

TC01-077

In the Matter of _____
IN THE MATTER OF THE FILING FOR
APPROVAL OF AN ADOPTION
AGREEMENT BETWEEN QWEST
CORPORATION AND PREFERRED
CARRIER SERVICES, INC. _____

Public Utilities Commission of the State of South Dakota

DATE

MEMORANDA

6/27 01 Filed and Docketed;
6/28 01 Weekly Filing;
2/8 02 Cable Disapproving Agreement;
2/8 02 Docket Closed

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June 25, 2001

Debra Elofson, Executive Director
Public Utilities Commission of the State of South Dakota
500 East Capitol Avenue
Pierre, SD 57501

Re: Filing of Adoption Letter Between Qwest Corporation and Preferred Carrier Services, Inc.
Our File No. 2104.078

Dear Ms. Elofson:

Pursuant to ARSD 20:10:32:21 enclosed for filing are an original and ten (10) copies of the Adoption Letter Between Qwest Corporation ("Qwest") and Preferred Carrier Services, Inc. ("Preferred") for approval by the Commission. Preferred chooses to adopt, in its entirety, the terms and conditions of the Negotiated Wireline Interconnection Agreement and any associated amendments, if applicable, between Qwest Corporation and Covad Communications Company for the State of South Dakota, that was approved by the Commission on November 18, 1999, Order No. TC99-017.

Preferred has authorized Qwest to submit this Agreement on Preferred's behalf.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.



Thomas J. Welk

TJW/vjj
Enclosures

cc: Alex Valencia - Preferred (enclosure letter only)
Ms. Colleen Sevoid
Ms. Cheryl Moore (enclosure letter only)

RECEIVED

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

April 17, 2001

Preferred Carrier Services, Inc.
14881 Midway Road
Suite 105
Addison, TX 75001

RECEIVED

APR 23 2001

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Dear Mr. Jamieson:

We have received your request that, under Section 252(i) of the Telecommunications Act of 1996, Preferred Carrier Services, Inc. ("CLEC") wishes to "Pick and Choose" in its entirety, the terms of the Interconnection Agreement and any associated amendments, if applicable, ("Agreement") between Covad Communications Company and Qwest Corporation fka U S WEST Communications, Inc. ("Qwest") that was approved by the Commission as an effective agreement in the State of South Dakota. Preferred Carrier Services, Inc. is incorporated in the state of Texas. We understand you have a copy of the Agreement.

With respect to the aforementioned Agreement, Qwest and CLEC (" the Parties") understand and agree:

1. The Parties shall request the Commission to expedite its review and approval of this Agreement. This Agreement shall become effective upon such approval.
2. Notwithstanding the mutual commitments set forth herein, the Parties are entering 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 those relating to the types of arrangements contained in this Agreement. During the proceeding in which the Commission is to review and approve the Agreement, Qwest may point out that it has objected, and continues to object, to the inclusion of the terms and conditions to which it objected in the proceedings involving the approval of the Underlying Agreement.
3. This Agreement contains provisions based upon the decisions and orders of the FCC and the Commission under and with respect to the Act. Currently, court and regulatory proceedings affecting the subject matter of this Agreement are in various stages, including the proceedings where certain of the rules and regulations of the FCC are being challenged. In addition, there is uncertainty in the aftermath of the Supreme Court's decision in AT&T Corp, et al. v. Iowa Utilities Board. Based on that uncertainty, and the regulatory and judicial proceedings which will occur as a result of that decision, the Parties acknowledge that this Agreement may need to be changed to reflect any changes in law. The Agreement has not been corrected to reflect the requirements, claims or outcomes of any of the proceedings. Accordingly, when a final decision or decisions are made in the proceedings that automatically change and modify the Underlying Agreement, then like changes and modifications will similarly be made to this Agreement. In addition, to the extent rules or laws are based on regulatory or judicial proceedings as a result of the recent Supreme Court decision, this Agreement will be amended to incorporate such changes. In the event of a Commission ruling in a generic cost docket that results in changes to the rates contained in this Agreement, the Agreement shall be automatically modified to reflect such change in rates.

4. Subsequent to the execution of this Agreement, the FCC or the Commission may issue decisions or orders that change or modify the rules and regulations governing implementing of the Act. If such

changes or modifications after the state of the law upon which the Underlying Agreement was negotiated and agreed and it reasonably appears that the parties to the Underlying Agreement would have negotiated and agreed to different term(s) condition(s) or covenant(s) than as contained in the Underlying Agreement had such change or modification been in existence before execution of the Underlying Agreement, then this Agreement shall be amended to reflect such different terms(s), condition(s), or covenant(s). Where the Parties fail to agree upon such an amendment, it shall be resolved in accordance with the Dispute Resolution provision of the Underlying Agreement which is being adopted pursuant to Section 251(d).

