



TC97-119

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**USWEST**

**VIA OVERNIGHT DELIVERY**

June 27, 1997

RECEIVED

JUN 30 1997

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

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

Re: Filing of Type I Paging Agreement  
Between U S WEST Communications, Inc.  
and Community Paging Corporation

Dear Mr. Bullard:

Enclosed herewith for filing is the original and eight copies of a negotiated Type I  
Paging Agreement No. V-1/DEN-970325-4413/3/25/97/DLH between U S WEST and  
Community Paging Corporation.

Please date stamp the additional copy enclosed and return in the self-addressed  
stamped envelope enclosed. Thank you for your cooperation.

Yours truly,

*William P. Heaston*  
William P. Heaston *mb*

WPH:mb  
Enclosures

cc: Service List

cc: Mr. Greg Wagner  
Community Paging Corporation  
1311 West Pacific  
Lexington, NE 68850

USWC  
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Wireless Market Group  
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Denver, CO 80202

Ms. Colleen Sevold  
Manager - Public Policy  
USWC - Public Policy  
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Sioux Falls, SD 57194

TC97-119

ORIG.  
Sigs.

**TYPE 1 PAGING AGREEMENT**

**BETWEEN**

**U S WEST COMMUNICATIONS, INC.**

**AND**

**COMMUNITY PAGING CORPORATION  
NORTH DAKOTA AND SOUTH DAKOTA**

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## TYPE 1 PAGING AGREEMENT

This Type 1 Paging Agreement, is between Community Paging Corporation ("Paging Provider") and U S WEST Communications, Inc. ("USWC"), a Colorado corporation.

Paging Provider is licensed to provide paging services by the Federal Communications Commission ("FCC"). Both USWC and Paging Provider are engaged in providing telecommunications and other services and have agreed to connect their facilities and exchange traffic; therefore, each party covenants and agrees as follows:

### 1. RECITALS

- 1.1. The Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, or other public forum addressing any matters, including matters related to the types of arrangements prescribed by this Agreement. It will be submitted to the North Dakota and South Dakota Public Utilities Commissions.
- 1.2. The Parties agree and understand that USWC is proposing certain provisions in this Agreement, based, in large part, on the FCC's First Report and Order, In the Matter of Implementing of the Local Competition Revisions in the Telecommunications Act of 1996, CC Docket No. 96-98, rel. Aug. 8, 1996 ("FCC 1st Order") and the Second Report and Order and Memorandum Opinion and Order, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, rel. Aug. 8, 1996 ("FCC 2d Order"). To the extent that certain of the rules contained in the FCC 1st Order and the FCC 2d Order, or any other FCC Order adopted to implement the Telecommunications Act of 1996, are modified or reversed by judicial and/or regulatory decisions, this Agreement shall be modified to comport with such decisions.

### 2. SCOPE OF AGREEMENT

- 2.1. Unless otherwise provided in this Agreement, the Parties will perform all of their obligations hereunder throughout, to the extent provided in the Appendices attached hereto. The Agreement includes all accompanying appendices.
- 2.2. 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, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.

### 2.3. Acknowledgment of Deferred Issues

- 2.3.1. Paging Provider acknowledges it is USWC's position that USWC's existing telecommunications network represents substantial investment made as a result of its carrier-of-last-resort obligation and that such network allows Paging Provider's subscribers to interconnect with significantly more business and residential customers than vice versa. Paging Provider further acknowledges that USWC believes that a separate transitional element is necessary to compensate USWC for the value of its network in this Agreement, that under the Act, the FCC will establish a proceeding to address Universal Service Support, and that the Act also empowers the state Commission to establish a separate proceeding on universal service issues. Paging Provider further acknowledges that USWC is entitled to receive additional compensation for costs of implementing various provisions of the Act, and that USWC shall seek such additional recovery through future state and/or federal regulatory proceedings.
- 2.3.2. In consideration of Paging Provider's willingness to interconnect on the terms set forth in this Agreement, and without prejudice to the position it may take in the FCC docket or before any state Commission, USWC agrees to await the outcome of such proceedings, rather than seek universal service support from Paging Provider at this time.

### 2.4. Interchange of Type 1 Traffic

- 2.4.1. USWC will originate and terminate paging traffic and deliver it to the Paging Provider's facility in the service area(s) set forth in Appendix C as herein provided.
- 2.4.2. This Agreement is for Type 1 traffic interchange for licensed, narrow-band radio carriers only. All other interconnections are covered by separate contract or tariff. Specifically, Paging Provider agrees that enhanced services, shall not be offered to Paging Provider patrons on a stand-alone basis over a Type 1 arrangement.
- 2.4.3. Initial or additional Connecting Circuits will be provided by USWC, at Paging Provider's request, under the terms and conditions set forth in this Agreement. All circuits and equipment provided by USWC will always be wholly owned and operated by USWC.
- 2.4.4. Paging Provider's and USWC's equipment and systems will be compatible, and will be consistent with normally accepted industry standards.
- 2.4.4.1. Paging Provider will provide a voice intercept announcement or distinctive signals to the calling party when a call is directed to a number that is not assigned.

- 2.4.4.2. When USWC is not able to complete calls because of malfunction, USWC will provide proper voice announcement or distinctive signals to the calling party advising that the call cannot be completed.
- 2.4.4.3. Paging Provider and USWC will provide supervisory tones or voice announcements to the calling party on all calls, consistent with standard industry practices.
- 2.4.5. This Agreement is only for the delivery interchange of traffic between the parties' systems, and is not an undertaking by either party to provide the services of the other.
- 2.4.6. Any proposed post-installation changes of systems, operations or services which would materially affect the other party's system, operation or services must be coordinated with the other party by giving as much advance notice as is feasible, but in no event less than ninety (90) days advance notice of the nature of the changes and when they will occur.
- 2.4.7. If the authorized service areas of USWC or Paging Provider change, the parties agree to negotiate any necessary modifications to this Agreement in good faith.

### 3. DEFINITIONS

- 3.1. "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 courts, FCC, or competent state regulatory bodies.
- 3.2. "Central Office Switch" means a switch used to provide telecommunications services and includes end office switches and tandem office switches.
- 3.3. "Collocation" means an arrangement whereby one Party's (the "Collocating Party") facilities are terminated in its equipment necessary for interconnection or for access to Network Elements on an unbundled basis which has been installed and maintained at the premises of a second Party (the "Housing Party"). Collocation may be "physical" or "virtual". In "Physical Collocation," the Collocating Party installs and maintains its own equipment in the Housing Party's premises. In "Virtual Collocation," the Housing Party installs and maintains the Collocating Party's equipment in the Housing Party's premises.
- 3.4. "Commission" means all state regulatory bodies with lawful jurisdiction over telecommunications.
- 3.5. "Connecting Circuit" means the equipment and system designed for terminating Paging Provider's calls from USWC's network.

- 3.6. "Digital Signal Level" means one of several transmission rates in the time division multiplexing hierarchy.
- 3.7. "Digital Signal Level 1" or "DS1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing.
- 3.8. "Digital Signal Level 3" or "DS3" means the 44.736 Mbps third-level in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.
- 3.9. "Enhanced Services" are services offered over common carrier transmission facilities used in communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information; provide the subscriber additional, different or restructured information; or involve subscriber interaction with stored information.
- 3.10. "Extended Area Service (EAS)/Local Traffic means traffic that is originated by a subscriber of one Party and terminated to a subscriber of the other Party as defined in accordance with USWC's then current EAS/local serving areas, as determined by the Commission.
- 3.11. "Interexchange Carrier" or "IXC" means a carrier that provides, directly or indirectly, interLATA or intraLATA Telephone Toll Services.
- 3.12. "InterLATA" is a term used to describe telecommunications functions originating in one LATA and terminating in another.
- 3.13. "IntraLATA" is a term used to describe telecommunications functions originating and terminating in the same LATA.
- 3.14. "Local Access and Transport Area (LATA)" denotes a geographic area established for the provision and administration of a communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes.
- 3.15. "Local Calling Area (LCA)" is a geographic area, including Extended Area Service (EAS) areas, defined in USWC's Local and/or General Exchange Service tariff in which an end user (Telephone Exchange Service Subscriber) may complete a call without incurring Message Telecommunication Service (MTS) charges.
- 3.16. "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.
- 3.17. "NXX" means the fourth, fifth and sixth digits of a ten-digit telephone number.

