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TC03-178

DOCKET NO.

**In the Matter of IN THE MATTER OF THE
IMPLEMENTATION OF THE FEDERAL
COMMUNICATIONS COMMISSION'S
TRIENNIAL REVIEW ORDER--90 DAY
PROCEEDING**

Public Utilities Commission of the State of South Dakota

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER-- 90 DAY PROCEEDING)	ORDER REQUESTING COMMENTS
		TC03-178

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC found that, on a national level, "requesting carriers are not impaired without access to unbundled local circuit switching when serving DS1 enterprise customers." Order at ¶ 419. The FCC based this finding on the following:

The evidence in our record establishes that, in most areas, competitive LECs can overcome barriers to serving enterprise customers economically using their own switching facilities in combination with unbundled loops (or loop facilities). The facilities used to provide DS1 capacity or above services to enterprise customers typically are not pre-wired to incumbent LEC switches, allowing competing carriers to avoid the costs and service disruptions associated with "hot cuts" -- the manual process by which customer lines are migrated to competitor switches. Enterprise customers also generally offer increased revenue opportunities and are more willing to enter long-term contracts, allowing competitive LECs a greater ability to recover the nonrecurring costs associated with providing service using their own switches.

Order at ¶ 421.

However, the FCC went on to find that "special circumstances may create impairment without access to unbundled local circuit switching to serve enterprise customers in particular markets." *Id.* Based on this finding, the FCC stated that it will allow state commissions "90 days to petition the [FCC] to rebut the national finding in individual markets based on specific operational evidence regarding loop, collocation, and transport provisioning and specific economic evidence including the actual deployment of competitive switches and competitors' costs in serving enterprise customers." *Id.* In addition, the FCC found that "[a]fter the 90-day period, states may wish, pursuant to state-determined procedures, to revisit whether competitive LECS are impaired without access to unbundled local circuit switching to serve enterprise customers due to changes in the specified operational and economic criteria." *Order at ¶ 455.*

Based on these provisions of the FCC Order, the Public Utilities Commission (Commission) is requesting written comments from any interested person or entity

regarding how the Commission should proceed with this issue. The Commission would like comments from each person or entity on the following issues:

1. Do you intend to challenge the FCC's presumption of no impairment? If so, please provide a short explanation of the bases for your challenge.
2. If no person or entity intends to challenge the presumption, should the Commission hold any proceedings regarding the presumption at this time?
3. If a proceeding is held, do you intend to participate?
4. If the Commission holds proceedings on whether the presumption should be rebutted, please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline;
5. Please provide any additional comments the Commission should consider regarding this issue.

All written comments must be received by the Commission on or before September 29, 2003. Based on the written comments the Commission shall determine how to proceed. It is therefore

ORDERED, that any interested person or entity shall file written comments on or before September 29, 2003, regarding the issues listed above.

Dated at Pierre, South Dakota, this 17th day of September, 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:	<u>Delaine Kalles</u>
Date:	<u>9/18/03</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:


ROBERT K. SAHR, Chairman


GARY HANSON, Commissioner


JAMES A. BURG, Commissioner

South Dakota Public Utilities Commission
WEEKLY FILINGS

For the Period of September 11, 2003 through September 17, 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: 605-773-3201

CONSUMER COMPLAINTS

- CT03-140 In the Matter of the Complaint filed by Herman and Judith Symens, Sisseton, South Dakota, against S&S Communications/Alterna-Cell Regarding Loss of Long Distance Services.**

Complainants state that they purchased a six-year prepaid long distance service plan and received only twenty-seven months of service. Complainants seek to be reimbursed for the prepaid service not provided.

Staff Analyst: Jim Mehlhaff

Staff Attorney: Kelly Frazier

Date Docketed: 09/12/03

Intervention deadline: N/A

- CT03-141 In the Matter of the Complaint filed by Elwin Nieuswma on behalf of Ken's Auto Inc., Strasburg, North Dakota, against S&S Communications/Alterna-Cell Regarding Loss of Long Distance Services.**

Complainant's representative states that it purchased a three-year prepaid long distance service plan. After approximately six months service was terminated. Complainant seeks to be reimbursed for the prepaid service not provided.

Staff Analyst: Jim Mehlhaff

Staff Attorney: Kelly Frazier

Date Docketed: 09/12/03

Intervention deadline: N/A

- CT03-142 In the Matter of the Complaint filed by Margaret E. Bohner, Sioux Falls, South Dakota, against S&S Communications/Alterna-Cell Regarding Loss of Long Distance Services.**

Complainant purchased a five-year prepaid long distance service plan on February 15, 2001. Service was terminated in June of 2003. Complainant seeks to be reimbursed for the prepaid service not provided.

Staff Analyst: Jim Mehlhaff

Staff Attorney: Kelly Frazier

Date Docketed: 09/15/03

Intervention deadline: N/A

CT03-143 In the Matter of the Complaint filed by Paul D. Merkel, Forbes, North Dakota, against S&S Communications/Alterna-Cell Regarding Loss of Long Distance Services.

Complainant purchased a ten-year prepaid long distance service plan. After three years and ten months service was terminated. Complainant seeks to be reimbursed for the prepaid service not provided.

Staff Analyst: Jim Mehlhaff

Staff Attorney: Kelly Frazier

Date Docketed: 09/15/03

Intervention deadline: N/A

CT03-144 In the Matter of the Complaint filed by Stephen R. Baade on behalf of Citizens State Bank, Pocahontas, Iowa, against S&S Communications/Alterna-Cell Regarding Loss of Long Distance Services.

Complainant's representative states that it purchased a forty-eight month prepaid long distance service plan. After twenty-four months service was terminated. Complainant seeks to be reimbursed for the prepaid service not provided.

Staff Analyst: Jim Mehlhaff

Staff Attorney: Kelly Frazier

Date Docketed: 09/15/03

Intervention deadline: N/A

CT03-145 In the Matter of the Complaint filed by Terry and Joanne Wheeler, Sioux Falls, South Dakota, against S&S Communications/Alterna-Cell Regarding Loss of Long Distance Services.

Complainants state that they purchased a six-year prepaid long distance service plan and received only twenty-nine months of service. Complainants seek to be reimbursed for the prepaid service not provided.

Staff Analyst: Jim Mehlhaff

Staff Attorney: Kelly Frazier

Date Docketed: 09/16/03

Intervention deadline: N/A

CT03-146 In the Matter of the Complaint filed by Ken Krause, Aberdeen, South Dakota, against S&S Communications/Alterna-Cell Regarding Loss of Long Distance Services.

Complainant states that he purchased a five-year extension on his original prepaid long distance service plan. Complainant estimates that eighty five percent of the contract remained when service was terminated in June of 2003. Complainant seeks to be reimbursed for the prepaid service not provided.

Staff Analyst: Jim Mehlhaff

Staff Attorney: Kelly Frazier

Date Docketed: 09/17/03

Intervention deadline: N/A

TELECOMMUNICATIONS

- TC03-177 In the Matter of the Application of MG LLC d/b/a SearsConnect for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota.**

On September 11, 2003, MG LLC d/b/a SearsConnect filed an application for a Certificate of Authority to provide interexchange telecommunications service in South Dakota. MG LLC d/b/a SearsConnect intends to provide resold interexchange service including, 1+ and 101XXXX outbound dialing, 800/888 toll-free inbound dialing, directory assistance, data services, travel card service, and prepaid calling card service throughout South Dakota.

Staff Analyst: Michele Farris

Staff Attorney: Karen Cremer

Date Docketed: 09/11/03

Intervention Deadline: 10/03/03

- TC03-178 In the Matter of the Implementation of the Federal Communications Commission's Triennial Review Order--90 Day Proceeding.**

On September 17, 2003, the Commission opened a docket regarding the Federal Communications Commission's Triennial Review Order. The Commission is seeking written comments on how to proceed with the 90 day proceeding. The entire order is attached to this fax filing.

Staff Analyst: Harlan Best

Staff Attorney: Karen Cremer

Date Docketed: 09/17/03

Comment Deadline: 09/29/03

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You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc>



Janet Keller
Docket Manager
303-298-6502

1875 Lawrence St.
Room 14-42
Denver, CO 80202

September 26, 2003

RECEIVED

Via Overnight Mail

SEP 29 2003

Pam Bonrud
Executive Director
SD Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Re: In the Matter of the Implementation of the Federal Communications
Commission's Triennial Review Order – 90 Day Proceeding,
Docket No. TC03-178

Dear Ms. Bonrud:

Enclosed are the original and ten copies of AT&T's Comments in the above-referenced matter.

Sincerely,

Janet Keller
Janet Keller

Enclosures

RECEIVED

SEP 29 2003

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

In the Matter of the Implementation of the Federal)
Communications Commission's Triennial Review Order) Docket No. TC03-178
– 90 Day Proceeding)

AT&T'S COMMENTS

AT&T Communications of the Midwest, Inc. ("AT&T") submits the following comments in response to the Commission's Order Requesting Comments dated September 17, 2003.

1. *Do you intend to challenge the FCC's presumption of no impairment? If so, please provide a short explanation of the bases for your challenge.*

AT&T does not intend to challenge the FCC's presumption that carriers are not impaired without access to unbundled local circuit switching when serving DS1 enterprise customers in South Dakota.

