TC98-019

DOCKET NO. TC98-019

In the Matter of IN THE MATTER OF THE FILING BY SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION FOR APPROVAL OF RECIPROCAL TRANSPORT AND TERMINATION AGREEMENT BETWEEN COMMNET CELLULAR, INC. AND BALTIC TELECOM COOPERATIVE

Public Utilities Commission of the State of South Dakota

DATE		MEMORANDA
2/6	98	Filed and Docketed;
2/12	98	TC Fax Filing;
3/24	98	Staffs Analysis and Recommendation;
4/14	98	SDITC Response;
4/17	98	Staffs Reply to SDITC Response;
5/4	98	Order Approving Agreement;
5/4	98	Docket Closed.

STATE PUBLISHING CO., PIERRE, SOUTH DAKOTA—SHEAD 47 SP14-98

TC98-019

SDITC

South Dakota Independent
Telephone Coalition, Inc.

Richard D. Coit
Executive Director

Bette Dozier
Administrative Assistant

February 6, 1998

RECEIVED

FEB 06 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Bill Bullard
Public Utilities Commission
500 East Capitol
Pierre, SD 57501

RE: Reciprocal Transport and Termination Agreements

Dear Bill:

Enclosed for Commission review pursuant to 47 U.S.C. § 252(e) are true and correct copies of "Reciprocal Transport and Termination Agreements" negotiated and entered into between CommNet Cellular, Inc. and the independent local exchange carriers ("LECs") listed below:

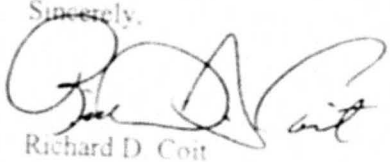
Accent Communications Inc.
Armour Independent Telephone Company
Baltic Telecom Cooperative
Beresford Municipal Telephone Company
Bridgewater-Canistota Independent Telephone Company
East Plains Telecom., Inc.
Faith Municipal Telephone Company
Golden West Telecommunications Cooperative, Inc.
Hanson Communications, Inc. dba McCook Telecom.
Hanson County Telephone Company
Heartland Communications, Inc.
Interstate Telecommunications Cooperative, Inc.
Intrastate Telephone Company
James Valley Cooperative Telephone Company
Kennebec Telephone Company Inc.
McCook Cooperative Telephone Company
Midstate Telephone Company
Mobridge Telecommunications Company
RC Communications, Inc.
Roberts County Telephone Cooperative Association
Sanborn Telephone Company
SANCOM Inc.
Sioux Valley Telephone Company
Splitrock Properties, Inc.
Splitrock Telecom Coop., Inc.
Stateline Telecommunications, Inc.

Stockholm/Strandburg Telephone Company
Sully Buttes Telephone Coop., Inc.
Union Telephone Company
Valley Cable & Satellite Communications, Inc.
Valley Telecommunications Coop. Assn., Inc.
Venture Communications, Inc.
Vivian Telephone Company dba Golden West Communications, Inc.
West River Cooperative Telephone Company
West River Telecommunications Cooperative
Western Telephone Company

SDITC, on behalf of the above listed companies, and CommNet are requesting Commission approval of each of the negotiated agreements. All the agreements are identical in their terms and conditions and the rates agreed upon are reflected in "Exhibit A" attached to each agreement.

The agreements have already been signed and are considered in affect by the parties. There was an urgency to get the agreements in effect as soon as possible, because, since US WEST in 1996 cancelled its LATA-wide cellular termination arrangements, no mechanism has been in place to provide for compensation between the parties. If through the Commission review process it is determined that changes to the agreements should be made and any such changes would have the affect of changing the rates or compensation provided for, the parties agree to make true-ups as necessary to comply with any Commission ordered changes.

Sincerely,



Richard D. Coit

RDC: bd

Enclosures

cc: Valerie Kendrick, CommNet Cellular, Inc.
Independent LECs listed

Reciprocal Transport and Termination Agreement

This Reciprocal Transport and Termination Agreement (the "Agreement") is effective as of the 8 day of December, 1997 (the "Effective Date"), by and between CommNet Cellular, Inc. ("CommNet") with offices at 8350 East Crescent Parkway, Room 400, Englewood, CO 80111 and Baltic Telecom Cooperative ("Carrier") with offices at 501 Second ST Balta SD 57003 CommNet and Carrier are each individually a "Party" and are together the "Parties" to this Agreement.

CommNet is licensed by the Federal Communications Commission ("FCC") as a Commercial Mobile Radio Service Provider ("CMRS") provider. Carrier and CommNet agree to exchange wireline to wireless and wireless to wireline traffic for the benefit of the Parties. Services provided by Carrier to CommNet under this Agreement are provided pursuant to CommNet's status as a CMRS provider.

WHEREAS, the Parties currently extend arrangements to one another allowing for the transport and termination of wireline to wireless and wireless to wireline traffic over each other's network facilities, between each other's subscribers; and

WHEREAS, the Parties wish to put in place an arrangement for the mutual exchange and reciprocal compensation of local telecommunications traffic in accord with the Telecommunications Act of 1996, and which is intended to supersede any previous arrangements between the parties relating to such traffic;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CommNet and Carrier hereby agree as follows:

1. SCOPE. This Agreement addresses the parties' reciprocal compensation obligations as described in § 251(b)(5) of the Telecommunications Act of 1996 (the "Act"). By this Agreement, neither Party waives any other rights it may have under the Act or the rule of the FCC or of the State Public Utilities Commission ("Commission"). Such rights may include CommNet's right to request unbundled network elements and a review of Carrier's rural telephone company exemption provided for under § 251(f)(1)(A) of the Act and Carrier's right to seek to maintain the rural exemption.

2. Interpretation and Construction. The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be prescribed by any federal, state or local government authority. To the extent required by any such subsequently prescribed law, rule, regulation or guideline, the Parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, regulation or guideline.

The Parties agree and understand that certain provisions in this Agreement are based on the FCC's First Report 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 1st Order") and the Second Report and Order and Memorandum Opinion and Order, In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, rel. Aug. 8, 1996 ("FCC 2nd Order"). To the extent that certain of the rules contained in the FCC 1st Order and the FCC 2nd Order, or any other FCC Order adopted to implement the Telecommunications Act of 1996, are ultimately deemed by the courts to be not effective, this Agreement shall be modified to comport with the final court decisions and subsequent FCC rules adopted to comply with the court's decisions.

The Parties further agree and understand that the rates for local transport and termination agreed to, as set forth in Exhibit A hereto, are not based on a specific costing methodology or company specific cost data and that they may have to be adjusted when an appropriate costing methodology consistent with § 252(d)(2) of the Telecommunications Act is established and actual cost information or an acceptable cost proxy which reasonably reflects the actual costs of providing the local transport and termination services becomes available.

