 Q But nothing to do with your cost of providing
13 the service?

14 A. Not historical costs, no, you're correct.

15 Q. Thank you. You've said that Fort Randall
16 doesn't qualify for universal service funding. Do you
17 stand by that statement?

18 A. Fort Randall doesn't receive universal
19 service funding.

20 Q. Why?

21 A. Because it doesn't receive it. Its cost, its
22 average cost per loop is below the threshold that's
23 required to receive universal service funding.

24 Q. If I oversimplify things because I'm not
25 really a telephone person, will you bear with me?

1 A. Sure.

2 Q. There's an old universal service that's the
3 one that's in use today. Is that a fair statement so
4 far?

5 A. Yes.

6 Q. There's another universal service that's
7 coming down the road sometime in the future. It has to
8 do with replacing the traditional support that comes
9 through the access charge. Is that a fair statement?

10 A. Well, I don't think it totally replaces
11 access charges, but what it does do -- yeah, there are
12 some supplements that are going to be added to it.
13 There are a number of different programs within what's
14 termed universal service.

15 Q. So there's a difference, again, bearing with
16 my --

17 A. No.

18 Q. There's a difference between the old
19 universal service and the future universal service. Is
20 that a fair statement?

21 A. Yes, that would be fair.

22 Q. Fort Randall at this time does not qualify --
23 or does not receive, excuse me, universal service
24 funding you've said; is that correct?

25 A. Yes.

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1 Q. If you had been operating these exchanges for
2 more than a couple of months or less than a year, would
3 you be receiving universal service funding?

4 A. No.

5 Q. Once the new universal service funding comes
6 on line, do you anticipate receiving universal service
7 funding in these exchanges?

8 A. I don't know.

9 Q. You make the statement that it would be
10 ironic if Fort Randall qualified for universal service
11 funding by virtue of having Dakota in as a competitor.
12 Were you speaking in terms of the old universal service
13 funding or the new universal service funding?

14 A. The old.

15 Q. Okay. It won't make any difference in the
16 new universal service funding, will it?

17 A. I don't know.

18 Q. Are you currently obligated to provide
19 service to all customers in the Centerville and Viborg
20 exchange?

21 A. Yes.

22 Q. On what basis?

23 A. As a part of the rural sale there wasn't any
24 indication that the Commission was going to allow us to
25 not provide service to customers.

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1 Q. Can you direct me to a statute or a
2 regulation that requires you to provide service to all
3 customers in those exchanges?

4 A. I'm not that familiar with the law that I
5 could direct you to anything. I can't answer that.

6 Q. All right. If you were asked by a customer
7 to provide service on the farthest end of any of your
8 exchanges, you would be free, would you not, to charge
9 them to construct out to their residence, their
10 business?

11 A. No.

12 Q. Why?

13 A. We don't do it. We don't, as a policy, we do
14 not charge any construction charges.

15 Q. That's an internal policy though?

16 A. Yeah, but we would not charge.

17 Q. But that's a choice of Hanson Communications?

18 A. A choice of our company.

19 Q. That's Hanson Communications, is it not?

20 A. Yes.

21 Q. There's no legal obstacle to charging for
22 construction, is there?

23 A. No.

24 Q. You have a differential between what you
25 charge for residential customers and for business

1 customers; is that correct?

2 A. Yes.

3 Q. And is that uniform throughout? Let's start
4 with Fort Randall.

5 A. Yes.

6 Q. Is that uniform throughout Mt. Rushmore and
7 Fort Randall?

8 A. Yes.

9 Q. Uniform throughout the other?

10 A. You can go all the way, yes.

11 Q. It's uniform throughout everything?

12 A. Yes.

13 Q. Okay. And is it coincidence that it's the
14 same as what U S West was charging in, say, the
15 Centerville and Viborg exchanges?

16 A. For Centerville and Viborg it's different
17 with our other properties, Minnesota properties and Mt.
18 Rushmore in particular as far as rates. But as a
19 result of the rural sale, the requirement of the
20 telephone company was so that they could not increase
21 rates for a period of 18 months. And, you know, for
22 some of those exchanges that 18 months has lapsed.
23 There hasn't been any adjustments to rates, no
24 intention of changing rates. We did in the rural.
25 There was a distinguishment between urban or town and

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1 rural rates. And we eliminated the pricing
2 differential, the three dollar differential that
3 existed between town and rural.

4 Q. You, as a company, choose the differential
5 between residence and business, do you not?

6 A. At the time that we purchased the telephone
7 exchanges, the rates were set in terms of what was
8 offered. And the intent originally was not to adjust
9 rates upward. In our particular case we've never had
10 -- I shouldn't say that. We've had what we would call
11 zone pricing or differential pricing between urban and
12 rural areas anywhere up to one zone to, you know,
13 sometimes years ago five zones. We did away with that
14 primarily to make sure that our rural plant, the plant
15 that was sitting out along rural lines, we wanted to
16 make sure the people didn't make a decision to move
17 their business or residential line into town and strand
18 investment that's sitting way out in the country. So
19 it was a decision on our part to get rid of rural
20 rates, the zoning, but we haven't -- we have not
21 eliminated the distinguishment between business and
22 resident.

23 Q. The difference between those prices is within
24 Hanson Communications, Fort Randall, the various
25 companies, it is within your control, is it not?

1 A. In some cases it is. Depends upon what
2 state.

3 Q. In South Dakota it is within your control, is
4 it not?

5 A. To some extent, yes, it is.

6 Q. Okay. May I assume that the "to some extent"
7 has to do with the obligations that the Commission
8 placed on you as part of your purchase?

9 A. Yes.

10 Q. Other than that, once those 18 months are
11 over, you're free to choose whatever pricing you wish
12 to; is that correct?

13 A. Yes.

14 Q. Okay. And the retail prices that you charge
15 customers are not based upon your costs, are they?

16 A. Yes, they are.

17 Q. How do you arrive at the retail pricing based
18 upon your costs?

19 A. The price for local service traditionally has
20 been a residual type pricing design. You know, you
21 first calculated your interstate revenue requirements
22 and your intrastate revenue requirements and then there
23 was always a residual in that portion of the residual
24 and recovered via local rates. So, yes, in fact, they
25 are a cost based rate kind of back-dooring your way in.

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1 Q. They don't change each year with your revenue
2 requirements, do they?

3 A. They can. They don't normally.

4 Q. Then are they smoothed?

5 A. I would guess I come from two different
6 trains of thought here. Within the state of Minnesota
7 we have and have to some extent greater regulation over
8 local service rates. And so there was by its nature
9 the process of going through a rate case a smoothing
10 effect that occurred. We don't care or enjoy adjusting
11 prices on a month-to-month basis depending upon our
12 revenue requirement, nor do we calculate it based on
13 that. So to the extent that we haven't adjusted rates,
14 there is some level of smoothing that goes on.

15 Q. Let me ask you about South Dakota in
16 particular. You've purchased a number of U S West
17 exchanges.

18 A. Yes.

19 Q. Is that correct?

20 A. Yes.

21 Q. Did you in those exchanges simply adopt the
22 U S West pricing when you came in?

23 A. For a short term, yes.

24 Q. So to that extent it's not based on your
25 cost, it's based on what U S West priced them at?

1 A. You can't have costs until you own something.

2 Q. I understand. I'm simply asking.

3 A. That's right.

4 Q. You can take all the time to explain that you
5 want.

6 A. No, I don't want to, but you just can't do
7 it.

8 Q. Are the exhibits available? The copies that
9 I have aren't marked. Are those marked?

10 A. No, they aren't. Are we going back to the
11 one?

12 Q. Yeah, that's what we're doing. August 12th,
13 1997, Bruce Hanson, treasurer.

14 A. Okay. Got it.

15 Q. Okay. Now, without going through laying some
16 foundational things, is it true, or it is true, is it
17 not, that you're the designated negotiator in these
18 negotiations?

19 A. Yes.

20 Q. Okay. And so it was in your capacity as the
21 negotiator that this letter was sent. Would you agree
22 with me?

23 A. Yes.

24 Q. Would you agree with me that paragraph one
25 requests negotiations pursuant to 251(a)?

1 MR. BRADLEY: I'm going to object on the
2 grounds once again that this document speaks for
3 itself. This is not necessary.

4 MS. WIEST: Were you going to have any
5 follow-up questions to that?

6 MR. MARMET: I was.

7 MS. WIEST: Go ahead. Objection overruled.

8 Q. All right. Without going through all these
9 paragraphs, which I understand I don't want to spend
10 any more time on this, you made the statement on your
11 direct examination that Dakota was only asking for an
12 EAS type arrangement. Does this letter not ask for the
13 full range of services that are available under the
14 Telecommunications Act of 1996?

15 A. I think --

16 Q. Just answer yes or no, please.

17 A. No.

18 Q. All right. What does it leave out?

19 A. Are you talking about specifically for the
20 two exchanges that we're talking about?

21 Q. I believe that this letter would relate back
22 to the June 1st letter, so we want to make reference to
23 that.

24 A. Let me, yeah, that's fine.

25 Q. Okay. Centerville and Viborg referred to in

1 that.

2 A. As a part of, you know, not digging into the
3 law at all, but you've asked for a number of services.
4 I'll give you for example. You asked for collocation,
5 virtual collocation, and no collocation in two
6 exchanges; and we were having problems trying to
7 understand did you want to be in the building, did you
8 want to be right next to the building, or did you want
9 to be out of the building? Since we only had two
10 buildings, it was kind of hard for us to understand how
11 you'd want all three services and pricing for all three
12 services. So when we received this letter, it didn't
13 provide any more clarity than the June 1st letter in
14 our minds to what exactly it was that you wanted. And
15 I think that's, in fact, how we responded to the
16 letter.

17 Q. Was it a request for negotiations on those
18 matters?

19 A. I think the issue came down to part of the
20 problem that we have is as a result of being a rural
21 telephone company, there were issues, that some
22 unknowns that we needed to know in order to determine
23 where we were going to go with this whole process. In
24 particular, any options, exemption type options, that
25 we may want to exercise as a result of something that

1 would just not be available. For example, subloop
2 unbundling.

3 Q. All right. Well, then you agree with me that
4 you're as a rural telephone company exempt from certain
5 obligations under the Telecommunications Act?

6 A. I'm sorry, say that question again.

7 Q. Will you agree with me that as a rural
8 telephone company, you are exempt from certain
9 obligations under the Telecommunications Act of 1996?

10 A. There again, it comes down to in my view I'm
11 exempt if I -- well, let's see. I have to request an
12 exemption in my mind of portions of the Act depending
13 upon what services are asked for.

14 Q. Your --

15 A. But I mean I'm interpreting law and I'm not a
16 lawyer, so I'm in some ways hamstrung.

17 Q. All right. Your testimony includes -- the
18 prefilled testimony includes a great deal of law. May I
19 assume, then, that you were not fully aware of what you
20 were testifying about?

21 MR. BRADLEY: You'll note in those instances,
22 Counsel, that he specifically refers that he was
23 advised that these were appropriate sections by
24 counsel.

25 MR. MARMET: Is that an admission that it's

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1 hearsay?

2 MR. BRADLEY: No. That's admission that he's
3 not being held up as a legal expert.

4 MR. MARMET: You're telling me that he
5 related what you related to him and it's offered to
6 prove the truth of the matter asserted. I believe that
7 constitutes hearsay.

8 MR. BRADLEY: I'm telling you what's in his
9 testimony, Counsel.

10 Q. All right. Would you look at paragraph
11 nine. Would you read that, please?

12 MR. BRADLEY: For what purpose? Again, it's
13 in the record. This would be so much better in a
14 brief. Why don't we move on?

15 MR. MARMET: If that's in the form of an
16 objection, the Hearing Officer has to make a ruling on
17 it.

18 MS. WIEST: Objection overruled.

19 A. "Pursuant to 47 U.S.C. 251" -- I don't know
20 what you call that -- "(c)(4)", Dakota requests that
21 Fort Randall offers to it for resale at wholesale rates
22 any telecommunications service which Fort Randall
23 provides at retail to any subscribers who are not
24 telecommunications carriers. Dakota further requests
25 that Fort Randall provide to Dakota a list of such

1 services and the wholesale price for these services."

2 Q. Is that not a request pursuant to Section
3 251(c)(4)?

4 A. I'm not sure what 251(c)(4) is, but it is a
5 request for services a list of such services and
6 wholesale prices for these services.

7 Q. Okay. Turning to the letter dated September
8 25th, 1997.

9 A. Give me that again. What date?

10 Q. September 25th, 1997.

11 MS. WIEST: Who's the letter to and from?

12 MR. MARMET: It's from myself to Michael J.
13 Bradley.

14 Q. Second page, bottom of the page, last
15 paragraph continuing onto the next page.

16 MS. WIEST: Excuse me, what was the date
17 again of that letter?

18 MR. MARMET: September 25, 1997. I think
19 it's going to be your Exhibit No. 23.

20 MS. WIEST: No.

21 MR. MARMET: I'm sorry, 17.

22 MS. WIEST: 17.

23 CHAIRMAN BURG: Is that right?

24 MS. WIEST: Yes.

25 A. Yeah, I'm sorry.

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1 Q. Do you want me to read it to you so that we
2 don't go through the objection process?

3 MR. BRADLEY: Whether you read it or not it's
4 the same objection.

5 Q. "In order to evaluate your statement that
6 'Dakota should abandon its plans to overbuild the
7 network and purchase Fort Randall's service for
8 resale,' it will be necessary to know what discount
9 from retail prices Fort Randall is offering to Dakota.
10 Please forward those prices along with the prices for
11 unbundled network elements in the Centerville and
12 Viborg exchanges along with the same prices for Tabor,
13 Tyndall, Wagner, Lake Andes, and Hermosa." Do you find
14 that on your letter?

15 A. Yes.

16 Q. Your statement that Dakota had not requested
17 any other services beyond an EAS agreement, can you
18 tell me how those services constitute an EAS agreement?

19 A. Maybe I misunderstood your letter and didn't
20 take each paragraph as being separate items. But the
21 paragraph just preceding that had indicated an interest
22 in seeking ETC status and disaggregation of contiguous
23 study areas. There wasn't any certainty that you were
24 saying I want to order this service. What you were
25 saying is in order to evaluate this statement, what's

1 your discount. And, in fact, in our letter dated
2 October 13th, we did provide you with the discount.

3 Q. Acknowledged. Is that not the essence of
4 negotiation?

5 A. The essence of negotiation is ask for a
6 specific service and then a response to that ask. I
7 can't read further than what's here.

8 Q. To just touch briefly on the EAS services
9 that you've mentioned in your prefiled testimony, you
10 name a certain number -- certain price as the cost of
11 providing EAS services. I think it's 70 cents for
12 residential, \$2.40 for business. How was that dollar
13 figure arrived at?

14 A. What we did was in the original rate design
15 that was -- that we were required to adopt from U S
16 West, there was a distinction primarily in terms of
17 calling scope, the number of customers that could be
18 called within a local calling area. And what we did
19 was looked at the size of the exchanges individually,
20 absent EAS, and the size of the exchanges with the
21 additional numbers of subscribers and found out whether
22 or not they fit into one of the five rate bands that
23 were originally adopted. And the distinction between
24 rate band one and two was the rate differentials that
25 we have in here.

1 Q. I guess I don't understand. Does that mean
2 if someone were not to be receiving EAS they would be
3 costing you less?

4 A. In this particular situation, I'm not sure
5 what your question goes to. I'm just responding to the
6 question in terms of how the rates were established
7 and the rates were established that were placed in here
8 was the difference between a break in number of
9 customers that they were able to call. And in this
10 case, absent EAS, they were in rate band one. With the
11 EAS they were in rate band two in the five rate bands
12 that were used by U S West at the time. And the
13 difference between one and two is 70 cents and \$2.40.

14 Q. Is it a fair statement that each of the
15 exchanges that Centerville and Viborg can call to are
16 Dakota exchanges?

17 A. No.

18 Q. Okay. Where?

19 A. Centerville can only call to Viborg, and
20 Viborg can call out to several exchanges including --
21 well, all of them would happen to be Dakota except for
22 the Centerville.

23 Q. So what I'm trying to get at is to the extent
24 that any customer in Centerville or Viborg can call
25 outside of a Fort Randall area, it is to a Dakota

1 exchange. Is that a fair statement?

2 A. Yes.

3 Q. Are you -- can you today provide to Dakota
4 resale of services at a wholesale price?

5 A. I think in our October letter we indicated
6 some information as far as the discount and the billing
7 service changes, things like that. To the extent that
8 those prices -- yeah, we could provide it at those
9 prices.

10 Q. You could today provide to Dakota a resale of
11 any service to any customer in the Centerville and
12 Viborg exchange?

13 A. Resold service of ours?

14 Q. Yes.

15 A. Technically, yes.

16 Q. Would it be economically -- it's technically
17 feasible?

18 A. Yes.

19 Q. Okay. Is U S West still doing the switching
20 for Viborg and Centerville?

21 A. Yes.

22 Q. And they would -- would you have to work out
23 an agreement with them?

24 A. Yes.

25 Q. Do you have such an agreement now?

1 A. No.

2 Q. Is that in the nature of an interconnection
3 agreement that you would have to work out with them?

4 A. Not really. Basically what we have in terms
5 of an agreement between U S West and ourselves is a
6 host services agreement which effectively provides us
7 on a short term basis with host services. What I would
8 expect that we would have to deal with in terms of
9 resale is we'd have some network rearrangements that
10 possibly would have to be done. I'm not sure all of
11 the details of that, but there would be some changes
12 that would need to occur with a resold customer and
13 obviously from a billing perspective there would be
14 some issues there too. But billing would be nothing
15 related to them.

16 Q. Okay. If we called a recess in this hearing
17 and you sat down with Tom Hertz and you said, "Okay,
18 we're going to sign an agreement. Here's our
19 discount." Mr. Hertz said, "We'll take it." Could you
20 today provide resold services to customers in the
21 Centerville and Viborg exchanges?

22 A. Today, no.

23 Q. Tomorrow?

24 A. Well, not tomorrow. It would take some time
25 to get the -- we haven't -- what we have done and what

1 went into the document, the October 3rd letter relating
2 to the pricing was strictly that. It was budgetary
3 pricing for those services. We didn't initiate any
4 software modifications to any of our billing systems or
5 any of our customer service operations, and so we don't
6 turn that this afternoon. We don't turn that
7 tomorrow. It would take some time to do that. I'm not
8 sure how long.

9 Q. Is it unduly economically burdensome?

10 A. I guess I'm not understanding the question in
11 terms of resale why that question would even be an
12 issue. But to the extent that the competitive local
13 exchange carrier would be willing to pay the costs
14 associated with making changes to the system, no.

15 Q. All right. So?

16 A. It's a revenue neutral issue for us.

17 Q. As long as the CLEC pays the cost, then it's
18 not unduly economically burdensome?

19 A. Huh?

20 Q. If you pay the cost, is it unduly
21 economically burdensome?

22 A. I think our estimate is between 46 and 50 --
23 or between 45 and \$50,000. It's a significant amount
24 of money. That would be a problem. I guess I'd have
25 to defer to my attorney to find out whether or not

1 where we would go with it. But obviously, you know, if
2 I had three CLEC's coming in, we could spread the cost
3 three ways, but obviously you're the only one right
4 now.

5 Q. You talked about the software changes. So
6 there is a technical aspect of the change in order to
7 resell at this time, is there not?

8 A. Yeah, if software -- yeah, if software is
9 considered technical, yes.

10 Q. Okay. So I just want to make sure I
11 understand as of today you could not resell. Is that a
12 true statement?

13 A. As of right now, yes, no, we could not.

14 Q. Is there any difference between the
15 Centerville and Viborg exchange on that and Wagner or
16 any of your other exchanges?

17 A. No.

18 Q. So they're all the same?

19 A. Yes.

20 Q. Will that change when you have your new
21 switch set up in place?

22 A. On a resold basis?

23 Q. Yes, sir.

24 A. Probably doesn't make as much difference on a
25 resold basis. When we get into other type, of

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1 interconnection, yeah, it does make a difference to
2 hold off on it just a little bit. But, no, not near as
3 much.

4 Q. Could you explain that to me? I'm not trying
5 to drag this out.

6 A. No, I understand.

7 Q. How are things different with your new setup
8 than they are when you're using U S West equipment?

9 A. The only significant difference is, let's say
10 for example on a facility based basis you decide that
11 you want to provide service and you request initially a
12 couple DSL's, some software modifications for number
13 portability, so you want to port the number, you want
14 to do a few things associated with the subscriber
15 account, make sure that all of the custom features that
16 the customer has today get ported across, those types
17 of things. That requires some coordination with our
18 existing host provider, U S West.

19 Obviously, building those systems for a
20 relatively short period of time don't make a lot of
21 sense in our mind because the cost recovery is so
22 short. Doing it over a switch reconfiguration in terms
23 of the remote call forwarding, things like that, make a
24 lot more sense because these are ongoing expenses that
25 can be borne over time and scheduled, where you just

1 end up eating -- you end up biting the dollars right at
2 the beginning and absorbing them almost completely and
3 not much advantage, or not much value is gotten
4 received from it from now until the first quarter of
5 the year.

6 Q. And so what you're talking about there is the
7 unbundled network elements; am I correct?

8 A. No. It could go to the issue of -- No. What
9 I'm saying is like a facility based provider like what
10 you're looking at where you have all of your own
11 facilities. However, you want to -- when a customer
12 changes, you want to retain the telephone number. For
13 a period of time until using interim number portability
14 we would use remote call forwarding. In our own switch
15 that's probably easy to do in terms of the costs
16 associated with getting U S West to do that because
17 it's not a group of services that we've already
18 purchased from U S West. Basically the services that
19 were offered to us and that we have under our host
20 services agreement are only the services that were
21 offered when we purchased the exchanges. To add
22 services would require whatever charges, you know, they
23 would bear to us. You know, a good example of that was
24 Caller ID. When it first came in that was not a
25 service that was offered at the time of the sale. And

1 so as a function of the host services agreement they
2 were not offering that service unless you wanted to pay
3 the fee, and we did pay the charges to provide that
4 feature functionality for our customers.

5 Q. I guess I'm -- are you and I talking about
6 different things? But it sounds to me like you're
7 talking about network elements are more difficult to
8 get out of U S West. I'm not trying to put words in
9 your mouth. I'm more trying to understand what you're
10 telling me.

11 A. No. What I'm saying, the costs are probably
12 pretty much the same. It's just we have to do it
13 twice.

14 Q. Okay.

15 A. And over a short period of time. And,
16 unfortunately, in the case of U S West, I only have
17 about six months to get that cost recovery done.

18 Q. Okay.

19 A. Because afterwards it's valueless once the
20 light is turned off towards our existing host switch
21 there's no value in that type of connection.

22 Q. And a pure resale is different?

23 A. Yes. We still have to deal with the OSS --
24 or with the billing system; however, that can have a
25 life beyond today -- or beyond the switch conversion.

1 Q. Okay.

2 A. Oh, wait a minute. I'm sorry, there is -- I
3 don't know how to describe this. No, yeah, with the
4 billing systems we could recover. One of the issues
5 that we have are usage sensitive type functions, call
6 forwarding -- or not call forwarding. Some of the
7 things that we bill on a usage basis. But, there
8 again, if we built the systems initially, we should be
9 able to on a resold basis be able to deal with that,
10 yeah.

11 Q. Now you've gotten me confused. Those things
12 -- if you built from the beginning, are you talking
13 about with your new switch on, or are you talking
14 through U S West?

15 A. No, any time, any time.

16 Q. Any time?

17 A. I'm sorry, I spoke out of turn. We would be
18 fine.

19 MR. MARMET: That's all the questions I have
20 for now.

21 MS. WIEST: Mr. Coit?

22 MR. COIT: No questions.

23 MS. WIEST: Mr. Hoseck?

24 MR. HOSECK: Yes.
25

CROSS-EXAMINATION

BY MR. HOSECK:

Q. Good afternoon, Mr. Hanson.

A. Good afternoon.

Q. Just a couple questions here. Which entity of the Dakota organization has sought interconnection with you? Do you know?

A. No, I do not.

Q. Okay.

A. We're guessing.

Q. But we are dealing with a request for interconnection. Is that your understanding of how this thing is postured?

A. Yes.

Q. Has there been any type of an interconnection agreement reached as of today between your company and any of the Dakota organizations?

A. No.

Q. Okay. One of the things I'd like to refer you to is page 16 of your prefiled testimony. And toward the top of that you're talking about the rates that are charged for residential versus business in the Viborg and Centerville exchanges. And in particular I would like to have you look at the statement that you make commencing on line 11, which reads and I quote,

1 "As is apparent, the residential rate is set below the
2 average rate, while the business rate is set above the
3 average rate." What is your basis for making that
4 statement?

5 A. Well, obviously both rates can't be average;
6 and so the assumption has to be that one is at a
7 different rate than the other and average is somewhere
8 in between. It's a traditional rate design, I guess,
9 is probably the way I'd best describe it. Most
10 traditional rates there's a difference between
11 residential and business. But, you know, if I were to
12 describe these rates, I'd have to say that both can't
13 be average, so average has to be somewhere else; and I
14 assume an average is in between.

15 Q. It can't be like Lake Woebegone where all the
16 children are above average?

17 A. Yeah, where you walk uphill both ways.

18 Q. Well, the other question I have on this were
19 the exchange rates that you have referenced here set by
20 U S West when you took over these exchanges?

21 A. The local service rates?

22 Q. Yes.

23 A. Yes.

24 Q. And so as to how these were reached and
25 whether or not one is higher or lower than average and

1 for whatever reason they might be, I believe you used
2 the word assumption. In other words, is there a cost
3 study that you have relied upon in reaching your
4 conclusion when you made this statement?

5 A. No. I think they would be best characterized
6 as prices rather than rates. They are prices for
7 services. And in our cost assumption, I mean, they
8 aren't relative to our costs at all. It was more of a
9 convenience, I think if I remember right, than anything
10 else and the stipulation.

11 Q. One other thing, and I don't mean to nitpick
12 here, but I just wanted to clarify something. I
13 believe you earlier testified -- and this would be with
14 regard to testimony that shows up on page 21 when you
15 were talking about the EAS connections. And you said
16 something along the line that all the EAS points from
17 Viborg were to Dakota exchanges. What I'm wondering
18 was do you know what the status of Beresford is in this
19 relationship? Are they a Dakota exchange?

20 A. No, they are not.

21 Q. Okay. So then your answer would be?

22 A. Correct.

23 Q. Correct, it would be modified in that regard?

24 A. Yes.

25 Q. Beresford rural, though, would be Dakota

1 partially; correct? I guess one final question,
2 Mr. Hanson: What is it that you expect the Public
3 Utilities Commission to approve or rule on as a result
4 of this proceeding?

5 A. I think, you know, I summarized my view in
6 terms of within my testimony, but I can read it for
7 you.

8 Q. No, just keep it as simple and short as
9 possible. In other words, what's the ultimate thing
10 that you expect this Commission to rule on?

11 A. Well, I think there's an important
12 distinction in my mind between competition that affects
13 a few customers within a very rural community and
14 competition that benefits the whole of the community
15 that we serve. And so I guess my -- you know, our
16 desire has been early on is that if Dakota desires to
17 provide service, that they don't limit their service to
18 their existing facilities within just the towns and
19 that they also compete actively for the rural customers
20 that we have. And so ETC, or the eligible
21 telecommunication carrier requirements, within an
22 exchange go pretty much to dealing with the issue of
23 providing service across the board.

24 The other significant issue for us is
25 although someone could say we want to provide service

1 everywhere; and Dakota probably would come through and
2 say, yeah, we'll provide service everywhere, but for a
3 rural customer it's going to cost you some additional
4 construction costs. It's going to cost you additional
5 dollars in terms of local service, effectively pricing
6 themselves out of the rural market and rural customers,
7 not buying into their service, more basically that
8 would be it. The desire is to get them onto an even
9 footing in terms of the universal service issue. We
10 believe that they made a conscious choice, an effort,
11 seeing something that they wanted to go after. And in
12 our mind, if there is "a subsidy" to be received from
13 universal service for providing competition, we don't
14 think that's right. We don't think competitors should
15 be subsidized.

16 Q. You've been in the telephone business a lot
17 longer than I have, and I'm sure you're familiar with
18 the term public interest, which means different things
19 to different people. Which, at least, that's how I
20 read it. Could you explain to this Commission how your
21 position in your mind serves the public interest?

22 A. Sure. It comes -- if you take a look at the
23 way competition has presently being introduced within
24 the United States, a predominant number of lines are in
25 the business area. Businesses seem to be benefitting

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1 more from competition than any other. Residences have
2 been held out, except for some odd situations where
3 they're providing maybe prepaid local telephone
4 service, things like that. You know, my view of how
5 we're attempting to fashion this is to make sure that
6 everybody has an opportunity to make a choice; and that
7 the choice, irrespective of whether or not they're in
8 town or out of town, the price is virtually the same.
9 But that it's pricing elastic so that we don't unfairly
10 disadvantage ourselves because we're there and are
11 going to continue to provide service. As you know, you
12 could use the term carrier of last resort or whatever.

13 Q. Is it your opinion that competition would be
14 in the public interest?

15 A. Maybe. It depends upon -- again, it goes
16 back to your original question or original comment.
17 Views of public interest are different. And I can sit
18 on either side of that table and place two arguments
19 that would contradict each other.

20 Q. Which side of the table are you sitting on in
21 this case?

22 A. Fort Randall Telephone Company's situation.

23 Q. And Fort Randall's situation is that they
24 view that competition is in the public interest?

25 A. I don't know that it's mine to really decide

1 but I can't say. I have a bias, okay? And my
2 reflective bias really shouldn't come into play in
3 determining whether or not it's a public interest or
4 not.

5 Q. Well, even assuming that you have a bias,
6 what is your opinion?

7 MR. BRADLEY: I'm going to object on the
8 grounds of relevance.

9 MR. HOSECK: I think public interest is
10 something that is something for the Commission to take
11 under consideration in all cases, and I don't think
12 that it's improper to discover what a particular
13 litigant's position is with regard to public interest.

14 MS. WIEST: Overruled, if you have an
15 answer.

16 A. We already have competition. I mean there
17 are cellular providers that presently provide service,
18 and we compete actively for those lines. Obviously,
19 there are different service requirements and different
20 obligations, and we don't -- I don't know that anybody
21 embraces competition. I mean competition is a
22 reality. Now, whether or not it's public interest or
23 not, I'm not in the public world to make that
24 determination. You know, I drive Chevrolets and I
25 drive Fords. Obviously, in terms of automobiles, I

1 like to -- I like variety. I don't know if I can port
2 that over to what we're talking about here.

3 MR. HOSECK: No further questions.

4 MS. WIEST: Commissioners?

5 CHAIRMAN BURG: I've got some. We talked --
6 at one time you were questioned about the cost, the
7 BCPM model and that. Would the historical costs be
8 higher or lower than the BCPM costs?

9 A. I don't know. I would have to believe it
10 would be lower only because it's a forward-looking
11 issue in my mind, because what you're looking at doing
12 is buying new technology, which may or may not cost
13 less but may provide --

14 CHAIRMAN BURG: Does the historical costs
15 include some things that forward-looking do not?

16 A. Yes.

17 CHAIRMAN BURG: And so?

18 A. For example, like acquisition adjustment may
19 be an obvious target.

20 CHAIRMAN BURG: And isn't fully allocated
21 historical?

22 A. I don't know.

23 CHAIRMAN BURG: I have a problem to your
24 answer?

25 A. I really don't know.

1 CHAIRMAN BURG: You said Fort Randall was not
2 eligible for universal service funds at this time?

3 A. That's correct.

4 CHAIRMAN BURG: Why not?

5 A. Two -- well, two reasons: In it's present
6 configuration it's an average schedule company. And
7 the only companies that actually qualify for universal
8 service funding are really small telephone exchanges.
9 Like, for example, prior to us purchasing the
10 exchanges, Mt. Rushmore, actually as an average
11 scheduled company, qualified for some universal service
12 funding. And so we would receive funding from the
13 pool. Traditionally average scheduled companies do not
14 receive anything from many of the universal service
15 fund pool.

16 CHAIRMAN BURG: For eligibility for funding,
17 is your entire company considered rather than a service
18 area or exchange?

19 A. Actually in this particular case because of
20 the way that the FCC handled the study area, Mt.
21 Rushmore and Fort Randall are considered as one unit.
22 The study area has actually also incorporated Keystone.

23 CHAIRMAN BURG: But for the purpose of
24 universal service funds, do your other company holdings
25 come into Hanson Communications eligibility or not?

1 A. No, they don't. It's on a study area basis.

2 CHAIRMAN BURG: There was a discussion on
3 whether you could pass on construction costs if you
4 wanted to. Do you remember that?

5 A. Yes.

6 CHAIRMAN BURG: And you've said you have
7 chosen not to?

8 A. Yes.

9 CHAIRMAN BURG: By that question I inferred
10 -- I got the inference that that's company choice
11 whether to or not; is that right?

12 A. Yeah. If you want me to expand on it,
13 basically our view is that our customers move into an
14 area. They make an investment in moving into town for
15 whatever reason. Our view is that that's just
16 investment placed and we will recover the costs over a
17 long period of time.

18 CHAIRMAN BURG: If you had a competitor that
19 charged for construction costs for new entrants and
20 thus lowered the average rates because of that, which
21 would be the inference, would you possibly have to go
22 to construction cost?

23 A. I don't think that we would. It would have
24 to -- there would have to be fairly significant.

25 CHAIRMAN BURG: Well, but I want to get you

1 away from policy reasons but economic reasons.

2 A. I'm an old dog, new tricks. We've been doing
3 it for 25 years this way.

4 CHAIRMAN BURG: Let me put it this way.

5 Right, I realize that, and I think that you know I
6 think that some of your answers have been on that
7 line. Would it be in the public interest to charge for
8 construction due to competitive services if you had to
9 charge for construction because your competitors did?

10 A. I think if I didn't, it would certainly
11 distinguish me from my competitor. Again, it goes back
12 to the issue we've got an investment already out there
13 and some of it is relatively close to the end customer
14 so the costs of extensions are somewhat mitigated by
15 the fact that we've got cable all over the place.

16 CHAIRMAN BURG: Is your 18 months terminated
17 yet that you are under for holding your rates with the
18 U S West purchase?

19 A. On some of the exchanges they have, yes.

20 CHAIRMAN BURG: Under that could you charge
21 for construction costs under the purchase agreement?

22 A. Yes, yeah, if we wanted to.

23 CHAIRMAN BURG: Okay. I believe that Dakota
24 indicated that they desired to have the Centerville and
25 Viborg exchanges determined to be a separate study

1 area. Did they do that on one of their prefiled, do
2 you recall?

3 A. In the testimony I think there was something
4 related to that.

5 CHAIRMAN BURG: Reference to the fact that
6 they wanted it as a separate study area?

7 A. Yes, or their intent to attempt to separate
8 them.

9 CHAIRMAN BURG: What would the effects on
10 Fort Randall be if that was determined a separate study
11 area?

12 A. Again, it goes back to the original issue.
13 These are both remotes. And so disaggregating costs
14 between the host and the remotes would get real
15 interesting. I don't know. When you get into
16 separating study areas, part of the reason that the FCC
17 hated it so much the first go-around was that they were
18 concerned about gaming the system. And there are some
19 opportunities for gaming there because you could end up
20 you're going to have a cost allocation mechanism that's
21 going to be 60/40, 20/30. When the guy is driving from
22 Tyndall to Centerville, when does his time start? Does
23 it start halfway? Does it start at Lesterville? Does
24 it start where? You know, what town? And you can get
25 into a bit of a cost separations nightmare.

1 CHAIRMAN BURG: But you also talked about the
2 ability to game; is that right?

3 A. Yeah, there is a possibility to game.

4 CHAIRMAN BURG: What would be the effects on
5 Fort Randall if it was gamed? I mean, in other words,
6 if they had a separate study area for Fort Randall and
7 Centerville, would you need to request the same thing?

8 A. Well, I'm not sure by -- I'm not sure what
9 the trigger is going to be. If they ask for a separate
10 study area, does that actually disaggregate our study
11 area? And we have two.

12 CHAIRMAN BURG: Would it need to be for your
13 economic health? In other words --

14 A. Probably, yeah.

15 CHAIRMAN BURG: I guess the question I'm
16 having is the Centerville, Viborg exchange a more
17 contiguous, less customers per mile exchange than your
18 entire Fort Randall area?

19 A. Not really. I think, you know, it's below
20 average in terms of numbers of customers.

21 CHAIRMAN BURG: Below average for Fort
22 Randall?

23 A. For Fort Randall.

24 CHAIRMAN BURG: Where is the higher areas?

25 A. Wagner and Hermosa.

1 CHAIRMAN BURG: Is that by including Wagner?
2 Do you mean just municipal or Wagner?

3 A. Wagner exchange, the 384.

4 CHAIRMAN BURG: The entire exchange --

5 A. Yeah.

6 CHAIRMAN BURG: -- has a higher
7 concentration?

8 A. Yeah. You have Wagner, you have Marty,
9 you've got Ravinia, those three communities within that
10 one exchange and Dante. You've got four communities
11 within an exchange and so there's -- so there are more
12 customers in there and they're living in communities as
13 opposed to living out in the country.

14 CHAIRMAN BURG: That's all I had.

15 A. We haven't done a density view. The only
16 time we ever look at densities is gross receipts
17 related, and in our particular case we're at the
18 highest rate anyhow so we don't generally spend too
19 much time thinking about densities.

20 CHAIRMAN BURG: Okay. That's all I have.

21 MS. WIEST: Any other questions from
22 Commissioners?

23 COMMISSIONER NELSON: I have one. I'm not
24 sure I caught your answer that you gave when you were
25 asked about whether or not you felt that competition

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1 was going to be in the public interest in Fort
2 Randall's case.

3 A. As it relates specifically to Fort Randall,
4 it depends upon how it's introduced, I think. If
5 public interest causes Fort Randall to come into play,
6 it would depend. If my competitor is allowed to
7 receive a subsidy in order to provide service through
8 some kind of pool mechanism and we were somehow held
9 out of that process and the competitor was allowed to
10 only provide service within a small geographical area,
11 it may be just the town, then, yeah, there is some
12 economic disadvantage. And somewhere along the line
13 those -- that cost or those -- our costs would stay the
14 same, more than likely, not a whole lot of decrease.
15 And we would have to recover that cost somewhere
16 through local rate increases, which would, you know, in
17 my mind may or may not cause a lack of public
18 interest. I mean if I increase rates, maybe customers
19 won't feel bad about it, but I don't know.

20 COMMISSIONER NELSON: Thank you. And there
21 was some talk earlier in your testimony about why you
22 were charging U S West rates. Is the only reason
23 you're still charging some of those rates is because
24 you agreed to it and the time hasn't run out? Is that
25 basically, in essence, why your rates are what they

1 were? Because there was some talk about if they were
2 cost based or whether or not they weren't.

3 A. Yeah. Primarily we've got under two years of
4 operation, not a full year of operation within any of
5 these exchanges where we've got a full calendar year.
6 We haven't looked at any rate adjustments except for in
7 the case of the urban/rural, the three dollar
8 differential, we did eliminate that for all of our
9 rural customers, so we actually are not charging U S
10 West rates or their traditional rate design.

11 COMMISSIONER NELSON: Can I assume your rates
12 are less?

13 A. They are less now for the rural customers.
14 And I guess some of our town customers touch tone
15 charges were eliminated. Touch tone is now part of the
16 basic rate and the rural differential is gone.

17 COMMISSIONER NELSON: Okay. And one other:
18 In your testimony you also -- there was some, at
19 least when Mr. Marmet questioned you about your EAS and
20 who you can call and the five bands, and you said there
21 was one band at least that in that particular band no
22 one had any -- couldn't make any EAS calls.

23 A. No, that isn't -- the characterization of the
24 way they set their rates up is U S West at some time
25 rearranged how they were doing their U S West

1 administrative. They used to have an administrative
2 for every exchange they added. And they went away from
3 that and went to a different rate design effectively
4 saying if you're a customer in Centerville, for
5 example, and Centerville was the only -- well, no,
6 that's -- let me get a good example. What do I have
7 for non-EAS? Tyndall, Tyndall is a good example.
8 Tyndall doesn't have EAS anywhere so they only can call
9 so many customers.

10 But if you were to add Tyndall and Tabor, for
11 example, you would go from a one rate band to a two
12 rate band because there would be more customers that
13 you could call. And the way U S West had the rate
14 design was to go from one, two, three, four, and five;
15 five being the highest number of customers that they
16 could call. Traditionally, Rapid City and probably
17 Sioux Falls were the only -- maybe Mitchell -- were the
18 only three communities that had the highest rate band.
19 In the case of Centerville and Viborg, they were in
20 rate band two. Tabor, for example, has about 400
21 customers but can call all of Yankton; and so they're
22 at rate band three, I think it is.

23 COMMISSIONER NELSON: If the more people you
24 could call, would it get more expensive the more people
25 you can call?

1 A. Yeah. That's what I indicated in my
2 testimony was that the difference between one and two,
3 the rate band, or the rate design one and two was 70
4 cents for residential customer.

5 COMMISSIONER NELSON: So the more people, the
6 more your rate?

7 A. Yeah, the higher the rate.

8 COMMISSIONER NELSON: Thank you.

9 CHAIRMAN BURG: I have one other one. It
10 goes to the question I have is why you assumed that
11 Dakota wanted only EAS type interconnection because you
12 were just asked quite a few questions based on the
13 letter of August 12th to yourself from Mr. Hertz in
14 which they go through all these requests and yet the
15 filed testimony was assuming that Dakota only wanted
16 EAS type connections. Why did that occur?

17 A. Basically in response to a letter that Tom
18 had sent -- and I have to find it. I don't know what
19 exhibit this is, but in the September 8th letter.

20 MR. BRADLEY: Exhibit 15.

21 A. Paragraph two. And this is Tom Hertz
22 writing. It says Dakota doesn't need any of Fort
23 Randall's facilities to provide local exchange service
24 in the Viborg and Centerville exchanges. Dakota's only
25 requirement for interconnection is essentially

1 identical to an EAS agreement.

2 CHAIRMAN BURG: So you base that being
3 Dakota's request for service?

4 A. Well, this along with the original letter.
5 We viewed this as being a refinement of the original
6 letter that said we want all of the services. Then
7 when we came back they refined or shortened their list
8 to saying we don't need any of your facilities, all we
9 really want is EAS. And that's how we responded.

10 CHAIRMAN BURG: Didn't Dakota's attorney
11 indicate to you that the letter of August 12th
12 requested all the services?

13 A. Yes.

14 CHAIRMAN BURG: So are you feeling that at
15 this point you based your assumption of interconnection
16 only as being erroneous, or is there something else?

17 A. No. The way I looked at it it was a
18 refinement. My view of the September 8th letter -- the
19 other letter served as what I would call a bona fide
20 request. What September 8th did was just say here's a
21 refinement of really what we need and all we're talking
22 about is an EAS type agreement.

23 CHAIRMAN BURG: Okay. If it boils down to
24 just an EAS type agreement, does that still constitute
25 a bona fide request for interconnection services on

1 your part?

2 A. Yes.

3 CHAIRMAN BURG: Still does? I thought I
4 heard an indication that an agreement with your
5 attorney from the request for dismissal of the case but
6 based on the fact there wasn't any --

7 A. I think what we were talking about is the
8 issue of exemptions, and it doesn't go to the issue of
9 whether or not it affects any of the rural exemptions.
10 A reciprocal comp agreement, I think the issue again --
11 I'm not a lawyer, but I think the issue goes down to it
12 doesn't affect the exemption is where they were going
13 in that discussion.

14 CHAIRMAN BURG: But you consider request for
15 EAS interconnection type agreement only to be a bona
16 fide request under the Act?

17 A. No.

18 CHAIRMAN BURG: That may be a legal
19 determination?

20 A. Yeah. In general the way I view the
21 September 8th -- I view the other letter as being a
22 bona fide request. I view the September 8th letter as
23 being tell me what you really want, and he told me what
24 he really wanted.

25 CHAIRMAN BURG: One of the things I'm

1 struggling with is did that refinement, that reduction
2 of all the litany that was needed, did that take it out
3 of the realm of a bona fide request to your estimation?

4 A. No, because --

5 CHAIRMAN BURG: But the -- let's see if I
6 could get this clear. The bona fide request is request
7 for a change from the exemption; is that correct?

