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In the Matter of — **IN THE MATTER OF THE FILING FOR APPROVAL OF AN AMENDMENT TO AN INTERCONNECTION AGREEMENT BETWEEN QWEST CORPORATION AND TW WIRELESS, L.L.C.**

**Public Utilities Commission of the State of South Dakota**

DATE	MEMORANDA
6/12 03	Filed and Docketed;
6/19 03	Weekly Filing;
8/8 03	Order Approving Amendment to Agreement;
8/8 03	Docket Closed

**BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.**  
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June 11, 2003

**RECEIVED**

JUN 12 2003

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

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

Re: Filing of Amendment to the Interconnection Agreement between TW Wireless, L.L.C. and Qwest Corporation f/k/a U S WEST Communications, Inc.  
Our File No. 2104.078

Dear Ms. Bonrud:

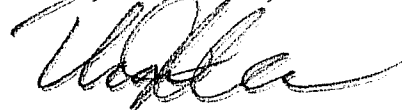
Pursuant to ARSD 20:10:32:21 enclosed for filing are the original and ten (10) copies of the Internet Service Provider Bound Traffic Amendment to the Interconnection Agreement between TW Wireless, L.L.C. ("TW") and Qwest Corporation ("Qwest") for approval by the Commission. This is an amendment to the Type 2 Wireless Interconnection Agreement between TW and Qwest which was approved by the Commission on February 11, 2000 in Docket No. TC99-123.

This Amendment is made in order to implement the requirements of the FCC Order on Remand and Report and Order in CC Docket No. 99-68 regarding intercarrier compensation for Internet service provider ("ISP") bound traffic.

TW has authorized Qwest to submit this Amendment on TW's behalf.

Sincerely yours,

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



Thomas J. Welk

TJW/vjj  
Enclosures

cc: Mr. Dan Willis (TW Wireless) (enclosure letter only)  
Ms. Colleen Sevold  
Mr. John Love (enclosure letter only)

**RECEIVED**

JUN 12 2003

**Internet Service Provider ("ISP") Bound Traffic Amendment  
to the Type 2 Wireless Interconnection Agreement between  
Qwest Corporation and  
TW Wireless LLC  
for the State of South Dakota**

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

This is an Amendment ("Amendment") to the Type 2 Wireless Interconnection Agreement between Qwest Corporation ("Qwest"), formerly known as U S WEST Communications, Inc., a Colorado corporation, and TW Wireless LLC ("Wireless Service Provider ("WSP)"). WSP and Qwest shall be known jointly as the "Parties".

**RECITALS**

WHEREAS, WSP and Qwest entered into the aforementioned Agreement ("Agreement") which was approved by the appropriate state Commission ("Commission"); and

WHEREAS, The FCC issued an Order on Remand and Report and Order in CC Docket 99-68 (Intercarrier Compensation for ISP-Bound Traffic); and

WHEREAS, the Parties wish to amend the Agreement to reflect the aforementioned Order under the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the language as follows in lieu of existing contract language:

**1. Definitions**

For purposes of this Amendment the following definitions apply:

1.1 "Bill and Keep" is as defined in the FCC's Order on Remand and Report and Order in CC Docket 99-68 (Intercarrier Compensation for ISP-Bound Traffic). Bill and Keep is an arrangement where neither of two (2) interconnecting networks charges the other for terminating traffic that originates on the other network. Instead, each network recovers from its own end users the cost of both originating traffic that it delivers to the other network and terminating traffic that it receives from the other network. Bill and Keep does not, however, preclude intercarrier charges for transport of traffic between carriers' networks.

1.2 "Information Service" is as defined in the Telecommunications Act of 1996 and FCC Order on Remand and Report and Order in CC Docket 99-68 and includes ISP-bound traffic.

1.3 "Information Services Access" means the offering of access to Information Services

Providers.

