TC03-029

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DOCKET NO. TC03-029

In the Matter of IN THE MATTER OF THE FILING FOR APPROVAL OF A TRANSIT RECORD EXCHANGE AGREEMENT TO CO-CARRIERS (WIRELINE - TRANSIT QWEST - CLEC) BETWEEN QWEST CORPORATION AND MCLEODUSA TELECOM DEVELOPMENT, INC.

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
1/13/03	Filed and Docketed;
1/16/03	Weekly Filings;
3/25/03	Order Approving Agreement;
3/25/03	Docket Closed.
4/1/03	Supplemental Comments of Qwest.

STATE PUBLISHING CO., PIERRE, SOUTH DAKOTA—SMEAD 104 SP14130

TC03-029

BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.

ATTORNEYS AT LAW

Russell R. Greenfield
Gary J. Pashby
Thomas J. Welk
Michael S. McKnight
Gregg S. Greenfield
Roger A. Sudbeck
Lisa Hansen Marso
Heather R. Springer
Heith R. Janke
Nettie Sanchez-Cole

101 North Phillips Avenue, Suite 600
Sioux Falls, South Dakota 57104
P.O. Box 5015
Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424
Facsimile 605 334-0618
www.bgpw.com

J.W. Boyce (1884-1915)

Writer's Direct Dial:
(605) 731-0208

Writer's Email:
tjwelk@bgpw.com

January 10, 2003

RECEIVED

JAN 13 2003

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

VIA UPS OVERNIGHT

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

Re: Filing of Agreements between Qwest Corporation and McLeodUSA Telecom Development, 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 following two agreements between Qwest Corporation ("Qwest") and McLeodUSA Telecom Development, Inc. ("McLeod") for approval by the Commission:

1. Transit Record Exchange Agreement to Co-Carriers (WSP – transit Qwest – CLEC)

2. Transit Record Exchange Agreement to Co-Carriers (Wireline - transit Qwest – CLEC)

The Agreements are negotiated agreements which set forth the terms, conditions and prices under which Qwest will offer and provide to any requesting CLEC network interconnection, access to unbundled network elements, ancillary services and telecommunications services available for resale within the geographical areas in which Qwest is providing local exchange service at that time and for which Qwest is the incumbent local exchange carrier within the State of South Dakota for purposes of providing local telecommunications services.

The Agreements do not discriminate against other telecommunications carriers, and the Agreements are consistent with the FCC's guidelines for negotiation and performance. Additionally, other telecommunications carriers have the option to adopt any negotiated or arbitrated agreement approved by the Commission.

greements are consistent with the public interest as identified in the state statutes of South a, the Commission's rules, the federal Telecommunications Act of 1996 and the rules of ederal Communications Commission and all disputes arising in South Dakota will be

resolved by South Dakota law. Expeditious approval of these Agreements will enable McLeod to enter the local exchange market and provide customers with increased choices among local exchange services.

McLeod has authorized Qwest to submit these Agreements on McLeod's behalf.

Sincerely yours,

BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.

Tom Welk

Thomas J. Welk

TJW/vjj
Enclosures

cc: William Heaston – McLeod (enclosure letter only)
Lauraine Harding – McLeod (enclosure letter only)
Colleen Sevold

TRANSIT RECORD EXCHANGE AGREEMENT TO CO-CARRIERS
(Wireline - Transit Qwest - CLEC)

This Transit Record Exchange Agreement to Co-Carriers ("Agreement") is made by and between Qwest Corporation ("Qwest"), a Colorado corporation, and McLeod USA Telecom Development, Inc. ("CLEC"). The service(s) described in this Agreement shall be performed in the state of South Dakota.

1. This Agreement is made in order for each party to obtain from the other certain technical and business information related to wireline network usage data under terms that will protect the confidential and proprietary nature of such information. Specifically, Qwest and CLEC will exchange wireline network usage data originated by a wireline Local Exchange Carrier (LEC) where the NXX resides in a wireline LEC switch, and transits Qwest's network. Each party agrees to provide to the other this wireline network usage data when Qwest or CLEC interconnects with a wireline LEC either currently or in the future. [Qwest will charge CLEC $.0025 per record.] The parties understand that this information is carrier protected information under §222 of the Communications Act and shall be used solely for the purposes of billing the wireline LEC. Each party further agrees to provide the other with the information required in Attachment 1 to this Agreement, which is attached hereto and incorporated herein by this reference.

2. As used herein, "Confidential Information" shall mean all information reasonably related to network usage data for all network traffic for all calls originating from CLEC or other Exchange Carrier (EC), which are interconnected by either party and terminated within either parties' network, furnished, in whatever tangible form or medium, or disclosed by one party to the other, which is marked as confidential or proprietary, or, for information which is orally disclosed, the disclosing party indicates to the other at the time of disclosure the confidential or proprietary nature of the information and reduces orally disclosed Confidential Information to writing and provides it to the receiving party within twenty (20) days after such disclosure which is also marked as confidential. All usage information exchanged between the parties on any medium which contains usage information of the minutes of termination of either party or a third party's network, whether marked confidential or not, is considered Confidential Information. Said Confidential Information shall be used by the parties for billing purposes only.