2. *If no person or entity intends to challenge the presumption, should the Commission hold any proceedings regarding the presumption at this time?*

No. A proceeding should not be instituted unless a party makes a filing seeking the opportunity to contest the national finding of no-impairment.

3. *If a proceeding is held, do you intend to participate?*

AT&T would not intend to participate as a party but would monitor any such proceeding.

4. *If the Commission holds proceedings on whether the presumption should be rebutted, please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.*

AT&T has no recommendations at this time other than to comment that there should be no procedural or substantive relationship between this 90-day proceeding regarding the enterprise market and the 9-month proceeding for the mass market.

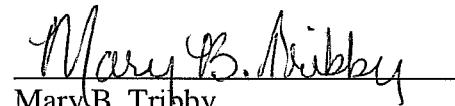
5. *Please provide any additional comments the Commission should consider regarding this issue.*

No determinations should be made in the 90-day enterprise market proceeding that are binding on or impact the 9-month mass market proceeding in any way. AT&T's non-participation in this 90-day proceeding is based on the Commission not making any decisions here that will affect or be binding on the 9-month proceeding.

Finally, the Commission should not interpret the absence of a challenge to the FCC's presumption of no-impairment as validation of the FCC's analysis, nor should the ability of a competitive local exchange carrier to demonstrate impairment in the future be viewed as waived.

Respectfully submitted this 29th day of September 2003.

AT&T COMMUNICATIONS
OF THE MIDWEST, INC.



Mary B. Tribby
1875 Lawrence Street, Suite 1575
Denver, CO 80202
(303) 298-6508
(303) 298-6301 (Facsimile)

Thorvald A. Nelson
Holland & Hart LLP
8390 E. Crescent Parkway, Suite 400
Greenwood Village, CO 80111
(303) 290-1601
(303) 290-1606 (Facsimile)

CERTIFICATE OF SERVICE

TC03-178

I hereby certify that on September 26, 2003, the original and 10 copies of AT&T's Comments were sent by overnight delivery service to:

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



Janet Keller



Timothy J. Goodwin
Senior Attorney
1801 California
Suite 4700
Denver, CO 80202
303-896-9874
303-896-8120 (fax)
tim.goodwin@qwest.com

September 26, 2003

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

Re: Docket TC03-178

Dear Ms. Bonrud:

I attach the original and ten copies of Qwest's Initial Comments in this docket.

I am also sending a copy of this filing to you by email. I will also serve copies on any intervenors or other commenters in this case, via email and, if requested, hard copy. However, at this time, we are unaware of any intervenors or commenters.

Sincerely,

Timothy J. Goodwin

enclosures

September 26, 2003

Office of the Secretary of the State of South Dakota

RECEIVED

SEP 29 2003

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

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

**IN THE MATTER OF THE
IMPLEMENTATION OF THE FEDERAL
COMMUNICATIONS COMMISSION'S
TRIENNIAL REVIEW ORDER—90 DAY
PROCEEDING**

TC 03-178

Qwest's Initial Comments

Qwest Corporation ("Qwest") files comments as requested by the Commission in this matter, as follows:

1. Do you intend to challenge the FCC's presumption of no impairment? If so, please provide a short explanation of the bases for your challenge.

No. Qwest agrees with the FCC's national finding of no impairment for unbundled switching associated with high-capacity (DS1 and higher) loops (i.e., enterprise loops). However, Qwest intends to participate in the 9-month proceedings.

2. If no person or entity intends to challenge the presumption, should the Commission hold any proceedings regarding the presumption at this time?

No. Many states have elected not to hold any proceedings on the FCC's presumption regarding switching associated with high-capacity loops. For example, in an order issued in Docket 030850-TP on September 3, 2003, the Florida Commission found that "[b]ased on the very limited demand that exists for the combination of DS1 loops with unbundled local switching, we believe that CLECs are not impaired absent access to unbundled local switching for business customers served via high-capacity loops, as presumed by the FCC. Accordingly, we shall not initiate a proceeding to

investigate whether to challenge the FCC's presumption. Thus, no further actions on this matter are necessary." Several other states have followed Florida's lead, including California on September 22, 2003.

More recently, on September 24, 2003, the North Dakota Commission issued a letter to all carriers indicating it had "received no indication of impairment to carriers serving enterprise customers, without access to DS1 and above local switching. In addition, we believe the 90-day proceeding issues would be best addressed before the FCC."

This Commission should determine that, in the absence of a CLEC challenging the presumption and providing evidence consistent with the Order, it cannot make the "affirmative finding" of impairment in a particular market, (Triennial Review Order ("Order") ¶ 455), and should not hold a 90-day proceeding.

3. If a proceeding is held, do you intend to participate?

If a proceeding is held, Qwest will participate.

4. If the Commission holds proceedings on whether the presumption should be rebutted, please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.

As a preliminary matter, Qwest notes that it is still in the process of reviewing and analyzing the FCC's 576 page Order. Therefore, Qwest's responses to the questions raised by the Commission represent its best effort to interpret the Order given the limited time it has had to review the Order. Also, in providing its response to these questions and in suggesting possible procedures for state proceedings that result from

the Order, Qwest is not waiving its right to appeal any issue in the Order, including issues related to the state proceedings required by the Order.

General Procedural Issues

The Order has already been the subject of legal challenges by a variety of parties, including Qwest. On Thursday, August 28, 2003, Qwest joined Southwestern Bell, BellSouth and the United States Telephone Association in filing a Writ of Mandamus before the U.S. Circuit Court of Appeals in Washington D.C., asking the court to, among other things, vacate the FCC's rules governing the unbundling of mass market switching and high-capacity facilities and to order the Commission to issue a lawful order within 45 days. On Thursday, September 4, 2003, Qwest filed a Petition for Review in the U.S. Court of Appeals for the District of Columbia seeking judicial review of the Order on the grounds that portions of the Order exceed the Commission's authority and fail to comply with the Court's order in the USTA case. In addition, on September 12, 2003, Qwest joined with Verizon, BellSouth, SBC and the USTA in petitioning the D.C. Circuit Court for a partial stay of the TRO. On September 15, 2003, the D.C. Circuit ordered the FCC to file a response to the Writ of Mandamus by September 25, 2003, with a reply by the petitioners by October 2, 2003. On September 16, 2003, pursuant to its standard lottery procedure, the Judicial Panel for Multidistrict Litigation ordered that all appeals of the TRO be transferred to the Court of Appeals for the Eighth Circuit. On September 18, 2003, Qwest, USTA, SBC, and Verizon filed a joint motion for expedited transfer of the consolidated appeal from the Eighth Circuit to the D.C. Circuit.

With regard to the Commission's specific question regarding unbundled switching for enterprise customers (the 90-day proceeding), the FCC made a national finding of "no impairment, subject to further state review." The FCC permits state Commissions to file a waiver petition with the FCC within 90 days of the effective date of the Order if the state makes an "affirmative finding" of impairment in a particular market. (Order ¶ 455). The "affirmative finding" required by the order must be based on the specific operational and economic factors identified in the Order, in particular those discussed in paragraphs 454-57.

Because it is unclear whether any CLEC in South Dakota will ask the Commission to file such a petition, CLECs should be required to notify the Commission by October 10, 2003, if they intend to present evidence that could form the basis for the findings the Commission must make prior to petitioning for a waiver. Only upon receipt of a notice, should the Commission open a generic 90-day proceeding. To the extent a CLEC initiates a 90-day proceeding, an adjudicative hearing process is the most appropriate format for the Commission to obtain the information necessary to make the findings required by the Order.

Further, in the event that a proceeding takes place in South Dakota, that proceeding should be binding on all carriers (ILECs, CLECs, IXCs, wireless and others). In the event of a case in South Dakota, the Commission should provide notice to all such carriers that the case will bind them and that gives them an opportunity to participate in the case.

Although the FCC has not established any "burden of proof" for any of the triennial review proceedings, if a CLEC initiates a 90-day proceeding, the Order is clear

that a CLEC must present sufficient evidence to rebut the FCC's findings regarding no impairment associated with unbundled switching for customers served with DS1 level facilities or above.

Discovery

Regardless of whether a 90-day proceeding docket is opened, Qwest recommends the Commission begin compiling the data that may be used for either or both of the 90-day and 9-month proceedings, pursuant to the federal authority delegated to the states in the Triennial Review Order, paragraphs 179 to 196. Qwest recommends that the Commission issue standardized data requests to all providers of telecommunications services in South Dakota. Attachment "A" to these responses is a preliminary set of standardized data requests Qwest proposes the Commission use for this purpose. Qwest stands ready to provide its data in response to these questions. It is essential that all telecommunications providers (CLECs, ILECs, IXCs, cable providers, wholesale providers, VoIP providers and wireless providers included) in South Dakota provide this information because they are in possession of much of the factual information identified by the FCC as relevant for state Commission consideration in determining if CLECs are impaired without access to specific UNEs. Pursuant to the Commission's investigatory powers, responses to these data requests should be mandatory and should require CLECs, cable providers and wireless providers to provide the factual information necessary to address the impairment issue, the alternatives to unbundled ILEC facilities, and other relevant factors to be considered by the Commission when making its decisions. To ensure that it promptly receives the information it needs, the Commission should explicitly state in any order or orders

issued by the Commission that the responses to the questions are due within 10 business days and that the responses must be full and complete.