The Parties enter into this agreement without prejudice to any position they may take with respect to similar future agreements between the Parties or with respect to positions they may 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 rates to be charged for transport and termination of local traffic or the types of arrangements prescribed by this agreement.

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 FCC or a Commission within its state of jurisdiction.

3.2 "CMRS" or "Commercial Mobile Radio Service" is as defined in the Communications Act of 1934 as amended by the Telecommunications Act of 1996.

3.3 "Commission" means the South Dakota Public Utilities Commission.

3.4 "Local Calling Area (LCA)" for purposes of this Agreement, is a geographic area defined by the Major Trading Area (MTA) within which CommNet provides CMRS services where local transport and termination rates apply as set forth in FCC 1st Order and 47 CFR 51.701(b)(2).

3.5 "Local Traffic" for purposes of this Agreement means traffic which originates and terminates, based on the location of the wireless subscriber and landline end user, within the same CMRS LCA.

3.6 "Major Trading Area (MTA) is a geographic area established in Rand McNally's Commercial Atlas and Marketing Guide and used by the FCC in defining CMRS license boundaries for CMRS providers for purposes of Sections 251 and 252 of the Communications Act of 1934 as amended.

3.7 "Non-Local Traffic" is the completion of interMTA calls based on the location of the wireless subscriber and the land line end user and the completion of that roaming traffic, as defined in FCC 1st Order, par. 1043, to which switched access charges are applicable.

3.8 "Reciprocal Compensation Credit" for purposes of this Agreement and based on current traffic trends is a monetary credit for wireline to wireless traffic which is originated by a landline subscriber of Carrier and terminates to a subscriber of CommNet within the LCA. Should traffic patterns change so that more wireless traffic is terminated by CommNet than Carrier within a prescribed billing period, the reciprocal compensation credit shall be changed to reflect such difference.

3.9 "Transit Traffic" is traffic that originates from one provider's network, transits another telecommunication carrier's network, substantially unchanged, and terminates to yet another provider's network.

3.10 "Wireless Traffic" for purposes of this Agreement, means all calls in either direction between a user of CommNet's CMRS (where CommNet provides the wireless equivalent of dial tone to the user) and an end user served by Carrier.

4. Reciprocal Traffic Exchange. Each Party shall reciprocally terminate wireless local traffic originating on each other's network. Reciprocal traffic exchange addresses the exchange of wireless traffic between CommNet subscribers and Carrier end users. Consistent with Carrier's current practice with CommNet, either Party's wireless local traffic may be routed through an intermediary for interconnection with the other Party's system. Any such arrangement may be modified by a separate agreement if both Parties wish to provide for two-way direct interconnection. Reciprocal traffic exchange per this Agreement covers only transport and termination services provided for CMRS carriers only in association with CMRS services. Other services, including any direct interconnect arrangement established between the parties, shall be covered by a separate contract, tariff or price list. The transport and termination services provided hereunder are intended for wireless to wireline or wireline to wireless, but not wireline to wireline communications. Such services will not be used to terminate other types of traffic on Carrier's network (such as wireline originated

traffic), and services provided in violation hereof shall constitute a breach of this Agreement. In addition to any other remedies available, the Party whose services have been improperly used shall be entitled to recover the charges applicable to such traffic for the entire period of misuse. Any incidental services (e.g. directory assistance, operator services, etc.) will be billed at the standard rates for those services.

5. Local and Non-Local Traffic. This Agreement is intended to address the transport and termination of local wireless traffic between the Parties. Local wireless traffic is subject to only the local transport and termination charge(s) set forth below and is not subject to switched access charges. Non-local traffic is subject to either interstate or intrastate switched access charges, whichever is applicable.

Ancillary traffic which includes wireless traffic that is destined for ancillary services including, but not limited to, directory assistance, 911/E911, operator call termination (busy line interrupt and verify), 800/888, LIDB, and information services requiring special billing will be exchanged and charged in accordance with the appropriate tariffs, local or switched access.

CommNet agrees that it shall not use the services provided by Carrier under this agreement for the transport or termination of non-local wireless traffic. Any use of the services for non-local traffic shall constitute a breach of this agreement and, with respect to such improper use, in addition to any other remedies available, Carrier shall be entitled to recover the charges applicable to such traffic for the entire period of misuse.

For billing purposes, if either Party is unable to classify on an automated basis the local wireless traffic delivered by CommNet as intrastate or interstate, CommNet will provide Carrier with a Percent Interstate Use (PIU) factor, which represents the estimated interstate portion of intraMTA traffic delivered by CommNet. The PIU factors will be provided updated on an semi-annual basis to commence six (6) months after Commission approval of this Agreement.

6. Local Transport and Termination Rate. CommNet and Carrier shall reciprocally and symmetrically compensate one another for wireless local traffic terminated to their end users. The rate(s) for the termination and transport of such traffic are as set forth in Exhibit A attached hereto. Carrier will be responsible for measuring the total monthly minutes of use terminating into its network from CommNet's network. Measured usage begins when CommNet's mobile switching office is signalled by the terminating end office that the call has been answered. Measured usage ends upon recognition by the mobile switching office of disconnection by the earlier of the Carrier's customer or the disconnection signal from the terminating end office. Carrier will only charge CommNet for actual minutes of use and/or fractions thereof of completed calls. Minutes of use

will be aggregated at the end of the billing cycle and rounded to the nearest whole minute.

7. Transit Traffic Rates. For transiting local traffic, the applicable local transit rate applies to the originating Party per Exhibit A attached. For transiting non-local traffic the Parties will charge the applicable switched access rates to the responsible carrier.

8. Reciprocal Compensation Credit. The monthly minutes of use terminated into CommNet's network from Carrier's network for purposes of this Agreement, which will determine the reciprocal compensation credit due CommNet, will be calculated using the formula set forth in Exhibit A.

The resulting number shall be multiplied by the local transport and termination rate to determine the monthly reciprocal compensation credit. The reciprocal compensation credit for the local transport and termination will appear on the monthly bill as a credit against the amounts due and payable from CommNet to Carrier.

9. Billing and Collecting Fees. CommNet will only bear the portion of billing and collecting fees that are associated with wireless traffic transport and termination to its subscribers. This will apply to billing and collection costs incurred by the Carrier directly or indirectly. For the purpose of this agreement, CommNet will bear cost for billing and collection services in order for the Carrier to render an accurate bill in an amount not to exceed the percentage used to calculate the reciprocal compensation credit to CommNet per Exhibit A of the total direct or indirect billing and collection costs incurred by the Carrier. Billing and collection arrangements entered into by CommNet or the Carrier with any intermediaries will be addressed separately and are not a part of the Agreement.