- 3.18. "Paging Terminal" is Paging Provider's equipment that receives a terminated paging call.
- 3.19. "Party" means either USWC or Paging Provider and "Parties" means USWC and Paging Provider.
- 3.20. "Point of Connection" or "POC" is the connection point(s) between Paging Provider and USWC; the technical interface(s), test point(s) and point(s) for operational division of responsibility.
- 3.21. "Serving Wire Center (SWC) denotes the USWC office from which dial tone for local exchange service would, absent special arrangements such as FX (Foreign Exchange) or FCO (Foreign Central Office) service, be provided to Paging Provider.
- 3.22. "Switched Access Traffic or InterLATA Toll Traffic" as specifically defined in USWC's state and interstate switched access tariffs, enters the USWC network at the IXC point of presence, and terminates to the Paging Provider's Paging Terminal. See Transit Traffic definition below.
- 3.23. "Tariff Services" as used throughout this Agreement refers to USWC interstate tariffs and state tariffs, price lists, price schedules and catalog.
- 3.24. "Traffic Type" is the characterization of traffic as "local" (local includes EAS), "toll", traffic outside of the incumbent local exchange carrier's local calling area established by the applicable tariffs, or transit traffic as defined below.
- 3.25. "Transit Traffic" is traffic that originates from one provider's network, "transits" USWC's network and terminates to the paging provider's DID number. Neither the originating nor terminating subscriber is a customer of the tandem telecommunications carrier, USWC.
- 3.26. "Trunk Group is a set of trunks of common routing origin and destination and which serve a like purpose or function.
- 3.27. "V and H Coordinate" means vertical and horizontal geographical cross points on a map used to determine distance.
- 3.28. "Wireless Service Request" or "WSR" means the standard forms and supporting documentation used for ordering Access Services. The WSR will be used to order trunking and facilities between Paging Provider and USWC for Service.
- 3.29. Terms not otherwise defined here, but defined in the Act or in regulations implementing the Act, shall have the meaning defined there.

#### **4. PAGING TRAFFIC**

##### **4.1. Scope**

- 4.1.1. Traffic covered by this Agreement is for Type 1 narrow band paging service only. Other services are covered by separate contract, tariff or price lists.
- 4.1.2. Type 1 Service is a one-way intraLATA/intrastate final route trunk group between USWC's end office switch and a Paging Provider's Point of Connection (POC).
- 4.1.2.1. USWC provides the following: the transmission medium; signaling and supervision. Maintenance and restoral are provided as detailed in the applicable sections of the state tariffs. Restoral is subject to the terms of the Telecommunications Service Priority System (TSP) for National Security and Emergency Preparedness Telecommunication (FCC #1, Section 10.8.1D).
- 4.1.2.2. All Type 1 Services have the following features. Blocks of telephone numbers will be assigned to the Paging Provider from an NXX assigned to the USWC switch which is the Dial Tone End Office for the Paging Provider's Paging Terminal location. This will usually be the Serving Wire Center (SWC). In the event sufficient numbers are not available to meet the Paging Provider's three year forecast, a new NXX, if practicable, will be assigned to the Dial Tone Office from which numbers will be allocated. All numbers are assigned and administered by USWC. The Paging Provider performs subadministration (assigning specific numbers to individual subscribers).
- 4.1.2.3. Reservation and implementation of numbers will be accomplished as follows: (a) Numbers may be reserved individually or in blocks of 20 or 100; (b) In addition to the non-recurring charges for the reservation and administration of numbers, there are non-recurring charges for custom numbers, extracting numbers from number blocks (block compromise charge) and for programming the USWC Central Office Switch to direct a number to terminate at a different number (translation charges).

#### 4.2. Types of Traffic

The types of traffic to be exchanged under this Agreement include:

- 4.2.1. EAS/local and toll traffic, as defined above.
- 4.2.2. Switched access traffic or interLATA toll traffic, as defined above.
- 4.2.3. Transit traffic, as defined above.

#### **4.3. Types of Exchanged Traffic**

##### **4.3.1. Transport and Termination of Local Traffic.**

Local traffic will be transported and terminated as Type 1 Paging Service.

##### **4.3.2. Transit Traffic.**

USWC will provide this transit service through local and access tandem switches for CLECs, exchange carriers, and interexchange Carriers.

##### **4.3.3. Toll Traffic.**

Toll traffic is the completion of calls outside of the incumbent local exchange carrier's local calling area established by the applicable tariffs.

#### **4.4. Rate Structure**

##### **4.4.1. Connection from Serving Wire Center**

Applicable rate elements for digital service include channel and channel facility, connectivity and dial outpulsing. Applicable rate elements for analog service include channel, connectivity and dial outpulsing. See Billing Parameters, Section 4.5, for further definitions. Applicable rates are listed in Appendix A. The digital option is available only where USWC facilities exist, or where the Paging Provider agrees to pay Special Construction to build necessary facilities.

##### **4.4.2. Connection to Foreign Dial Tone Office**

###### **4.4.2.1. Dedicated Transport**

Applicable rate elements include dedicated transport and channel performance. When the Serving Wire Center is not the Dial Tone Office, Dedicated Transport is the transmission path for the switched traffic from USWC's Foreign Central Office to USWC's Serving Wire Center. Non-recurring and monthly charges apply. All rates are listed in Appendix A. The digital option is available only where USWC facilities exist, or where the Paging Provider agrees to pay Special Construction to build necessary facilities.

###### **4.4.2.2. Multiplexing**

Multiplexing options are available at rates listed in Appendix A.

#### 4.5. Billing Parameters

- 4.5.1. Channel (Network Access Channel - NAC). Connection from USWC's Serving Wire Center to Paging Provider's Paging Terminal. Non-recurring charges and monthly rates apply to two-wire analog and four-wire analog. Non-recurring charges apply to four-wire digital. Monthly charges do not apply to four-wire digital.
- 4.5.2. Channel Facility (for digital service) - DS1 level. Twenty-four digital voice grade channels can be transmitted over one DS1 facility. A full DS1 is necessary for the addition of voice grade channels even if ordered in increments of less than 24. The transmission rate is 1.544 Mbps. Non-recurring charges and monthly rates apply.
- 4.5.3. Channel Facility (for digital service) - DS3 level. Twenty-eight DS1s, including their associated digital voice grade channels, can be transmitted over one DS3 facility. When using a DS3 multiplexing level, a full DS3 is necessary for the addition of DS1s even if ordered in increments of less than 28. The facility transmission rate is 44.736 Mbps. Non-recurring charges and monthly rates apply.
- 4.5.4. Channel Performance. Conditioning to extend signaling on a two-wire and four-wire analog channel when the Serving Wire Center is not the Dial Tone Office. Monthly rates apply.
- 4.5.5. Dedicated Transport. When the Serving Wire Center is not the Dial Tone Office, Dedicated Transport is the transmission path for the switched traffic from USWC's Foreign Central Office to USWC's Serving Wire Center. The dedicated transport rates are set forth in Appendix A. Dedicated transport has non-recurring charges and monthly charges on a fixed basis, and monthly charges on a per mile basis.
- 4.5.6. Multiplexing. Multiplexing performed at the Serving Wire Center enables a DS1 NAC to be connected to a DS0 Dedicated Transport System. A DS3 system will be multiplexed down to a DS1 level in order to connect with the digital switch. Non-recurring charges for multiplexing are incurred only when the multiplexing element is installed subsequent to the installation of the NAC.
- 4.5.7. Number Activation. The act of translating telephone numbers in the dial tone office to allow routing to the appropriate trunk group. Non-recurring charges will apply.
- 4.5.8. Number Reservation. The assigning of sequential numbers to a Paging Provider without activation of the assigned numbers. Non-recurring charges will apply.



#### **4.6. Miscellaneous Charges**

The following charges/procedures found in Section 2, 5, or 12 of the State Access Tariff are applicable to Paging Provider:

- Due Date Change
- Design Change Charge
- Additional Engineering
- Overtime Installation
- Additional Labor Standby
- Additional Labor Testing and Maintenance
- Maintenance of Service
- Additional Cooperative Testing
- Automatic Scheduled Testing
- Cooperative Scheduled Testing
- Manual Scheduled Testing
- Nonscheduled Testing
- Nonscheduled Cooperative Testing
- Nonscheduled Manual Testing
- Credit Allowance for Service Interruption (Switch Access)
- Deposits, Advance Payments
- Cancellation of Service Order, Cancellation after 30 days
- Expedited Order Charge
- Late Payment Charge

#### **4.7. Type 1 Service Interface Code Availability And Optional Features**

##### **4.7.1. Interface Code Availability.**

Supervisory Signaling specifications, and the applicable network channel interface codes for Type 1 Service trunks, are the same as those defined in Bellcore Reference Documents GR 145 - CORE & BR-795-403-100.

All channel configurations may be ordered with Multifrequency (MF), Dual Tone Multifrequency (DTMF), or Dial Pulse (DP) Signaling, subject to availability and technical limitations.