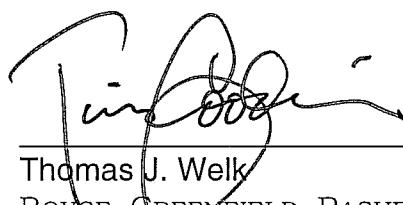
Protective Order

The Commission should also issue a standard protective order to ensure that competitively sensitive information of the parties and non-parties produced in response to the Commission's data requests is made available to the parties and to the Commission, but is not disclosed or used improperly. A copy of the current proposal is Attachment "B" hereto.

5. Please provide any additional comments the Commission should consider regarding this issue.

See Qwest's comments previously stated above.

Dated: September 29, 2003.



Thomas J. Welk
BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.
P.O. Box 5015
Sioux Falls, SD 57117-5015
Telephone: (605) 336-2424

Tim Goodwin, Senior Attorney
QWEST CORPORATION
1801 California Street 47th floor
Denver, CO 80202

ATTORNEYS FOR QWEST CORPORATION

Discovery Requests for Triennial Review Proceedings

STATE OF COMPETITION

1. Please list each LATA in [state] in which [company] provides or has provided local telecommunications services since passage of the Telecommunications Act of 1996.

2. Please list each wire center in [state] in which [company] provides or has provided local telecommunications services since passage of the Telecommunications Act of 1996.

3. For each LATA and wire center identified in response to requests 1 and 2, please identify:
 - a. How many local telecommunications lines [company] has in service? Please provide this information by:
 - i. Switched Services
 - (a) POTS;
 - (b) Centrex;
 - (c) ISDN BASIC;
 - (d) ISDN Primary;
 - (e) PBX Trunk (Analog only);
 - (f) Switched Services riding a DS1 pipe (to a Digital PBX, ISDN PRIMARY, etc; Count by channel);
 - (g) Other switched services;
 - (h) Total switched services.

ii. Non-Switched Services (include facilities, not voice grade equivalents; exclude interoffice facilities; count each terminating leg of facility separately):

- (a) DS0 Services (including both Analog & Digital);
- (b) DS1 Services;
- (c) DS3 Services;
- (d) OC-3 Services;
- (e) OC-12 Services;
- (f) OC-48 Services;
- (g) Other;
- (h) Total Non-Switched Services.

b. What percentage of the lines (by line types defined above) identified in response to (a) are

- i. UNE-P Business;
- ii. UNE-P Residence;
- iii. UNE-L Business;
- iv. UNE-L Residence;
- v. Business lines provided using the [company]'s own loop facilities and another party's dial tone (switching);
- vi. Business lines provided using [company]'s own loop facilities and own dial tone;
- vii. Business lines using a third party's loop facilities and [company]'s own dial tone;
- viii. Residential lines provided using the company's own loop facilities and another party's dial tone;
- ix. Residential lines provided using the [company]'s own loop facilities and own dial tone;

- x. Residential lines using a third party's loop facilities and the [company]'s own dial tone;
- xi. For any residential and business lines served in any manner not listed above, in what manner are those lines served?
- c. Please provide the number of end-user customer locations served by DS1 and above capacity circuits and below DS1 capacity circuits using [company]'s self-provided switching. Please identify each such customer location by address. In the Triennial Review Order, the FCC states "if a customer has purchased services from the competitive carrier that require a DS1 or above loop, it is economically feasible to digitize the traffic and aggregate the customer's voice loops at the customer's premises and put them onto a high-capacity circuit." [para 451] Please state if [firm] disputes this finding and, if it does, explain why and describe all facts that support your positions. In addition, if [company] disputes this finding, provide all documents you rely upon to support your position.

Please produce all documents that support or substantiate the information provided in any of your responses to this request.

4. Please provide the number of UNE-P orders that [company] has placed with any local exchange carriers in [state] over the past 12 months.

5. Please provide the number of UNE-P orders that [company] expects to place with any local exchange carriers in [state] in the next 12 months, the next 24 months, and the next 36 months. Please produce all documents that reflect or relate to these forecasts.

6. Please provide the number of UNE-L orders that [company] has placed with any local exchange carriers in [state] over the past 12 months.

7. Please provide the number of UNE-L orders that [company] expects to place with any local exchange carriers in [state] in the next 12 months, the next 24 months, and the next 36 months. Please produce all documents that reflect or relate to these forecasts.

8. If the state commission determines that competitive carriers are not impaired without access to switching in the mass market, provide projections of the number of UNE-L orders and/or conversions you would anticipate over the first 12 months after the effective date of the decision, the second 12 months, and the third 12 months.
9. Please state whether [company] is providing any intermodal services in [state] to compete with services offered by Qwest, including cable, wireless, and Voice Over Internet ("VOIP"). If [company] is using any of these services, please identify the geographic areas in [state] where it is offering these services, and specify which service(s) is being offered in which areas. In addition, identify the number of end-user customers you are serving using such intermodal facilities by wire center.
10. Please list all areas in [state] in which [company] is certified to provide local exchange service.
11. Please list all areas in [state] in which [company] has engaged in any form of advertising or marketing of local exchange services within the past 12 months. Please produce all documents that reflect or relate to such advertisements and marketing efforts, including copies of all advertisements and documents describing marketing campaigns.
12. Please state whether [company] has any business plans to begin providing local exchange service in areas of [state] where it does not currently provide such service. If [company] has such plans, please identify the new areas where it intends to provide service, and produce all documents that refer or relate to [company]'s plans to expand into these new areas.

CLEC REVENUES AND COSTS

13. Please provide the average total revenue per line that [company] has received from its residential customers within [state] in each of the past two years. The average revenue per line should include revenues associated with the basic retail price charged to residential customers, vertical features, universal service payments, access charges, subscriber line charges, toll, long distance, local number portability, data, video, service to Internet service providers, international calling, and line revenues derived from any other sources. Please provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total. In addition, please list intraLATA and interLATA revenues separately. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

14. Please provide the average total revenue per line that [company] has received from its business customers within [state] in each of the past two years. The average revenue per line should include revenues associated with the basic retail price charged to business customers, vertical features, universal service payments, access charges, subscriber line charges, toll, long distance, local number portability, data, international calling, and line revenues derived from any other sources. Please provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total. In addition, please list intraLATA and interLATA revenues separately. If revenues differ depending on the type of business customer (small vs. large), please provide the total revenues and the breakdown of revenues by type of business customer. Please provide the information by POTS, DS0, DS1, DS3,

OC-3, OC-12, OC-48, and any other relevant categories. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

15. Please explain how [company] defines its business customer segments and provide any documents that reflect this definition or the criteria [company] uses to segment or classify business customers into distinct customer groups. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

16. Please provide the average total revenue per line that [company] has received from its entire customer base (residence and business combined) within [state] in each of the past two years. The average revenue per line should include revenues associated with the basic retail price charged to residential and business customers, vertical features, universal service payments, access charges, subscriber line charges, toll, long distance, data, international calling, local number portability, and line revenues derived from any other sources. Please provide both the total average revenue per line and a breakdown of the amount of revenue for each category of revenue that comprises the total. In addition, please list intraLATA and interLATA revenues separately. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

17. Please provide the average total cost per line that [company] has incurred to provision lines used to serve residential customers within [state] for each of the past two years for the following categories: (1) service provided by UNE-P, (2) service provided by UNE-L, and (3) service provided using [company]'s own facilities. Please provide a

breakdown of each cost component (*e.g.*, investment-related costs, network operations, maintenance, and SG&L) that is part of the average total cost per line, identifying the type and amount of each cost. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

18. Please provide the average total cost per line that [company] has incurred for lines used to serve business customers within [state] for each of the past two years, and in addition to a total average, please provide separate averages for service provided through UNE-P, UNE-L, and with [company]'s own facilities. Please provide a breakdown of each cost component (*e.g.*, investment-related costs, network operations, maintenance, and SG&L) that is part of the average total cost per line, identifying the type and amount of each cost. If costs differ depending on the type of business customer (small vs. large), please provide the total cost and the breakdown of costs by type of business customer. Please identify how your company defines "small" and "large" business customers. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

19. Please provide the average total cost per line that [company] has incurred to provision all the lines serving its entire customer base (residence and business combined) within [state] in each of the past two years, and in addition to a total average, please provide separate averages for service provided through UNE-P, UNE-L, and with [company]'s own facilities. Please provide a breakdown of each cost component (*e.g.*, investment-related costs, network operations, maintenance, and SG&L) that is part of the average total cost per line, identifying the type and amount of each cost. Please produce

all documents that reflect, refer or relate to the information provided in your response to this request.

20. Does [company] currently order high capacity UNE-P circuits such as UNE-P-DSS or UNE-P-PRI from Qwest or any other ILEC? If yes, identify the wire centers from which [company] orders such circuits and the number of such circuits [company] currently has in service. If yes, describe [company's] rationale for ordering such circuits. Please describe and itemize all costs that [company] would incur to connect its own facilities to the wire centers in question.