8 A. No. A bona fide request -- I mean Dakota
9 Cooperative made a bona fide request to U S West to
10 enter into negotiations for this same type of an
11 agreement, a reciprocal comp agreement to provide local
12 service within Harrisburg and Tea, at least in my
13 understanding.

14 CHAIRMAN BURG: Did we have to act on that?

15 MR. HERTZ: You approved it.

16 CHAIRMAN BURG: On the bona fide request or
17 the agreement itself in this case?

18 A. I don't know.

19 MS. WIEST: You'll have to ask a different
20 witness.

21 CHAIRMAN BURG: Okay. I'll ask that later.
22 I think that clarifies it -- or doesn't clarify it
23 but --

24 A. I'm sorry

25 (AT THIS TIME A RECESS WAS TAKEN.)

1 MS. WIEST: Okay. We'll go back on the
2 record. Mr. Bradley, do you have any redirect?

3 MR. BRADLEY: Thank you.

4 REDIRECT EXAMINATION

5 BY MR. BRADLEY:

6 Q. Mr. Hanson, I'll start off with kind of the
7 area that was last asked by Chairman Burg. Let's begin
8 with the June 1st letter, which is Exhibit 6, and
9 that's the first request received by Fort Randall for
10 interconnection services.

11 A. Okay.

12 Q. And that is for which two exchanges?

13 A. Centerville and Viborg.

14 Q. The subsequent letter of August 12th, which
15 was Exhibit 11, states that it seeks to continue the
16 negotiations of June 1st. From that did you infer that
17 we were continuing to talk about Centerville and
18 Viborg? Did we send through me a letter dated
19 September 8th, Exhibit No. 14, from myself? So it will
20 be on Moss & Barnett letterhead.

21 CHAIRMAN BURG: To who though?

22 Q. It was written to William Bullard complaining
23 that the latest August letter, August 12th letter,
24 quote, "does nothing more than assert that Dakota is
25 requesting every possible form of unbundled service

1 possible." Did we send that letter?

2 A. Yes.

3 Q. And then in a response to that letter,
4 Exhibit 15, also dated September 8th, replies to
5 Mr. Bradley's letter of September 8th, 1997, and does
6 that say in part, "Fort Randall seems intent on
7 throwing up as many regulatory road blocks. Dakota
8 does not need any of Fort Randall's facilities to
9 provide local exchanges services in the Viborg and
10 Centerville exchanges. Dakota's only requirement for
11 interconnection is essentially identical to an EAS,
12 extended area service, agreement between local exchange
13 carriers." Does it say that?

14 A. Yes.

15 Q. Does it go on to say in the same paragraph,
16 "Dakota is willing to enter into exactly the same kind
17 of physical interconnection agreement it now has with
18 U S West and approved by the SDPUC for reciprocal,
19 symmetrical exchange of EAS type traffic"?

20 A. Yes.

21 Q. Did we on September 24th, document 16 --

22 A. I've got to find it.

23 Q. Go ahead. September 24th, Moss & Barnett
24 letterhead. Does it indicate at the very top, "The
25 purpose of this letter is to respond to your letter of

1 September 8th, 1997, and to accept the form of the
2 interconnection proposed in that letter"?

3 A. Yes.

4 Q. Document Number 17 is a letter dated
5 September 25th, 1997, to me from Dakota. September
6 25.

7 A. Yeah, it's probably in here.

8 CHAIRMAN BURG: Exhibit 17?

9 A. These aren't numbered, I'm sorry.

10 Q. Underneath Roman Numeral I, Interconnection
11 Through Meet Points. Does that say a meet point for
12 the arrangement of the interconnection with Dakota's
13 traffic with Fort Randall makes sense?

14 A. Yes.

15 Q. Did we on October -- did Fort Randall on
16 October 13th, Exhibit 18, send a proposed
17 interconnection agreement of an EAS type arrangement?

18 A. Yes.

19 Q. Has Fort Randall at any time other than this
20 afternoon indicated that there was any other service
21 that it wanted from Fort Randall?

22 A. Did Dakota?

23 Q. Yes.

24 A. No.

25 Q. Based on all those series of correspondence,

1 do you believe and you continue to believe the only
2 services that Fort Randall has been requested to
3 provide in Centerville and Viborg are those services
4 that, in fact, it has offered through its
5 interconnection agreement?

6 A. Yes.

7 Q. Turning to page 18 of your testimony, line
8 eight has a BCPM cost of \$108.09 for a rural loop and
9 \$70.30 for an unbundled loop. Has Fort Randall had --
10 Hanson Communications had reason to recently basically
11 replace all of the facilities in any particular
12 exchanges it operates?

13 A. Yes, we have.

14 Q. And which exchanges is that?

15 A. The Zumbrota Telephone Company. It's an
16 entire exchange was replaced.

17 Q. Based on that do you have an opinion
18 concerning the reasonableness of those rates on line
19 eight?

20 A. Yeah. They're reasonable. Those are --
21 everything was brand new from the get-go. There was
22 very little bit of existing facilities that were
23 replaced -- or that were retained. So they would kind
24 of identify a forward-looking view but, yeah, they
25 would make sense.

1 Q. Now, regardless of the absolute correctness
2 of those numbers, even if they were to go down by 25
3 percent, would -- what was the -- would the purpose of
4 having to put these numbers remain the same and what
5 was that purpose? Let me rephrase it. You have given
6 two different rates for the purpose of demonstrating,
7 have you not, the consequences of a competitor only
8 serving less costly customers?

9 A. Okay.

10 Q. If these prices were to be reduced by 50
11 percent so that they were \$54.00 and \$35.00, would that
12 principle still be valid?

13 A. Yeah, the principle of a rural versus urban
14 type loop, yeah, there would always be a distinguished
15 difference between the two and they'd correlate.

16 Q. You had a significant discussion concerning
17 the ability to provide resale services. I believe
18 earlier today during your direct testimony with me you
19 indicated that in exchange, if Dakota were required to
20 provide ETC services, Fort Randall would be willing to
21 provide a wholesale resale at a wholesale rate?

22 A. Yes.

23 Q. You indicated that one of the up-front costs
24 related to providing that service, though, was a
25 modification to the billing and collection service

1 software 45,000 to \$48,000?

2 A. Yes, that's our estimate.

3 Q. Would those be costs that you would be
4 seeking to recover from Dakota?

5 A. Yes.

6 Q. You indicated at this time that U S West
7 provides the switching for Centerville and Viborg; is
8 that correct?

9 A. Yes.

10 Q. And if Dakota waits until after the first
11 quarter of 1998, Fort Randall would be providing its
12 own switching; is that correct?

13 A. That's correct.

14 Q. If Dakota implements its services earlier
15 than at switch change-out, it will be necessary to
16 involve U S West in the process?

17 A. Yes.

18 Q. And U S West may impose additional costs?

19 A. Yes.

20 Q. And the intent would be to impose those costs
21 directly on Fort Randall -- directly on Dakota?

22 A. Yes, that would be correct.

23 Q. You indicated earlier that competitors
24 shouldn't be subsidized. Is your concern that
25 competitors shouldn't be subsidized or that only

1 uneconomic duplicative facilities shouldn't be
2 subsidized?

3 A. Yeah, I think going to the point of that
4 uneconomic duplication shouldn't be subsidized,.

5 MR. BRADLEY: At this point I would like to
6 move into the record Exhibit 2, which is his testimony.

7 MS. WIEST: Any objection? If not, that's
8 been admitted.

9 MR. BRADLEY: I have no further questions.

10 MS. WIEST: Is there any further cross of
11 this witness?

12 MR. MARMET: Just a few.

13 RECROSS-EXAMINATION

14 BY MR. MARMET:

15 Q. Mr. Hanson, if you could not recover the cost
16 of the software upgrade and if you could not recover
17 the cost that U S West might pass on from Dakota, would
18 a resale agreement today be unduly economically
19 burdensome for your company?

20 A. If I could not?

21 Q. Yes.

22 A. It's a problem. We're talking about \$50,000
23 plus. You're saying that that should be a borne cost
24 by a LEC because they exist?

25 Q. That's the premise of my question, yes.

1 A. I'm not -- I guess I'm not necessarily
2 certain of the resale aspect of it in terms of an
3 allowance for an exemption. I guess I'd have to defer
4 to somebody else to give me any indication of whether
5 or not I can impose an exemption because of resale.

6 Q. One of the obligations under 251(c) that
7 you're exempt from is duty to resale at wholesale
8 rates. Will you agree with me? It's in your
9 testimony.

10 A. Yes.

11 Q. Let me get to it.

12 A. I guess to answer your question concerning
13 the dollars, it would be -- I don't have a cost
14 recovery mechanism to recover \$50,000.

15 Q. So then the question is would that be unduly
16 economically burdensome for you, for your company?

17 A. For these two exchanges, yes.

18 Q. Okay. One of the obligations under 251(c),
19 again referring to your testimony, is the duty to
20 negotiate in good faith. Will you agree with me?

21 A. Yes.

22 Q. Okay. So if you retain the exemption, you do
23 not have the obligation to negotiation. Will you agree
24 with me?

25 A. Yes.

1 Q. Okay. The letter that you've spoken about,
2 September 18 -- September 8th, to whom was that sent?

3 MR. BRADLEY: There were two separate.

4 Q. Excuse me, Exhibit 15.

5 A. I don't have them marked, I'm sorry.

6 Q. Okay.

7 A. But I'm assuming you're talking about the
8 Moss & Barnett letter.

9 Q. No, sir.

10 A. The other one, the Dakota?

11 Q. Yes.

12 A. Your letter, then, to William Bullard.

13 Q. It was not directed to you?

14 A. No.

15 Q. When you talk about the benchmark cost proxy
16 model that your company ran, do you happen to know
17 which version of it?

18 A. No, I do not.

19 Q. You've indicated that your company is --

20 A. I'm sorry, let me go back to that. Yes, I do
21 know it was the most updated version that they had.
22 Now, there was two. We ran two versions that came up
23 with two different values. I could find the version
24 number, but I know the second go-around we ran an
25 updated version.

1 Q. But you do confirm that there were multiple
2 versions of the benchmark cost proxy model?

3 A. There is more than one, yes.

4 Q. You've indicated that your company is an
5 average scheduled company?

6 A. Yes.

7 Q. You could change to a cost company at any
8 time without penalty, couldn't you?

9 A. That's correct.

10 Q. The cost allocations that you're talking
11 about with study areas, do you know whether a CLEC, a
12 competitive local exchange carrier, has a study area?

13 A. No, I don't have a --

14 Q. You don't know whether they do or not?

15 A. No.

16 Q. Do you know whether we're talking --

17 A. I'm assuming that they don't. I don't know.

18 Q. All right. When we're talking about the
19 study areas and when we're talking about
20 disaggregating, if a CLEC -- if we'll go on the
21 assumption that a CLEC does not have a study area, then
22 the only purpose of the study area service area is for
23 purposes of universal service, the new universal
24 service. Will you agree with me there?

25 A. I'm not sure what the impact is of a

1 disaggregation because it hasn't occurred. But the
2 purpose of a study area is to make sure that a company
3 recovers or not recovers, a service area is designed to
4 encompass the operations of a telephone exchange -- or
5 telephone company within a state.

6 Q. Uh-huh. Will you --

7 A. Go ahead.

8 Q. Will you agree with me, then, that the only
9 reason that a CLEC would care about the size of a study
10 area or a service area is for purposes of complying
11 with 253(f) serving an entire service area of an
12 incumbent rural telephone company?

13 A. I'm not even sure why a CLEC would care.
14 They could provide service to all or none. I mean in
15 the case of U S West, U S West has one study area for
16 the state of South Dakota. I can choose to provide
17 service as a CLEC, more than likely to one customer or
18 200,000 customers, irrespective.

19 Q. Is U S West a rural telephone company?

20 A. No, they are not.

21 Q. For purposes of our discussion here today,
22 can you think of any reason why a CLEC would care
23 whether this service area or study area of a rural
24 telephone company is disaggregated other than to comply
25 with the 253(f) requirement?

1 A. That's a question I can't answer. I mean
2 you've obviously put the point out and said I want it
3 disaggregated. Why you want it, I'm not going to tell
4 you why you want it.

5 Q. If you can't think of any other reason,
6 that's the only reason I need. Would disaggregating
7 for purposes of 253(f) affect in any way your recovery
8 of universal service funds or your cost study area?

9 A. Yes.

10 Q. How?

11 A. Somewhere along the line there's going to
12 have to be some type of calculation that's going to
13 have to be paid in terms of a cost recovery mechanism
14 for Fort Randall Telephone Company, and incorporated in
15 that cost recovery model is going to be a disaggregated
16 study area if my study area is disaggregated. So I'm
17 going to have two study areas, therefore I'm going to
18 have two cost centers within a state. It will cause --
19 it's going to move costs, shift costs around. In some
20 cases we may have stranded investment that cannot be
21 migrated over to an area that has customers. For
22 example, if customers are ported or unbundled loops are
23 offered and there is stranded investment, that core
24 investment could be stranded financially.

25 Q. You're saying that the FCC -- if this

1 Commission and the FCC agree on a disaggregation, that
2 your concern is that it will migrate costs one way or
3 the other?

4 A. Well, what I'm saying is that there is no
5 certainty to understanding how the FCC is going to deal
6 with a disaggregated cost study -- or disaggregated
7 study area, because now you go from one cost center to
8 a number of cost centers. Now, how that's going to
9 affect us, I don't know.

10 Q. You're saying it creates uncertainty, isn't
11 that fair?

12 A. Correct.

13 MR. MARMET: Okay. I don't have any further
14 questions. Thank you.

15 MS. WIEST: Any further questions?

16 COMMISSIONER SCHOENFELDER: I just have one.
17 When you use the benchmark cost model --

18 A. Yes.

19 COMMISSIONER SCHOENFELDER: -- have you
20 looked at both of the proxy cost models? Because and I
21 want to talk -- I want to ask you about when you
22 discussed an exchange in Minnesota where you would have
23 replaced everything. I don't know that there's that
24 kind of provision in the benchmark cost proxy cost
25 models. I believe that's more applicable to the

1 Hatfield model. Can you speak to whether you use both
2 of those or not? I believe the Hatfield model talks
3 about the scorched node concept.

4 A. Yeah, I think that's probably right. Did
5 we? I remember Hatfield coming up. I don't remember
6 if I ran it.

7 COMMISSIONER SCHOENFELDER: The numbers you
8 used in here are from your run of the benchmark and not
9 of the Hatfield?

10 A. Not of the Hatfield.

11 COMMISSIONER SCHOENFELDER: And it does not
12 reflect in Minnesota where you totally replaced
13 everything?

14 A. No, it does not. Yeah, there is a lack of
15 relationship there. I guess I think the way I was
16 responding to it was more of a sanity check. Does it
17 look reasonable yes it looks close.

18 COMMISSIONER SCHOENFELDER: But the numbers
19 in here are from the benchmark?

20 A. Correct.

21 COMMISSIONER SCHOENFELDER: From one version
22 of the benchmark or another?

23 A. Yes. We used some of what we had done in
24 Zumbrota to plug numbers into the model program.

25 COMMISSIONER SCHOENFELDER: So then the

1 inputs could not be necessarily benchmark models; it
2 could be Hatfield inputs?

3 A. Yeah.

4 COMMISSIONER SCHOENFELDER: Thank you.

5 MS. WIEST: Any other questions of this
6 witness?

7 MR. BRADLEY: None.

8 MS. WIEST: Thank you.

9 Do you have any further witnesses?

10 MR. BRADLEY: No.

11 MS. WIEST: Dakota.

12 MR. COIT: Do you want me to go first since
13 it's similar?

14 MS. WIEST: Dakota was second on the Notice.
15 Unless the parties want to agree on something.

16 MR. MARMET: Dakota will call Tom Hertz.

17 **TOM HERTZ,**

18 called as a witness, being first duly sworn,
19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MARMET:

22 Q. Will you please state your name.

23 A. My name is Tom Hertz.

24 Q. And your business address?

25 A. 29705 453rd Avenue, Irene, South Dakota.

1 Q. By whom are you employed?

2 A. Dakota Telecommunications Group, which is the
3 parent company of DTI, one of the proponents in this
4 docket.

5 Q. And --

6 A. One of the parties, excuse me.

7 Q. How long have you been employed by DTI or its
8 parent?

9 A. Since October of '95.

10 Q. What was your experience relative to
11 telecommunications prior to that time?

12 A. I have practiced telecommunications law for
13 approximately fifteen years in front of this Commission
14 as an attorney in private practice.

15 Q. You've prefiled testimony today, have you
16 not?

17 A. Yes, I have.

18 Q. This has been marked, I believe, as Exhibit
19 No. 1. If I were to ask you the questions contained in
20 that testimony, would you have the same answers today
21 as you did when you prefiled that?

22 A. Yes, I would.

23 Q. Are there any corrections or additions that
24 you've made?

25 A. I think there's a typographical error where

1 -- I don't have a copy in front of me.

2 Q. On?

3 A. On page three, line 28, it refers to
4 paragraph six above. I believe that should refer to
5 paragraph Roman Numeral IV above. I think that's the
6 only corrections I have noted.

7 MR. MARMET: I would offer Exhibit No. 1.

8 MS. WIEST: Any objection? If not, it's been
9 admitted.

10 Q. Would you tell the Commission what is needed
11 to provide service in Centerville and Viborg?

12 A. What is needed depends on the kind of
13 services that we will be providing. To provide
14 services within Viborg and Centerville proper, all we
15 need is an EAS type connection. If we are to provide
16 services in the rural areas outside of the city of
17 Viborg and Centerville, before the time which it will
18 take us to construct those facilities; and in that
19 interim period we will need, as we specified in the
20 letter, is some kind of resale agreement with Fort
21 Randall as laid out in Mr. Marmet's letter. So the
22 determination of what we need depends on what the
23 Commission makes us do. If we are allowed to proceed
24 as we have thought we were able to proceed, and that is
25 we are building our own facilities to serve all the

1 customers, then we really don't need anything from Fort
2 Randall except EAS type agreements.

3 Q. Why is an EAS type agreement needed?

4 A. EAS type agreements is for the exchanges of
5 local traffic or extended area service. We do not
6 intend to change the EAS arrangements that are in
7 existence. We also need a mechanism to allow, for
8 example, Fort Randall customers in Centerville to call
9 Dakota customers in Centerville as a local call.

10 Q. The contract that was sent to Dakota by Fort
11 Randall contained some terms and conditions. Have you
12 had a chance to review that contract?

13 A. I have reviewed it briefly, yes.

14 Q. Do you recall the prices that were included
15 in that for transport and call termination?

16 A. I believe the rate was in the order of five
17 cents a minute. I don't recall the exact numbers.

18 Q. Is that the sort of rate that is in your
19 experience typical for transport and call termination?

20 A. It is about 16 times as high as what our
21 agreement with U S West calls for for exactly the same
22 services.

23 Q. If Dakota were to be required to provide ETC
24 service throughout Fort Randall's service area and if
25 courts of competent jurisdiction were to conclude that

1 those requirements could be enforced, what would Dakota
2 require to accomplish that?

3 A. The threshold question there is what is Fort
4 Randall's service area. If Fort Randall's service area
5 is everything they have in the state of South Dakota,
6 then obviously we would require some kind of formal
7 interconnection agreement to do so. We do not have
8 facilities in Hermosa, South Dakota. If the
9 requirement is to provide the same level of services
10 within a matter of weeks or a few months, then
11 obviously we would have to have some services that
12 would be provided on a wholesale basis by Fort
13 Randall.

14 Q. What area does Dakota seek to serve in the
15 first instance?

16 A. First instance, Dakota seeks to serve the
17 exchanges of Viborg and Centerville. And for those
18 areas, if we are allowed to proceed with our own build
19 out schedule, we do not need any additional services
20 from Fort Randall. We don't need unbundled loops. We
21 don't need a resale agreement. We intend to build our
22 own facilities to serve those customers. The reason we
23 would do that and what makes this somewhat of a unique
24 case is the fact that Dakota exchanges completely
25 surround the Centerville and Viborg exchanges. They

1 are the hole in the doughnut, so to speak.

2 While what makes sense for these two
3 exchanges and be economically feasible for these two
4 exchanges does not necessarily translate into economic
5 sense or economic feasibility for other rural telephone
6 exchanges. In particular, these two exchanges because
7 of where they're located, because of where Dakota is
8 located, because of the kind of facilities we already
9 have there, we can serve them fairly efficiently and in
10 a reasonable period of time.

11 Q. Are you familiar with -- generally familiar
12 with the exchange boundaries of telephone companies
13 within South Dakota?

14 A. Yes, I am.

15 Q. And the two exchanges that we're talking
16 about, Centerville and Viborg, are they contiguous?

17 A. Yes, they are to each other; and they're also
18 contiguous to all Dakota exchanges.

19 Q. The exchanges that Fort Randall operates at
20 Wagner, Tyndall, Tabor and the other ones that
21 Mr. Hanson mentioned, are they contiguous to
22 Centerville and Viborg?

23 A. No, they are not, and I don't believe they're
24 contiguous to each other either.

25 Q. Do you have an estimation of how far removed

1 they are from the Centerville and Viborg exchange?

2 A. Whatever distance Tabor is from Centerville
3 or Viborg. I would guess 35 to 40 miles, rough
4 estimate from the town of Viborg from the town of
5 Tabor.

6 Q. Are you familiar with the concept of
7 disaggregation?

8 A. Yes, I am. The fact the FCC has specifically
9 addressed that issue when it promulgated its proposed
10 rules and adopted its rules, they -- I don't remember
11 the exact page and cite, but they found that it would
12 be in the best interests of universal service for state
13 commissions to treat study areas as being contiguous
14 exchanges only if rural telephone company service
15 areas. In fact, that was their recommendation,
16 although they did not give it -- obviously did not give
17 it the force of law. It's an interpretation of what
18 they thought would be appropriate to further the goals
19 of universal service.

20 Q. And is it your opinion that that would make
21 sense in this case?

22 A. Yes, it would, especially in this case.
23 Especially because of the unique location and area that
24 the exchanges of Viborg and Centerville encompass.

25 MR. MARMET: I don't have any further

1 questions at this time.

2 MS. WIEST: Mr. Bradley?

3 CROSS-EXAMINATION

4 BY MR. BRADLEY.

5 Q. Mr. Hertz, you just indicated that an EAS
6 type arrangement would be adequate for Centerville and
7 Viborg if Dakota were granted enough time to do its own
8 build-out time, follow its own build-out time line.

9 A. It has been our intention and I think we
10 stated it from the very beginning that we don't want
11 just part of the customers in Viborg and Centerville;
12 we want all of them.

13 Q. How long is that going to take?

14 A. I think that the 24-month period that has
15 been suggested or discussed here would not be
16 unreasonable.

17 Q. Mr. Hanson has specifically suggested 12
18 months per exchange, 24 total. Does that work?

19 A. 24 months to build out those exchanges is not
20 an unreasonable amount.

21 Q. You've indicated that if Hermosa were
22 included you would need potentially the full range of
23 services. What if Hermosa were not included but
24 Wagner, Tyndall, Lake Andes, et cetera, were included?
25 What would be required then?

1 A. It would be an economic decision on our part
2 as to whether or not it would make sense to provide our
3 own facilities in those exchanges. Much of it is
4 technology dependent. It's very possible that in five
5 years from now one of two things could happen. Either
6 we all have wireless services that are providing local
7 exchange services everywhere, or we're all going to
8 work for Bill Gates and Microsoft. I'm not sure which
9 is going to come first.

10 Q. So basically you would evaluate the situation
11 and when you concluded what services you needed from
12 Fort Randall you'd let Fort Randall know?

13 A. We've already done that. We've told Fort
14 Randall that if we are required to provide services to
15 all of those exchanges, then we will have an
16 interconnection agreement that encompasses the full
17 range of services, whether it's unbundled local loops,
18 which is highly dependent in how the Commission chooses
19 to price those, or if it's simply resale of local
20 service, which is a simpler concept, certainly not as
21 economically feasible for the long run.

22 Q. Can we figure out which of the Dakota's we're
23 dealing with here? Is it only DTI?

24 A. DTG is a holding company, a Delaware
25 Corporation. DTI is the wholly-owned subsidiary of

1 Dakota Telecommunications Group. DTS is, in fact, the
2 company that has applied for and has received
3 permission from the Commission in South Dakota to
4 provide competitive local exchanges services.

5 Q. Is there any particular reason you picked DTI
6 over DTS?

7 A. No.

8 Q. So from now on if we just talk about DTI I've
9 got the right company?

10 A. It depends again on what exchanges we're
11 talking about. If you're in Viborg and Centerville,
12 since DTI already owns cable television facilities and
13 those facilities will be utilized with the addition of
14 new technology to provide the telephone service, then
15 that's why it's in DTI. In exchanges where we do not
16 own a cable television operation, we may choose for
17 accounting and business purposes to segregate those
18 into DTS.

19 Q. You testify that on March 12th, 1996, DTI
20 filed a petition with the Commission for authority to
21 construct facilities. And you stated page three, line
22 24, that DTI began engineering and construction of
23 hybrid fiberoptic coaxial cable to serve its customers
24 in Southeast South Dakota, including Centerville and
25 Viborg. When did DTI actually put physical plant into

1 Centerville?

2 A. We did in the summer of '96. There was some
3 fiberoptic backbone facilities replaced in May of or
4 June of '96. I don't have the exact date.

5 Q. And these would have been backbone works with
6 regard to the distance learning program?

7 A. That would have been one of their uses. The
8 other uses would have transport facilities to get to
9 some of our other exchanges and often those facilities
10 can be reused as part of the networks within these
11 cities.

12 Q. And at that time they weren't being used for
13 local service in that Centerville area?

14 A. We did have land line dial up customers in
15 the Centerville exchange in the summer of '96. But
16 that was a small number of customers which we built
17 hardware facilities to.

18 Q. Basically you put a drop from their location
19 and ran it back to Irene?

20 A. We connected with our existing facilities,
21 yes.

22 Q. Which was switched out of Irene?

23 A. No. Those particular customers, I'm not sure
24 what exchange were switched out of. One might be
25 switched out of what is rural Beresford. I'm not sure

1 where the other two or three are switched out of.

2 Q. And when they receive the service to
3 whichever local switch, they then received whatever
4 local access that switch provided?

5 A. Yes.

6 Q. So it's a form of foreign exchange service?

7 A. No. It is a form of overbuild in which the
8 customer becomes part of a different exchange than the
9 exchange that he was formerly attached to.

10 Q. He's receiving a local exchange service from
11 a different exchange?

12 A. For those particular customers, that's
13 correct.

14 Q. So they weren't really receiving local
15 service in Centerville; they were receiving local
16 service for a different exchange?

17 A. If I recall correctly, you fought us in those
18 dockets and those customers remained within your study
19 area. So, technically, yes, it is a Centerville
20 exchange.

21 Q. I'm not aware of having fought you on that
22 particular issue, but thank you for that additional
23 point. When did you begin providing actual dial tone?
24 Let me back up. Those customers that were receiving a
25 dial tone in Centerville in the summer of '96, if they

1 needed to get back to and terminate a call to another
2 customer residing in Centerville, how did they do that?

3 A. Over EAS circuits.

4 Q. So you were using the EAS network to
5 terminate interexchange traffic?

6 A. It wasn't exchange traffic. It is EAS
7 traffic.

8 Q. It was traffic from a different exchange
9 coming across which had EAS to it?

10 A. The traffic between Centerville and Viborg
11 technically is interexchange traffic because there are
12 two exchanges involved, however, it is still EAS
13 traffic. It is quite possible for EAS traffic to
14 traverse several exchanges. U S West, for example, in
15 the, what is it, the Dimock exchange, which is near
16 Parkston, actually transports it all the way back to
17 Sioux Falls and then sends it back to Parkston. So the
18 actual routing of the call is really irrelevant in an
19 EAS arrangement.

20 Q. Can you bring us up to date from the summer
21 of '96 to just prior to the current period in terms of
22 what sorts of services were being provided down to
23 Centerville?

24 A. We have been building the hybrid fiberoptic
25 coaxial system in Viborg and Centerville and Tea and

1 Harrisburg as well as transport facilities to connect
2 those with other parts of our network and with the
3 networks of AT&T, MCI, and other carriers.

4 Q. Now, I've been asking specifically about
5 Centerville. How was Viborg different from
6 Centerville?

7 A. Viborg is where our centralized switching
8 facility is located.

9 Q. When did you first provide any sort of dial
10 tone in Viborg?

11 A. If the question is when did we cut over the
12 switch, the cutover of the Viborg switch began about
13 the middle of October. And we provide dial tone out of
14 the Viborg switch to it will be 13 exchanges. I think
15 five of the nine have been tied over.

16 Q. Now, prior to the middle of October, did you
17 have any customers who were receiving dial tone from
18 Dakota of any form prior to October of '97?

19 A. I'm sorry, I didn't hear the question.

20 Q. Were you providing dial tone to anyone in
21 Viborg prior to October of '97?

22 A. Other than those customers that we've had
23 since early '96, no.

24 Q. Could you tell me how many customers we're
25 talking about?

1 A. The total number of customers in Viborg.

2 Q. Centerville and Viborg, who you were taking
3 dial tone outside of Centerville and Viborg?

4 A. They were the same as the number we specified
5 in the pleadings we filed with the Commission and when
6 we were challenged about overbills in the spring or
7 summer of '96. It was a test case. I believe it was
8 approximately three customers.

9 Q. Now, how does all of that compare with what
10 you have indicated was going to be taking place on
11 November 1st? What happened on November 1st?

12 A. Nothing in particular happened on November
13 1st except we specified that as a date in the -- as a
14 start date for us to begin providing dial tone service
15 within the Viborg and Centerville exchange. In other
16 words, start turning up the switching for those
17 customers in those exchanges.

18 Q. And those customers would have their switch
19 right there and traffic would terminate right there if
20 they were terminating it to a customer in Viborg?

21 A. I don't understand the question.

22 Q. Okay. Let me ask you this: How are you
23 going to terminate traffic between your switch and Fort
24 Randall's switches?

25 A. Fort Randall doesn't have any switches in

1 Viborg and Centerville. U S West is providing those
2 services today.

3 Q. How are you going to terminate those calls?

4 A. We are going to terminate those calls in
5 Viborg and Centerville using our interconnection
6 agreement with Fort Randall.

7 Q. And which interconnection agreement is that?

8 A. The one we've been negotiating.

9 Q. We don't have one, do we?

10 A. No.

11 Q. You've not signed it?

12 A. No, we have not.

13 Q. You just told us you think our rates are
14 improper?

15 A. I've told you your rates are 15 times as high
16 as U S West for exactly the same service. Yes, I've
17 told you that.

18 Q. The obligation to have a reciprocal
19 compensation arrangement applies to all LEC's?

20 A. I don't think there's no statutory
21 obligation. This is one of the methods that companies
22 have used to resolve interconnection arrangements.
23 There's also bill and keep, that is another way to
24 resolve these kinds of things.

25 Q. Mr. Hertz, you're an expert on this. Isn't

1 251(b) a requirement that applies to all LEC's?

2 A. Perhaps you'd like to enlighten me on what
3 251(b) says.

4 Q. I'll do that for you. 251(b) is entitled
5 Obligations of all Local Exchange Carriers. DTI is a
6 local exchange carrier in the Telecommunications Act?

7 A. That is correct.

8 Q. And one of the obligations of (b)(5) is a
9 reciprocal compensation, the duty to establish
10 reciprocal compensation arrangements.

11 A. Okay.

12 Q. At this point you paid no compensation for
13 any traffic you're terminating under your competitive
14 facilities?

15 A. Nor are you paying any for terminating at our
16 facilities. At this point I'm not sure where you're
17 going with this, Mr. Bradley. It is technically
18 possible to terminate that traffic. It is technically
19 possible to terminate it because there are existing EAS
20 circuits between your exchanges and ours.

21 The fact that U S West is in the middle here
22 makes it impossible for U S West to measure that
23 traffic. U S West does not have the capability of
24 measuring that traffic on any basis. In fact, they
25 don't measure EAS traffic right now even though they

1 have purported to enter into compensation agreements
2 with all the independents in this state. And what they
3 have basically agreed to do on a neighboring local
4 exchange carrier base is, yes, we'll charge you .033
5 cents per minute for terminating our traffic. You pay
6 us .003 for terminating their traffic. But since we
7 can't measure it any way, we're going to presuming it's
8 a wash.

9 Well, we've taken that one better, we
10 believe, because we are going to measure this. We are
11 going to keep track of it. And as these numbers get
12 developed and as the system works its way through we
13 will have the data to determine what compensation is
14 due to all parties. We are measuring that traffic.

15 Q. So you measure traffic both ways?

16 A. Yes, we are.

17 Q. So you have no problem with the true-up
18 later?

19 A. It's done all the time in the industry.

20 Q. You'll have no problem with a true-up later?

21 A. It's done all the time in the industry.

22 Q. I believe that's a yes or no. Yes, you will
23 do it or, no, you won't?

24 A. Yes, we will.

25 Q. You state that you were present with House

1 Senate -- House State Affairs Committee met to consider
2 Bills 1127 and 1256 and note that the Chairman of the
3 Commission and its general counsel were proponents of
4 House Bill 1227. You also recall that the Commission's
5 position before those legislative committees was that
6 the current provisions of Chapter 49-31 already give
7 the Commission authority to apply and enforce the
8 provisions of the Federal Telecommunications Act of
9 1996.

10 A. Do I recall them saying that?

11 Q. Yes.

12 A. I recall that I was very surprised that the
13 Commission would spend hundreds of hours and thousands
14 of pages of paper trying to get something that they
15 thought they already had. But, yes, I do recall the
16 Chairman saying that.

17 MR. BRADLEY: I have no further questions.

18 MS. WIEST: Mr. Coit?

19 MR. COIT: Yes, I just have one question.

20 CROSS-EXAMINATION

21 BY MR. COIT:

22 Q. You referenced -- you made a comparison
23 between the rates proposed in the reciprocal
24 compensation agreement proffered to you by Fort
25 Randall, you compared that with U S West's reciprocal

1 compensation rates in the agreement that you have
2 currently with U S West. Is it true that the agreement
3 that you entered into with U S West was entered into
4 prior to the Eighth Circuit Court's decision
5 invalidating the FCC's local transport and termination
6 rules, including the pricing?

7 A. The Eighth Circuit did not invalidate any
8 negotiated agreements. What it simply said was --

9 Q. I asked you the question of whether they --
10 was it before the actual FCC rules or overruled by the
11 Eighth Circuit?

12 A. I don't know. I don't recall the date.

13 Q. Do you recall the date on the contract?

14 A. No, I do not. The contract was filed with
15 the Commission. It's a matter of public record. But I
16 don't know what the date was right offhand.

17 MR. COIT: That's all the questions I have.

18 A. One of the concerns I have is that the --
19 dealing with Mr. Coit's question on the rates is
20 that --

21 MR. COIT: I didn't ask any further
22 questions. I think he is a witness. He is entitled to
23 -- or he should abide by the rules for taking
24 testimony -- offering testimony.

25 MS. WIEST: I just did have one question.

1 Does the Commission actually have that proposed
2 interconnection? Or which interconnection agreement
3 did you refer to the U S West, DTI one?

4 MR. BRADLEY: The proposal which we sent to
5 Dakota is among that pile of documents. It's in
6 there.

7 MR. COIT: Are you talking about the U S
8 West, Dakota?

9 MS. WIEST: I'm actually talking about either
10 one right now. First of all, I was just wondering if
11 the proposed interconnection agreement is in the
12 record.

13 MR. BRADLEY: It is in the record as document
14 18.

15 MS. WIEST: Okay. Mr. Hoseck.

16 CROSS-EXAMINATION

17 BY MR. HOSECK:

18 Q. Mr. Hertz, this kind of got into an area of
19 questioning that I was interested in. From the record,
20 I'm assuming there's an agreement out there someplace
21 that's been tendered by one party to the other; is that
22 correct?

23 A. There has been an agreement tendered to us by
24 Moss & Barnett on behalf of Fort Randall which was, I'm
25 assuming, in response to my statement that we would

1 consider an EAS type interconnection agreement similar
2 or substantially identical to what we had with U S West
3 and which has been approved by the Commission.

4 Q. Okay. And I believe -- and correct me if I'm
5 wrong -- that you said that you have at least in a
6 cursory manner reviewed this agreement that's been
7 tendered?

8 A. Yes, in a cursory manner.

9 Q. And I take it, for the record, this has not
10 been entered into; is that correct?

11 A. That is correct.

12 Q. Okay. At this point in time are there
13 ongoing negotiations between your company and Fort
14 Randall in this case with regard to the entry into this
15 particular agreement?

16 A. I think so, yes.

17 Q. Okay. Do you view this as an extended area
18 service agreement?

19 A. The designation EAS, or extended area service
20 agreement, I think, comes out of the negotiations with
21 U S West. They labeled it as such. We simply chose to
22 use that terminology. It makes sense because if
23 there's a Fort Randall customer in Viborg and there's a
24 Dakota customer in Viborg, one would presume that those
25 should be local calls. We have chosen not to ask for

1 number portability so they will be different NXX's. So
2 there has to be some methodology where eventually Fort
3 Randall's switch will recognize those calls as local
4 calls and were calls coming from the other direction
5 from Fort Randall to Dakota customers will be
6 recognized as local calls. That is what the agreement
7 is designed to do. It is to account for those local
8 calls that should stay local calls.

9 Q. And am I correct in assuming that in these
10 proceedings this contract is not before this Commission
11 for purposes of approval?

12 A. That is correct.

13 Q. Without going into any of your strategies
14 that you may have -- and maybe you can't answer this
15 question because of that -- where are the
16 negotiations? Are they progressing? Are there any
17 further meeting times established or anything of that
18 nature?

19 A. Well, again, we've exchanged a lot of
20 correspondence. We've raised some issues with each
21 other. In general, I think I would characterize it as
22 negotiations. But are they proceeding in an ordinary
23 manner? Probably not. Do we have any further meetings
24 scheduled? Not at this time. We have looked at the
25 kind of arrangement that they have proposed and in

1 general, if all we are required to do initially is
2 serve within the communities of Viborg and Centerville
3 and allowed to build the rest of the systems on our
4 construction schedule, which I have agreed that 24
5 months is not an unreasonable time to ask us to build
6 out the rest of the systems using the technology we
7 might choose, then all we need at this time is an EAS
8 type arrangement. However, we requested more because
9 we thought perhaps the Commission might require more.
10 If the Commission is going to require more from us or
11 in a quicker time table, then in order to meet a
12 quicker time table we would have to in fact resell Fort
13 Randall's services.

14 Q. Again, without disclosing anything that you
15 may deem to be confidential or proprietary in nature,
16 what is the status of the construction of the two
17 systems within the Centerville and Viborg exchanges?
18 In other words, are they built? Are they part built?
19 How far has this gone?

20 A. The Viborg and Centerville exchanges are
21 essentially completely built. We have been working
22 with a group of probably ten to 20 customers in the
23 exchanges as a beta test, so to speak. We've not asked
24 them to disconnect their existing services. We've
25 simply offered to put a phone in their home to test out

1 what is at this point leading edge technology. The
2 other two exchanges, Tea and Harrisburg, are somewhat
3 behind that schedule, however, those are due to be
4 turned up and operating within the next couple weeks.

5 Q. And has any of your beta testing extended
6 into what I'll call the rural areas around Centerville
7 and Viborg?

8 A. It has not because this is the core system is
9 a hybrid fiberoptic/coaxial system. What this
10 basically means is that you use fiberoptic cabling to
11 take it into a neighborhood. There is a node with a
12 power plant in the center of the neighborhood. From
13 that node and out to the individual residences there is
14 coax and copper cabling that goes into the individual
15 homes and businesses from that point forward. So and
16 over that facility we can provide full range of
17 services. We can provide data. We can provide video.
18 We can provide high speed Internet access. And we can
19 provide telephony. It simply goes to the house.
20 There's a box on the side of the house. If the
21 customer wants cable only, fine. If he wants telephony
22 only, it's another connection inside the same box.

23 Q. Somewhere in the record here there's an
24 indication that you had an intention to turn up dial
25 tone as of November 1st?

1 A. Yes, we did.

2 Q. And --

3 A. And we're testing. We've got, as I said, ten
4 to 15 customers in each one of those four exchanges are
5 being offered the service on a test basis to make sure
6 the thing works properly.

7 Q. Okay. So I'm not misunderstanding you when
8 you say turning up dial tone, it's turning it up for in
9 test purpose only; is that correct?

10 A. At this point, yes.

11 Q. What is it that you want from the Public
12 Utilities Commission in this proceeding? In other
13 words, what ruling is it that you feel is essential for
14 them to make in this process?

15 A. Well, probably the key factor here is that,
16 reading Mr. Hanson's testimony and trying to summarize
17 it, they want us to have to serve all the customers but
18 they want to keep all the money. It doesn't make sense
19 to me to ignore what the FCC has recommended when it
20 comes to segregating study areas. It doesn't make
21 sense to me to treat this particular situation that
22 Dakota is in with Fort Randall in the Viborg and
23 Centerville exchanges as some kind of massive
24 precedent, never turn back. This is the now and
25 forever; this is how it's going to be for everybody

1 kind of thing.

2 What we're looking for here is for the
3 Commission to say that if we serve the customers, then
4 we're entitled the same kind of revenue requirements as
5 Fort Randall if they serve the customers. And, again,
6 that's within the Commission's duty to do, or power to
7 do, assuming they do it in an ordinary fashion with a
8 rule making or something like that. We're not asking
9 them to take anything away from Fort Randall. We don't
10 think it's realistic for the Commission to require us
11 to serve Hermosa, South Dakota, or even Wagner, South
12 Dakota. Those are not contiguous exchanges.

13 And it doesn't make any sense. Fort Randall
14 came in here after we knew we were buying these things,
15 after we knew that we were going to build them, after
16 we started construction. And they simply aren't an
17 innocent purchaser here. They even continued their
18 contract with U S West on the outcome of Commission
19 proceedings having to do with Dakota and what we're
20 doing in these exchanges.

21 So all we're asking for here, I think, is we
22 be allowed to compete and provide the services to these
23 customers. We think regardless of SDITC's position,
24 we're not going to go out West River and take over
25 Sully Buttes. Much of that to me, it's hypocrisy.

1 SDITC has joined forces with a multitude of large
2 corporations, a lot of LEC companies to go out and
3 provide competitive service, but they're only going to
4 do that outside their exchanges. What that says to me
5 they think competition is good as long as it doesn't
6 come to their back yard.

7 As far as we're concerned, competition is
8 good for all customers. It's good for Dakota, it's
9 good for Fort Randall, it's good for everyone. It
10 means a choice of service, and it should mean in the
11 long run a reduction of prices. That's what we hope to
12 provide here, and that's what we hope the Commission
13 does not prevent us from providing.

14 Q. Earlier I asked the same question of
15 Mr. Hanson and that was with regard to the concept of
16 the public interest. How is what you're proposing
17 serving the public interest?

18 A. I think the same reasoning as you heard many
19 times before. If there is -- the old story is if you
20 have one lawyer in town he starves to death. If you
21 have two lawyers, they both do very well. I think
22 competition works that way. I think if we have more
23 than one provider available in an area, then the
24 choices to the consumers are going to be better. In
25 the long run the prices are going to be better. In the

1 long run the technology is going to be better because
2 it's not going to be propped up by an artificial
3 subsidy system. It's going to be supported by whoever
4 can provide the best services at the lowest cost, and
5 that is a completely different kind of thing.

6 Bruce Hanson told me a story one time, and I
7 don't want to repeat the whole thing here, but the gist
8 of the story was is that under the old access and
9 subsidy system any trained monkey can run a telephone
10 company. All you have to do is add up your costs and
11 that's what your rates are going to be. In a
12 competitive environment it's not going to be like that
13 any more. And I think it's in the public interest to
14 give consumers choices.

15 MR. HOSECK: No further questions. Thank
16 you.

17 MS. WIEST: Commissioners?

18 COMMISSIONER SCHOENFELDER: Mr. Hertz, I have
19 some. I don't know if they are questions.
20 Clarifications, perhaps, just so I know exactly what it
21 is that DTI wants. You're asking about Centerville and
22 Viborg. I want to talk about those. Within the 24
23 months that you've agreed to do it, do you intend then
24 to have a build-out in the local loop to the rural area
25 or just the city area?