#### **4.8. Testing**

##### **4.8.1. Acceptance Testing**

When service is installed, Paging Provider will have thirty (30) days to satisfy itself of proper connection. Any USWC problems or deficiencies occurring within the thirty (30) day period will be promptly corrected by USWC at no additional cost to Paging Provider if USWC is promptly notified of the problem. After all problems of which USWC has been given timely notice have been corrected, the connection will be deemed accepted by Paging Provider. After Acceptance, each party is subject to the applicable provisions of Section 4.6.

USWC and Paging Provider will each do such maintenance testing and inspection of their own systems as may be necessary.

#### **4.9. Ordering**

- 4.9.1. A POC Form, consistent with the sample form attached as Appendix C, will be completed for each POC covered under this Agreement. Although not attached to this Agreement, all POC Forms shall be considered a part of this Agreement and are hereby incorporated by reference.
- 4.9.2. When ordering Type 1 Service, the ordering Party shall specify on the service order: 1) the type and number of channel facilities to terminate at the Serving Wire Center with CLLI code; 2) the dedicated trunk transport; and 3) the number of trunks to be provisioned at a local exchange office. When the ordering Party requests facilities or routing different than those determined to be available, the Parties will work cooperatively in determining an acceptable configuration, based on available facilities, equipment and routing plans. Bellcore document GR-145 - Core - Compatibility Information for Interconnection of a Wireless Services Provider and a Local Exchange Carrier Network, addresses blocking requirements.
- 4.9.3. When the ordering Party initially orders a DS3 channel facility, the provider will forward the appropriate DS1 facility record information necessary to identify the circuit facility assignment (CFA). On subsequent orders utilizing existing DS3 facilities, or DS3 dedicated transport facilities, the provider will assign the DS1 facility to the DS3 channel facility or DS3 dedicated transport facility, as directed by the ordering Party.
- 4.9.4. A joint planning meeting with USWC will precede a Paging Provider's issuance of new trunking orders.
- 4.9.5. Service intervals and due dates for negotiated arrangements will be determined on an individual case basis.

#### **4.10. Mileage Measurement**

Where required, the mileage measurement for Type 1 dedicated transport is measured from the V&H coordinates of the USWC Foreign Central Office to the V&H of the USWC Serving Wire Center.

#### **4.11. Construction Charges**

If applicable, construction charges will apply as detailed in Section 15. of this Agreement.

## **5. TYPE 1 SERVICE FROM USWC'S END OFFICE SWITCH**

### **5.1. Network Access Channel**

5.1.1. A NAC facility extends from the Serving Wire Center of USWC to the Paging Provider's Paging Terminal location. NAC facilities may not extend beyond the area served by USWC's Serving Wire Center. The rates for NAC facilities are provided in Appendix A. The digital option for interconnection is available only where technically feasible or where Paging Provider agrees to pay Construction Charges to build necessary facilities.

### **5.2. Mid-Span Meet POI**

5.2.1. A Mid-Span Meet POI is a negotiated point of connection, limited to the joining of facilities between USWC's switch and the Paging Provider's Paging Terminal. Mid-Span Meet POI may be accomplished by the Parties through the negotiation of a separate Agreement. The actual physical point of connection and facilities used will be subject to negotiations between the Parties. Each Party will be responsible for its portion of the build to the Mid-Span Meet POI, if the meet point arrangement is used exclusively for the exchange of local traffic.

5.2.2. If the Mid-Span Meet arrangement is to be used for access to unbundled network elements, Paging Provider must pay the portion of the economic costs of the Mid-Span Meet arrangement used by Paging Provider for access to unbundled network elements.

### **5.3. Collocation**

Interconnection may be accomplished through either virtual or physical collocation for terms and conditions under which collocation will be available. See Section 6. herein.

### **5.4. Quality of Interconnection**

USWC will not, for the purpose of interconnection, provide to paging provider facilities built to lesser standards than USWC 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 USWC. To the extent that paging provider requests a higher or lower quality interconnection, or where paging provider's request cannot be met by the offerings specified in this agreement, or where this agreement does not establish a price to recover the development, implementation, or other costs of meeting the request, paging provider agrees to use the New Interconnection/Unbundled Element Request procedure described in Section 15. of this Agreement.

## **5.5. Points of Interface (POI)**

Upon the request for specific point to point routing, USWC will make available to Paging Provider information indicating the location and technical characteristics of USWC's network facilities. The following alternatives are negotiable: (1) a DS1 or DS3 NAC facility, where facilities are available (where facilities are not available and USWC is required to build, special construction charges will apply); (2) Virtual Collocation; (3) Physical Collocation; and (4) negotiated Mid-Span Meet facilities. Each Party is responsible for providing its own facilities up to the Mid-Span Meet POI. The Parties will negotiate the facilities arrangement between their networks.

## **5.6. Trunking Requirements**

5.6.1. Type 1 Service should be ordered by the Paging Provider to provide blocking levels in accordance with Bellcore document SR-000191.

5.6.2. Channel Facilities can be analog or digital. Digital is available where technically feasible.

## **5.7. Forecasting**

5.7.1. The Parties agree that joint forecasting and planning meetings will take place no less frequently than once per quarter.

5.7.2. The Paging Provider shall provide forecasting information concerning facilities no less than once per quarter. The quarterly forecasts shall include forecasted requirements for each channel facility identified in Appendix B. The Parties recognize that, to the extent historical traffic data can be shared between the Parties, the accuracy of the forecasts will improve. Forecasts shall be for a minimum of three (current and plus-1 and plus-2) years and shall identify:

5.7.2.1. Common Language Location Identifier (CLLI-MSG), which are described in Bellcore documents BR 795-100-100 and BR 795-400-100;

5.7.2.2. A description of major network projects anticipated for the following six months that could affect USWC. 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.

**5.8. Service Interruptions.**

- 5.8.1. 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".
- 5.8.2. If either Party causes an impairment of service, as set forth in this Section, the Party (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.
- 5.8.3. When Paging Provider reports trouble to USWC and no trouble is found in USWC equipment, Paging Provider will be responsible for payment of service maintenance charges as specified in the Intrastate Switched Access Tariff or state-specific pricing catalogue, as appropriate, for the period of time from when USWC's personnel are dispatched to when USWC work is completed. Failure of USWC's personnel to find trouble in USWC's service will not result in a charge if the trouble is actually in that service, but not discovered at that time. Conversely, if USWC reports trouble to Paging Provider and no trouble is found in Paging Provider's equipment, USWC will be responsible for payment of service maintenance charges for the period of time that [Paging Provider]'s personnel are involved.
- 5.8.4. No out-of-service credit will apply for the interruption involved if the service maintenance charge applies as a result of the trouble not being in USWC's equipment, but is, in fact, a result of a failure in the equipment or service of Paging Provider.
- 5.8.5. 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.

- 5.8.6. 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.
- 5.8.7. 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.
- 5.8.8. Before either Party reports a trouble condition, it shall use its best efforts to isolate the trouble to the other's facilities.

## **6. COLLOCATION**

Should the Parties desire to establish a collocation relationship, through either physical or virtual collocation, the Parties will enter into a separate Collocation Agreement.

## **7. UNBUNDLED ACCESS/ELEMENT**

USWC shall provide nondiscriminatory access to, and where appropriate, development of unbundled network elements pursuant to the Act in response to specific requests therefore, pursuant to the New Interconnection/Unbundled Element Request Process detailed in Section 15 of this Agreement.

## **8. ACCESS TO TELEPHONE NUMBERS**

### **8.1 Number Resources Arrangements.**

- 8.1.1. USWC will support all Paging Provider's requests related to number assignments in the manner required and consistent with the Central Office Code Assignment Guidelines.
- 8.1.2. The Parties will comply with code administration requirements as prescribed by the Federal Communications Commission, the Commission, and accepted industry guidelines.

## **9. U S WEST DEX ISSUES**

USWC and Paging Provider 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 Paging Provider and directory publishers, including U S WEST Dex. USWC acknowledges that Paging Provider may request USWC to facilitate discussions between Paging Provider and U S WEST Dex.

## **10. ACCESS TO DATABASES**

In accordance with Section 271 of the Act, USWC shall provide Paging Provider with interfaces to access USWC's databases and associated signaling necessary. Except where otherwise specified, access to such databases, and the appropriate interfaces, shall be available to Paging Provider via a Network Interconnection and Unbundled Element Request.

## **11. NOTICE OF CHANGES**

If a Party makes a change in its network which it believes will materially affect the 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. Such coordination will include, at a minimum, providing at least ninety (90) days advance written notice of the nature of the changes and when the change will occur.