21. Please list each switch that [company] has purchased, leased or upgraded at any time to provide local exchange service in [state], and provide the following information for each switch: (1) the type of switch; (2) the date of purchase; (3) the location; (4) the initial installed number of lines and trunks; (5) the initial price paid for the switch; (6) the EF&I (engineering, furnish, and install) costs of the switch (if separate from the price paid); (7) a description of any additions to the switch; (8) the price paid for each addition to each switch; (9) the amount of increased capacity provided by each addition; and (10) the price paid for each switch operating software upgrade. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

22. Please provide complete copies of [company]'s switching vendor contracts, including amendments, pricing lists, discount schedules, etc. If any redactions are required, please explain why and identify the type of information redacted.

23. Please state whether [company] has purchased switching (wholesale or retail) in [state] from any entity other than Qwest. If [company] has purchased switching from any entity other than Qwest, please identify all such entities and identify the locations of their switches that are providing the switching and the locations of the customers served by [company] via those switches.
24. Please state whether [company] is using any partitioned switches in [state] that it owns, leases, or otherwise controls jointly with another carrier(s) and whether you share a CLLI with another carrier for the switch. Please identify the locations of any such switches and the identities of the other carriers and describe the capacity and capability of the partition that [company] owns, leases, or otherwise controls. As used in this request, “partitioned” means switches shared by different entities.
25. Identify every switch for which you share a CLLI code with another carrier and, for each switch, explain why you are sharing the CLLI code.
26. For [company’s] business operation in [state] that provides local exchange service, please provide the ratio of general and administrative expenses to revenues that [company] has had in each of the past two years. In providing this ratio, please exclude any extraordinary items from both the numerator and the denominator, and identify any extraordinary items, including the amounts, that are excluded. Please produce all documents and data relied upon to calculate these ratios, including data that will permit independent verification of the ratio.

27. For [company's] operation in [state] that provides local exchange service, please provide the ratio of all types of marketing costs and revenue offsets to revenues (excluding extraordinary items from both the numerator and denominator), including for the following categories.

- a. Advertising;
- b. Promotional discounts;
- c. Sales commissions;
- d. Billing and collection;
- e. Customer care (other than the above).

Please produce all documents and data relied upon to calculate these ratios, including data that will permit independent verification of the ratio. In addition, please provide the total annual amount of the costs for each category listed above for the past two years.

28. Does [company] incur any customer acquisition costs in addition to those listed above in Request 27 (excluding any charges paid to ILECs) to set up a new customer account and to establish service? If so, please identify all such costs and provide the ratio they represent in relation to revenues. Please provide the amount of all such costs, by individual cost categories, for each of the past two years.

29. For [company's] business operation in [state] that provides local exchange service, what is the allowance for uncollectable revenues as a fraction of annual revenues? In providing this response, please separate any losses (or potential losses) associated with the bankruptcies of WorldCom, Global Crossing, and XO

Communications from other bad debt. Please produce all documents that reflect, refer or relate to the information provided in your response to this request.

30. For [company's] business operation in [state] that provides local exchange service, what is the ratio of taxes (other than income taxes) to the value of the company's net plant? Please produce all documents that reflect, refer or relate to the calculation of this ratio, and produce the data that will permit independent verification of the ratio.

31. Please provide copies of any studies or analyses that [company] has conducted that evaluate or refer to the costs of collocation in [state]. In addition, please produce all documents and data that reflect, refer or relate to the collocation costs that [company] has incurred in [state].

32. Please identify all operational support systems ("OSSs") that [company] uses to support its business operation in [state] that provides local exchange service.

33. For each OSS included in your response to Request No. 32, please:

- a. Describe the functions performed by the OSS;
- b. Provide the number of local telecommunications lines that have been served by the OSS each year;
- c. Provide the total cost of each OSS, including:
 - i. The initial cost of the OSS;
 - ii. The average upgrade cost per year for the OSS; and
 - iii. The annual cost for each year in which [company] has used the OSS.

Please provide all documents that reflect or relate to the information you provide in response to this request.

34. For each OSS listed in response to Request No. 32, please state whether [company] uses the OSS to support services other than local telecommunications service. Please identify any such services.

35. Of the lines that [company] serves in [state] using UNE-Ls, please:

- a. State the percentage of these lines that [company] serves from ILEC offices in which [company] is collocated;
- b. State the percentage of these lines that are connected to DLCs in collocation space.
- c. State the percentage of these lines that are connected to DLCs in collocation space.

36. For each Qwest office in [state] which [company] uses its own DLC equipment, please provide:

- a. The number of lines served;
- b. The number of lines installed;
- c. The concentration ratio; and
- d. The cost of the equipment, fully installed.

Please produce all documents that reflect or relate to the information you provide in your response to this request, including any documents that reflect the prices [company] has paid for DLC equipment.

37. Please describe the pricing structure that governs [company's] purchases of DLC equipment, including whether [company's] purchases this equipment on an EF&I basis, pre-wired, or pursuant to any other special specifications.
38. Please identify the monthly churn rate [company] has experienced for local exchange customers in each month in which it has provided local exchange service in the [state] market. In answering this request, you should calculate the churn rate based upon the number of lines lost each year divided by the average number of lines in service that year. In calculating churn, do not include customers who move but stay with the company.
39. In connection with [company's] churn rates in [state] in each of the past two years for local exchange customers, of the total customers that have left [company], please identify the percentage that have left within one month of signing up for service, within two months of signing up for service, within three months of signing up for service, and within six months of signing up for service. Please produce all documents and data that reflect or relate to the information you provide in response to this request.
40. Please produce all documents that reflect, refer, or relate to the churn rates for local exchange customers that [company] has experienced in [state].
41. Please provide all documents that summarize or otherwise reflect the financial results of [company's] CLEC operations in [state] in each of the past two years.

CLEC RATE PLAN OFFERINGS

42. Please identify all rate plans that [company] offers in [state], and list all components (including vertical features) of the rate plans that [company] offers to businesses and all the components of the rate plans that [company] offers to residential customers. In addition, please produce all documents that describe the rate plans [company] offers in [state].

43. Please identify the percentage of [company's] revenues from local exchange customers in [state] that are derived from flat rate plans that do not include incremental charges for domestic long distance calls. Provide the percentage of total local exchange lines in [state] that are provided to the customer pursuant to a flat rate plan that does not include incremental charges for long distance calls. Please produce all documents that reflect, refer or relate to the information you provide in response to this request.

44. Please provide the average long-distance per minute usage in [state] of [company's] local exchange customers for whom [company] is also the long-distance carrier using the following breakdown:

- a. Local exchange customers using flat-rate plans that do not include incremental charges for domestic long-distance calls; and
- b. All other CLEC customers.

Please produce all documents that reflect, refer, or relate to the information you provide in response to this request.

45. Please identify the percentage of [company's] switched minutes in [state] that are directed to Internet service providers. Please produce all documents that reflect, refer or relate to the information you provide in your response to this request.

CLEC SWITCHES

46. Please identify all switches owned or controlled by [company] that are being used in [state] to provide service to customers served by facilities at or above the DS-1 level. For each switch, please state the number and percentage of customers that are being served by DS-1 and above facilities that are self-provided by [company] and are not leased from another carrier.

47. Please access website <http://www.TRAinfo.com> showing publicly available specifications from the LERG Routing Guide of all central office switches currently in place in [state]. Please state whether the information in the LERG is current and accurate for the switches that [company] owns, operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity. If any of the information is not accurate, please identify the inaccurate information and provide corrected information, including any additions, deletions or changes. As part of your review of the information in the LERG, please state whether the CLLI code is accurate for each switch that [company] owns, operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity. In addition, please state whether the LERG definition of the function of each switch (i.e., tandem, end office, etc.) is accurate.

48. For each switch that [company] operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within [state], please report (in Excel spreadsheet format) whether the switch is currently providing switching for local voice grade services, tandem switching¹ for voice calls, or both. In addition, for each switch, please provide traffic volumes, expressed in minutes of use, for year 2002 for local traffic and tandem traffic. If these data are not available for year 2002, please provide the information for the most recent 12-month period for which the data are available. Provide all documents that reflect, refer or relate to the information you provide in response to this request. In addition, please provide the following information for each switch:

- a. Switch type;
- b. The generic (feature package) loaded in the switch;
- c. Current number of equipped lines in the switch;
- d. The current number of equipped trunks in the switch;
- e. 2001 and 2002 line growth for the switch; and
- f. 2001 and 2002 trunk growth for the switch.

49. For each switch that [company] owns operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within [state], please state (in Excel spreadsheet format) if the switch is providing originating voice grade services for residential end-user customers and/or small business customers (defined for this question as businesses with four DS-0 lines or fewer). If so, please:

¹ Tandem switching is defined as switching of telephone traffic between two subtending end offices.