10. Term. Subject to the termination provisions contained in this Agreement, the term of this Agreement shall be one (1) year from the effective date and shall continue in effect for consecutive one (1) year terms until either Party gives the other Party at least sixty (60) days written notice of termination, which termination shall be effective at the end of the notice period.

11. Termination Upon Default. Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party, provided, however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and that the defaulting Party does not cure the alleged default within thirty (30) calendar days of receipt written notice thereof.

12. Liability Upon Termination. Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect for any act or omission occurring prior to the termination

relating to an obligation which is expressly stated in this Agreement. 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 of this Agreement.

13. General Responsibilities of Parties. Each Party is responsible to provide facilities within its network which are necessary for routing and terminating traffic from the other Party's network.

14. Assignments, Successors and Assignees. Notwithstanding anything to the contrary contained herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their successors and assignees.

15. 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, 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, power blackouts, other major environmental disturbances or unusually severe weather conditions (collectively, a "Force Majeure Event").

16. No Third Party Beneficiaries. 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. Notices. Notices given by one Party to the other Party under this Agreement shall be in writing to the addresses of the Parties set forth above and shall be (i) delivered personally; (ii) delivered by express delivery service; (iii) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested; or (iv) delivered by telecopy.

18. Governing Law. For all claims under this Agreement that are based upon issues within the jurisdiction of the FCC, the Parties agree that remedies for such claims shall be governed by the FCC and the Communications Act of 1934, as amended. For all claims under this Agreement that are based upon issues within the jurisdiction of the State Public Utilities Commission, the parties agree that the jurisdiction for all such claims shall be with such Commission, and the remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the state of South Dakota without reference to conflict of law provisions.

19. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, representations, statement, 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 this 8 day of December, 1997.

CommNet Cellular, Inc.

By: Thos D Flaherty

"Carrier" Baltic Telecom Cooperative
(type company name)

By: MANAGER

"Exhibit A"

ILEC	Exchange Lines	MOU Rate
Accent Communications	1877	$0.030
Armour Independent Telephone Co.	675	$0.040
Baltic Telecom Coop.	1483	$0.035
Beresford Municipal Telephone	1199	$0.035
Bridgewater-Canisota Independent	935	$0.035
Brookings Municipal Telephone	14,421	$0.030
Cheyenne River Sioux Tribe Tel.	2568	$0.030
Faith Municipal Telephone	359	$0.053
Fort Randall Telephone	4132	$0.030
Golden West Telecommunications Coop.	13,812	$0.030
Golden West Communications of S.D.	8962	$0.030
Hanson Communications, Inc.	865	$0.040
Hanson County Telephone Company	512	$0.040
Heartland Communications, Inc.	1540	$0.030
Interstate Telecommunications Coop.	8943	$0.030
Intrastate Telephone Company, Inc.	6407	$0.030
James Valley Coop. Telephone	2083	$0.030
Jefferson Telephone Company	551	$0.040
Kadoka Telephone Company	542	$0.040
Kennebec Telephone Company, Inc.	779	$0.040
McCook Cooperative Telephone	739	$0.040
Midstate Telephone Company	2804	$0.030
Mobridge Telecommunications Company	2457	$0.030
Mt. Rushmore Telephone Company	502	$0.040
Roberts County Telephone Coop. Assoc.	485	$0.053
RC Communications	1506	$0.030
Sanborn Telephone Cooperative	2439	$0.030
Sancom, Inc.	2430	$0.030
Sioux Valley Telephone Company	5247	$0.030
Splitrock Properties, Inc.	1576	$0.030
Splitrock Telecom Cooperative, Inc.	3904	$0.030
State Line Telecommunications, Inc.	2294	$0.030
Stockholm-Strandburg Telephone	713	$0.040
Sully Buttes Telephone Cooperative	4077	$0.030
Tri-County Telecom, Inc.	437	$0.053
Union Telephone Company	1499	$0.035
Valley Cable & Satellite Communications	1580	$0.030
Valley Telecommunications Coop. Assoc.	2019	$0.030
Venture Communications, Inc.	6791	$0.030
Vivian Telephone Company	114	$0.053
West River Coop. Telephone Company	1536	$0.030
West River Telecommunications Coop.	645	$0.040
Western Telephone Company	1086	$0.035

EAST PLAINS TELECOM, LLC $0.035

-TRANSIT TRAFFIC RATE
(Per MOU per route mile) $0.0005

- RECIPROCAL COMPENSATION CREDIT – CALCULATION

Multiply the total monthly local minutes of use of wireless traffic delivered from CommNet's network for termination into Carrier's network by a factor of 0.17.

South Dakota
Public Utilities Commission
State Capitol 500 E. Capitol
Pierre, SD 57501-5070
Phone: (605) 773-3705
Fax: (605) 773-3809

TELECOMMUNICATIONS SERVICE FILINGS

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

02/06/98 through 02/12/98

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

DOCKET NUMBER	TITLE/STAFF/SYNOPSIS	DATE FILED	INTERVENTION DEADLINE
	NEGOTIATED INTERCONNECTION AGREEMENT FILED		
TC98-017	CommNet Cellular, Inc. and Accent Communications Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-018	CommNet Cellular, Inc. and Armour Independent Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-019	CommNet Cellular, Inc. and Baltic Telecom Cooperative submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-020	CommNet Cellular, Inc. and Beresford Municipal Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-021	CommNet Cellular, Inc. and Bridgewater-Canistota Independent Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-022	CommNet Cellular, Inc. and East Plains Telecom., Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98

TC98-023	CommNet Cellular, Inc. and Faith Municipal Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998	02/06/98	Responses Due 03/05/98
TC98-024	CommNet Cellular, Inc. and Golden West Telecommunications Cooperative, Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-025	CommNet Cellular, Inc. and Hanson Communications, Inc. d/b/a McCook Telecom submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-026	CommNet Cellular, Inc. and Hanson County Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-027	CommNet Cellular, Inc. and Heartland Communications, Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-028	CommNet Cellular, Inc. and Interstate Telecommunications Cooperative, Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-029	CommNet Cellular, Inc. and Intrastate Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-030	CommNet Cellular, Inc. and James Valley Cooperative Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-031	CommNet Cellular, Inc. and Kennebec Telephone Company Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98

TC98-032	CommNet Cellular, Inc. and McCook Cooperative Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-033	CommNet Cellular, Inc. and Midstate Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-034	CommNet Cellular, Inc. and Mobridge Telecommunications Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/CH) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-035	CommNet Cellular, Inc. and RC Communications, Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-036	CommNet Cellular, Inc. and Roberts County Telephone Cooperative Association submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-037	CommNet Cellular, Inc. and Sanborn Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-038	CommNet Cellular, Inc. and SANCOM Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-039	CommNet Cellular, Inc. and Sioux Valley Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-040	CommNet Cellular, Inc. and Splitrock Properties, Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98

