

LAW OFFICES  
**RITER, ROGERS, WATTIER & BROWN, LLP**  
Professional & Executive Building  
319 South Coteau Street  
P.O. Box 280  
Pierre, South Dakota 57501-0280  
[www.riterlaw.com](http://www.riterlaw.com)

ROBERT C. RITER, Jr.  
DARLA POLLMAN ROGERS  
JERRY L. WATTIER  
JOHN L. BROWN

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MARGO D. NORTHRUP, Associate

November 17, 2005

OF COUNSEL:  
Robert D. Hofen  
E. D. Mayer  
TELEPHONE  
605-224-5825  
FAX  
605-224-7102

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

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NOV 18 2005

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Re: TC05-083, TC05-092, TC05-087, TC05-095, TC05-096, TC05-094.  
TC05-090, TC05-093, TC05-097, TC05-098, TC05-109, TC05-091

Dear Pam:

Enclosed herein please find an original Confidentiality Agreement in each of the above mentioned dockets.

Sincerely yours,

RITER, ROGERS, WATTIER & BROWN, LLP

By:   
Margo D. Northrup

MDN/rar  
Enclosures

cc: Karen Cremer  
Dave Gerdes  
Bill Van Camp  
Client

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NOV 10 2005

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT OF LECS' 2005 SWITCHED ACCESS REVENUE REQUIREMENTS

Docket Number TC05-092  
CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is made as of the 17<sup>th</sup> day of November, 2005, by and among BERESFORD MUNICIPAL TELEPHONE COMPANY ("Beresford") (Petitioner in Docket No. TC05-092), South Dakota Public Utilities Commission Staff ("Staff"), Midcontinent Communications ("Midcontinent"), MCIMetro Access Transmission Services, LLC ("MCI"), and AT&T Communications of the Midwest, Inc. ("AT&T") and the entity or entities executing this Confidentiality Agreement and the NONDISCLOSURE AGREEMENT attached hereto as Exhibit A, hereinafter referred to as "the Parties."

**RECITALS**

1. Requests have been made by Intervenors and Staff in this docket to review data and information, and the Parties anticipate future requests to inspect and review additional data and information, which may be claimed by the Party who produces the information ("Producing Party") to constitute Confidential Information as defined herein.
2. The Parties hereby state that they will, under the terms of the following Confidentiality Agreement, allow inspection and review of certain data and information, claimed by them to be of a confidential nature, to the signators of this Agreement.

3. In connection with this case, the Parties desire to have access to review certain documents of the Producing Party.

4. The Parties submit that some of the documents the other party (“Requesting Party”) wishes to review contain Confidential Information, which, if used by the Requesting Party to advance its own competitive interest or if disclosed to competitors or others, could result in irreparable damage and injury to the Producing Party.

5. The Parties desire to provide a means by which the documents described in Recital No. 4 can be provided to one another for review, but, at the same time, protected from disclosure that could result in irreparable damage or injury to the Producing Party.

**NOW, THEREFORE**, the Parties agree as follows:

1. For the purposes of this Agreement, the following terms shall be defined in the following manner:

(a) “Documents” shall mean and include all documents, data, information, studies, computer programs and other matters heretofore or hereafter filed or furnished in any form within this docket, whether in response to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery containing claimed Confidential Information, or whether filed or attached to filings made or to be made in this docket. Such Confidential Information shall be furnished under the terms of this Agreement and shall not be used or disclosed except for the purpose of this proceeding, and solely in accordance with this Agreement. Any and all documents, recorded or graphic matters of any kind whatsoever shall extend to any subsequent compilation,

summary, quotation, or reproduction thereof prepared at any subsequent time in any subsequent form or proceeding, in whole or in part.

To the extent there may be information that the Producing Party believes requires extraordinary protection beyond that provided for in this Agreement, the Producing Party shall file the information with the Commission only, under seal, together with a motion seeking such extraordinary protection. The motion shall state the grounds for seeking the relief and advise all other Parties of the request, together with a description of the subject matter of the material at issue, including the identity and date of authorship.