5. This Agreement shall continue in force and effect through the initial term of the Underlying Agreement. Thereafter this Agreement can be terminated by either Party on thirty (30) days written notice, and another Interconnection Agreement will not replace the current Agreement. If there is a replacement Interconnection Agreement, one Party can notify the other Party that it is requesting Section 251/252 negotiations under the Federal Telecommunications Act of 1996 ("Act"). That notification will trigger the processes and procedures contained in Section 252 of the Act, or pursuant to the timeframes set forth by the appropriate state commission. In the event of such notice, the arrangements between our companies shall continue and be governed by the terms of the expired agreement until the new agreement is approved by the appropriate state commission.

6. This Agreement shall be interpreted in accordance with GTE Service Corp. v. Federal Communications Commission, No. 99-1176 (D.C. Cir. March 17, 2000). The Parties shall not be bound by any language in the Underlying Agreement, or any prior interpretation or performance under such language that are inconsistent with the Court's decision in GTE Service Corp. v. Federal Communications Commission. The Parties also recognize that certain provisions of the terms and conditions may be void or unenforceable as a result of the July 18, 1997 and October 14, 1997, decisions of the United States Eighth Circuit Court of Appeals. Additionally, this Agreement shall be interpreted in accordance with all other relevant judicial or regulatory decisions.

7. The Parties agree that Qwest's position has been, and continues to be, that Interconnection Agreements entered into pursuant to Sections 251 and 252 of the Act, including the reciprocal compensation provisions of those Agreements, apply only to local traffic. Local traffic is that traffic that originates and terminates in the same local calling area. Each company bears the burden of proof that the traffic being exchanged is in fact local in nature.

8. CLEC adopts the terms and conditions of the Covad Communications Company Agreement for interconnection with Qwest and in applying the terms and conditions, agrees that Preferred Carrier Services, Inc. be substituted in place of "Covad Communications Company" throughout the Agreement wherever the latter appears.

9. Qwest requests that notice to Qwest Corporation as may be required under the Agreement shall be provided as follows:

To: Qwest Corporation
Director Interconnection Compliance
1801 California Street, Room 2410
Denver, CO 80202

With copy to:
Qwest Corporation Law Department
Attention: General Counsel, Interconnection
1801 California Street, 38th Floor
Denver, CO 80202

CLEC requests that notice to CLEC as may be required under the Agreement shall be provided as follows:

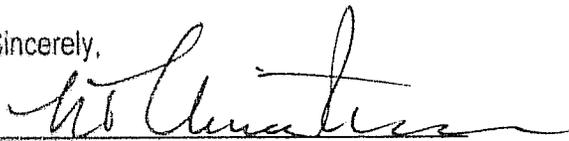
To: Preferred Carrier Services, Inc.
Alex Valencia
Regulatory Counsel
14681 Midway Road, Suite 105
Addison, TX 75001
Phone: 972-503-3388
Fax: 972-503-3385

10. CLEC represents and warrants that it is a certified provider of local dialtone service in the State of South Dakota, and that this Agreement will cover services in that state only.

Please sign all three original copies of this letter, and overnight them to Heidi Higer, 1801 California St. Suite 2410 - Denver, CO 80202 (Phone: 303-965-3029) by July 17, 2001. After July 17, 2001, Qwest may rescind its willingness to consider the Agreement's terms and conditions, and will consider that you have withdrawn from good faith negotiations.

Please note that Qwest will file this letter with the appropriate state commission for approval; however, some state commissions will not approve the letter until the CLEC is certified by the state commission. You may want to contact the appropriate state commission to determine the requisite filing guidelines.

Sincerely,

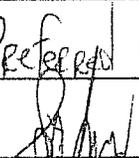


Qwest Corporation
L.T. Christensen
Director - Business Policy
1801 California Street, Suite 23rd Floor
Denver, Colorado 80202

Date

4/30/01

I agree to all terms and conditions contained in this letter as indicated by my signature below.

CLEC Name Preferred Carrier Services, Inc
Signature 
Name Steve JAMES
Title CEO
Date 4/25/01

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of June 21, 2001 through June 27, 2001

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact
Delaine Kolbo within five business days of this filing. Phone: 605-773-3705 Fax: 605-773-3805

CONSUMER COMPLAINTS

CT01-027 In the Matter of the Complaint filed by Empire Plastics, Inc., Sioux Falls, South Dakota, against McLeodUSA Telecommunications Services, Inc., Regarding Deceptive Business Practice.

The Complainant's representative states that when he agreed to service, he told the McLeod representative that he would not agree to a five year contract and that he would only agree to one year or less. He states that he did not sign the addendum indicating five years and believes that the McLeod representative may have committed him to five years of service without his knowledge. Complainant's representative believes that the McLeod representative used deceptive business practice to obtain his business. He states that the McLeod representative did not present the contract correctly to him. He requests that the Commission inform McLeod that the contract is unenforceable and that the Complainant not be responsible for any charges or penalties for ending service.