1 A. No, in the --

2 COMMISSIONER SCHOENFELDER: I need to have
3 this very clear.

4 A. If the Commission imposes a deadline on us
5 for building out the rest of the exchange, in other
6 words, outside the city limits of Viborg and
7 Centerville, then 24 months would be an appropriate
8 time to do that.

9 COMMISSIONER SCHOENFELDER: Would be an
10 appropriate time?

11 A. Yes, it would be an appropriate time to do
12 that.

13 COMMISSIONER SCHOENFELDER: Okay. And so but
14 initially or what you are prepared to serve now is just
15 the city, within the towns themselves?

16 A. You have to start somewhere, and we chose to
17 start in the center and then build out, yes.

18 COMMISSIONER SCHOENFELDER: And in the towns
19 themselves -- I understand a little bit about the kind
20 of fiber you have there. In the towns themselves, do
21 you have built out the local loop now as we speak?

22 A. Yes, we do.

23 COMMISSIONER SCHOENFELDER: To everyone?

24 A. Yes.

25 COMMISSIONER SCHOENFELDER: To every

1 residence?

2 A. Yes.

3 COMMISSIONER SCHOENFELDER: And that's using
4 cable facilities?

5 A. Yes.

6 COMMISSIONER SCHOENFELDER: Now, you talked
7 about the box on the side of the house; and I think
8 somewhere in the industry I've heard that called the
9 NID and I can't for the life of me remember what that
10 acronym stands for.

11 A. Network interface device.

12 COMMISSIONER SCHOENFELDER: So is that what
13 we're talking about when you say that if I'm your
14 customer, I can choose telephony, cable, whichever?

15 A. Or both.

16 COMMISSIONER SCHOENFELDER: Or both?

17 A. Yes.

18 COMMISSIONER SCHOENFELDER: Or can I also
19 receive data?

20 A. Yes.

21 COMMISSIONER SCHOENFELDER: How high speed
22 data?

23 A. Ten megabits per second. That's using
24 current technology cable modems. And we have -- we're
25 working on a project, trial project at this point, but

1 we've got 25 customers picked out. We're going to try
2 25 modems and see how it works and do a little bit from
3 that point forward. As you know, we own an Internet
4 company as well.

5 COMMISSIONER SCHOENFELDER: Yeah. So within
6 24 months you could build out to all the rural people?
7 That would be a physical build-out or some type of
8 wireless connection that would constitute the loop?

9 A. We could meet the requirements that are
10 specified in federal law for basic telecommunications
11 services within 24 months. I would choose not to at
12 this time reveal the particular technology that I
13 choose.

14 COMMISSIONER SCHOENFELDER: That's okay.

15 A. Yes.

16 COMMISSIONER SCHOENFELDER: That's okay. I
17 just want to know. But that would not necessarily
18 include cable and telephony both?

19 A. It probably would not at this point at least
20 include cable. Cable is a much higher band cable TV,
21 excuse me.

22 COMMISSIONER SCHOENFELDER: That's what I
23 meant.

24 A. Video services require much higher band
25 width. We're basically talking around 1.5 to 1.5

1 megabits available at each customer's residence with
2 the technology we are proposing to use. That is not
3 high enough to support cable TV.

4 COMMISSIONER SCHOENFELDER: So the ETC
5 requirement, would you -- if the Commission imposed an
6 ETC requirement on DTI, would you consider that
7 burdensome?

8 A. First of all, we've taken the position in
9 this proceeding that we don't think the Commission has
10 the ability to selectively impose those requirements on
11 us without a proceeding to set up a rule making to see
12 these are what ETC requirements are going to look like
13 in South Dakota. I don't think you can specifically
14 tailor them just to Dakota. If you do establish those
15 kinds of requirements, then the Federal Act specifies
16 basically what you have to do to be an ETC. The second
17 question then comes how do you apply it on an exchange
18 by exchange basis on a contiguous study area by a
19 contiguous study basis or on a statewide basis.

20 So those are the kinds of threshold questions
21 that depending on how do you this, it could be
22 burdensome. But the technical requirements of serving
23 a particular customer are not burdensome. In other
24 words, we don't object to having to provide E911
25 service or any of the other services specified in the

1 technical requirements. We might have some objection
2 to how they're imposed if we don't think they're
3 imposed fairly.

4 COMMISSIONER SCHOENFELDER: And if I
5 understand your case properly, you're asking us to
6 remove the rural exemption that Hanson thinks they have
7 in this exchange, these two exchanges?

8 A. I don't know it's something we're asking
9 for. It seems to me the federal statute requires that
10 if they cannot or do not choose to meet the
11 interconnection requirements then they give up their
12 ETC status. But I'm --

13 COMMISSIONER SCHOENFELDER: ETC or the rural
14 exemption?

15 A. Rural exemption, excuse me.

16 COMMISSIONER SCHOENFELDER: Okay. Thank
17 you. That's all I have.

18 MS. WIEST: Any other questions?

19 CHAIRMAN BURG: I only have one, I think.
20 I'm not sure. We ruled that there's a bona fide
21 request, and we're acting under that bona fide request
22 right now; is that correct, in your estimation?

23 A. My understanding of the bona fide request,
24 Mr. Commissioner, is that that is what is needed to
25 start the negotiation process. That's really the only

1 fair interpretation of what that means in the law.
2 It's supposed to be a starting point. So you measure
3 things from that starting point, 135 days go by and
4 then something else happens. That is the only
5 consequence that I can see of a bona fide request.
6 Once you make that request, then you start
7 negotiating. We made it with U S West rather
8 informally. We had a phone call with them. And we
9 said, "Let's get together and start talking about
10 this." We followed it up with letters and
11 correspondence and meetings and discussions and so on
12 and so forth. But making the request itself doesn't do
13 much. It's the negotiation process and the agreements
14 that you end up with are really what's important here.

15 CHAIRMAN BURG: Okay. And then if at this
16 time that you do reach an agreement and you exercise
17 service under the EAS type arrangement, is what we've
18 been calling --

19 A. If that's what we end up with, yes.

20 CHAIRMAN BURG: If you end up going for
21 either because of ruling of ours or because of the
22 choice of yourself going for other services beyond the
23 EAS type interconnection, do you think it would take a
24 new request?

25 A. I don't think so. I think it's a notice

1 thing. As I said, it's to start the ball rolling.
2 It's to get things under way. I don't think we need to
3 start over from scratch, if we have to go that far. It
4 wouldn't make a lot of sense to me to create an
5 artificial barrier like that. All this is supposed to
6 do is make the negotiation process ordinary and toll
7 some periods for appeals and Commission action and FCC
8 involvement.

9 So if we are required, or the Commission
10 attempts to put some requirements on us and it's
11 finally determined that we do, in fact, have to meet
12 those requirements, then we would probably all during
13 this period be talking with Fort Randall about how
14 we're going to do that. And most likely it would be a
15 pure resale arrangement, at least initially.

16 CHAIRMAN BURG: At this point are you asking
17 for the lifting of the rural exemption for Fort
18 Randall?

19 A. We asked -- I'm not sure of the status of the
20 pleadings whether we've specifically asked for that or
21 not. I'm not sure what counsel's --

22 CHAIRMAN BURG: And if you did not at this
23 time but this process goes forward, that's my question
24 is if you ask for a lifting of the rural exemption for
25 additional services, does that constitute a request?

1 You know, I'm having a problem figuring it out.

2 A. I guess I don't understand the problem,
3 Commissioner. If we ask for additional services and
4 then they can't provide it or refuse to provide it,
5 then the statute seems to say that their rural
6 exemption goes away and we're no longer bound to
7 negotiate with them. There's some question about
8 whether there's even a duty to negotiate. I guess at
9 that point it gets to be this is all new territory.
10 Especially when it comes to rural telephone companies,
11 there aren't a lot of people doing this.

12 There have been some areas where U S West and
13 Ameritech exchanges have been overbuilt by rural
14 telephone companies. There is a classic case in Kansas
15 which involved two non-RBOC's fighting it out over a
16 study area designation and who got to own the exchange
17 and so on and so forth, but that was settled without
18 having a lot of issues ever formally resolved.

19 So one of the burdens we labor under, as does
20 Fort Randall, is that this is all new. Our concern
21 here is, though, that just because it's new doesn't
22 mean you want to deny the benefits of competition to
23 these customers. I don't see us coming in here and
24 asking the Commission to throw Fort Randall over the
25 wall or save us or save them or anything like that.

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2 It's to get things under way. I don't think we need to
3 start over from scratch, if we have to go that far. It
4 wouldn't make a lot of sense to me to create an
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9 So if we are required, or the Commission
10 attempts to put some requirements on us and it's
11 finally determined that we do, in fact, have to meet
12 those requirements, then we would probably all during
13 this period be talking with Fort Randall about how
14 we're going to do that. And most likely it would be a
15 pure resale arrangement, at least initially.

16 CHAIRMAN BURG: At this point are you asking
17 for the lifting of the rural exemption for Fort
18 Randall?

19 A. We asked -- I'm not sure of the status of the
20 pleadings whether we've specifically asked for that or
21 not. I'm not sure what counsel's --

22 CHAIRMAN BURG: And if you did not at this
23 time but this process goes forward, that's my question
24 is if you ask for a lifting of the rural exemption for
25 additional services, does that constitute a request?

1 You know, I'm having a problem figuring it out.

2 A. I guess I don't understand the problem,
3 Commissioner. If we ask for additional services and
4 then they can't provide it or refuse to provide it,
5 then the statute seems to say that their rural
6 exemption goes away and we're no longer bound to
7 negotiate with them. There's some question about
8 whether there's even a duty to negotiate. I guess at
9 that point it gets to be this is all new territory.
10 Especially when it comes to rural telephone companies,
11 there aren't a lot of people doing this.

12 There have been some areas where U S West and
13 Ameritech exchanges have been overbuilt by rural
14 telephone companies. There is a classic case in Kansas
15 which involved two non-RBOC's fighting it out over a
16 study area designation and who got to own the exchange
17 and so on and so forth, but that was settled without
18 having a lot of issues ever formally resolved.

19 So one of the burdens we labor under, as does
20 Fort Randall, is that this is all new. Our concern
21 here is, though, that just because it's new doesn't
22 mean you want to deny the benefits of competition to
23 these customers. I don't see us coming in here and
24 asking the Commission to throw Fort Randall over the
25 wall or save us or save them or anything like that.

1 What we want to see happen is that these customers are
2 allowed to start receiving services, to receive the
3 benefit of what we built receive the benefits of
4 competition. That's what we're here primarily trying
5 to do.

6 CHAIRMAN BURG: To your knowledge, has the
7 FCC approved any disaggregated study areas any place?

8 A. They have approved multiple study areas. In
9 other words, some companies -- and, again, I think this
10 goes back to the classic case. There is a situation
11 where they said more than one -- an exchange could be
12 in more than one study area so that two companies might
13 have overlapping study areas, or some exchanges might
14 be in two company study areas. The disaggregation
15 question really doesn't have anything to do with study
16 area. It has to do with meeting ETC requirements, and
17 that's different.

18 CHAIRMAN BURG: Okay. But I'll try to
19 clarify. Has the FCC approved any overlapping study
20 areas?

21 A. I believe they have in the classic case but
22 it became moot because eventually one company bought
23 the other one out any way. But they did in fact --

24 CHAIRMAN BURG: So at this time they did in
25 fact approve it but right at this time there's none in

1 operation?

2 A. I'm not aware of any. Now, as far as
3 disaggregating, again, that's a separate question
4 because that has to do with eligibility requirements.
5 And the only thing we have to go on are FCC's comments
6 in the regulations that they think it would not be --
7 that it would be in the public interest to disaggregate
8 noncontiguous study areas. In other words, they
9 thought in rural areas that study areas should be
10 contiguous.

11 CHAIRMAN BURG: Okay. That's all I have.

12 MS. WIEST: Just to clarify something. Does
13 Dakota or DTI need 251(c) type interconnection or
14 services if the Commission were to determine that DTI
15 only needed to offer services in Centerville and Viborg
16 within a 24-month period?

17 A. If it's limited to the Centerville and Viborg
18 exchanges and if there's a 24-month time period, then
19 the only thing we need with Fort Randall is the ability
20 to hand off local traffic between exchanges. And that
21 is what has been characterized as an EAS type
22 agreement. In other words, we don't need any of their
23 billing collection, we don't need any of their
24 transport, we don't need any of their switching, none
25 of those features. We're not asking for number

1 portability, and number portability is one of the
2 enumerated things we would have to have if we were
3 going to use any of their facilities.

4 MS. WIEST: Would that be characterized as
5 reciprocal compensation?

6 A. Yes, but it may be reciprocal. Could be bill
7 and keep. It could be you pay us and we'll pay you.
8 There are a number of ways to do that, but, yes.

9 MS. WIEST: Does DTI know at this time
10 whether it would intend to price services such as
11 residential and business local exchange services
12 differently, or do you know at this time?

13 A. Yes, we have published a proposed price list
14 for the Viborg and Centerville exchanges. There are
15 somewhat less than Fort Randall's, but not
16 substantially so. We maintain a differential between
17 business and residential as does Fort Randall.

18 MS. WIEST: Is there any difference between
19 rural and urban areas?

20 A. We don't have any rural customers, but our
21 intentions would be to price them the same. In other
22 words, someone outside of town with a business would
23 pay the same as someone in town with a business.

24 MS. WIEST: And how does DTI intend to
25 provide notice of its services? You said you had a

1 price list. Is that public record?

2 A. Yes, it is. It's posted in our offices.
3 We've been sending flyers to all the residences in
4 those communities. We're going to be holding a series
5 of public meetings in those communities to gauge or to
6 promote the services.

7 MS. WIEST: Could Dakota submit that as a
8 late-filed exhibit for the Commission?

9 A. Yes, we can, a copy.

10 MS. WIEST: And does Dakota --

11 MR. MARMET: That would be Exhibit 24.

12 MS. WIEST: And does Dakota intend to offer
13 at least the same local service area calling scope as
14 Fort Randall?

15 A. Yes.

16 MS. WIEST: Do you intend to offer more than
17 what they offer at this time?

18 A. Yes.

19 MS. WIEST: Is that also in your notice?

20 A. I don't know if we talk about that in the
21 notice or not. I don't believe we do because that's
22 still under examination and evaluation. As you know,
23 the whole issue of EAS is a very touchy issue. It's
24 very difficult for companies to decide what the best
25 direction to go would be. The big push for this is the

1 cellular people. They've essentially done away with
2 toll calling within all the areas they serve. You can
3 call anywhere in Cell One's service area and it's still
4 a local call. You pay air time but there's no more
5 toll charges, per se.

6 And we're looking at those kind of pricing
7 schemes as well. We think that's probably where the
8 industry is going, and we would think we're going to
9 have to do that one way or the other because we see the
10 wireless people's prices coming down dramatically
11 almost on a monthly basis. And we think we're going to
12 face those as much more serious competitors than
13 anybody else.

14 MS. WIEST: That's all the questions I had.
15 Commissioners got anything else?

16 CHAIRMAN BURG: I got one that your questions
17 prompted. Do you intend to have any construction cost
18 for either rural areas or any extensions?

19 A. Historically we haven't done so. I know it's
20 common in the rural electric industry to do that. But
21 I can't guarantee that we wouldn't in a particular
22 situation. For example, if we had a customer in a
23 rural area that might want a DS3 level of service,
24 that's much more than just running a few copper pair
25 out there. We might ask for either a long-term

1 contract to provide the service with no construction
2 charge, or we might ask for construction charge. But
3 generally we haven't in the past, and we have no plans
4 to change that policy.

5 CHAIRMAN BURG: For just plain old POTS are
6 you ready to commit on that, or don't you know yet?

7 A. I don't think we will. First of all, plain
8 old POTS is something we hope to offer better
9 than --

10 CHAIRMAN BURG: What I'm saying, then, that
11 we usually try to establish a minimum of service and
12 plain old POTS may be that.

13 A. For the minimum service our plans would not
14 be to have any construction charge for those rural
15 customers.

16 CHAIRMAN BURG: That's all I have.

17 MS. WIEST: Any other questions from the
18 Commissioners?

19 CHAIRMAN BURG: I would probably make one
20 additional comment. In the late-filed testimony, any
21 of this that's been determined as information for the
22 customer, I wouldn't mind seeing it included. If
23 you've made a determination on construction costs, I
24 think it might be pertinent to have it in that file.

25 A. One of the things that I would like to point

1 out to the Commission in connection with the request
2 are these things are not set in stone. When we get
3 into a competitive area we expect to see price changes
4 much more rapidly than we see them in the past and plan
5 changes and option changes and things like that. So
6 while you may have a particular plan that you start
7 with, competition or other forces might cause you to
8 change your mind. So we will send you what we propose
9 to do at this time.

10 CHAIRMAN BURG: Okay.

11 MS. WIEST: Any other questions?

12 MR. HOSECK: I have one.

13 MS. WIEST: Mr. Hoseck.

14 RECROSS-EXAMINATION

15 BY MR. HOSECK:

16 Q. Mr. Hertz, I'm probably a little slow on
17 this, but could you give me your opinion based on your
18 knowledge of this subject matter and your experience
19 and all this why are we sitting here in this proceeding
20 which is a contested case and not in an arbitration
21 proceeding between your company and Fort Randall?

22 A. It's a good question. I don't know the
23 answer to it. I don't think that we have pushed to
24 have this proceeding take place.

25 MR. HOSECK: No further questions.

1 MS. WIEST: Any redirect?

2 MR. MARMET: No redirect.

3 MS. WIEST: Any further questions of this
4 witness? Thank you. Do you have any other witnesses?

5 MR. MARMET: No, I don't. Thank you very
6 much.

7 MR. BRADLEY: As a point of order, I'd like
8 to -- this witness testified about FCC rulings which we
9 may or may not want to discuss in our briefs and would
10 like to be able to have you take official notice of the
11 FCC rulings on universal service.

12 MS. WIEST: And interconnection?

13 MR. BRADLEY: Yes.

14 MS. WIEST: Is there any objection to that?

15 MR. MARMET: No objection.

16 MS. WIEST: Okay. We will take official
17 notice of those. SDITC?

18 MR. COIT: SDITC calls Mr. Don Lee, please.

19 DON LEE,

20 called as a witness, being first duly sworn,
21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. COIT:

24 Q. Don, could you state your name and address
25 for the record, please?

1 A. Sure. My name is Don Lee. My business
2 address is 1515 North Sandborn Boulevard in Mitchell,
3 South Dakota, 57301.

4 Q. And by whom are you currently employed?

5 A. I'm employed by Martin and Associates.

6 Q. And what is your position with Martin and
7 Associates and briefly what are your responsibilities?

8 A. I serve as the director of the LEC
9 Settlements Division of our company; and in that regard
10 I work in a number of fields, including management
11 consulting, cost studies, tariff development
12 negotiations, for instance.

13 Q. You have sitting in front of you what's been
14 marked Exhibit 3. Could you please identify that?

15 A. Yes. That's the direct testimony and the
16 attached exhibits that I offered for this docket.

17 Q. And do you have any corrections to that
18 document?

19 A. There are two. Start the thing off with back
20 on page one, at the first line the word draft should be
21 deleted. And at page eight in line four where our
22 reference section 253F should be a small letter (f) as
23 opposed to capital.

24 Q. If I were to ask you today the same questions
25 that are in that testimony, would you provide the same

1 answers?

2 A. Yes, I would.

3 MR. COIT: At this time I would admit into
4 evidence Exhibit 3.

5 MS. WIEST: Any objection?

6 MR. MARMET: I do have an objection to
7 Exhibit B, as in boy, through I, as in igloo.

8 MR. COIT: What's the nature of that
9 objection, please?

10 MR. MARMET: They relate not to this docket.
11 They relate to Sully Buttes Telephone Cooperative and
12 Golden West Telecommunications Cooperative, Inc.,
13 neither of whom are parties to this docket. Nor is
14 their switched access revenue requirement per minute
15 effects of lost local service revenue subject to this
16 hearing. They're irrelevant.

17 MR. COIT: My response to that would be we're
18 dealing with an issue here that potentially may impact
19 all of the South Dakota independent telephone
20 companies, coalition members specifically, that is the
21 issue of whether competitors should be allowed to
22 cherry pick certain exchanges within service areas.
23 And those exhibits are intended to show the impacts on
24 customers if that sort of policy is established. We do
25 believe --

1 MR. MARMET: I further object on the basis of
2 lack of foundation.

3 Q. Are there any backup documents to that?
4 Pretty much those calculations stand by themselves, do
5 they not?

6 A. Yes, they do. There are no backup documents
7 to it.

8 MS. WIEST: I would sustain the objection.

9 MR. COIT: On what basis?

10 MS. WIEST: On the basis of relevance. I
11 believe that this proceeding is directed toward the
12 situation between Fort Randall and DTI.

13 MR. COIT: So it's just these exhibits
14 themselves; correct?

15 MS. WIEST: Yes.

16 MR. MARMET: Or if there are any references
17 to them, I would object, but I don't recall any in
18 there.

19 MS. WIEST: Page six, line 23, makes
20 reference.

21 MR. MARMET: All right. I would expand my
22 objection to include any references to them.

23 Q. Could you generally state for the Commission
24 the purpose of the testimony that you filed?

25 A. Sure. In a very brief synopsis, the concerns

1 of SDITC and its member companies, I believe, are
2 two-fold. Number one, and that was the purpose for
3 offering the exhibits, was that the issue being debated
4 included eligible telecommunications carrier status and
5 whether or not that and the Federal Telecom Act, in
6 fact, imposed obligations on competitive LEC's that
7 were also imposed on the incumbent LEC's as they exist
8 today.

9 And so one of our concerns was that if the --
10 and I'll use the term cherry picking of eligible
11 telecommunications carriers' status obligations are not
12 imposed on competitive LEC's, it provides an unfair or
13 uneven playing field. And the customers who are not
14 being provided service by the competitors do not enjoy
15 those benefits. The other is a concern that because of
16 the unique circumstances in this issue, the doughnut
17 hole, et cetera, that any proceedings or decisions that
18 are made by the Commission in this docket not be
19 established as precedent setting for future rural
20 exemption concerns of the SDITC members.

21 Q. Does any of your testimony address the rural
22 exemption issue?

23 A. Yes, it does. In fact, that testimony begins
24 on page one at line 23 where we talked about the two --
25 there being two concerns, and that in our opinion if

1 the rural exemption safeguards are called into order,
2 then a separate procedure should establish how the
3 rules are promulgated to affect the SDITC members.

4 Q. You indicate on page -- bottom of page seven
5 of your testimony, lines 29 through 33, you indicate
6 that you support some of the minimum service
7 provisioning requirements set forth in Mr. Hanson's
8 testimony. In particular, do you have any concerns
9 with competitors or even incumbent LEC's being allowed
10 to price services significantly differently between
11 their rural and/or the in town customers and those that
12 are located in the outlying areas?

13 A. Yes, we do. And, again, without referring to
14 the exhibits, I'll say only that any time that a
15 competitive local exchange carrier might be allowed to
16 cherry pick, there are going to be ramifications that
17 impact the revenues or the cost of both local exchange
18 carrier customers, local subscribers, and interexchange
19 carriers. And our concern is that the eligible
20 telecommunications carrier status criteria should
21 become a minimum criteria that is applicable to CLEC's
22 as well as -- I'm sorry, incumbent LEC's.

23 Q. Do you have any comments concerning the
24 impact of deaveraging prices between rural and in town
25 customers on universal service?

1 A. Yes, I do, along with the concerns about any
2 rate disparity between rural and urban customers. And
3 there are a couple terms that could be used there. Is
4 it a comparable rate? Is it the same as? Is it not
5 higher in the rural than town? I'm not sure what the
6 correct answer is. But my concern is that the eligible
7 telecommunications carrier provisions, in fact, include
8 universal service concepts. And there's a major amount
9 of uncertainty regarding what's going to happen with
10 universal service. The FCC is still working with
11 different potential models to determine what universal
12 service requirements might look like and also have
13 indicated that the federal portion of USF will only
14 cover 25 percent of a local exchange carriers'
15 universal service revenue requirement. And that is a
16 major concern for us.

17 MR. COIT: That's all the questions I have at
18 this point. I would tender the witness for cross.

19 MS. WIEST: Mr. Bradley?

20 MR. BRADLEY: Just very briefly.

21 CROSS-EXAMINATION

22 BY MR. BRADLEY:

23 Q. Don, do you have a view about generally the
24 process with regard to bona fide request? Does one
25 statement start the clock and after 120 days there is

1 no defense to any later request? I mean how shall we
2 handle these things?

3 A. In my opinion a statement doesn't necessarily
4 start the clock. In my opinion, a bona fide request
5 has to be just that, a request for services. Can it be
6 verbal or written? I guess either would have similar
7 effect. Key to your question, I think, is does that
8 preclude future requests and expansion. And from my
9 perspective, I'd say no.

10 Q. And at the time of the future expansion or
11 future requests are made, should the rural telephone
12 company have no rights?

13 A. No, I don't think that would be a fair
14 statement.

15 Q. Does it make a difference to a rural
16 telephone company when it's looking at the rural
17 exemption if we're talking about the request for resale
18 versus a request for unbundled loops?

19 A. Absolutely.

20 Q. Why?

21 A. The two concepts are totally different. In
22 one of them, that is the unbundled loop, the concept is
23 that a telephone company, through whatever prescribed
24 method, will determine what its unbundled loop costs
25 are and is allowed to recapture that from any potential

1 competitive LEC. Under the resale process, resale at
2 wholesale rates, the incumbent LEC is, I believe,
3 directed to determine what its avoided costs are; and
4 avoided costs are yet being determined, and discount
5 its retail rates by that amount. Conversely, in the
6 resale environment, the incumbent LEC is allowed to
7 retain the access service revenues. So there will be a
8 substantial difference between those two concepts.

9 Q. So let's do a scenario. Let's assume a
10 request comes in. The bona fide request for
11 interconnection company says all I want from you is
12 resale. And the rural telephone company gives them
13 resale. And the 121st day comes along and the company
14 says, oh, by the way, I'll also take an unbundled
15 loop. Should the rural telephone company have the
16 right, then, to determine whether or not and go to the
17 Commission for determination on whether to waive the
18 exemption with regard to that unbundling of the loop?

19 A. Boy, you're making me stretch my legal hat
20 that I don't have. I can offer my opinion only. And
21 my opinion would be that that second request, in fact,
22 embraces the question of rural exemptions. And I think
23 that would be the point in time at which it would
24 become an issue.

25 Q. That would start a new clock of 120 days?

1 A. Sure.

2 MR. BRADLEY: I have no further questions.

3 MS. WIEST: Mr. Marmet?

4 CROSS-EXAMINATION

5 BY MR. MARMET:

6 Q. Can you tell me the significance of 120 days?

7 A. I believe only that the significance is in
8 the rules it starts a time table during which
9 negotiations are to proceed and if they are not
10 completed arbitration can be requested following that.

11 Q. If I told you that was 135 days, would you
12 disagree with me?

13 A. I wouldn't argue.

14 MR. MARMET: No further questions.

15 MS. WIEST: Mr. Hoseck?

16 MR. HOSECK: No questions.

17 CHAIRMAN BURG: Commissioners? Any
18 redirect?

19 MR. COIT: No.

20 MS. WIEST: Thank you. Any further
21 witnesses, Mr. Coit?

22 MR. COIT: No, no further witnesses.

23 MS. WIEST: Staff, do you have any
24 witnesses?

25 MR. HOSECK: Yes, briefly. I would call

1 Harlan Best to the stand, please.

2 HARLAN BEST,

3 called as a witness, being first duly sworn,
4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HOSECK:

7 Q. Would you state your name for the record,
8 please.

9 A. Harlan Best.

10 Q. What's your job?

11 A. I am the deputy director of Fixed Utilities
12 for the South Dakota Public Utilities Commission.

13 Q. And have you been present in the hearing room
14 this afternoon and heard the testimony of all the
15 witnesses on a firsthand basis?

16 A. Yes.

17 Q. And based upon that, whatever you observed
18 and heard, do you have any recommendations to the
19 Commission in your position as a staff analyst with
20 regard to this docket?

21 A. If the Commission can disaggregate the
22 exchanges of Fort Randall into the two that are
23 involved in this proceeding, those being Centerville
24 and Viborg, if the Commission can do that, and if the
25 Commission does go along with the 24-month build-out

1 period that DTI would provide service to anyone who
2 requests it, be it in town or out of town, with the
3 caveats that Mr. Hertz put on it for possible aid to
4 construction if they requested something out of the
5 norm, whatever that norm happens to be, then staff
6 would recommend that the Commission grant an EAS type
7 of arrangement between DTI and Fort Randall.

8 Q. I have no further questions of this witness
9 and would tender him for cross-examination.

10 MS. WIEST: Mr. Bradley?

11 CROSS-EXAMINATION

12 BY MR. BRADLEY:

13 Q. I just wanted a clarification on what you
14 mean when you say disaggregate. Disaggregate for the
15 purpose of determining ETC service obligations? Or
16 have you brought in the entire subject of
17 disaggregation of Fort Randall's study areas, universal
18 service funding, and the host of things that go along
19 with that?

20 A. I feel it would be all of it would have to be
21 looked at. All I was going on was the basis of
22 Mr. Hertz's comment where he said the FCC in some
23 rulings somewhere, someplace in time, has approved a
24 disaggregation of -- I don't know if he was referring
25 to a study area or an ETC, or just what exactly that

1 was. But if there is a way in which that can be done,
2 and the Commission -- this Commission would have -- I
3 don't want to get into one of those things where you we
4 say do it here but you can't do it on the federal side.

5 Q. Let me pose a hypothetical to you. Let's
6 assume that Mr. Hertz was mistaken and that the
7 Commission, in fact, no one study area, why would you
8 not look at the service obligation disembodied from the
9 universal service funding aspect?

10 A. My understanding was the service obligation
11 of DTI was that they would provide it to whomever
12 asked.

13 Q. But couldn't you impose that service
14 obligation onto them without deciding what you would do
15 in terms of universal service funding?

16 A. The Commission could.

17 MR. BRADLEY: I have no further questions.

18 MS. WIEST: Any further questions,
19 Mr. Marmet?

20 CROSS-EXAMINATION

21 BY MR. MARMET:

22 Q. Mr. Best, it would be your recommendation
23 that DTI be allowed to serve immediately subject to
24 those conditions that you've outlined?

25 A. Immediately being upon a Commission order?

1 Q. Yes.

2 A. Yes.

3 Q. If I offered you part of the FCC Docket
4 97-157 where the FCC concluded based on additional
5 information that they thought that requiring a carrier
6 to serve a noncontiguous service area as a prerequisite
7 to eligibility might impose a serious barrier to entry,
8 particularly for wireless carriers, would that be the
9 sort of FCC decision that you were talking about?

10 A. That or any others that might be out there.

11 MR. MARMET: Thank you. No further
12 questions.

13 MS. WIEST: Mr. Coit?

14 MR. COIT: No questions.

15 MS. WIEST: Commissioners?

16 CHAIRMAN BURG: I just have a couple. Are
17 you indicating that you feel disaggregation would be
18 necessary in order to approve service in this
19 territory?

20 A. I think so.

21 CHAIRMAN BURG: Do you feel that -- you said
22 -- Mr. Marmet asked you if they should be able to
23 offer immediately. Given the information that he
24 talked about, should there have to be a negotiated
25 settlement approved first?

1 A. I believe there's already an offer at that
2 point. It would be just if the two parties could not
3 reach agreement on what that specific rate would be,
4 then they would come back to the Commission.

5 CHAIRMAN BURG: What I'm getting at should
6 the service be able to be offered without the
7 settlement having been reached either through
8 negotiation, arbitration, or some other?

9 A. I think they could do it with the
10 understanding that they would do a true-up based on
11 whatever would come out of a final agreement.

12 CHAIRMAN BURG: Okay.

13 COMMISSIONER SCHOENFELDER: But, Mr. Best,
14 you are only referring to what was proposed as an EAS
15 agreement, not the total interconnection agreement?

16 A. Right.

17 COMMISSIONER SCHOENFELDER: Thank you.

18 MS. WIEST: Well, then, in your
19 recommendation when you say grant an EAS, the
20 Commission should grant an EAS type arrangement, you
21 don't mean within this docket?

22 A. Yes, within this docket for these two
23 specific exchanges.

24 MS. WIEST: What EAS arrangement would that
25 be?

1 A. Well, at this point in time my understanding
2 is there is an offer for an EAS arrangement. The rate
3 that was cited within that offering is not acceptable
4 to DTI, so the two, DTI and Fort Randall, should be
5 able to discuss that. If they can't reach agreement,
6 then that comes back in effect for arbitration before
7 the Commission.

8 MS. WIEST: Any other questions of this
9 witness? Thank you.

10 Do you have any further witnesses,
11 Mr. Hoseck?

12 MR. HOSECK: No further witnesses.

13 MS. WIEST: Do any of the parties have any
14 rebuttal witnesses?

15 MR. MARMET: DTI does not.

16 MR. COIT: SDITC does not.

17 MS. WIEST: Then I think we still have to
18 rule on some motions. The first one I want to look at
19 is the application for additional hearings, and that's
20 the motion that the Commission holds further hearings
21 in Centerville and Viborg. I would recommend that the
22 Commission deny that motion.

23 CHAIRMAN BURG: I'll move we deny that
24 motion.

25 COMMISSIONER SCHOENFELDER: I would agree. I

1 would second -- support it.

2 MS. WIEST: The motion entitled Application
3 for Leave to Make Additional Motions, what I would
4 recommend on that is that the Commission is going to
5 receive some late-filed exhibits, so I believe the
6 record would be kept open. So to the extent that it's
7 asking that the record be kept open until such time as
8 a briefing is completed, then I would grant that.

9 COMMISSIONER SCHOENFELDER: I would move that
10 we grant that motion. I have it marked number four. I
11 don't know if that's the right one, Application for
12 Leave to Make Additional Motions.

13 CHAIRMAN BURG: I agree, limited to the
14 comments that you made for the purposes.

15 MS. WIEST: To the extent, right, that the
16 record is kept open. On the application pursuant to
17 SDCL 1-26-17, with respect to subparagraph one, the
18 Commission has already complied with that
19 subparagraph. With respect to subparagraph two, the
20 Commission will deny those. And with respect to
21 subparagraph four, to the extent that the Commission
22 has already determined that the record will be kept
23 open until such time as a briefing is completed, that
24 has been granted in part.

25 MR. MARMET: For clarification, did you deny

1 three as well?

2 MS. WIEST: Yes, subparagraphs two and three
3 are denied.

4 COMMISSIONER SCHOENFELDER: I would move we
5 support Commission Counsel's ruling.

6 CHAIRMAN BURG: I concur.

7 MR. MARMET: Thank you.

8 CHAIRMAN BURG: I conferred with her because
9 I thought we said if she denies or grants it stands
10 unless we overrule and she preferred that we have a
11 vote.

12 MS. WIEST: On the motion did I miss any?

13 CHAIRMAN BURG: Yes. Didn't application for
14 rehearing -- did we do that one?

15 MR. MARMET: You denied that one.

16 CHAIRMAN BURG: That's right, I got it.

17 MS. WIEST: Are there any motions that
18 haven't been ruled on?

19 MR. MARMET: Not yet.

20 (A DISCUSSION WAS HELD OFF THE RECORD.)

21 MS. WIEST: We'll go back on the record. We
22 have set briefing schedules. Simultaneous briefs will
23 be due two weeks from the time the parties receive the
24 transcript. Rebuttal briefs will be due one week
25 thereafter. Do any of the parties wish to make any

1 closing statements? Fort Randall?

2 MR. BRADLEY: No, thank you.

3 MS. WIEST: Dakota?

4 MR. MARMET: No, thank you.

5 MS. WIEST: SDITC?

6 MR. COIT: No.

7 MS. WIEST: Staff?

8 MR. HOSECK: No.

9 MS. WIEST: Is there anything else that needs
10 to come before the Commission at this time? I believe
11 there are two late-filed exhibits, from what I know,
12 the one that I requested with the price list. And I
13 also believe that there was a request made of
14 Mr. Hanson that he was going to supply to you --

15 MR. BRADLEY: I'm not aware of it.

16 MS. WIEST: -- the number of access lines in
17 each exchange.

18 MR. BRADLEY: Do you need that?

19 MR. MARMET: If you can just send me a
20 letter, that would be fine.

21 MS. WIEST: That would be late-filed Exhibit
22 25. Anything else? If not, we're done for today.

23 (THE HEARING CONCLUDED AT 5:45 P.M.)

24

25

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF HUGHES)

3

4 I, Lori J. Grode, RMR, Notary Public, in and
5 for the State of South Dakota, do hereby certify that
6 the above hearing, pages 1 through 164, inclusive, was
7 recorded stenographically by me and reduced to
8 typewriting.

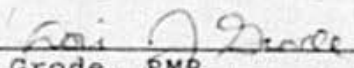
9 I FURTHER CERTIFY that the foregoing
10 transcript of the said hearing is a true and correct
11 transcript of the stenographic notes at the time and
12 place specified hereinbefore.

13 I FURTHER CERTIFY that I am not a relative or
14 employee or attorney or counsel of any of the parties,
15 nor a relative or employee of such attorney or counsel,
16 or financially interested directly or indirectly in
17 this action.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and seal of office at Pierre, South Dakota, this
20 10th day of November, 1997.

21

22


Lori J. Grode, RMR

23

24

25

Ex 1 - Hertz Testimony
 Ex 2 - Hanson Testimony
 Ex 3 - Lee Testimony

LIST OF CORRESPONDENCE AND DOCUMENTS

TO	FROM	DATED	REGARDING
		10-22-96	Final Order and Decision Granting a Certificate of Authority; Notice of Entry of Judgment Docket TC96-050
		2-18-97	Settlement Agreement Between USWC and DTI
Wesley Hanson	Robert Marmet	6-1-97	Letter requesting negotiations for interconnection in Centerville and Viborg
Robert Marmet	Michael Bradley	6-9-97	Interconnection Negotiations Between DTI and Fort Randall requesting more information on services desired
Michael Bradley	Robert Marmet	6-11-97	Interconnection Negotiations Between DTI and Fort Randall defending bona fide request of 6-1-97
Bruce Hanson	Robert Marmet	7-28-97	Request that all services be provided
Robert Marmet	Michael Bradley	8-4-97	Request for more specific information on interconnection needs of DTI
Bruce Hanson	Thomas Hertz	8-12-97	Request for continued negotiations on behalf of DTI
William Bullard	Robert Marmet	8-12-97	Second notice of request for interconnection
Thomas Hertz	Michael Bradley	8-21-97	Reply to 8-12-97 letter, requesting more detail
William Bullard	Michael Bradley	9-8-97	Request for SDPUC to develop a schedule for determining whether to waive the Rural Exemption
William Bullard	Thomas Hertz	9-8-97	Reply to Fort Randall's 9-8-97 letter, requesting an EAS type interconnection
Thomas Hertz	Michael Bradley	9-24-97	Accepting the proposed form of interconnection
Michael Bradley	Robert Marmet	9-25-97	Reply to 9-24-97 letter, verifying the request for an EAS type interconnection
Thomas Hertz	Michael Bradley	10-13-97	Transmittal of the proposed EAS type Interconnection Agreement and the Agreement
William Bullard	Thomas Hertz	10-14-97	Notice of intent to offer Dial Tone Service beginning 11-1-97
William Bullard	Michael Bradley	10-16-97	Response to Letter Notice of 10-14-97 and Discussion of Rural Exemption
William Bullard	Robert Marmet	10-17-97	Defense of 10-14-97 letter and right to do business in Centerville and Viborg
Robert Marmet	Michael Bradley	10-21-97	Rural Telephone Company status for the Centerville and Viborg Exchanges
Michael Bradley	Robert Marmet	10-23-97	Reply to 10-21-97 letter

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY DAKOTA)	
TELECOM, INC., DAKOTA	)	APPLICATION
TELECOMMUNICATIONS SYSTEMS, INC.	)	PURSUANT TO SDCL §1-26-17
AND DAKOTA TELECOMMUNICATIONS)	
GROUP, INC., FOR INTERCONNECTION WITH)	
FORT RANDALL TELEPHONE COMPANY	)	TC97-062

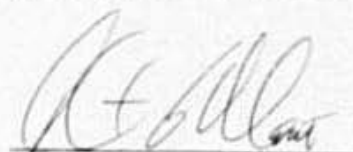
COME NOW Dakota Telecom, Inc. ("DTI"), and Dakota Telecommunications Systems, Inc. ("DTS") (collectively "Dakota") and File this Applications For a More Definite and Detailed Statement and For Reference to the Legal Authority and Jurisdiction and for a Reference to the Particular Sections Involved, all pursuant to SDCL §1-26-17. In support thereof, DTI and DTS offer the following:

1. Dakota hereby requests that the South Dakota Public Utilities Commission provide Dakota with a statement in compliance with SDCL §1-26-17 (2) and (3) making reference to the particular sections of statutes and regulations under which this hearing is being held.
2. Dakota hereby requests that the South Dakota Public Utilities Commission provide Dakota with a statement in compliance with SDCL §1-26-17 (4), setting forth a more definite and detailed statement of the matters asserted in this hearing. In particular, Dakota requests that the standards which the Commission will use to arrive at a decision regarding the issue of whether Dakota shall be required to meet eligible telecommunications carrier requirements be articulated.
3. Dakota hereby requests that the South Dakota Public Utilities Commission provide Dakota with a statement in compliance with SDCL §1-26-17 (5). Dakota requests that the Commission specify what actions it believes are authorized by law.
4. Dakota further requests that upon being provided the requested information, it be allowed a sufficient time to review the statements, prepare testimony and argument, and that the hearing be continued to allow for any such matters to be presented to the Commission.

Dated this 3rd day of November, 1997.

*Motions by
Marmet / Dakota*

Not Exhibits



Robert G. Marmet
Attorney for Dakota
PO Box 66
Irene, SD 57037
(605) 263-3301

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY DAKOTA)	
TELECOM, INC., DAKOTA)	APPLICATION FOR REHEARING
TELECOMMUNICATIONS SYSTEMS, INC.)	
AND DAKOTA TELECOMMUNICATIONS)	
GROUP, INC., FOR INTERCONNECTION WITH)	
FORT RANDALL TELEPHONE COMPANY)	TC97-062

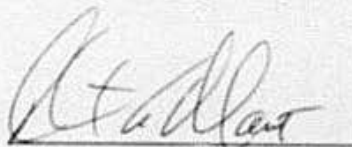
COME NOW Dakota Telecom, Inc. ("DTI"), and Dakota Telecommunications Systems, Inc. ("DTS") (collectively "Dakota") and File this Application for Rehearing pursuant to ARSD 20:10:01:30.01. In support thereof, DTI and DTS offer the following:

1. On October 22, 1997, at an ad hoc hearing, the South Dakota Public Utilities Commission considered whether to add an issue to a hearing previously scheduled for November 3, 1997.
2. After hearing the arguments of the parties, the Commission voted to expand the scope of the hearing to include the issue of whether the Commission shall require Dakota to meet the requirements of an eligible telecommunications carrier before being allowed to provide services in exchanges owned by Fort Randall Telephone Company.
3. By making this initial determination to expand the scope of the hearing, the Commission has exceeded its jurisdiction in the following manner: The Telecommunications Act of 1996 delegates some regulatory responsibilities to the "State commission" of each state. The Telecommunications Act of 1996 allows some acts to be done by "a State". The power to impose requirements of 47 USC §253(f) is reserved to "a State". Because there has been no specific grant of state statutory authority to the Commission, if the Commission is acting pursuant to 47 USC §253(f), it is exercising powers which it has not been granted. The authority to establish whether or not such requirements shall be imposed belongs to the legislature until such time as it has delegated its authority to act.
4. If the Commission does have the delegated authority to impose 47 USC §253(f) requirements, it should follow procedures for rule making.
5. The Commission previously granted certificates of authority to Dakota to provide local service statewide. The exchanges now at issue were not owned by a rural telephone company at the time the Dakota was granted authority. The Order which granted Dakota authority specifically excluded these exchanges from the language which would have required Dakota to seek additional authority before beginning service in those exchanges. The Commission has not amended that Order to change its exclusion of those exchanges. Furthermore, Dakota was already serving customers in the exchanges in questions prior to purchase of those exchanges by Fort Randall.