If the licensed service areas of USWC or Paging Provider change, the Parties agree to negotiate in good faith any necessary modifications to this Agreement.

## **12. REFERRAL ANNOUNCEMENT**

Paging Provider will provide a voice intercept announcement or distinctive tones to the calling party when a call is directed to a Paging Provider's number that is not assigned.

## **13. NETWORK INTERCONNECTION AND UNBUNDLED ELEMENT REQUEST**

- 13.1. Any request for interconnection or access to an unbundled Network Element that is not already available as described herein shall be treated as a Network Interconnection and Unbundled Element Request (NIUER). USWC shall use the NIUER Process to determine technical feasibility of the requested interconnection or Network Elements and, for those items found to be feasible, to provide the terms and timetable for providing the requested items.
- 13.2. A NIUER shall be submitted in writing and shall, at a minimum, include: (a) a technical description of each requested Network Element or interconnection; (b) the desired interface specification; (c) each requested type of interconnection or access; (d) a statement that the interconnection or Network Element will be used to provide a telecommunications service; and (e) the quantity requested, (f) the specific location requested.
- 13.3. Within 15 business days of its receipt, USWC shall acknowledge receipt of the NIUER and in such acknowledgment advise Paging Provider of any missing information, if any, necessary to process the NIUER. Thereafter, USWC shall promptly advise Paging Provider of the need for any additional information that will facilitate the analysis of the NIUER.
- 13.4. Within 30 calendar days of its receipt of the NIUER and all information necessary to process it, USWC shall provide to Paging Provider a preliminary analysis of

the NIUER. The preliminary analysis shall specify: (a) USWC's conclusions as to whether or not the requested interconnection or access to an unbundled Network Element is technically feasible; and (b) any objections to qualification of the requested Network Element or interconnection under the Act.

- 13.4.1. If USWC determines during the 30 day period that a NIUER is not technically feasible or that the NIUER otherwise does not qualify as a Network Element or Interconnection that is required to be provided under the Act, USWC shall advise Paging Provider as soon as reasonably possible of that fact, and USWC shall promptly, but in no case later than ten days after making such a determination, provide a written report setting forth the basis for its conclusion.
- 13.4.2. If USWC determines during the thirty day period that the NIUER is technically feasible and otherwise qualifies under the Act, it shall notify Paging Provider in writing of such determination within ten days.
- 13.4.3. As soon as feasible, but in any case within 90 days after USWC notifies Paging Provider that the NIUER is technically feasible, USWC shall provide to Paging Provider a NIUER quote which will include, at a minimum, a description of each interconnection and Network Element, the quantity to be provided, any interface specifications, and the applicable rates (monthly and nonrecurring) including the separately stated amortized development costs of the interconnection or the network elements and any minimum volume and term commitments required to achieve amortization of development costs. An initial payment for development cost is appropriate only where Paging Provider is the only conceivable customer or where requested quantity is insufficient to provide amortization.
- 13.5. If USWC has indicated minimum volume and term commitments, then within 30 days of its receipt of the NIUER quote, Paging Provider must either agree to purchase under those commitments, cancel its NIUER, or seek mediation or arbitration.
- 13.6. If Paging Provider has agreed to minimum volume and term commitments under the preceding paragraph, Paging Provider may cancel the NIUER or volume and term commitment at any time, but in the event of such cancellation Paging Provider will pay USWC's reasonable development costs incurred in providing the interconnection or network element, to the extent that those development costs are not otherwise amortized.
- 13.7. If either Party believes that the other Party is not requesting, negotiating or processing any NIUER in good faith, or disputes a determination, or quoted price or cost, it may seek arbitration or mediation under §252 of the Act. Paging Provider is not required to use this section as the exclusive method of seeking access to interconnection or Network Elements.



#### 14. AUDIT PROCESS

14.1. "Audit" shall mean the comprehensive review of:

14.1.1. Data used in the billing process for services performed and facilities provided under this Agreement; and

14.1.2. 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 connection or access to unbundled elements.

14.2. The data referred to in subsection 14.1., 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:

14.2.1. Either Party may request to perform an Audit.

14.2.2. The Audit shall occur upon 30 business days written notice by the requesting Party to the non-requesting Party.

14.2.3. The Audit shall occur during normal business hours.

14.2.4. There shall be no more than one Audit requested by each Party under this Agreement in any 12-month period.

14.2.5. 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.

14.2.6. The location of the Audit shall be the location where the requested records, books and documents are retained in the normal course of business.

14.2.7. All transactions under this Agreement which are over 24 months old will be considered accepted and no longer subject to Audit.

14.2.8. Each Party shall bear its own expenses occasioned by the Audit, provided that the expense of any special data collection shall be born by the requesting Party.

14.2.9. 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.

- 14.2.10. 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.
- 14.2.11. 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).
- 14.3. 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, Paging Provider and USWC 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.

## **15. CONSTRUCTION CHARGES**

- 15.1. All rates, charges and initial service periods specified in this Agreement contemplate the provision of network interconnection services, equipment and facilities to the extent available. Where USWC is required to build facilities, construction charges will apply. Construction charges will also apply when USWC determines that the placement of facilities will be temporary, or facilities are ordered in advance of actual Paging Provider demand for service.
- 15.2. When channel facilities for services are not available and USWC is required to construct said facilities, USWC will develop the cost required to be paid by Paging Provider to provide the service.
- 15.3. Except where required, all necessary construction will be undertaken at the discretion of USWC, consistent with budgetary responsibilities and consideration for the impact on the general body of customers.
- 15.4. A quote for the Paging Provider portion of a specific job will be provided to Paging Provider. The quote will be in writing and will be binding for ninety (90) days after the issue date. When accepted, Paging Provider will be billed the quoted price and construction will commence after receipt of payment. If Paging Provider chooses not to have USWC construct the facilities, USWC reserves the right to bill Paging Provider for the expense incurred for producing the engineered job design.

- 15.5. In the event a construction charge is applicable, Paging Provider service application date will become the date upon which USWC receives the required payment.

## **16. SERVICE STANDARDS**

### **16.1. Definitions.**

When used in this Section, the following terms shall have the meanings indicated.

- 16.1.1. "Specified Performance Commitment" means the commitment by USWC to meet the Performance Criteria for any Specified Activity during the Specified Review Period.

- 16.1.2. "Specified Activity" means any of the following activities:

16.1.2.1. Installation Activities -- apply to resold services, unbundled loops and un/undled switching;

16.1.2.2. Installation Intervals Offered (measured from application date to original due date);

16.1.2.3. Installation Commitments Met;

16.1.2.4. Installation Reports within 7 days (percent of reports per total of new, to or change orders).

- 16.1.3. Repair Activities -- apply to resold service, unbundled loops, unbundled switching, and interim number portability:

16.1.3.1. Out of Service Cleared in Less Than 24 Hours (percent of total out of service reports);

16.1.3.2. Report Rate per 100 Access Lines;

16.1.3.3. Repair Commitments Met;

16.1.3.4. Out of Service and Service Affecting Cleared in Less than 48 Hours;

16.1.3.5. Repair Repeat Reports within 30 Days (Percent of Repeats per 100 Access Lines).

- 16.1.4. Trunking Activities include channel facilities and dedicated transport.

16.1.4.1. Defects per 1 Million Calls (Dedicated Facilities/Trunkside only).

- 16.2. "Performance Criteria" means, with respect to a Specified Review Period (i.e., a calendar month or quarter), the performance by USWC for the specified activities for Paging Provider will meet or exceed the average performance by USWC for the total universe of specified activities.
- 16.3. Failure to Meet the Performance Criteria. If during a Specified Review Period, USWC fails to meet the performance criteria, USWC will use its best efforts to meet the Performance Criteria for the next Specified Review Period. If USWC fails to meet the performance criteria for two consecutive periods, the Parties agree, in good faith, to attempt to resolve such issues through negotiation or non-binding arbitration. This paragraph shall not be construed to waive either Party's right to seek legal or regulatory intervention as provided by state or federal law. Paging Provider may seek regulatory or other legal relief including requests for specific performance of USWC's obligations under this Agreement.
- 16.4. Limitations. USWC's failure to meet or exceed the Performance Criteria cannot be as a result, directly or indirectly, of a Delaying Event. A "Delaying Event" means (a) a failure by Paging Provider to perform any of its obligations set forth in this Agreement, (b) any delay, act or failure to act by a Customer, agent or subcontractor of Paging Provider or (c) any Force Majeure Event. If a Delaying Event prevents USWC from performing a Specified Activity, then such Specified Activity shall be excluded from the calculation of USWC's compliance with the Performance Criteria.
- 16.5. Records. USWC shall maintain complete and accurate records, for the Specified Review Period of its performance under this Agreement for each Specified Activity and its compliance with the Performance Criteria. USWC shall provide to Paging Provider such records in a self-reporting format upon written request. The parties agree that such records shall be deemed "Proprietary Information".
- 16.6. Cost Recovery. USWC reserves the right to recover the costs associated with the creation of the above reports and standards through a future proceeding before a regulatory body. Such a proceeding may address a wide range of implementation costs not otherwise recovered through charges established herein.

