





South Dakota Telecommunications Association  
PO Box 57 ■ 320 E Capitol Avenue ■ Pierre, SD 57501  
605/224-7629 ■ Fax 605/224-1497 ■ sdtaonline.com

September 6, 2001

RECEIVED

SEP 10 2001

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Ms. Debra Elofson  
Executive Director  
South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol Ave.  
Pierre, SD 57501

RE: Request for Approval of Reciprocal Transport and Termination Agreement  
between Swiftel Communications and Beresford Municipal Telephone Company

Dear Ms. Elofson:

Enclosed for filing with the Commission are ten (10) copies of a Reciprocal Transport and Termination Agreement executed by Brookings Municipal Utilities d/b/a Swiftel Communications and the Beresford Municipal Telephone Company. SDTA requests approval of the Agreement on behalf of these two companies pursuant to 47 U.S.C. § 252(e).

Please file and distribute these copies as necessary.

Thank you for your assistance.

Sincerely,

Richard D. Coit  
Executive Director and General Counsel

CC: Jim Adkins, Swiftel Communications  
Wayne Ackland, Beresford Municipal Telephone Company

CLEAR

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Reciprocal Transport and Termination Agreement  
and  
Type 2 Wireless Agreement

SEP 10 2001

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

This Wireless Reciprocal Transport and Termination and Type 2 Interconnection Agreement (the "Agreement") is entered into by and between Brookings Municipal Utilities d.b.a. Swiftel Communications ("PCS Provider") with offices at 525 Western Avenue Brookings, South Dakota 57006 and Beresford Municipal Telephone Company ("Carrier") with offices at Beresford, South Dakota. PCS Provider and Carrier are each individually a "Party" and are together the "Parties" to this Agreement.

PCS Provider is licensed by the Federal Communications Commission ("FCC") as a Personal Communications Service provider. Pursuant to this Agreement, Carrier and PCS Provider agree to exchange wireline to wireless and wireless to wireline traffic for the benefit of the Parties. Services provided by Carrier to PCS Provider under this Agreement are provided pursuant to the receiving Party's status as a PCS Provider.

WHEREAS, the Parties agree to establish Type 2 interconnection 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 or transiting Carrier's facilities; and

WHEREAS, the Parties agree that Carrier will provide local tandem and transport arrangements to interconnect PCS Provider with other carriers; and

WHEREAS, the Parties wish to put in place an arrangement for the mutual exchange and reciprocal compensation of local telecommunications traffic in accordance 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, PCS Provider and Carrier hereby agree as follows:

1. Scope. This Agreement sets forth the terms, conditions and prices under which the Parties agree to provide Type 2 Interconnection and 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 rules of the FCC, under state statute, or pursuant to rules of the South Dakota Public Utilities Commission ("Commission"). Such rights may include PCS Provider's right to request unbundled network elements and a review of Carrier's rural telephone company exemption provided for under § 251(0)(1)(A) of the Act and Carrier's right to seek to maintain the rural exemption.

## 2. Interconnection Arrangements.

2.1 Interconnection is at the trunk side of the Beresford switch. The Point of Interface (POI) will be at the Beresford switching office. The Parties will establish mutually agreeable facility arrangements between their networks. Two-way trunk groups will be established with quantities mutually agreed to based on industry standards for peak hour blocking. Trunk group connections will be made at a DS1 or multiple DS1 level.

2.2 The Type 2 Interconnection will perform the Type 2B (End Office) function which will be utilized to connect the Beresford exchange NXX (763) to and from the PCS Provider and the Type 2A (Local Tandem) function which will be utilized to connect the PCS Provider to other carriers.

## 3. Interpretation and Construction.

3.1 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. Nothing herein shall obligate either Party to perform services which are in violation or breach of applicable federal, state or local laws, regulations or contractual obligations undertaken in accordance with or pursuant to such laws or regulations.

The Parties agree and understand that certain provisions in this Agreement are based on, and intended to comply with, 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, FCC First Report and Order, through FCC Fourth Report and Order, released December 9, 1999 (FCC Release 99-355), and all subsequent and supplemental FCC Reports and Orders applicable hereto (all of which are referred to herein as the "FCC Orders"). To the extent that certain of the rules contained in the FCC Orders, or any other FCC Order adopted to implement the Telecommunications Act of 1996, are ultimately deemed by any court of applicable jurisdiction to be invalid or not effective, in whole or in part, this Agreement shall be modified to comport with the final court decisions and subsequent FCC rules adopted to comply with any such 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, have not been determined based on a specific costing methodology or company specific cost studies 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.

3.2 The Parties further agree that this Agreement is with respect to services provided by and for the Parties. Carrier agrees to provide intermediate transport and switching of Tandem Traffic for the PCS Provider and/or other carriers.