3. This Agreement arises out of an Interconnection Agreement between the Parties, which was approved by the South Dakota ("Commission"). This Agreement shall become effective upon execution by both parties and shall terminate at the same time as the said Interconnection Agreement. Provided, however, either party may terminates this Agreement upon sixty (60) days written notice to the other party. Notwithstanding the termination of this Agreement, each party agrees to treat such Confidential Information as confidential for a period of three (3) years from the date of receipt of same unless otherwise agreed to in writing by both parties. In handling the Confidential Information, each party agrees: (a) not to copy such Confidential Information of the other, except for billing purposes, unless specifically authorized; (b) not to make disclosure of any such Confidential Information to anyone except employees and subcontractors of such party to whom disclosure is necessary for the purposes set forth above; and (c) to appropriately notify such employees and subcontractors that the disclosure is made in

confidence and shall be kept in confidence in accordance with this Agreement. The obligations set forth herein shall be satisfied by each party through the exercise of at least the same degree of care used to restrict disclosure of its own information of like importance. Notwithstanding the foregoing, disclosure may be made under the circumstances set forth in Section 7 of this Agreement.

4. Each party agrees that in the event permission is granted by the other to copy Confidential Information, or that copying is otherwise permitted hereunder, each such copy shall contain and state the same confidential or proprietary notices or legends, if any, which appear on the original. Nothing herein shall be construed as granting to either party any right or license under any copyrights, inventions, or patents now or hereafter owned or controlled by the other party.

5. The obligations imposed by this Agreement shall not apply to any information that: (a) is already in the possession of, is known to, or is independently developed by the receiving party; or (b) is or becomes publicly available through no fault of the receiving party; or (c) is obtained by the receiving party from a third person without breach by such third person of an obligation of confidence with respect to the Confidential Information disclosed; or (d) is disclosed without restriction by the disclosing party; or (e) is required to be disclosed pursuant to the lawful order of a government agency or disclosure is required by operation of the law.

6. Except for the obligations of use and confidentiality imposed herein, no obligation of any kind is assumed or implied against either party by virtue of the party's meetings or conversations with respect to the subject matter stated above or with respect to whatever Confidential Information is exchanged. Each party further acknowledges that this Agreement and any meetings and communications of the parties relating to the same subject matter, including the exchange of Confidential Information, shall not: (a) constitute an offer, request, or contract with the other to engage in any research, development or other work; (b) constitute an offer, request or contract involving a buyer-seller relationship, joint venture, teaming or partnership relationship between the parties; or (c) impair or restrict either party's right to make, procure or market any products or services, now or in the future, which may be similar to or competitive with those offered by the disclosing party, or which are the subject matter of this Agreement, so long as that party's obligations of confidentiality under this Agreement are not breached. The parties expressly agree that any money, expenses or losses expended or incurred by each party in preparation for, or as a result of this Agreement or the parties' meetings and communications, is at each party's sole cost and expense.

7. Without the prior consent of the other party, neither party shall disclose to any third person the existence or purpose of this Agreement, the terms or conditions hereof, or the fact that discussions are taking place and that Confidential Information is being shared, except as may be required by law, regulation or court or agency order or demand, and then only after prompt prior notification to the other party of such required disclosure. The parties also agree that neither party shall use any trade name, service mark, or trademark of the other or refer to the other party in any promotional activity or material without first obtaining the prior written consent of the other party.

8. Neither Party shall assign, sublet, or transfer any interest in this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that Qwest may assign and transfer this Agreement to any parent, subsidiary, successor, affiliated company or other business entity without the prior written consent of CLEC.

9. Any claim, controversy or dispute between the Parties shall be resolved by binding arbitration in accordance with the Federal Arbitration Act, 9 U.S.C. 1-16, not state law. The arbitration shall be conducted by a retired judge or a practicing attorney under the rules of the American Arbitration Association. The arbitration shall be conducted in Denver, Colorado. The arbitrator's decision shall be final and may be entered in any court with jurisdiction. Each Party shall be responsible for its own costs.

10. This Agreement, together with any and all exhibits incorporated herein, constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement. No provision of this Agreement shall be deemed waived, amended or modified by either party, unless such waiver, amendment or modification is made in writing and signed by both parties. This Agreement supersedes all previous agreements between the parties relating to the subject matter hereof.

11. Any notice to be given hereunder by either party to the other, shall be in writing and shall be deemed given when sent either by mail to the address listed below or by facsimile with a confirmation copy sent by mail.