## **17. MISCELLANEOUS TERMS**

### **17.1. General Provisions**

- 17.1.1. Each Party is responsible for providing necessary facilities within its network. Such facilities shall be designed based upon the description and forecasts provided under this Agreement.
- 17.1.2. 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.

- 17.1.3. Each Party is solely responsible for the services it provides to its Customers and to other telecommunications carriers.

**17.2. Term of Agreement**

- 17.2.1. This Agreement shall become effective thirty days from the date the executed agreement is filed with the Commission, and shall remain in full force and effect for a period of 2 years, and thereafter shall continue in force and effect unless and until a new agreement, addressing all of the terms of this Agreement become effective between the Parties. Implementation of the terms and conditions will begin when the Commission approves this Agreement. The Parties agree to commence negotiations on a new agreement no later than 1 ½ years after this Agreement becomes effective. This Agreement shall become effective pursuant to Sections 251 and 252 of the Act.

- 17.2.2. This Agreement will terminate upon a revocation or other termination of either Party's governmental authority to provide the services contemplated by this Agreement. If the authority is temporarily suspended, delivery of traffic will cease only during the suspension if the suspended Party otherwise is and remains in full compliance under this Agreement.

**17.3. 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.

**17.4. Payment**

- 17.4.1. Amounts payable under this Agreement are due and payable within thirty (30) days after the date of invoice. Billing and collection of usage charges by Paging Provider from its customers shall have no bearing on the amount or timeliness of Paging Provider's payment obligation to USWC.
- 17.4.2. Unless otherwise specified in this Agreement, any amount due and not paid by the due date stated above shall be subject to the late payment factor of the Intrastate Access Service Tariffs, General Regulations for the state in which the Service is rendered.

- 17.4.3. Should Paging Provider dispute any portion of the monthly billing under this Agreement, Paging Provider will notify USWC in writing within thirty (30) days of the receipt of such billing, identifying the amount and details of such dispute. Paging Provider shall pay all amounts due, including amounts in dispute. Both Paging Provider and USWC 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 Paging Provider's favor, USWC will reimburse Paging Provider the resolved amount plus interest from the date of payment at the late payment factor of the Intrastate Access Service Tariffs, General Regulations for the state in which the service is rendered.
- 17.4.4. If Paging Provider is repeatedly delinquent in making its payments, USWC may, in its sole discretion, require a deposit to be held as security for the payment of charges. "Repeatedly delinquent" means being thirty (30) days or more delinquent for three (3) consecutive months. The deposit may not exceed the estimated total monthly charges for a two (2) month period. The deposit may be a cash deposit, a letter of credit with terms and conditions acceptable to USWC in its sole discretion, or some other form of mutually acceptable security.
- 17.4.5. Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or tariffs. Cash deposits and accrued interest will be credited to Paging Provider's account or refunded, as appropriate, upon the earlier of the termination of this Agreement or one full year of timely payments in full by Paging Provider. The fact that a deposit has been made does not relieve Paging Provider from any requirements of this Agreement.

#### **17.5. Taxes**

Each Party purchasing 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 purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing 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. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party.

#### **17.6. 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.

#### **17.7. Limitation of Liability**

17.7.1. 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.

17.7.2. 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.

17.7.3. Nothing contained in this Section shall limit either Party's liability to the other for willful or intentional misconduct.

17.7.4. Nothing contained in this Section shall limit either Party's obligations of indemnification as specified in the Indemnity Section of this Agreement.

#### **17.8. Indemnity**

17.8.1. With respect 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.

17.8.2. The indemnification provided herein shall be conditioned upon:

17.8.2.1. 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.

17.8.2.2. 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.

17.8.2.3. 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.

#### **17.9. Intellectual Property**

17.9.1. 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.

17.9.2. The rights and licenses under Section 17.9.1. 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.

- 17.9.3. Paging Provider shall not, without the express written permission of USWC, state or imply that; 1) Paging Provider is connected, or in any way affiliated with USWC or its affiliates, 2) Paging Provider is part of a joint business association or any similar arrangement with USWC or its affiliates, 3) USWC and its affiliates are in any way sponsoring, endorsing or certifying Paging Provider and its goods and services, or 4) with respect to Paging Provider advertising or promotional activities or materials, that Paging Provider is in any way associated with or originated from USWC or any of its affiliates. Nothing in this paragraph shall prevent Paging Provider from truthfully describing the network elements it uses to provide service to its customers.
- 17.9.4. 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. Paging Provider may not use any patent, copyright, logo, trademark, tradename, trade secret or other intellectual property right of USWC or its affiliates without execution of a separate agreement between the Parties.
- 17.9.5. Paging Provider acknowledges the value of the marks "U S WEST" and "U S WEST Communications" (the "Marks") and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to U S WEST, Inc. and USWC respectively (the "Owners"). Paging Provider recognizes that nothing contained in this Agreement is intended as an assignment or grant to Paging Provider 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. Paging Provider 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. Paging Provider 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.

17.9.6. 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 providing evidence of such permission.

#### **17.10. 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.

#### **17.11. 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.

#### **17.12. 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.

#### **17.13. 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.

#### **17.14. Severability**

The Parties recognize that the FCC is promulgating rules addressing issues contained in this Agreement. 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.

#### **17.15. Nondisclosure**

- 17.15.1. 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.
- 17.15.2. 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.
- 17.15.3. 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.

- 17.15.4. Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:
- 17.15.4.1 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
  - 17.15.4.2 is or becomes publicly known through no wrongful act of the receiving Party; or
  - 17.15.4.3 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
  - 17.15.4.4 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
  - 17.15.4.5 is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or
  - 17.15.4.6 is approved for release by written authorization of the disclosing Party; or
  - 17.15.4.7 is required to be made public by the receiving Party pursuant to applicable law or regulation provided that the requirement to the disclosing Party to enable the disclosing Party to seek protective orders.
- 17.15.6. 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 by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.

#### 17.16. 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.

#### **17.17. 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 Denver, Colorado. 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.

#### **17.18. Controlling Law**

This Agreement was negotiated by the Parties in accordance with the terms of the Act and the laws of the state where service is provided hereunder. It shall be interpreted solely in accordance with the terms of the Act and the applicable state law in the state where the service is provided.

#### **17.19. 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.

#### **17.20. 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 such 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.

**17.21. Notices**

Any notices required by or concerning this Agreement shall be sent to the Parties at the addresses shown below:

USWC  
Group Product & Market Mgr - Wireless Market Group.  
1801 California St., Rm. 2420  
Denver, CO 80202  
Phone: 303-896-2707, Fax: 303-896-1287

Community Paging Corporation  
Mr. Greg Wagner  
1311 West Pacific  
Lexington, NE 68850

Each Party shall inform the other of any changes in the above addresses.

**17.22. 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 such 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.

**17.23. 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.

#### **17.24. 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, Paging Provider practice, USWC 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, Paging Provider practice, USWC practice, or publication of industry standards (unless Paging Provider elects otherwise). Should there be any inconsistency between or among publications or standards, the parties will jointly agree which requirement shall apply.

#### **17.25. 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 service marks without the prior written approval of the other Party.

#### **17.26. Amendment**

Paging Provider and USWC 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.

#### **17.27. 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.

#### **17.28. 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.

#### **17.29. Cancellation Charges**

Except as provided pursuant to a Network Element Network Interconnection and Unbundled Element Request, or as otherwise provided in any applicable tariff or contract referenced herein, no cancellation charges shall apply.

**17.30. 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.

**17.31. Compliance**

Each Party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

**17.32. 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.

**17.33. 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.

Community Paging Corporation\*

*Greg Wagner*  
Signature

GREG WAGNER  
Name Printed/Typed

OPERATIONS MGR  
Title

6-4-97  
Date

U S WEST Communications, Inc.\*

*Kathy Fleming*  
Signature

Kathy Fleming  
Name Printed/Typed

Executive Director - Interconnect  
Title

6/17/97  
Date

\* Signature does not waive any rights of either Party to seek administrative/judicial review of all or part of the Agreement, or to reform the agreement as the result of successful administrative/judicial review and/or future settlement agreements between the Parties to this Agreement.