## **2. Exchange Service (EAS/Local) Traffic**

Pursuant to the election in Section 5 of this Amendment, the Parties agree to exchange all EAS/Local (§251(b)(5)) traffic at the FCC ordered rate, pursuant to the FCC's Order on Remand and Report and Order in CC Docket 99-68, (Intercarrier Compensation for ISP-Bound Traffic) or the state ordered reciprocal compensation rate. When the FCC ordered rate for ISP-bound traffic is applied to EAS/Local traffic, the FCC Ordered ISP rate is used in lieu of End Office call termination and Tandem Switched Transport rate elements.

## **3. ISP-Bound Traffic**

3.1 Qwest elects to exchange ISP-bound traffic at the FCC ordered rates pursuant to the FCC's Order on Remand and Report and Order (Intercarrier Compensation for ISP-Bound Traffic) CC Docket 99-68 (FCC ISP Order), and usage based intercarrier compensation will be applied as follows:

3.2 Compensation for Interconnection configurations exchanging traffic pursuant to Interconnection agreements as of adoption of the FCC ISP Order:

3.2.1 Identification of ISP-Bound traffic -- Qwest will presume traffic delivered to WSP that exceeds a 3:1 ratio of terminating (Qwest to WSP) to originating (WSP to Qwest) traffic is ISP-bound traffic. Either Party may rebut this presumption by demonstrating the factual ratio to the state Commission. Traffic exchanged that is not ISP bound traffic will be considered to be section 251(b)(5) traffic. The provisions in this amendment apply regardless of how the ISP bound traffic is determined.

3.2.2 Growth Ceilings for ISP-Bound Traffic -- Intercarrier compensation for ISP-bound traffic originated by Qwest end users and terminated by WSP will be subject to growth ceilings. ISP-bound MOUs exceeding the growth ceiling will be subject to Bill and Keep compensation.

3.2.2.1 For 2002, WSP may receive compensation, pursuant to a particular Interconnection Agreement, for ISP bound minutes up to a ceiling equal to the minutes for which it was entitled to compensation under that Agreement in 2001, plus another ten percent (10%) growth factor.

3.2.2.2 In 2003, WSP may receive compensation, pursuant to a particular Interconnection Agreement, for ISP bound minutes up to a ceiling equal to the 2002 ceiling applicable to that Agreement.

3.2.3 Rate Caps -- Intercarrier compensation for ISP-bound traffic exchanged between Qwest and WSP will be billed in accordance with their existing Agreement or as follows, whichever rate is lower:

3.2.3.1 \$.001 per MOU for eighteen (18) months from December 14, 2001 through June 13, 2003.

3.2.3.2 \$.0007 per MOU from June 14, 2003 until thirty six (36) months after the effective date or until further FCC action on intercarrier compensation, whichever is later.

3.2.3.3 Compensation for ISP bound traffic in Interconnection configurations not exchanging traffic pursuant to Interconnection agreements prior to adoption of the FCC ISP Order on April 18, 2001 will be on a Bill and Keep basis until further FCC action on Intercarrier compensation. This includes carrier expansion into a market it previously had not served.

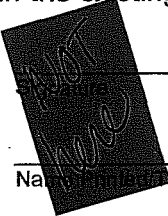
**4. Effective Date**

This Amendment shall be deemed effective upon execution by the Parties, subject to approval by the Commission.

**5. Rate Election**

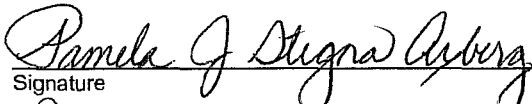
The reciprocal compensation rate elected for (§251(b)(5)) traffic is (elect and sign one):

Current rate for voice traffic in the existing Interconnection Agreement:

NO  \_\_\_\_\_  
Name Printed/Typed

**OR**

The rate applied to ISP traffic:

 \_\_\_\_\_  
Signature  
Pamela J. STEGNA AKBERG  
Name Printed/Typed

**6. Further Amendments; Waivers**

The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**7. Entire Agreement**

This Amendment (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of this Amendment and supersedes any prior understandings, agreements, amendments, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of this Amendment.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