CLEC
Dick Sutherland
5100 South McLeod Lane
Sioux Falls, SD 57108

Qwest Corporation
E. G. (Ed) Melichar
1314 Douglas On The Mall, 14th Floor
Omaha, NE 68102

12. Notwithstanding anything to the contrary, CLEC may not make any disclosure to any other person or any public announcement regarding this Agreement or any relation between CLEC and Qwest, without Qwest's prior written consent. Qwest shall have the right to terminate this Agreement and any other agreements between the Parties if CLEC violates this provision.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to sign this Agreement as of the date first stated above.

Qwest Corporation

Ed Melichar
Authorized Signature

Ed Melichar
Printed Name

Sr. Access Mgr. - NE/SD
Title

2/28/01
Date

McLeod USA Telecom Development, Inc.

Randall Rings
Authorized Signature

Randall Rings
Printed Name

GVP & Gen Counsel
Title

3-7-01
Date

ATTACHMENT 1
(Wireline - Transit Qwest - CLEC)

DATA REQUIRED BY THE PARTIES TO PROCESS USAGE DATA:

Operating Company Number (OCN)	State
7024	SD
4768	MN

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of January 9, 2003 through January 15, 2003

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 report. Phone: 605-773-3705

CONSUMER COMPLAINTS

CN03-001 In the Matter of the Complaint filed by Veda J. Boxwell, Sioux Falls, South Dakota, against MidAmerican Energy Company Regarding Billing.

Complainant states that after selling her property at 1000 N. Minnesota, she contacted MidAmerican and asked that it remove her name from the billing at this address and to inquire about what her final bill would be. In January 2003, Complainant requested that MidAmerican put her name on the billing address at 3316 N. 9th Ave. MidAmerican told her that it could not put her name on the account because she had service in her name at 1000 N. Minnesota and had an outstanding bill of $240.00. Complainant requests that service be removed from her name at 1000 N. Minnesota, effective January 15, 2002, that the outstanding bill at this address be removed from her name and that she be allowed service in her name at 3316 N. 9th Ave., effective immediately.

Staff Analyst: Mary Healy
Staff Attorney: Karen Cremer
Date Docketed: 01/10/03
Intervention Deadline: N/A

CT03-001 In the Matter of the Complaint filed by Berdell Kinsley, Springfield, South Dakota, against BroadWing Telecommunications, Inc. Regarding Unauthorized Switching of Services.

Complainant states that his service was switched without his authorization. Complainant requests a payment of $800.00 for the unauthorized switch and reimbursement of expenses to attend a hearing.

Staff Analyst: Mary Healy
Staff Attorney: Kelly Frazier
Date Docketed: 01/13/03
Intervention Deadline: N/A

ELECTRIC

EL03-002 In the Matter of the Filing by Otter Tail Power Company for Approval of a Contract with Deviations with the City of DeSmet.

Application by Otter Tail Power Company for approval of a contract with deviations with the City of DeSmet. The current municipal contract providing electrical service expires February 1, 2003. The new contract contains rates that are not otherwise tariffed.

Staff Analyst: Dave Jacobson
Staff Attorney: Karen Cremer
Date Docketed: 01/14/03
Intervention Deadline: 01/24/03

NATURAL GAS

NG03-001 **In the Matter of the Filing by MidAmerican Energy Company for Approval of its 2002 Economic Development Report and its 2003 Economic Development Plan.**

Application by MidAmerican Energy Company for approval of its 2002 Economic Development Report and 2003 Economic Development Plan in accordance with the Settlement Stipulation in Docket NG01-010. The Settlement Stipulation specifies that economic development expenses up to $100,000 shall be equally paid by ratepayers ($50,000) and shareholders ($50,000) and that MidAmerican's programs will be submitted for approval on an annual basis.

Staff Analyst: Dave Jacobson
Staff Attorney: Karen Cremer
Date Docketed: 01/15/03
Intervention Deadline: 01/31/03

TELECOMMUNICATIONS

TC03-002 **In the Matter of a Confidential Settlement Agreement between U S WEST Communications, Inc. and Advanced Telecom Group, Inc.**

TC03-003 **In the Matter of an Agreement between U S WEST Communications, Inc., Qwest Communications International, Inc. and AT&T Corporation, AT&T Communications of the Midwest, Inc., AT&T Communications of the Mountain States, Inc., AT&T Communications of the Pacific Northwest, Inc. and AT&T Broadband Services, Inc. dba AT&T Cable Services and Teleport Communications Group, Inc. dba AT&T Local Services.**

TC03-004 **In the Matter of a Confidential Billing Settlement Agreement between Qwest Corporation and Black Hills FiberCom, L.L.C.**

TC03-005 **In the Matter of a Confidential Settlement Document in Letter Format between U S WEST, Inc. and McLeodUSA.**

TC03-006 **In the Matter of a Subject to Rule of Evidence 408, Confidential Billing Settlement Agreement between U S WEST Communications, Inc. and McLeodUSA, Inc.**

TC03-007 **In the Matter of a Confidential Settlement Agreement between U S WEST Communications, Inc. and McLeodUSA Telecommunications Services, Inc.**

TC03-008 **In the Matter of a Letter Agreement between Qwest Corporation and McLeodUSA Incorporated.**