(b) “Confidential Information” shall mean and include any documents and all contents thereof that are marked “CONFIDENTIAL,” “PROPRIETARY,” or in some similar manner by the Producing Party, and includes the filings and Exhibits thereto furnished by Beresford in this docket. “Confidential Information” also includes a response to a discovery request that may reveal that no information or documentation exists, which is responsive to the discovery request.

(c) “Use of Confidential Information and Persons Entitled to Review.” All Confidential Information made available pursuant to this Agreement shall be given solely to the Commission or counsel for the Parties, and shall not be used or disclosed except for purposes of this proceeding; provided, however, that access to any specific Confidential Information may be authorized by counsel, solely for the purpose of this proceeding, to those persons indicated by the Parties as being their experts, consultants, or advisors in this matter and who have executed the Nondisclosure Agreement as provided below. For purposes of this Agreement, disclosure shall be strictly limited to persons employed or hired by the Parties who are directly involved in this case as an attorney, consultant, advi-

sor, expert or witness. Disclosure shall not be made to any person who is in any manner whatsoever involved in the provisioning, marketing, pricing, or management of any telecommunications services, including but not limited to switched access, long distance, or local exchange service by the Parties, or any affiliated enterprise.

(d) “Disclose,” “make disclosure of,” or “disclosure” shall mean and include the dissemination to any person, firm, corporation or other entity of the contents of a document, whether that dissemination is by means of the transmittal or transfer of the original or a copy of that document or any verbal or other dissemination of the contents of said document. No access to Confidential Information shall be authorized under the terms of the preceding paragraph (c) of this Agreement until the person authorized by counsel to have access signs a Nondisclosure Agreement in the form that is attached and incorporated as Exhibit A. Only persons authorized by counsel to have access and signing Exhibit A shall be deemed “Authorized Persons” under this Agreement. The Nondisclosure Agreement shall require the persons to whom disclosure is to be made to certify in writing that they have read this Agreement, agree to be bound by its terms, and certify that they are not involved in any manner whatsoever in the provisioning, marketing, pricing, or management of any telecommunications services, including but not limited to switched access, long distance, or local exchange service by the Parties, and that if they should become involved in the future, they will not disclose or otherwise use any information provided under this Agreement for such purposes. The Nondisclosure Agreement shall contain the signatory’s full name, permanent address, and employer, and the name of the party with whom the signatory is associated. This Nondisclosure Agreement shall

be delivered to counsel for the Producing Party and the Commission at the time of review of the documents, or as soon thereafter as practicable.

2. All Confidential Information and the disclosure thereof shall be subject to the following restrictions:

(a) The Parties shall not disclose any Confidential Information to anyone other than an Authorized Person(s) for the sole purpose of such Party's review and analysis of the case.

(b) Whether the Parties have provided Confidential Information in hard copy or in some other form, no Party shall make copies or reproductions of any kind or nature whatsoever of the Confidential Information so supplied except for this proceeding. The foregoing notwithstanding, no Party may disclose Confidential Information to an Authorized Person(s) unless, prior to the disclosure of such Confidential Information, said Authorized Person(s) has signed the Nondisclosure Agreement attached hereto as Exhibit A.

3. In the event that other parties participating in this docket ("Other Requesting Parties") wish to review and inspect documents covered by this Agreement, they may do so only if such parties execute the Nondisclosure Agreement in the form that is attached and incorporated as Exhibit A.

4. Delivery of Documentation. Where feasible, Confidential Information will be marked as such and delivered to counsel and counsel may make documents available for inspection by counsel and Authorized Persons, as defined herein. Any information sent unmarked and later determined by the sender to be confidential shall thereafter be treated as confidential information by the recipient, upon notice in writing.

5. In the event that a Party objects to another Party's designation of a document or its contents as Confidential Information, the materials shall be treated as Confidential Information until a contrary ruling by the Commission or, if appropriate, a court of competent jurisdiction. Prior to the time any objection to a designation of Confidential Information is brought before the Commission or a court of competent jurisdiction for resolution, the Parties shall attempt to resolve the objection by agreement. If the Parties are unable to reach an agreement, then either or any of them may bring the objection before the Commission or court of competent jurisdiction in accordance with the applicable rules of that forum.

6. In the event a Party desires to disclose Confidential Information to a person, firm, corporation or entity other than an Authorized Person, such Party shall designate the Confidential Information it wishes to disclose, identify the persons or entities to whom it wishes to make disclosure, and advise the Producing Party in writing of its desire to make such disclosure. If, after the Producing Party's receipt of such communication from the Party who seeks disclosure, the two parties are unable to agree on the terms and conditions of such disclosure, such disclosure may be made only on such terms and conditions as the Commission or, if appropriate, a court of competent jurisdiction may order.

7. Nothing in this Agreement shall preclude a Party from using or disclosing any Confidential Information it has produced, i.e. its own information, for any purpose or to any person.

8. Nothing in this Agreement shall preclude any Party from refusing to make any disclosure of any Confidential Information to another party even if the party

agrees that such disclosure shall be in accordance with the terms of this Confidentiality Agreement. If Confidential Information is withheld by the Producing Party pursuant to this Paragraph 8, the Producing Party shall provide the Requesting Party with a written statement regarding the basis for withholding the Confidential Information, together with a description of the subject matter of the material at issue, including the identity and date of authorship.

9. All persons who are afforded access to any Confidential Information by reason of this Agreement shall neither use nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of this proceeding, and then solely as contemplated here, and shall take all reasonable precautions to keep the Confidential Information secure and in accordance with the purposes and intent of this Agreement.

10. Any disclosure of Confidential Information by the Producing Party pursuant to this Agreement shall not act as a waiver of the Producing Party's right to question, challenge, and object to the admissibility of any and all data, information, studies, and other matters furnished under the terms of this Agreement or a commission issued Protective Order on the grounds of relevancy or materiality.

11. This Agreement shall in no way constitute a waiver of the rights of any party or person to contest any assertion or finding of a trade secret, confidentiality, or privilege or to appeal any determination of the Commission or any assertion by a party.

12. The provisions of this Agreement are specifically intended to apply to information supplied by any party to this proceeding, and any nonparty that supplies

documents, testimony, or other information pursuant to process issued by the Commission.

13. Within ten (10) days after the final disposition of the case, including any and all appeals therefrom, the Receiving Party must destroy or return all hard copies, other originals and reproductions of all documents containing Confidential Information subject to this Confidentiality Agreement. The Receiving Party must send written notification that these documents have been destroyed if they are not returned directly to the party.

14. The provisions of this Confidentiality Agreement, insofar as they restrict the disclosure and use of Confidential Information governed by this Confidentiality Agreement, shall, without the written permission of the Party who produced such information or further order of the Commission or, if appropriate, a court of competent jurisdiction, continue to be binding after the conclusion of the case.

15. In the event that the Requesting Party or any Authorized Person acting for the Requesting Party is required or requested by any court, legislative or administrative body to disclose any Confidential Information, then the recipient, party or Authorized Person will promptly and prior to disclosure notify the Producing Party and shall provide full documentation concerning the disclosure sought, so that an appropriate protective order can be sought and/or other action can be taken if possible. In the event that a protective order is not, or cannot be, obtained, then the Requesting Party or any Authorized Person acting for the Requesting Party may disclose to the appropriate body that portion of the Confidential Information that it is advised by written outside legal advice it is

legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded the Confidential Information.

16. The attorneys for the parties to this Confidentiality Agreement have authority to sign the Agreement and to bind the companies and their employees to the terms herein.

**WHEREFORE**, the undersigned have set their hands and seals as of the date set forth above.

BERESFORD MUNICIPAL TELEPHONE COMPANY:

By Darla Pollman Rogers  
Darla Pollman Rogers, its Attorney

South Dakota Public Utilities Commission Staff:

By Karen E. Brem staff attorney  
Name Title

Midcontinent Communications:

By Scott Kowalski Atty & Record  
Name Title

MCIMetro Access Transmission Services, LLC:

By Scott Kowalski Atty & Record  
Name Title

AT&T Communications of the Midwest, Inc.:

By [Signature] att of record  
Name Title

EXHIBIT A  
NONDISCLOSURE AGREEMENT IN TC05-092

I hereby agree that I have read the CONFIDENTIALITY AGREEMENT dated as of the \_\_\_\_\_ day of November, 2005, among Beresford, Commission Staff, Midcontinent, MCI, and AT&T in this docket TC05-092, and agree to be bound by the terms thereof. I hereby certify that I am not involved in any manner whatsoever in the provisioning, marketing, pricing, or management of any switched access, long distance or local exchange service by any telecommunications services provider, or any affiliated enterprise, and that if I should become so involved in the future, I will not disclose or otherwise use any information provided under this Agreement.

Name: \_\_\_\_\_

Employer or Firm: \_\_\_\_\_

Detailed Description of Position and Responsibilities with Employer or Firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Business Address: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

NOV 18 2005

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE ESTABLISHMENT OF LECs' 2005 SWITCHED ACCESS REVENUE REQUIREMENTS

CONFIDENTIALITY AGREEMENT

ALLIANCE COMMUNICATIONS COOP., INC.	TC05-083
BROOKINGS MUNICIPAL TELEPHONE (SWIFTEL)	TC05-087
MIDSTATE COMMUNICATIONS	TC05-090
WESTERN TELEPHONE COMPANY	TC05-091
BERESFORD MUNICIPAL TELEPHONE COMPANY	TC05-092
ROBERTS COUNTY TELEPHONE COOPERATIVE	TC05-093
McCOOK COOPERATIVE TELEPHONE	TC05-094
KENNEBEC TELEPHONE COMPANY	TC05-095
LECA	TC05-096
SANTEL COMMUNICATIONS COOPERATIVE	TC05-097
TRI-COUNTY TELCOM, INC.	TC05-098
WEST RIVER TELECOMMUNICATIONS COOPERATIVE	TC05-109

CERTIFICATE OF SERVICE

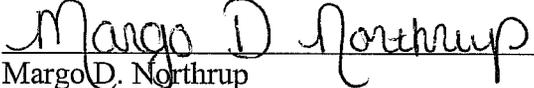
I hereby certify that a true and correct copy of the CONFIDENTIALITY AGREEMENT was served in each of the above dockets via the method(s) indicated below, on the seventeenth day of November, 2005, addressed to:

Karen Cremer, Staff Attorney South Dakota Public Utilities Commission 500 East Capitol Avenue Pierre, South Dakota 57501	<input checked="" type="checkbox"/>	First Class Mail
	<input type="checkbox"/>	Hand Delivery
	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	Overnight Delivery
	<input type="checkbox"/>	E-Mail
Brett M. Koenecke May, Adam, Gerdes & Thompson P. O. Box 160 Pierre, South Dakota 57501	<input checked="" type="checkbox"/>	First Class Mail
	<input type="checkbox"/>	Hand Delivery
	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	Overnight Delivery
	<input type="checkbox"/>	E-Mail
David A. Gerdes May, Adam, Gerdes & Thompson P. O. Box 160 Pierre, South Dakota 57501	<input checked="" type="checkbox"/>	First Class Mail
	<input type="checkbox"/>	Hand Delivery
	<input type="checkbox"/>	Facsimile
	<input type="checkbox"/>	Overnight Delivery
	<input type="checkbox"/>	E-Mail

William M. Van Camp, Jr.  
Olinger, Lovald, McCahren & Reimers  
Box 66  
Pierre, South Dakota 57501

First Class Mail  
 Hand Delivery  
 Facsimile  
 Overnight Delivery  
 E-Mail

Dated this seventeenth day of November, 2005.

  
Margo D. Northrup  
Riter, Rogers, Wattier & Brown, LLP  
P. O. Box 280  
Pierre, South Dakota 57501  
Telephone (605) 224-7889  
Fax (605) 224-7102