**TW Wireless LLC**

Pamela J. Stegora Axberg  
Signature

Pamela J. STEGORA AXBERG  
Name Printed/Typed

SVP - National Networks  
Title

5-2-03  
Date

**Qwest Corporation**

L. T. Christensen  
Signature

L. T. Christensen  
Name Printed/Typed

Director - Business Policy  
Title

5/30/03  
Date

**South Dakota Public Utilities Commission**  
**WEEKLY FILINGS**  
For the Period of June 12, 2003 through June 18, 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**

**CT03-010 In the Matter of the Complaint filed by Chris Nelson on behalf of Pharmco Industries, Inc., Platte, South Dakota, against S&S Communications/Alterna-Cell Regarding Loss of Long Distance Services.**

Complainant purchased a 48 month prepaid long distance phone service contract from the respondent on 01/06/03, service was activated on 02/01/03 and due to a financial crisis on the part of the respondent, service was terminated on 06/03/03. Complainant seeks a full refund of payments made to the respondent and to have the Commission take steps to prevent consumers from being harmed by this type of activity in the future.

Staff Analyst: Jim Mehlhaff  
Staff Attorney: Kelly Frazier  
Date Docketed: 06/17/03  
Intervention Deadline: N/A

**ELECTRIC**

**EL03-021 In the Matter of the Filing for Approval of a Consent and Agreement for Electric Service in Assigned Territory of another Electric Supplier between NorthWestern Energy and Dakota Energy Cooperative, Inc.**

On June 16, 2003, NorthWestern Energy and Dakota Energy Cooperative filed a joint petition requesting approval for the release of assigned territorial rights from Dakota Energy Cooperative to NorthWestern Energy. Dakota Energy consents to NorthWestern providing service up to a maximum of 5 kW to a camper site and seasonal cabin with a maximum of 676 square feet to be used by Larry Picek or subsequent occupant and located at the following described property: the East Half (E 1/2) of the South Half (S 1/2) of the North Half (N 1/2) of the Northeast Quarter (NE 1/4) of the Southeast Quarter (SE 1/4) of Section 24, Township 111N, Range 62W of the 5th Principal Meridian, Beadle County, South Dakota, except Lot H-2. The territory involved in this request is located along SD Highway 37 approximately one mile North of the City of Huron.

Staff Analyst: Michele Farris  
Staff Attorney: Karen Cremer  
Date Docketed: 06/16/03  
Intervention Deadline: 07/07/03

**EL03-022 In the Matter of the Application for a Master Metering Variance Request for the Western Mall, Sioux Falls, South Dakota.**

On June 16, 2003, TSP filed with the Commission, on behalf of the owner of the Western Mall, a request for a master meter variance request. The Western Mall is currently served by a central physical plant, which is nearing the end of its useful life and needs to be upgraded. The physical plant is currently served with a single electric meter. The owner is proposing individual roof top units for each of the tenants. Therefore, they are requesting a variance, in accordance with ARSD 20:10:26, to allow the continued use of a single master meter.

Staff Analyst: Michele Farris  
Staff Attorney: Karen Cremer  
Date Docketed: 06/16/03  
Intervention Deadline: 07/07/03

**TELECOMMUNICATIONS**

**TC03-092 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and TW Wireless, L.L.C.**

On June 12, 2003, the Commission received a filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation (Qwest) and TW Wireless, L.L.C. (TW Wireless). According to the parties, the Amendment is an ISP Bound Traffic Amendment to the Interconnection Agreement between Qwest and TW Wireless. This is an Amendment to the Type 2 Wireless Interconnection Agreement and is made in order to implement the requirements of the FCC Order on Remand and Report and Order in CC Docket No. 99-68 regarding intercarrier compensation for ISP bound traffic. The original agreement 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 2, 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: 06/12/03  
Initial Comments Due: 07/02/03

**TC03-093 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and McLeodUSA Telecommunications Services, Inc.**

On June 12, 2003, the Commission received a filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and McLeodUSA Telecommunications Services, Inc. The original agreement was approved by the Commission on July 23, 1999, in Docket No. TC99-057. The parties entered into an Amendment No. 1 and