TC03-009 **In the Matter of a Subject to Rule of Evidence 408, Confidential Billing Settlement Agreement between Qwest Corporation and McLeodUSA, Inc.**

TC03-010 **In the Matter of a Subject to Rule of Evidence 408, Confidential Amendment to Confidential Billing Settlement Agreement between Qwest Corporation and McLeodUSA Incorporated.**

TC03-011 **In the Matter of a Subject to Rule of Evidence 408, Purchase Agreement between Qwest Communications Corp. and McLeodUSA Telecommunications Services, Inc.**

TC03-012 **In the Matter of a Subject to Rule of Evidence 408, Purchase Agreement between Qwest Communications Corp. and McLeodUSA Telecommunications Services, Inc.**

TC03-013 **In the Matter of a Subject to Rule of Evidence 408, Confidential Amendment to Confidential Billing Settlement Agreement between Qwest Corporation and McLeodUSA Incorporated.**

TC03-014 **In the Matter of a Subject to Rule of Evidence 408, Amendment to Confidential Billing Settlement Agreement between Qwest Corporation and McLeodUSA, Inc.**

TC03-015 **In the Matter of a Confidential Agreement to Provide Directory Assistance Database Entry Services between Qwest Corporation and McLeodUSA Telecom Development, Inc.**

TC03-016 **In the Matter of a Confidential Billing Settlement Agreement between Qwest Corporation, successor to U S WEST Communications, Inc., and McLeodUSA Telecommunications Services, Inc.**

TC03-017 **In the Matter of a Confidential Billing Settlement Agreement between Qwest Communications Corporation and McLeodUSA Telecommunications Services, Inc.**

TC03-018 **In the Matter of a Memorandum of Understanding between Qwest Corporation and Z-Tel Communications, Inc.**

The above 17 Agreements were filed with the Commission on 06/13/02, as a confidential exhibit to the Affidavit of Todd Lundy in Docket TC01-165. On 11/22/02, in the Order Regarding the Public Interest, the Commission ruled that the issue of whether these Agreements were a mandatory filing should be considered separate from the TC01-165 docket. Pursuant to that Order, these dockets were opened for the purpose of receiving a Commission ruling on whether these Agreements should have been filed pursuant to the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. Qwest has requested confidential treatment of the contents of these Agreements pursuant to ARSD chapter 20:10:01. Any party wishing to comment on these Agreements may do so by filing written comments with the Commission and the parties to these Agreements no later than February 5, 2003. Parties to these Agreements 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: 01/10/03
Initial Comments Due: 02/05/03

TC03-019 **In the Matter of a U S WEST Service Level Agreement with Covad Communications Company Unbundled Loop Services between U S WEST Network Complex Services and Covad Communications Company.**

This Agreement was filed with the Commission on 06/13/02, as a confidential exhibit to the Affidavit of Todd Lundy in Docket TC01-165. On 11/22/02, in the Order Regarding the Public Interest, the Commission ruled that the issue of whether this Agreement was a mandatory filing should be considered separate from the TC01-165 docket. Pursuant to that Order, this docket was opened for the purpose of receiving a Commission ruling on whether this agreement should have been filed pursuant to the

mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. According to the Agreement, Qwest f/k/a U S WEST, agreed to make demonstrable improvements to its provisioning service performance on unbundled loops, in order to reach service quality standards as set forth in the Agreement. Covad agreed to withdraw its opposition to the U S WEST/Qwest merger in return. 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 February 5, 2003. 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: 01/10/03
Initial Comments Due: 02/05/03

TC03-020 In the Matter of a Subject to Rule of Evidence 408, Confidential Billing Settlement Agreement between U S WEST Communications, Inc. and McLeodUSA, Inc.

This Agreement was filed with the Commission on 06/13/02, as a confidential exhibit to the Affidavit of Todd Lundy in Docket TC01-165. On 11/22/02, in the Order Regarding the Public Interest, the Commission ruled that the issue of whether this Agreement was a mandatory filing should be considered separate from the TC01-165 docket. Pursuant to that Order, this docket was opened for the purpose of receiving a Commission ruling on whether this agreement should have been filed pursuant to the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. According to the Agreement, in consideration for McLeodUSA's withdrawal from the dockets related to the U S WEST/Qwest merger, Qwest f/k/a U S WEST agreed to pay McLeodUSA a fixed sum for the settlement of disputes involving nonblocked Centrex service, subscriber list information and miscellaneous billing disputes. 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 February 5, 2003. 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: 01/10/03
Initial Comments Due: 02/05/03

TC03-021 In the Matter of a Confidential Agreement in Letter Format between Qwest Communications International, Inc. and McLeodUSA Incorporated.