TC98-041	CommNet Cellular, Inc. and Splitrock Telecom. Coop., Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-042	CommNet Cellular, Inc. and Stateline Telecommunications, Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-043	CommNet Cellular, Inc. and Stockholm-Strandburg Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-044	CommNet Cellular, Inc. and Sully Buttes Telephone Coop., Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-045	CommNet Cellular, Inc. and Union Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-046	CommNet Cellular, Inc. and Valley Cable & Satellite Communications, Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-047	CommNet Cellular, Inc. and Valley Telecommunications Coop. Assn., Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-048	CommNet Cellular, Inc. and Venture Communications, Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-049	CommNet Cellular, Inc. and Vivian Telephone Company d/b/a Golden West Communications, Inc. submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98

TC98-050	CommNet Cellular, Inc. and West River Cooperative Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-051	CommNet Cellular, Inc. and West River Telecommunications Cooperative submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
TC98-052	CommNet Cellular, Inc. and Western Telephone Company submitted copy of the contract entered into between the parties for a wireless interconnection agreement. (Staff: HB/KC) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than March 5, 1998. Parties to the agreement may file written responses to the comments no later than March 26, 1998.	02/06/98	Responses Due 03/05/98
REQUEST FOR CERTIFICATE OF AUTHORITY			
TC98-053	Application by Satellink Paging, LLC for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/KC) "Applicant is a switch-based reseller which intends to offer 1+ direct dialing, 800 toll free, travel card and outbound dialing as an adjunct to its paging and voice mail services through the resale of telephone services provided by facilities-based interexchange carriers."	02/09/98	02/27/98

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILINGS BY SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION FOR APPROVAL OF RECIPROCAL TRANSPORT AND TERMINATION AGREEMENTS BETWEEN COMMNET CELLULAR, INC. AND THE FOLLOWING TELECOMMUNICATIONS COMPANIES	)	STAFF'S ANALYSIS AND RECOMMENDATION
ACCENT COMMUNICATIONS INC	)	TC98-017
ARMOUR INDEPENDENT TELEPHONE COMPANY	)	TC98-018
BALTIC TELECOM COOPERATIVE	)	TC98-019
BERESFORD MUNICIPAL TELEPHONE COMPANY	)	TC98-020
BRIDGEWATER-CANISTOTA INDEPENDENT TELEPHONE COMPANY	)	TC98-021
EAST PLAINS TELECOM, INC.	)	TC98-022
FAITH MUNICIPAL TELEPHONE COMPANY	)	TC98-023
GOLDEN WEST TELECOMMUNICATIONS COOPERATIVE, INC.	)	TC98-024
HANSON COMMUNICATIONS, INC. DBA MCCOOK TELECOM	)	TC98-025
HANSON COUNTY TELEPHONE COMPANY	)	TC98-026

HEARTLAND COMMUNICATIONS, INC.	)	**TC98-027**
	)	
INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC.	)	**TC98-028**
	)	
INTRASTATE TELEPHONE COMPANY	)	**TC98-029**
	)	
JAMES VALLEY COOPERATIVE TELEPHONE COMPANY	)	**TC98-030**
	)	
KENNEBEC TELEPHONE COMPANY INC	)	**TC98-031**
	)	
MCCOOK COOPERATIVE TELEPHONE COMPANY	)	**TC98-032**
	)	
MIDSTATE TELEPHONE COMPANY	)	**TC98-033**
	)	
MOBRIDGE TELECOMMUNICATIONS COMPANY	)	**TC98-034**
	)	

I have reviewed a document entitled "Reciprocal Transport and Termination Agreement" in each of the above referenced dockets and offer the following comments for the Commission's consideration:

1. In each Agreement under the second section entitled "Interpretation and Construction," and in particular the second full paragraph on page 2, the parties agree:

> ". . . that the rates for local transport and termination agreed to, as set forth in Exhibit A hereto, are not based on a specific costing methodology or company specific cost data and that they may have to be adjusted when an appropriate costing methodology consistent with § 252(d)(2) of the Telecommunications Act is established and actual cost information or an acceptable cost proxy which reasonably reflects the actual costs of providing the local transport and termination services becomes available." (Emphasis mine.)

Generally, State Commissions may reject an Agreement under 47 U.S.C. 252(e)(2) if it is discriminatory or inconsistent with the public interest. However, the Act creates a question when at § 252(a)(1) it provides that voluntary Agreements are to be entered

HEARTLAND COMMUNICATIONS, INC.	)	**TC98-027**
	)	
INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC.	)	**TC98-028**
	)	
INTRASTATE TELEPHONE COMPANY	)	**TC98-029**
	)	
JAMES VALLEY COOPERATIVE TELEPHONE COMPANY	)	**TC98-030**
	)	
KENNEBEC TELEPHONE COMPANY INC	)	**TC98-031**
	)	
MCCOOK COOPERATIVE TELEPHONE COMPANY	)	**TC98-032**
	)	
MIDSTATE TELEPHONE COMPANY	)	**TC98-033**
	)	
MOBRIDGE TELECOMMUNICATIONS COMPANY	)	**TC98-034**
	)	

I have reviewed a document entitled "Reciprocal Transport and Termination Agreement" in each of the above referenced dockets and offer the following comments for the Commission's consideration:

1. In each Agreement under the second section entitled "Interpretation and Construction," and in particular the second full paragraph on page 2, the parties agree:

> ". . . that the rates for local transport and termination agreed to, as set forth in Exhibit A hereto, are not based on a specific costing methodology or company specific cost data and that they may have to be adjusted when an appropriate costing methodology consistent with § 252(d)(2) of the Telecommunications Act is established and actual cost information or an acceptable cost proxy which reasonably reflects the actual costs of providing the local transport and termination services becomes available." (Emphasis mine.)

Generally, State Commissions may reject an Agreement under 47 U.S.C. 252(e)(2) if it is discriminatory or inconsistent with the public interest. However, the Act creates a question when at § 252(a)(1) it provides that voluntary Agreements are to be entered

without regard to the standards of § 251(b) and (c). Section 251(b)(5) establishes a duty to enter into reciprocal compensation arrangements for transport and termination; it is questionable whether this sets a standard.

Pricing standards are thus set in 47 U.S.C. 252(d)(2) which reads in pertinent part, as follows:

> (2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC.--
>
> (A) IN GENERAL.--For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless--
>
> (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and
>
> (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls. (Emphasis supplied.)