3.3 Charges for services rendered will be as indicated in Exhibit A to this Agreement. For services not listed in Exhibit A, charges will be based on Carrier's established Interstate Switched Access rates as covered by tariff.

3.4 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.

#### 4. Definitions.

4.1 "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 the Commission within its state of jurisdiction.

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

4.3 "Independent Telephone Company" or "ITC" means any entity other than Carrier which, with respect to its operations within South Dakota is an Incumbent Local Exchange Carrier."

4.4 "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 MTA.

4.5 "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 PCS license boundaries for PCS Providers for purposes of Sections 251 and 252 of the Communications Act of 1934 as amended.

4.6 "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.

4.7 "PCS" or "Personal Communications Service" is as defined in the Communications Act of 1934 as amended by the Telecommunications Act of 1996.

4.8 "Reciprocal Compensation Credit" for purposes of this Agreement is a monetary or usage credit for Carrier's wireline to wireless traffic which is originated by a landline subscriber of Carrier (605-763) and terminates to a subscriber of PCS Provider (605-751).

4.9 "Tandem Traffic" is traffic that originates from one provider's network and is connected to the trunk circuits of another provider's network by the local tandem function of the Carrier.

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

5. Reciprocal Traffic Exchange. Each Party shall reciprocally terminate Local Traffic originating on each other's network. Reciprocal traffic exchange addresses the exchange of Local Traffic between PCS Provider subscribers and Carrier end users. Consistent with Carrier's current practice with PCS Provider, either Party's 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 written agreement. Reciprocal traffic exchange as provided for in this Agreement covers only transport and termination services provided for PCS Provider only in association with PCS services. Other services, excluding local tandem and transport, which is covered under this agreement, 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 or wireless to wireless communications. Such services will not be used to terminate other types of traffic on Carrier's network (such as wireline originated traffic) and services used 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, or as otherwise mutually agreed to in writing between the Parties.

6. Local and Non-Local Traffic. This Agreement is intended to address the transport and termination of Local Traffic between the Parties, Tandem Traffic and Non-Local Traffic. Local Traffic which involves wireless is subject to only the local transport and termination charge(s) set forth herein 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.

PCS Provider may use the services provided by Carrier under this Agreement for the transport and termination of wireless Non-Local Traffic. When Local Traffic is terminated over the same trunks as Non-Local Traffic, applicable access charges shall apply to the Non-Local Traffic.

For billing purposes, if either Party is unable to classify on an automated basis the wireless traffic delivered by PCS Provider as Local or Non-Local, PCS Provider will provide Carrier with a Percent InterMTA Use (PIU) factor, which represents the estimated interMTA portion of traffic delivered by PCS Provider. The PIU factor will be provided and updated on a semi-annual basis to commence six (6) months after Commission approval of this Agreement.

7. Local Transport and Termination Rate. PCS Provider 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 Local 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 PCS Provider's network. Measured usage begins when PCS Provider's mobile switching office is signaled 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 PCS Provider 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.

8. Tandem Traffic Rates. For Tandem Traffic, the applicable local tandem switching and transport rate applies to the originating Party in accordance with Exhibit A attached.

9. Reciprocal Compensation Credit. The monthly minutes of use terminated into PCS Provider's network from Carrier's network for purposes of this Agreement, which will determine the reciprocal compensation credit due PCS Provider, will be as measured. In the absence of actual measurements, the calculated minutes of use will be derived using the formula set forth in Exhibit A.

The resulting measured or derived number shall be the reciprocal compensation credit applicable to the local transport and termination that will appear on the monthly bill as a credit against or reduction of amounts due and payable from PCS Provider to Carrier. If the reciprocal compensation credit exceeds the amounts due from PCS Provider to Carrier, Carrier will remit the excess reciprocal compensation amount to PCS Provider.

10. Term. Subject to the default 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 unless either Party

gives the other Party prior written notice of termination at least 60 days prior to the end of the then current annual 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 the defaulting Party does not cure the alleged default within thirty (30) calendar days of receipt of 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 permitted successors and assignees. Neither Party may assign or transfer this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party; provided that either Party may assign or transfer this Agreement to a corporate affiliate or an entity under its common control.

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 South Dakota 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. Disclaimer of Agency. Except as expressly provided for in this Agreement, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted in writing by such other Party, and neither Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

20. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be executed as of this 9<sup>th</sup> day of May, 2001, by its duly authorized representative.