- a. Identify the switch (by CLLI) and the LATA(s) served by each switch (the LATA in which the switch providing the originating dial tone is physically located);
- b. Identify the geographic scope over which [company] serves residential end-user customers and/or small business customers with its own switch;
- c. Number of originating business and residential customers served by this switch;
- d. Provide the volume of such traffic (expressed in minutes of use) for the most recent 12-month period;
- e. Identify the rate centers you are serving for originating traffic;
- f. State the manner by which such traffic is transported to the switch (i.e., transport purchased from a provider other than Qwest , transport purchased from Qwest, EELs or transport via facilities owned by your entity); and
- g. If [company] is serving customers (as defined above) in one LATA in [state] using a switch located in another LATA (including a LATA in another state), please identify the LATA and state in which the switch is located and describe the means by which you transport traffic from the second LATA to the switch.

50. For each switch that [company] owns or controls within [state], please state (in Excel spreadsheet format) if the switch is providing services to end-user customers with five DS-0 lines or more (including DS-1 facilities and above.) If so, please:

- a. identify the switch (by CLLI) and the LATA's served by each switch;
- b. identify the geographic scope over which [company] serves such end-user customers with its own switch;
- c. provide the volume of such traffic (expressed in minutes of use) for the most recent 12-month period;
- d. state the manner in which such traffic is transported to the switch (i.e., transport purchased from a provider other than Qwest, transport purchased from Qwest, EELs, or transport via facilities owned by your entity); and

- e. If [company] is serving these end-user customers using DS-1 and above facilities in one LATA in [state] using a switch located in a different LATA (including a LATA in another state), please identify the state in which the switch is located and describe the means by which you transport traffic from the second LATA to the switch.
51. For each switch that [company] owns operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity within [state], please report (in Excel spreadsheet format) the level of traffic supported by that switch relative to the installed capacity of the switch expressed as a percentage (i.e., number of CCS at average busy hour divided by installed CCS capacity of the switch). In addition, please provide:

- a. For each switch, the percentage change in that value over the most recent 12-month period; and
- b. For each switch, a statement of whether the local switching capacity of the switch can be expanded through modular software and hardware additions. If you assert any obstacles to expansion, please identify and explain all such obstacles.

Sample Response Form			
Switch CLLI Code	(A) Average Busy Hour CCS (August 2003)	% Change 8/2002 to 8/2003	Switch expandable beyond current capacity via modular hardware? (y/n and reason)

52. For each voice grade switch in [state] that [company] owns operates, controls, maintains, or from which you lease dial tone or trunking functionality/capacity, please provide (in Excel spreadsheet format), the number of in-service telephone numbers ported from Qwest wire centers, listing each wire center, as well as the total number of all in-service telephone numbers active in each switch as of March 2003. (NOTE: if

information regarding Qwest wire center from which numbers were ported is not available to you, simply provide the data for each switch as identified by its CLLI code).

Sample Response Form				
		(A)	(B)	(C)
Switch CLLI Code	Qwest Wire Center	Total in-service telephone numbers ported from Qwest as of March 2003	Total of all in-service telephone numbers as of March 2003	Percentage ported numbers in service to all in-service numbers (A/B)

53. For each switch in [state] that [company] owns or controls and that is providing switching for local voice services, please report (in Excel spreadsheet format): (a) whether the switch is serving mass market customers, enterprise customers or both; (b) whether the switch is serving third-party local service providers; (c) the number of mass market switching ports; (d) the number of enterprise switching ports. In each instance, if the response is yes, please report the percentage of "in service" switching lines and trunks relative to installed lines and trunks in the switch.

Sample Response Form						
Switch CLLI Code	Switch serving mass markets, enterprise or both (M, E, B)	(if yes) % of switching ports in service	Switch serving 3 rd party local service providers? (y/n)	(if yes) % of switching ports in service	# of mass markets switching ports	# of enterprise switching ports

54. Please identify each entity, other than Qwest, from which [company] is purchasing or leasing interoffice tandem switching in [state]. For all such switching that [company] has obtained, please provide the tandem minutes of use obtained from each entity by trunk group, wire center, and tandem.
55. Please provide all fill factors or utilization rates for each switch in [state] for which [company] is responsible.
56. Please provide copies of any current contracts the [company] has with vendors for DLC equipment, including all pricing schedules, discounts, and amendments.
57. Please explain whether [company] pays for switching on a per line basis, and identify any switching components that [company] does not pay for on a per line basis.
58. If [company] offers intrastate switched access service to other carriers, please report your current switched access prices in [state].
59. If [company] offers intrastate-switched access service in [state], for each month since December 2001, please report (in Excel spreadsheet format) total revenue received for intrastate-switched access service.
60. If [company] offers intrastate long distance service to end users in [state], please report total intrastate long distance minutes of use and revenue for full years 2001 and 2002.

Sample Response Form				
State	2001 intrastate long distance minutes of use	2001 intrastate long distance revenue	2002 intrastate long distance minutes of use	2002 intrastate long distance revenue

61. What information does the CLEC require from the ILEC switch routing table?

From the CLEC perspective, what does “access” imply, entail, or require beyond what is currently provided?

62. Does [company] believe that there are costs associated with converting or otherwise using a switch currently serving only enterprise customers to also serve mass market customers? If [company] believes that there are such switching costs, please identify all such costs and explain why it would be necessary to incur them to begin serving mass market customers. Produce any documents or data that support your response.

63. Describe all activities [company] must perform on its side of the network to complete an ILEC to CLEC hot cut, and identify all costs associated with these activities. Produce all data and documents that support your response. To the extent [company’s] response would differ based on whether it performed a basic or a coordinated hot cut, please provide an itemization of the cost differences.

UNBUNDLED LOOPS

64. Please report (in Excel spreadsheet format) the number of DS0 level (voice grade) residential and business lines in [state] that [company] serves by loops or lines for which a company other than Qwest provides switching dial tone functionality. In responding to this request, please separate by the categories set forth in the following table:

Sample Response Form						
State	<u>Residential</u>			<u>Business</u>		
	# DS0 lines served via your facilities	<u># DS0</u> <u>lines</u> <u>served via</u> <u>Qwest</u> <u>leased</u> <u>facilities</u>	<u># DS0</u> <u>lines</u> <u>served via</u> <u>leased</u> <u>from third</u> <u>party</u>	# DS0 lines served via your facilities	<u># DS0</u> <u>lines</u> <u>served via</u> <u>Qwest</u> <u>leased</u> <u>facilities</u>	<u># DS0</u> <u>lines</u> <u>served via</u> <u>leased</u> <u>from third</u> <u>party</u>

65. Please report (in Excel spreadsheet format) the number of DS1 level business lines in [state] served by unbundled loops for which [company] provides switching dial tone functionality. In responding to this request, please separate loop facilities by the categories set forth in the following table:

Sample Response Form						
State	<u>Wire Center</u>	<u>Residential</u>			<u>Business</u>	
		# DS0 lines served via your facilities	<u># DS0</u> <u>lines</u> <u>served via</u> <u>Qwest</u> <u>leased</u> <u>facilities</u>	<u># DS0</u> <u>lines</u> <u>served via</u> <u>leased</u> <u>from third</u> <u>party</u>	# DS0 lines served via your facilities	<u># DS0</u> <u>lines</u> <u>served via</u> <u>Qwest</u> <u>leased</u> <u>facilities</u>

66. If [company] provides services operating at DS-1 and above (i.e., Digital Switched Service, Primary Rate Interface, etc) that terminate directly at end users' premises, please provide the city name, wire center and street address associated with each such termination. In addition, please:

- a. Report the service being provided at each such address (e.g., local switched service, high-speed data, video, etc) and capacity level;

- b. For services operating at DS-1 level or above, identify what category of facilities over which they are being provided (e.g., fiber, COAX, copper, radio, wireless, fixed wireless);
- c. For services operating at DS-1 level or above provided over network facilities obtained from another entity, please provide the name of the entity from which you obtain the facility and identify the type of facility used in providing the DS-1-level service to the end user.
- d. For each multi-tenant building in which [company] provides services operating at DS-1 level or above, state whether [company] is capable of serving all customers located in each building with its existing, installed facilities.
- e. If answer to (d) is no, whether customers could be served by adding electronics or other steps that do not require laying new cable.

Sample Response Form							
State	City	Wire Center	Street Address	Type of service provided (local switched, data, video)	Category of facility over which service is provided (e.g., fiber, COAX, copper, radio, wireless, fixed wireless)	Name of third party entity from which DS-1 level or above transport is obtained	Type of DS-1 level or above transport facility obtained from third party (e.g., fiber, COAX, copper, radio, wireless, fixed wireless)

67. Please provide the city name, wire center and street address of every end-user location in [state] to which [company] terminates dark fiber. For each such location, please indicate (a) the number of strands of fiber terminated to that street address, (b) the wire center or other location where that loop originates, (c) identity of any other premises through which the dark fiber is routed (d) whether that fiber is self-provisioned, obtained from Qwest, or obtained from a third party (and, if so, whom) (e) whether that fiber is owned outright, held as an indefeasible right of use ("IRU"), or has been obtained on some other basis (and, if so, what basis), and (f) what loop electronics are actually

connected or available to be connected at the originating or terminating locations of those loops.