This section provides that a State Commission, in approving an Agreement such as this one, shall not consider such Agreement terms just and reasonable unless two conditions are met. Those conditions are (1) that there is a mutual and reciprocal recovery of costs and (2) the costs represent a "reasonable approximation" of additional terminating costs.

The Agreement, in my opinion, does not comply with this provision. It does not recite that transport and terminating costs for originating calls agreed to in Exhibit A are, in fact premised upon mutual and reciprocal recovery of the carrier costs. In fact, from the language the opposite can be implied when it states that the rates are not based on "company specific cost data."

Secondly, the Federal Act imposes a further condition that the costs are a "reasonable approximation" of the additional costs of terminating the calls. In other words, there is no recitation that the costs represent a "reasonable approximation" of terminating costs. Subparagraph (ii) would seem to imply, at a minimum, that this be recited and that some representation be made to the Commission on how the reasonable approximation is determined.

In pointing this out to the Commission, I am cognizant that the Act at § 252(d)(2)(B)(i) allows for recovery of costs through waiver and bill-and-keep arrangements.

The Agreements at Section 8 partially employ a "credit" system for amounts due the local carrier from CommNet. There is an implication that amounts would be due to the carrier from CommNet over and above the "credits." Secondly, I submit that § 252(d)(2)(A) and § 252(d)(2)(B) must be read together so the costing requirement would need to be met in any event -- so long as it does not preclude mutual recovery of costs. The costing requirements in and of themselves would not preclude such arrangements.

There is, however, a fundamental question that the Commission should answer and that is whether it approves the Agreements on the discrimination and public interest standards only or whether additional costing recitations are necessary. This point is raised because of what the undersigned attorney perceives to be a facial ambiguity in the Act and the desire to so inform the Commission.

2. In Dockets TC98-028 and TC98-029, the carrier is ITC Telecom and ITC, respectively. Clarification is needed on those Agreements to show which is Interstate Telecommunications Cooperative, Inc., and which is Intrastate Telephone Company.

3. In Docket TC98-034, the Agreement between CommNet and Mobridge Telecom, there is no effective starting date. This is critical as under the provisions of Section 10, the Agreement term and renewal date are dependent upon this specific recitation.

Dated this 24th day of March, 1998.

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

CERTIFICATE OF SERVICE

I hereby certify that a copy of Staff Analysis and Recommendation was served on the following by mailing the same to him by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 24th day of March, 1998.

Richard D. Coit
Executive Director
SDITC
P. O. Box 57
Pierre, SD 57501

Camron Hoseck
Staff Attorney

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILINGS BY SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION FOR APPROVAL OF RECIPROCAL TRANSPORT AND TERMINATION AGREEMENTS BETWEEN COMMNET CELLULAR, INC. AND THE FOLLOWING TELECOMMUNICATIONS COMPANIES	)	SDITC RESPONSE
ACCENT COMMUNICATIONS, INC.	)	TC98-017
ARMOUR INDEPENDENT TELEPHONE COMPANY	)	TC98-018
BALTIC TELECOM COOPERATIVE	)	TC98-019
BERESFORD MUNICIPAL TELEPHONE COMPANY	)	TC98-020
BRIDGEWATER-CANISTOTA INDEPENDENT TELEPHONE COMPANY	)	TC98-021
EAST PLAINS TELECOM, INC.	)	TC98-022
FAITH MUNICIPAL TELEPHONE COMPANY	)	TC98-023
GOLDEN WEST TELECOMMUNICATIONS COOPERATIVE, INC.	)	TC98-024
HANSON COMMUNICATIONS, INC. D/B/A MCCOOK TELECOM	)	TC98-025
HANSON COUNTY TELEPHONE COMPANY	)	TC98-026
HEARTLAND COMMUNICATIONS, INC.	)	TC98-027
INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC.	)	TC98-028
INTRASTATE TELEPHONE COMPANY	)	TC98-029
JAMES VALLEY COOPERATIVE TELEPHONE COMPANY	)	TC98-030
KENNEBEC TELEPHONE COMPANY INC.	)	TC98-031

MCCOOK COOPERATIVE TELEPHONE COMPANY	)	TC98-032
MIDSTATE TELEPHONE COMPANY	)	TC98-033
MOBRIDGE TELECOMMUNICATIONS COMPANY	)	TC98-034
RC COMMUNICATIONS, INC.	)	TC98-035
ROBERTS COUNTY TELEPHONE COOPERATIVE ASSN.	)	TC98-036
SANBORN TELEPHONE COMPANY	)	TC98-037
SANCOM, INC.	)	TC98-038
SIOUX VALLEY TELEPHONE COMPANY	)	TC98-039
SPLITROCK PROPERTIES, INC.	)	TC98-040
SPLITROCK TELECOM COOP., INC.	)	TC98-041
STATELINE TELECOMMUNICATIONS, INC.	)	TC98-042
STOCKHOLM-STRANDBURG TELEPHONE COMPANY	)	TC98-043
SULLY BUTTES TELEPHONE COOP., INC.	)	TC98-044
UNION TELEPHONE COMPANY	)	TC98-045
VALLEY CABLE & SATELLITE COMMUNICATIONS, INC.,	)	TC98-046
VALLEY TELECOMMUNICATIONS COOP. ASSN., INC.	)	TC98-047
VENTURE COMMUNICATIONS, INC.	)	TC98-048
VIVIAN TELEPHONE COMPANY D/B/A/ GOLDEN WEST COMMUNICATIONS, INC.	)	TC98-049

WEST RIVER COOPERATIVE TELEPHONE COMPANY	)	**TC98-050**
	)	
WEST RIVER TELECOMMUNICATIONS COOPERATIVE	)	**TC98-051**
	)	
WESTERN TELEPHONE COMPANY	)	**TC98-052**

The South Dakota Independent Telephone Coalition ("SDITC") submits these comments on behalf of the independent, cooperative, and municipal telephone companies referenced in the above caption, in response to Staff's "Analysis and Recommendation" filed in these matters.

Staff has challenged the Reciprocal Transport and Termination Agreements offered (hereinafter referenced collectively as the "Agreements") by claiming that the pricing standards set forth in section 252(d)(2) of the Telecommunications Act of 1996 ("the Act") are applicable to this pending Commission review process and that the Agreements fail to comply with such standards. Staff apparently believes that the Commission in reviewing voluntary negotiated agreements may go beyond the "discrimination" and "public interest" standards set forth in section 252(e)(2) of the Act.