This Agreement was filed with the Commission on 06/13/02, as a confidential exhibit to the Affidavit of Todd Lundy in Docket TC01-165. On 11/22/02, in the Order Regarding the Public Interest, the Commission ruled that the issue of whether this Agreement was a mandatory filing should be considered separate from the TC01-165 docket. Pursuant to that Order, this docket was opened for the purpose of receiving a Commission ruling on whether this agreement should have been filed pursuant to the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. According the Agreement, the parties agreed to (1) develop an implementation plan by which the parties agree to implement their interconnection agreements, (2) arrange quarterly meetings to address unresolved and/or anticipated business issues, and (3) establish and follow escalation procedures to facilitate and expedite business-to-business dispute resolutions as set forth in the Agreement. 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 February 5, 2003. 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: 01/10/03
Initial Comments Due: 02/05/03

TC03-022 **In the Matter of the Filing by NOS Communications, Inc. for Approval of its Intrastate Switched Access Tariff and for an Exemption from Developing Company Specific Cost-Based Switched Access Rates.**

On January 10, 2003, NOS Communications, Inc. filed a request for approval of switched access rates with consideration of ARSD 20:10:27:07 being waived. The Applicant has also requested a waiver of ARSD 20:10:27:12. NOS Communications, Inc. intends to mirror the switched access tariffed rates of Qwest.

Staff Analyst: Keith Senger
Staff Attorney: Kelly Frazier
Date Docketed: 01/10/03
Intervention Deadline: 01/31/03

TC03-023 **In the Matter of the Filing for Approval of a Boundary Change between Valley Telecommunications Cooperative Association, Inc. and Venture Communications Cooperative.**

Valley Telecommunications and Venture Communications have filed a joint petition proposing changes to several exchange boundaries. The proposed exchange boundaries affect the following exchanges: Glenham/Selby, Mound City/Selby, Eureka/Selby, Hosmer/Bowdle, Ipswich/Roscoe.

Staff Analyst: Michele M Farris
Staff Attorney: Karen Cremer
Date Docketed: 01/13/03
Intervention Deadline: 01/31/03

TC03-024 **In the Matter of the Filing for Approval of a Line Information Data Base Storage Agreement between U S WEST Communications, Inc. and Black Hills FiberCom, L.L.C.**

On January 13, 2003, the Commission received a filing of an Agreement between U S WEST Communications, Inc. n/k/a Qwest Corporation and Black Hills FiberCom, L.L.C. for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 1999 Line Information Data Base Storage Agreement between U S WEST (now Qwest) and Black Hills FiberCom, L.L.C. According to the parties, the agreement is a negotiated agreement which sets forth the terms, conditions, and prices under which U S WEST agreed to offer and provide to any requesting CLEC network interconnection, access to unbundled network elements, ancillary services and telecommunications services available for resale within the geographical areas in which U S WEST was providing local exchange services at that time and for which U S WEST was the incumbent local exchange carrier within the state of South Dakota for purposes of providing local telecommunications 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 February 3, 2003. 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: 01/13/03
Initial Comments Due: 02/03/03

TC03-025 **In the Matter of the Filing for Approval of a Common Channel Signaling Network Interconnection Agreement Switched Access Services between U S WEST Communications, Inc. and Black Hills FiberCom, L.L.C.**

On January 13, 2003, the Commission received a filing of an Agreement between U S WEST Communications, Inc. n/k/a Qwest Corporation and Black Hills FiberCom, L.L.C. (BHFC) for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The agreement is a 1999 Common Channel Signaling Network Interconnection Agreement Switched Access Services. According to the parties, the agreement is a negotiated agreement which describes the terms and conditions under which the parties agree to permit their customers to use line number telephone calling cards to initiate calls and also to permit their customers to bill calls to accounts associated with cards, collect, bill to third number and public telephone check for the specific number. 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 February 3, 2003. 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: 01/13/03
Initial Comments Due: 02/03/03

TC03-026 In the Matter of the Filing for Approval of an Internetwork Calling Name Delivery Service Agreement (ICNAM Service) between U S WEST Communications, Inc. and Black Hills FiberCom, L.L.C.

On January 13, 2003, the Commission received a filing of an Agreement between U S WEST Communications, Inc. n/k/a Qwest Corporation and Black Hills FiberCom, L.L.C. (BHFC) for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 1999 Internetwork Calling Name Delivery Service Agreement ("ICNAM Service") which provides the terms and conditions under which U S WEST (now Qwest) will provide ICNAM services to BHFC, thereby transporting Calling Name data between the parties' databases. 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 February 3, 2003. 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: 01/13/03
Initial Comments Due: 02/03/03

TC03-027 In the Matter of the Filing for Approval of a Custom Local Area Signaling Services (CLASS) Network Interconnection Agreement between U S WEST Communications, Inc. and Black Hills FiberCom, L.L.C.