68. Please state whether [company] is using extended enhanced links ("EELs") in [state]. If so, identify each EEL, and for each such facility, explain or state (1) the services being provided over the EEL, (2) the number of customers served by the EEL, (3) whether the facility is being used in lieu of collocation, (4) the number of loops connected to the EEL, a descriptions of the type of loop facilities so connected, and the final demarcation point of each loop, and (5) whether the facility is being used as a functional private line.

69. Does [company] provide wholesale unbundled loops to any carriers in [state]? If so, please identify the carriers to which [company] has provided unbundled loops, the quantities of loops provided, and the dates that [company] provided the loops.

70. Does [company] obtain or lease unbundled loops on a wholesale basis from any other carriers (other than Qwest) in [state]? If so, please identify all these carriers, the quantities of loops obtained, and when these loops were obtained or leased.

71. Identify all customer locations (by address) in [state] to which [company] has deployed dark fiber loops.

TRANSPORT

72. Please report (in Excel spreadsheet format) the speed and number of transport facilities (i.e., trunks) in [state] running between two Qwest central offices or between a

Qwest central office and a CLEC central office served via network facilities owned or controlled by [company], or leased from an entity other than Qwest. For each such facility, please identify the A location, the Z location and any other premises through which the facility is routed. In addition, please break down this total number of facilities by wire center in which those trunks or EELs are located (NOTE: if data unavailable by wire center, please report the data by city).

73. Please describe whether [company] has dark fiber transport facilities available to it. For each such dark fiber facility, provide the following information: (a) the number of strands of fiber existing in that route, (b) the A location of the fiber, the Z location of the fiber and an identification of all intermediate premises through which the fiber is routed; (c) whether that fiber is self-provisioned, obtained from Qwest, or obtained from a third party (and, if so, whom), (d) whether that fiber is owned outright, held as an indefeasible right of use ("IRU"), or has been obtained on some other basis (and, if so, what basis), (e) what electronics are actually connected or available to be connected at the originating and terminating locations of the facility and (f) whether [company] has self provisioned these electronics.

74. Please report (in Excel spreadsheet format) the number of transport trunks between any Qwest switch and a CLEC switch in [state] served via network facilities owned or controlled by [company], or leased from an entity other than Qwest. Please break down this total by wire center in which those terminations are located (NOTE: if data unavailable by wire center, please report the data by city).

Sample Response Form			
State	Wire Center	# of trunks owned by your entity	# of trunks obtained from a non-Qwest entity

75. For [state], please provide a current mapping of all existing standard copper, COAX, fiber facilities (including points of access to these facilities), dark fiber and microwave routes owned, controlled, or leased by [company]. This mapping should contain a view at the state level showing major facility routes owned, leased or controlled by [company], and metropolitan area mapping showing specific facility routes within any and all metropolitan areas in which your network facilities are now located. In addition, please specify whether these facilities are dark or lit.

76. Please report available capacity of all standard copper, COAX, fiber facilities and microwave routes installed and owned by your [company] in [state].

77. Please provide details (e.g., purchaser of capacity, specific routes involved, type of transport, number of circuits purchased) regarding any transport capacity on your network that is currently being leased, resold or otherwise provided to another telecommunications provider.

78. If you currently purchase or lease interoffice transport within [state] from a company other than Qwest, please report which entity you currently obtain this service from, and also report the routes involved as well as number/type of transport facilities

(e.g., copper, fiber, or radio) being purchased. Please report separately the quantity of DS0, DS1, DS3 optical carrier level (OC) and dark fiber connections you currently are purchasing, leasing or otherwise are being provided from non-Qwest entities.

Sample Response Form				
State	Entity from which transport is obtained	Originating and terminating points of each transport facility leased	Type of transport leased (DS0,DS1,DS3, OC,dark fiber))	Quantity of transport connections leased, by type (as of 3/03)

79. Does [company] provide transport facilities on a wholesale basis to other carriers in [state]? If so, please list identify all such facilities that [company] has provided, including (1) the entity that obtained the transport, (2) the originating and terminating point of each facility, and (3) the type of facility (DS0, DS1, DS3, OC, dark fiber).

OPERATIONAL ISSUES

80. Please state whether [company] alleges that Qwest has performed deficiently in providing [company] with hot cuts, collocation, provisioning of loops, provisioning of transport, CLEC-to-ILEC cross connects, or CLEC-to-CLEC cross-connects in [state] at any time since June 2001. For any such allegations, please provide a complete description of all facts that [company] relies upon, and produce all documents that relate in any way to the allegation.

81. How many CLEC-to-CLEC cross-connects has [company] performed in [state] since June 2001? How many CLEC-to-CLEC cross-connects does [company] maintain in [state] at present?

PROTECTIVE ORDER

To facilitate the disclosure of documents and information during the course of this proceeding and to protect trade secret and other confidential information not in the public domain, the Commission now issues this Protective Order ("Order") to govern these proceedings.

1. (a) Confidential Information. All documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be of a trade secret, proprietary or confidential nature (herein referred to as "Confidential Information"), shall be so marked by the providing party by stamping the same with a "Confidential" designation. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Confidential Information will be marked by the receiving party as Confidential Information. Access to and review of Confidential Information shall be strictly controlled by the terms of this Order.

(b) Use of Confidential Information -- Proceedings. All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of proceedings in the above-captioned docket or before the Federal Communications Commission ("FCC"), and all subsequent appeals ("TRO Proceedings"), and shall keep the Confidential Information secure as trade secret, confidential or proprietary information and in accordance with the purposes, intent and requirements of this Order.

(c) Persons Entitled to Review. Each party that receives Confidential Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in TRO Proceedings and the attorneys' staff; (2)

experts, consultants and advisors who need access to the material to assist the party in TRO Proceedings; (3) only those employees of the party who are directly involved in these TRO Proceedings, provided that counsel for the party represents that no such employee is engaged in the sale or marketing of that party's products or services. In addition, access to Confidential Information may be provided to Commissioners and all Commission Hearing Officers, and staff members and employees of the Commission to whom disclosure is necessary.

(d) Nondisclosure Agreement. Any party, person, or entity that receives Confidential Information pursuant to this Order shall not disclose such Confidential Information to any person, except persons who are described in section 1(c) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A." Court reporters shall also be required to sign an Exhibit "A" and comply with the terms of this Order.

The nondisclosure agreement (Exhibit "A") shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory's full name, employer, business address and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if no objection thereto is registered to the Commission within five (5) days, then disclosure shall follow. An attorney who makes Confidential Information available to any person listed in subsection (c) above shall be responsible for having each such person execute an original of Exhibit A and a copy of all such signed Exhibit "A"s shall be circulated to all other counsel of record promptly after execution.

2. (a) Notes. Limited notes regarding Confidential Information may be taken by counsel and experts for the express purpose of preparing pleadings, cross-examinations, briefs, motions and argument in connection with this proceeding, or in the case of persons designated in paragraph 1(c) of this Protective Order, to prepare for participation

in this proceeding. Such notes shall then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the final settlement or conclusion of the TRO Proceedings in accordance with subsection 2(b) below.

(b) Return. All notes, to the extent they contain Confidential Information and are protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the final settlement or conclusion of the TRO Proceedings. The party destroying such Confidential Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

3. Highly Confidential Trade Secret Information: Any person, whether a party or non-party, may designate certain competitively sensitive Confidential Information as "Highly Confidential Information" if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential Information includes, but is not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to marketing, business planning or business strategies.

Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Confidential Information to information that truly might impose a serious business risk if disseminated without the heightened protections provided in this section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

"HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN
DOCKET NO. _____."

Placing a "Highly Confidential" stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate Highly Confidential Information, even

where that information has been redacted. The unredacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and "Confidential Information" described in section 1 of this Protective Order.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of Exhibit A of the non-disclosure agreement identified in section 1(d). Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) two in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as "Highly Confidential." Disclosure of Highly Confidential Information to Commissioners, Hearing Officers and Staff members shall be limited to persons to whom disclosure is necessary. The Exhibit "A" also shall describe in detail the duties or responsibilities of the person being designated to see Highly Confidential Information and the person's role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in strategic or competitive decision making for any party, including the sale or marketing of products or services on behalf of any party.

Any person, whether a party or non-party, may object in writing to the designation of any individual as a person who may review Highly Confidential Information within three (3) business days after receiving a signed Exhibit "A". Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If after receiving a written response to the providing party's objection, the providing party still declines to produce the requested information, the Commission shall determine whether the Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information shall be provided to the in-house attorneys, outside counsel and outside experts. The in-house experts may inspect and review the in-house attorney's copies of Highly Confidential Information.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made. Any testimony or exhibits prepared that reflect Highly Confidential Information must be maintained in the secure location until removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential Information.

Unless specifically addressed in this section, all other sections of this Protective Order applicable to Confidential Information also apply to Highly Confidential Information.

4. Objections to Admissibility. The furnishing of any document, data, study or other materials pursuant to this Protective Order shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before this Commission.

5. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is Confidential or Highly Confidential. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be confidential in the following manner:

- (a) A party seeking to challenge the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;
- (b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:
 - (1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and

- (2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.
 - (c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by a Hearing Officer after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by subsection 5(b) above.
 - (d) The record of said in camera hearing shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. _____". Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or Order of the Hearing Officer and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.
 - (e) In the event that the Hearing Officer should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be confidential.
6. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding materials claimed to be confidential in the following manner:

- (1) Prior to the use of or substantive reference to any Confidential Information, the parties intending to use such Information shall make that intention known to the providing party.
- (2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so the Information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature.
- (3) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.
- (4) Only one (1) copy of the documents designated by the providing party to be placed in a sealed record shall be made.