SDITC objects to the Analysis and Recommendation offered. Staff has clearly misread the applicable law and has overstepped in asking the Commission to require additional "costing recitations" or cost information as a pre-condition to approving the filed Agreements. As further explained below, the Commission's review under section 252 of the Act of voluntary, negotiated transport and termination agreements is specifically limited to determining whether the agreements discriminate against any telecommunications carrier or carriers that are not a party and whether the agreements are consistent with the public interest. It is only necessary to determine compliance with the pricing standards for local transport and termination set forth in section 252(d)(2), where the parties have a dispute concerning such charges and have initiated an arbitration proceeding.

In specific response to the Staff filing, SDITC offers the following:

I. The standards for reviewing negotiated reciprocal transport and termination agreements are limited to those set forth in 47 U.S.C. § 252(e)(2).

Staff claims that the federal law creates uncertainty as to what standards should be applied by the Commission in the process of reviewing voluntary, reciprocal negotiated transport and termination agreements. Staff acknowledges the language found in section 252(a)(1) of the Act, which states that "an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251", but contends based on the language of section 251(b)(5) that this provision is inapplicable to reciprocal compensation arrangements negotiated between carriers. Because the language contained in section 251(b)(5) does not by itself describe any particular standard(s), Staff argues that section 252(a)(1) should be given no effect and that negotiated reciprocal compensation arrangements should be reviewed differently than other negotiated interconnection arrangements. According to Staff, all reciprocal compensation arrangements, whether arbitrated or negotiated, must be reviewed for purpose of determining compliance with the pricing standards set forth in section 252(d) of the Act.

Contrary to what Staff would have Commissioners believe there is no "facial ambiguity" in the Act which requires the Commission in this case to review the negotiated agreements offered any differently than other negotiated interconnect agreements. The Staff Analysis is piecemeal and ignores other provisions found in section 252 of the Act which leave no question as to what standards are to be applied by state commissions in reviewing negotiated interconnection arrangements, including reciprocal transport and termination agreements.

Section 252(e) of the Act, includes provisions specifically describing the process that is to be followed by state commissions in reviewing interconnection agreements adopted by either arbitration or negotiation. In pertinent part it provides as follows:

> (e) APPROVAL BY STATE COMMISSION.—
>
> (1) APPROVAL REQUIRED.-- Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to the deficiencies.
>
> (2) GROUNDS FOR REJECTION.-- The State commission may only reject –
>
> (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that –
>
> (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
>
> (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or
>
> (B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) it if finds that the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251, or the standards set forth in subsection (d) of this section. (Emphasis Added.)

The above emphasized provisions in section 252(e)(2)(A) very clearly indicate that a State commission may only reject a voluntary, negotiated agreement if it finds it to be discriminatory or inconsistent with the public interest, convenience or necessity. Section 252(e)(2)(B) then makes specific reference to the pricing standards found in section 252(d), but only with respect to agreements (or any portion thereof) "adopted by arbitration". These provisions, given a reasonable interpretation, can only mean that the pricing standards of section 252(d) are relevant only in the arbitration process or in the final review of arbitrated interconnection or transport and termination agreements.

Support for this conclusion is also found in various other provisions of the Act, including sections 252(c) and 252(d)(2). The relevant provisions from each of these sections read as follows:

(c) STANDARDS FOR ARBITRATION. – In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall –

(1) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to Section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(d) PRICING STANDARDS. – . . . .

(2) CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC. –

(A) IN GENERAL. -- For purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless –

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) RULES OF CONSTRUCTION.-- This paragraph shall not be construed –

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

Section 252(c), above, addresses the establishment of rates for interconnection, services, or network elements by state commissions. It also is specifically limited to arbitration proceedings and no similar provision is found in the Act with reference to negotiated agreements. Also, section 252(d)(2)(A), above, which contains the pricing standards for local transport and termination

specifically references back to section 251(b)(5), noting that the standards established are "for purposes of compliance . . . with section 251(b)(5)". Based on this language, it is reasonable to conclude that the standards set forth in section 252(d)(2) should be considered part of section 251(b)(5). It then follows, contrary to what Staff argues, that the language of section 252(a)(1) is applicable to negotiated reciprocal compensation arrangements and that carriers are free to negotiate such arrangements without regard to the pricing standards found in section 252(d). In addition, the provisions of section 252(d)(2)(B), above, indicate that State commissions with respect to reciprocal compensation arrangements in general should not overly burden companies with costing requirements. This is reflected in section 252(d)(2)(B)(i) which allows carriers to enter into voluntary arrangements that "waive mutual recovery". Further, by the provisions of section 252(d)(2)(B)(ii), State commissions are prevented from engaging in any rate regulation proceeding for the purpose of establishing with particularity the additional costs of transporting or terminating calls or from requiring that carriers maintain records concerning these additional costs.

It is obvious from all of the above cited provisions that Congress did not intend that carriers show specific compliance with the section 252(d)(2) pricing standards as a condition to obtaining approval of negotiated transport and termination agreements. Contrary to what Staff contends, there is no reason to question the standards established in section 252(e) of the Act for reviewing negotiated interconnection agreements, including local transport and termination agreements. As clearly prescribed by section 252(e), this Commission's review should be limited to "discrimination" and general "public interest" considerations.

II. Establishing specific compliance with the section 252(d)(2) pricing standards has not been required in earlier cases involving negotiated transport and termination agreements.

From our perspective, the Staff's Analysis appears overreaching. It appears that Staff is trying to apply a different standard of review in these cases than it has applied in previously reviewing other negotiated interconnection agreements.

SDITC wonders why Staff has at this time raised this new "fundamental question" relating to the Act. (See Staff's "Analysis and Recommendation", p. 4). The Commission has given its approval to other negotiated reciprocal compensation agreements in other proceedings and, to our knowledge, Staff did not in any of these proceedings raise any concern as to the parties providing cost related information. SDITC would refer the Commission specifically to Docket TC97-053 (In the Matter of the Filing of a Wireless Interconnection Agreement Between Dakota Cooperative Telecommunications, Inc. and Western Wireless Corporation). In that Docket, Dakota Cooperative Telecommunications, Inc. ("Dakota") in filing its negotiated agreement with Western Wireless Corporation ("Western Wireless") for approval pursuant to Section 252(e) noted the following:

> In entering into this Agreement, Dakota has used the Agreements entered into by Western Wireless and US WEST Communications, Inc. ("US WEST") as a model for the terms and conditions of this contract. Pending development of its own cost-based model, Dakota has farther used most of the prices in the US WEST-Western Wireless agreement as a proxy for its own costs. Because the Telecommunications Act of 1996 requires that costs be based upon a reasonable approximation of the additional cost of terminating calls, Dakota represents to the Commission that the costs presented in this Agreement may not be accurate, and may require adjustment at some time in the future, and that Dakota and Western Wireless entered into the agreement subject to these representations and conditions.