On January 13, 2003, the Commission received a filing of an Agreement between U S WEST Communications, Inc. n/k/a Qwest Corporation and Black Hills FiberCom, L.L.C. (BHFC) for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 1999 Custom Local Area Signaling Services ("CLASS") Network interconnection Agreement which describes the terms and conditions under which the parties agreed to provide each other access to interconnect their respective networks for the provision of intraLATA CLASS in compliance with the Common Channel Signaling Network ("CCSN") Interconnection Agreement for switched access 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 February 3, 2003. 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: 01/13/03
Initial Comments Due: 02/03/03

TC03-028 **In the Matter of the Filing for Approval of a Transit Record Exchange Agreement to Co-Carriers (WSP - Transit Qwest - CLEC) between Qwest Corporation and McLeodUSA Telecom Development, Inc.**

On January 13, 2003, the Commission received a filing of an Agreement between Qwest Corporation (Qwest) and McLeodUSA Telecom Development, Inc. (McLeodUSA) for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 2001 Transit Record Exchange Agreement to Co-Carriers (WSP - Transit Qwest - CLEC). According to the parties, the Agreement is a negotiated agreement made in order for each party to obtain from the other certain technical and business information related to wireless network usage data under terms that will protect the confidential and proprietary nature of such information. 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 February 3, 2003. 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: 01/13/03
Initial Comments Due: 02/03/03

TC03-029 **In the Matter of the Filing for Approval of a Transit Record Exchange Agreement to Co-Carriers (Wireline - Transit Qwest - CLEC) between Qwest Corporation and McLeodUSA Telecom Development, Inc.**

On January 13, 2003, the Commission received a filing of an Agreement between Qwest Corporation and McLeodUSA Telecom Development, Inc. (McLeodUSA) for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 2001 Transit Record Exchange Agreement to Co-Carriers (Wireline - Transit Qwest - CLEC). According to the parties, the Agreement is a negotiated agreement made in order for each party to obtain from the other certain technical and business information related to wireline network usage data under terms that will protect the confidential and proprietary nature of such information. 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 February 3, 2003. 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: 01/13/03
Initial Comments Due: 02/03/03

TC03-030 **In the Matter of the Filing for Approval of a Transit Record Exchange Agreement to Co-Carriers (WSP - Transit Qwest - CLEC) between Qwest Corporation and Midcontinent Communications, Inc.**

On January 13, 2003, the Commission received a filing of an Agreement between Qwest Corporation and MidContinent Communications for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 2002 Transit Record Exchange Agreement to Co-Carriers (WSP - Transit Qwest - CLEC). According to the parties, the Agreement is a negotiated agreement made in order for each party to

obtain from the other certain technical and business information related to wireless network usage data under terms that will protect the confidential and proprietary nature of such information. 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 February 3, 2003. 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: 01/13/03
Initial Comments Due: 02/03/03

TC03-031 In the Matter of the Filing for Approval of a Transit Record Exchange Agreement to Co-Carriers (Wireline - Transit Qwest - CLEC) between Qwest Corporation and Midcontinent Communications, Inc.

On January 13, 2003, the Commission received a filing of an Agreement between Qwest Corporation and MidContinent Communications) for a determination of whether the agreement fell within the mandatory filing requirements of section 252(e)(1) of the 1996 Telecommunications Act. The Agreement is a 2002 Transit Record Exchange Agreement to Co-Carriers (Wireline - Transit Qwest - CLEC). According to the parties, the Agreement is a negotiated agreement made in order for each party to obtain from the other certain technical and business information related to wireline network usage data under terms that will protect the confidential and proprietary nature of such information. 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 February 3, 2003. 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: 01/13/03
Initial Comments Due: 02/03/03

TC03-032 In the Matter of the Application of Alticomm, Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services and Local Exchange Services in South Dakota.

Alticomm, Inc. is seeking a Certificate of Authority to provide interexchange and local exchange telecommunication services in South Dakota. The applicant intends to provide a full range of services on a resale basis.

Staff Analyst: Keith Senger
Staff Attorney: Kelly Frazier
Date Docketed: 01/14/03
Intervention Deadline: 01/31/03

TC03-033 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and FiberComm, L.C.

On January 15, 2003, the Commission received for approval a filing of an Amendment to an Interconnection Agreement between Qwest Corporation (Qwest) and FiberComm, L.C. (FiberComm). According to the parties, the Amendment is a negotiated amendment to the Agreement between the parties approved by the Commission in Docket TC01-020 which became effective July 12, 2001. The Amendment is made in order to add terms and conditions for the Special Request Process as set forth in Exhibit B attached to the Amendment. 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 February 4, 2003. 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: 01/15/03
Initial Comments Due: 02/04/03

TC03-034 In the Matter of the Application of Business Network Long Distance, Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota.

Business Network Long Distance, Inc. has filed an application with the South Dakota Public Utilities Commisison for a Certificate of Authority to provide interexchange services in South Dakota. The applicant intends to provide resold interexchange services, including 1+ and 101XXXX outbound dialing, 800/888 toll-free inbound dialing, directory assistance, data services, and travel card services throughout South Dakota.