No. 2, which was approved on September 29, 2000, in Docket No. TC00-107. According to the parties, the bill and keep provisions of Amendment No. 2 terminated on December 31, 2002. The parties have continued to treat reciprocal compensation as bill and keep on a month-to-month basis since December 31, 2002. The parties wish to amend the Agreement by extending the terms and conditions contained in Amendment No. 2. 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 2, 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: 06/12/03  
Initial Comments Due: 07/02/03

**TC03-094 In the Matter of the Application of BAK Communications, LLC for a Certificate of Authority to Provide Local Exchange Services in South Dakota.**

BAK Communications, LLC has filed an application for a Certificate of Authority to provide competitive local exchange services to residential customers in South Dakota using a combination of the resale platform and the unbundled network elements provided by the incumbent local exchange carriers.

Staff Analyst: Bonnie Bjork  
Staff Attorney: Karen Cremer  
Date Docketed: 06/12/03  
Intervention Deadline: 07/07/03

**TC03-095 In the Matter of the Filing by Qwest Corporation for Approval of Revisions to its Exchange and Network Services Tariff.**

On June 13, 2003, Qwest Corporation filed a revision to its South Dakota Exchange and Network Services Tariff. These revisions increase the Federal Telephone Lifeline Plan Credit from \$7.75 to \$8.25.

Staff Analyst: Keith Senger  
Staff Attorney: Kelly Frazier  
Date Docketed: 06/13/03  
Intervention Deadline: 07/07/03

**TC03-096 In the Matter of the Filing for Approval of a Reciprocal Transport and Termination Agreement between PrairieWave Telecommunications, Inc. and WWC License L.L.C.**

On June 18, 2003, the Commission received a Filing for Approval of a Reciprocal Transport and Termination Agreement between PrairieWave Telecommunications, Inc. and WWC License L.L.C. (WWC). According to the parties, if WWC elects to replace the existing

form of indirect interconnection with a two-way or one-way direct connection, the parties agree to negotiate a separate interconnection agreement related to the provision and compensation for such facilities. 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 8, 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: 06/18/03

Initial Comments Due: 07/08/03

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

IN THE MATTER OF THE FILING FOR ) APPROVAL OF AN AMENDMENT TO AN ) INTERCONNECTION AGREEMENT BETWEEN ) QWEST CORPORATION AND TW WIRELESS, ) L.L.C. )	ORDER APPROVING AMENDMENT TO AGREEMENT  TC03-092
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On June 12, 2003, Qwest Corporation (Qwest) filed for approval by the South Dakota Public Utilities Commission (Commission) an amendment to an interconnection agreement between TW Wireless, L.L.C. (TW Wireless) and Qwest. The amendment is made in order to implement the requirements of the FCC Order on Remand and Report and Order in CC Docket No. 99-68 regarding intercarrier compensation for Internet service provider (ISP) bound traffic.

On June 19, 2003, the Commission electronically transmitted notice of the filing of the amendment to interested individuals and entities. The notice stated that any person wishing to comment on the parties' request for approval had until July 2, 2003, to do so. No comments were filed.

At its duly noticed August 4, 2003, meeting, the Commission considered whether to approve the negotiated amendment to the agreement between Qwest and TW Wireless. 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 amendment does not discriminate against a telecommunications carrier that is not a party to the amendment and the amendment is consistent with the public interest, convenience, and necessity. The Commission unanimously voted to approve the amendment to the agreement. It is therefore

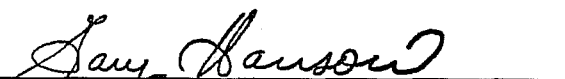
ORDERED, that the Commission approves the negotiated amendment to the agreement as described herein.

Dated at Pierre, South Dakota, this 8<sup>th</sup> day of August, 2003.

<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:	<i>Alvin Kalbo</i>
Date:	<i>8/8/03</i>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

  
ROBERT K. SAHR, Chairman

  
GARY HANSON, Commissioner