(Document dated May 9, 1997, submitted with "Wireless Interconnection Agreement" between Dakota and Western Wireless).

Despite the foregoing language included with Dakota's filing in Docket TC97-053, wherein Dakota admitted that the prices agreed to were based on a mirroring of US WEST's cost and that as a result the costs may not be accurate, the Commission by Order dated August 4, 1997, approved the

negotiated agreement between Dakota and Western Wireless. Further, Staff did not file in Docket TC97-053 any comments similar to those it now presents.

Staff is for some reason now holding our negotiated agreements to a higher standard than what has been applied in previous cases. Why all of a sudden does Staff have a concern that the involved parties must show detail confirming that the prices negotiated "reasonably approximate" the associated costs? The language objected to by Staff found on page 2 of the Agreements between the SDITC member LECs and CommNet is very similar to the statements made by Dakota in Docket TC97-053.

III. There is no basis to contend that the reciprocal transport and termination agreements are not in compliance with Section 252(d)(2).

SDITC not only disagrees with Staff's interpretation of the federal law, but also objects to Staff's claim that the Reciprocal Transport and Termination Agreements offered are out of compliance with the pricing standards contained in section 252(d)(2). The language in each of the Agreements addressing the costing issue, referenced in Staff's comments, is not intended to mean that the prices agreed to between CommNet and the SDITC member LECs are not at all reflective of the costs incurred by the companies in providing the transport and termination services. The language merely gives recognition to the fact that at present companies do not have a defined costing methodology upon which the specific cost of providing local transport and termination services may be determined. The language is intended, essentially, to establish the prices agreed to as interim prices that are subject to change at such time that a costing methodology specific to local transport and termination services has been developed by the companies and the resulting specific cost information is available.

Staff has misinterpreted the agreement provisions and also has no factual basis for suggesting that the agreed to prices do not "reasonably approximate" the additional costs incurred in providing the transport and termination services. While no defined methodology was used in arriving at the

established prices, the parties entered into the Agreements with familiarity and a general understanding of the costs incurred in providing transport and switching services. The parties agreed to the prices detailed in Exhibit A attached to each of the Agreements cognizant of these costs and also being fully aware of the pricing standards for local transport and termination found in section 252(d)(2) of the Act. If either CommNet or any of the SDITC member LECs felt that the prices offered were out-of-line with such standards, arbitration through the Commission could be pursued. Under the circumstances, Staff has no basis to suggest that the prices agreed to do not "reasonably approximate" the costs actually incurred.

Staff also argues that the Agreements do not comply with the section 252(d)(2) pricing standards by suggesting that they do not provide for a mutual and reciprocal recovery of each carrier's costs. Specifically, Staff points to Section 8 of the Agreement and has concerns due to "an implication that amounts would be due to the carrier from CommNet over and above the credits." In response, it should be noted that "mutual recovery" does not mean equal payments to each of the providing carriers. The credit provision set forth in Section 8 is written in recognition of the fact that presently SDITC member LECs are receiving more wireless traffic than they are terminating into CommNet's network. Because each of the landline carriers is today receiving more traffic than CommNet, the compensation to CommNet is established, as a matter of convenience, as a credit against amounts due from CommNet to each of the SDITC member LECs. The provisions of Section 8 properly recognize that the telecommunications traffic from the landline network to the CommNet network and from CommNet's network to the landline network are not equal. They do not, as Staff alleges, work to preclude mutual cost recovery, but instead by recognizing that traffic is terminated in both directions ensure such recovery.

IV. The Agreements offered are nondiscriminatory and are consistent with the public interest, convenience and necessity.

The standards applicable to this review process are clearly established under and section 252(e) of the Act and the Reciprocal Transport and Termination Agreements filed should be approved as being consistent with those standards.

First, as to whether or not the Agreements meet the nondiscrimination standard, it should be noted that these are the first local transport and termination agreements entered into by the SDITC member LECs pursuant to the federal law. This being the case, it cannot be said that the agreed upon terms and conditions, or prices discriminate against any other telecommunications carrier. The lack of any possible discrimination issue is also evidenced by the fact that no other carriers have intervened in these proceedings to raise any discrimination related concerns.

The Commission must also determine whether the Agreements are consistent with the public interest, convenience and necessity. On this question, it should be pointed out that until these Agreements were signed by the parties no agreements were in place between the parties allowing for a flow of compensation between CommNet and the SDITC member LECs. No arrangements have been in place allowing for the exchange of compensation between the parties since US WEST on or about December 31, 1996, cancelled its LATA-wide termination agreements with CommNet and other cellular carriers. US WEST under these earlier agreements had been compensating the SDITC member LECs for wireless traffic terminated into their areas, but since cancellation of these agreements in 1996, no compensation mechanism has been in place. The new Agreements offered allow for this compensation between the involved carriers and do so at prices that are significantly lower than the prices charged to CommNet by US WEST under the earlier LATA-wide termination agreements.

It is our belief that the Agreements executed are clearly consistent with the public interest standard dictated by section 252(e) of the Act. They allow for reasonable compensation to flow between the parties ensuring the continuous transmission of telecommunications traffic between cellular and landline customers.

VI. Response to miscellaneous concerns.

In its comments, Staff indicates that clarification is needed regarding the Agreements filed respectively by Interstate Telecommunications Cooperative, Inc. ("ITC Telecom") and Intrastate Telephone, Inc. ("ITC") in Dockets TC98-028 and TC98-029. No such clarification is needed. The signature page of each Agreement indicates specifically which company is the executing carrier.

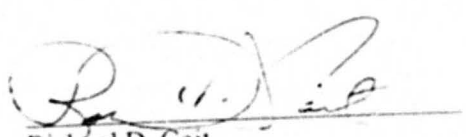
Staff also notes that there is no effective date in the first paragraph of the Agreement signed between Mobridge Telecom and CommNet filed in Docket TC98-034. The date was omitted by mistake and should be the same date as the execution date (January 21, 1998).

VII. Conclusion.

Based on all of the foregoing, SDITC asks the Commission to reject the claims of Staff that some additional costing recitations or cost information is necessary, and to approve the Agreements as filed.

Dated this 14th day of April, 1998.