APPENDIX A - PAGE 1 - NORTH DAKOTA

DESCRIPTION	USOC	NONRECURRING RATES	MONTHLY RATES
<b>NETWORK ACCESS CHANNEL - NAC</b>			
<b>Analog 2-wire Channels:</b>			
1-way in (land to mobile)	MTZ1X	\$253.11	\$27.15
1-way out (mobile to land), loop start	MH60X	\$253.11	\$27.15
1-way out, ground start	MK60X	\$253.11	\$27.15
1-way out, loop with reverse battery	MTZ0X	\$253.11	\$27.15
<b>Analog 4-wire Channels:</b>			
1-way in (land to mobile)	MTJ1X	\$253.11	\$73.26
1-way out (mobile to land)	MTJ0X	\$253.11	\$73.26
2-way	MTJCX	\$253.11	\$73.26
<b>4-wire Digital Channels:</b>			
1-way in (land to mobile)	M4W1X	\$75.71	N/A
1-way out (mobile to land)	M4W0X	\$75.71	N/A
2-way	M4WCX	\$75.71	N/A
<b>DIGITAL FACILITY</b>			
DS1 Level	MF31X	\$465.67	\$98.48
DS3 Level	MF33X	\$511.02	\$482.24
<b>CONNECTIVITY</b>			
Analog (Per analog channel)	CK6AX	N/A	\$21.10
DS1 Level (Per DS1 Facility)	CK61X	N/A	\$48.48
DS3 Level (Per DS3 Facility)	CK63X	N/A	\$236.79
-per DS1 Activated on a DS3 Facility	CK61X	N/A	\$48.48
<b>DIAL OUTPULSING</b>			
Per each one-way-in (land to mobile) or two-way channel:			
-Analog 2-wire	OUPAX	\$173.35	N/A
-Analog 4-wire or Digital	OUPAX	\$173.35	N/A
<b>MULTIPLEXING</b>			
DS1 to DS0	MXG1X	\$279.55	\$225.18
DS3 to DS1	MXG3X	\$286.18	\$236.79
<b>CHANNEL PERFORMANCE</b>			
Loop Start	PM2GG	N/A	\$9.85
Ground Start	PM2HG	N/A	\$5.57
Loop with Reverse Battery	PM2JG	N/A	\$4.29

**APPENDIX A - PAGE 2 - NORTH DAKOTA**

<b>DESCRIPTION</b>	<b>USOC</b>	<b>NONRECURRING RATES</b>	<b>MONTHLY RATES</b>
<b>DEDICATED TRANSPORT</b>			
<b>Analog/DSO</b>			
Over 0 to 8 Miles			
Fixed:	XUWH1	\$27.14	\$20.76
Per Mile	JZ3HA	N/A	\$0.08
Over 8 to 25 Miles			
Fixed	XUWH2	\$27.14	\$20.80
Per Mile	JZ3HB	N/A	\$0.19
Over 25 to 50 Miles			
Fixed	XUWH3	\$27.14	\$20.81
Per Mile	JZ3HC	N/A	\$0.20
Over 50 Miles			
Fixed	XUWH4	\$27.14	\$20.81
Per Mile	JZ3HD	N/A	\$0.18
<b>DS1 Level</b>			
Over 0 to 8 Miles			
Fixed:	XUWJ1	\$207.27	\$41.30
Per Mile	JZ3JA	N/A	\$0.63
Over 8 to 25 Miles			
Fixed	XUWJ2	\$207.27	\$41.56
Per Mile	JZ3JB	N/A	\$3.28
Over 25 to 50 Miles			
Fixed	XUWJ3	\$207.27	\$41.58
Per Mile	JZ3JC	N/A	\$3.40
Over 50 Miles			
Fixed	XUWJ4	\$207.27	\$41.53
Per Mile	JZ3JD	N/A	\$3.12
<b>DS3 Level</b>			
Over 0 to 8 Miles			
Fixed:	XUWK1	\$207.27	\$289.99
Per Mile	JZ3KA	N/A	\$12.34
Over 8 to 25 Miles			
Fixed	XUWK2	\$207.27	\$280.37
Per Mile	JZ3KB	N/A	\$12.80

## APPENDIX A - PAGE 3 - NORTH DAKOTA

DESCRIPTION	USOC	NONRECURRING RATES	MONTHLY RATES
<b>DS3 Level</b>			
Over 25 to 50 Miles			
Fixed	XUWK3	\$207.27	\$290.50
Per Mile	JZ3KC	N/A	\$11.72
Over 50 Miles			
Fixed	XUWK4	\$207.27	\$299.46
Per Mile	JZ3KD	N/A	\$28.34
Numbers			
Reservation:			
Blocks of 100	NOJA1	\$14.82	N/A
Activation:			
Blocks of 100	RC6BX	\$17.11	N/A

## APPENDIX A - PAGE 1 - SOUTH DAKOTA

DESCRIPTION	USOC	NONRECURRING RATES	MONTHLY RATES
-------------	------	--------------------	---------------

## NETWORK ACCESS CHANNEL - NAC

## Analog 2-wire Channels:

1-way in (land to mobile)	MTZ1X	\$261.35	\$31.77
1-way out (mobile to land), loop start	MH60X	\$261.35	\$31.77
1-way out, ground start	MK60X	\$261.35	\$31.77
1-way out, loop with reverse battery	MTZ0X	\$261.35	\$31.77

## Analog 4-wire Channels:

1-way in (land to mobile)	MTJ1X	\$261.35	\$74.77
1-way out (mobile to land)	MTJ0X	\$261.35	\$74.77
2-way	MTJCX	\$261.35	\$74.77

## 4-wire Digital Channels:

1-way in (land to mobile)	M4W1X	\$78.19	N/A
1-way out (mobile to land)	M4W0X	\$78.19	N/A
2-way	M4WCX	\$78.19	N/A

## DIGITAL FACILITY

DS1 Level	MF31X	\$480.83	\$96.87
DS3 Level	MF33X	\$527.64	\$388.63

## CONNECTIVITY

Analog (Per analog channel)	CK6AX	N/A	\$21.99
DS1 Level (Per DS1 Facility)	CK61X	N/A	\$51.12
DS3 Level (Per DS3 Facility)	CK63X	N/A	\$219.52
-per DS1 Activated on a DS3 Facility	CK61X	N/A	\$51.12

## DIAL OUTPULSING

Per each one-way-in (land to mobile) or two-way channel:

-Analog 2-wire	OUPAX	\$179.04	N/A
-Analog 4-wire or Digital	OUPAX	\$179.04	N/A

## MULTIPLEXING

DS1 to DS0	MXG1X	\$288.64	\$207.83
DS3 to DS1	MXG3X	\$295.51	\$219.52

## CHANNEL PERFORMANCE

Loop Start	PM2GG	N/A	\$6.98
Ground Start	PM2HG	N/A	\$5.14
Loop with Reverse Battery	PM2JG	N/A	\$4.06

## APPENDIX A - PAGE 2 - SOUTH DAKOTA

DESCRIPTION	USOC	NONRECURRING RATES	MONTHLY RATES
<b>DEDICATED TRANSPORT</b>			
<b>Analog/DSO</b>			
<b>Over 0 to 8 Miles</b>			
Fixed:	XUWH1	\$28.03	\$19.66
Per Mile	JZ3HA	N/A	\$0.10
<b>Over 8 to 25 Miles</b>			
Fixed	XUWH2	\$28.03	\$19.64
Per Mile	JZ3HB	N/A	\$0.14
<b>Over 25 to 50 Miles</b>			
Fixed	XUWH3	\$28.03	\$19.64
Per Mile	JZ3HC	N/A	\$0.13
<b>Over 50 Miles</b>			
Fixed	XUWH4	\$28.03	\$19.66
Per Mile	JZ3HD	N/A	\$0.08
<b>DS1 Level</b>			
<b>Over 0 to 8 Miles</b>			
Fixed:	XUWJ1	\$214.03	\$39.86
Per Mile	JZ3JA	N/A	\$1.13
<b>Over 8 to 25 Miles</b>			
Fixed	XUWJ2	\$214.03	\$39.87
Per Mile	JZ3JB	N/A	\$2.15
<b>Over 25 to 50 Miles</b>			
Fixed	XUWJ3	\$214.03	\$39.87
Per Mile	JZ3JC	N/A	\$2.09
<b>Over 50 Miles</b>			
Fixed	XUWJ4	\$214.03	\$39.86
Per Mile	JZ3JD	N/A	\$1.44
<b>DS3 Level</b>			
<b>Over 0 to 8 Miles</b>			
Fixed:	XUWK1	\$214.03	\$270.95
Per Mile	JZ3KA	N/A	\$12.50
<b>Over 8 to 25 Miles</b>			
Fixed	XUWK2	\$214.03	\$271.31
Per Mile	JZ3KB	N/A	\$12.95