Brookings Municipal Utilities  
d.b.a. Swiftel Communications

Beresford Municipal Telephone Company

"PCS Provider"

"Carrier"

By: Craig Osvog

By: Alyce Akland

Craig Osvog

Its: Executive Vice President & GM

Its: General Manager

“Exhibit A”

- TRANSPORT AND TERMINATION RATE  
\$0.033 per MOU

- RECIPROCAL COMPENSATION CREDIT

- -MEASURED will prevail if available

-CALCULATION

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

- LOCAL TANDEM SWITCHING RATE  
\$0.0015 Per MOU

- LOCAL TANDEM TRANSPORT RATE  
\$0.0030 Per MOU

South Dakota Public Utilities Commission  
WEEKLY FILINGS  
For the Period of September 6, 2001 through September 12, 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: 605-773-3809

**CONSUMER AFFAIRS**

**CT01-039**      **In the Matter of the Complaint filed by Denise Haerter, Sioux Falls, South Dakota, against Midcontinent Communications, Inc. and Qwest Corporation Regarding Unauthorized Switching of Services.**

Complainant alleges that she had no instate or out of state long distance service between July 20 2001 and August 27, 2001, because her service was switched without her consent. The complainant wants an answer to why this was done and which company is responsible. The complainant is seeking a letter of apology from the company responsible and a check for \$1000.00 for the violation.

Staff Analyst: Charlene Lund  
Staff Attorney: Karen E. Cremer  
Date Docketed: 09/07/01  
Intervention Deadline: N/A

**CN01-002**      **In the Matter of the Complaint filed by Veda J. Boxwell, Sioux Falls, South Dakota, against MidAmerican Energy Company Regarding Refusal to Accept a Reasonable Payment Plan and Disconnection of Services.**

Complainant alleges that the company refuses to set a reasonable payment plan and threatens to disconnect services. Complainant requests the company to continue services at 1000 N. Minnesota, Sioux Falls, SD until the issue is resolved; to negotiate a payment plan that she can keep; separate the two bills; and to set a hearing on the matter immediately.

Staff Analyst: Charlene Lund  
Staff Attorney: Karen E. Cremer  
Date Docketed: 09/12/01  
Intervention Deadline: N/A

**TELECOMMUNICATIONS**

**TC01-146**      **In the Matter of the Filing for Approval of a Reciprocal Transport and Termination Agreement and Type 2 Wireless Agreement between Brookings Municipal Utilities d.b.a Swiftel Communications and Beresford Municipal Telephone Company.**

On September 10, 2001, the Commission received a request for approval of a Reciprocal Transport and Termination Agreement and Type 2 Wireless Agreement between Brookings Municipal Utilities d.b.a Swiftel Communications (Swiftel) and Beresford Municipal Telephone Company (Beresford). According to the Agreement, the parties agree to establish Type 2 Interconnection arrangements to one another allowing for the transport and termination of wireline to wireless and wireless to wireline traffic over each other's network. The parties also agree that Beresford will provide tandem and transport arrangements to interconnect Swiftel with other carriers. 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 October 1, 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: 09/10/01  
Initial Comments Due: 10/01/01

**TC01-147**      **In the Matter of the Request of Great Plains Communications, Inc. for Certification Regarding its Use of Federal Universal Service Support.**

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

IN THE MATTER OF THE FILING FOR )	ORDER APPROVING
APPROVAL OF A RECIPROCAL TRANSPORT )	AGREEMENT
AND TERMINATION AGREEMENT AND TYPE )	
2 WIRELESS AGREEMENT BETWEEN )	TC01-146
BROOKINGS MUNICIPAL UTILITIES D.B.A )	
SWIFTEL COMMUNICATIONS AND )	
BERESFORD MUNICIPAL TELEPHONE )	
COMPANY )	

On September 10, 2001, the South Dakota Independent Telephone Coalition on behalf of Brookings Municipal Utilities d.b.a Swiftel Communications (Swiftel) and Beresford Municipal Telephone Company (Beresford) filed for approval by the South Dakota Public Utilities Commission (Commission) a reciprocal transport and termination agreement between Swiftel and Beresford.

On September 13, 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 October 1, 2001, to do so. No comments were filed.

At its duly noticed October 10, 2001, meeting, the Commission considered whether to approve the agreement between Swiftel and Beresford. Commission Staff recommended approval.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31, and the Federal Telecommunications Act of 1996. In accordance with 47 U.S.C. § 252(e)(2), the Commission found that the agreement does not discriminate against a telecommunications carrier that is not a party to the agreement and the agreement is consistent with the public interest, convenience, and necessity. The Commission unanimously voted to approve the agreement with an effective date as of the date of this Order. It is therefore

ORDERED, that the Commission approves the agreement.

Dated at Pierre, South Dakota, this 18th day of October, 2001.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u><i>Debra Kalbs</i></u>
Date: <u><i>10/19/01</i></u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

 _____ JAMES A. BURG, Chairman
 _____ PAM NELSON, Commissioner