Sincerely,



Richard D. Coit
Executive Director and General Counsel

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILINGS BY SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION FOR APPROVAL OF RECIPROCAL TRANSPORT AND TERMINATION AGREEMENTS BETWEEN COMMNET CELLULAR, INC. AND THE FOLLOWING TELECOMMUNICATIONS COMPANIES	)	STAFF'S REPLY TO SDITC RESPONSE
ACCENT COMMUNICATIONS INC	)	TC98-017
ARMOUR INDEPENDENT TELEPHONE COMPANY	)	TC98-018
BALTIC TELECOM COOPERATIVE	)	TC98-019
BERESFORD MUNICIPAL TELEPHONE COMPANY	)	TC98-020
BRIDGEWATER-CANISTOTA INDEPENDENT TELEPHONE COMPANY	)	TC98-021
EAST PLAINS TELECOM, INC.	)	TC98-022
FAITH MUNICIPAL TELEPHONE COMPANY	)	TC98-023
GOLDEN WEST TELECOMMUNICATIONS COOPERATIVE, INC.	)	TC98-024
HANSON COMMUNICATIONS, INC. DBA MCCOOK TELECOM	)	TC98-025

HANSON COUNTY TELEPHONE COMPANY	)	TC98-026
	)	
HEARTLAND COMMUNICATIONS, INC.	)	TC98-027
	)	
INTERSTATE TELECOMMUNICATIONS COOPERATIVE, INC.	)	TC98-028
	)	
INTRASTATE TELEPHONE COMPANY	)	TC98-029
	)	
JAMES VALLEY COOPERATIVE TELEPHONE COMPANY	)	TC98-030
	)	
KENNEBEC TELEPHONE COMPANY INC	)	TC98-031
	)	
MCCOOK COOPERATIVE TELEPHONE COMPANY	)	TC98-032
	)	
MIDSTATE TELEPHONE COMPANY	)	TC98-033
	)	
MOBRIDGE TELECOMMUNICATIONS COMPANY	)	TC98-034
	)	

Staff wishes to reply to the lengthy discourse filed by SDITC in response to Staff's Analysis and Recommendation filed in this matter. Among the assertions made by SDITC are the following

1 "Staff has clearly misread the applicable law and has overstepped in asking the Commission to require additional 'costing recitations' or cost information as a pre-condition to approving the filed Agreements." (emphasis mine), page 3, third paragraph

2. "According to Staff, all reciprocal compensation arrangements, whether arbitrated or negotiated, must be reviewed for purpose of determining compliance with the pricing standards set forth in section 252(d) of the Act," (emphasis mine), page 4, end of first paragraph under Section I.

3. "SDITC wonders why Staff has at this time raised this new 'fundamental question' relating to the Act," page 8, second paragraph under Section II.

First, Staff in its analysis merely raised the question of how various sections of the Federal Act interplay. In other words, what is the relationship of § 252(e)(2) with § 252(d)(2)?

Second, Staff's questions were raised because the agreements tendered for approval by SDITC contained specific language which Staff believed to create an issue which Staff wrestled with and, frankly, for which it found no specific solution. Staff has not taken a position that the agreements were inartfully drawn. Rather, the issue was pointed out to the Commission for its consideration.

Third, SDITC attempts to draw a comparison between the language in its agreement and that in the Dakota Cooperative - Western Wireless agreement. Had the SDITC costing language more closely resembled the Dakota language, Staff's questioning of it would have been minimized. It is apparent that the SDITC language contains no reference or attempt to comply with § 252(d)(2)(ii) in reciting that the costing methods are based on a reasonable approximation. Dakota's language makes this connection.

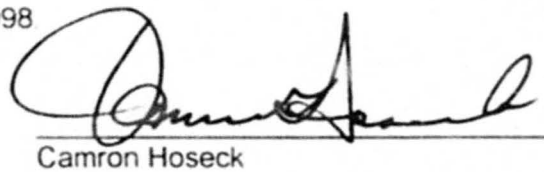
Fourth, as to the exceptions raised regarding the Intrastate versus Interstate Telecommunications Companies, the Commission may judge for itself whether the agreements are proper (Dockets TC98-028 and TC98-029). As to the exception of the starting date in Docket TC98-034, irrespective of the signature date, the agreement does

have specific language as to the starting date. It is not uncommon for agreements to be signed on one date but have a different start time. Staff maintains its position that this should be corrected.

CONCLUSION

SDITC has overreacted to a question raised by Staff. Its language caused the problem which Staff noted and brought to the Commission's attention. Staff in doing its analysis visited with the Staff of another state and with an FCC attorney. A clear solution was not apparent. Suffice it to say that this situation has been handled by other parties to interconnection agreements and that the unique draftsmanship of the SDITC agreements poses a legitimate question for the Commission's consideration.

Dated this 17th day of April, 1998.

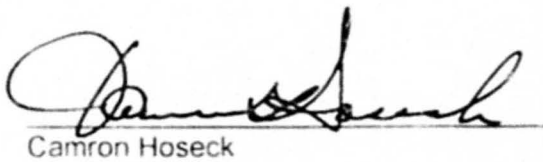


Camron Hoseck
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

CERTIFICATE OF SERVICE

I hereby certify that a copy of Staff's Reply to SDITC Response was served on the following by mailing the same to him by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 17th day of April, 1998.

Richard D. Coit
Executive Director
SDITC
P. O. Box 57
Pierre, SD 57501



Camron Hoseck
Staff Attorney

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION FOR APPROVAL OF RECIPROCAL TRANSPORT AND TERMINATION AGREEMENT BETWEEN COMMNET CELLULAR, INC. AND BALTIC TELECOM COOPERATIVE	)))))))	ORDER APPROVING AGREEMENT TC98-019

On February 6, 1998, the South Dakota Public Utilities Commission (Commission) received a filing from the South Dakota Independent Telephone Coalition (SDITC) seeking approval of a reciprocal transport and termination agreement between CommNet Cellular, Inc. and Baltic Telecom Cooperative pursuant to 47 U.S.C. §§ 252(a)(1) and 252(e).

On February 12, 1998, 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 March 5, 1998, to do so. Parties to the agreement had until March 26, 1998, to file written responses to the comments. Commission staff filed its analysis and recommendation on March 24, 1998. SDITC filed its response on April 14, 1998. Staff's rebuttal was filed on April 17, 1998.

At its duly noticed April 22, 1998, meeting, the Commission considered whether to approve the negotiated agreement between CommNet Cellular and Baltic.

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, as required by 47 U.S.C. § 252(e)(2)(A), the agreement does not discriminate against a telecommunications carrier not a party to the agreement nor is the implementation of this agreement inconsistent with the public interest, convenience, and necessity. It is therefore

ORDERED, that pursuant to 47 U.S.C. § 252(e) the Commission approves the negotiated agreement.

Dated at Pierre, South Dakota, this 12th day of May, 1998.

CERTIFICATE OF SERVICE

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

By Melissa Kolbo

Date 5/5/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION.

James A. Burg

JAMES A. BURG, Chairman

Pam Nelson

PAM NELSON, Commissioner

Laska Schoenfelder

LASKA SCHOENFELDER, Commissioner