## APPENDIX A - PAGE 3 - SOUTH DAKOTA

DESCRIPTION	USOC	NONRECURRING RATES	MONTHLY RATES
<b>D53 Level</b>			
Over 25 to 50 Miles			
Fixed	XUWK3	\$214.03	\$271.52
Per Mile	JZ3KC	N/A	\$11.80
Over 50 Miles			
Fixed	XUWK4	\$214.03	\$279.80
Per Mile	JZ3KD	N/A	\$28.76
<b>NUMBERS</b>		<b>NONRECURRING</b>	<b>RECURRING</b>
Reservation Blocks of 100	NOJA2	\$15.32	N/A
Activation Blocks of 100	RC6BX	\$17.66	N/A

**APPENDIX B**  
**TRUNK FORECAST FORM**  
**TYPE1 PAGING**

**DATE OF MEETING:**

**Paging Provider**

Name:	
Address:	
City, State, Zip:	
Technical Contact Person:	
Technical Contact Person Telephone #:	
USWC Negotiator:	
USWC Negotiator Telephone #:	
<b>Desired U S WEST Central office</b>	
CLL:	
Central Office address:	
City, State:	

**Equipment**

Manufacture/ model#	Quantity	

**Cable Makeup**

Number of cables:	
Number of fibers per cable:	
Distance from USWC's Serving Wire Center	
Distance from Paging Provider's POC	

**Service Requirements**

	Year 1	Year 2	Year 3
DS3			
DS1			

**Remarks:**

**Please attach additional major network project information to this forecast, as discussed in Section 5.7.2.2 .**



APPENDIX C  
POINT OF CONNECTION (POC)

Legal Entity: \_\_\_\_\_

Effective Date \_\_\_\_\_

Type 1

Paging Provider's POC: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

USWC's Serving Wire Center: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

V = \_\_\_\_\_ H = \_\_\_\_\_

V = \_\_\_\_\_ H = \_\_\_\_\_

CLLI Code: \_\_\_\_\_

CLLI Code: \_\_\_\_\_

NXX \_\_\_\_\_

**SERVING ARRANGEMENT:**

The Type 1 Paging Service provided by the Agreement is represented by the following:

\_\_\_\_\_  
USWC SWC CLLI

\_\_\_\_\_  
USWC Foreign Central Office CLLI

\_\_\_\_\_  
TRAFFIC CLLI

\_\_\_\_\_  
TRAFFIC CLLI

\_\_\_\_\_  
Type 1 TRUNKS

\_\_\_\_\_  
Type 1 TRUNKS

**DEDICATED TRANSPORT:**

Number of miles from Foreign Central Office to Serving Wire Center \_\_\_\_\_

Multiplexing N/A \_\_\_\_\_ DS1 to DS0 \_\_\_\_\_ DS3 to DS1 \_\_\_\_\_

TC97-118	In The Matter Of The Establishment Of Switched Access Rates For West River Telecommunications Cooperative, Hazen, N.D. (Staff: HB/C) West River Telecommunications filed cost study revenue requirements that are included in the Local Exchange Carrier Association switched access rate filing (TC97-061). West River Telecommunications requests that the Commission allow the use of GVNW's cost study model as opposed to the Commission model for revenue requirement and rate development.	06/30/97	07/18/97
<b>FILING OF TYPE 1 PAGING AGREEMENT</b>			
TC97-118	U S WEST Communications, Inc. filed for approval by the Commission the Type 1 Paging Agreement between Community Paging Corporation and U S WEST.	06/30/97	07/18/97
<b>TELECOMMUNICATIONS INFRASTRUCTURE DOCKET OPENED</b>			
TC97-120	The 1997 South Dakota Legislature passed SDCL 49-31-60 through 49-31-68 which outline the legislative intent regarding the state's telecommunications infrastructure. These statutes are effective July 1, 1997. According to SDCL 49-31-60, "[i]t is the intent of the Legislature that South Dakota have a telecommunications infrastructure that meets the advanced communication needs of the state's individual citizens and its communities of interest, including our schools, medical facilities, businesses and all levels of government." The statutes further describe specific network requirements and deployment goals. On June 24, 1997, at its regularly scheduled meeting, the Commission considered whether to open a docket to investigate the current status of South Dakota's telecommunications infrastructure and the telecommunications companies' plans to comply with the statutes. After hearing the comments of the South Dakota Independent Telephone Coalition, U S WEST Communications, Inc., the Bureau of Information and Telecommunications, and MCI Telecommunications Corporation, the Commission unanimously voted to open an investigative docket. The Commission has jurisdiction in this matter pursuant to SDCL Chapter 49-31 and the Telecommunications Act of 1996. It is therefore ORDERED that a docket shall be opened to investigate the current status of South Dakota's telecommunications infrastructure and the telecommunications companies' plans to comply with the statutes.	Opened 07/03/97	NA

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 [terry@pic.state.sd.us](mailto:terry@pic.state.sd.us). Filing the address to the Commission at 605-773-3809

PAGE 2 OF 2

South Dakota Public Utilities Commission State Capitol 500 E. Capitol Pierre, SD 57501-5070 Phone: (800) 332-1782 Fax: (605) 773-3809		<b>TELECOMMUNICATIONS SERVICE FILINGS</b> These are the telecommunications service filings that the Commission has received for the period of: <b>06/27/97 through 07/03/97</b> If you need a complete copy of a filing filed, 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
<b>REQUEST FOR CERTIFICATE OF AUTHORITY</b>			
TC97-116	Application by USA Tele Corp. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/TZ) *Applicant is a switchless reseller which intends to offer 1+ direct dialing, 800 toll free and travel card (no prepaid calling cards) service through the resale of telephone services provided by facilities-based interexchange carriers.*	06/30/97	07/18/97
<b>REQUEST FOR ELIGIBLE TELECOMMUNICATIONS COMPANY STATUS</b>			
TC97-117	McCook Cooperative Telephone Company pursuant to 47 U.S.C. 214(e) and 47 CFR 54.201 hereby seeks designation as an eligible telecommunications carrier within the local exchange areas that constitute its service area in South Dakota. McCook Cooperative Telephone Company is the facilities-based local exchange carrier presently providing local exchange telecommunications services in the following exchanges in South Dakota: Canova (523), Center (247), Spencer (246) and Winfred (485). McCook Cooperative Telephone Company, to its knowledge, is the only carrier today providing local exchange telecommunications services in the above identified exchange area. (Staff: HB/CH)	06/30/97	07/18/97
TC97-121	Kadoka Telephone Company pursuant to 47 U.S.C. 214(e) and 47 CFR 54.201 hereby seeks designation as an eligible telecommunications carrier within the local exchange areas that constitute its service area in South Dakota. Kadoka Telephone Company is the facilities-based local exchange carrier presently providing local exchange telecommunications services in the following exchange: Kadoka (837). Kadoka Telephone Company, to its knowledge, is the only carrier today providing local exchange telecommunications services in the above identified exchange areas. (Staff: HB/CH)	07/03/97	07/18/97
<b>REQUEST FOR WAIVER</b>			
TC97-109	FirstTel, Inc. has filed a request that the Commission waive ARSD 20:10-24-02(7) and 20:10-24-02(12) from the requirements for Certificate of Authority. (Staff: TS/KC) Subdivision 7 is the filing of a map and subdivision 12 is cost support.	07/01/97	07/18/97
<b>NONCOMPETITIVE TELECOMMUNICATIONS FILINGS</b>			

PAGE 1 OF 2



# South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



July 22, 1997

Mr. William P. Heaston  
Senior Attorney  
U S WEST Communications, Inc.  
1801 California, Suite 5100  
Denver, CO 80202

Ms. Colleen Sevold  
Manager - Public Policy  
U S WEST Communications, Inc.  
125 South Dakota Avenue, 8th Floor  
Sioux Falls, SD 57194

Mr. Greg Wagner  
Community Paging Corporation  
1311 West Pacific  
Lexington, NE 68850

Re: Type 1 Paging Agreement between U S WEST  
Communications, Inc., and Community Paging  
Corporation  
Docket TC97-119

Dear Folks:

Enclosed each of you will find a copy of Staff Analysis and Recommendation in the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

Camron Hoseck  
Staff Attorney

CH dk  
Enc.