Staff Analyst: Michele M. Farris
Staff Attorney: Karen Cremer
Date Docketed: 01/15/03
Intervention Deadline: 01/31/03

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING FOR APPROVAL OF A TRANSIT RECORD EXCHANGE AGREEMENT TO CO-CARRIERS (WIRELINE - TRANSIT QWEST - CLEC) BETWEEN QWEST CORPORATION AND MCLEODUSA TELECOM DEVELOPMENT, INC.	))))))	**ORDER APPROVING AGREEMENT** **TC03-029**

On January 13, 2003, the Commission received for approval a filing of a Transit Record Exchange Agreement to Co-Carriers (Wireline - Transit Qwest - CLEC) between Qwest Corporation (Qwest) and McLeodUSA Telecom Development, Inc. (McLeod).

On January 16, 2003, 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 February 3, 2003, to do so. No comments were filed.

At its duly noticed March 18, 2003, meeting, the Commission considered whether to approve the agreement between Qwest and McLeod. Commission Staff recommended its 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. It is therefore

ORDERED, that the Commission approves the agreement.

Dated at Pierre, South Dakota, this 25th day of March, 2003.

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: Delaine Kolbo

Date: 3/26/03

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr

ROBERT K. SAHR, Chairman

Gary Hanson

GARY HANSON, Commissioner

James A. Burg

JAMES A. BURG, Commissioner

Qwest
Spirit of Service

Timothy J. Goodwin
Senior Attorney
1801 California
Suite 4700
Denver, CO 80202
303-896-9874

303-896-8120 (fax)
tim.goodwin@qwest.com

March 31, 2003

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

Re: Dockets TC03-024 through TC03-031

Dear Ms. Bonrud:

At the Commission's regular meeting on March 18, 2003, the Commission requested that Qwest supply a written explanation concerning the filing of the agreements reflected in TC03-024 through TC03-031 on or before April 1, 2003. I attach the original and ten copies of Qwest's Supplemental Comments responsive to this request for filing. If you have any questions, do not hesitate to call.

Sincerely,

Timothy J. Goodwin

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In The Matter Of The Filing For Approval Of A Line Information Data Base Storage Agreement Between U S West Communications, Inc. And Black Hills Fibercom, L.L.C.	TC03-024
In The Matter Of The Filing For Approval Of A Common Channel Signaling Network Interconnection Agreement Switched Access Services Between U S West Communications, Inc. And Black Hills Fibercom, L.L.C.	TC03-025
In The Matter Of The Filing For Approval Of An Internetwork Calling Name Delivery Service Agreement (Icnam Service) Between U S West Communications, Inc. And Black Hills Fibercom, L.L.C.	TC03-026
In The Matter Of The Filing For Approval Of A Custom Local Area Signaling Services (Class) Network Interconnection Agreement Between U S West Communications, Inc. And Black Hills Fibercom, L.L.C.	TC03-027
In The Matter Of The Filing For Approval Of A Transit Record Exchange Agreement To Co-Carriers (Wsp - Transit Qwest - Clec) Between Qwest Corporation And Mcleodusa Telecom Development, Inc.	TC03-028
In The Matter Of The Filing For Approval Of A Transit Record Exchange Agreement To Co-Carriers (Wireline - Transit Qwest - Clec) Between Qwest Corporation And Mcleodusa Telecom Development, Inc.	TC03-029
In The Matter Of The Filing For Approval Of A Transit Record Exchange Agreement To Co-Carriers (Wsp - Transit Qwest - Clec) Between Qwest Corporation And Midcontinent Communications, Inc.	TC03-030
In The Matter Of The Filing For Approval Of A Transit Record Exchange Agreement To Co-Carriers (Wireline - Transit Qwest - Clec) Between Qwest Corporation And Midcontinent Communications, Inc.	TC03-031

SUPPLEMENTAL COMMENTS OF QWEST CORPORATION

Qwest Corporation ("Qwest") submits the following supplemental comments in these dockets pursuant to the Commission's oral request during a March 18, 2003 hearing on the dockets that Qwest explain why the agreements reflected in TC03-024 through TC03-031 were not filed earlier.

INTRODUCTION

On January 13, 2003, Qwest petitioned the Commission to approve pursuant to Section 252(e) the agreements reflected in TC03-024 through TC03-031 (the "Agreements") under the new standards adopted by the FCC. Under each of these Agreements, CLECs subscribe to various standard product offerings which are and have been generally available on equal terms to all CLECs through standard, uniform provisions contained in Qwest's SGATs or other filed and approved interconnection agreements. These standard offerings include Custom Local Area Calling Services (CLASS), Internetwork Calling Name Delivery Service (ICNAM), Transient Interim Signaling Capability Service, Line Item Data Base Service, Common Channel Signaling, and Transit Record Exchange. As shown by a review of each of the Agreements, these documents are standard forms that the parties execute when the CLEC requests these types of offerings.

Prior to and even after the FCC's October 4, 2002 ruling on Qwest's request for clarification of the filing standards,[1] Qwest did not consider such form contracts as within the Section 252 filing requirement. For example, these types of order form contracts were provided to the Minnesota Department of Commerce as part of the unfiled agreements docket in that state, and the Minnesota Department of Commerce never identified these form contracts as agreements that are within the Section 252 filing requirement.