- (5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this Order.
- (b) Seal. While in the custody of the Commission, materials containing Confidential Information shall be marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. _____" and Highly Confidential Information shall be marked "HIGHLY CONFIDENTIAL—USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. _____" and shall not be examined by any person except under the conditions set forth in this Order.
- (c) In Camera Hearing. Any Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the information under this Order. Similarly, any cross-examination on or substantive reference to Confidential Information (or that portion of the record containing Confidential Information or references thereto) shall be received in an in camera hearing, and shall be marked and treated as provided herein.
- (d) Access to Record. Access to sealed testimony, records and information shall be limited to the Hearing Officer and persons who are entitled to review Confidential Information pursuant to subsection 1(c) above and have signed an Exhibit "A," unless such information is released from the restrictions of this Order either through agreement of the parties or after notice to the parties and hearing, pursuant to the ruling of a Hearing Officer, the order of the Commission and/or final order of a court having final jurisdiction.
- (e) Appeal/Subsequent Proceedings. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal or to the FCC, but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded to a court or the FCC, the providing party shall be notified which portion of the sealed record has been

designated by the appealing party as necessary to the record on appeal or for use at the FCC.

(f) Return. Unless otherwise ordered, Confidential Information and Highly Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall be returned to counsel for the providing party within thirty (30) days after final settlement or conclusion of the TRO Proceedings.

7. Use in Pleadings. Where references to Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 5), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information contained therein. Any use of or substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Officer or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed the nondisclosure agreement set forth in Exhibit "A." All of the restrictions afforded by this Order apply to materials prepared and distributed under this section.

8. Summary of Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the Order to be placed on the public record.

9. The provisions of this Order are specifically intended to apply to all data, documents, studies, and other material designated as confidential or highly confidential by any party to Docket No. _____.

10. This Protective Order shall continue in force and effect after this Docket is closed.

Dated this ____ day of _____, 2003.

EXHIBIT "A"

I have read the foregoing Protective Order dated _____, ___, 2003, in
Docket No. _____ and agree to be bound by the terms and conditions of this Order.

Name

Employer

Business Address

Party

Signature

Date

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September 29, 2003

HAND DELIVERED

Pamela Bonrud
Executive Secretary
Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

RECEIVED

SEP 29 2003

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

RE: **MIDCONTINENT COMMUNICATIONS; TRIENNIAL REVIEW ORDER,
90-DAY PROCEEDING**
Docket TC03-178
Our file: 0053

Dear Pam:

Enclosed are original and 10 copies of Comments of Midcontinent in the above captioned proceeding. Please file the enclosures.

We have not sent copies to a service list, since I did not understand that to be part of the order.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw
Enclosures
cc/enc: Tom Simmons
Nancy Vogel
Mary Lohnes

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SEP 29 2003

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE) TC03-178
IMPLEMENTATION OF THE FEDERAL)
COMMUNICATIONS COMMISSION'S) COMMENTS OF MIDCONTINENT
TRIENNIAL REVIEW ORDER --)
90 DAY PROCEEDING)

In response to the Commission's Order Requesting Comments in this docket, Midcontinent Communications responds as follows:

- 1. Do you intend to challenge the FCC's presumption of no impairment? If so, please provide a short explanation of the basis for your challenge.**

No. However, Midcontinent believes that competitive providers are impaired without access to unbundled local circuit switching to serve enterprise customers primarily over DS-1 circuits in the majority of Qwest markets. In a number of Qwest markets, there are alternative DS-1 circuits, but not all with a switching component. In order to build a base of customers sufficient enough to justify the high cost of a collocation with Qwest, collocation equipment, a switch, or transport to a switch, the switching component within the UNE-P product is vital for the development toward full facility competition.

The very nature of the development of competition under the Telecommunications Act of 1996 contemplates that transitional measures, such as resale, are necessary for the "robust" competition contemplated by the Act to develop. Moreover, the FCC has continued to recognize that the mere presence of some facilities based competition in an exchange does not constitute "robust" competition under the Act. As stated above, a CLEC cannot immediately enter a market in a competitively responsible manner until it has developed a customer base justifying use of expensive pieces of equipment, such as switches.

Demographics in the State of South Dakota are unique, with only two Metropolitan Statistical Areas and part of another (see Exhibit A, attached) in the state, and a number of relatively (compared to most states) small other population centers. The FCC Order would appear not to have considered these factors.

- 2. If no person or entity intends to challenge the presumption, should the Commission hold any proceedings regarding the presumption at this time?**

Probably not.

- 3. If a proceeding is held, do you intend to participate?**

Yes

4. If the Commission holds proceedings on whether the presumption should be rebutted, please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.

Prefiled testimony on a relatively short time schedule would produce the best record. As an alternative, the Commission could simply ask for written comments, followed by argument to the Commission at a hearing called for that purpose.

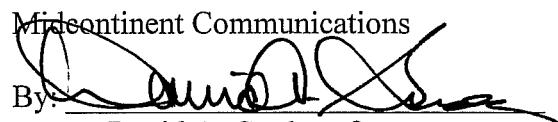
5. Please provide any additional comments the Commission should consider regarding this issue.

None.

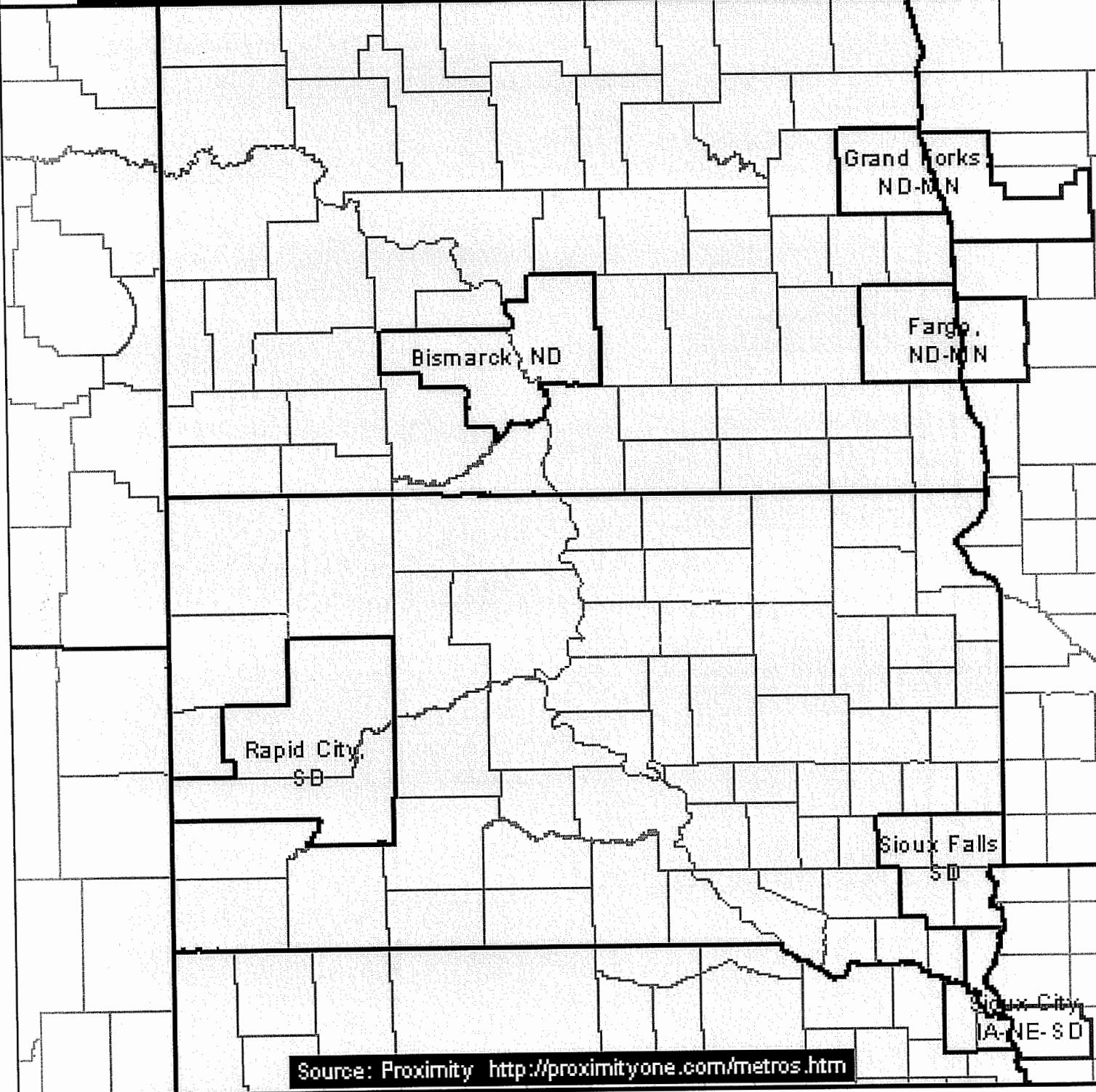
Dated this 39^{PM} day of September, 2003.