Capitol Office  
Telephone (605)773-3281  
FAX (605)773-3009

Transportation/  
Warehouse Division  
Telephone (605)773-5280  
FAX (605)773-3225

Consumer Hotline  
1-800-332-1782

TTY Through  
Relay South Dakota  
1-800-877-1113

Internet  
bill@puc.state.sd.us

Jim Berg  
Chairman  
Paul Nelson  
Vice-Chairman  
Lanka Schaeffelder  
Commissioner

William Bullard Jr.  
Executive Director

Edward R. Anderson  
Harlan Best  
Martin C. Bettmann  
Charlie Bolle  
Sue Cichos  
Karen E. Crenor  
Marlette Fischbach  
Shirleen Fugitt  
Lewis Hammond  
Lemi Healy  
Camron Hoseck  
Dave Jacobson  
Bob Kadie  
DeLaine Kolbo  
Terry J. Lumsden  
Jeffrey P. Lorenson  
Terry Norum  
Gregory A. Raskov  
Tammi Stangor  
Steven M. Wegman  
Rosalyn Aris West

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

<b>IN THE MATTER OF THE FILING OF WIRELESS</b>	)	<b>STAFF ANALYSIS AND</b>
<b>INTERCONNECTION AGREEMENT BETWEEN</b>	)	<b>RECOMMENDATION</b>
<b>U S WEST COMMUNICATIONS, INC. AND</b>	)	<b>TC 97-119</b>
<b>COMMUNITY PAGING CORPORATION</b>	)	

**PRELIMINARY STATEMENT**

At 47 U.S.C. Section 252 (a)(1) the law provides that negotiated interconnection agreements which have been reached are to be submitted to the Public Utilities Commission (Commission) for approval. Submission of the agreement is to be in accordance with subsection (e) of this provision. Subsection (e) provides that the Commission may approve the agreement or reject it with written findings as to deficiencies. The grounds for rejection are specified in Subsection (e)(2). As summarized, those reasons include discrimination, inconsistency with the public interest, convenience and necessity or inconsistency with section 251 or the standards of (d) of Section 252.

The following analyses and recommendations are based upon the standards of (1) discrimination and (2) the public interest, convenience and necessity and are intended to assist the Commission in its consideration of this negotiated Agreement.

**ANALYSIS**

1. DISCRIMINATION

a. quality of service

At Section 5, "TYPE 1 SERVICE FROM USWC's END OFFICE SWITCH," paragraph 5.4 "Quality of Interconnection," at page 11, the Agreement provides for U S WEST to provide terms and conditions to Community Paging which are not less than those provided to itself or in a less efficient manner. The same standard of service applies to the quality of interconnection. This provides some basic service quality assurance to Community Paging. Previously this has not been an assurance extended to interconnection agreements with domestic South Dakota, non-cellular carriers; it has been extended to cellular interconnection agreements. The Commission may wish to consider whether this constitutes a pattern of discrimination which is prohibited by the federal statute cited above.

B. payment penalty

Under Section 17 "Miscellaneous Terms," paragraph 17.4 "Payment" on page 21, late payments are addressed and the remedy is the late payment factor in U S WEST's tariffs. Facially, this provides consumers with a level of protection for continuity of service in the event of billing disputes between U S WEST and Community Paging, protection significantly different than was granted non-cellular companies in prior interconnection agreements considered by this Commission. Domestic South Dakota, non-cellular companies have been treated differently from this provision in two instances: PAM Oil, Inc. and Firstel, Inc. The pending Dakota Telecom et al application is similar to this Agreement. Two cellular Agreements, one arbitrated, one negotiated and one non-cellular agreement (Dakota TC97-126) have taken a financial penalty approach. The Commission may wish to consider whether, in the entire scheme of these interconnection agreements that it is called upon to

arbitrate or approve, U S WEST has demonstrated a pattern of disparate treatment of those with whom it does business.

II. Public interest, convenience and necessity

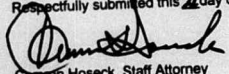
A. In Section 17, "Miscellaneous Terms," paragraph 17.10 "Warranties" on page 26 there is a standard provision for warranties. Again, I would question how the public interest, convenience and necessity is served by a warranty when the contract is for a service. Warranties typically apply to the sale of goods.

B. In Paragraph 17 "Miscellaneous Terms," paragraph 17.18, "Controlling Law" at page 29 there is reference to the applicable law which is the law of the state where the service is provided. Consistent with my approach in prior cases, I would strongly recommend that this Agreement not be approved until it explicitly states that the Agreement shall be construed in accordance with the law of the state of South Dakota. The vagueness of this provision for construing the Agreement in accordance with the law of the state where the service is provided presents a problem. If different services under the Agreement are performed in states other than South Dakota, then different parts of the contract could potentially be interpreted by laws of a variety of states. In order to protect the consuming public in South Dakota, South Dakota's laws should govern the execution and performance of this Agreement.

**RECOMMENDATION**

I recommend that this Agreement NOT be approved until these matters are resolved to the satisfaction of the Commission.

Respectfully submitted this <sup>2<sup>nd</sup></sup> day of July, 1997.

A handwritten signature in black ink, appearing to read "Camron Hoseck". The signature is stylized with a large initial "C" and a long, sweeping underline.

Camron Hoseck, Staff Attorney

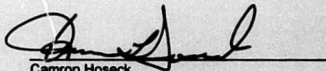
CERTIFICATE OF SERVICE

I hereby certify that copies of Staff Analysis and Recommendation were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 22nd day of July, 1997.

William P. Heaston  
Senior Attorney  
U S WEST Communications, Inc.  
1801 California, Suite 5100  
Denver, CO 80202

Colleen Sevold  
Manager - Public Policy  
U S WEST Communications, Inc.  
125 South Dakota Avenue, 8th Floor  
Sioux Falls, SD 57194

Greg Wagner  
Community Paging Corporation  
1311 West Pacific  
Lexington, NE 68850



Camron Hoseck  
Staff Attorney  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501



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

IN THE MATTER OF THE FILING BY U S WEST ) COMMUNICATIONS, INC. FOR APPROVAL OF ) TYPE 1 PAGING AGREEMENT BETWEEN U S ) WEST COMMUNICATIONS, INC. AND ) COMMUNITY PAGING CORPORATION )	ORDER APPROVING AGREEMENT  TC97-119
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On June 30, 1997, U S WEST Communications, Inc. (U S WEST) filed for approval by the South Dakota Public Utilities Commission (Commission) of the Type 1 Paging Agreement between Community Paging Corporation (CPC) and U S WEST.

On July 3, 1997, the Commission electronically transmitted notice of this filing to interested individuals and entities. The notice stated that any person wishing to comment on the parties' request for approval had until July 18, 1997, to do so. On July 22, 1997, Staff filed its Analysis and Recommendation with the Commission.

At its duly noticed August 18, 1997, meeting, the Commission considered whether to approve the agreement between U S WEST and CPC. The Commission considered Staff's analysis and recommendation.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31, and the Federal Telecommunications Act of 1996. Upon review of the agreement, the Commission found that the agreement should be revised to state that it shall be construed in accordance with the laws of the state of South Dakota. The Commission unanimously voted to approve the agreement subject to the condition that it is revised to state that it shall be construed in accordance with the laws of the state of South Dakota. It is therefore

ORDERED, that the Commission approves the agreement, subject to the condition that the agreement be revised to state that the agreement shall be construed in accordance with the laws of the state of South Dakota.

Dated at Pierre, South Dakota, this 27<sup>th</sup> day of August, 1997.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>Nellie K. Laska</u>
Date: <u>9/2/97</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner

U S WEST, Inc.  
1801 California Street, Suite 5100  
Denver, Colorado 80202  
303 672-2810  
Facsimile 303 295-7069

William P. Heaston  
Senior Attorney

**USWEST**

**VIA OVERNIGHT DELIVERY**

October 14, 1997

**RECEIVED**

OCT 15 1997

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

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

Re: Filing of Type 1 Paging Agreement between  
U S WEST Communications, Inc. and  
Community Paging Corporation  
Docket TC97-119

Dear Mr. Bullard:

Pursuant to the Commission Order of August 27, 1997, please find enclosed an original and eleven copies of a revised page 29 of the above Agreement, which has been changed to reflect "the laws of the State of South Dakota".

Please return a stamped copy in the enclosed self-addressed stamped envelope. Thank you for your cooperation.

Yours truly,

*William P. Heaston*  
*mb*

William P. Heaston

WPH:mb  
Enclosures

cc: Greg Wagner, Community Paging Corporation  
USWC Wireless Market Group  
Colleen Sevoid

#### **17.17. 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 Denver, Colorado. 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.

#### **17.18. Controlling Law**

This Agreement was negotiated by the Parties in accordance with the terms of the Act and the laws of the state of South Dakota. It shall be interpreted solely in accordance with the terms of the Act and the applicable state law in the state of South Dakota.

#### **17.19. 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.

#### **17.20. 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 such 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.