6. Under the circumstances outlined above, the Commission should rehear the matter to determine if it has the jurisdiction to consider the matter of whether to require Dakota to meet eligible telecommunications carrier requirements; whether it should be determining this matter on an ad hoc basis, or through comprehensive rule making; and whether these exchanges are still excluded by the Order granting Dakota's Certificate of Authority.

WHEREFORE, Dakota respectfully requests that the Commission Reconsider its Decision in the Amended Order For and Notice of Hearing and Procedural Schedule, and confine the previously scheduled hearing to the issue set forth in the Commission's Order For and Notice of Hearing and Procedural Schedule dated October 3, 1997.

Dated this 3rd day of November, 1997.



Robert G. Marmet
Attorney for Dakota
PO Box 66
Irene, SD 57037
(605) 263-3301

Subscribed and sworn to before me this 3 day of November, 1997.



Notary Public—South Dakota
My Commission Expires:

(SEAL)

KRISTIE LYNGSTAD
Notary Public, South Dakota
My Commission Expires June 7, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY DAKOTA)	
TELECOM, INC., DAKOTA)	APPLICATION FOR LEAVE TO
TELECOMMUNICATIONS SYSTEMS, INC.)	MAKE ADDITIONAL MOTIONS
AND DAKOTA TELECOMMUNICATIONS)	
GROUP, INC., FOR INTERCONNECTION WITH)	
FORT RANDALL TELEPHONE COMPANY)	TC97-062

COME NOW Dakota Telecom, Inc. ("DTI"), and Dakota Telecommunications Systems, Inc. ("DTS") (collectively "Dakota") and File this Application for Leave to Make Additional Motions. In support thereof, DTI and DTS offer the following:

1. Due to the short period of time between the date upon which the expanded of the issues to be considered at this hearing and the date of the hearing, and due to the unknown nature of the Commission's rulings on the other motions and applications filed by Dakota, Dakota hereby requests permission to file additional Motions and Applications throughout the course of the hearings and the briefing period to follow.

Dated this 3rd day of November, 1997.



Robert G. Marmet
Attorney for Dakota
PO Box 66
Irene, SD 57037
(605) 263-3301

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY DAKOTA)	
TELECOM, INC., DAKOTA)	APPLICATION FOR
TELECOMMUNICATIONS SYSTEMS, INC.)	ADDITIONAL HEARINGS
AND DAKOTA TELECOMMUNICATIONS)	
GROUP, INC., FOR INTERCONNECTION WITH)	
FORT RANDALL TELEPHONE COMPANY)	TC97-062

COME NOW Dakota Telecom, Inc. ("DTI"), and Dakota Telecommunications Systems, Inc. ("DTS") (collectively "Dakota") and File this Application for Additional Hearings. In support thereof, DTI and DTS offer the following:

1. In the event that the South Dakota Public Utilities Commission determines that one of the issues it must consider in determining whether Dakota should be required to meet eligible telecommunications carrier requirements prior to providing service in exchanges owned by Fort Randall Telephone Company, Dakota hereby requests that, at the conclusion of the hearings scheduled for November 3rd and 4th, the Commission hold further hearings in Centerville and Viborg, South Dakota, to allow the public to provide testimony concerning the public interest.

Dated this 3rd day of November, 1997.



Robert G. Marmet
Attorney for Dakota
PO Box 66
Irene, SD 57037
(605) 263-3301

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

IN THE MATTER OF THE FILING BY)
DAKOTA TELECOM, INC. , DAKOTA)
TELECOMMUNICATIONS SYSTEMS, INC.,)
AND DAKOTA COOPERATIVE)
TELECOMMUNICATIONS, INC. FOR)
INTERCONNECTION WITH FORT)
RANDALL TELEPHONE COMPANY)

TC97-062

PREFILED TESTIMONY

OF

THOMAS W. HERTZ

October 31, 1997



TC96-050

DTI/Hertz Prefiled Testimony

1 Q. Please state your name, occupation and address.

2
3 A. My name is Tom Hertz, and I am President and Chief Executive Officer of Dakota
4 Telecommunications, Inc., East Highway 46, P.O. Box 127, Irene, South Dakota 57037. I
5 am also President and Chief Executive Officer of Dakota Telecommunications Group,
6 Inc., of which Dakota Telecom, Inc. is a wholly owned subsidiary.

7 Q. How long have you been in a management position for Dakota Telecom, Inc.?

8 A. Since October, 1995.

9 Q. What was your position prior to being employed to manage Dakota Telecom, Inc.
10 and its parent company?

11 A. I practiced law with the firm of Ulmer, Hertz & Bertsch, P.C., Menno, South Dakota
12 from January 1, 1978 until October, 1995. I was outside legal counsel for DTI and its
13 parent corporation, Dakota Cooperative Telecommunications, Inc., now Dakota
14 Telecommunications Group, Inc. from mid-1978 until I assumed the positions noted in
15 my answer to the first question above.

16 Q. In your capacity as the CEO of Dakota Telecom, Inc., are you familiar with the
17 factual and legal background which gives rise to this controversy?

18 A. I am.

19 Q. What is your view of the issues to be decided by the Commission in this proceeding?

20 A. On March 12, 1996, Dakota Telecom, Inc. filed a Petition for Registration and Authority
21 to Construct Facilities. The original Petition referred to construction in Tea, South
22 Dakota, and other U S WEST Communications, Inc. owned exchanges.
23 The Public Utilities Commission of the State of South Dakota ("Commission") issued its
24 Certificate of Authority to Dakota Telecom, Inc. "To Conduct Business As A
25 Telecommunications Company Within The State Of South Dakota as authorized by the
26 Final Order and Decision Granting A Certificate Of Authority Dated 10/22/96." ("Final
27 Order").

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DTI/Hertz Prefiled Testimony

1 Paragraph III of the Conclusions of Law of the Final Order states as follows:

2 The Commission grants DTI a statewide Certificate of Authority to
3 provide telecommunications services, including local exchange services.
4 However, with respect to rural telephone companies, DTI will have to
5 come before the Commission in another proceeding before being able to
6 provide service in that rural service area pursuant to 47 U.S.C. §253(f)
7 which allows the Commission to require a company that seeks to provide
8 service in a rural service area to meet the requirements in 47 U.S.C.
9 §214(e)(1) for designation as an eligible telecommunications carrier. In
10 addition, the granting of statewide certification will not affect the
11 exemptions, suspensions, and modifications for rural telephone companies
12 found in 47 U.S.C. §251(f).
13

14 Paragraph IV of the Conclusions of Law of the Final Order states as follows:

15 The Commission declines to apply the exception for rural telephone
16 companies as listed in Conclusion of Law III to the eight exchanges U S
17 WEST has proposed to sell to other local exchange carriers in South
18 Dakota. The Commission finds that those exchanges are not currently
19 owned and operated by a rural telephone company as defined in 47 U.S.C.
20 §153, subsection 47. Therefore, the provisions in the Federal
21 Telecommunications Act relating to rural telephone companies are not
22 currently applicable to these exchanges.
23

24 In the Spring of 1996 Dakota Telecom, Inc. began engineering and construction of state-
25 of-the-art hybrid fiber optic/coaxial cable ("HFC") facilities to serve customers in
26 southeast South Dakota, including Centerville and Viborg, South Dakota. The main
27 facility is located in Viborg, South Dakota. Viborg and Centerville are located in two of
28 the eight local exchanges which are referred to in Paragraph 6., above.

29 During the hearings held by the South Dakota Public Utilities Commission
30 relative to the application of Dakota Telecom, Inc. for a Certificate of Authority, I
31 testified that Dakota Telecom, Inc. was planning to provide local telephone service in
32 both the Centerville and Viborg exchanges. At the time I testified Fort Randall
33 Telephone Company had apparently agreed to purchase those exchanges from US WEST

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DTI/Hertz Prefiled Testimony

1 Communications, Inc. Fort Randall Telephone Company and the South Dakota
2 Independent Telephone Coalition ("SDITC") participated in the aforementioned Public
3 Utilities Commission hearings.

4 Subsequent to the issuance of Certificate of Authority to Dakota Telecom Inc.,
5 Fort Randall Telephone Company did purchase the Centerville and Viborg exchanges
6 from US WEST Communications, Inc. On or about June 1, 1997, Fort Randall began to
7 operate the Centerville and Viborg exchanges.

8 By letter dated June 1, 1997, Dakota Telecom, Inc. requested interconnection negotiations
9 with Fort Randall Telephone Company. Fort Randall Telephone Company is a "rural
10 telephone company" as defined by 47 USC §153(47). Dakota Telecom Inc. submitted
11 notice of the letter requesting interconnection to the South Dakota Public Utilities
12 Commission, as provided in 47 USC §251(f)(1)(B).

13 Fort Randall sought and was granted a declaratory ruling by the Commission that
14 Dakota Telecom, Inc.'s June 1, 1997 request for interconnection was not a bona fide
15 request for purposes of 47 USC §251(f)(1)(A). Dakota Telecom Inc. has appealed that
16 ruling to the Circuit Court of Hughes County, South Dakota (Civ. 97-292).

17 In the same docket, and at approximately the same time, the South Dakota Public Utilities
18 Commission "found that it would hold a hearing on whether Dakota shall be required to
19 meet Eligible Telecommunications Carrier (ETC) requirements before being allowed to
20 provide service in exchanges owned by Fort Randall."

21 Dakota Telecom, Inc. has appealed the Order For And Notice Of Hearing And Procedural
22 Schedule entered by the Commission on the 31st day of July, 1997, which set a hearing

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DTI/Hertz Prefiled Testimony

1 for August 26, 1997 and ordered Dakota to file testimony on or before August 11, 1997
2 and Fort Randall to file testimony on or before August 20, 1997.

3 Dakota filed its Notice of Appeal on August 4, 1997. On August 8, 1997, Fort
4 Randall and SDITC, an Intervenor in the Commission proceeding, removed the matter to
5 the United States District Court for the District of South Dakota ("District Court"). On
6 September 25, 1997, the District Court entered its Order of Remand remanding the matter
7 back to Hughes County Circuit Court.

8 On August 15, 1997, Dakota sent Fort Randall another request for
9 interconnection. On September 9, 1997 the Commission found that the August 15
10 request was a bona fide request as required by 47 U.S.C. §251(f)(1).

11 Subsequent to the filing of the appeal referred to in Paragraph 13., above, the
12 Commission entered another Order For And Notice Of Hearing And Procedural Schedule
13 in the same docket which is the subject of Dakota Telecom Inc.'s appeal. This new Order
14 set a hearing for November 3rd and 4th, 1997, on the issue of "whether Fort Randall as a
15 rural telephone company shall be entitled to retain an exemption under 47 U.S.C.
16 251(f)(1) for its service territory". The Commission ordered simultaneous prefiled
17 testimony to be filed by all parties on or before October 29, 1997.

18 By letter dated October 14, 1997, Dakota Telecom, Inc. notified the Commission
19 that it intended to begin providing "dial tone" to customers in Centerville and Viborg on
20 November 1, 1997. Fort Randall and SDITC responded by requesting that the
21 Commission prevent Dakota from providing local telecommunications services in the
22 Centerville and Viborg exchanges "without first complying with the Commission's Order

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DTI/Hertz Prefiled Testimony

1 requiring a determination of the service obligations related to these Rural Telephone
2 Company exchanges".

3 At an *ad hoc* hearing October 22, 1997, held with less than one day's faxed notice
4 to Dakota Telecom, Inc., the Commission decided to "include as an issue [at the
5 November 3rd and 4th hearing] whether the Commission shall require Dakota [Telecom,
6 Inc.] to meet the requirements of an Eligible Telecommunications Carrier...before being
7 allowed to provide services in exchanges owned by Fort Randall." The procedural
8 schedule was amended to require prefiled testimony to be filed on or before October 30,
9 1997. The Amended Order for and Notice of Hearing and Procedural Schedule was
10 issued that same day.

11 The hearing scheduled for November 3rd and 4th, Monday and Tuesday of next
12 week, is noticed as an adversary proceeding pursuant to Chapter 1-26.
13 By its Order For And Notice Of Hearing And Procedural Schedule entered on the 31st day
14 of July, 1997, the Commission asserts the authority to impose upon Dakota, as a
15 condition of providing competitive service in Centerville and Viborg, requirements
16 established by the Telecommunications Act of 1996 to qualify for Universal Service Fund
17 support. 47 USC §214. The Commission lacks subject matter jurisdiction to impose such
18 a condition because it has no statutory authority to do so under either federal or state
19 statutes.

20 Prior to November 1996, I practiced as an attorney in proceedings before the
21 Commission for more than fifteen years. I am familiar with the statutes and regulations
22 governing the Commission. I am also familiar with the Telecommunications Act of
23 1934, as amended, the federal statutes governing regulation of telecommunications.

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DTI/Hertz Prefiled Testimony

1 The South Dakota legislature has given the Commission regulatory jurisdiction with
2 regard to classifying telecommunications services and pricing of noncompetitive services,
3 tariffs, complaints, unjust discrimination, neglect, or violation of state law and certificates
4 of authority to provide telecommunications services. SDCL §49-31-21 requires
5 Commission approval of construction of new telecommunications facilities, but that
6 statute has been found by the Commission to be preempted by the Telecommunications
7 Act of 1996. (TC96-150, Order Partially Dismissing Complaint dated September 24,
8 1996. Attached hereto as "Exhibit I") The powers and duties of the Commission have
9 been spelled out in considerable detail by the legislature, with guidelines and standards as
10 required by the state constitution. No state statute authorizes the Commission to impose
11 ETC requirements as a condition of providing service.

12 The Telecommunications Act of 1996 was passed by the United States Congress
13 to provide for a pro-competitive, de-regulatory national policy to accelerate private sector
14 deployment of advanced telecommunications and information technologies and services
15 by opening all telecommunications markets to competition.

16 IN GENERAL.---No State or local statute or regulation, or other State or
17 local legal requirement, may prohibit or have the effect of prohibiting the
18 ability of any entity to provide any interstate or intrastate
19 telecommunications service. 47 USC §253(a).

20
21 A few very limited exceptions to the general rule follow this sweeping mandate.

22 Included in the exceptions is subsection 47 USC 253(f), which states:

23 RURAL MARKETS.---It shall not be a violation of this section for a State
24 to require a telecommunications carrier that seeks to provide telephone
25 exchange service or exchange access in a service area served by a rural
26 telephone company to meet the requirements in section 214(e)(1) for
27 designation as an eligible telecommunications carrier for that area before
28 being permitted to provide such service...

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DTI/Hertz Prefiled Testimony

1
2 Section 214(e) requires a company to offer certain services throughout its "service area".
3 Those services include: voice grade access to the public switched network, free local
4 usage, dual tone multi-frequency signaling, single party service, access to emergency
5 services, access to operator services, access to interexchange services, access to directory
6 assistance and toll limitation to qualifying low-income customers.
7 Congress has permitted, but not required, the State of South Dakota to impose the section
8 214(e)(1) requirements on companies seeking to compete in areas served by incumbent
9 rural telephone companies.

10 The Order For and Notice of Hearing and Procedural Schedule issued by the
11 Commission on July 31, 1997 states that the issue at the hearing is "whether Dakota shall
12 be required to meet ETC requirements before being permitted to provide service in
13 exchanges owned by Fort Randall."

14 The Amended Order For and Notice of Hearing and Procedural Schedule issued by the
15 Commission on October 22, 1997 states that "the second issue at this hearing is whether
16 the Commission shall require Dakota to meet the requirements of an Eligible
17 Telecommunications Carrier before being allowed to provide service in exchanges owned
18 by Fort Randall."

19 Both the July 31 Notice and the October 22 Notice assert jurisdiction "pursuant to
20 SDCL Chapters 1-26 and 49-31, ARSD Chapter 20:10:01 and the Telecommunications
21 Act of 1996 (Act)."

22 Neither Notice specifies the sections of the Telecommunications Act upon which
23 the Commission bases its jurisdiction. SDCL §1-26-17 (2) and (3) require a statement of

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DTI/Hertz Prefiled Testimony

1 the jurisdiction under which the hearing is being held and a reference to the particular
2 section of the statute involved.

3 Although the Notices fall short of the statutory requirement, the language in each
4 is nearly identical to the permitted 47 USC §253(f) restrictions. Without explicitly stating
5 that it is doing so, the Commission is attempting to exercise the powers which Congress
6 delegated to "a State," rather than to a "State commission."

7 The Communications Act of 1934, as amended, contains defined terms. Both "State" and
8 "State commission" are defined terms.

9 Section 3 [47 USC Section 153]. Definitions
10 For the purposes of this Act, unless the context otherwise requires.—

11 State.--The term "State" includes the District of Columbia and the
12 Territories and possessions.

13 State commission.--The term "State commission" means the commission,
14 board, or official (by whatever name designated) which under the laws of
15 any state has regulatory jurisdiction with respect to intrastate operations of
16 carriers.

17
18 The Commission is a "State commission" for purposes of the Communications Act of
19 1934 as amended. The plain language of the Communications Act of 1934 establishes
20 that Congress saw a distinction between "States" and "State commissions".

21 Throughout the Act, different duties are delegated to "State commissions" and to
22 "States". By proposing to impose restrictions reserved to a "State" without a grant of
23 authority from the state legislature to do so, the South Dakota "State commission", the
24 Public Utilities Commission, has exceeded its jurisdiction.

25 The federal Telecommunications Act of 1996 became law in February of 1996.
26 The 1997 South Dakota Legislature, aware of the changes in federal law, considered, and
27 passed legislation relating to telecommunications. The legislature specifically considered

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DTI/Heriz Prefiled Testimony

1 and rejected legislation which would have imposed restrictions upon telephone
2 companies providing service in rural telephone company service areas as permitted under
3 47 USC §253(f).

4 South Dakota House Bill 1227 was entitled "An Act to revise certain provisions
5 regarding the regulating of telecommunications services, to provide for a universal
6 service fund, to provide for contributing to the fund and to establish the use of the fund."
7 It was first read in the House and referred to the House State Affairs Committee on
8 January 31, 1997. Section 13 of the bill proposed to amend SDCL chapter 49-31 to
9 include the following language:

10 If the applicant proposes to provide any local exchange service in an area
11 served by a rural telephone company, the applicant shall satisfy the service
12 obligations of an eligible telecommunications carrier, unless the
13 commission determines that the requirement is not in the public interest
14 and a waiver is granted by the commission pursuant to section 14 of this
15 Act.

16
17 Section 14 would have allowed an exception to the ETC requirement where the
18 incumbent rural telephone company had obtained an exemption to its interconnection
19 obligation. The proposed language of the requirement to meet ETC requirements and the
20 opportunity for waivers is drawn almost directly from the 47 USC §253(f). Section 14,
21 the waiver section, provided that the hearing was to be held pursuant to chapter 1-26, and
22 established standards for the grant of waivers.

23 South Dakota House Bill 1256 was entitled "An Act to revise certain provisions
24 relating to the regulation of telecommunications companies." It was first read in the
25 House and referred to the State Affairs Committee on February 3, 1997. It provided:

26 Except as provided in the United States Code, title 47, section 253(f) as of
27 February 8, 1996, if the applicant proposes to provide any local exchange

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1 service in an area served by a rural telephone company, the applicant is
2 required to satisfy the service obligations of an eligible
3 telecommunications carrier as set forth in the United States Code, title 47,
4 section 214(e), as of February 8, 1996. However, an applicant may
5 petition the commission for a waiver from the requirements of satisfying
6 the service obligations of an eligible telecommunications carrier. The
7 commission may grant the waiver if it determines, after notice and hearing
8 pursuant to chapter 1-26, that the waiver would be in the public interest,
9 that it would not adversely impact universal service, that prices for local
10 exchange service would be just, reasonable, and affordable, and that
11 quality of service would be continued.

12
13 I was present in person when the House State Affairs Committee met to consider both
14 bills on February 19, 1997. Proponents of HB 1227 included the Chairman of the Public
15 Utilities Commission and its General Counsel. The Chairman of the Public Utilities
16 Commission was also listed as a proponent of HB 1256 on the Committee's Official
17 Testimony Sign-up Sheet. A motion was made to amend HB 1227 to delete everything
18 after the enacting clause and replace it with new language. This new language contained
19 no mention of eligible telecommunications carrier requirements as a condition precedent
20 to service in a rural telephone company service area. This Motion carried on a voice vote.
21 A further motion was made to add language to 49-31 which would have granted the
22 Commission "all powers necessary, including promulgating rules pursuant to chapter 1-
23 26, to implement and comply with the provisions of the federal Telecommunications Act
24 of 1996..." This amendment failed on a voice vote.

25 At that same Committee meeting, HB 1256, the second bill which contained the
26 mandated rural protections was deferred until the 41st legislative day.

27 The telecommunications legislation that did pass the 1997 South Dakota
28 Legislature contained the following language:

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1 It is the intent of the Legislature that all of the future rules, policies,
2 actions, and decisions of the State of South Dakota and all its political
3 subdivisions, and the actions and decisions of its offices and employees,
4 shall be made consistent with and further the purposes and directives of §§
5 49-31-60 through 49-31-68, inclusive. Any rule, policy, action, decision,
6 or directive from a regulatory agency shall consider input from common
7 carriers, including local exchange carriers, and others; allow economic
8 deployment of technology; encourage maximum cooperation among
9 facilities providers; and consider a fair return on the investment made by
10 facility providers to implement §§49-31-60 through 49-31-68, inclusive.
11 SDCL §49-31-60.

12 The South Dakota legislature has stated its intention that state policies and actions should
13 be consistent with a law which did not include the very type of restrictions which the
14 Commission now proposes to impose on Dakota. The action which the Commission now
15 proposes to consider would not only violate the letter of its legislative mandate, but
16 would also be contrary to the pro-competitive spirit of both the federal
17 Telecommunications Act of 1996 and the newly enacted "policy that will guide and direct
18 the creation of a telecommunications infrastructure across South Dakota" SDCL §47-31-
19 60 *et seq.*

20 The legislature did not impose the type of restrictions permitted by 47 USC
21 253(f). The legislature did not grant the Commission the power to impose such
22 restrictions. The legislature has provided very specific delegated authority to the
23 Commission which does not include the authority it now proposes to exercise on an *ad*
24 *hoc* basis.

25 The Commission lacks subject matter jurisdiction to take the action it proposes.
26 If the Commission proceeds with the proposed action beyond its jurisdiction, Applicant
27 will be irreparably harmed by being prevented from conducting its lawful business in the
28 Centerville and Viborg exchanges.

*TC97-062**DTI/Hertz Prefiled Testimony*

- 1 Q. Assuming that the Commission is found to have subject matter jurisdiction to
2 impose ETC requirements, what service area would be appropriate for DTI in
3 providing service in Centerville and Viborg?
- 4 A. The Commission should disaggregate the Fort Randall Study Area to contiguous areas,
5 which in this case would result in a service area of Centerville and Viborg, which are
6 contiguous with each other, but geographically separated from the remainder of the Fort
7 Randall service area.
- 8 Q. Does that conclude your testimony?
- 9 A. Yes it does.
- 10

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DTI/Hertz Prefiled Testimony

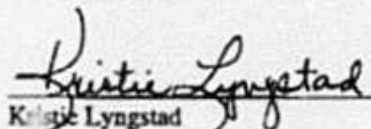
CERTIFICATE OF SERVICE

I, Kristie Lyngstad, do hereby certify that I am the authorized representative of Dakota Telecom, Inc., and that on October 31 1997, I faxed a true and correct copy of the foregoing PREFILED TESTIMONY OF THOMAS W. HERTZ to:

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SD Independent Telephone Coalition
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Kristie Lyngstad

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

OCT 31 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

FAX Received OCT 30 1997

IN THE MATTER OF THE FILING BY DAKOTA)
TELECOM, INC., DAKOTA TELECOMMUNICATIONS)
SYSTEMS, INC., AND DAKOTA COOPERATIVE)
TELECOMMUNICATIONS, INC. FOR INTERCONNECTION)
WITH FORT RANDALL TELEPHONE COMPANY)

TC97-062

PREFILED DIRECT TESTIMONY OF

BRUCE C. HANSON



1 Q. Please state your name and business address.

2 A. Bruce C. Hanson, Hanson Communications Incorporated, Clara City, Minnesota.

3 Q. By whom are you employed and what is your position?

4 A. I am Treasurer of Hanson Communications, which operates two independent telephone
5 companies in South Dakota -- Mt. Rushmore Telephone Company and Fort Randall
6 Telephone Company ("Fort Randall"). I am also treasurer of Fort Randall, which
7 currently operates seven exchanges in South Dakota.

8 Q. What is your educational and professional background?

9 A. I have a Bachelor of Arts degree from Bethel College, located in Minnesota. I have been
10 employed in a variety of positions within the telephone companies owned and operated
11 by Hanson Communications and, for approximately, sixteen years I have been
12 responsible for the financial and business operations of these companies. As such, I have
13 a solid basis for estimating the likely financial and business consequences of different
14 types of local competition in Fort Randall's service area.

15 Q. What is the purpose of your testimony?

16 A. To address the issue of the Rural Exemption provided by Section 251(f)(1) of the Federal
17 Telecommunications Act of 1996 ("Act") as it applies to the services requested by Dakota
18 Telecom, Inc. and Dakota Telecommunications Systems, Inc. ("DTI/DTS"); and to make
19 recommendations concerning the service obligations that may be imposed, pursuant to
20 Section 253(b) and (f), on DTI/DTS with respect to their proposal to offer competitive
21 local telecommunications services in Fort Randall's service area.

1 universal service funding. Ironically, DTI/DTS' decision to duplicate Fort Randall's
2 existing network may result in Fort Randall qualifying for such funding. If it does
3 qualify, those funds will be needed to protect universal service and should not be diverted
4 to DTI/DTS. The public should not be required to subsidize DTI/DTS' decision to
5 overbuild in these very rural exchanges. DTI/DTS should only build those facilities that
6 are economically viable without a public subsidy.

7 **The Rural Exemption**

8 Q. What is the Rural Exemption?

9 A. In recognition that unregulated competition would not be in the public interest,
10 particularly in the service areas of Rural Telephone Companies, Congress established
11 different obligations on both the incumbent local exchange carrier ("ILEC") and on the
12 competitive local exchange carrier ("CLEC"). The Rural Exemption relates to the
13 process for determining the obligations of the ILEC. The Service Obligations of Section
14 253(b) and (f) relate to the obligation of the CLEC.

15 Q. Is Fort Randall a Rural Telephone Company?

16 A. Yes. A Rural Telephone Company is defined under the Act, 47 U.S.C. § 153(37). Fort
17 Randall would qualify under any of the four alternative definitions. For example, Fort
18 Randall has _____ access lines, significantly fewer than the 50,000 access line limit for a
19 Rural Telephone Company.

20 Q. What provisions of the Act relate to the Rural Exemption?

1 A. Fort Randall's attorneys will discuss these provisions in our brief to the Commission.

2 They advise me that the largest local exchange carriers are required to comply with the
3 interconnection obligations of Section 251(c), which provides:

4 In addition to the duties contained in subsection (b), each incumbent
5 local exchange carrier has the following duties:

6 (1) DUTY TO NEGOTIATE- The duty to negotiate in good faith in
7 accordance with section 252 the particular terms and conditions of agreements
8 to fulfill the duties described in paragraphs (1) through (5) of subsection (b)
9 and this subsection. The requesting telecommunications carrier also has the
10 duty to negotiate in good faith the terms and conditions of such agreements.

11 (2) INTERCONNECTION- The duty to provide, for the facilities and
12 equipment of any requesting telecommunications carrier, interconnection with
13 the local exchange carrier's network --

14 (A) for the transmission and routing of telephone exchange
15 service and exchange access;

16 (B) at any technically feasible point within the carrier's network;

17 (C) that is at least equal in quality to that provided by the local
18 exchange carrier to itself or to any subsidiary, affiliate, or any other party to
19 which the carrier provides interconnection; and

20 (D) on rates, terms, and conditions that are just, reasonable, and
21 nondiscriminatory, in accordance with the terms and conditions of the
22 agreement and the requirements of this section and section 252.

23 (3) UNBUNDLED ACCESS- The duty to provide, to any requesting
24 telecommunications carrier for the provision of a telecommunications service,
25 nondiscriminatory access to network elements on an unbundled basis at any
26 technically feasible point on rates, terms, and conditions that are just,
27 reasonable, and nondiscriminatory in accordance with the terms and conditions
28 of the agreement and the requirements of this section and section 252. An
29 incumbent local exchange carrier shall provide such unbundled network
30 elements in a manner that allows requesting carriers to combine such elements
31 in order to provide such telecommunications service.

32 (4) RESALE- The duty--

33 (A) to offer for resale at wholesale rates any telecommunications
34 service that the carrier provides at retail to subscribers who are not
35 telecommunications carriers; and

36 (B) not to prohibit, and not to impose unreasonable or
37 discriminatory conditions or limitations on, the resale of such
38 telecommunications service, except that a State commission may, consistent
39 with regulations prescribed by the Commission under this section, prohibit a
40 reseller that obtains at wholesale rates a telecommunications service that is

1 available at retail only to a category of subscribers from offering such service
2 to a different category of subscribers.

3 (5) NOTICE OF CHANGES- The duty to provide reasonable public
4 notice of changes in the information necessary for the transmission and routing
5 of services using that local exchange carrier's facilities or networks, as well as
6 of any other changes that would affect the interoperability of those facilities
7 and networks.

8 (6) COLLOCATION- The duty to provide, on rates, terms, and
9 conditions that are just, reasonable, and nondiscriminatory, for physical
10 collocation of equipment necessary for interconnection or access to unbundled
11 network elements at the premises of the local exchange carrier, except that the
12 carrier may provide for virtual collocation if the local exchange carrier
13 demonstrates to the State commission that physical collocation is not practical
14 for technical reasons or because of space limitations.

15
16 In recognition that these burdens may not be in the public interest with respect to
17 competition in the service areas of Rural Telephone Companies, Congress provided an
18 exemption from these requirements, which I have been advised is contained in Section
19 251(f), and also a process for waiving that exemption if the specific request is not unduly
20 economically burdensome, is technically feasible and is consistent with the goals of
21 universal service. That provision reads as follows:

22 (f) EXEMPTIONS, SUSPENSIONS, AND MODIFICATIONS-

23 (1) EXEMPTION FOR CERTAIN RURAL TELEPHONE
24 COMPANIES-

25 (A) EXEMPTION- Subsection (c) of this section shall not apply
26 to a rural telephone company until (i) such company has received a bona fide
27 request for interconnection, services, or network elements, and (ii) the State
28 commission determines (under subparagraph (B)) that such request is not
29 unduly economically burdensome, is technically feasible, and is consistent
30 with section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

31 (B) STATE TERMINATION OF EXEMPTION AND
32 IMPLEMENTATION SCHEDULE - The party making a bona fide request of
33 a rural telephone company for interconnection, services, or network elements
34 shall submit a notice of its request to the State commission. The State
35 commission shall conduct an inquiry for the purpose of determining whether to
36 terminate the exemption under subparagraph (A). Within 120 days after the
37 State commission receives notice of the request, the State commission shall

1 terminate the exemption if the request is not unduly economically burdensome,
2 is technically feasible, and is consistent with section 254 (other than
3 subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption,
4 a State commission shall establish an implementation schedule for compliance
5 with the request that is consistent in time and manner with Commission
6 regulations.
7

8 Q. Are determinations with respect to the waiver of the Rural Exemption specific to the
9 actual request for services?

10 A. Absolutely. This is demonstrated by several portions of the above statute. First, in order
11 to trigger a request for the waiver of the Rural Exemption, the request must be "bona
12 fide". Because a CLEC could request a broad range of network access configurations and
13 related services, a bona fide request must necessarily be limited to the specific network
14 configurations and services actually needed. A request for network configurations and
15 services that are not needed would obviously not be a bona fide request.

16 Second, until the CLEC actually states the network configurations and services
17 needed, the Rural Telephone Company cannot determine whether satisfying the request
18 would be unduly economically burdensome, technically feasible, and consistent with
19 universal service goals.

20 Third, if the Commission waives the Rural Exemption, it must "establish an
21 implementation schedule for compliance with the request". That would not be possible if
22 there has been no request for the specific network configuration or services which the
23 Commission is to require; and certainly, the Rural Telephone Company should not be
24 required to invest in network changes that are unnecessary.

25 Q. What services have DTI/DTS actually requested?

1 A. On August 12, 1997, DTI/DTS sent a request asserting the need for every possible
2 network configuration and service imaginable. Fort Randall, on September 8, 1997,
3 responded pointing out that the request was not realistic, that "Dakota cannot possibly
4 need the range of services it has demanded", and asked DTI/DTS to describe the specific
5 network configurations and services actually being requested. Tom Hertz, CEO of
6 DTI/DTS, on September 8, 1997, sent a reply letter, which modified the earlier broader
7 demand for services stating:

8 Dakota does not need any of Fort Randall's facilities to provide local exchange
9 services in the Viborg and Centerville exchanges. Dakota's only requirement
10 for interconnection is essentially identical to an EAS (Extended Area Service)
11 agreement between local exchange carriers for the exchange of local traffic.
12 Dakota is willing to enter into exactly the same kind of physical
13 interconnection agreement it now has with US WEST for reciprocal,
14 symmetrical exchange of EAS-type traffic.
15

16 In response, Fort Randall has provided the requested EAS type agreement.

17 In a letter dated September 25, 1997, DTI/DTS restated that they did not wish any
18 other services beyond the interconnection services listed in its September 8, 1997 letter.
19 In that same letter DTI/DTS asked, for informational purposes only, what Fort Randall's
20 wholesale discount rate would be. That rate, along with the start-up cost associated with
21 the billing changes required to provide services at wholesale has also been sent to
22 DTI/DTS. Finally, as an after thought, DTI/DTS asked what the costs of unbundled
23 network elements would be. Because DTI/DTS have not requested any such services,
24 and has no current intention of purchasing any such services, these latter requests are not
25 bona fide requests. Fort Randall has, for informational purposes provided DTI/DTS with
26 a loop cost, a switching cost, and a transport cost.

1 Fort Randall has received no requests for services other than the "EAS type"
2 interconnection and transport to which we have already responded. Fort Randall can do
3 nothing more at this time. It cannot foresee any other service for which DTI/DTS would
4 have a bona fide need. If DTI/DTS have a bona fide need for additional services or
5 network configurations, it will need to expressly tell Fort Randall.

6 Based on the services actually requested, Fort Randall can provide those services.
7 Consequently, the Commission should find, based on information currently available to
8 Fort Randall, that Fort Randall has not requested an exemption from the obligations of
9 the Act. Fort Randall, of course, may revisit the appropriateness of an exemption should
10 new services or network configurations be demanded.

11 Q. If a waiver is granted for one service or obligation under Section 251(c), does that result
12 in the loss of the entire Rural Exemption?

13 A. No. Just as the appropriateness of a waiver must be based on the specific services and
14 network configurations requested, and a CLEC can make new requests as its needs
15 develop or change, the waiver of the exception for one service or network configuration
16 obligations does not prevent the Commission from upholding the exemption as it relates
17 to a different service or network configuration.

18 For example, it may be possible to support the provision of unbundled loops. It
19 would be an entirely different matter if the CLEC were to ask for subloop unbundling,
20 thus stranding portions of the loop investment. Such a request would very likely be
21 inconsistent with universal service goals.

1 Similarly, Fort Randall must offer a wholesale discount as a condition of requiring a
2 carrier to meet the Eligible Telecommunications Carrier service obligations of
3 Section 253(f), which I discuss later in this testimony. The singling out of that
4 interconnection obligation, which is contained in Section 251(c)(4), clearly demonstrates
5 that relinquishing the exemption from one Section 251(c) obligation does not result in the
6 waiver of the exemption for any other provision of Section 251(c).

7 **Section 253 Service Obligations**

8 Q. What provisions within the Act give the Commission authority to impose the service
9 obligations you are recommending on DTI/DTS and to deny DTI/DTS authority to
10 receive universal service fund support?

11 A. Fort Randall's attorneys will discuss these provisions in our brief to the Commission.

12 They advise me that the relevant provisions include:

13 47 U.S.C. § 253(b), which provides:

14 STATE REGULATORY AUTHORITY- Nothing in this section shall
15 affect the ability of a State to impose, on a competitively neutral basis and
16 consistent with section 254, requirements necessary to preserve and advance
17 universal service, protect the public safety and welfare, ensure the continued
18 quality of telecommunications services, and safeguard the rights of consumers.

19
20 47 U.S.C. § 253(f), which provides in part:

21 RURAL MARKETS- It shall not be a violation of this section for a
22 State to require a telecommunications carrier that seeks to provide telephone
23 exchange service or exchange access in a service area served by a rural
24 telephone company to meet the requirements in section 214(c)(1) for
25 designation as an eligible telecommunications carrier for that area before being
26 permitted to provide such service. This subsection shall not apply--
27 (1) to a service area served by a rural telephone company that has obtained an
28 exemption, suspension, or modification of section 251(c)(4) that effectively
29 prevents a competitor from meeting the requirements of section 214(c)(1)

1 47 U.S.C. § 253(e)(1) and (2), which provide in part:

2 (1) ELIGIBLE TELECOMMUNICATIONS CARRIERS- A common
3 carrier designated as an eligible telecommunications carrier under
4 paragraph (2) or (3) shall be eligible to receive universal service support in
5 accordance with section 254 and shall, throughout the service area for which
6 the designation is received--

7 (A) offer the services that are supported by Federal universal
8 service support mechanisms under section 254(c), either using its own
9 facilities or a combination of its own facilities and resale of another carrier's
10 services (including the services offered by another eligible telecommunications
11 carrier); and

12 (B) advertise the availability of such services and the charges
13 therefor using media of general distribution.
14

15 (2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS
16 CARRIERS- A State commission shall upon its own motion or upon request
17 designate a common carrier that meets the requirements of paragraph (1) as an
18 eligible telecommunications carrier for a service area designated by the State
19 commission. Upon request and consistent with the public interest,
20 convenience, and necessity, the State commission may, in the case of an area
21 served by a rural telephone company, and shall, in the case of all other areas,
22 designate more than one common carrier as an eligible telecommunications
23 carrier for a service area designated by the State commission, so long as each
24 additional requesting carrier meets the requirements of paragraph (1). Before
25 designating an additional eligible telecommunications carrier for an area
26 served by a rural telephone company, the State commission shall find that the
27 designation is in the public interest.
28

29 **A. Service Area Obligations.**

30 Q. These Sections authorize the Commission to impose certain service obligations on
31 DTI/DTS within Fort Randall's study area. What is Fort Randall's study area?

32 A. The FCC requires Fort Randall to have a single, state-wide study area that includes the
33 service area of Fort Randall's affiliate Mt. Rushmore. A single study area has been
34 required to prevent a company from segregating its high-cost areas into a separate area
35 for the purpose of receiving universal service funding and setting interstate access rates.

1 Attached to my testimony, as Attachment A, is a map of the South Dakota telephone
2 company exchange areas. The map has been marked to indicate the Hermosa, Lake
3 Andes, Wagner, Tyndall, Tabor, Centerville and Viborg exchanges operated by Fort
4 Randall, along with the Keystone exchange operated by Mt. Rushmore.

5 A review of the map shows that the Keystone and Hermosa exchanges are
6 geographically close. Both exchanges are managed out of the Keystone exchange and, by
7 the first quarter of 1998, the Hermosa exchange will use a remote switch which homes
8 onto the Keystone host switch. The Lake Andes, Wagner, Tyndall, Tabor, Centerville
9 and Viborg exchanges are managed out of the Wagner exchange. By the end of first
10 quarter in 1998, each of these exchanges will be served by a remote switch which homes
11 on to the Wagner host switch.

12 Q. Does DTI/DTS want to offer services in the entire Fort Randall service area?

13 A. No. DTI/DTS have indicated that they only want to serve the Centerville and Viborg
14 exchanges. The attached map of the Telephone Company exchange areas demonstrates
15 that those exchanges are completely surrounded by the Dakota Cooperative
16 Telecommunications, Inc. ("DCT") service area. DCT is an affiliate of DTI/DTS. By
17 limiting their service offerings to customers within the Centerville and Viborg exchanges,
18 DTI/DTS can gain economies that would not be available if they were to install facilities
19 in Fort Randall's entire study area.

20 DTI/DTS are seeking to overbuild a part of the system, which it hopes to finance, in
21 part, through universal service funding. At the current time, Fort Randall does not
22 receive universal service funding. However, as DTI/DTS construct their own network,

1 this could result in Fort Randall qualifying for universal service funding. It would be
2 ironic if subsidies must be paid due to the creation of a duplicative network. However, if
3 Fort Randall qualifies for this funding, it will be needed to support universal service, and
4 those funds should not be diverted to DTI/DTS.

5 DTI/DTS should not be allowed to divert universal service funding from Fort Randall,
6 which must provide facilities to serve all of the potential customers in all of its
7 exchanges. By denying DTI/DTS universal service funding, DTI/DTS will have an
8 economic incentive to only build those facilities which can be supported without a
9 subsidy. The public should not be asked to fund DTI/DTS' voluntary decision to
10 overbuild in this very remote and rural area.

11 Q. What purpose would be served by the Commission imposing the ETC requirements
12 authorized by Section 253(f) on a competitor in a Rural Telephone Company service
13 area?

14 A. The ETC requirements serve the purpose of imposing some of the same service
15 obligations and, therefore, costs on a competitor that regulation imposes on the Rural
16 Telephone Company. For example, if the ETC requirements are imposed, a competitor
17 would be precluded from coming into an area and only serving the most lucrative
18 customers or the most lucrative exchanges. Such a practice, known as "cherry picking",
19 would drive up the average cost of serving the remaining customers and threaten the
20 ability of the Rural Telephone Company to offer universal service at an affordable rate.
21 By imposing some of the same service obligations on the CLEC as are imposed on the
22 ILEC, all else being equal, both companies should have the same average cost of service,

1 and competition should occur based on actual differences in service capabilities and
2 underlying costs, rather than based on unequal service obligations.

3 Q. Should the Commission impose the service obligations of an ETC on DTI/DTS?

4 A. Yes. However, there are different service areas in which the Commission could impose
5 the ETC obligations. Under one option, DTI/DTS could be required to serve the
6 Hermosa exchange. The justification for requiring DTI/DTS to serve the Hermosa
7 exchange would be to reflect the cost consequences of the FCC's decision requiring Fort
8 Randall to average the Hermosa exchange costs in with the exchange costs in the other
9 six exchanges for interexchange access and universal service funding purposes.

10 However, the cost of providing service in Hermosa is not directly affected by the cost
11 of providing service out of the Wagner exchange. Consequently, Fort Randall would not
12 be disadvantaged if DTI/DTS were not to serve customers in the Hermosa exchange, if
13 DTI/DTS are not allowed to receive universal service funding to support its facilities.

14 On the other extreme, DTI/DTS could limit their services to the Centerville and
15 Viborg exchanges. In that instance, DTI/DTS would have significantly different average
16 costs than Fort Randall. Centerville and Viborg would be "cherry picked", not because of
17 their economic value in terms of particular customer markets, but rather, because of their
18 lower than average cost for DTI/DTS to serve as a facilities-based provider. If DTI/DTS
19 were, for example, required to offer facilities-based competition in the Tabor, Tyndall,
20 Wagner and Lake Andes exchanges, the cost of service would increase very significantly.

21 Clearly, if DTI/DTS are allowed to selectively serve Fort Randall's exchanges,
22 federal law would not allow DTI/DTS to receive universal service funding, because they

1 would not satisfy the ETC obligations throughout Fort Randall's services territory.

2 Further, while the FCC has indicated a willingness to consider disaggregating
3 noncontiguous service areas into separate study areas, the six southeastern exchanges
4 served by Fort Randall should not be broken into separate study areas. They should be
5 considered contiguous. They are all served out Wagner where the host switch will be
6 located, and Fort Randall's service costs cannot fairly be disaggregated to treat
7 Centerville and Viborg as independent cost centers.

8 Q. Should the Commission establish a reasonable time period for providing service within
9 the service area?

10 A. Yes. An obligation to serve must necessarily include an appropriate time period.

11 DTI/DTS should be required to provide service throughout the service area within
12 24 months. This is sufficient time to allow DTI/DTS to begin offering services
13 throughout the service area.

14 **B. Service Obligations Within Exchanges Served.**

15 Q. Regardless of the service area obligations imposed on DTI/DTS, are there service
16 obligations that should apply to DTI/DTS in every exchange DTI/DTS serves?