Midcontinent Communications

By:


David A. Gerdes of
May, Adam, Gerdes & Thompson, LLP
P.O. Box 160
Pierre, SD 57501
Telephone 605-224-8803
Telecopier 605-224-6289

North Dakota, South Dakota -- 2003 Metropolitan Statistical Areas





Rural roots, global connections

South Dakota Telecommunications Association
PO Box 57 ■ 320 East Capitol Avenue ■ Pierre, SD 57501
605/224-7629 ■ Fax 605/224-1637 ■ sdtaconline.com

September 29, 2003

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SEP 29 2003

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Pamela A. Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
State Capitol Building
Pierre, South Dakota 57501

**RE: Docket TC03-178, In the Matter of the Implementation of the Federal
Communications Commission's Triennial Review Order**

Dear Ms. Bonrud:

The South Dakota Telecommunications Association (“SDTA”) submits these comments on behalf of its local exchange carrier members in response to this Commission’s Order issued in the above referenced matter dated September 18th.

In starting, we would thank the Commission for providing an opportunity to comment on the procedures that the Commission may use should it be viewed necessary to initiate a review of the FCC’s “no impairment” finding.

In regards to each of the issues identified by this Commission, SDTA offers the following:

- 1. Do you intend to challenge the FCC’s presumption of no impairment? If so, please provide a short explanation of the bases for your challenge.*

SDTA does not challenge the FCC’s presumption of no impairment.

- 2. If no person or entity intends to challenge the presumption, should the Commission hold any proceedings regarding the presumption at this time?*

SDTA does not believe the Commission should hold any proceedings regarding the presumption if it is unchallenged by any party. Specifically, in regards to rural telephone company service areas, at the present time, no competitive local exchange carrier (CLEC) is utilizing unbundled network services to provide services to end user customers. To SDTA’s knowledge, there is also not at the present time any pending CLEC request for unbundled network elements in any rural telephone company service area. Under these circumstances, SDTA does not believe proceedings in regards to the FCC’s finding of “no impairment” would be warranted insofar as the FCC finding relates to rural telephone company service areas in South Dakota.

3. If a proceeding is held, do you intend to participate?

Whether SDTA participates or whether any of its individual members participates in any formal proceedings depends on whether the FCC's finding of "no impairment" is challenged in regards to any "individual market" that is either entirely or part of a rural telephone company service area. At this point in the process, that is not known, so it is not possible to state with certainty whether or not SDTA and/or any of its member companies intend to participate in the proceeding.

4. If the Commission holds any proceedings on whether the presumption should be rebutted, please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.

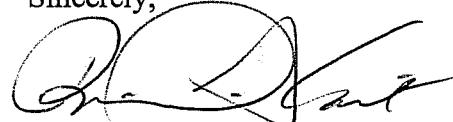
SDTA does not at this time have any specific suggestions on the procedure to be followed, but does believe that all interested parties should be given a fair opportunity to participate in the process. This, in our view, requires that interested parties be given an opportunity to intervene after such time that any challenges to the FCC's finding of "no impairment" are clearly stated and it is known what "individual market" is involved.

5. Please provide any additional comments the Commission should consider regarding this issue.

SDTA has no additional comments at this time.

We thank the Commission and Staff for its consideration of these comments.

Sincerely,



Richard D. Coit
Executive Director and General Counsel

CC: SDTA Member Companies

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

**IN THE MATTER OF THE IMPLEMENTATION) ORDER SETTING FILING
OF THE FEDERAL COMMUNICATIONS) DEADLINE
COMMISSION'S TRIENNIAL REVIEW ORDER--)
90 DAY PROCEEDING) TC03-178**

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC found that, on a national level, "requesting carriers are not impaired without access to unbundled local circuit switching when serving DS1 enterprise customers." Order at ¶ 419.

However, the FCC went on to find that "special circumstances may create impairment without access to unbundled local circuit switching to serve enterprise customers in particular markets." *Id.* Based on this finding, the FCC stated that it will allow state commissions "90 days to petition the [FCC] to rebut the national finding in individual markets based on specific operational evidence regarding loop, collocation, and transport provisioning and specific economic evidence including the actual deployment of competitive switches and competitors' costs in serving enterprise customers." *Id.* In addition, the FCC found that "[a]fter the 90-day period, states may wish, pursuant to state-determined procedures, to revisit whether competitive LECS are impaired without access to unbundled local circuit switching to serve enterprise customers due to changes in the specified operational and economic criteria." Order at ¶ 455.

Based on these provisions of the FCC Order, the Public Utilities Commission (Commission) requested written comments from any interested person or entity regarding how the Commission should proceed with this issue. The Commission requested comments, to be filed on or before September 29, 2003, on the following issues:

1. Do you intend to challenge the FCC's presumption of no impairment? If so, please provide a short explanation of the bases for your challenge.
2. If no person or entity intends to challenge the presumption, should the Commission hold any proceedings regarding the presumption at this time?
3. If a proceeding is held, do you intend to participate?
4. If the Commission holds proceedings on whether the presumption should be rebutted, please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.

5. Please provide any additional comments the Commission should consider regarding this issue.

The Commission received comments from Qwest Corporation, AT&T Communications of the Midwest, Inc., Midcontinent Communications, and the South Dakota Telecommunications Association. No company indicated that it intended to challenge the presumption and no company requested that the Commission hold proceedings in the event no one challenged the presumption. Based on these comments, the Commission is setting a deadline of October 14, 2003, for any person or entity to file a petition with the Commission which seeks to rebut the FCC's finding of non-impairment. The petition shall be accompanied by written testimony and exhibits, as well as a proposed procedural schedule. If no such petition is filed, the Commission may choose to not hold any proceedings regarding this issue at this time. It is therefore

ORDERED, that any interested person or entity shall file a petition, with supporting documents, rebutting the FCC's finding of non-impairment on or before October 14, 2003.

Dated at Pierre, South Dakota, this 2nd day of October, 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:	<u>Melaine Kolbo</u>
Date:	<u>10/2/03</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman *dk*

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

**IN THE MATTER OF THE IMPLEMENTATION) ORDER CLOSING DOCKET
OF THE FEDERAL COMMUNICATIONS)
COMMISSION'S TRIENNIAL REVIEW ORDER--) TC03-178
90 DAY PROCEEDING)**

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC found that, on a national level, "requesting carriers are not impaired without access to unbundled local circuit switching when serving DS1 enterprise customers." Order at ¶ 419.

However, the FCC went on to find that "special circumstances may create impairment without access to unbundled local circuit switching to serve enterprise customers in particular markets." *Id.* Based on this finding, the FCC stated that it will allow state commissions "90 days to petition the [FCC] to rebut the national finding in individual markets based on specific operational evidence regarding loop, collocation, and transport provisioning and specific economic evidence including the actual deployment of competitive switches and competitors' costs in serving enterprise customers." *Id.* In addition, the FCC found that "[a]fter the 90-day period, states may wish, pursuant to state-determined procedures, to revisit whether competitive LECS are impaired without access to unbundled local circuit switching to serve enterprise customers due to changes in the specified operational and economic criteria." *Order* at ¶ 455.

Based on these provisions of the FCC Order, the Public Utilities Commission (Commission) requested written comments from any interested person or entity regarding how the Commission should proceed with this issue. The Commission requested comments, to be filed on or before September 29, 2003, on the following issues:

1. Do you intend to challenge the FCC's presumption of no impairment? If so, please provide a short explanation of the bases for your challenge.
2. If no person or entity intends to challenge the presumption, should the Commission hold any proceedings regarding the presumption at this time?
3. If a proceeding is held, do you intend to participate?
4. If the Commission holds proceedings on whether the presumption should be rebutted, please set forth any recommendations regarding the general procedures the Commission should undertake to meet the FCC's deadline.

5. Please provide any additional comments the Commission should consider regarding this issue.

The Commission received comments from Qwest Corporation, AT&T Communications of the Midwest, Inc., Midcontinent Communications, and the South Dakota Telecommunications Association. No company indicated that it intended to challenge the presumption and no company requested that the Commission hold proceedings in the event no one challenged the presumption. Based on these comments, the Commission set a deadline of October 14, 2003, for any person or entity to file a petition with the Commission rebutting the FCC's finding of non-impairment. If no such petition was filed, the Commission stated that it may choose to not hold any proceedings regarding this issue at this time. No petitions were filed.

At its October 16, 2003, meeting, the Commission considered how to proceed with this docket. No one objected to the Commission closing this docket. Based on the lack of objections and the lack of any person seeking to rebut the FCC's finding of non-impairment, the Commission voted to not hold any proceedings at this time regarding whether to petition the FCC to rebut the national finding in individual markets. It is therefore

ORDERED, that no proceedings shall be held at this time regarding whether to petition the FCC to rebut the national finding of non-impairment for unbundled local circuit switching serving enterprise customers; and it is

FURTHER ORDERED, that this docket is closed.

Dated at Pierre, South Dakota, this 28th day of October, 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:

Melaine Kolbo

Date:

10/29/03

(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