However, a subsequent comment in the FCC's December 23, 2002 ruling on Qwest's application for section 271 relief in nine other states suggested that even these form contracts potentially could be subject to Section 252. Qwest promptly reviewed the Agreements (and several others) in light of the December 23, 2002 comment, the standards announced by the FCC in October 2002, and particularly Qwest's announced policy to resolve all Section 252 issues in favor of filing. Thus, on January 13, 2002, Qwest filed the Agreements.

DISCUSSION

As Qwest noted in its original comments in these dockets, as of May 2002 Qwest adopted new policies under which all future contracts creating ongoing obligations with respect to Sections 251(b) or (c) are filed with state commissions for approval under Section 252. Qwest also created a senior-level committee to enforce compliance with this policy. These policies apply across all states in the Qwest region. Subsequently, on October 4, 2002, the FCC issued a Declaratory Ruling regarding the scope of the Section 252 filing requirement that was consistent with Qwest's self-imposed policy standard.

As part of its implementation of these policies, in September 2002 Qwest filed in South Dakota previously unfiled agreements insofar as those contracts contained provisions creating on-going obligations that relate to Section 251(b) or (c) which have not been terminated or superseded by agreement, commission order, or otherwise. These filings were equivalent to those made the previous month in the several other states. Four contracts were filed in South Dakota, and the Commission approved those contracts on December 19, 2002.

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[1] *Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements Under Section 252(a)(1)*, 17 FCC Rcd 19337 (Oct. 4, 2002).

Through these September filings, Qwest believed that it had complied with the requirements of Section 252 as expressed in Mr. Davis's May, 2002 letter and Qwest's quite broad filing standard that it has applied since. Then, on October 4, 2002, the FCC issued its ruling on Qwest's Petition for Declaratory Ruling, and supported, in Qwest's view, its understanding that these types of form contracts were not within the filing requirement. That is, the FCC stated in paragraph 13 the following:

> 13. Qwest has argued, in another proceeding, that order and contract forms used by competitive LECs to request service do not need to be filed for state commission approval because such forms only memorialize the order of a specific service, the terms and conditions of which are set forth in a filed interconnection agreement. We agree with Qwest that forms completed by carriers to obtain service pursuant to terms and conditions set forth in an interconnection agreement do not constitute either an amendment to that interconnection agreement or a new interconnection agreement that must be filed under Section 252(a)(1).

Thus, Qwest had not filed the Agreements at issue here – certain boilerplate contracts used by CLECs in the ordinary course to order ancillary interconnection services – understanding them to fall into the category of contract order forms that did not require prior state commission approval under that Ruling. In the FCC's order on Qwest's application for section 271 relief in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming,[2] however, the Commission made a comment that precipitated the filing of the Agreements. The FCC found that at least one such contract "does not appear on its face to fall within the scope of the filing requirement exceptions set forth in the Commission's declaratory ruling. . . ."[3] Even so, the Commission found that because the terms of the agreement are available through SGATs in the relevant states, the terms of the agreement are

[2] *Memorandum Opinion and Order* in WC Docket No. 02-314 (Dec. 23, 2002) ("*Qwest 271 Order*")

[3] *Qwest 271 Order* ¶ 491 n.1789.

available to other CLECs "and thus no ongoing discrimination exists that would warrant denial of this section 271 application."[4]

To eliminate any issue in South Dakota or before the FCC in connection with Qwest's application for section 271 relief for South Dakota, Qwest promptly filed the Agreements for approval under Section 252 in South Dakota, and similar form contracts in Oregon and New Mexico as well. The Agreements filed in South Dakota and represented in Dockets TC03-024 through TC03-031 are all form contracts similar to the agreement discussed in the *Qwest 271 Order*. Qwest must make clear that it continues to believe that, when examined in context as opposed to simply on their face, it is clear that these Agreements are order form contracts exempt from Section 252. However, we have no objection to filing them; they simply reflect the same terms that are and always have been available to all CLECs equally.

In sum, no South Dakota CLEC has been injured in this matter because the contract terms are standard provisions that have been available to all CLECs. Especially given that, no CLEC intervened in these dockets or complained about the timing of the Agreements' filing, and in light of the significant, proactive steps Qwest has taken to ensure the prompt filing of all agreements that arguably fall under the FCC's filing standards pursuant to sections 251 and 252 of the 1996 Act, Qwest respectfully requests that Dockets TC03-024 through –031 be closed.

[4] *Id.*

Respectfully submitted this 31st day of March, 2003.

Thomas J. Welk
BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.
101 North Phillips Avenue, Suite 600
P. O. Box 5015
Sioux Falls, SD 57117-5015
(605) 336-2424

Tim Goodwin, Senior Attorney
QWEST SERVICES CORPORATION
1801 California Street
Denver, CO 80202

ATTORNEYS FOR QWEST CORPORATION