17 A. Yes. Fort Randall has significant service obligations that affect its cost of service. It is
18 important that the same basic service obligations be imposed on DTI/DTS. If such
19 requirements are not imposed on DTI/DTS, it could be devastating to Fort Randall's
20 ability to continue providing quality service at an affordable rate using state-of-the-art
21 equipment. More specifically, DTI/DTS should be required to:

1. Offer basic services to all customers on a nondiscriminatory basis.
2. Set a rate that demonstrates that the offering is legitimate.
3. Provide adequate notice of its service offerings to all potential customers.
4. Ensure that the local calling scope is at least the same as that provide by Fort Randall.

I. Basic Services Should Be Offered To All Customers On A Nondiscriminatory Basis.

Q. Why should DTI/DTS be required to offer its services to all customers in the exchanges it serves?

A. Unless these service obligations are met by DTI/DTS, I am concerned about Fort Randall's ability to continue providing quality service, at an affordable rate, using state-of-the art technology. Absent the obligation to provide basic non-discriminatory service to all customers at reasonable rates, I am concerned that Fort Randall could be left with the sole responsibility of serving the 38 percent of its residential and nine percent of its business customers that are located outside the towns of Centerville and Viborg.

It is also possible that Fort Randall could be solely responsible for serving all residential customers. The result of such an unequal service burden would be very bad for the more rural and residential customers -- the rates Fort Randall needed to charge its remaining customers would increase dramatically, universal service would be adversely affected, and the ability of Fort Randall to invest in new technology would be severely limited.

Q. Please explain.

1 A. There are several factors that could lead to the harms I described. First, Fort Randall has
2 a fairly traditional rate design. Its rates are as follows:

Exchange	Residential		Single Line Business	
	Rates	Access lines	Rates	Access Lines
Viborg	\$12.70	509	\$26.00	93
Centerville	\$12.70	634	\$26.00	97

3
4
5
6
7
8 This rate design reflects the difference in the value of the service to the two classes of
9 customers. It also reflects the difference in the two classes' ability to pay. Using this
10 type of rate differential between residential and business customers has fostered universal
11 service. As is apparent, the residential rate is set below the average rate, while the
12 business rate is set above the average rate.

13 If a competitor is allowed to serve only business customers, it will easily be able to
14 undercut Fort Randall's business rate and obtain an unfair advantage -- one which is not
15 based on differences in the cost of service of Fort Randall and the competitor. Obviously,
16 if a competitor serves only business customers, Fort Randall will lose the corresponding
17 above-average revenues forcing Fort Randall to raise the rates of its remaining customers.
18 However, the Commission's Order in Docket TC96-125 prohibits Fort Randall from
19 increasing any rate, including residential rates, for at least 18 months. Consequently, in
20 the interim, DTI/DTS would have the ability to cherry pick business customers, and Fort
21 Randall would have no way to recover the lost revenues needed to sustain service to the
22 remaining customers.

1 Q. Could DTI/DTS decide to only serve selected business customers and, if so, what would
2 be the consequences of such selective service?

3 A. Yes. A competitor could decide to serve only one or two business customers in each
4 exchange, which would be highly lucrative to the competitor, would provide benefits to
5 those few customers, but would be very harmful to the remaining 1,333 customers. In
6 both Centerville and Viborg, a single customer purchases approximately 10 percent of the
7 business access lines and is also responsible for a disproportionate amount of long
8 distance access revenues. Competitors like DTI/DTS, which have an affiliated long
9 distance carrier, could even decide to price their local business rates to serve such
10 customers at a very reduced rate, or even below cost, in order to obtain the profitable long
11 distance business.

12 Q. Would it be possible for a competitor to offer service within the town areas of the
13 exchanges without offering service in the surrounding more rural areas?

14 A. Absolutely. This is possibly the biggest concern, and is a real possibility, if the
15 competing carrier is not required to provide non-discriminatory service to all customers at
16 reasonable rates. DTI operates a cable company within the towns of Centerville, Tabor
17 and Viborg. Therefore, DTS, through its affiliate, already has facilities going past the
18 customers living within those towns. According to a newspaper article, DTI provides
19 video services to over 270 of Viborg's residents. DTI has no facilities to the telephone
20 customers residing outside of the towns. If DTI or DTS elected to serve customers using
21 DTI's cable facilities, they would have facilities passing the homes of approximately

1 62 percent of the residential and 91 percent of the business customers within those two
2 exchanges.

3 The consequences of a policy allowing a competitor to focus on serving within the
4 town, while leaving Fort Randall with the duty to serve more rural customers, would be
5 very harmful. Customers residing outside of the towns have a significantly higher cost of
6 service than those residing within the towns. Using the US WEST Communications, Inc.
7 BCPM methodology, Fort Randall has determined that the cost of a loop in its more rural
8 service areas is \$108.09 compared to a cost of \$70.38 for an unbundled loop within the
9 towns.

10 Therefore, if DTI/DTS were allowed to serve only in-town customers, Fort Randall
11 would have a much higher average cost of service than would its competitor. This would
12 force Fort Randall to adopt zone pricing -- driving up the cost of service in the areas
13 outside the town in order to make it possible for Fort Randall to compete for the in-town
14 customers. Fort Randall would also need to abandon its policy of not charging for line
15 extensions required to serve new rural customers. Thus, new rural customers could face
16 construction charges of thousands of dollars in order to obtain a connection.

17 In summary, if competitors are allowed to select the customers they will pursue, select
18 the scope of the local calling area, or limit the geographic area in which service will be
19 offered within the service area of the Rural Telephone Company, a few customers may
20 benefit, but the more rural customers and those customers the competitors elect not to
21 serve (mostly residential) would see higher rates. This would adversely affect universal

1 service. It may also become impossible for Fort Randall to continue providing high
2 quality, state-of-the-art service in the future.

3 Q. What can the Commission do to prevent these adverse consequences?

4 A. Require DTI/DTS to offer its services to all customers at competitive rates within the
5 exchanges it serves.

6 Q. Is there a time period within which DTI/DTS should be required to provide service to all
7 customers within a particular exchange?

8 A. Yes. I previously testified that DTI/DTS should provide service throughout the service
9 area within 24 months. A different service obligation should apply to the offering of
10 service within a particular exchange. DTI/DTS should be required to offer service to all
11 customers within an exchange within 12 months of initially offering service within that
12 exchange. This is sufficient time to allow DTI/DTS to install all necessary facilities
13 within the exchange, and is the maximum period that DTI/DTS should be allowed to
14 engage in selective service offerings.

15 **2. DTI/DTS' Rates Should Demonstrate A Willingness To Serve All**
16 **Customers.**

17
18 Q. Why should the Commission require that the rate be set such that offering to all
19 customers is legitimate?

20 A. If, for example, DTI/DTS were to impose a uniform construction charge of 50 cents per
21 foot to customers located more than 100 feet from its feeder cable, the cost of DTI/DTS'
22 service to more rural customers would not be comparable to the cost of service for

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1 in-town customers, and Fort Randall would be left with the duty to serve the higher cost
2 out-of-town customers.

3 Similarly, if DTI/DTS were, for example to offer an out-of-town rate that was five
4 dollars higher than Fort Randall's comparable rate while offering an in-town rate that was
5 five dollars lower than Fort Randall's comparable rate, we should expect to see DTI/DTS
6 win the majority of the lower cost in-town customers while leaving Fort Randall with the
7 duty to serve the higher cost out-of-town customers.

8 If, on the other hand, DTI/DTS are obligated to make a competitive service offering
9 to all customers within the exchange, they would be required to have a competitively
10 comparable offering in rural areas. That, in turn, should result in DTI/DTS having
11 comparable average cost-of-service obligations and prevent an unfair advantage based on
12 selective customer offerings.

13 **3. DTI/DTS Should Be Required To Give Adequate Notice Of Its**
14 **Service Offerings To All Potential Customers.**
15

16 Q. Why should DTI/DTS be required to provide adequate notice of its service offerings to all
17 potential customers?

18 A. The goal is to prevent DTI/DTS from gaining an unfair advantage as a result of selective
19 customer offerings. Just as price differences could be used to select the lowest cost
20 customers, marketing efforts targeting only lower cost customers could have the same
21 result. Consequently, DTI/DTS should take reasonable steps to notify all customers of
22 the availability of their service.

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1 **4. DTI/DTS Should Be Required To Offer The Same Local Calling**
2 **Scope.**

3
4 Q. Could a competitor find a niche by simply offering local service without extended area
5 service ("EAS")?

6 A. Yes. Another competitive advantage could be obtained by unbundling EAS. Centerville
7 has EAS to Viborg; and Viborg has EAS to Beresford, Centerville, Flyger, Hurley, Irene,
8 Davis, and Mayfield. While EAS benefits a majority of the customers, a competitor
9 could acquire those customers not economically benefited by simply offering those
10 customers (which represent a sizable minority) local service without EAS. The
11 remaining customers of Fort Randall would see an increase in rates to make up the lost
12 EAS revenues, which would make the EAS option uneconomical to additional customers,
13 with a spiral that would eventually end up with Fort Randall offering EAS as a high
14 priced premium service, thus, eliminating the intended purpose of EAS.

15 The existing rates include the following EAS components in the basic rates:

<u>Exchange</u>	<u>Residential Rate</u>	<u>Business Rate</u>
Viborg	\$0.70	\$2.40
Centerville	\$0.70	\$2.40

16
17
18
19 Q. What can the Commission do to minimize the risks you have described?

20 A. Require DTI/DTS to have at least the same local service area calling scope as Fort
21 Randall. That is a particularly reasonable requirement in light of the obligation imposed
22 on Fort Randall by the Order in Docket TC96-125 to continue offering the existing EAS
23 services.

1 **C. Conclusion**

2 Q. Would the imposition of ETC service obligations be in the public interest?

3 A. Yes. If the CLEC is required to satisfy the service obligations of an ETC: a) both the
4 competitor and the Rural Telephone Company would have similar average costs,
5 supplying a comparable range of services; b) the existing rate design, which is designed
6 to support universal service goals, could be retained; and c) to the extent Fort Randall
7 loses customers under these conditions, it would not lose only the "winners", rather, Fort
8 Randall should lose a mix of customers, such that the revenue losses should come closer
9 to matching Fort Randall's average revenues per customer, which would also better
10 match any offsetting cost savings.

11 Competition is a reality. But it should occur in a way that protect higher-cost
12 customers from harm and that benefits all of the customers, both business and residential,
13 in-town and out-of-town.

14 **Universal Service Funding**

15 Q. Are you asking that the Commission determine DTI/DTS' entitlement to future universal
16 service funding in this proceeding?

17 A. No. My purpose in discussing universal service funding is to demonstrate that the service
18 obligations under Section 253(f) stand separate and apart from the universal service
19 funding issues to be decided at some future date under Section 214(e).

20 My previous testimony has demonstrated that the ETC service obligations are needed
21 to support Fort Randall's ability to continue providing affordable, quality, state-of-the-art

1 services. Consequently, those service standards should be imposed without regard to the
2 question of whether DTI/DTS should later qualify for universal service funding.

3 Further, it is important to remember that DTI/DTS have voluntarily elected to provide
4 its services using its own facilities. It could have simply provided service in these
5 exchanges through resale of Fort Randall's services. DTI/DTS should not be allowed to
6 receive a subsidy because of their decision to create an uneconomic and duplicative
7 system in a very rural service area.

8 It is also important to note that the only facilities DTI/DTS intend to install are
9 located in the Centerville and Viborg exchanges. DTI/DTS have no interest in providing
10 facilities-based service in Fort Randall's other exchanges. DTI/DTS' service decisions
11 are based on the proximity of their affiliated local exchange company DCT and DTI's
12 cable television facilities. In contrast, Fort Randall is required to provide facilities-based
13 service in all of its exchanges.

14 Fort Randall cannot be expected to meet its service obligations throughout its service
15 area if DTI/DTS are allowed to funnel away universal service support for its
16 unnecessarily duplicative facilities.

17 Q. Does this conclude your testimony?

18 A. Yes.

1 services. Consequently, those service standards should be imposed without regard to the
2 question of whether DTI/DTS should later qualify for universal service funding.

3 Further, it is important to remember that DTI/DTS have voluntarily elected to provide
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13 service in all of its exchanges.

14 Fort Randall cannot be expected to meet its service obligations throughout its service
15 area if DTI/DTS are allowed to funnel away universal service support for its
16 unnecessarily duplicative facilities.

17 Q. Does this conclude your testimony?

18 A. Yes.

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IMAGE (S)

POSSIBLE

SERVICE	AREAS
1. Customer Service	1. Customer Service
2. Product Development	2. Product Development
3. Marketing	3. Marketing
4. Sales	4. Sales
5. Finance	5. Finance
6. Operations	6. Operations
7. Human Resources	7. Human Resources
8. Information Technology	8. Information Technology
9. Legal	9. Legal
10. Public Relations	10. Public Relations
11. Research and Development	11. Research and Development
12. Supply Chain Management	12. Supply Chain Management
13. Quality Control	13. Quality Control
14. Environmental Health and Safety	14. Environmental Health and Safety
15. Facilities Management	15. Facilities Management
16. Compliance	16. Compliance
17. Investigative Services	17. Investigative Services
18. Security Services	18. Security Services
19. Training Services	19. Training Services
20. Consulting Services	20. Consulting Services
21. Event Management	21. Event Management
22. Travel Services	22. Travel Services
23. Food and Beverage Services	23. Food and Beverage Services
24. Transportation Services	24. Transportation Services
25. Logistics Services	25. Logistics Services
26. Warehousing Services	26. Warehousing Services
27. Inventory Management	27. Inventory Management
28. Procurement Services	28. Procurement Services
29. Construction Services	29. Construction Services
30. Maintenance Services	30. Maintenance Services
31. Cleaning Services	31. Cleaning Services
32. Landscaping Services	32. Landscaping Services
33. Security Guard Services	33. Security Guard Services
34. Alarm Monitoring Services	34. Alarm Monitoring Services
35. Video Surveillance Services	35. Video Surveillance Services
36. Access Control Services	36. Access Control Services
37. Perimeter Protection Services	37. Perimeter Protection Services
38. Asset Protection Services	38. Asset Protection Services
39. Loss Prevention Services	39. Loss Prevention Services
40. Crime Prevention Services	40. Crime Prevention Services
41. Emergency Response Services	41. Emergency Response Services
42. Disaster Preparedness Services	42. Disaster Preparedness Services
43. Business Continuity Services	43. Business Continuity Services
44. IT Security Services	44. IT Security Services
45. Network Security Services	45. Network Security Services
46. Cloud Security Services	46. Cloud Security Services
47. Mobile Security Services	47. Mobile Security Services
48. Endpoint Security Services	48. Endpoint Security Services
49. Incident Response Services	49. Incident Response Services
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56. Endpoint Forensics Services	56. Endpoint Forensics Services
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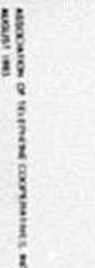
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301/454-6100

- * **APPROACHES USED TO MEASURE TELL PREREAD CD**
- * **CHILD READING PROFICIENCY SCORES USING TELL PREREAD QUESTIONNAIRE**
- * **SCORES ON AND OUT OF CLASSROOM ACTIVITIES AND**
- * **CHILD AND PARENT READ PROXIMITY TO TELL PREREAD CD**
- * **INTERVIEW, EXCURSION, TELL PREREAD CD**
- * **ADDITIONAL TELL PREREAD CD**

- 50. *Salicornia* (11.1.19.2002) CO
- 51. *Artemisia* (11.1.19.2002) CO
- 52. *Salicornia* (11.1.19.2002) CO
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- INTERNATIONAL STATES**
 16. UNITED KINGDOM CO
 17. UNITED STATES CO



Certificate of Service

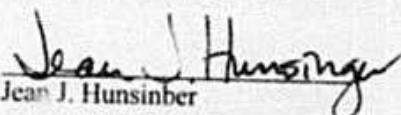
I hereby certify that an original and eleven copies of the above and foregoing Prefiled Direct Testimony of Bruce C. Hanson on behalf of Fort Randall Telephone Company were sent via facsimile and Federal Express on the 30th day of October, 1997, to the following:

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

and a true and correct copy was sent by Federal Express to the following:

Rolayne Wiest
South Dakota Public Utilities Commission
Capitol Building
500 East Capitol
Pierre, South Dakota 57501

and a true and correct copy by facsimile and/or Federal Express or Overnight Mail to the persons on the attached list.


Jean J. Hunsinber

Robert G. Marmet
P O Box 269
Centerville, SD 57014

Richard D. Coit
Executive Director
SDITC
St. Charles Hotel
207 E Capitol, Suite 206
Pierre, SD 57501

Bruce C. Hanson
Hanson Communications, Inc.
Box 800
Clara City, MN 56222-0800

RECEIVED

OCT 30 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

PREFILED DIRECT TESTIMONY
OF
DON LEE
ON BEHALF OF
SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION

DOCKET #TC97-062

OCTOBER 30, 1997



DIRECT TESTIMONY OF DON LEE
ON BEHALF OF THE
SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION (SDITC)

1 Q. Please state your name, business address, and occupation for the record.

2 A. My name is Don Lee. I work for Martin and Associates, Inc., located at 1515 North
3 Sanborn Boulevard, Mitchell, SD 57301-1021. My background covers over thirty five
4 years in the telecommunications industry, including nineteen years as manager of the Mid
5 Iowa Telephone Coop. in Gilman, Iowa. I have been employed at Martin and Associates
6 since 1985 as a Management Consultant. At present, I am the Director of the LEC
7 Settlements Division which provides management consulting and financial analysis dealing
8 with nearly all phases of telecommunications management such as network, tariffs, cost
9 studies, contract development and feasibility studies.

10 Q. Have you previously testified before this Commission?

11 A. Yes, I have. The most recent occasion was regarding the acquisition process wherein a
12 number of independent telephone companies purchased exchanges from US WEST.

13 Q. Whom do you represent in this instance?

14 A. My testimony is offered on behalf of the South Dakota Independent Telephone Coalition
15 (SDITC).

16 Q. Are the member companies of SDITC "Rural Telephone Companies"?

17 A. Yes. A "Rural Telephone Company", for purposes of the Federal Communications Act of
18 1934, as amended (the Act), is defined in 47 U.S.C. Section 153(37). The SDITC member
19 local exchange carriers fall within any of the four (4) alternative definitions. For example,
20 each of the SDITC member companies serves fewer than fifty thousand (50,000) local
21 access lines, the upper limit for qualification as a "Rural Telephone Company".

22 Q. What are SDITC's concerns in this proceeding?

23 A. SDITC has two primary concerns. Its first concern relates to the Commission's potential
24 consideration regarding whether it should continue or terminate all or part of the "rural
25 exemption" granted to Fort Randall Telephone Company (Fort Randall) by Section
26 251(f)(1) of the Federal Communications Act of 1934, as amended (the Act). Based on
27 recent communications to this Commission, SDITC questions whether the services
28 currently requested by Dakota Telecommunications Group, Inc. (Dakota) from Fort
29 Randall are within the scope of the "rural exemption", and questions whether there is a

1 need for the Commission to address the status of Fort Randall's "rural exemption" in order
2 to resolve this proceeding. Moreover, even if the Commission, for any reason, were to
3 determine that it should address the continuation or termination of Fort Randall's "rural
4 exemption", SDITC believes that the unique circumstances herein require that any such
5 decision be limited to this case, and that the Commission should refuse to adopt any
6 general policies or precedents that might be applied to future "rural exemption"
7 determinations affecting other rural telephone companies serving the citizens of South
8 Dakota.

9 SDITC's second concern relates to the Commission's potential interpretation and
10 implementation of the rural safeguards set forth in Sections 253(f) and 214(e)(1) of the Act.
11 In particular, SDITC vigorously opposes any attempt by Dakota or other potential
12 competitive local exchange carriers (CLECs) to serve only the more financially lucrative
13 and/or less costly exchanges or portions of exchanges within a rural telephone company's
14 service area. If permitted, "cherry picking" by CLECs will have substantial adverse
15 impacts upon the rates, services and service quality provided to rural South Dakota
16 residents and businesses located outside the CLEC-selected areas.

17 *Q. With regard to the review of Fort Randall's "rural exemption" at this particular time, what*
18 *are SDITC's concerns?*

19 *A.* By letter of September 8, 1997 to this Commission, Dakota has indicated that it is building
20 facilities in Viborg and Centerville, and that it "needs only to formalize existing EAS-type
21 interconnection arrangements" with Fort Randall similar to those which Dakota has had
22 with US WEST. By letter of October 13, 1997 to Dakota, Fort Randall's attorney offered a
23 proposed contract for reciprocal compensation and interconnection using EAS-type
24 arrangements based upon an agreement between Dakota and US West.

25 The "rural exemption" of Section 251(f)(1) of the Act applies solely to certain incumbent
26 local exchange carrier (ILEC) obligations regarding access to unbundled network elements,
27 resale at wholesale rates, physical colocation and interconnection which are specified in
28 Section 251(c) of the Act. The "rural exemption" does not apply to the general
29 interconnection duties of all telecommunications carriers specified in Section 251(a) of the

1 Act, or to the reciprocal compensation and other obligations of local exchange carriers
2 (LECs) specified in Section 251(b) of the Act.

3 It now appears that Dakota is only requesting an "EAS-type" interconnection agreement
4 that is governed by Sections 251(a) and 251(b) of the Act, and which lies outside the scope
5 of Section 251(c) of the Act. Therefore, we believe the Commission has no reason to
6 consider the continuation or termination of Fort Randall's "rural exemption" at this time,
7 and should not do so.

8 *Q. If and when the Commission reviews the continuation or termination of the "rural*
9 *exemption" afforded by Section 251(f)(1) of the Act to rural telephone company, what*
10 *procedures and factors should it consider?*

11 *A. Section 251(f)(1) of the Act exempts all incumbent rural telephone companies from the*
12 *interconnection obligations set forth in Section 251(c) of the Act, unless and until the*
13 *governing State Commission determines that such exemption should be terminated.*

14 In enacting Section 251(f)(1), Congress recognized that there can not and should not be a
15 "one-size-fits-all" policy of competition and deregulation for the entire nation. Rather,
16 given the havoc wreaked by airline deregulation upon service and prices in many rural
17 communities, Congress determined that telecommunications competition and deregulation
18 cannot work as a national policy without rural safeguards.

19 As our Senator Tom Daschle has stated:

20 While legislation focuses on competition and deregulation, the bill
21 before us also contains essential rural safeguards . . . It does not
22 demand unrealistic competition in towns of 50 households.

23
24 . . .

25 Those who have taken the risks and made the investments to
26 extend cable or phone service to smaller rural communities should
27 not now be placed at risk of being overwhelmed by larger, better-
28 financed companies.

29 . . .

30 As Congressman Ed Markey has said, that's not competition, it's
31 communications cannibalism. State PUCs will be able to judge
32 where communities can sustain competition and where they
33 cannot. 141 Cong. Rec. S. 8478 (June 15, 1995).

1
2 Section 251(f)(1)(B) of the Act requires the Commission to consider carefully whether
3 certain express procedures and criteria have been satisfied before it may determine that all
4 or part of the "rural exemption" of a particular LEC should be terminated. Specifically, the
5 Commission must first find that a prospective competitor has made a "bona fide request" to
6 a rural telephone company for specific Section 251(c) services. Then, it must find that
7 requiring that particular rural telephone company to provide the specified Section 251(c)
8 services to the particular local competitor: (1) is not unduly economically burdensome; (2)
9 is technically feasible; and (3) is consistent with the universal service requirements of
10 Section 254.

11 In other words, Section 251(f)(1) of the Act requires a case-by-case, factual review in
12 situations where a rural telephone company has received a "bona fide request" from a
13 competitor for Section 251(c) services. The prescribed criteria require the Commission to
14 make careful factual determinations regarding the particular type and scope of services
15 requested and the impact of the provisioning of such services upon the incumbent rural
16 telephone company and its customers. SDITC believes that the Commission should be
17 most concerned with the ultimate effect of the termination of the "rural exemption" for
18 particular 251(c) services upon the rates and services of rural end users - both those served
19 by the CLEC and those disregarded or otherwise left unserved by the CLEC.

20 In other words, a rural telephone company's "rural exemption" should not be terminated by
21 the Commission without a complete understanding of the actual facts and clear proof that
22 such termination is consistent with the specific criteria established in the Act and that it is
23 in the public interest.

24 *Q. Do you believe that terminating Fort Randall's "rural exemption" under the present*
25 *circumstances would undermine the purpose of the "rural exemption" provisions?*

26 *A. Yes. As indicated above, the "EAS-type" service which it appears Dakota is seeking from*
27 *Fort Randall is not a Section 251(c) service and is not covered by (or subject to) the "rural*
28 *exemption". If Dakota is seeking additional interconnection services from Fort Randall, it*
29 *has not indicated clearly the nature and extent of such additional services; much less their*
30 *economic burdens, technical feasibility and universal service impacts. Until Dakota*

1 identifies the nature and amount of any additional services, the Commission can not
2 properly conduct any review or rule on Fort Randall's "rural exemption".

3 As noted above, the "rural exemption" provision recognizes that rural telephone companies
4 face an entirely different set of economic circumstances and technological challenges than
5 the Regional Bell Operating Companies (RBOCs) and other large local telephone
6 companies. It reflects an understanding that a "one-size-fits-all" approach to local service
7 competition is not in the public interest and that the introduction of local competition into
8 rural service areas requires a more cautious approach. The provision gives state
9 commissions significant control over the introduction of local competition in rural markets.
10 SDITC believe these provisions should be used to ensure that local competition in South
11 Dakota's rural areas occurs in a manner that is fair to the incumbent rural companies and
12 consistent with the universal service principles established in the federal law.

13 SDITC is concerned that the outcome of this proceeding may have an effect on future cases
14 involving the "rural exemption" of other SDITC members. It is particularly concerned that
15 the "rural exemption" could, in large part, be rendered ineffective as a means of preserving
16 universal service in rural markets if competitors are able to force a premature review of the
17 exemption prior to the time that they have a real desire or need for the particular Section
18 251(c) services to which the exemption applies.

19 If the Commission does proceed to review the "rural exemption" without regard to whether
20 the services being requested bring the "rural exemption" into issue and without specific
21 factual evidence to review, it will be sending the wrong message to CLECs and it will
22 make it more difficult to apply the "rural exemption" effectively in future cases involving
23 other rural telephone companies.

24 *Q. If the Commission proceeds to review Fort Randall's "rural exemption" in this proceeding,*
25 *do you have any recommendations?*

26 *A. Yes. If the Commission proceeds to evaluate the status of Fort Randall's "rural exemption"*
27 *at this time, we would recommend that the Commission expressly limit its decision to the*
28 *specific facts and circumstances of the Fort Randall/Dakota relationship. The Commission*
29 *should declare expressly that its decision does not establish general principles or*

1 procedures affecting future "rural exemption" proceedings and does not constitute a
2 precedent with respect to such future proceedings.

3 *Q. You referenced a second area of concern. Can you expand on that concern?*

4 A. Certainly. SDITC's second concern is with the adverse impact of potential "cherry
5 picking" of high revenue/low cost portions of rural telephone company service areas by
6 CLECs. As the Commission is aware, rural telephone companies until now have been
7 required to extend service to all of the households within their service areas that requested
8 service -- including many cases where the revenues and costs of serving particular outlying
9 households, clusters or communities would not otherwise have induced a rational business
10 to extend service to them. The saving grace has been that rural telephone companies
11 heretofore have been able to average the costs of serving both higher-cost and lower-cost
12 access lines throughout their entire service area..

13 If CLECs are permitted to offer competing service in lower-cost towns, without serving
14 high-cost outlying areas, they will receive substantial and unwarranted benefits at the
15 expense of rural telephone companies and their outlying customers. First, if the CLEC is
16 permitted to serve only the lower-cost town, it will be handed a substantial cost and pricing
17 advantage over the rural telephone company which has been forced to construct a system
18 serving all lower-cost and higher-cost portions of the area. Second, as the CLEC picks off
19 customers within the town (many of whom may be higher-revenue producing business
20 customers), the remaining rural telephone company customers will have to pay increasingly
21 higher rates and/or suffer greater and greater decreases in the nature and quality of their
22 service.

23 In the attached exhibits, I have estimated the potential adverse impact on certain South
24 Dakota rural telephone companies and their customers if CLECs are permitted to pick or
25 choose to serve only selected exchanges or portions of service areas of rural telephone
26 companies. The net affect of such "cherry picking" is to raise the revenue requirement per
27 access line (cost of local service) for the remaining South Dakota rural telephone company
28 customers and to raise the per minute cost of switched access to interexchange carriers. It
29 is apparent from a review of these exhibits that the end user local service cost in the

1 examples given would increase by an average of two dollars per month, and access revenue
2 requirements would increase an average of 16 percent per intrastate minute of use. The
3 embedded costs referenced are for facilities no longer utilized when a CLEC overbuilds a
4 given area.

5 Whether or not adjustments can be devised to allow the LECs to "remain whole", rural
6 South Dakota end users will ultimately pay the price.

7 *Q. In this light, are there any additional concerns regarding "cherry picking".*

8 A. Yes. Section 253(f) of the Act permits a state commission to deny CLECs authorization to
9 serve rural telephone company areas unless and until such CLECs agree to provide service
10 throughout the rural telephone company's entire service area. Section 214(e) of the Act
11 states:

12 "(e) PROVISION OF UNIVERSAL SERVICE. -

13 "(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS. -

14 A common carrier designated as an eligible telecommunications carrier
15 under paragraph (2) or (3) shall be eligible to receive universal service
16 support in accordance with section 254 and shall, throughout the service
17 area for which the designation is received -

18 "(A) offer the services that are supported by Federal universal
19 service support mechanisms under section 254(c), either using its own
20 facilities or a combination of its own facilities and resale of another
21 carrier's services (including the services offered by another eligible
22 telecommunications carrier); and

23 "(B) advertise the availability of such services and the charges
24 therefor using media of general distribution.

25 I would highlight the requirement to provide service "throughout the service area" as a key
26 to the above provisions. It requires a CLEC to serve the entire service area of the
27 incumbent rural telephone company, rather than the more attractive (read: lower-cost
28 and/or higher-revenue) towns or exchanges.

29 Additionally, as has been pointed out in Mr. Bruce Hanson's testimony, in the event a
30 CLEC is allowed to serve in an ILEC service area, minimum service provisioning
31 requirements should be imposed upon the CLEC. We support the requirements outlined by
32 Fort Randall. It is equally important that CLECs are not in a position to discriminate
33 between customers as to rates charged, and the level of services provided.

1 Q. Can you summarize your concerns?

2 A. Yes. The primary concern of SDITC in this proceeding is that whatever the outcome, it not
3 be viewed as precedent with regard to later proceedings regarding the "rural exemption"
4 status, the application of Section 253F of the Act, or any later determinations concerning
5 USF support.

6 Q. Does this conclude your testimony?

7 A. Yes, it does.

**Percentage of Fort Randall Telephone Company
Access Lines in Exchanges that Dakota Proposes to Compete In**

Fort Randall Tel. Co. Exchanges that Dakota proposes to compete in:	Estimated Access Lines	Percentage
Centerville	722	
Viborg	605	
Subtotal of Access Lines in Exchanges that Dakota proposes to compete in	1,327	23%
(5) Other Fort Randall Tel. Co. Exchanges	4,483	77%
Total Access Lines for Fort Randall Tel. Co.	5,810	100%

**Sully Buttes Telephone Cooperative, Inc.
Effects of a CLEC on Intrastate Switched Access
Revenue Requirement Per Minute**

	<u>Access Lines</u>	<u>Percentage</u>
Highmore	844	21%
(14) Other Sully Buttes Exchanges	3,188	79%
Total Access Lines for Sully Buttes	4,032	100%

Effects of a CLEC on Intrastate Switched
Access Revenue Requirement Per Minute:

A. Per 1995 Cost Study

12.08¢

B. Per 1995 Cost Study as Adjusted to
Remove 60% of the Access Minutes and
Access Lines for the Highmore Exchange
(assuming a CLEC had acquired that
traffic)

14.00¢

C. Percentage Increase in Intrastate
Switched Access Revenue Requirement
Per Minute Due to CLEC Acquiring 60%
of Access Minutes and Access Lines
in the Highmore Exchange $[(B-A)/A]$

16%

Total Intrastate Switched Access
Revenue Requirement Per Minute:

Sully Buttes Telephone Cooperative, Inc.
Effects of Lost Local Service Revenue Due to CLEC Operations

Effects on Local Service Rates
 for the Remaining Sully Buttes
 Exchanges, Assuming a CLEC
 Acquired 60% of the Access Lines in
 the Highmore Exchange:

	<u>Business</u>	<u>Residence</u>	<u>Total</u>
A. Number of Highmore Access Lines	208	636	844
B. Percentage of Access Lines Assumed to be Acquired by CLEC	60%	60%	
C. Monthly Local Service Rate	\$18.50	\$12.41	
D. Annual Loss in Local Service Revenue (A x B x C x 12 Mos.)	\$27,706	\$56,828	\$84,534
E. Total Access Lines for Sully Buttes			4,032
F. Less 60% of Highmore Access Lines Assumed to be Acquired by CLEC (844 x 60%=506)			506
G. Remaining Access Lines for Sully Buttes (E-F)			3,526
H. Lost Local Service Revenue to be Generated from the Remaining Sully Buttes Access Lines Each Year Assuming a CLEC Acquired 60% of the Access Lines in the Highmore Exchange (D/G)			<u>\$23.97</u>

**Sully Buttes Telephone Cooperative, Inc.
Effects of a CLEC on Intrastate Switched Access
Revenue Requirement Per Minute**

	<u>Access Lines</u>	<u>Percentage</u>
Access Lines for Blunt, Harrold, and Hoven (227 + 257 + 425)	909	23%
(12) Other Sully Buttes Exchanges	<u>3,123</u>	<u>77%</u>
Total Access Lines for Sully Buttes	4,032	100%

Effects of a CLEC on Intrastate Switched
Access Revenue Requirement Per Minute:

Total Intrastate Switched Access
Revenue Requirement Per Minute:

A. Per 1995 Cost Study

12.08¢

B. Per 1995 Cost Study as Adjusted to
Remove 60% of the Access Minutes and
Access Lines for the Blunt, Harrold, and Hoven Exchanges
(assuming a CLEC had acquired that
traffic)

14.11¢

C. Percentage Increase in Intrastate
Switched Access Revenue Requirement
Per Minute Due to CLEC Acquiring 60%
of Access Minutes and Access Lines
in the Blunt, Harrold, and Hoven Exchanges [(B-A)/A]

17%

Sully Buttes Telephone Cooperative, Inc.
Effects of Lost Local Service Revenue Due to CLEC Operations

Effects on Local Service Rates for the Remaining Sully Buttes Exchanges, Assuming a CLEC Acquired 60% of the Access Lines in the Blunt, Harrold, and Hoven Exchanges:			
	<u>Business</u>	<u>Residence</u>	<u>Total</u>
A. Number of Access Lines for the Blunt, Harrold, and Hoven Exchanges	192	717	909
B. Percentage of Access Lines Assumed to be Acquired by CLEC	60%	60%	
C. Monthly Local Service Rate	\$18.50	\$12.41	
D. Annual Loss in Local Service Revenue (A x B x C x 12 Mos.)	\$25,574	\$64,065	\$89,640
E. Total Access Lines for Sully Buttes			4,032
F. Less 60% of Blunt, Harrold, and Hoven Access Lines Assumed to be Acquired by CLEC (909 x 60% = 545)			545
G. Remaining Access Lines for Sully Buttes (E-F)			3,487
H. Lost Local Service Revenue to be Generated from the Remaining Sully Buttes Access Lines Each Year Assuming a CLEC Acquired 60% of the Access Lines in the Blunt, Harrold, and Hoven Exchanges (D/G)			<u>\$25.71</u>

**Golden West Telecommunications Cooperative, Inc.
Effects of a CLEC on Intrastate Switched Access
Revenue Requirement Per Minute**

	<u>Access Lines</u>	<u>Percentage</u>
Hot Springs	3,219	23%
(27) Other Golden West Exchanges	<u>10,593</u>	<u>77%</u>
Total Access Lines for Golden West	13,812	100%

Effects of a CLEC on Intrastate Switched
Access Revenue Requirement Per Minute:

Total Intrastate Switched Access
Revenue Requirement Per Minute:

A. Per 1995 Cost Study

11.85¢

B. Per 1995 Cost Study as Adjusted to
Remove 60% of the Access Minutes and
Access Lines for the Hot Springs Exchange
(assuming a CLEC had acquired that
traffic)

13.41¢

C. Percentage Increase in Intrastate
Switched Access Revenue Requirement
Per Minute Due to CLEC Acquiring 60%
of Access Minutes and Access Lines
in the Hot Springs Exchange [(B-A)/A]

13%

**Golden West Telecommunications Cooperative, Inc.
Effects of Lost Local Service Revenue Due to CLEC Operations**

Effects on Local Service Rates for the Remaining Golden West Exchanges, Assuming a CLEC Acquired 60% of the Access Lines in the Hot Springs Exchange:			
	<u>Business</u>	<u>Residence</u>	<u>Total</u>
A. Number of Hot Springs Access Lines	879	2,340	3,219
B. Percentage of Access Lines Assumed to be Acquired by CLEC	60%	60%	
C. Monthly Local Service Rate	\$21.95	\$10.95	
D. Annual Loss in Local Service Revenue (A x B x C x 12 Mos.)	\$138,917	\$184,486	\$323,403
E. Total Access Lines for Golden West			13,812
F. Less 60% of Hot Springs Access Lines Assumed to be Acquired by CLEC (3,219 x 60%=506)			1,931
G. Remaining Access Lines for Golden West (E-F)			11,881
H. Lost Local Service Revenue to be Generated from the Remaining Golden West Access Lines Each Year Assuming a CLEC Acquired 60% of the Access Lines in the Hot Springs Exchange (D/G)			<u>\$27.22</u>

**Golden West Telecommunications Cooperative, Inc.
Effects of a CLEC on Intrastate Switched Access
Revenue Requirement Per Minute**

	<u>Access Lines</u>	<u>Percentage</u>
Number of Access Lines for Phillip, Wall, Kyle, and White River	3,097	22%
(24) Other Golden West Exchanges	<u>10,715</u>	<u>78%</u>
Total Access Lines for Golden West	13,812	100%

Effects of a CLEC on Intrastate Switched
Access Revenue Requirement Per Minute:

Total Intrastate Switched Access
Revenue Requirement Per Minute:

A. Per 1995 Cost Study	11.85¢
B. Per 1995 Cost Study as Adjusted to Remove 60% of the Access Minutes and Access Lines for the Phillip, Wall, Kyle, and White River Exchanges (assuming a CLEC had acquired that traffic)	13.82¢
C. Percentage Increase in Intrastate Switched Access Revenue Requirement Per Minute Due to CLEC Acquiring 60% of Access Minutes and Access Lines in the Phillip, Wall, Kyle, and White River Exchanges [(B-A)/A]	<u>17%</u>

**Golden West Telecommunications Cooperative, Inc.
Effects of Lost Local Service Revenue Due to CLEC Operations**

Effects on Local Service Rates for the Remaining Golden West Exchanges, Assuming a CLEC Acquired 60% of the Access Lines in the Phillip, Wall, Kyle, and White River Exchanges:			
	<u>Business</u>	<u>Residence</u>	<u>Total</u>
A. Number of Access Lines for the Phillip, Wall, Kyle, and White River Exchanges	976	2,121	3,097
B. Percentage of Access Lines Assumed to be Acquired by CLEC	60%	60%	
C. Monthly Local Service Rate	\$21.95	\$10.95	
D. Annual Loss in Local Service Revenue (A x B x C x 12 Mos.)	\$154,247	\$167,220	\$321,467
E. Total Access Lines for Golden West			13,812
F. Less 60% of Phillip, Wall, Kyle, and White River Access Lines Assumed to be Acquired by CLEC (3,097 x 60%=1858)			1,858
G. Remaining Access Lines for Golden West (E-F)			11,954
H. Lost Local Service Revenue to be Generated from the Remaining Golden West Access Lines Each Year Assuming a CLEC Acquired 60% of the Access Lines in the Phillip, Wall, Kyle, and White River Exchanges (D/G)			<u>\$26.89</u>

CERTIFICATE OF SERVICE

I hereby certify that copies of SDITC's Prefiled Direct Testimony of Don Lee were sent via facsimile and also by Federal Express on the 30th day of October, 1997, to the following persons:

William Bullard Jr.
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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

OCT 24 1996
MICHAEL J. BRADLEY

IN THE MATTER OF THE APPLICATION OF)	FINAL ORDER AND
DAKOTA TELECOM, INC. FOR A)	DECISION GRANTING A
CERTIFICATE OF AUTHORITY TO PROVIDE)	CERTIFICATE OF
TELECOMMUNICATIONS SERVICES IN)	AUTHORITY; NOTICE OF
SOUTH DAKOTA)	ENTRY OF JUDGMENT
)	TC96-050

On March 15, 1996, the Public Utilities Commission (Commission) received a petition from Dakota Telecom, Inc. (DTI) seeking a Certificate of Authority to operate as a telecommunications company within the State of South Dakota, specifically including, but not limited to local exchange services, interexchange carrier access, and other telecommunications services.

On March 21, 1996, the Commission electronically transmitted notice of the filing and the intervention deadline of April 5, 1996, to interested individuals and entities. Intervention was granted to the South Dakota Independent Telephone Coalition (SDITC), U S WEST Communications, Inc. (U S WEST), and MCI Telecommunications Corporation (MCI).

By Order dated July 19, 1996, the Commission set the hearing to follow other hearings beginning July 31, 1996, at the State Capitol, Room LCR-1, Pierre, South Dakota. The hearing on this application was held on August 1, 1996. A briefing schedule was set following the hearing. At an ad hoc meeting of October 3, 1996, the Commission unanimously approved DTI's request for a Certificate of Authority.

The Commission having reviewed the evidence of record and being fully informed in the matter makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I

On March 15, 1996, DTI applied for a Certificate of Authority to operate as a telecommunications company in South Dakota, specifically including, but not limited to, local exchange services in the State of South Dakota. DTI stated that initially it "will provide telecommunications services to the Tea, South Dakota area. Future expansion plans include other U S WEST areas in and near Sioux Falls." Exhibit 1. In its prefiled testimony Tom Hertz, Executive Vice President of DTI stated that DTI is seeking statewide certification. Exhibit 2, Testimony of Tom Hertz at page 5, lines 24-25.

II

The Commission held a prehearing conference on Tuesday, May 28, 1996, in Room 412 of the State Capitol, Pierre, South Dakota. The Commission heard arguments concerning the issues presented by the applications to provide local exchange service. See Dockets TC96-087; TC96-038; TC96-050; TC96-054, and TC96-083. Specifically, the Commission heard arguments concerning the scope of the hearings, whether the applications for local exchange certification should be consolidated, and how to proceed with the applications.

III

On June 26, 1996, the Commission issued an Order Regarding Scope of Hearings; Order for and Notice of Procedural Schedule which provided in part as follows:

EXHIBIT

4

On June 24, 1996, at an ad hoc meeting, the Commission considered how to proceed in these dockets. The Commission ruled that the Commission may grant a company statewide certification to provide local exchange services. However, with respect to rural telephone companies, a competing provider of local exchange services will have to come before the Commission in another proceeding before being able to provide service in that rural service area pursuant to 47 U.S.C. § 253(f) which allows the Commission to require a company that seeks to provide service in a rural service area to meet the requirements in 47 U.S.C. § 214(e)(1) for designation as an eligible telecommunications carrier. In addition, the granting of statewide certification will not affect the exemptions, suspensions, and modifications for rural telephone companies found in 47 U.S.C. § 251(f). Finally, the Commission may also need to consider SDCL 49-31-21.

The Commission also ordered that the applications would not be consolidated.

IV

DTI has shown that it has sufficient financial capabilities to provide telecommunications services, including local exchange services. DTI's financial statements, filed as confidential, demonstrate its financial capabilities to provide local exchange services within this state. Harlan Best, testifying on behalf of the Commission Staff, stated that the financial information provided by DTI showed that DTI was operating in a positive financial position. Exhibit 3, Testimony of Harlan Best at page 4, lines 16-20.

V

DTI has shown that it has sufficient management capabilities to offer telecommunications services, including local exchange services. Tr. at page 30, beginning at line 12 to page 31, line 12.