Staff Analyst: Mary Healy
Staff Attorney: Kelly Frazier
Date Docketed: 06/27/01
Intervention Deadline: N/A

ELECTRIC

EL01-014 In the Matter of the Filing by MidAmerican Energy Company for Approval of Tariff Revisions.

Application by MidAmerican Energy to revise the standard bill contained in the Sample Forms section of its tariff. The changes clarify the means by which customers may contact the Company.

Staff Analyst: Dave Jacobson
Staff Attorney: Karen Cremer
Date Docketed: 06/25/01
Intervention Deadline: 07/20/01

EL01-015 In the Matter of the Filing by Otter Tail Power Company for Approval of Tariff Revisions.

Otter Tail Power Company is requesting approval of 18 revised sheets to the South Dakota Electric Tariff Rate Book. These revisions generally consist of wording changes.

Staff Analyst: Keith Senger
Staff Attorney: Karen Cremer
Date Docketed: 06/25/01
Intervention Deadline: 07/13/01

Communications, Inc. ("Z-Tel") was filed with the Commission for approval. According to the parties the agreement is a negotiated agreement which sets forth the terms, conditions and prices under which Qwest will provide services for resale to Z-Tel for the provision of local exchange services. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than July 12, 2001. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 06/22/01
Initial Comments Due: 07/12/01

TC01-072 In the Matter of the Filing for Approval of an Adoption Agreement between Qwest Corporation and NPCR, Inc. d/b/a Nextel Partners.

On June 25, 2001, an Adoption Agreement between NPCR, Inc. d/b/a Nextel Partners ("Nextel") and Qwest Corporation ("Qwest") f/k/a US WEST Communications, Inc. was filed with the Commission for approval. According to the parties the agreement is a negotiated agreement with the parties adopting the terms and conditions of the Interconnection Agreement and any associated amendments, if applicable, between TW Wireless, L.L.C. and Qwest which was approved by the Commission on February 11, 2000 in Docket No. TC99-123. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than July 16, 2001. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 06/25/01
Initial Comments Due: 07/16/01

TC01-073 In the Matter of the Establishment of Switched Access Revenue Requirement for Cheyenne River Sioux Tribe Telephone Authority.

Cheyenne River Sioux Tribe Telephone Authority, Eagle Butte, South Dakota, filed a switched access cost study developing a revenue requirement and minutes of use that are included in the revenue requirement and minutes of use used to determine the switched access rates for the Local Exchange Carrier Association.

Staff Analyst: Harlan Best
Staff Attorney: Karen Cremer
Date Docketed: 06/26/01
Intervention Deadline: 07/13/01

TC01-074 In the Matter of the Application of Frontier Communications of America, Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota.

Frontier Communications of America, Inc. has filed an application for a Certificate of Authority to provide interexchange telecommunications services in South Dakota. Frontier will provide resale telecommunications services including direct dialed (1+), toll-free, calling card and operator assisted services throughout South Dakota.

Staff Analyst: Michele Farris
Staff Attorney: Kelly Frazier
Date Docketed: 06/26/01
Intervention Deadline: 07/13/01

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

IN THE MATTER OF THE FILING FOR) ORDER DISAPPROVING
APPROVAL OF AN ADOPTION AGREEMENT) ADOPTION AGREEMENT
BETWEEN QWEST CORPORATION AND)
PREFERRED CARRIER SERVICES, INC.) TC01-077

On June 27, 2001, the South Dakota Public Utilities Commission (Commission) received a filing from Qwest Corporation (Qwest) for approval of an adoption agreement between Qwest and Preferred Carrier Services, Inc. (Preferred) pursuant to 47 U.S.C. §§ 252(a)(1) and 252(e).

On June 28, 2001, 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 17, 2001, to do so. No comments were filed.

At its duly noticed February 5, 2002, meeting, the Commission considered whether to approve the adoption agreement between Qwest and Preferred. Commission Staff recommended not approving the adoption agreement as Preferred did not have a certificate of authority to provide local service in South Dakota.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-81, and the Federal Telecommunications Act of 1996. Upon review of the adoption agreement, the Commission found that pursuant to 47 U.S.C. § 252(e)(2)(A), the implementation of this adoption agreement would be inconsistent with the public interest, convenience, and necessity. It is therefore

ORDERED, that pursuant to 47 U.S.C. § 252(e) and SDCL 49-31-81, the Commission does not approve the adoption agreement which is the subject of this docket.

Dated at Pierre, South Dakota, this 8th day of February, 2002.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By <u>Melaine Kolbo</u>
Date <u>2/11/02</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner