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Jason D. Topp
Corporate Counsel

RECEIVED

JUL 14 2006

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION  **Qwest.**
Spirit of Service™

July 12, 2006

ELECTRONICALLY FILED

DATE JUL 12 2006

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

**Re: Confidential Settlement Agreement between Qwest Corporation and
Black Hills Fibercom, LLC**

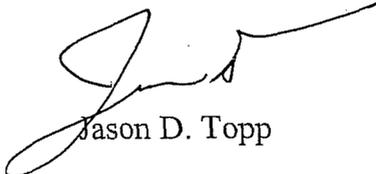
Dear Ms. Van Gerpen:

Qwest Corporation ("Qwest") and Black Hills Fibercom, LLC entered into a Confidential Settlement Agreement (the "Agreement"). Qwest determined that certain provisions of the Agreement contained ongoing terms and conditions under Section 251 of the Telecommunications Act of 1996 (the "Act") and that those terms should be placed into an Interconnection Agreement Amendment which should be filed under Section 252 of the Act. Prairie Wave does not wish to execute an Interconnection Agreement Amendment, however, and stated to Qwest that it believes that the Agreement should be filed, even though Qwest believes that an Interconnection Agreement Amendment is required.

Thus, Qwest is filing the enclosed redacted version of the Agreement which contained the ongoing terms and conditions under Section 251 of the Act for review and approval pursuant to the Section 252 Act.

Please contact the undersigned if you have any questions in this regard.

Very truly yours,



Jason D. Topp

JDT/bardm

Enclosures

cc: William P. Heaston (via e-mail)
Colleen Sevold

JUL 14 2006

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

| | |
|---|--|
| <p>BLACK HILLS FIBERCOM, LLC, Complainant, v. QWEST CORPORATION, Respondent.</p> | <p>TC Confidential Settlement Agreement</p> |
|---|--|

By this Confidential Settlement Agreement ("Agreement") Qwest Corporation ("Qwest") and Black Hills FiberCom, LLC ("BHFC"), (herein, collectively, "the Parties") confidentially settle, resolve, release and withdraw the disputes between them raised in the above-captioned matter as follows:

1. ***The Disputes.***

a.

b.

2. **Agreement to Settle.**

3. **Confidential Payment.**

4. **Bill and Keep.** Beginning with usage on March 1, 2005, all intrastate interexchange traffic delivered to ISPs of Black Hills FiberCom or Qwest between their common Rapid City and Northern Black Hills exchanges shall be considered to be "bill and keep." This means that neither Party will charge the other switched access rates for originating or terminating ISP-bound traffic that originates in one South Dakota exchange and is delivered to an internet service provider in another South Dakota exchange (as determined by called station number) for transmission to the Internet.

5. **Billing and Refund Procedure.** For administrative purposes, the Parties may bill interexchange traffic, including the Disputed Traffic, under their respective intrastate switched access tariffs. Each year, during the first quarter, the Parties shall exchange information to determine the Disputed Traffic exchanged during the prior calendar year (for 2005, this information shall cover March usage through December usage only) that should have been treated as bill and keep and appropriate refunds shall be made. Any refund not paid by March 31 each year shall be subject to late payment fees under the terms and conditions of the Parties interconnection agreements.

- a. Should a dispute arise regarding the determination of the amount to be refunded under this procedure, either party may submit the dispute to the Commission under its complaint procedures.
- b. Each party shall bear their respective cost of the annual review and refund determination, including the cost of any dispute resolution proceeding that may be required.

6. **No Billing Offsets.** Qwest and BHFC agree that neither Party will utilize any billing offset methods to withhold payments relating to the Disputed Traffic for the term of the Agreement.

7. **Filing and Approval of Agreement.**

8. **Binding Effect.**

9. ***No Assignments.***

10. ***Representation of Authority.***

11. **Confidentiality.**

12. **Notice of Disclosure.**

a.

b.

(i)

13. ***Entire Agreement; Amendments.***

14. ***Governing Law.***

15. **Change of Law.** Subsequent to the execution of this Agreement, the FCC or the Commission, or courts or legislatures, may issue decisions, rulings, orders, regulations, or laws governing the subject matter of the Disputes which change or modify the law upon which this Agreement was based ("Changed Law"). In such event, the Parties nevertheless agree that this Agreement will remain binding upon the Parties unless this Agreement violates the Changed Law. In case of such violation, the Parties agree to negotiate in good faith the amendment of this Agreement so that it complies with the Changed Law, while still adhering to the spirit and intent of this Agreement, as closely as is practicable and consistent with the Changed Law. If the parties fail to agree upon such an amendment, it shall be resolved in accordance with the dispute resolution procedures of this Agreement, and in keeping with the spirit and intent of this Agreement. The Parties agree, however, that this section shall not apply to any Changed Law that is still subject to, or undergoing, further appeal.

16. **Advice of Counsel.**

17. **Dispute Resolution**

18. **Notices.**

If to Qwest: (1)

(2)

If to BHFC: (1)

(2)

If to PrairieWave:

19. ***No waiver.***

20. ***No Admission.***

21. ***Headings.***

21. **Counterparts.** This Agreement, including the appended Agreement To Be Bound, may be executed by facsimile and in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

BLACK HILLS FIBERCOM, LLC

By: Steven J. Helmers

Steven J. Helmers
General Counsel
Black Hills Corporation

Dated: 4/28/05

QWEST CORPORATION

By: _____

Its: _____

Dated: _____

Dated: 4/28/05

Agreement To Be Bound

The undersigned PrairieWave Communications, Inc., a Delaware corporation ("PrairieWave"), has agreed to purchase Black Hills FiberCom, LLC ("BHFC") by way of a Stock Purchase Agreement with an anticipated closing date of June 30, 2005. PrairieWave hereby agrees to be bound by all the terms and conditions of the foregoing Confidential Settlement Agreement between Qwest Corporation and BHFC as it relates to the operations of BHFC.

PrairieWave Communications, Inc.

By: 
William P. Heaston
VP, General Counsel
Corporate Secretary

Its: _____

Dated: 4/28/05