VI

DTI has shown that it has sufficient technical capabilities to provide telecommunications services, including local exchange service. Tr. at page 29, beginning at line 8 to page 30, line 11; page 31, beginning at line 25 to page 32, line 23.

VII

Harlan Best, testifying on behalf of the Commission Staff, recommended that DTI be granted a Certificate of Authority to provide telecommunications services. Tr. at page 147, lines 3-24.

VIII

None of the intervenors presented evidence contesting DTI's financial, managerial, or technical ability to provide telecommunications services. Exhibits 4 and 5.

IX

Pursuant to the Federal Telecommunications Act of 1996, DTI is currently negotiating with U S WEST for interconnection arrangements to allow DTI to enter the market as a provider of local exchange service to South Dakota consumers. Tr. at page 46, lines 1-3.

X

The exact nature and extent of DTI's local service offerings will be known only after negotiations or arbitrations with incumbent local exchange carriers are completed.

XI

U S WEST currently has entered into contracts to sell eight of its exchanges. Exhibit 4, Testimony of James Fischer at page 10, lines 3-11; see also Docket TC96-125, In the Matter of the Joint Application of U S WEST Communications, Inc., Golden West Telecommunications Cooperative, Hanson Communications, Inc., and Baltic Telecommunications Cooperative Regarding the Sale of Eight Telephone Exchanges by U S WEST Communications, Inc. SDITC, through its witness James Fischer, requested that if any carrier wished to offer service in any of the eight exchanges, it should separately petition the Commission pursuant to its Order Regarding Scope of Hearings. In the alternative, SDITC asked that the Commission require any of the carriers wishing to serve any of the eight exchanges to satisfy the obligations of an eligible telecommunications carrier if the sale is finalized. Exhibit 4, Testimony of James Fischer at page 10, lines 14-19. The Commission denies SDITC's requests since, at this time, those exchanges are still owned and operated by U S WEST and therefore are not owned by rural telephone companies as defined under the Federal Telecommunications Act. See 47 U.S.C. § 153, subparagraph 47. Therefore, the provisions in the Act relating to rural telephone companies are not currently applicable to these exchanges.

XII

The Commission finds that DTI has not fully complied with subparagraphs (5), (6), (7), and (12) pursuant to ARSD 20:10:24.02. However, pursuant to the authority under that rule, the Commission finds good cause to waive compliance with these subparagraphs because some of the information required is dependent on the outcome of negotiations or arbitrations between DTI and incumbent local exchange carriers.

XIII

U S WEST, through its witness Jon Lehner, asked the Commission to make a finding on what regulatory requirements apply to DTI or to any other competitive local exchange provider offering local exchange service in U S WEST's service areas. Exhibit 5, Testimony of Jon Lehner at page 10, lines 6-21. The Commission declines at this time to state how competitive local exchange providers will be regulated pursuant to state and federal law. The Commission will decide the regulation of local exchange providers in Docket TC96-153, In the Matter of the Investigation of Local Competition Issues. This will allow all parties that seek to provide local exchange service the opportunity to comment on this issue.

XIV

Commission Staff, through its witness Harlan Best, requested that the Commission establish anti-slamming requirements, with the loss of the applicant's Certificate of Authority if too many slamming complaints were received. Exhibit 3, Testimony of Harlan Best at page 10, lines 6-10. The Commission declines to adopt the Staff's proposed slamming restrictions. The Commission will decide the slamming issue in Docket TC96-153, In the Matter of the Investigation of Local Competition Issues. This will allow all parties that seek to provide local exchange service the opportunity to comment on the slamming issue.

XV

The Commission rejects the proposed Findings of Fact and Conclusions of Law submitted by the parties.

CONCLUSIONS OF LAW

I

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-31 and the Telecommunications Act of 1996.

II

Pursuant to SDCL 49-31-3, the Commission finds that DTI has met its burden of proof in showing that it has sufficient technical, financial, and managerial capabilities to provide telecommunications services, including local exchange services in the State of South Dakota.

III

The Commission grants DTI a statewide Certificate of Authority to provide telecommunications services, including local exchange services. However, with respect to rural telephone companies, DTI will have to come before the Commission in another proceeding before being able to provide service in that rural service area pursuant to 47 U.S.C. § 253(f) which allows the Commission to require a company that seeks to provide service in a rural service area to meet the requirements in 47 U.S.C. § 214(e)(1) for designation as an eligible telecommunications carrier. In addition, the granting of statewide certification will not affect the exemptions, suspensions, and modifications for rural telephone companies found in 47 U.S.C. § 251(f).

IV

The Commission declines to apply the exception for rural telephone companies as listed in Conclusion of Law III to the eight exchanges U S WEST has proposed to sell to other local exchange carriers in South Dakota. The Commission finds that those exchanges are not currently owned and operated by a rural telephone company as defined in 47 U.S.C. § 153, subsection 47. Therefore, the provisions in the Federal Telecommunications Act relating to rural telephone companies are not currently applicable to these exchanges.

V

The Commission revises the language in its previous Order Regarding Scope of Hearings and deletes the final sentence which states that the Commission may also need to consider SDCL 49-31-21 because the Commission finds that this statute has been preempted by the Federal Telecommunications Act.

VI

Pursuant to ARSD 20:10:24:02, the Commission finds good cause to waive subparagraphs (5), (6), (7), and (12) because some of the information required by these subparagraphs is dependent on the outcome of negotiations or arbitrations between DTI and incumbent local exchange carriers.

VII

The Commission will decide the issue of how local exchange providers will be regulated, pursuant to state and federal law, in Docket TC96-153, In the Matter of the Investigation of Local Competition Issues.

VIII

The Commission declines to adopt Staff's proposed slamming restrictions. The Commission will consider slamming restrictions in Docket TC96-153, In the Matter of the Investigation of Local Competition Issues.

IX

The Commission rejects the proposed Findings of Fact and Conclusions of Law submitted by the parties.

It is therefore

ORDERED, that DTI's application for a Certificate of Authority to provide telecommunications services, including local exchange services, is granted, and it is

FURTHER ORDERED, that the Commission grants DTI statewide authority, subject to the Commission's restriction with respect to rural telephone companies; and it is

FURTHER ORDERED, that the Commission finds good cause to waive subparagraphs (5), (6), (7), and (12) of ARSD 20:10:24:02.

PLEASE TAKE NOTICE that this Final Decision and Order in Docket TC96-050 was duly entered on the 22nd day of October, 1996.

Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 22nd day of October, 1996.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By	<u>William Kelbo</u>
Date	<u>10/22/96</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Kenneth Stofferahn
KENNETH STOFFERAHN, Chairman

James A. Burg
JAMES A. BURG, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

SETTLEMENT AGREEMENT

18th Feb
This Agreement is made and entered into as of this 18th day of February, 1997, by and between U S West Communications, Inc., its parent corporation, affiliates, subsidiary corporations, their officers, agents, employees, directors, successors and assigns ("USWC"), and Dakota Cooperative Telecommunications, Inc. and its subsidiaries Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc., its officers, agents employees, directors, successors and assigns ("Dakota").

RECITALS

The parties agree to the following facts:

- A. The following disputes are currently pending between USWC and Dakota:
1. A claim arising from the termination by Dakota of a sale agreement dated December 7, 1994 which contained the terms and conditions of a sale of eight telephone exchanges ("New Exchanges") by USWC to Dakota ("Sale Agreement") for the return to Dakota of an escrow amount in excess of \$500,000 plus accrued interest ("the Escrow"). This dispute is currently in arbitration before the American Arbitration Association and designated as file No. 56 181 00307 96 ("Escrow Claim"). The claim of USWC to the Escrow is based in part on an assignment by third parties of rights arising from agreements entered into by a consortium of telephone companies, including Dakota, for the purpose of purchasing telephone exchanges from USWC ("the ICAA").
 2. After the termination of the Sale Agreement, certain other telephone companies ("Third Party Beneficiaries") agreed to purchase pursuant to certain agreements ("New Sale Agreements") the New Exchanges from USWC, and, with USWC, petitioned the South Dakota Public Utilities Commission ("Commission") for approval of these sales ("Sale of Exchange Approval Proceedings"). The Commission has issued a written decision in Docket 96-125 approving these sales. Dakota intervened in these proceedings and has appealed the order approving these to the Clay County Circuit Court, Civil File 96-192 ("Clay County Appeal").

3. USWC and Dakota currently have pending an arbitration proceeding (TC96-159) before the Commission to resolve interconnection issues under the 1996 Telecommunications Act ("the Act"). These proceedings were originally scheduled to commence on Monday, November 4, 1996 ("Interconnection Arbitration").
 4. Dakota desires to construct a distance learning project which will connect several schools, some of which are located in exchanges operated by USWC. Dakota desires the concurrence of USWC in the construction of the project by Dakota.
 5. Dakota has constructed telecommunications facilities outside its traditional exchange areas, and is providing services on a competitive basis. USWC filed a complaint with the Commission alleging that Dakota unlawfully constructed facilities in its territories (TC96-150). The Commission determined that Dakota was not required to comply with SDCL §49-31-21, which would have required Commission approval, because the Act preempted such approval. In addition, the Commission entered a declaratory ruling stating that the Act preempted SDCL §49-31-21 (TC96-127). USWC and South Dakota Independent Telephone Coalition ("SDITC") have appealed the Commission's rulings to the Circuit Court of Hughes County. This appeal has been designated Hughes County File No. 96-392 ("Hughes County Appeal").
- B. The New Sale Agreements provide that under certain circumstances the Third Party Beneficiaries shall not be obligated to consummate the transactions relating to the New Exchanges (Article 3.1, Clause L, competitive Local Service Provider and Article 6.2, Clause M, Interconnection Agreements, as amended) ("New Sale Contingencies"). Dakota claims the right to negotiate, and obtain arbitration of, interconnection agreements with USWC in the New Exchanges pending closing of the sale of New Exchanges to Third Party Beneficiaries. Dakota also claims that Third Party Beneficiaries will succeed to the obligations of USWC as they relate to interconnection with Dakota in the New Exchanges. These claims by Dakota may give rise to New Sale Contingencies.
- C. The parties desire to resolve at this time the above pending disputes on the following terms and conditions.

IT IS AGREED AS FOLLOWS:

1. Escrow Claim: Dakota and USWC agree to settle the Escrow Claim by jointly instructing the escrow agent to pay the escrow funds, including interest, one half of to Dakota and one half to USWC.
2. Sale of Exchange Approval Proceedings: Dakota agrees to dismiss the Clay County Appeal upon the execution of this agreement and to provide USWC a certified copy of the dismissal papers. Dakota further agrees not to make any filing with the FCC or any state or Federal Court or take any other action to directly challenge the Sale of Exchange Approval Proceedings. *Dakota will withdraw its opposition to the Expedited Joint Petition for Waiver (FCC Docket AAD97-24).* Nothing in this Agreement shall prevent, or have the effect of preventing, Dakota from filing with the Federal Communications Commission ("FCC") and the National Exchange Carriers Association ("NECA") for new, changed, or modified "Study Area(s)" as that term is commonly understood in the context of FCC and NECA requirements.
3. Distance Learning Project: USWC agrees to execute the attached consent form. ("Attachment A").
4. Hughes County Appeal: USWC agrees to dismiss the Hughes County Appeal upon the execution of this agreement to provide Dakota a certified copy of the dismissal papers. USWC agrees to request that SDITC dismiss its Appeal.
5. Interconnection Arbitration: Dakota agrees to stipulate with USWC that its request for interconnection will be amended to stipulate that the request for interconnection was first made on the 1st day of August, 1996. The Interconnection Arbitration scheduled for November 4, 1996 will be continued and rescheduled by the Commission to determine interconnection obligations between USWC and Dakota, which shall be subject to Dakota's obligations with regard to Third Party Beneficiaries set forth in the following paragraph.
6. Dakota's Interconnection Rights and Obligations with regard to Third Party Beneficiaries: If, prior to Third Party Beneficiaries taking possession of the New Exchanges, Dakota enters into a negotiated or arbitrated interconnection agreement with USWC which includes interconnection in the New Exchanges, Dakota agrees Dakota will not contest any Third Party Beneficiary's qualifications as a Rural Telephone Company, as defined by the Act, based on any claim that purchase of the New Exchanges from

USWC prevents Third Party Beneficiaries from qualifying as such. Third Party Beneficiaries shall not be obligated to assume any interconnection or resale obligations based on agreements between Dakota and USWC other than those obligations which Third Party Beneficiaries would have had if Third Party Beneficiaries had owned the New Exchanges at the time such interconnection or resale agreement was entered into by USWC.

If Dakota makes a *bona fide* request to any Third Party Beneficiary for interconnection in any of the New Exchanges, interconnection negotiations shall be conducted on the same basis, in terms of applicable regulations, as if the initial request to a Third Party Beneficiary were the initial request by Dakota for interconnection in that exchange. Upon the request of any Third Party Beneficiary, Dakota agrees to stipulate to a determination by the Commission, prior to Closing, of such Third Party Beneficiary's rights and obligations regarding interconnection with Dakota after Closing. No Party waives their appeal rights with regard to the substantive rulings made by the Commission in such determination. Dakota's obligations assumed herein with regard to New Exchanges and Third Party Beneficiaries shall inure to the benefit of the Third Party Beneficiaries and their successors and assigns, and shall be enforceable by each and every Third Party Beneficiary as if it had been a party to this Agreement, provided, however, that if any existing agreement for purchase of any New Exchange shall be terminated, all rights of the Third Party Beneficiary purchaser created herein, and all obligations of Dakota with respect to such New Exchange shall terminate.

7. Release: Except as provided in this Agreement, USWC and Dakota release and discharge each other from all claims, demands, and liabilities arising from the Sale Agreement and Escrow Claim, the ICAA, the Clay County Appeal, and the Hughes County Appeal.

8. Dismissal: The parties to this agreement authorize their attorneys to dismiss with prejudice without costs the Clay County Appeal, the Hughes County Appeal and the Escrow Claim, to withdraw the Request for Rehearing of Commission Docket 96-125 and to withdraw the opposition to the Expedited Joint Petition for Waiver in FCC Docket AAD97-24.

9. No admission of liability: The execution of this Settlement Agreement is not to be construed as an admission of liability on the part of any party. The parties recognized that this settlement is in full compromise of all claims of the parties which were made or could have been made, with respect to the

issues and matters described herein against one another and such claims are disputed as to validity and amount.

10. Return of Documents: All business documents that have been furnished by USWC to Dakota regarding the Sales Agreement including all abstracts of title and all proprietary information pertaining to any of the New Exchanges will be returned to USWC upon the execution of this agreement. No copies will be made of any such documents by Dakota and used in any manner whatsoever.

11. Authority: The parties and signatories warrant and represent that the execution of this agreement by their respective officers or employees was approved by the proper corporate action.

12. Governing Law: This agreement will be governed by the laws of the State of South Dakota except where those laws are preempted by federal law.

13. Counterparts: This agreement may be executed in counterparts. Any or all of such counterparts shall constitute one and the same agreement.

U S WEST Communications, Inc.

By: 

Its: 

Dakota Cooperative
Telecommunications, Inc.

By: 

Its: GM/CEO

Dakota Telecom, Inc.

By: 

Its: CEO

Dakota Telecommunications,
Systems, Inc.

By: 

Its: CEO



DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921

June 1, 1997

Wesley Hanson, President
Fort Randall Telephone Company
227 S. Main Street
Clara City, MN 56222-0800

Dear Mr. Hanson:

Pursuant to the provisions of the Communications Act of 1934, (47 U.S.C. §151 *et seq.*) as amended, and existing and future Federal Communications Commission ("FCC") and State rules, regulations and policies promulgated thereunder, Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc. ("Dakota") hereby request that Fort Randall Telephone Company ("Fort Randall") commence negotiations regarding those matters set forth in 47 U.S.C. §§251-252 between Fort Randall and Dakota in the following exchanges:

Centerville, South Dakota
Viborg, South Dakota.

Dakota requests that Fort Randall negotiate in good faith to achieve the interconnection of Dakota's existing and planned facilities and equipment. Thomas W. Hertz is hereby designated as the individual with authority to make binding representations on behalf of Dakota. Dakota hereby requests that Fort Randall designate an individual with comparable authority for purposes of these negotiations.

We look forward to finalizing interconnection agreements between Dakota and Fort Randall. If you have any questions, or need further information, please contact me at (605) 263-3301.

Sincerely,

Robert G. Marmet
Counsel

EXHIBIT

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LAW OFFICES
MOSS & BARNETT
A PROFESSIONAL ASSOCIATION

4800 NORWEST CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS, MINNESOTA 55402-4129

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WRITER'S DIRECT DIAL NUMBER

347-0337

WRITER'S E-MAIL ADDRESS
BradleyM@moss-barnett.com

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ROBERT J. LUND
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MICHAEL J. BRADLEY
PETER A. KOLLER
RICHARD J. KILMER
RYAN M. BUNCH
JULIAN C. KNOX
THOMAS M. HUGHES

June 9, 1997

Robert G. Marmet
Dakota Telecom, Inc.
P.O. Box 127
Irene, South Dakota 57037

Re: Interconnection Negotiations Between Dakota Telecom, Inc., Dakota
Telecommunications Systems, Inc. and Fort Randall Telephone Company

Dear Robert:

This is to acknowledge receipt of your June 1, 1997 letter to Wesley Hanson, President of Fort Randall Telephone Company ("Fort Randall"), in which Dakota Telcom, Inc. ("DTI"), Dakota Telecommunications Systems, Inc. ("DTS"), and Dakota Cooperative Telecommunications, Inc. ("DCT") have requested that "negotiations commence regarding those matters set forth in 47 U.S.C. §§ 251-252" related to Fort Randall's Centerville and Viborg exchanges. While Fort Randall, through Bruce Hanson, is willing to begin discussions concerning such matters, for the below-described reasons, it is not willing, particularly based on the currently available information, to waive any of the rights granted to Fort Randall under the 1996 Telecommunications Act ("Act") or state law. Nor, for the below-described reasons, does Fort Randall accept the June 1, 1997 letter as meeting the requirements of a bona fide request under Section 251(f)(1) of the Act.

As you are aware, Fort Randall, in purchasing the Centerville, Viborg and Tabor exchanges from US WEST Communications, Inc. ("USWC"), did not waive its rights as an Rural Telephone Company ("RTC"), and the Settlement between DCT and USWC expressly recognizes that the prior ownership of those exchanges by USWC shall have no impact on Fort Randall's rights as an RTC. More specifically, the Settlement states in relevant part:

If Dakota makes a bona fide request to any Third Party Beneficiary [including Fort Randall] for interconnection in any of the New Exchanges, interconnection negotiations shall be conducted on the same basis, in terms of applicable

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regulations, as if the initial request to a Third Party Beneficiary were the initial request by Dakota for interconnection in that exchange.

Fort Randall qualifies as an RTC pursuant to 47 U.S.C. § 153(a)(47).

The Act contains a number of special provisions designed to assure that competition in RTC service areas occurs in a manner that is consistent with the public interest. The Act recognizes that unfettered competition in RTC service areas would not be in the public interest, and that, while competition may occur in such areas, it is more important to address the needs of the public than it is to address the private needs of individual competitors. In recognition of those protections, the Certificates of Authority granted to DTI and DTS expressly withheld authorization to serve RTC service areas in advance of obtaining separate South Dakota Public Utilities Commission ("Commission") authority.¹ The purpose of the separate proceeding is to permit the Commission to determine what protections and limitations should apply to such competition, including the below-described Rural Market Protections of Section 253(f) and such other protections as it deems appropriate pursuant to Section 253(b) of the Act and state law. In apparent recognition of the need to obtain Commission authority to serve the Centerville and Viborg exchanges, DCT, DTI and DTS have given the Commission notice of their intent to provide competitive local services in those exchanges.

The proper application of various rural protections contained in the Act are best discussed in the context of a specific proposal, termed by the Act a bona fide request. Pursuant to Section 251(f)(1), absent a bona fide request and a ruling by the Commission that the bona fide request is not unduly economically burdensome, is technically feasible, and is consistent with the universal service goals of Section 254 of the Act, the provisions of Section 251(c) do not apply to an RTC (the "Rural Exemption"). The June 1, 1997 letter does not qualify as a bona fide request. That letter simply requests an interconnections agreement under the Act. Consequently, based on that letter, it is not possible to determine whether the wishes of DCT, DTI and DTS are unduly economically burdensome, technically feasible and consistent with the universal service goals.

Section 251(f)(1)(B) of the Act provides only 120 days from the date of a bona fide request for the Commission to determine whether to waive the Rural Exemption and, if a waiver is granted, to establish an implementation schedule for compliance. That is inadequate time, unless the request initiating the process contains sufficient detail to permit the RTC to evaluate

¹ Similarly, while the Commission has declared that the requirements of SDCL § 49-31-21 do not apply to a previously approved local exchange carrier such as DCT, it also ruled that DCT would be required to obtain Commission approval before providing competitive local service in an RTC service area.

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whether it will voluntarily waive some or all of the Rural Exemption; the filing of comments and expert testimony explaining why the Rural Exemption should not be waived as to those matters deemed inappropriate for competition in an RTC service area; the development of an implementation schedule for issues where a waiver is granted; and the Commission to determine the matter and establish an implementation schedule for compliance.

The importance of determining DCT, DTI and DTS' intentions before starting a Commission review process under Section 251(f)(1)(B) is further demonstrated by the fact that if, for example, DCT, DTI and DTS are not seeking an interconnection agreement under Section 252(c) and, instead intend to interconnect and compete pursuant to the provisions of Section 252(a) and (b), the limited negotiations needed to implement those provisions can occur without a waiver of the Rural Exemption.²

Based on the information contained in your June 1, 1997 letter, Fort Randall cannot determine whether the Rural Exemption of Section 251(f)(1) is applicable or, if applicable, whether Fort Randall would need to avail itself of the Rural Exemption. Similarly, Fort Randall cannot determine whether there may be a need to seek a suspension or modification pursuant to Section 251(f)(2). Therefore, in order to assist Fort Randall and DCT, DTI and DTS and, if appropriate, the Commission with respect to evaluating these issues, Fort Randall has attached a list of questions to better define what type of interconnection is actually desired. While the list is detailed, it is a simple matter to answer "not applicable" to those issues that are not under consideration, and the requested information is unquestionably needed with respect to those items that are applicable.

Answering the attached questions will also assist Fort Randall in deciding whether to request the protections available under Section 253(f) (the "Rural Market Protections"). That Section provides:

It shall not be a violation of this section
for a State to require a telecommunications carrier that seeks to
provide telephone exchange service or exchange access in a service
area served by a rural telephone company to meet the requirements
in section 214(c)(1) for designation as an eligible
telecommunications carrier for that area before being permitted to
provide such service. This subsection shall not apply--
(1) to a service area served by a rural telephone company

² Depending on the specifics of the DCT, DTI, and DTS requests, Fort Randall would be entitled to seek a suspension or modification of the Section 252(b) obligations pursuant to Section 251(f)(2).

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Robert G. Marnet

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that has obtained an exemption, suspension, or modification of section 251(c)(4) that effectively prevents a competitor from meeting the requirements of section 214(e)(1); and (2) to a provider of commercial mobile services.

The service obligations of Section 214(e)(1) include:

A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received--

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

Please advise whether DCT, DTI and DTS intend to meet the service obligations of an ETC in Fort Randall's Study Area. Fort Randall's Study Area includes: Centerville, Viborg, Tabor, Tyndall, Wagner, Lake Andes, and Hermosa. If the answer is yes, please explain in detail how it intends to satisfy those obligations, including:

- 1) What facilities DCT, DTI and DTS will use to support its services;
- 2) What types of customers will be offered DCT, DTI and DTS services;
- 3) Will DCT, DTI and DTS offer all of the services listed by the FCC as eligible for universal service fund support;
- 4) Will DCT, DTI and DTS offer all of the services listed by the FCC as eligible for universal service fund support to all customers throughout Fort Randall's entire study area;
- 5) If the answer to question 4 is in the affirmative, what evidence can DCT, DTI and DTS provide that its rates will support a finding that it is making a bona fide offering of its services to all customers;

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June 9, 1997
Page 5

- 6) How will DCT, DTI and DTS advertise the availability of their services and their rates;
- 7) Will rates be averaged throughout the study area; and
- 8) Will rates be averaged throughout each exchange.

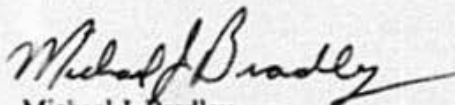
Just as it is necessary to determine the role of the Rural Exemption prior to commencing negotiations, it is equally important to determine, in advance of negotiating an interconnection agreement, whether DCT, DTI and DTS will voluntarily assume the service obligations of the Rural Market Protections and, if not, whether the Commission should impose those obligations.

As noted earlier, the duty to negotiate an interconnection agreement does not begin unless and until the Commission establishes such a duty under Section 251(f)(1). Consequently, the June 1, 1997 letter requesting negotiations does not activate the schedule for negotiations under Section 252.

Please call me so that we may discuss and develop a reasonable process for proceeding.

Very truly yours,

MOSS & BARNETT
A Professional Association


Michael J. Bradley

MJB/mjb
cc: The South Dakota Public Utilities Commission
Rolayne Wiest
Bruce Hanson
Rich Coit
113233/2FDD011.DOC1

Information Required To Constitute A Bona Fide Request

A. Points of Interconnection Requested

1) A list of the points, by exchange, at which interconnection with Fort Randall is requested, the time frames in which interconnection is requested, the interface and protocol standards and quantities of facilities to be interconnected at each of the following points within Fort Randall's network, as defined in 47 C.F.R. § 51.305(a)(2) of the FCC interconnection rules:

- (i) any line-side local switch interconnections;
- (ii) any trunk-side local switch interconnections;
- (iii) any trunk interconnection points for a tandem switch;
- (iv) any central office cross-connect points;
- (v) any out-of-hand signaling transfer points interconnections, including any interconnections to call-related databases;
- (vi) any points of access to unbundled network elements as described in 47 C.F.R. § 51.319; and
- (vii) any other points of interconnection.

2) A list of and description of any interconnection facilities that are requested that are of superior quality to that provided by Fort Randall to itself or of inferior quality to that provided by Fort Randall to itself, including interface or protocol standards, as described in Section 51.305(a)(4) of the FCC interconnection rules.

3) A statement that DCT, DTI and DTS are not requesting interconnection solely for the purpose of originating or terminating their interexchange traffic on Fort Randall's network within the meaning of Section 51.305(b) of the FCC interconnection rules.

4) Any two-way trunks requested, including locations, time frames and quantities within the meaning of Section 51.305(f) of the FCC interconnection rules.

B. Unbundled Elements Requested

A list of the unbundled network elements requested by exchange, the time frames at which unbundling of the elements is requested, the quantities of unbundled elements anticipated and which DCT, DTI and DTS commits to purchase, including, without limitation, the following as defined in Section 51.319 of the FCC interconnection rules:

- (a) Local Loops.
- (b) Network Interface Devices.
- (c) Switching Capability, including:
 - (1) Local Switching Capability;
 - (2) Tandem Switching Capability.

- (d) Interoffice Transmission Facilities.
- (e) Signaling Networks and Call-Related Databases, including:
 - (1) Signaling Networks;
 - (2) Call-Related Databases;
 - (3) Service Management Systems.
- (f) Operations Support Systems Functions.
- (g) Operator Services and Directory Assistance.

C. Collocation/Interconnection Methods Requested

1) A list of the points, by exchange, at which physical, virtual or meetpoint interconnection is requested, the time frames at which interconnection is requested, and the types and quantities of facilities to be interconnected within Fort Randall's network, including, but not limited to, the following as defined in Sections 51.321 and 51.323 of the FCC interconnection rules:

- (i) transmission equipment, including, but not limited to, optical terminating equipment and multiplexers;
- (ii) equipment being collocated to terminate basic transmission facilities;
- (iii) any copper or coaxial cable for which interconnection is requested; and
- (iv) any microwave transmission facilities for which interconnection is requested.

2) A list of any contractors that DCT, DTI and DTS seek to use for collocation of equipment.

D. Wholesale Rates

A list of the retail services of Fort Randall that DCT, DTI and DTS request at wholesale, within the meaning of 47 C.F.R. § 51.607, including:

- (i) identification of the customer classes to be served by DCT, DTI and DTS within the meaning of 47 C.F.R. § 51.613(a)(1); and
- (ii) any branding or unbranding that DCT, DTI and DTS requests with respect to any operator, call competition or directory assistance services to be purchased within the meaning of 47 C.F.R. § 51.613(c).

E. Number Portability

A statement of whether DCT, DTI and DTS are requesting that Fort Randall provide local number portability, the locations in which any local number portability is requested and the date by which local number portability is requested in each location.



DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND IA WATS 800-239-7501

RECEIVED

JUN 13 1997

MICHAEL J. BRADLEY

June 11, 1997

Michael J. Bradley
Moss & Barnett
4800 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402-4129

RE: Interconnection Negotiations Between Dakota Telecom, Inc.,
Dakota Telecommunications Systems, Inc. and Fort
Randall Telephone Company.

Dear Mike:

Thank you for your letter of June 9, 1997. The position you advocate was presented to the Federal Communications Commission ("FCC") by the United States Telephone Association, Anchorage Telephone Utility and others. The FCC declined to adopt those proposals in the First Report and Order in the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. The FCC concluded that:

Given the pro-competitive focus of the 1996 Act, we find that rural LECs must prove to the state commission that they should continue to be exempt pursuant to section 251(f)(1) from requirements of section 251(c), once a bona-fide request has been made... We conclude that it is appropriate to place the burden of proof on the party seeking relief from otherwise applicable requirements. Moreover, the party seeking exemption, suspension, or modification is in control of the relevant information necessary for the state to make a determination regarding the request.

Dakota's request for interconnection with Fort Randall is a bona fide request for interconnection with a Rural Telephone Company. The request has been docketed as such by the South Dakota Public Utilities Commission. By filing its request with the Commission, Dakota has "come before the Commission in a separate proceeding". By sending your letter to the South Dakota Public Utilities Commission you have requested an exemption from interconnection requirements for Fort Randall. The 120 day clock for determination by the South Dakota Public Utilities Commission has begun to run.

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Dakota was granted its certificate as a competitive telecommunications provider at a time when US West provided service in Centerville and Viborg. Dakota has been lawfully serving customers in the Centerville and Viborg exchanges for over one year. The language you cite withholding authority to serve Rural Telephone Company service areas does not apply to the Centerville and Viborg exchanges. Furthermore, to date the South Dakota Public Utilities Commission has taken no action to impose requirements permitted by 47 USC 253(f) on competitive providers. Dakota will continue to serve those, and any other customers who request service, into the future.

If, in the future, the South Dakota Public Utilities Commission should impose such requirements upon telecommunications carriers competing in a service area served by a Rural Telephone Company, Fort Randall's continued exemption from its obligation to interconnect with Dakota, if granted, would effectively prevent Dakota from meeting the requirements of an eligible telecommunications carrier. In that case, no eligible telecommunications carrier requirements could be imposed on Dakota. At this time, no such requirements have been mandated by the Commission. Moreover, Dakota fully expects to meet the requirements of an Eligible Telecommunications Carrier on a facilities basis regardless of interconnection with Fort Randall.

Fort Randall and Dakota have an opportunity to develop a healthy competition consistent with the letter and the spirit of the Telecommunications Act of 1996. Negotiation, rather than litigation is the preferred method of achieving that end. The questions posed in the attachment to your letter are suitable issues for discussion as part of good faith negotiations and will be answered in that context. They are neither an appropriate condition precedent to negotiations nor are they a valid "pre-filing" requirement.

It is my understanding that negotiations have already begun between Bruce Hanson and several representatives of Dakota. Let not the posturing by those of trained at the bar stand in the way of those charged with running the telephone companies. If negotiations fail, we will each have ample opportunity to present our arguments to the State and Federal Commissions. In the meantime, let the businessmen make the best deals possible.

Sincerely,
Dakota Telecom, Inc.

By: 
Robert G. Marnet

cc: The South Dakota Public Utilities Commission
Rolayne Wiest
Tom Hertz



DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND IA WATS 800-239-7501

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AUG 4 1997

MICHAEL J. BRADLEY

July 28, 1997

Bruce Hanson, Treasurer
Fort Randall Telephone Company
227 S. Main Street
Clara City, MN 56222-0800

Dear Mr. Hanson:

As part of the continuing negotiations initiated with my letter dated 1 June, 1997, I am enclosing as "Attachment 1", a list of elements which, at this time, represent the best reasonable estimate by Dakota Telecom, Inc. ("DTI") and Dakota Telecommunications Systems, Inc. ("DTS"), of the scope of their request for interconnection to be negotiated or arbitrated between DTI/DTS and Fort Randall Telephone Company.

The attached list is intended as a point of beginning for the negotiations. As we have discussed earlier, the primary focus of DTI/DTS is to provide service to the Centerville, South Dakota and Viborg, South Dakota exchanges. DTI/DTS intend to serve all customers within these exchanges with all services supported by Universal Service Fund. However, in order to prepare for eventualities beyond our control, DTI/DTS wish to enter into negotiations which may cover interconnection throughout Fort Randall Telephone Company's entire service area.

We look forward to negotiating and finalizing interconnection agreements between DTI/DTS and Fort Randall. If you have any questions, or need further information, please contact me at (605) 263-3301.

Sincerely,
Dakota Telecom, Inc.
Dakota Telecommunications Systems, Inc.

By: 

Robert G. Marnet

Enclosure

EXHIBIT

9

ATTACHMENT 1

A. Points of interconnection:

- (1) Yes ☒ No ☐ line-side interconnections
- (2) Yes ☒ No ☐ trunk-side interconnections
- (3) Yes ☒ No ☐ tandem trunk interconnections
- (4) Yes ☒ No ☐ central office cross-connects
- (5) Yes ☒ No ☐ out-of-band signaling transfer points, including call-related databases
- (6) Yes ☒ No ☐ points of access to unbundled network elements
- (7) Yes ☒ No ☐ interconnection facilities with specifications different from the incumbent LEC's facilities
- (8) Yes ☒ No ☐ two-way trunks

B. Unbundled elements:

- (1) Yes ☒ No ☐ local loops, including sub-loop unbundling
- (2) Yes ☒ No ☐ network interface devices
- (3) Yes ☒ No ☐ local or tandem switching
- (4) Yes ☒ No ☐ interoffice transmission facilities
- (5) Yes ☒ No ☐ signaling networks and call-related databases, including service management systems
- (6) Yes ☒ No ☐ operations support systems
- (7) Yes ☒ No ☐ operator services and directory assistance

C. Collocation:

- (1) Yes ☒ No ☐ physical, including
 - a. Yes ☒ No ☐ transmission equipment
 - b. Yes ☒ No ☐ equipment used to terminate transmission equipment
- (2) Yes ☒ No ☐ virtual
- (3) Yes ☒ No ☐ meet point

D. Wholesale services:

- (1) Yes ☒ No ☐ residential
- (2) Yes ☒ No ☐ business
- (3) Yes ☒ No ☐ unbranded or rebranded call completion
- (4) Yes ☒ No ☐ unbranded or rebranded operator
- (5) Yes ☒ No ☐ unbranded or rebranded directory assistance

E. Number portability:

- (1) Yes ☒ No ☐

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KATHA A. BERGOTT

August 4, 1997

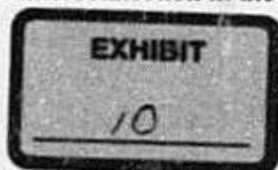
Robert G. Marmet
Dakota Telecom, Inc.
P O Box 127
Irene, SD 57037

Re: Request For Interconnection

Dear Robert:

Fort Randall Telephone Company ("Fort Randall") has received your letter of July 28, 1997, in which Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc. ("DTI/DTS") indicated that, depending on the conditions imposed on DTI/DTS by the South Dakota Public Utilities Commission ("SDPUC"), they may want the full menu of possible interconnection services under the Telecommunications Act. The letter further states that the communications are "part of the continuing negotiations initiated with [the] June 1, 1997" letter. As you are aware, Fort Randall is not required to negotiate with DTI/DTS unless the SDPUC waives Fort Randall's Rural Exemption. Furthermore, negotiations cannot commence until DTI/DTS explain which services they actually want. Therefore, these communications are not part of the negotiation process. Rather, they are part of the process of determining how competitive services should be offered.

DTI/DTS have indicated that they would prefer to only offer services in the Centerville and Viborg exchanges, and that they intend to offer services to all customers located in those exchanges. However, without additional details concerning how DTI/DTS intend to accomplish their goals, Fort Randall cannot determine whether it should assert the Rural Exemption. That is particularly the case when all of the answers on Attachment I to the June 28th letter were "yes". It is, for example, extremely doubtful that DTI/DTS actually want physical collocation, virtual collocation and meet point interconnection in the



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Robert G. Marnet

August 4, 1997

Page 2

Centerville and Viborg exchanges. Therefore, Fort Randall asks that DTI/DTS (and any relevant affiliate) answer the following questions so that progress toward the goal of actually providing competitive services may occur.

In answering these questions, please assume the SDPUC agrees to the following conditions:

- 1) Competitive service would be limited to the Centerville and Viborg exchanges.
- 2) DTI/DTS would be required to offer their services to all customers, and the out-of-town rates must be set at a level that demonstrates that the offer is legitimate. The ability to offer services to all customers must be met within twelve months of initially offering service within the exchanges (the fact that DTI/DTS may be serving one or more customers at this time is not viewed by Fort Randall to be competitive local service within the meaning of this question).
- 3) DTI/DTS would be required to offer local access (including local usage), dual tone multi-frequency signaling or its equivalent, access to long distance service, access to local operator services, access to 911 services, and access to directory assistance.
- 4) DTI/DTS would be required to offer the same local calling scope, including EAS, as Fort Randall currently offers.
- 5) DTI/DTS would not qualify for universal service fund support.

Based on the above assumptions please answer the following questions:

I. Points of Interconnection.

For each point of interconnection answered "yes" in your June 28, 1997 letter:

- A) List those which would still be answered "yes" under the above assumptions. In answering this question and other questions below, it is important that DTI/DTS take into consideration that the Centerville and Viborg exchanges are served by remotes. Those remotes do not have direct trunking abilities. The Centerville and Viborg remotes currently home on a US WEST Host switch. By the end of this year, Fort Randall intends to serve those exchanges using a Lucent switch located in its Wagner central office. It is the Wagner switch which will have the capability of providing terminating services to DTI/DTS.

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Robert G. Marnet
August 4, 1997
Page 3

- B) For each interface determined still applicable under subpart (A), state:
- 1) The interface and protocol standards to be used.
 - 2) The anticipated quantities.
 - 3) The time frames for providing the services.
 - 4) Will interconnection occur in Wagner? If not: a) where would interconnection occur; and b) who does DTI/DTS anticipate would provide the facilities needed to transport the traffic: i) between the point of interconnection and Wagner; and ii) between Wagner and Centerville/Viborg?
- C) If two-way trunks are desired, provide the locations, time frames and quantities desired.

II. Unbundled elements.

For each of the unbundled elements answered "yes" in your June 28, 1997 letter:

- A) List those which would still be answered "yes" under the above assumptions.
- B) With respect to unbundling loops:
- 1) Do DTI/DTS intend to order unbundled loops?
 - 2) Do DTI/DTS intend to order unbundled network interface devices ("NIDs") without also ordering the unbundled loops connected to the NIDs?
 - 3) Do DTI/DTS intend to request subloop unbundling? If the answer to this subpart is "yes", please describe the specific segments of the loops being requested.

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Robert G. Marnet

August 4, 1997

Page 4

- C) For each unbundled element determined still applicable under subparts (A) and (B), state:

- 1) The anticipated quantities.
- 2) The time frames for providing the services.

III. Collocation.

For each of the collocation options answered "yes" in your June 28, 1997 letter:

- A) List those which would still be answered "yes" under the above assumptions (including the fact that the serving switch is in Wagner).
- B) If meet point interconnection is requested, indicate the meet point.
- C) If physical interconnection is requested, indicate the specific space, electrical and other facilities being requested.
- D) If virtual collocation is being requested, describe the interconnection facilities being requested and the location of the meet point with DTI/DTS' facilities.
- E) With respect to the transmission equipment, state the optical terminating equipment and multiplexers being requested.
- F) State whether the interconnection with DTI/DTS' facilities would be over copper, fiber, or coaxial cable.
- G) State the quantities of the facilities to be interconnected.
- H) State the time frame for the interconnection.

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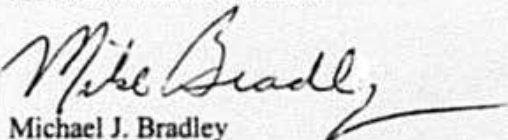
Robert G. Marnet
August 4, 1997
Page 5

IV. Wholesale Services.

For each of the wholesale service options answered "yes" in your June 28, 1997 letter, list those which would still be answered "yes" under the above assumptions.

Very truly yours,

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A Professional Association


Michael J. Bradley

MJB/mjb
123844/2NK4011.DOC



DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND IA WATS 800-239-7501

August 12, 1997

Bruce Hanson, Treasurer
Fort Randall Telephone Company
227 S. Main Street
Clara City, MN 56222-0800

Post-It® Fax Note	7671	Date	8/15/97
To	Mike Bradley	From	Bruce Hanson
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

Dear Mr. Hanson:

By this letter Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc., (collectively "Dakota") seek to continue the negotiations begun by letter dated 1 June, 1997 from Robert G. Marmet, on behalf of Dakota, to Wesley Hanson, on behalf of Fort Randall Telephone Company ("Fort Randall"). As you are aware, by letter dated June 9, 1997, attorney Michael J. Bradley, on behalf of Fort Randall, named you as the individual with authority to bind Fort Randall in negotiations concerning the request by Dakota.

Now, in furtherance of the negotiations commenced on 1 June, 1997, or independently, as an initial request for interconnection, Dakota hereby makes the following requests:

1. Dakota requests that Fort Randall immediately commence negotiations to fulfill its duty pursuant to 47 U.S.C. § 251(a) in order to permit the interconnection, directly or indirectly, between the facilities and equipment of Dakota and Fort Randall.
2. Dakota requests that, pursuant to 47 U.S.C. § 251(b)(1), Fort Randall commence negotiations regarding resale of services in the Centerville and Viborg exchanges.
3. As a part of these negotiations, Dakota requests that Fort Randall determine whether it is technically feasible, using the equipment presently in use in the Centerville and Viborg exchanges, to permit Fort Randall to provide Dakota with number portability.
4. Pursuant to 47 U.S.C. § 251(b)(3) & (4), Dakota requests that Fort Randall include as a part of these negotiations the issues of dialing parity and access to its rights of way in the Centerville and Viborg exchanges.
5. Dakota specifically requests that Fort Randall commence negotiations pursuant to 47 U.S.C. § 251(b)(5) on the subject of reciprocal compensation arrangements for exchange of traffic between Fort Randall's Viborg and Centerville exchanges and Dakota's Centerville and Viborg exchanges.
6. Dakota specifically requests that Fort Randall commence negotiations in good faith pursuant to 47 U.S.C. § 251(c)(1) on items (2) through (5), above. Dakota hereby warrants that it will conduct its negotiations in good faith as well.
7. Pursuant to 47 U.S.C. § 251(c)(2) Dakota requests that Fort Randall provide facilities and equipment for transmission and routing of telephone exchange service and exchange access at any technically feasible point in the Fort Randall's Centerville and

EXHIBIT

Viborg exchanges, with quality at least equal to that which Fort Randall is providing itself, and upon terms and conditions and at rates which are just and reasonable and not discriminatory. To facilitate these negotiations, Dakota requests that Fort Randall provide to Dakota, in a format which is customarily used in the industry, a diagram of the Centerville and Viborg exchanges which will allow Dakota's engineers to ascertain where Dakota will be requesting points of interconnection. Dakota also requests that Fort Randall provide quotes for transmission and routing services.

8. Pursuant to 47 U.S.C. § 251(c)(3) Dakota requests that Fort Randall provide unbundled access at any technically feasible point in the Fort Randall's Centerville and Viborg exchanges, upon terms and conditions and at rates which are just and reasonable and not discriminatory. To facilitate these negotiations, Dakota requests that Fort Randall provide Dakota with a list of all network elements which Fort Randall is capable of unbundling. Dakota also requests that Fort Randall provide quotes for prices of each network element.
9. Pursuant to 47 U.S.C. § 251(c)(4) Dakota requests that Fort Randall offer to it for resale at wholesale rates any telecommunications service which Fort Randall provides at retail to any subscribers who are not telecommunications carriers. Dakota further requests that Fort Randall provide to Dakota a list such services and the wholesale prices for these services.
10. Pursuant to 47 U.S.C. § 251(c)(5) Dakota requests that Fort Randall make a part of its interconnection agreements with Dakota recognition of the duty which Fort Randall has under the Telecommunications Act of 1996 to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using Fort Randall's facilities or networks, as well as any other changes that would affect the interoperability of those facilities and networks.
11. Pursuant to 47 U.S.C. § 251(c)(6) Dakota requests collocation so that the facilities which Dakota has in the Centerville and Viborg exchanges can be interconnected with Fort Randall's facilities in those exchanges. Please provide Dakota with floor plans and descriptions of equipment in use in those exchanges so that Dakota may determine whether physical or virtual collocation is necessary for interconnection. Please provide pricing as well as terms and conditions.

Anticipating a prompt resolution of all unresolved issues, I look forward to continuing these negotiations with your company.

Sincerely,

Dakota Telecom, Inc.

Dakota Telecommunications Systems, Inc.

By:

T.W. Hertz
Thomas W. Hertz

CEO and President

**DAKOTA TELECOM, INC.**

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND LA WATS 800-239-7501

August 12, 1997

William Bullard
Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501-5070

Re: Second notice of requests for interconnection between Fort Randall Telephone Company and Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc.

Dear Mr. Bullard:

Pursuant to 47 USC §251(f) the South Dakota Public Utilities Commission is hereby notified that Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc. ("Dakota") have again, in good faith, requested interconnection, services and network elements from Fort Randall Telephone Company ("Fort Randall"). Enclosed are copies of letters sent by Dakota to Bruce Hanson, who has been designated as the interconnection contact person for Fort Randall, and a copy of a recent letter to Dakota from Mike Bradley, an attorney for Fort Randall.

Dakota is requesting interconnection, services and network elements for the purpose of serving customers in the Centerville and Viborg exchanges now served by Fort Randall. Dakota's new facilities in these exchanges will soon be complete and capable of providing advanced telecommunications services to Centerville and Viborg customers on a competitive basis. Interconnection with Fort Randall facilities is necessary to enable Dakota's new customers in Centerville and Viborg to connect with Fort Randall's customers in the same area.

As the enclosed reply correspondence from Mr. Bradley makes clear, Fort Randall is claiming exemption from the obligation to negotiate in good faith regarding interconnection.

EXHIBIT

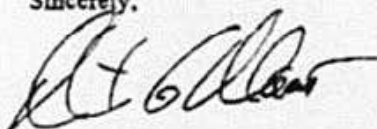
12

William Bullard
South Dakota Public Utilities Commission
August 12, 1997

page 2

Dakota hereby requests the South Dakota Public Utilities Commission to conduct the inquiry required by 47 USC §251(f)(1)(B) to determine whether the exemption of Fort Randall should be terminated.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. G. Marmet", written over a horizontal line.

Robert G. Marmet

Enclosures.

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BRIAN T. GREGAN

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MATTHEW M. MEYER

RETIRED:
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VERNE W. MOSS
JAMES H. KENNEDY
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August 21, 1997

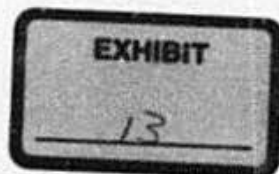
Thomas W. Hertz
CEO and President
Dakota Telecom, Inc.
P O Box 127
Irene, South Dakota 57037

Re: Reply to Letter Dated August 12, 1997

Dear Mr. Hertz:

This letter is in response to your letter of August 12, 1997. In that letter, you indicate a desire to negotiate with respect to every potential right and issue open to negotiation under the Telecommunications Act of 1996. This request is inconsistent with prior statements concerning Dakota's desire to be a facilities-based carrier with nothing more than a reciprocal compensation agreement. The request is also inconsistent with the type of interconnection agreement negotiated with US WEST Communications, Inc. Consequently, the actual purpose of your letter is unclear and does not advance the negotiation process in a meaningful manner.

Therefore, Fort Randall respectfully requests that Dakota provide meaningful detail concerning what it actually wants in the way of interconnection. Dakota makes the statement that it "hereby warrants that it will conduct its negotiations in good faith." The provision of detailed information on its actual needs would provide evidence that Dakota will back its statements with useful action. In the interim, Fort Randall will proceed to work on addressing those issues that can be addressed based on the limited information provided. For example, Fort



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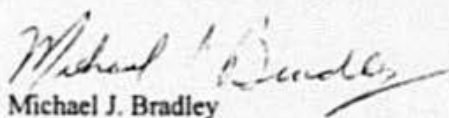
A PROFESSIONAL ASSOCIATION

Thomas W. Hertz
August 19, 1997
Page 2

Randall will be meeting with its consultants to determine the ability to provide interconnection in Centerville and Viborg and the costs associated with such an interconnection. We hope to provide at least some preliminary information during the first week of September.

Very truly yours,

MOSS & BARNETT
A Professional Association


Michael J. Bradley

MJB/mjb
cc: Bruce Hanson
Robert Marmet
127109/2Q2T011.DOC

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September 8, 1997

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WAYNE A. HENNING

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

Re: Request By Dakota For A Waiver Of The Rural Exemption
Docket No. TC-97-062

Dear Mr. Bullard:

On August 15, 1997, Dakota Telcom, Inc. and Dakota Telecommunications Systems, Inc. ("Dakota") filed a letter with the South Dakota Public Utilities Commission ("Commission") asserting that an August 12, 1997 letter sent to Fort Randall Telephone Company satisfied the requirements of a bona fide request under 47 U.S.C. § 251(f)(1). If the letter constitutes a bona fide request, Fort Randall must determine whether it will assert its right to an exemption from the provisions of 47 U.S.C. § 251(c), and the Commission must determine whether to waive Fort Randall's exemption. Section 251(f)(1) provides 120 days to complete the process. Fort Randall strongly believes that the August 12 letter was not a bona fide request. It does nothing more than assert that Dakota is requesting every possible form of unbundled service possible. Dakota cannot possibly need the range of services it has demanded, and this form of gamesmanship is not helpful to any of the parties. Nonetheless, based on discussions with Dakota, there is reason to believe that Dakota is seeking some unbundled services and does require interconnection. Therefore, Fort Randall stipulates to the start of the 120 day period.¹

Fort Randall is proceeding with all due speed to determine what interconnection services it is capable of providing, what network changes would be required to make other services

¹ Dakota did not serve the August 15, 1997 notice on Fort Randall or SDITC until September 4, 1997. The 120 day period for determining the waiver should run from that date rather than August 15. This would have the effect of giving the Commission until January 2, 1998 to resolve this issue (as contrasted to December 13, 1997).

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William Bullard
September 5, 1997
Page 2

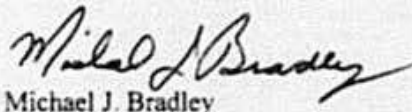
possible, and the host of other related issues that Dakota's request raises. This process is made more difficult by the fact that it is the first such request anyone the size of Fort Randall has had to face. Some of the issues that need to be addressed include: 1) the fact that the Centerville and Viborg exchanges are remote switches; 2) the current host switch is owned and operated by US WEST Communications, Inc.; 3) the inability to offer mechanized support systems; 4) the importance of maintaining security over the switch operations for switches that are usually unmanned; 5) the problems associated with billing systems that were not designed to differentiate between carriers using unbundled switching services; and 6) how to determine the cost for each of the various services.

Fort Randall has already held meetings with its accountants, engineers, and billing service providers, and has had informal discussions with US WEST Communications. It is doubtful that Fort Randall will be able to identify all of the problems until early November. Further, before bringing these problems to the Commission, one or more meetings with Dakota should occur to determine whether Dakota accepts whatever limitations have been identified. If issues remain unresolved, Fort Randall would need to prepare a filing with the Commission, including possible testimony, outlining the reasons for retaining the rural exemption with respect to those matters.

Therefore, Fort Randall respectfully requests that the Commission develop a schedule that allows Fort Randall to file its objection to the waiver of its rural exemption no earlier than November 14, 1997.

Very truly yours,

MOSS & BARNETT
A Professional Association



Michael J. Bradley

cc: Rolayne Wiest, Rich Coit, Bruce Hanson, Robert Marmet
MJB/mjb
130172/2SFW011.DOC

Certificate of Service

I hereby certify that an original and eleven copies of the above and foregoing Response to Request by Dakota for a Waiver of the Rural Exemption on behalf of Fort Randall Telephone Company were sent via facsimile and Federal Express on the 8th day of September, 1997, to the following:

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

and a true and correct copy was sent by facsimile to the following:

Rolayne Wiest
South Dakota Public Utilities Commission
Capitol Building
500 East Capitol
Pierre, South Dakota 57501

and a true and correct copy by facsimile and/or Federal Express or Overnight Mail, postage prepaid, to the persons on the attached list.


June Holmgren

Robert G. Marmet
P O Box 269
Centerville, SD 57014

Richard D. Coit
Executive Director
SDITC
St. Charles Hotel
207 E Capitol, Suite 206
Pierre, SD 57501

Bruce C. Hanson
Hanson Communications, Inc.
Box 800
Clara City, MN 56222-0800



Dakota Telecommunications Group
29705 453rd Ave.
Irene, South Dakota 57045-0066
605-263-3301 - - fax 605-263-3844

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SEP 11 1997

WICHAMER, J. BRADLEY

September 8, 1997

William Bullard, Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, South Dakota

Re: Interconnection with Ft. Randall Telco
TC 97-062

Dear Mr. Bullard:

Mr. Bradley's letter of September 8, 1997 adds another tiresome and predictable verse to Ft. Randall's continuing lament about the horrors of competition in rural areas. Dakota has clearly stated its intentions to become a facilities-based provider of competitive local exchange services (and backed them up with its actions to construct the system) since well before Ft. Randall purchased the Viborg and Centerville exchanges from U S West. Ft. Randall seems intent on throwing up as many regulatory and legal road blocks as it can find to prevent the customers in Viborg and Centerville from having the benefits of a competitive environment. Ft. Randall also seems convinced that without interconnection there can be no competition. They are wrong.

Dakota does not need any of Ft. Randall's facilities to provide local exchange services in the Viborg and Centerville exchanges. Dakota's only requirement for interconnection is essentially identical to an EAS (Extended Area Service) agreement between local exchange carriers for the exchange of local traffic. Ft. Randall and Dakota already have physical interconnection for the exchange of existing traffic via EAS circuits. It would be a technically simple matter to formally add what is needed here. Dakota is willing to enter exactly the same kind of physical interconnection agreement it now has with U S West (and approved by the SDPUC) for reciprocal, symmetrical exchange of EAS-type traffic. Unfortunately, Ft. Randall obfuscates this very simple situation with reams of peripheral, non-relevant argument.

Dakota formally asked for interconnection by its letter of June 1, 1997, using the same format as was successfully used to commence interconnection negotiations with U S West earlier this year, and which the FCC declined to expand for rural companies (Sec. 1257-1263, *In the Matter of Implementation of Local Competition Provision in the Telecommunications Act of 1996*, CC Docket No. 96-98). Ft. Randall managed to convince the South Dakota Commission that the request was not bona fide, however, and therefore should not be processed at that time, pending a more exact determination of what Ft. Randall thought was relevant. A second request was sent July 28, 1997. Dakota submitted a third request on August 12, 1997 stating that if the Commission required Dakota to serve in all Ft. Randall exchanges in South Dakota, then it need full interconnection capabilities in those areas where facilities were not being built. Ft. Randall's

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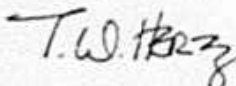
September 8, 1997

current letter (September 8) expresses surprise and consternation at Dakota's request, and now pleads for an extended schedule to even consider the request.

This is not rocket science. Dakota is building facilities in Viborg and Centerville, and needs only to formalize existing EAS-type interconnection arrangements. Ft. Randall, which had only one isolated exchange in the Black Hills of South Dakota prior to its purchase of additional telephone exchanges from US West, now seeks to seduce the Commission into believing that its entire South Dakota service area is sacrosanct, and that Dakota cannot serve any of it without serving all of it, contiguous or not. The FCC has directly addressed this issue, and said that an approach like Ft. Randall seeks to take here is not appropriate (Sec. 190, *In the Matter of the Federal-State Joint Board in Universal Service*, CC Docket No. 97-157). Letting Ft. Randall hide behind its flawed interpretation of the rules to protect its monopoly position is not only inconsistent with the spirit of competition and letter of the law, it is bad, very bad for consumers.

The Commission made its pro-competitive stance clear when it ruled that South Dakota law prohibiting competitive facilities cannot stand under the weight of the 1996 Telecom Act in Docket TC 96-127. Dakota began construction of its facilities in the Viborg and Centerville exchanges prior to the time that US West sold them to Ft. Randall. Dakota finds it inconceivable that the Commission would now succumb to disingenuous arguments and procrastination by an assignee of US West, especially one which knew exactly what it was getting when it bought the exchanges (and conditioned its agreement with US West accordingly).

Sincerely,



Thomas Hertz, CEO

cc: Mike Bradley, Rich Coit

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September 24, 1997

Thomas Hertz
Chief Executive Officer
Dakota Telecommunications Group
29705 453rd Ave
Irene, South Dakota 57045-0066

Re: Form Of Interconnection; Authority To Offer Service In Centerville and Viborg;
and Universal Service Funding

Dear Mr. Hertz:

The purpose of this letter is to respond to your letter of September 8, 1997 and to accept the form of interconnection proposed in that letter. Based on the position set forth in that letter, Fort Randall believes that a stipulated resolution of both the interconnection and certification issues with respect to Dakota's provision of competitive local service in Centerville and Viborg can be achieved and submitted to the South Dakota Public Utilities Commission ("Commission").

I. Interconnection Through Meet Point Facilities And Reciprocal Compensation As Proposed In Your August 8 Letter Would Be Acceptable To Fort Randall.

Your letter of August 8 includes Dakota's first response to Fort Randall's repeated requests to specify the type of interconnection that Dakota actually needs. In that letter, Dakota indicates that it only wants an "EAS" type interconnection. In contrast, Dakota's June 28, 1997 and August 12, 1997 letters to Fort Randall both requested virtually every possible form of interconnection and service. Because many services and interconnections could be extremely difficult and/or costly for Fort Randall to provide, we have been engaged in the difficult task of determining which of those services would be technically feasible, not economically unreasonable, and consistent with universal service. That process has not been completed

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because of the wide array of complex problems uncovered. However, in Dakota's September 8 letter to the Commission, you stated:

Dakota does not need any of Fort Randall's facilities to provide local exchange services in the Viborg and Centerville exchanges. Dakota's only requirement for interconnection is essentially identical to an EAS (Extended Area Service) agreement between local exchange carriers for the exchange of local traffic. . . . Dakota is willing to enter exactly the same kind of physical interconnection agreement it now has with US West (and approved by the SDPUC) for reciprocal, symmetrical exchange of EAS-type traffic.

We are proceeding on the belief that this statement accurately reflects Dakota's position, since you have been designated by Dakota as "the individual with authority to make binding representations on behalf of Dakota." (See Dakota's June 1, 1997 letter to Wes Hanson.) Fort Randall is willing and able to provide that type of interconnection.

More specifically, Fort Randall can provide: 1) meet-point facilities half way between Fort Randall's Centerville and Viborg switches and Dakota's switch; 2) reciprocal compensation for local traffic, and 3) number portability using remote call forwarding or direct inward dialing. Dakota would necessarily need to provide facilities between its switch and the meet points and provide an NXX specific to Centerville and a separate NXX specific to Viborg.

Fort Randall is in the process of reviewing the US WEST/Dakota interconnection agreement referenced by Dakota, along with other interconnection agreements, and will develop an interconnection agreement and a reciprocal terminating rate to make a specific proposal to Dakota.

II. Fort Randall's Position Is Subject To The Establishment Of Service Requirements That Will Prevent Discrimination Between Customers.

At this time, Dakota's Certificate of Authority does not permit it to offer service in exchanges operated by a rural telephone company. At Dakota's request, the proceeding to determine the service obligations which should be imposed as a condition on granting Dakota authority to serve Centerville and Viborg was stayed by the Commission. Fort Randall believes that, based on prior representations made by Dakota, this issue could also be resolved without further litigation. More specifically, Fort Randall will stipulate that the appropriate Dakota affiliate should receive a certificate of authority to serve local customers in Centerville and Viborg, subject to the following service requirements:

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- 1) Dakota must, within a reasonable period of time (nine months from the date Dakota first begins providing service under the Certificate), offer its service on a nondiscriminatory basis to all customers in the Centerville and Viborg exchanges; and
- 2) Dakota must offer a local calling scope to customers no less than is currently offered by Fort Randall.

While your August 8 letter does not explicitly state that Dakota would offer its services to all customers located within those exchanges, Dakota has repeatedly stated that intent. For example, in a June 11, 1997 letter, Dakota represented that it will offer its services to all customers in those exchanges, saying in part:

Dakota fully expects to meet the requirements of an Eligible Telecommunications Carrier on a facilities basis regardless of interconnection with Fort Randall.

This service commitment was reaffirmed in a July 11 brief to the Commission, wherein it was represented:

Dakota has every intention of bringing its services to each and every customer who requests service in a manner which is consistent with sensible engineering practices and controlled growth.

Based on these representations, we assume that Dakota does not intend to discriminate between customers in the towns of Centerville and Viborg and customers in the countryside around those towns. Further, for Dakota's pledge to offer nondiscriminatory service to all customers to be meaningful, service to customers must include adequate notice of availability to all potential customers, rates between customers in town and in the countryside must be comparable, and Dakota's service must be available to all customers within a reasonable period of time.

A. Dakota Should Be Obligated to Offer Its Services To All Customers Within The Centerville And Viborg Exchanges.

Fort Randall's legal obligation to provide service to all customers has a significant impact on Fort Randall's cost of service. In order to prevent unfair discrimination between customers and severe adverse impacts on customers in the higher cost parts of these exchanges, Dakota should accept the same obligation to offer service to all customers in these exchanges. Otherwise, competition could have a severe adverse impact on the affordability of rates for the 38 percent of residential and 9 percent of business customers located outside the towns of Centerville and Viborg. In recognition of this fact, 47 U.S.C. § 253 allows the Commission to

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Page 4

impose minimum service obligations on competitive local exchange carriers offering services in rural telephone company service areas.

Fort Randall has conducted a preliminary analysis of the cost of providing service in its study area. The information is based on application of US WEST Communications, Inc.'s ("USWC") BCPM model, which the Commission used to develop the unbundled element rates that USWC must offer AT&T. That costing model is able to break down costs for varying densities. Twenty-eight percent of Fort Randall's customers reside in the lowest density area (0 to 10) and have a cost per access line of \$117.27.¹ The remaining 72 percent of the customers in Centerville and Viborg exchanges reside in areas with a density of 11 to 50, and have a cost per access line of \$79.85.²

Thus, there is a loop cost differential of \$37.42 between the more dense and less dense service areas. If Dakota is allowed to serve only the more dense and shorter loop in-town areas of these exchanges, it will have an overwhelming cost advantage.

With these cost advantages, it should be assumed that Dakota would be able to price its services significantly below Fort Randall's rates and obtain at least 50 percent of the in-town customers (approximately 32 percent of Fort Randall's customers and more than 32 percent of Fort Randall's revenues). The impact of losing only the low-cost customers would serve to increase Fort Randall's weighted cost of service, increasing Dakota's overall cost advantage.

In addition, 81 percent of the business customers are located in the lower cost in-town area. Consequently, if Dakota is allowed to focus its efforts in the lower-cost service areas, it will also position itself to receive a disproportionate higher than average portion of the revenues available from business customers. Both Centerville and Viborg have one business customer that purchases approximately 10 percent of the business access lines and also purchases a disproportionate amount of long distance service.

In contrast, if Dakota offers its services on a uniform basis to all customers, Fort Randall's customer losses should be spread over the full range of the cost of service, and Dakota

¹ This cost includes both loop and switching costs. Under the Hatfield 3.1 model, using the four exchanges Fort Randall initially purchased, the unbundled loop cost for this density would be \$99.26.

² The Hatfield model does not have a corresponding density level. The second smallest density level is 5 to 100 (twice that of the USWC BCPM), and develops an unbundled loop cost of \$27.47 for Fort Randall's initially purchased exchanges.

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should have an average cost of service that is reasonably comparable to Fort Randall's. While the loss of customers would obviously adversely affect Fort Randall and rates could still increase due to the loss of some economies and the need to recover fixed costs over fewer customers, the overall impact should be much less than if Dakota is allowed to cherry pick customers.

B. Dakota Should Provide All Potential Customer With Notice Of The Availability Of Its Services.

To make the availability of service meaningful, reasonable notice to customers is needed. Customers cannot be expected to take a service which is not made known to them. The duty to providing notice of availability should be acceptable to Dakota unless Dakota intends to restrict availability.

C. The Rates Offered In Town And In The Countryside Should Be Reasonably Comparable.

To make the availability of service meaningful, it is also essential that the rates between customers remain reasonably comparable, and that Dakota not impose different rate obligations, such as special construction charges. If, for example, out-of-town monthly rates were \$20 higher than rates in town, the result would likely be that no out-of-town customer would accept service. In this way, Dakota could manipulate the acceptance of its service to avoid serving the higher cost out-of-town customers. The result would be the same unreasonable discrimination and adverse impact on the average cost of serving the remaining customers as if Dakota had not offered its services except to low-cost customers.

D. Service Should Be Offered To All Customers Within A Reasonable Period Of Initial Offerings.

Because Dakota will be providing service using its own facilities, it is unlikely that it can offer service to all customers immediately. However, it is also important that Dakota have a reasonable deadline to begin offering its services to all customers. Dakota should be able to meet that obligation within nine months of first offering service after the Commission issues Dakota a Certificate of Authority. Nine months would provide sufficient time for Dakota to install its facilities.

Thomas Hertz
September 25, 1997
Page 6

E. Dakota Should Offer The One Option That Has No Smaller Local Calling Scope, Including EAS, Than Customers Currently Receive.

Centerville has EAS to Viborg; and Viborg has EAS to Beresford, Centerville, Flyger, Hurley, Irene, Davis, and Mayfield. While EAS benefits a majority of the customers, a competitor could acquire those customers not economically benefited by EAS by simply offering those customers (which represent a sizable minority) local service without EAS. In order to compete with such a service offering, Fort Randall would need to offer a comparable service. The remaining customers of Fort Randall would necessarily see an increase in the EAS additive to make up for the lost EAS revenues. That, in turn, would make the EAS option uneconomical to additional customers, with a spiral that would eventually end with Fort Randall offering EAS as a high-priced premium service, thus eliminating the intended purpose of EAS.

Fort Randall's existing EAS routes have the following rate consequences:

<u>Exchange</u>	<u>Residential rate</u>	<u>Business rate</u>
Viborg	\$0.70	\$2.40
Centerville	\$0.70	\$2.40

To assure Fort Randall's ability to continue offering EAS, Dakota should be required to have the same local service obligation as Fort Randall.³

III. Fort Randall Does Not Agree That There Should Be More Than One Universal Service Recipient In Centerville And Viborg.

While Fort Randall is willing to agree to provide the form of interconnection requested by Dakota and to the grant of a certificate to compete, we wish to make it clear that Fort Randall does not agree that Dakota should, at any time, receive Universal Service funding for competition in the Centerville and Viborg exchanges. You should be aware that Fort Randall

³ The reasonableness of this requirement is further demonstrated by the fact that the Commission conditioned its approval of US WEST's sale of these exchanges on Fort Randall continuing to offer all existing EAS service. Docket TC96-125, Decision and Order Regarding the Sale, dated October 24, 1996.

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A PROFESSIONAL ASSOCIATION

Thomas Hertz
September 25, 1997
Page 7

will vigorously oppose any request by Dakota to receive federal or state Universal Service funding for its local service offerings in Centerville and Viborg.

Pursuant to 47 U.S.C. § 214(e), Dakota may only receive federal Universal Service funding if: 1) it meets the service obligations of an eligible telecommunications carriers in all of Fort Randall's service area; and 2) the Commission finds that authorizing more than one eligible telecommunications carrier is consistent with the public interest convenience and necessity. Dakota does not satisfy the first requirement, and the Commission should find that allowing multiple eligible telecommunications carriers to receive federal universal service support would be contrary to the public interest.

Dakota has voluntarily elected to place facilities only in the Centerville and Viborg exchanges. Fort Randall's study area is much larger than Centerville and Viborg. Fort Randall is required to provide facilities, not only in Centerville and Viborg, but also in Tabor, Tyndall, Wagner, Lake Andes and Hermosa. Once Fort Randall replaces the US WEST host switch with a new host switch in Wagner (occurring in the first quarter of 1998), it will operate all of its exchanges, except the Hermosa exchange, as a single integrated operation out of Wagner. By selecting two out of the seven exchanges to install facilities, Dakota has engaged in a form of cherry picking, made possible only because of Dakota's other exchange facilities. Under any other circumstance, Dakota's decision to duplicate facilities in exchanges averaging only 667 access lines would be unthinkable because it is terribly uneconomic and wasteful. The Federal Universal Service Fund was never intended to subsidize such selective competition.

Nor did Congress intend to provide Universal Service funding to competitors in situations where the consequence must necessarily be an increase in the rates of the incumbent Eligible Telecommunications Carrier's customers. A rate increase would be inevitable because the grant of Universal Service funding to Dakota would necessarily mean the loss of such funding to Fort Randall. If Dakota cannot economically provide competitive services using its own facilities without receiving Universal Service Fund support, it should abandon its plans to overbuild the network and purchase Fort Randall's services for resale. Universal Service funding should act as a check on uneconomical facilities, rather than as an economic incentive that drives up local rates.

Therefore, Fort Randall will oppose the grant of any Universal Service funding to Dakota for its operations in Centerville and Viborg. Such funding would not only violate federal law by granting funding to a provider serving less than Fort Randall's entire study area, it would also jeopardize the very purpose of the Universal Service funding -- to assure the support of state-of-the-art, affordable service in rural areas.

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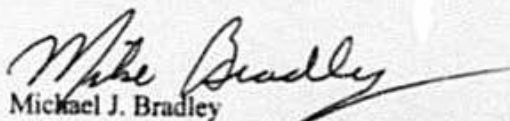
Thomas Hertz
September 25, 1997
Page 8

IV. Conclusion.

Fort Randall will proceed to prepare a proposed interconnection agreement permitting meet-point reciprocal compensation. Dakota will still need to obtain the Commission's authority to offer local competitive service in Centerville and Viborg, and Fort Randall is offering to stipulate to very reasonable basic service obligations. Finally, Dakota is on notice that it proceeds at its own risk by installing facilities that should not receive Universal Service Fund support.

Very truly yours,

MOSS & BARNETT
A Professional Association



Michael J. Bradley
Attorneys on behalf of Fort Randall Telephone Co.

MJB/mjb
cc: William Bullard
Rolayne Wiest
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SEP 24 1997

MICHAEL J. BRADLEY

September 25, 1997

Michael J. Bradley
MOSS & BARNETT
Attorney for Fort Randall Telephone Co.
4800 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402-4129

RE: Negotiations between Dakota Telecom, Inc. and Fort Randall Telephone Co.

Dear Mike:

Thank you for your letter of September 24, 1997 directed to Tom Hertz. It had been my understanding that Bruce Hanson, Treasurer of Hanson Communications in Clara City, Minnesota, was the individual with authority to make binding representations on behalf of Fort Randall. Please clarify the identity of Fort Randall's designated negotiator. Pending such clarification, Dakota Telecom, Inc., on behalf of itself and Dakota Telecommunications Systems, Inc. (collectively "Dakota") will assume your authority, and treat your letter as a part of the continuing negotiations which were begun on June 1, 1997.

From your letter it appears that there are several areas which offer promise in these negotiations. Other areas appear to rest upon legal assumptions with which Dakota cannot agree, and which, it appears, will ultimately have to be resolved by the appropriate regulatory authorities. Nonetheless, in the spirit of good faith negotiations, Dakota remains committed to seeking a mutually agreeable contractual resolution to as many disputes as possible.

With reference to the specific points raised by your letter, I offer the following responses:

I. Interconnection through Meet Point Facilities

A meet point arrangement for the interconnection of Dakota's traffic with Fort Randall's makes sense. What is not clear from your letter is where Fort Randall proposes to meet. As you may be unfamiliar with the geography, "half way between Fort Randall's Centerville and Viborg switches and Dakota's switch" would be out in the country, either in crop land or in a rural highway ditch. For the sake of the continuing good health of both Fort Randall's and Dakota's employees, a meet point in a more accessible location

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should be considered. Dakota has facilities in both Centerville and Viborg and would be willing to build facilities right up to, or even into Fort Randall's local offices in those towns.

We look forward to discussing the issues of reciprocal compensation for local traffic and number portability. Prices and availability of these services are of great interest to Dakota.

Dakota understands that it must provide facilities between its switch and Fort Randall's meet point or switch. Dakota has obtained an NXX for each of the Centerville and Viborg exchanges.

II. Establishment of Service Requirements

Legitimate service requirements imposed by the South Dakota Public Utilities Commission consistent with the Communications Act of 1934, as amended, will be met by Dakota.

Dakota has said in the past, and reiterates here, that it intends to serve all customers in these exchanges. A nine month gestation period is appropriate for many species of mammal. It may, or may not, be appropriate for engineering and constructing rural telecommunications facilities. A date by which Dakota will be able to serve any customer in the Centerville or Viborg exchange does not seem to be an appropriate item for negotiating in an interconnection agreement.

Several of the other obligations suggested by Fort Randall appear to be Eligible Telecommunications Carrier ("ETC") requirements. Entering into a Stipulation with Fort Randall which imposes ETC requirements as part of an interconnection agreement does not seem to be appropriate.

Issues such as mirroring extended area service ("EAS"), advertising of availability and town and country rates or construction charges are issues which are internal marketing decisions. For Dakota to stipulate to vesting control of these matters in an incumbent competitor does not make any business sense, and is not required by any regulatory statute or rule.

III. Universal Service

Dakota has every intention of seeking ETC status in the Centerville and Viborg exchanges. Your position regarding Fort Randall's study area as the minimum service area for purposes of ETC status is acknowledged. Dakota's position is that the Fort Randall study area must be disaggregated into contiguous areas.

In order to evaluate your statement that "Dakota should abandon its plans to overbuild the network and purchase Fort Randall's services for resale" it will be necessary to know

what discount from retail prices Fort Randall is offering to Dakota. Please forward those prices along with the prices for unbundled network elements in the Centerville and Viborg exchanges along with the same prices for Tabor, Tyndall, Wagner, Lake Andes and Hermosa.

I look forward to your reply and to continuing these negotiations.

Sincerely,
Dakota Telecom, Inc.



Robert G. Marmet

cc: William Bullard
Rolayne Wiest

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October 13, 1997

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ROBERT J. LARSEN
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EDWARD J. BLUMHART
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WILLIAM HAY
THOMAS A. JUD
DAVID M. GIBCO
CARL E. WEL
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RETIRED:
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VIRGINIA M. JONES
JAMES H. JOHNSON
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HOWARD S. COE
PATRICK F. PLANKAMP
WILLIAM H. RYAN

Mr. Thomas Hertz
Dakota Telecommunications Group
29705 - 453rd Avenue
PO Box 66
Irene, SD 57037-0066

Dear Mr. Hertz:

As requested in your September 8, 1997 letter, attached is a proposed contract for reciprocal compensation and interconnection using "EAS" type arrangements. The contract is based on the agreement Dakota entered into with US WEST Communications, Inc. ("USWC"), as modified to reflect the limited services Dakota has requested.

You will note that the contract contains an effective date of March 1, 1998. That is the estimated date for Fort Randall Telephone Company ("Fort Randall") to begin serving the Centerville and Viborg exchanges using its new Host switch out of its Wagner exchange. If Dakota desires an earlier effective date, it will be necessary for Fort Randall to make special arrangements with USWC, and the associated added costs would need to be separately addressed.

Mr. Marmet, in a letter dated September 25, 1997, requested that Fort Randall provide the wholesale discount at which it would offer its services for resale. Fort Randall has determined that its wholesale discount, applying the avoided cost principles of the Telecommunications Act of 1996, would be 8.8 percent. However, before Fort Randall could provide services for resale, it would require significant changes to the current billing system. Fort Randall has received a quote from its billing service provider of between \$46,500 and \$49,500 (depending on the level of billing detail Dakota would desire) to make



MOSS & BARNETT

A PROFESSIONAL ASSOCIATION

Mr. Thomas Hertz

October 13, 1997

Page 2

the changes needed to support resale. Therefore, if Dakota wishes to order services for resale, it would be necessary to negotiate an acceptable method for recovering those costs.

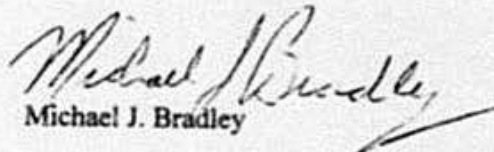
Finally, Mr. Marmet requested that Fort Randall provide rates for unbundled service elements. That request is not supported by your September 8, 1997 letter. However, Fort Randall has determined that the cost of providing an unbundled loop for customers within the towns of the two exchanges would be \$70.38 and \$108.09 for customers located outside the town areas. These rates were determined using the BCPM costing model. The switching rate would be the same as is contained in the attached Interconnection Agreement.

Based on your September 8, 1997 letter, Dakota has not requested any services that would require Fort Randall to assert its exemption from the requirements of Section 251(c). Therefore, Fort Randall believes that there are no rural exemption issues on which it could submit testimony on October 29, 1997, or on which an evidentiary hearing could be conducted related to the rural exemption.

Very truly yours,

MOSS & BARNETT

A Professional Association


Michael J. Bradley

MJB/mjb

137006/2XPQ011.DOC

Enclosure

cc: William Bullard (w/o encl.)
Rolayne Wiest (w/o encl.)
Bruce Hanson (w/encl.)
Richard D. Coit (w/encl.)

INTERCONNECTION AGREEMENT

between

FORT RANDALL TELEPHONE COMPANY

and

DAKOTA TELECOM, INC.

and

DAKOTA TELECOMMUNICATIONS SYSTEMS, INC.

for

SOUTH DAKOTA

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INTERCONNECTION AGREEMENT

This Interconnection Agreement, made as of the ____ day of _____, 1997, is between Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc. (collectively "Dakota") and Fort Randall Telephone Company ("Fort Randall").

I. RECITALS

Pursuant to this Interconnection Agreement ("Agreement"), Dakota and Fort Randall (collectively, "the Parties") will extend certain arrangements to one another within the Centerville and Viborg telephone exchange service areas within the state of South Dakota. This Agreement includes terms, conditions, and prices for facilities-based network interconnection.

II. SCOPE OF AGREEMENT

- A. This Agreement sets forth the terms, conditions and prices under which the parties agree to provide interconnection and reciprocal compensation for the exchange of local traffic between Fort Randall and Dakota for the purpose of offering telecommunications services in the Centerville and Viborg, South Dakota, exchanges. The Agreement includes all accompanying appendices.
- B. In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be reasonably delayed, withheld or conditioned.
- C. Dakota will notify Fort Randall when Dakota begins offering residential and business exchange services in Centerville and Viborg through the use of Fort Randall's facilities.

III. DEFINITIONS

- A. "Act" means the Communications Act of 1934 (47 U.S.C. § 151, et. seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or a Commission within its state of jurisdiction.
- B. "Basic Exchange Telecommunications Service" means a service offered to end users which provides the end user with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such end user to generally place calls to, or receive calls from, other stations on the public

switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunications Services. As used solely in the context of this statement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.

- C. "Calling Party Number" or "CPN" is a Common Channel Signaling ("CCS") parameter which refers to the number transmitted through a network identifying the calling party. Reference Technical Pub. 77342.
- D. "Commission" means the South Dakota Public Utilities Commission.
- E. "Common Channel Signaling" or "CCS" means a method of digitally transmitting call set-up and network control data over a special signaling network fully separate from the public voice switched network elements that carry the actual call. The CCS used by the Parties shall be Signaling System 7.
- F. "Interconnection" is as described in the Act and refers to the connection of separate pieces of equipment, facilities, or platforms between or within networks for the purpose of transmission and routing of Telephone Exchange Service traffic and Exchange Access traffic.
- G. "LIS" is defined as local interconnection services.
- H. "Local Traffic" means traffic that is originated by an end user of one Party in either the Centerville or Viborg exchange and terminates to an end user of the other Party in either the Centerville or Viborg exchange.
- I. "Mid-Span Meet" is a point of interconnection between two networks, designated by two telecommunications carriers, at which one carrier's responsibility for service begins and the other carrier's responsibility ends.
- J. "North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.
- K. "NXX" means the fourth, fifth and sixth digits of a ten-digit telephone number.
- L. "Party" means either Fort Randall or Dakota and "Parties" means Fort Randall and Dakota.

- M. "Point of Interface" or "POI" is a mutually agreed upon point of demarcation where the exchange of traffic between Fort Randall and Dakota takes place.
- N. "Telecommunications Carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.
- O. Terms not otherwise defined here, but defined in the Act or in regulations implementing the Act, shall have the meaning defined there.

IV. RECIPROCAL TRAFFIC EXCHANGE

A. Scope

Reciprocal traffic exchange addresses the exchange of traffic between Dakota end users located in the Centerville or Viborg exchanges and Fort Randall end users located in the Centerville or Viborg exchanges.

B. Types of Traffic

1. The types of traffic to be exchanged under this Agreement are limited to local traffic as described above.
2. The traffic not covered by this Agreement includes all other traffic, including, but not limited to, IntraLATA toll traffic, Switched Access traffic, InterLATA toll traffic, EAS traffic other than calls between customers located in Centerville and Viborg, Transit traffic, and certain ancillary traffic such as:
 - a. Directory Assistance
 - b. Operator call termination (busy line interrupt and verify)
 - c. 800/888 database dip
 - d. LIDB
 - e. Information services requiring special billing
 - f. Wireless traffic terminating on either Party's network from a Commercial Mobile Radio Service provider.

Certain other EAS traffic not covered by this Agreement is being exchanged by the Parties. This Agreement is not intended to alter or change those arrangements.

C. Rate Structure -- Local Traffic

1. Call Termination

- a. The Parties agree that call termination rates as described in Appendix A will apply reciprocally for the termination of local traffic per minute of use at either Party's end office.
- b. For purposes of call termination of the initial traffic, the initial switches shall be treated as end office switches.

2. Transport

- a. The parties agree that reciprocal transport rates as described in Appendix A will apply. The Parties shall negotiate the point of demarcation. The total costs of providing interconnection facilities shall be shared equally by the Parties, and the mid-point shall be treated as the meet point of intersection ("POI"). Each Party shall be responsible for maintenance between their respective end offices and the POI.
- b. Direct-trunked transport facilities are provided as dedicated DS1 facilities without the tandem switching functions, for the use of either Party between the point of interconnection and the terminating end office or tandem switch.

3. Bill and Keep

- a. If the ratio of calls between Dakota and Fort Randall fall within the range of 45% to 55% inclusive, the traffic shall be transported and terminated on a bill and keep basis.

D. LIS Interface Code Availability and Optional Features

1. Interface Code Availability

Supervisory Signaling specifications, and the applicable network channel interface codes for LIS trunks, are the same as those used for Feature Group D Switched Access Service, as described in the Parties' applicable switched access tariffs.

2. Optional Features

2. Optional Features

a. Inband MF Signaling

Inband MF signaling is available for LIS trunks. Provisioning of the LIS trunks equipped with MF signaling is the same as that used for Feature Group D Switched Access.

[The following paragraphs (b) and (c) are dependent on Fort Randall's SS-7 provider's willingness to do the necessary data dips. Fort Randall is investigating this issue.]

b. SS7 Out-of-Band Signaling.

SS7 Out-of-Band Signaling is available if Dakota elects to interconnect at Fort Randall's Wagner, South Dakota exchange. Common Channel Signaling Access Capability Service, as set forth in this Agreement, must be ordered by Dakota when SS7 Out-of-Band Signaling is requested on LIS trunks.

c. Clear Channel Capability

Clear Channel Capability permits 24 DS0-64 kbit/s services or 1.536 Mbit/s of information on the 1.544 Mbit/s line rate. Clear Channel Capability is available for LIS trunks equipped with SS7 Out-of-Band Signaling. Clear Channel Capability is only available on trunks to Fort Randall's switch located in Wagner, South Dakota. (Clear Channel Capability is not available on trunks to Fort Randall's end offices at Centerville or Viborg). Clear Channel Capability must be requested on the order for the new LIS trunks. The provisioning of the LIS trunks equipped with Clear Channel Capability is the same as that used for Feature Group D Switched Access Service.

E. Measuring Local Interconnection Minutes

1. Measurement of terminating Local Interconnection Minutes begins when the terminating LIS entry switch receives answer supervision from the called end user's end office indicating the called end user has answered. The measurement of terminating call usage over LIS trunks ends when the terminating LIS entry switch receives disconnect supervision from either the called end user's end office, indicating the called end user has disconnected, or Dakota's point of interconnection, whichever is recognized first by the entry switch.

2. Fort Randall and Dakota are required to provide each other the proper call information (e.g., originated call party number and destination call party number, etc.) to enable each Party to issue bills in a complete and timely fashion.

F. Testing

1. Acceptance Testing

At the time of installation of the interconnection facilities group, and at no additional charge, the Parties will cooperatively test the same parameters tested for terminating Feature Group D Switched Access Service.

2. Testing Capabilities

- a. Terminating LIS testing is provided where equipment is available, with the following test lines: seven-digit access to balance (100 type), milliwatt (102 type), nonsynchronous or synchronous, automatic transmission measuring (105 type), data transmission (107 type), loop-around, short circuit, open circuit, and non-inverting digital loopback (108 type).
- b. In addition to LIS acceptance testing, other tests are available (e.g., additional cooperative acceptance testing, automatic scheduled testing, cooperative scheduled testing, manual scheduled testing, and non-scheduled testing) at the switched access tariff rate.

G. Ordering

1. When ordering LIS, the ordering Party shall specify on the service order: 1) the number of two-way trunks to be interconnected at the mid-span meet POI; 2) the peak busy hour CCS from the Dakota end office.
2. A joint planning meeting will precede Dakota and Fort Randall trunking orders.
3. Due dates for installation of facilities will be determined on an individual case basis.
4. The provisions of Section IV.C.2(a) will apply.

V. INTERCONNECTION

A. Definition

"Interconnection" is the linking of the Fort Randall and Dakota networks for the mutual exchange of traffic. Interconnection does not include the transport and termination of traffic. Interconnection is provided by Mid-Span Meet arrangements.

B. Mid-Span Meet POI

The Parties agree to use a Mid-Span Meet POI, limited to the interconnection of facilities between one Party's switch and the other Party's switch. The actual physical POI and facilities used will be subject to negotiations between the Parties.

C. Quality of Interconnection

Fort Randall will not, for the purpose of interconnection, provide to Dakota less favorable terms and conditions than Fort Randall provides itself or in a manner less efficient than it would impose on itself. The quality of interconnection will be at least equal to that of Fort Randall.

Both Parties agree to manage their network switches in accordance with the Bellcore LSSGR. The acceptable service levels for LIS and the criteria for applying protective controls will be administered in the same manner as the network management for Switched Access Service.

D. Physical Point of Interface (POI)

Each Party is responsible for providing its own facilities up to the actual physical POI. The Parties will negotiate the facilities arrangement between their networks and the physical POI.

E. Trunking Requirements

1. The Parties agree to provide designed interconnection facilities that meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, in accordance with industry standards.
2. Two-way trunk groups will initially be established.
3. Trunk group connections will be made at a DS1 or multiple DS1 level for exchange of EAS/local traffic.

4. The Parties will provide Common Channel Signaling (CCS) to one another upon request by Dakota on interconnection facilities between Dakota and Fort Randall's Wagner, South Dakota exchange. All CCS signaling parameters will be provided, including calling party number (CPN). All privacy indicators will be honored.
5. Where CCS is not provided, in-band multi-frequency (MF) wink start signaling will be provided.
6. The Parties shall terminate local traffic exclusively on the interconnection facilities.

F. Interconnection Forecasting

1. The Parties agree to meet annually to determine the forecasted facility needs for the succeeding 12-month period and shall include:
 - a. The use of Common Language Location Identifier (CLLI-MSG), which are described in Bellcore documents BR 795-100-100 and BR 795-400-100;
 - b. A description of major network projects anticipated for the following six months that could affect the other Party. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the following forecasting period. This planning will include the issues of network capacity, forecasting and compensation calculation, where appropriate.
3. If a trunk group is under 75 percent of centum call seconds (ccs) capacity on a monthly average basis for each month of any three-month period, either Party may request to resize the trunk group, which resizing will not be unreasonably withheld. If a resizing occurs, the trunk group shall not be left with less than 25 percent excess capacity. In all cases, grade of service objectives identified below shall be maintained.
4. Each Party shall provide the name of the person to contact for planning, forecasting and trunk servicing purposes.

G. Service Interruptions

1. Standards and procedures for notification of trunk disconnects will be jointly developed by the Parties. Neither Party shall be

expected to maintain active status for a trunk disconnected by the other Party for an extended or indefinite period of time. Collectively, the Parties will use their best good faith efforts to complete and agree on such plan.

2. The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services; 2) cause damage to their plant; 3) violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service."
3. If either Party causes an Impairment of Service, as set forth in this Section, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem. The Impaired Party shall advise the Impairing Party that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, the Impaired Party may temporarily discontinue use of the affected circuit, facility or equipment.
4. Each Party shall be solely responsible, and bear the expense, for the overall design of its services. Each Party shall also be responsible for any redesign or rearrangement of its services that may be required because of changes in facilities, operations or procedures, minimum network protection criteria, and operating or maintenance characteristics of the facilities.
5. To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a Trouble Reporting Control Office (TRCO) for such service.
6. Where new facilities, services and arrangements are installed, the TRCO shall ensure that continuity exists and take appropriate

transmission measurements before advising the other Party that the new circuit is ready for service.

7. Each Party shall furnish a trouble reporting telephone number for the designated TRCO. This number shall give access to the location where facility records are normally located and where current status reports on any trouble reports are readily available.
8. Before either Party reports a trouble condition, they shall use their best efforts to isolate the trouble to the other's facilities.
 - a. In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority provided to other interconnecting carriers.
 - b. The Parties shall cooperate in isolating trouble conditions.

VI. ACCESS TO TELEPHONE NUMBERS

A. Number Resources Arrangements

1. Nothing in this Agreement shall be construed in any manner to limit or otherwise adversely impact either Party's right to the request and assignment of any NANP number resources including, but not limited to, central office (NXX) codes pursuant to the Central Office Code Assignment Guidelines (last published by the Industry Numbering Committee ("INC") as INC 95-0407-008, Revision 4/19/96, formerly ICCF 93-0729-010), NXXs, and the initial points of interface for interconnection between the Parties' networks, will be included in Addenda to this Agreement.
2. The Parties will comply with code administration requirements as prescribed by the Federal Communications Commission, the Commission, and accepted industry guidelines.
3. It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to the Local Exchange Routing Guide (LERG) guidelines to recognize and route traffic to the other Party's assigned NXX codes at all times. Neither Party shall impose any fees or charges whatsoever on the other Party for such activities. Dakota agrees to obtain and use one or more NXXs that are exclusively assigned to the Centerville exchange service area and one or more NXXs that are exclusively assigned to the Viborg exchange service area. The Parties will cooperate to establish procedures to ensure the timely activation of NXX assignments in their respective networks.

4. Each Party shall be responsible for notifying its customers of any changes in numbering or dialing arrangements to include changes such as the introduction of new NPAs or new NXX codes.
5. Each Party is responsible for administering NXX codes assigned to it. Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of CLI codes assigned to its switches. Each party shall use the LERG published by Bellcore or its successor for obtaining routing information and shall provide all required information to Bellcore for maintaining the LERG in a timely manner.

VII. DIALING PARITY

The Parties shall provide Dialing Parity to each other as required under Section 251(b)(3) of the Act.

VIII. DIRECTORY ISSUES

Fort Randall and Dakota agree that certain issues, such as yellow page advertising, directory distribution, access to call guide pages, yellow page listings, will be the subject of negotiations between Dakota and directory publishers, including U S WEST DEX.

IX. NOTICE OF CHANGES

If a Party makes a change in its network which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide advance notice of such change to the other Party in accordance with the applicable FCC regulations.

X. REFERRAL ANNOUNCEMENT

When an end user customer changes from Fort Randall to Dakota, or from Dakota to Fort Randall, and does not retain their original main/listed telephone number, the Party formerly providing service to the end user will provide a transfer of service announcement on the abandoned telephone number. The announcement shall be provided for 3 months for residential customers and 12 months for business customers. Each Party will provide this referral service. This announcement will provide details on the new number that must be dialed to reach this customer.

XI. COORDINATED REPAIR CALLS

- A. Dakota and Fort Randall will employ the following procedures for handling misdirected repair calls:

1. Customers of Dakota shall be instructed to report all cases of trouble to Dakota. Customers of Fort Randall shall be instructed to report all cases of trouble to Fort Randall.
2. In responding to repair calls, neither Party shall make disparaging remarks about each other, nor shall they use these repair calls as the basis for internal referrals or to solicit customers to market services. Either Party may respond with accurate information in answering customer questions.

XII. AUDIT PROCESS

- A. "Audit" shall mean the comprehensive review of:
1. Data used in the billing process for services performed and facilities provided under this Agreement; and
 2. Data relevant to provisioning and maintenance for services performed or facilities provided by either of the Parties for itself or others that are similar to the services performed or facilities provided under this Agreement for interconnection.
- B. The data referred to in subsection A.2., above, shall be relevant to any performance standards that are adopted in connection with this Agreement, through negotiation, arbitration or otherwise.

This Audit shall take place under the following conditions:

1. Either Party may request to perform an Audit.
2. The Audit shall occur upon 30 business days written notice by the requesting Party to the non-requesting Party.
3. The Audit shall occur during normal business hours.
4. There shall be no more than one Audit requested by each Party under this Agreement in any 12-month period.
5. The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain information relevant to the operation of this Agreement.
6. The location of the Audit shall be the location where the requested records, books and documents are retained in the normal course of business.

7. All transactions under this Agreement which are over 24 months old will be considered accepted and no longer subject to Audit.
 8. Each Party shall bear its own expenses occasioned by the Audit, provided that the expense of any special data collection shall be borne by the requesting Party.
 9. The Party requesting the Audit may request that an Audit be conducted by a mutually agreed-to independent auditor. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit.
 10. In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties.
 11. The Parties agree that if an Audit discloses error(s), the Party responsible for the error(s) shall, in a timely manner, undertake corrective action for such error(s).
- C. All information received or reviewed by the requesting Party or the independent auditor in connection with the Audit is to be considered Proprietary Information as defined by this Agreement. The non-requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or the resolution of its findings as described above to execute a nondisclosure agreement satisfactory to the non-requesting Party. To the extent an Audit involves access to information of other competitors, Dakota and Fort Randall will aggregate such competitors' data before release to the other Party, to insure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an affiliate of the party being audited (including itself and its subsidiaries), the Parties shall be allowed to examine such affiliates' disaggregated data, as required by reasonable needs of the audit.

XIII. MISCELLANEOUS TERMS

A. General Provisions

1. Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with the other Party's network and to terminate the

traffic it receives in that standard format to the proper address on its network. Such facility shall be designed based upon the description and forecasts provided under this Agreement.

2. Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's customers, and each Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, either Party shall provide the other Party notice of such violation, if practicable, at the earliest practicable time.
3. Each Party is solely responsible for the services it provides to its customers and to other Telecommunications Carriers.
4. The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

B. Term of Agreement

This Agreement shall become effective on the latter of Commission approval pursuant to Sections 251 and 252 of the Act or April 1, 1998. This Agreement shall remain effective for a period of five years, expiring on April 1, 2003. The Agreement shall automatically renew for one-year terms unless written notice terminating the Agreement is provided no later than six months before the end of the then-current term. This Agreement shall remain in effect until replaced by another Agreement.

C. Most Favored Nation Terms and Treatment

The Parties agree that the provisions of Section 252(i) of the Act shall apply, including state and federal interpretive regulations in effect from time to time.

D. Payment

1. Amounts payable under this Agreement are due and payable within thirty (30) days after the date of invoice.
2. Unless otherwise specified in this Agreement, any amount due and not paid by the due date stated above shall be subject to a late charge equal to either: i) 0.049 percent per day for the number of calendar days from the payment due date to and including, the

date of payment, that would result in an annual percentage rate of 18% or ii) the highest lawful rate, whichever is less.

3. Should either Party dispute any portion of the monthly billing under this Agreement, that Party will notify the other in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. The disputing Party shall pay all amounts due. Both Dakota and Fort Randall agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. Should the dispute be found in Dakota's favor, Fort Randall will reimburse Dakota the resolved amount plus interest at the above-specified rate. Should the dispute be found in Fort Randall's favor, Dakota will reimburse Fort Randall the resolved amount plus interest from the date of payment at the above-specified rate.

E. Disconnection

Should either Party fail to make payment within ninety (90) days of receipt of a billing, the other Party may disconnect the interconnection facilities after providing ten (10) days' written notice.

F. Taxes

Each Party securing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such securing Party (or the providing Party when such providing Party is permitted to pass along to the securing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice.

G. Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). In the event of a labor

dispute or strike, the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

H. Limitation of Liability

1. Each Party shall be liable to the other for direct damages for any loss, defect or equipment failure resulting from the causing Party's conduct or the conduct of its agents or contractors in performing the obligations contained in this Agreement.
2. Neither Party shall be liable to the other under this Agreement for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.
3. Nothing contained in this Section shall limit either Party's liability to the other for willful or intentional misconduct.
4. Nothing contained in this Section shall limit either Party's obligations of indemnification as specified in the Indemnity Section of this Agreement.

I. Indemnity

1. With to third party claims, each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an "Indemnitee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, costs and attorneys' fees, whether suffered, made, instituted, or asserted by any other party or person, for invasion of privacy, personal injury to or death of any person or persons, or for loss, damage to, or destruction of property, whether or not owned by others, resulting from the indemnifying Party's performance, breach of Applicable Law, or status of its employees, agents and subcontractors; or for failure to perform under this Agreement, regardless of the form of action.
2. The indemnification provided herein shall be conditioned upon:
 - a. The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party

relating to the indemnification. Failure to so notify the indemnifying Party shall not relieve the indemnifying Party of any liability that the indemnifying Party might have, except to the extent that such failure prejudices the indemnifying Party's ability to defend such claim.

- b. The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense.
- c. In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party.

J. Intellectual Property

1. Each Party hereby grants to the other Party the limited, personal and nonexclusive right and license to use its patents, copyrights and trade secrets but only to the extent necessary to implement this Agreement or specifically required by the then applicable federal and state rules and regulations relating to interconnection and access to telecommunications facilities and services, and for no other purposes. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trademarks.
2. The rights and licenses under Section I.1. above are granted "AS IS" and the other Party's exercise of any such right and license shall be at the sole and exclusive risk of the other Party. Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding (hereinafter "claim") by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision of any facilities by either Party under this Agreement constitutes infringement, or misuse or misappropriation of any patent, copyright, trade secret, or any other proprietary or intellectual property right of any third party.
3. Neither Party shall, without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other Party or its affiliates, 2) it is part of a joint business association or any similar arrangement with the other

Party or its affiliates, 3) it and its affiliates are in any way sponsoring, endorsing or certifying the other Party and its goods and services, or 4) with respect to advertising or promotional activities or materials, that the goods and services are in any way associated with or originated from the other Party or any of its affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the network elements it uses to provide service to its customers.

4. Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, tradename, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Dakota may not use any patent, copyright, logo, trademark, tradename, trade secret or other intellectual property right of Fort Randall or its affiliates without execution of a separate agreement between the Parties. Fort Randall may not use any patent, copyright, logo, trademark, tradename, trade secret or other intellectual property right of Dakota or its affiliates without execution of a separate agreement between the Parties.
5. As a condition to the access or use of patents, copyrights, trade secrets and other intellectual property (including software) owned or controlled by a third party to the extent necessary to implement this Agreement or specifically required by the then applicable federal and state rules and regulations relating to Interconnection and access to telecommunications facilities and services, the Party providing access may require the other upon written notice, from time to time, to obtain permission for such access or use, make all payments in connection with obtaining such permission, and provide evidence of such permission.
6. Dakota acknowledges the value of the marks "Fort Randall" and "Fort Randall Telephone Company" (the "Marks") and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to Fort Randall (the "Owners"). Fort Randall acknowledges the value of the marks Dakota Telecom, Inc. ("DTI"), Dakota Telecommunications Systems, Inc. ("DTS") and Dakota Telecommunications Group ("DTG") (the "Dakota Marks") and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to Dakota (the "Owners"). Dakota recognizes that nothing contained in this Agreement is intended as an assignment or grant to Dakota of any right, title or interest in or to the Marks and that this Agreement does not confer

any right or license to grant sublicenses or permission to third parties to use the Marks and is not assignable. Fort Randall recognizes that nothing contained in this Agreement is intended as an assignment or grant to Fort Randall of any right, title or interest in or to the Dakota Marks and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Dakota Marks and is not assignable. Dakota will do nothing inconsistent with the Owner's ownership of the Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the benefit of the Owners. Fort Randall will do nothing inconsistent with the Owner's ownership of the Dakota Marks, and all rights, if any, that may be acquired by use of the Dakota Marks shall inure to the benefit of the Owners. Dakota will not adopt, use (other than as authorized herein), register or seek to register any mark anywhere in the world which is identical or confusingly similar to the Marks or which is so similar thereto as to constitute a deceptive colorable imitation thereof or to suggest or imply some association, sponsorship, or endorsement by the Owners. The Owners make no warranties regarding ownership of any rights in or the validity of the Marks. Fort Randall will not adopt, use (other than as authorized herein), register or seek to register any mark anywhere in the world which is identical or confusingly similar to the Dakota Marks or which is so similar thereto as to constitute a deceptive colorable imitation thereof or to suggest or imply some association, sponsorship, or endorsement by the Owners. The Owners make no warranties regarding ownership of any rights in or the validity of the Marks.

K. Warranties

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

L. Assignment

Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party provided that each Party may assign this Agreement to a corporate affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not

permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

M. Default

If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may seek legal and/or regulatory relief. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

N. Disclaimer of Agency

Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

O. Severability

In the event that any one or more of the provisions contained herein shall for any reason be held to be unenforceable in any respect under law or regulation, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may seek regulatory intervention, including negotiations pursuant to Sections 251 and 252 of the Act.

P. Nondisclosure

- 1 All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data (i) furnished by one Party to the other Party dealing with customer specific, facility specific, or usage specific information, other than customer information communicated for the purpose of publication of

directory database inclusion, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary" or (iii) communicated and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information.

2. Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.
3. Each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only in connection with this Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.
4. Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:
 - a. was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential evidenced by written records prepared prior to delivery by the disclosing Party; or
 - b. is or becomes publicly known through no wrongful act of the receiving Party; or
 - c. is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or
 - d. is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services

pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or

- e. is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or
 - f. is approved for release by written authorization of the disclosing Party; or
 - g. is required to be made public by the receiving Party pursuant to applicable law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.
5. **Effective Date Of This Section.** Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.

Q. Survival

The Parties' obligations under this Agreement, which by their nature are intended to continue beyond the termination or expiration of this Agreement, shall survive the termination or expiration of this Agreement.

R. Dispute Resolution

If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents ("Dispute") cannot be settled through negotiation, it shall be resolved by arbitration conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration shall occur in Sioux Falls, South Dakota. Nothing in this Section shall be construed to waive or limit either Party's right to seek relief from the Commission or the Federal Communications Commission as provided by state or federal law.

No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

S. Controlling Law

This Agreement was negotiated by the Parties in accordance with the terms of the Act and the laws of South Dakota. It shall be interpreted solely in accordance with the terms of the Act and the applicable South Dakota law.

T. Joint Work Product

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

U. Responsibility for Environmental Contamination

Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any environmental hazard that either Party did not introduce to the affected work location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any environmental hazard that the indemnifying Party, its contractors or agents introduce to the work locations or (ii) the presence or release of any environmental hazard for which the indemnifying Party is responsible under applicable law.

V. Notices

Any notices required by or concerning this Agreement shall be sent to the Parties at the addresses shown below:

Bruce Hanson
Fort Randall Telephone Company
227 S Main Street
Clara City, MN 56222

Dakota Telecom, Inc.
Dakota Telecommunications Systems, Inc.
Legal Department
29705 453rd Avenue
Irene, SD 57037

Each Party shall inform the other of any changes in the above addresses.

W. Responsibility of Each Party

Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations or, (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

X. No Third Party Beneficiaries

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

Y. Referenced Documents

All references to Sections, Exhibits, and Schedules shall be deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, Dakota practice, Fort Randall practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a

reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, Dakota practice, Fort Randall practice, or publication of industry standards (unless Dakota elects otherwise). Should there be any inconsistency between or among publications or standards, Dakota shall elect which requirement shall apply.

Z. Publicity and Advertising

Neither Party shall publish or use any advertising, sales promotions or other publicity materials that use the other Party's logo, trademarks or Marks without the prior written approval of the other Party.

AA. Amendment

Dakota and Fort Randall may mutually agree to amend this Agreement in writing. Since it is possible that amendments to this Agreement may be needed to fully satisfy the purposes and objectives of this Agreement, the Parties agree to work cooperatively, promptly and in good faith to negotiate and implement any such additions, changes and corrections to this Agreement which are needed to provide Mid-Span Meet POI and reciprocal compensation.

BB. Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

CC. Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

DD. Cancellation Charges

Except as provided pursuant to, or as otherwise provided in any applicable tariff or contract referenced herein, no cancellation charges shall apply. If South Dakota ceases to use the facilities installed by Fort Randall used to interconnect with Dakota prior to the expiration of

36 months from the effective date of this Agreement, it shall reimburse Fort Randall its full cost for the interconnection facilities.

EE. Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC and shall, at all times, be subject to review by the Commission or the FCC. In the event any such review rejects any portion of this Agreement, renders it inoperable or creates any ambiguity of requirement for further amendment, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification.

FF. Compliance

Each party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

GG. Compliance with the Communications Law Enforcement Act of 1994 ("CALEA")

Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with CALEA. Each party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

HH. Entire Agreement

This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Dakota Telecom, Inc.

Fort Randall Telephone Company

By _____
Thomas W. Hertz
Its General Manager/CEO

By _____
Bruce Hanson
Its Treasurer

Date

Date

Dakota Telecommunications Systems, Inc.

By _____
Thomas W. Hertz
Its General Manager/CEO

Date

135808/2VWSG011.DOC

Appendix A
Rates and Charges

Transport, per minute of use	.03070
Call Termination, per minute of use	.02460



DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND IA WATS 800-239-7501

RECEIVED

OCT 1 1997

October 14, 1997

William Bullard
Executive Director
SD Public Utilities Commission
500 East Capitol
Pierre, SD 57501-5070

Re: Facilities based competitive local telephone service

Dear Mr. Bullard:

This letter will serve to inform the South Dakota Public Utilities Commission that Dakota Telecom Inc. will begin providing dial tone in the Centerville, Harrisburg, Tea and Viborg exchanges November 1, 1997. New Dakota Telecom Inc. facilities in these communities will provide consumers with advanced telecommunications services, including high speed data service.

Dakota Telecom Inc. believes it has met all applicable requirements to begin providing consumers in these communities with a choice of telecommunications providers.

Sincerely,

Thomas W. Hertz
President/CEO
Dakota Telecom, Inc.

cc: Bruce Hanson, Fort Randall Telephone Company
✓ Mike Bradley, Attorney for Fort Randall
Bill Heaston, Attorney for US West Communications, Inc.

EXHIBIT

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LAW OFFICES
MOSS & BARNETT
A PROFESSIONAL ASSOCIATION

4800 NORWEST CENTER
90 SOUTH SEVENTH STREET
MINNEAPOLIS, MINNESOTA 55402-4129

TELEPHONE (612) 347-0300

FACSIMILE (612) 339-6686

WRITER'S DIRECT DIAL NUMBER

347-0337

WALTER'S E-MAIL ADDRESS
Bradley.M@moss-barnett.com

October 16, 1997

HERMAN J. RUTELLE
PAUL VAN VLEIGHEN
MICHAEL L. PLAMASIAN
THOMAS A. KELLEN III
W. SCOTT HERRICK
JAMES E. O'BRIEN
PAUL G. WEDMANN
EDWARD L. WINTER
WILLIAM H. BOUTER
WILLIAM A. HAUG
CHARLES A. FARROW JR.
MICHAEL J. JOHNSON
ROBERT J. LUKES
JAMES A. RUBENSTEIN
THOMAS R. SHERRAN
MICHAEL HIRSH

EDWARD J. BLUMBERG
ANN E. NEWHALL
MICHAEL J. ANGER
JEFFREY L. WATSON
THOMAS J. HUNTER
DAVID P. SCHNEIDER
CURTIS D. SMITH
DAVE R. BENSER
ROBERT A. BRUNO
MITCHELL W. COE
MICHAEL J. BRADLEY
PETER A. KULLER
RICHARD J. KELLER
KEVIN M. BURCH
SUZAN C. RACER
THOMAS M. HUGHES

NICK RAY
THOMAS A. JORD
DEANNE M. GRACE
CARI S. WEL
JANNA R. STEVANCE
M. CECILIA RAY
JOSEPH R. KLEIN
NANCY M. KUSIG
BARBARA LAMAR
RONALD A. KENDRICK
MICHAEL COLLETON
ROBERT R. PIRRO
TIMOTHY R. WILSTENHAUGH
PHILIP S. ZILKA
VINCENT J. FANNLANDER
BRIAN T. GREGAN

MARK E. LITE
JOHN LARSEN BETTINGER
JAN W. WAGNER
MICHELLE R. LUDWIG
MATTHEW M. MEYER

RETIRED:
FRANK C. FLETCHER
TERRY W. MOSE
JAMES H. HENNINGSTADT
STANLEY R. STAGEL
HOWARD S. COE
PATRICK F. PLAMBERT
WAYNE A. HERBERT

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

Re: Dakota Telecom, Inc. Provision of Service in Centerville and Viborg Exchanges
Docket No.: TC97-062

Dear Mr. Bullard:

The purpose of this letter is to address two issues: 1) the pending hearing on November 3 and 4, 1997, related to the Rural Telephone Company Exemption ("Rural Exemption"); and 2) the service obligations of Dakota Telecom, Inc. in the Centerville and Viborg exchanges.

The South Dakota Public Utilities Commission ("Commission") noticed a hearing for November 3 and 4, 1997, to address whether to waive the Rural Exemption granted to Fort Randall Telephone Company ("Fort Randall") under Section 251(f)(1) of the 1996 Federal Telecommunications Act. Subsequently, Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc. clarified the specific services they were requesting from Fort Randall. Based on that request, Fort Randall has determined that it can provide the requested services and does not need to invoke the Rural Exemption. Therefore, it does not appear that the Commission will need to determine, at this time, whether to grant Fort Randall an exemption from the interconnection obligations of Section 251(c). As such, the previously scheduled November 3 and 4, 1997 hearing is no longer required, at least with respect to the Rural Exemption issue.

If Dakota Telecom, Inc. or Dakota Telecommunications Systems, Inc. should, at a later date, issue a bona fide request for additional services, Fort Randall will, at that time, evaluate whether the Rural Exemption should be maintained with respect to that service.

EXHIBIT

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MOSS & BARNETT

A PROFESSIONAL ASSOCIATION

William Bullard

October 16, 1997

Page 2

The second purpose of this letter is to discuss the October 14, 1997 letter from Thomas W. Hertz, President and CEO of Dakota Telecom, Inc. In that letter, Mr. Hertz indicates an intent to begin providing service by no later than November 1, 1997, in the Centerville and Viborg exchanges. At this time, the certificate of authority granted to Dakota Telecom, Inc. does not permit it to offer services in exchanges operated by a Rural Telephone Company.

Initially, the Commission noticed a proceeding to determine the service obligations which should be imposed on Dakota Telecom, Inc.'s service offerings in the Centerville and Viborg exchanges. On August 12, 1997, the Commission received a letter from Dakota Telecom, Inc. requesting that the Commission suspend the hearing scheduled to determine whether Dakota Telecom, Inc. should be required to meet the service obligations authorized under the 47 U.S.C. § 253(f). Based on that request, the procedural schedule was suspended.

In light of the October 14, 1997 letter, Fort Randall requests that the proceeding to determine the service obligations to be imposed on Dakota Telecom, Inc. be rescheduled. Further, Fort Randall requests that the Commission advise Dakota Telecom, Inc. not to begin providing "dial tone" in Centerville and Viborg without first complying with the Commission's Order requiring a determination of the service obligations related to these Rural Telephone Company exchanges.

Very truly yours,

MOSS & BARNETT
A Professional Association



Michael J. Bradley

MJB/jjh

cc: Rolayne Wiest
Thomas W. Hertz
Bruce C. Hanson
Richard D. Coit

138063/2YJ3011.DOC



DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND IA WATS 800-239-7501

RECEIVED

OCT 23 1997

MICHAEL J. BRADLEY

COPY

October 17, 1997

William Bullard
Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, South Dakota 57501

Dear Mr. Bullard:

The October 16 1997 letter sent to the Commission by Michael Bradley on behalf of Fort Randall Telephone Company ("Fort Randall") has been forwarded to me for a response.

With regard to Mr. Bradley's assertion that Dakota does not have authority to serve consumers in Centerville and Viborg:

The Certificate of Authority granted to Dakota Telecom, Inc. ("DTI") and Dakota Telecommunications Systems, Inc. ("DTS") contain language which Mr. Bradley has repeated characterized as granting incumbent rural telephone companies an exclusive franchise within their service areas. The language upon which Fort Randall relies is contained in Conclusions of Law III and IV from Dockets TC95-087 and TC96-050. Those paragraphs read as follows:

III

The Commission grants DTI [DTS] a statewide Certificate of Authority to provide telecommunications services, including local exchange services. However, with respect to rural telephone companies, DTI [DTS] will have to come before the Commission in another proceeding before being able to provide service in that rural service area pursuant to 47 U.S.C. § 253(f) which allows the Commission to require a company that seeks to provide service in a rural service area to meet the requirements in 47 U.S.C. § 214(e)(1) for designation as an eligible telecommunications carrier. In addition, the granting of statewide certification will not affect the modifications for rural telephone companies found in 47 U.S.C. § 251(f).

EXHIBIT

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IV

The Commission declines to apply the exception for rural telephone companies as listed in Conclusions of Law III to the eight exchanges US WEST has proposed to sell to other local exchange carriers in South Dakota. The Commission finds that those exchanges are not currently owned and operated by a rural telephone company as defined in 47 U.S.C. §153, subsection 47. Therefore, the provisions in the Federal Telecommunications Act are not currently applicable to these exchanges.

The former U S WEST exchanges, including Centerville, Viborg, were specifically excluded from the Commission's limitations on the statewide grant of authority. Furthermore, DTS has been providing service in these exchanges since July of 1996. Dakota has complied with the letter and the spirit of the Commission's Orders regarding competition. Fort Randall's continued attempts to use the Commission's powers to protect its monopoly and preclude consumers in Centerville and Viborg from having a choice of providers is well documented in the record.

With regard to Mr. Bradley's statement that the Commission inquiry into Fort Randall's continued exemption from interconnection obligations "is no longer required":

The Telecommunications Act of 1996 provides that "the State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption" upon receipt of notice of a bona fide request made to a rural telephone company. The Commission has determined that Dakota's request of September 15, 1996 was a bona fide request. The statutory language is mandatory. If Fort Randall is a rural telephone company within the meaning of the Act, it has been granted an exemption by operation of law under 47 USC §251(f)(1)(B). Notice of Dakota's bona fide request for interconnection with Fort Randall facilities in Centerville and Viborg triggered the requirement for an inquiry by the South Dakota Public Utilities Commission with regard to *terminating the existing rural exemption*.

Mr. Bradley's statement that Fort Randall "does not need to invoke the Rural Exemption" does not eliminate the need for a determination as to whether the exemption should be terminated, but rather would support a determination by the Commission that the exemption should be terminated.

Sincerely,



Robert G. Marnet

cc: Michael J. Bradley
Rolayne Wiest

LAW OFFICES
MOSS & BARNETT

A PROFESSIONAL ASSOCIATION

4800 NORWEST CENTER
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October 21, 1997

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JANNA R. SEVERANCE
M. CECILIA RAY
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HOWARD S. COLE
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WAYNE A. BERGLITT

Robert G. Marmet
Dakota Telecom, Inc.
P O Box 127
Irene, SD 57037

Re: Rural Telephone Company Status for the Centerville and Viborg Exchanges

Dear Mr. Marmet:

In your October 17, 1997 letter to William Bullard, you appear to assert that the Centerville and Viborg exchanges are not entitled to be treated as rural telephone company exchanges. By this letter, we formally remind you of the Settlement Agreement entered into by Dakota with Fort Randall, which states on page 4, paragraph 6:

If Dakota makes a *bona fide* request to any Third Party Beneficiary for interconnection in any of the New Exchanges, interconnection negotiations shall be conducted on the same basis, in terms of applicable regulations, as if the initial request to a Third Party Beneficiary were the initial request by Dakota for interconnection in that exchange.

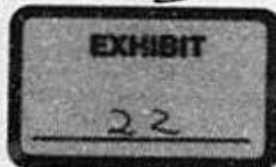
The meaning of this provision could not be clearer. Fort Randall is entitled to the full protections of a Rural Telephone Company.

Very truly yours,

MOSS & BARNETT
A Professional Association

Michael J. Bradley

MJB/jjh
cc: Bruce Hanson
139203/22#R011.DOC





DAKOTA TELECOM, INC.

P.O. BOX 127
IRENE, SOUTH DAKOTA 57037
(605) 263-3921
SD WATS 800-952-0004
MN AND IA WATS 800-239-7501

October 23, 1997

Michael J. Bradley
MOSS & BARNETT
4800 Norwest Center
90 South Seventh Street
Minneapolis, Minnesota 55402-0300

RE: Rural Telephone Company Status for the Centerville and Viborg Exchanges.

Dear Mike:

Thank you for your letter of October 21, 1997.

The language which you have referenced in your letter is present in the Settlement Agreement between U S WEST Communications, Inc. and Dakota Cooperative Telecommunications, Inc., and subsidiaries. The paragraph you have referred to relates to the "interconnection negotiations". Dakota has complied with that paragraph. Dakota commenced new negotiations with Fort Randall Telephone Company, rather than claiming that the negotiations which Dakota undertook with U S WEST should be imputed to Fort Randall. Dakota notified the State commission of its request for interconnection.

The rights which Dakota negotiated away all relate to interconnection obligations under Sections 251 and 252 of the Federal Act. At no time did Dakota waive or bargain away any rights or arguments regarding how it should be regulated under Section 253 (f) of the Federal Act. I trust this will clear up any confusion on your part.

Sincerely,

Robert G. Marmet

EXHIBIT

23

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November 10, 1997

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WAYNE A. BERGOTT

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, South Dakota 57501

Re: Late Filed Exhibit 25
Docket TC97-062

Dear Mr. Bullard:

Enclosed please find late filed Exhibit 25, which is an access line count by exchange for Fort Randall Telephone Company. The total access line number of 6,542 is slightly higher than that contained in Bruce Hanson's Prefiled Testimony. The attached Exhibit 25 is a more current and actual customer count. The previous customer counts relied, in part, on access line counts provided by US WEST Communications, Inc. at the time the exchanges were purchased.

Very truly yours,

MOSS & BARNETT
A Professional Association

Michael J. Bradley
Michael J. Bradley

MJB/jjh
Enclosure
cc: All parties of record
143078/32#011.DOC



November

Centerville	642
Hermosa	820
Keystone	465
Lake Andes	905
Tabor	362
Tyndall	963
Viborg	735
Wagner	<u>1,650</u>
	6,542

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STANLEY S. STABLE
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PATRICK P. FLANNERY
WALTER R. BERGOTT

December 5, 1997

William Bullard
Executive Director
South Dakota Public Utilities Commission
State of South Dakota
500 East Capitol
Pierre, SD 57501

Re: In the Matter of Request by for Interconnection with Fort Randall Telephone
Company
Docket No.: TC97-062

Dear Mr. Bullard:

Enclosed please find an original of the executed Settlement Agreement between Fort Randall Telephone Company and Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc. and Dakota Cooperative Telecommunications, Inc. in the above entitled Docket. Also enclosed is a Certificate of Service.

Very truly yours,

MOSS & BARNETT
A Professional Association


Michael J. Bradley

MJB/jjh
Enclosures
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DEC 08 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
FAX Received

NOV 21 1997



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FAX Received NOV 21 1997

DEC 08 1997

SETTLEMENT AGREEMENT

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

This Agreement is made and entered into as of November 19, 1997 by and between Fort Randall Telephone Company ("Fort Randall") and Dakota Telecom, Inc. ("DTI"), Dakota Telecommunications Systems, Inc. and Dakota Telecommunications Group, Inc. (formerly Dakota Cooperative Telecommunications, Inc.) (collectively "Dakota").

RECITALS

Whereas, Dakota desires to provide local telecommunications services in the Centerville and Viborg exchanges operated by Fort Randall;

Whereas, Dakota and Fort Randall ("the Parties") desire to enter into an interim interconnection agreement that will be in effect until such time that a permanent interconnection agreement is approved by the South Dakota Public Utilities Commission ("Commission") pursuant to 47 U.S.C. § 252 ("Permanent Interconnection Agreement");

Whereas, the Parties wish to resolve all issues and disputes that have arisen, or which could arise in the following proceedings:

IN THE MATTER OF THE FILING BY DAKOTA TELECOM, INC., DAKOTA TELECOMMUNICATIONS SYSTEMS, INC., AND DAKOTA COOPERATIVE TELECOMMUNICATIONS, INC. FOR INTERCONNECTION WITH FORT RANDALL TELEPHONE COMPANY, Docket TC97-062, currently pending before the Commission;

DAKOTA TELECOM, INC.; DAKOTA TELECOMMUNICATIONS SYSTEMS, INC.; and DAKOTA TELECOMMUNICATIONS GROUP, INC. vs. PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA, Civ. 97-292; and

DAKOTA TELECOM, INC. vs. JAMES A. BURG, PAM NELSON, LASKA SCHOENFELDER, Commissioners of the Public Utilities Commission of the State of South Dakota, Civ. 97-425.

WHEREFORE, IT IS AGREED AS FOLLOWS:

1. DTI agrees to the following conditions on its authority to offer local telecommunications service in Fort Randall's service area/study area.

A. DTI will offer, on a nondiscriminatory basis, basic local services to all customers residing within the Centerville and Viborg exchanges.

B. DTI will provide notice of the availability of its basic local services to all customers in the Centerville and Viborg exchanges and shall comply with any future

Commission rules concerning the advertising/notice obligations of eligible telecommunications carriers.

C. DTI will offer a local calling scope which is at least as large as the existing local calling area offered by Fort Randall.

D. DTI's out-of-town rates will be no greater than DTI's in-town rates.

E. DTI will satisfy the requirements of paragraph 1, Clauses A through D inclusive, for both the Centerville and Viborg exchanges by the end of the 1999 construction season, and shall satisfy the requirements of paragraph 1, Clauses A through D inclusive, within 12 months of initially offering local exchange service in any other Fort Randall exchange.

2. The Parties agree to resolve all current issues related to the rural exemption of Fort Randall from 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(1) in the following manner:

A. The Parties agree that, based on the above service obligations, the Commission is not required to and should not determine whether any or all of Fort Randall's Rural Exemption from the requirements of 47 U.S.C. § 251(c) should be terminated with respect to DTI's service offerings in the Centerville and Viborg exchanges.

B. If DTI elects to provide local service in any Fort Randall exchange, Fort Randall agrees to waive the Rural Exemption as it applies to 47 U.S.C. 251(c)(4) and offer resale of its retail services at wholesale rates, subject to such reasonable restrictions on resale as are allowed under state and federal law. Fort Randall agrees to waive the Rural Exemption from 47 U.S.C. § 251(c)(1) with respect to negotiating the particular terms and conditions to be contained in the Permanent Agreement to fulfill the duties described in Section 251(b) and (c)(4)

3. The provisions of Paragraph 1 and 2 of this Agreement shall apply to DTI's parent corporation, affiliates, and subsidiary corporations should any of those entities offer local services in any Fort Randall exchange. Dakota shall not employ, authorize or direct its officers, agents, employees, directors, successors and assigns in any way to defeat or undermine the purpose of this Agreement

4. The Parties agreed that DTI has not requested universal service funding at this time, and the Commission should not, in Docket TC97-062, determine whether DTI should qualify for universal service funding. It is further agreed that this issue should be determined at the time DTI seeks universal service funding for its facilities used to provide local service in the Centerville and Viborg exchanges.

5. The Parties agree to the following terms with respect to an interim interconnection agreement.

A. The facilities used for the interconnection and transport of local traffic under this Agreement shall be dedicated facilities between Fort Randall's Centerville and Viborg exchanges and the switch used by DTI facilities at a single point in Viborg (the "Interconnection Facilities"). The Parties shall separately agree on the specific technical requirements of those Interconnection Facilities.

B. Each party shall be responsible for the installation and maintenance of the Interconnection Facilities on their respective side of the meet point (which meet point shall be separately negotiated by the Parties).

C. The Parties agree to complete the physical connection of their respective portions of the Interconnection Facilities as soon as reasonably possible, and by no later than December 1, 1997. Completion of the Interconnection Facilities includes installation of the transport facilities and all necessary switch changes, including programming Fort Randall's switches to recognize NXXs being used by DTI for service to customers.

D. The Parties agree to use a "bill and keep" arrangement for termination of local traffic transferred from one Party to the other Party (the "Local Traffic") using the Interconnection Facilities. Effective with Fort Randall's switch change out in Wagner and the rehoming of the Centerville and Viborg remote switches to the Wagner switch, which is scheduled to occur at the end of the first quarter of 1998, both Parties agree to measure the Local Traffic and agree that such Local Traffic shall become subject to the reciprocal, symmetrical compensation arrangements contained in the Permanent Interconnection Agreement. If the Permanent Interconnection Agreement is entered into after the date measurement of the Local Traffic commences, the Parties agree to make a true-up payment within 30 days of the Permanent Interconnection Agreement becoming effective.

E. Fort Randall is currently unable to offer local referral announcements following customer number changes because of equipment limitations. Each Party shall as soon as reasonably possible, but not later than the end of the first quarter of 1998, make a good faith effort to make referral announcements available in accordance with the Act, and shall, if referral announcements can be made available, establish a rate or other recovery mechanism to recover the cost of the service. The Permanent Interconnection Agreement shall address local service announcements. As an alternative, Fort Randall is willing to provide remote call forwarding at the following rates: \$5 nonrecurring charge per customer for implementing the service, and a recurring charge of \$3.50 per month for each increment of 20 numbers receiving this service.

F. The Parties agree to resolve service issues, maintenance issues and on-going operational issues using the same business standards that are prevalent in the telecommunications industry.

6. The Parties agree that the above-described legal proceedings currently pending before the Commission and the Circuit Court shall be resolved as follows:

A. The Parties agree to present this Agreement to the Commission by no later than November 21, 1997, along with a request that the Commission issue an Order accepting Paragraphs 1 through 4, inclusive, of this Agreement and closing Docket No. TC97-062. The Parties agree not to appeal an Order accepting the Agreement. It is further agreed that if the Commission does not issue such an Order, the Settlement shall be withdrawn with respect to Paragraphs 1 through 4, and the Parties shall be free to argue their respective positions on all outstanding issues without regard to this Agreement.

B. Dakota agrees to dismiss with prejudice both Docket Civ. 97-292 and Docket Civ. 97-425 by no later than November 21, 1997.

7. This agreement shall be binding upon and benefit each of the Parties and their respective affiliates, subsidiary corporations, their officers, agents, employees, directors, successors and assigns.

DAKOTA TELECOM, INC.

FORT RANDALL TELEPHONE COMPANY

By:


Thomas Hertz

By:


Bruce Hanson

SDITC

South Dakota Independent
Telephone Coalition, Inc.

Richard D. Coit
Executive Director

Bette Dozier
Administrative Assistant

November 24, 1997

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NOV 25 1997

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

William Bullard, Executive Director
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Ave.
Pierre, SD 57501

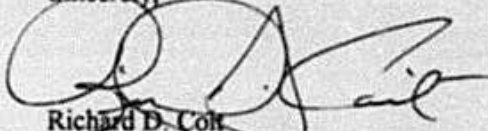
RE: In the Matter of the Filing by Dakota Telecom, Inc., Dakota
Telecommunications Systems, Inc. and Dakota Cooperative
Telecommunications, Inc. for Interconnection with Fort Randall
Telephone Company, Docket No. TC97-062

Dear Mr. Bullard:

The purpose of this letter is to inform the Commission that SDITC, as a party, to the above referenced Docket, has reviewed the settlement agreement entered into between Fort Randall Telephone Company and the Dakota companies and for the limited purpose of resolving the Docket TC97-062 proceedings and also the proceedings currently pending with the State Circuit Court, Civ. #s 97-292 and 97-425, would not oppose a Commission order accepting paragraphs 1 through 4, inclusive, of the agreement.

A copy of this letter has been forwarded to the other parties of record.

Sincerely,



Richard D. Coit
Executive Director and General Counsel

cc: Robert Marmet
Rolayne Ailts Wiest
Mike Bradley



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

IN THE MATTER OF THE FILING BY DAKOTA	)	ORDER APPROVING
TELECOM, INC., DAKOTA	)	SETTLEMENT AGREEMENT
TELECOMMUNICATIONS SYSTEMS, INC.,	)	AND CLOSING DOCKET
AND DAKOTA COOPERATIVE)	
TELECOMMUNICATIONS, INC., FOR	)	TC97-062
INTERCONNECTION WITH FORT RANDALL)	
TELEPHONE COMPANY)	

On June 3, 1997, Dakota Telecom, Inc., Dakota Telecommunications Systems, Inc., and Dakota Cooperative Telecommunications, Inc. (collectively Dakota) filed a Notice of Request for Interconnection with Fort Randall Telephone Company (Fort Randall) with the Public Utilities Commission (Commission). At its July 15, 1997, meeting, the Commission granted intervention to SDITC. At a July 18, 1997, ad hoc meeting, the Commission found Dakota's request was not a bona fide request as required by 47 U.S.C. Section 251(f)(1). The Commission issued a hearing notice on July 31, 1997, to consider whether Dakota should be required to meet Eligible Telecommunications Carrier (ETC) requirements before being allowed to provide service in exchanges owned by Fort Randall.

On August 4, 1997, Dakota filed an appeal of this matter to the Circuit Court, Sixth Judicial Circuit and sought a stay in these proceedings. On August 8, 1997, Fort Randall and intervenor SDITC filed for removal of the appeal to the United States District Court, District of South Dakota. Dakota requested that the Commission suspend these proceedings in light of these appeals. By order dated August 14, 1997, the Commission suspended the procedural schedule in this matter.

On August 15, 1997, Dakota filed an application with the Commission requesting interconnection, service and network elements from Fort Randall and requesting that the Commission determine whether the exemption from the obligation of negotiating interconnection with Dakota by Fort Randall should be terminated.

This matter again came to the Commission at its September 9, 1997, regular meeting, at which time it found Dakota's request for interconnection dated August 15, 1997, to be a bona fide request. A hearing was ordered on October 3, 1997, and was held on November 3, 1997, in the State Capitol.

On November 21, 1997, the Commission received a Settlement Agreement between the parties. The parties requested that the Commission approve paragraphs 1-4 of the Settlement Agreement and close the docket.

At its regularly scheduled December 2, 1997, meeting, the Commission considered the Settlement Agreement dated November 19, 1997, and which was entered into between Dakota and Fort Randall.

The Commission has jurisdiction over this matter pursuant to Chapters 1-26 and 49-31, SDCL and the Telecommunications Act of 1996.

Upon review of the Settlement Agreement, the Commission found that it would approve paragraphs 1-4 of the Settlement Agreement. As the Commission's final decision in this matter, it is therefore

ORDERED that the Settlement Agreement is incorporated by reference and the Commission approves paragraphs 1-4; and it is

FURTHER ORDERED that the docket is closed.

Dated at Pierre, South Dakota, this 12th day of December, 1997.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By

Date

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner