

TC97-026

4/3/03

TC97-026

DOCKET NO.

In the Matter of IN THE MATTER OF THE  
APPLICATION OF EAST PLAINS  
TELECOM, INC. FOR A CERTIFICATE  
OF AUTHORITY TO PROVIDE  
TELECOMMUNICATIONS SERVICES IN  
SOUTH DAKOTA

## Public Utilities Commission of the State of South Dakota

DATE

MEMORANDA

3/13/97 Filed, and Docketed,  
3/13/97 TC For Filing,  
5/17/97 Supplement to Petition for Certificate of Authority,  
4/28/97 Underwriting COA (with proof of closing of sale),  
6/12/97 Received Proof of Closing,  
6/12/97 Issued COA,  
6/13/97 Docket Closed.

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in Minnesota and Iowa

TC97-026

March 12, 1997

RECEIVED

MAR 14 1997

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

VIA U.P.S. OVERNIGHT DELIVERY

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

Re: *Petition for Certificate of Authority - East Plains Telecom, Inc.*  
(our file no. BT-280-01)

Dear Director Bullard:

Enclosed please find one original and ten copies of a Petition for Certificate of Authority for East Plains Telecom, Inc., a wholly-owned subsidiary of Baltic Telecom Cooperative, Inc. Also enclosed is a check in the amount of \$250.00 for the application fee. As we discussed on the telephone, anything that you can do to expedite the approval process in this case would be greatly appreciated. I will call you to ensure that the Commission has all the information that it needs to complete the application process. Please feel free to contact me if you need further information in the meantime or have any questions. Thank you for your assistance.

Sincerely,

CUTLER, DONAHOE & MICKELSON, LLP

*Brian J. Donahoe*

Brian J. Donahoe  
For the Firm

BJD:rk  
enclosure  
cc: Greg Grablander

TC97-026

RECEIVED

MAR 13 1997

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION )	
OF EAST PLAINS TELECOM, INC., FOR )	PETITION FOR CERTIFICATE
A CERTIFICATE OF AUTHORITY TO )	OF AUTHORITY
PROVIDE TELECOMMUNICATION )	
SERVICES IN SOUTH DAKOTA )	TC97-_____

PRELIMINARY STATEMENT

East Plains Telecom, Inc., is a wholly owned subsidiary of Baltic Telecom Cooperative, Inc. Pursuant to the Public Utility Commission's Decision and Order in Docket TC96-010, the Commission has approved the sale of the Alcester Telephone Exchange to Baltic Telecom Cooperative, Inc., through its subsidiary, East Plains Telecom, Inc. Subsequently, on October 24, 1996, the Commission also approved the sale of the Hudson Exchange from U.S. West to Baltic Telecom Cooperative, Inc., through its subsidiary East Plains Telecom, Inc., in a Decision and Order docketed as TC96-125.

Baltic Telecom has also petitioned the Federal Communications Commission for approval of the sale of these exchanges. As to the Alcester exchange, FCC approval has been gained regarding Sections 69.3(e)(11), 69.3(i)(4), 69.605(c) and the definition of "Study Area" in the Federal Communication Commission's Rules. No other approval of the Federal Communications Commission is necessary for the Alcester exchange. FCC approval is still pending on all matters relating to the purchase of the Hudson Exchange.

East Plains Telecom, Inc., will only be operating the Alcester and Hudson exchanges, as a wholly owned subsidiary and under a management contract with Baltic Telecom Cooperative Inc. East Plains Telecom, Inc., now seeks a Certificate of Authority pursuant to SDCL 49-31-3, allowing it to offer telecommunications services consistent with this Commission's rulings in the above-referenced decisions, and any conditions and/or requirements set forth by the Federal Communications Commission.

APPLICATION

1. The name of the Applicant is East Plains Telecom, Inc.. The address of the principal office of the corporation is 501 Second Street, Baltic, South Dakota 57003. The phone number is (605) 529-5454; although upon operation of the Alcester exchange, a local telephone number shall be used for any service calls. This telephone number has been ordered, but has not yet been received.
2. The name under which the Applicant will provide these services will be "East Plains Telecom, Inc."

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3. The Applicant is a corporation.
    - a. The Applicant was incorporated in the State of South Dakota on November 13, 1995. A copy of its Certificate of Incorporation is attached as Exhibit A.
    - b. The location of its principal office is listed above in Paragraph No. 1. The address of its current registered agent is Brian B. Meyer, P.O. Box 89, 122 North Main Street, Onida, South Dakota 57564.
    - c. The East Plains Telecom, Inc., is a wholly owned subsidiary of Baltic Telecom Cooperative, Inc., located at 501 Second Street, P.O. Box 307, Baltic, South Dakota 57003.
    - d. The Applicant does not own or control any subsidiaries.
  4. The Applicant is not a partnership.
  5. The Applicant intends to provide local telephone exchange service in the same manner, and with at least the same manner, and with at least the same services as the previous owner of the Alcester and Hudson exchanges, pursuant to the orders and conditions imposed by this Commission and the Federal Communications Commission. Specifically, the Applicant intends to operate the Alcester exchange, with 780 access lines, and the Hudson exchange, with 317 access lines under a Management Agreement with Baltic Telecom Cooperative, Inc. The local telephone service will include enhanced 911 service to all subscribers, and all modern telecommunication services of a local telephone exchange as described more fully below.
  6. The Applicant intends to provide these services, through existing equipment and a new type DMS-10 digital switch at Alcester shortly after acquisition. Existing EAS services will continue uninterrupted, CLASS features such as caller ID, and other SS7 capabilities will also be provided to subscribers. Voice mail and other options currently provided to Baltic Telecom Cooperative, Inc.'s subscribers will also be offered to the subscribers of the Alcester and the Hudson exchanges. A fiber optic cable for toll routes, including a fiber connection between the two exchanges, will be utilized. Distance learning services will be provided to the Alcester-Hudson school, and in fact the Alcester Hudson School District has been provided with grants and incentives to encourage participation in distance learning and internet access.

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7. Geographic areas served will be the Alcester and Hudson local exchange areas, as indicated by the attached maps identified as Exhibits B and C, respectively.
  8. As East Plains Telecom, Inc., has not yet commenced business, there is no annual report produced for East Plains Telecom. However, a current balance sheet and income statement will be produced upon request after commencement of business. The financial information for Baltic Telecom Cooperative, Inc., was previously submitted to the Commission in Docket No. TC96-010, and an update of this information will also be supplied upon request. Applicant's tariffs and conditions of service shall be in accordance with the Commission's Orders in Docket Nos. TC96-010 and TC96-125 for Alcester and Hudson exchanges, respectively. A copy of the Commission's Order in Docket No. TC96-010 is attached as Exhibit D; identical tariffs and conditions are imposed in Docket No. TC96-125.
  9. The representatives to whom all inquiries should be made regarding complaints and regulatory matters for East Plains Telecom, Inc., shall be Gregory R. Grablander, Manager. Local subscribers of the Alcester and Hudson exchanges will be able to call a local telephone number, which will then be forwarded to the office of Baltic Telecom Cooperative, Inc. Customer service representatives located in Baltic and in Alcester will be able to handle service requests or other matters, and billing will be centralized out of the Baltic Telecom Cooperative office. Those will be handled on a monthly basis, and all equal access issues regarding long distance service for intrastate and interstate calling will be handled as they are currently being handled under Baltic's existing billing system.
  10. The only state in which the Applicant is registered to do business is the state of South Dakota. Applicant has never been denied registration or certification in any state.
  11. Applicant intends to market its services to the local subscribers through direct mail and other local marketing. There is no intention to engage in any multi-level marketing and at the present time there are no plans to produce brochures to assist in the sale of any services. In the future it may be necessary to produce such brochures to inform the subscribers about new services and other options available to them.
  12. Cost support for rates shown in the company's tariff for all noncompetitive or emerging competitive services are not included in this application. Any tariffs involved are continued in place from the previous owner pursuant to the Commission's Orders.

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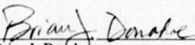
REQUEST FOR CERTIFICATION

Based on the foregoing information, and the fact that the Applicant is a wholly owned subsidiary of an existing and successful rural telephone cooperative in the state of South Dakota, the Applicant respectfully requests that the Commission grants its Petition for a Certificate of Authority to conduct business as a telecommunication company in the state of South Dakota. Petitioner also requests that the Commission expedite this application, and issue its order without conducting a hearing in this matter. Given the nature of the parent cooperative-subsidiary relationship in this case, Petitioner respectfully submits that there is no need for a hearing.

Submitted this 12<sup>th</sup> day of March, 1997.

EAST PLAINS TELECOM, INC.

BY:

  
\_\_\_\_\_  
Brian J. Donahoe  
Attorney for East Plains Telecom  
100 North Phillips Avenue, Suite 901  
Sioux Falls, SD 57104-4961

9142306

# State of South Dakota



## OFFICE OF THE SECRETARY OF STATE

### CERTIFICATE OF INCORPORATION

#### BUSINESS CORPORATION

I, JOYCE HAZELTINE, Secretary of State of the State of South Dakota, hereby certify that the Articles of Incorporation of EAST PLAINS TELECOM, INC. duly signed and verified, pursuant to the provisions of the South Dakota Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I hereby issued this Certificate of Incorporation and attach hereto a duplicate of the Articles of Incorporation of EAST PLAINS TELECOM, INC.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this November 13, 1995.

*Joyce Hazeltime*  
JOYCE HAZELTINE  
Secretary of State

0142307

# ALCESTER EXCHANGE

Exhibit

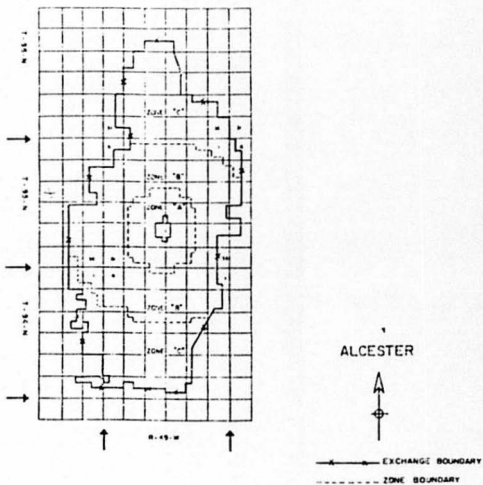


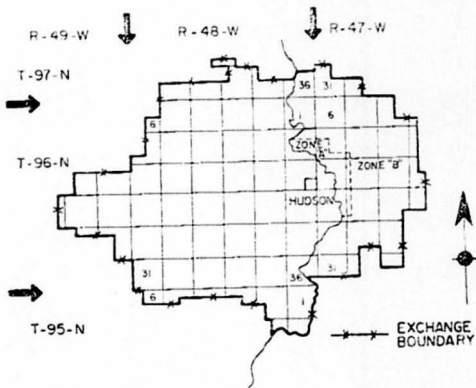
EXHIBIT B



NYR-12-1997 18:17

BALTIC TELECOM COOP.

1 605 529 5498 P.01/01  
**HUDSON EXCHANGE**



HUDSON

EXHIBIT C

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED

MAY 06 1996

IN THE MATTER OF THE SALE OF THE )  
ALCESTER TELEPHONE EXCHANGE BY U S )  
WEST COMMUNICATIONS, INC. TO BALTIC )  
TELECOM COOPERATIVE, INC. )

DECISION AND ORDER OF THE COMMISSION  
REGARDING THE SALE OF  
THE ALCESTER  
EXCHANGE; NOTICE OF  
ENTRY OF ORDER  
TC96-010

PRELIMINARY STATEMENT

On January 10, 1996, U S WEST Communications, Inc. ( U S WEST) and Baltic Telecom Cooperative, Inc. (Baltic) applied to the South Dakota Public Utilities Commission (Commission) for approval of the sale of U S WEST's Alcester exchange to Baltic. On January 11, 1996, the Commission faxed notice of the filing and the intervention deadline of January 26, 1996, to interested individuals and entities. On February 6, 1996, the Commission received a late-filed Petition for Intervention from John D. and Margaret Gubbrud and Peter A. and Vickie A. Larsen, all of Alcester, SD.

At its regularly scheduled February 21, 1996, meeting, the Commission found that the Petition for Intervention demonstrated good cause to grant intervention. By Order dated March 1, 1996, the Commission granted intervention and set the hearing for March 19, 1996, at 6:00 p.m., in Alcester, SD.

The hearing was held as scheduled on March 19, 1996. On April 11, 1996, the Commission received Baltic's Proposed Findings of Fact and Conclusions of Law. On April 11, 1996, the Commission received Comments of the Intervenor to the Proposed Findings of Fact and Conclusions of Law by Baltic Telecom Cooperative, Inc.

On April 23, 1996, the Commission voted to approve the sale of the Alcester exchange to Baltic Telecom Cooperative, Inc., through its subsidiary East Plains Telecom, Inc. (Commissioner Schoenfelder, dissenting). The Commission having reviewed the evidence of record and being fully informed in the matter makes the following:

FINDINGS OF FACT

1. U S WEST is a Colorado corporation providing local exchange telecommunications service, interexchange carrier access, intraLATA interexchange telecommunications services, and other telecommunications services throughout South Dakota.

2. Baltic is a South Dakota cooperative currently providing telephone service in South Dakota. Baltic was organized in 1955 to provide telephone service to rural customers. Exh. 2 at page 1. Baltic currently serves approximately 1420 access lines in two telephone exchanges in South Dakota that serve the communities of Baltic, Crooks, and Lyons. Id. at page 2.

3. On or about November 17, 1995, U S WEST entered into a purchase agreement with Baltic for the sale of the Alcester exchange. On January 10, 1996, the Commission received a Joint Application from U S WEST and Baltic. Exh. 1. U S WEST and Baltic filed the purchase agreement along with the Joint Application. Exh. 1 attached as Exh. B. Baltic is purchasing the Alcester exchange through its wholly owned subsidiary East Plains Telecom, Inc. Exh. 2 at page 5.

4. The purchase agreement entered into between Baltic and U S WEST states as follows:

Seller and Buyer agree to promptly file any required application and to take reasonable action as may be necessary or helpful (including, but not limited to, making available witnesses, information, documents, and data requested by the PUC) to apply for and receive approval by the PUC for the transfer of Assets and Authorities to Buyer.

Exh. 1 attached as Exh. B, Section 6.3, subparagraph D.

5. A duly noticed public hearing was held at Alcester, South Dakota, on March 19, 1996, concerning the sale of the Alcester exchange. There was testimony from the public, both supporting and opposing the sale.

6. U S WEST relied primarily on testimony and evidence submitted in previous telephone exchange sales similar in nature to the present transaction in presenting its case at the hearing. Exhibit 4. In addition, Jon Lehner of U S WEST submitted prefiled testimony concerning this sale. Exh. 5. Mr. Lehner stated in his prefiled testimony that U S WEST's decision to sell the Alcester exchange was primarily due to the threat of competition and U S WEST's need to concentrate on limited capital resources. Id. at page 2. Mr. Lehner further testified that the Alcester customers would be well served by Baltic since "[t]heir operation includes the latest technology in both switching and outside plant, and they are a local company with the ability to be close to their customers." Id.

#### ADEQUACY OF LOCAL TELEPHONE SERVICE

7. In addition to Baltic's existing six employees, it intends to locate one employee in Alcester to maintain the switch serving the exchange and provide local service. Exh. 2 at pages 2, 3.

8. Buyer is purchasing a new digital switch to serve the Alcester exchange. The customers in the Alcester exchange will receive improved switching services. Id. at page 4.

9. Buyer will continue all existing services provided to the customers in the Alcester exchange and will add new services as appropriate. Id.

10. Buyer anticipates offering cooperative membership to Alcester exchange customers within 3-5 years of acquisition, pursuant to the Resolution of the Board of Directors of Baltic. Exh. 3.

### REASONABLENESS OF RATES

11. Buyer will charge the same local rates as U S WEST did in the Alcester exchange. Testimony of Greg Grablander, Hearing Transcript at page 37.

12. Buyer's pro forma financial projections, together with the testimony of Kevin Doyle, demonstrates Buyer's capability of maintaining rates and providing state-of-the-art telecommunications services to the customers of the Alcester exchange. Exh. 2; Testimony of Kevin Doyle, Hearing Transcript at pages 61-63.

13. Pursuant to section 5.1(G) of the contract, Buyer is prohibited from seeking recovery of the acquisition adjustment through its regulated interstate or intrastate rates, including from federal or state universal service funds. The acquisition adjustment is the amount Buyer paid over net book value. Exh. 1, attached as Exh. B.

### PUBLIC SAFETY ISSUES

14. The Alcester exchange currently has 911 service and this will continue unchanged following Buyer's acquisition of the exchange. Testimony of Greg Grablander, Hearing Transcript at page 26. Baltic currently provides E911 to its telephone subscribers. Exh. 2 at page 3.

### ABILITY OF BALTIC TO PROVIDE SERVICE

15. Buyer is fit, willing, and able (financially and otherwise) to purchase and thereafter operate, maintain, and upgrade to the level required by the Commission the facilities of the Alcester exchange. Exh. 2; Testimony of Greg Grablander, Hearing Transcript at pages 24-26; Testimony of Kevin Doyle, Hearing Transcript at pages 61-63.

16. Buyer has the ability to obtain capital and the incentive to invest in the Alcester exchange. Id.

17. Buyer is committed to bringing new services to the Alcester exchange and is willing to address any request to participate in telemedicine. Testimony of Greg Grablander, Hearing Transcript at pages 26-27.

### PROTECTION OF PUBLIC INTEREST

18. Buyer's purchase of the Alcester exchange is in the public interest of the customers within the exchange for the following reasons:

- a. High quality local service will be maintained, if not improved.
- b. Customer service in the exchange, as provided by Buyer, should be improved. Buyer will employ one service technician who will be located in Alcester. No such local representation exists currently. This should result in faster responses to customer inquires and trouble reports than could be provided from a remote location.

- c. The customers in the Alcester exchange should receive better services, and the costs of maintenance and repair should be reduced.
- d. Local rates will not increase as a result of the sale.
- e. Emergency service will continue to be provided to the Alcester exchange.
- f. Modern state-of-the-art telecommunications equipment will be maintained in the Alcester exchange.

Exhibit 2: Testimony of Greg Grablander, Hearing Transcript at pages 25-42.

#### PAYMENT OF TAXES

19. U S WEST's property taxes for the Alcester exchange are estimated to have been approximately \$16,670. Testimony of Jon Lehner, Hearing Transcript at page 13.

20. Buyer would pay a gross receipts tax of 5% on the Alcester exchange that is estimated at \$24,600. Testimony of Greg Grablander, Hearing Transcript at pages 23-24. The taxes would be paid to the school districts. *Id.* at 45.

21. Based on the evidence, the Commission finds that the gross receipts taxes paid by Baltic will exceed the taxes previously paid by U S WEST.

#### SWITCHED ACCESS RATES

22. A request was made by the Buyer at the hearing pursuant to ARSD 20:10:27:02 to waive the Commission's switched access rules in determining the intrastate switched access rates to be charged in the Alcester exchange. U S WEST and the Buyer agreed to set the rates at seven cents per minute through May 1, 2000. Hearing Transcript at page 49.

23. Pursuant to SDCL 49-31-18 and 49-31-19 and ARSD Chapters 20:10:27 to 20:10:29, inclusive, switched access rates are established by the Commission. Thus, switched access rates cannot be stipulated to by telecommunications companies without approval by the Commission.

24. In Docket TC94-122, in which the Commission approved the sale of 63 U S WEST exchanges, the Commission allowed an intrastate switched access rate of seven cents per minute as a reasonable interim rate until May 1, 1997. Consistent with the Commission's decision in Docket TC94-122, the Commission finds that it will allow an interim rate of seven cents per minute in this case until May 1, 1997.

#### GAIN ON SALE

25. U S WEST is expected to have a gain on the sale. Such gain is the difference between the purchase price and the net investment of the sold exchange. U S WEST has required, as a condition of the sale, that the gain be booked to the USOA Account 7350.

**From the foregoing Findings of Fact, the Commission now makes its:**

**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over U S WEST and the Buyer and the sale of the Alcester exchange to the Buyer pursuant to SDCL Chapters 1-26 and 49-31, specifically 1-26-17.1, 49-31-3, 49-31-3.1, 49-31-4, 49-31-5.1, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, 49-31-20, 49-31-21, and 49-31-59.

2. The hearing held by the Commission relative to this matter was an evidentiary hearing pursuant to SDCL Chapter 1-26.

3. The Commission has considered, among other things, the requirements of SDCL 49-31-59 in regard to the proposed sale and the protection of the public interest pursuant to SDCL 49-31-7. The Commission finds that it is in the public interest to approve the sale because the sale will enable the customers in the Alcester exchange to be better served in the future.

4. U S WEST and the Buyer have satisfied their burden of proof under SDCL Chapter 49-31, specifically 49-31-3, 49-31-3.1, 49-31-4, 49-31-5.1, 49-31-7, 49-31-7.1, 49-31-11, 49-31-18, 49-31-19, 49-31-20, 49-31-21 and 49-31-59 for approval of the sale of the Alcester exchange.

5. The Commission has considered in reviewing the sale the adequacy of local telephone service. The Buyer is required to provide all services currently offered and may not discontinue any existing extended area service arrangements without first obtaining approval from the Commission. In addition, the Buyer must honor existing contracts and other agreements.

6. The Commission has also considered the reasonableness of local rates. The Commission finds that local telephone service rates for the customers in the Alcester exchange will remain at the same rates as U S WEST currently charges and there will be no increase in local service rates for at least 24 months. Further, the Buyer is prevented from recovering any of the acquisition adjustment through local rates.

7. The Commission has determined previously the reasonableness of the local rates for U S WEST.

8. Any existing 911, enhanced 911, and other public safety services currently provided will continue to be provided by the Buyer.

9. The Commission has considered the payment of taxes by U S WEST and the Buyer. The Commission has determined that the gross receipts taxes paid by the Buyer will exceed the taxes previously paid by U S WEST.

10. The Commission has determined that the Buyer has the ability to provide modern state-of-the-art telecommunications services that may facilitate economic development, telemedicine, and distance learning in the Alcester exchange.

26. U S WEST requested that any gain be booked by U S WEST utilizing the FCC's uniform system of accounts codified in 47 C.F.R. Part 32. Part 32 accounting requires that the loss or gain from the sale of telecommunications assets "with traffic" be booked as an Account 7350 event. 47 C.F.R. §§ 32.2000(d)(5) and 32.7350(b). This account is for nonoperating income or expense, neither of which should be included by the Commission or U S WEST in any ratemaking proceeding.

#### JURISDICTION OVER BALTIC

27. A telecommunications company with less than 10,000 subscribers is subject to a lessened form of regulation pursuant to SDCL 49-31-5.1. However, the Commission will retain significant regulatory control over the Buyer pursuant to SDCL Chapters 49-13 and 49-31. Additionally, a majority of subscribers within the exchange may vote to return full regulatory control to the Commission. SDCL 49-31-5.2 and 49-31-5.3.

#### REJECTION OF PROPOSED FINDINGS

28. The Commission rejects the proposed findings of fact and conclusions of law submitted by the Buyer.

#### CONDITIONS OF SALE

1. The Commission shall approve the sale of the Alcester exchange to the Buyer subject to the following conditions:

- a. That current local rates not be increased for 24 months from the date the Buyer begins to operate the exchange;
- b. That the Buyer shall not recover any of the acquisition adjustment through its regulated interstate or intrastate rates, through its local rates, or through federal or state universal service funds;
- c. Except as provided for in the Agreement for Purchase, the Buyer shall honor all existing contracts, commitments, leases, licenses and other agreements which relate to, arise from, or are used for the operation of the exchange;
- d. That the Buyer offers, at a minimum, all existing services currently offered in the Alcester exchange;
- e. That the Buyer not discontinue any existing extended area service arrangements in the Alcester exchange without first obtaining approval from the Commission; and
- f. That the Buyer comply with the Resolution adopted on March 15, 1996, by the Board of Directors of Baltic.

11. Customers who pay for telephone service do not acquire any interest, legal or equitable, in the property used for their convenience or in the funds of a telephone company who provides that service. The gain from the sale that is derived by U S WEST may be booked to USOA Account 7350, and shall not be used for ratemaking purposes by either U S WEST or the Commission.

12. Pursuant to ARSD 20:10:27.02, the Commission finds that good cause has been shown to waive the application of Chapters 20:10:27 to 20:10:29, inclusive, to determine the intrastate switched access rates to be charged by the Buyer for a period from closing until May 1, 1997.

13. The Commission has and will retain significant regulatory control over the Buyer and its telephone operations in the Alcester exchange pursuant to SDCL Chapters 49-13 and 49-31. In addition, a majority of the subscribers may vote to return full regulatory control to the Commission. SDCL 49-31 5.2 and 49-31-5.3.

14. The Commission rejects the proposed findings of fact and conclusions of law submitted by the Buyer.

15. The Commission approves the sale of the Alcester exchange by U S WEST to Baltic Telecom Cooperative, through its subsidiary East Plains Telecom, Inc., subject to the Buyer complying with the Conditions of Sale.

Pursuant to SDCL Chapter 1-26, the Commission hereby enters its final decision in this docket. It is therefore

ORDERED that the sale of the Alcester exchange to Baltic Telecom Cooperative, through its subsidiary East Plains Telecom, Inc., is approved subject to the Conditions of Sale; and it is

FURTHER ORDERED that the Commission finds good cause, pursuant to ARSD 20:10:27.02, to grant the request for a waiver of the Commission's switched access rules found in ARSD 20:10:27 to 20:10:29, inclusive; and it is

FURTHER ORDERED that an interim switched access rate of seven cents per minute in the Alcester exchange for a period from closing until May 1, 1997 is approved; and it is

FURTHER ORDERED that U S WEST's request to retain the gain from the sale for the benefit of its stockholders is granted, and such gain shall be booked to USOA Account 7350 and shall not be used for ratemaking purposes by either U S WEST or the Commission; and it is

FURTHER ORDERED that the proposed findings of fact and conclusions of law submitted by the Buyer are rejected.

Pursuant to SDCL 1-26-32, this Order becomes effective 10 days after the date of receipt or failure to accept delivery of the decision by the parties.



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PLEASE TAKE NOTICE that this Decision and Order in Docket TC96-010 was duly entered this 2nd of May, 1996, and filed in the Commission's docket.

Dated at Pierre, South Dakota, this 2nd day of May, 1996.

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 envelope, with charges prepaid thereon:

By

Melaine Kalko

Date

5/3/96

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Kenneth Stofferahn

KENNETH STOFFERAHN, Chairman

James A. Burg

JAMES A. BURG, Commissioner

LASKA SCHOENFELDER, Commissioner,  
dissenting

COMMISSIONER SCHOENFELDER'S DISSENTING OPINION

U S WEST is a public utility and has enjoyed the rights granted by statute as such. In return it has an obligation to the people of this state to provide telecommunications services in its certified territories and should not be allowed to sell those exchanges that are in sparsely populated areas and keep only those areas that are more densely populated and thus allow the company to realize a higher monetary return. It should not be allowed to sell its exchanges in its territories that have so far, when blended with the rest of U S WEST's corporation's holdings, not qualified as high cost exchanges. U S WEST should not have the right at this time to pick and choose whom it serves.

This sale could cause an increase in the subsidies flowing from national funds to South Dakota companies at a time in our history when both state and federal regulators and all government officials are trying to reduce or eliminate subsidies.

Customers of telephone services will have a smaller voice in the overall regulation of communications services if this sale is approved because of the reduced jurisdiction of the Commissioners that they elect as their representatives to deal with utility matters.

There is no factual demonstration in the record that indicates how the Buyer would be more capable of enhancing and promoting economic development in the Alcester area. There was no testimony or offers of exhibits that outlined definite plans to promote business development or to extend the ability to telecommute and access to the information superhighway to businesses or farms in the Alcester community.

Competition is developing in telecommunications markets everywhere in America. Because of the demographics and geographics of the most rural states of our country, competition develops more slowly. Competition is the best rate regulator and encourages the use and deployment of new technologies. This sale will stymie the development of competition in this rural area or prohibit it entirely. The benefits of competition--lower costs and more choices--will be denied to the customers of the Alcester exchange.

One of the most significant reasons to deny this sale is the prospect of increased intrastate toll prices. In its testimony, the Buyer has indicated that access rates will be increased. That, of course, will be subject to a decision by this Commission. However, any increase in access rates will result in an increase in toll rates. This increase comes at a time when toll rates should be decreasing because of technology and because of competition.

Even with all of the above objections, I could approve this sale if the questions I asked at the hearing had been answered or even given consideration by the Buyer. I believe that it is extremely important that the customers of the Alcester exchange be given a date certain when membership in the co-op will be granted. Without this information, I believe that the members of the Alcester exchange are being misled and the Buyer's testimony that the Alcester exchange members may become co-op members in 3-5 years is unacceptable.

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## BACKGROUND

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CUTLER, DONAHOE, & MICKELSON, LLP  
100 NORTH PHILLIPS AVENUE, SUITE 901  
SIOUX FALLS, SD 57104-6725

SECURITY STATE BANK  
SIOUX FALLS, SD 57104  
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PAY TO THE  
ORDER OF Public Utilities Commission

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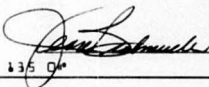
Public Utilities Commission

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TC97-026

MEMO Our file no 280.01, filing fee - Certificate of Authority

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NA	WorldCom, Inc. filed to renew its Bottom Line Business promotion for new customers with an expiration date of June 30, 1997.	03/10/97	NA
NA	AT&T filed to offer incremental usage credits to new and existing SDN, SCS and VTNS customers. The promotions are effective March 13, 1997.	03/12/97	NA
NA	Excel Communications, Inc. filed to increase the rates for the Evening and Night/Weekend Time of Day rate periods for the following service offerings: Excel Plus, Excel Plus II and Premier Plus II. In addition, minor textual changes may have been included. The revisions are effective March 13, 1997.	03/12/97	NA
NA	Least Cost Routing, Inc. filed to amend its rates. The revisions are effective March 14, 1997.	03/13/97	NA
NA	MCI Telecommunications Corporation filed to introduce Option AE (Advanced Option II for Small Business) and Option AF (homeMCI One). The revisions are effective March 23, 1997.	03/13/97	NA
NA	Cable & Wireless, Inc. filed to introduce Personal Office and Promotional Offering service, to increase rates for Travel WATS, Venture, VNS, Simplicity and BFI Operator Handled and Toll-free Meet Me calls and Meet Me calls. CWI incorporates Time Periods for Operator Services and makes other minor revisions. The revisions are effective March 14, 1997.	02/27/97	NA

**Important Notice:** The Commission is compiling a list of internet addresses. If you have an internet address, please notify the Commission by E-mailing it to Terry.Nelson@sdcc.state.sd.us. Filing the address to the Commission at 605-773-3809.

PAGE 2 OF 2

South Dakota Public Utilities Commission State Capitol 500 E. Capitol Pierre, SD 57501-5070 Phone: (800) 332-1782 Fax: (605) 773-3809		<h2 style="text-align: center;">TELECOMMUNICATIONS SERVICE FILINGS</h2> <p style="text-align: center;">These are the telecommunications service filings that the Commission has received for the period of</p> <h3 style="text-align: center;">03/07/97 through 03/13/97</h3> <p style="text-align: center;">If you need a complete copy of a filing taxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five days of this filing.</p>	
DOCKET NUMBER	TITLE/STAFF/SYNOPSIS	DATE FILED	INTERVENTION DEADLINE
<b>REQUEST FOR CERTIFICATION OF AUTHORITY</b>			
TC97-022	Application by MCImetro Access Transmission Services, Inc. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/KC) Applicant will provide a full range of telecommunications services, including, but not limited to: resale, various intrastate private line services and switched services, local exchange and IntraLATA toll services. MCImetro plans to provide services by reselling local telecommunications exchange services offered by the incumbent local exchange carrier. MCImetro plans to interconnect its network with U S WEST and other local exchange carriers in order to bring the widest range of services to consumers in South Dakota.	03/07/97	03/28/97
TC97-023	Application by Atlas Communications, Ltd. to amend its Certificate of Authority to provide local exchange services within the state of South Dakota. (Staff: TS/CH) Applicant intends to provide local exchange service on a resale basis. The specific manner in which Applicant will provide local exchange service depends upon the result of negotiations with the incumbent local exchange carriers currently operating within the State. Applicant seeks authority to resell local exchange service in the existing service areas of U S WEST and any other relevant carriers.	03/10/97	03/28/97
TC97-024	Application by U S Republic Communications, Inc. for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/KC) Applicant seeks authority to provide resold long distance telecommunications services in South Dakota. Initially, Applicant's operator services will be provided through the utilization of AT&T's existing operator services.	03/10/97	03/28/97
TC97-025	Application by Cypress Telecommunications Corporation for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (Staff: TS/CH) Applicant seeks authority to operate as a reseller of interexchange telecommunications services, including operator-assisted services within South Dakota.	03/12/97	03/28/97
TC97-026	Application by East Plains Telecom, Inc. (East Plains) for a Certificate of Authority to operate as a telecommunications company within the state of South Dakota. (DJ/KC) East Plains will provide local exchange telephone service within the exchange boundaries of the Alcester and Hudson exchanges. On May 2, 1996, the Commission approved the sale of the Alcester exchange from U S WEST Communications to East Plains. On October 24, 1996, the Commission approved the sale of the Hudson exchange from U S WEST Communications to East Plains.	03/13/97	03/28/97
<b>FULLY COMPETITIVE TELECOMMUNICATIONS FILINGS</b>			

PAGE 1 OF 2

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TC 97-026  
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in Minnesota and Iowa

March 14, 1997

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Mr. William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

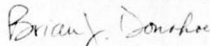
Re: *Supplement to Petition for Certificate of Authority - East Plains Telecom, Inc.*  
*(Our File No. BT-280-01)*

Dear Mr. Bullard:

Enclosed is an original and ten copies of East Plain Telecom, Inc.'s Supplement to Petition for Certificate of Authority, which provides the Commission with a copy of the FCC Memorandum Opinion and Order dated February 27, 1997. Please contact me if there is anything further I can do to expedite the approval process in this particular docket.

Sincerely,

CUTLER, DONAHOE & MICKELSON, LLP



Brian J. Donahoe  
For the Firm

BJD:rk  
Enclosures  
cc: Greg Grablander

**Brian J. Donahoe**  
Attorney for East Plains Telecom  
100 North Phillips Avenue, Suite 901  
Sioux Falls, SD 57104-4961

## Federal Communications Commission

DA 97-435

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	AAD 96-95
Petition for Waivers Filed by	)	
	)	
Baltic Telecom Cooperative, Inc. East Plains	)	
Telecom, Inc. and U S WEST	)	
Communications, Inc.	)	
	)	
Concerning Sections 69.3(e)(11), 69.3(i)(4),	)	
69.605(c) and the Definition of "Study Area"	)	
Contained in the Part 36 Appendix-Glossary	)	
of the Commission's Rules	)	

## MEMORANDUM OPINION AND ORDER

Adopted: February 27, 1997

Released: February 27, 1997

By the Chief, Accounting and Audits Division  
Common Carrier Bureau:

## I. INTRODUCTION

1. On September 11, 1996, Baltic Telecom Cooperative, Inc. ("Baltic"), East Plains Telecom, Inc. ("East Plains"), and U S WEST Communications, Inc. ("U S WEST") filed a petition for waiver of various Commission rules. The petitioners seek waivers of the definition of "Study Area" contained in the Part 36 Appendix-Glossary of the Commission's rules. The requested waivers would allow U S WEST to alter the boundaries of its South Dakota study area and allow East Plains to create a new study area to reflect the sale of the Alcester exchange from U S WEST to East Plains. East Plains also seeks a waiver of Section 69.605(c) of the Commission's rules to allow the Alcester exchange to be treated as an average schedule company.<sup>1</sup> In addition, Baltic and East Plains also seek waiver of Sections 69.3(e) and 69.3(i)(4) of the Commission's rules, if necessary, so that they may be issuing carriers in the National Exchange Carrier Association ("NECA") common line tariffs.<sup>2</sup>

<sup>1</sup> Average schedule companies are those ILECs that receive compensation for their interstate common carrier services on the basis of formulas that are designed to "simulate the disbursements that would be received ... by a [cost study] company that is representative of average schedule companies." 47 C.F.R. § 69.606(a).

<sup>2</sup> As shown in paras. 21 and 22, *infra*, a waiver is not required.



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2. On September 20, 1996, the Common Carrier Bureau ("Bureau") released a Public Notice soliciting comments on the petition.<sup>1</sup> In this Order, we find that the public interest would be served by allowing U S WEST to alter its study area boundary and by permitting East Plains to have average schedule status. We also find that the public interest would not be served by allowing East Plains to establish a new study area. We therefore grant the petition, in part, as explained below.

## II. STUDY AREA WAIVERS

## A. Background

3. A study area is a geographic segment of an incumbent local exchange carrier's ("ILEC") telephone operations. Generally, a study area corresponds to an ILEC's entire service territory within a state. Thus, ILECs operating in more than one state typically have one study area for each state, and ILECs operating in a single state typically have a single study area. Study area boundaries are important primarily because ILECs perform jurisdictional separations at the study area level.<sup>4</sup> For jurisdictional separations purposes, the Commission froze all study area boundaries effective November 15, 1984.<sup>5</sup> The Commission took that action primarily to ensure that ILECs do not set up high-cost exchanges within their existing service territories as separate study areas to maximize interstate cost allocations.<sup>6</sup> An ILEC must apply to the Commission for a waiver of the frozen study area rule if it wishes to sell or purchase an exchange.<sup>7</sup>

4. Waiver of Commission rules is appropriate only if special circumstances warrant deviation from the general rule and such a deviation will serve the public interest.<sup>8</sup> In evaluating

<sup>1</sup> Public Notice, 11 FCC Rcd 11639 (Common Carrier Bureau 1996). Supporting comments were filed by the United States Telephone Association.

<sup>4</sup> The phrase "jurisdictional separations," or "separations," refers to the process of dividing costs and revenues between a carrier's state and interstate operations. See generally 47 C.F.R. §§ 36.1-36.741.

<sup>5</sup> 47 C.F.R. § 36 app. (defining "study area"). See MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Recommended Decision and Order*, 49 Fed. Reg. 48325 (Dec. 12, 1984) ("1984 Joint Board Recommended Decision"); *id.*, *Decision and Order*, 50 Fed. Reg. 939 (Jan. 8, 1985) ("1985 Order Adopting Recommendation"); see also Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Notice of Proposed Rulemaking*, 5 FCC Rcd 5974 (Oct. 10, 1990) ("Study Area Notice").

<sup>6</sup> See 1984 Joint Board Recommendation Decision, *supra* note 5 ¶ 66; 1985 Order Adopting Recommendation, *supra* note 5, ¶ 1, 5.

<sup>7</sup> 47 C.F.R. §§ 1.3, 36 app.

<sup>8</sup> *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); 47 C.F.R. § 1.3.

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petitions seeking a waiver of the rule freezing study area boundaries, the Commission employs a three-prong standard: first, the change in study area boundaries does not adversely affect the Universal Service Fund ("USF") support program;<sup>9</sup> second, the state Commission(s) having regulatory authority over the exchange(s) to be transferred does not object to the change; and third, the public interest supports the change.<sup>10</sup>

5. The Commission's concern about adverse USF impacts was mitigated, in the short term at least, by its adoption of the Joint Board's recommendation for an indexed cap on the USF.<sup>11</sup> The Commission nonetheless recognized that, even in the short term, the granting of a study area waiver may adversely affect the fund's distribution, if not its size. Under the indexed USF cap rules, any study area reconfiguration that increases the USF draw of one USF recipient often reduces that of other USF recipients. Consequently, in evaluating whether a study area change would have an adverse impact on the distribution or level of the USF, the Commission applies a "one-percent" guideline to study area waiver requests filed after January 5, 1995.<sup>12</sup> Under this guideline, no study area waiver is granted if it would result in an annual aggregate shift in USF assistance in an amount equal to or greater than one percent of the total USF, unless the parties can demonstrate extraordinary public interest benefit. To prevent carriers from evading this

<sup>9</sup> See 1984 Joint Board Recommended Decision, *supra* note 5, ¶ 66. The Commission created the USF to preserve and promote universal service. See Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Decision and Order*, 96 FCC 2d 781 (1984). The USF allows carriers with high local loop plant costs to allocate a portion of those costs to the interstate jurisdiction, thus enabling the states to establish lower local exchange rates in study areas receiving such assistance. To determine which ILEC study areas are eligible for USF support, the USF rules prescribe an eligibility threshold set at 115 percent of the national average unseparated loop cost per working loop. When the average loop cost in a particular study area exceeds that threshold, the study area is eligible for support equal to a certain percentage of the average loop cost in excess of that threshold. The study area becomes eligible for higher levels of support as its average loop cost rises above additional thresholds set further above the national average unseparated loop cost. Because USF assistance is targeted primarily at small study areas, the level of support provided at each threshold generally is greater if the study area has 200,000 or fewer working loops. See 47 C.F.R. § 36.631.

<sup>10</sup> See *U.S. WEST Communications, Inc., and Eagle Telecommunications, Inc., Petition for Waiver of the Definition of "Study Area"* Contained in Part 36, Appendix-Glossary of the Commission's Rules, *Memorandum Opinion and Order*, 10 FCC Rcd 1771, ¶ 5 (1995) ("*U.S. WEST-Eagle Study Area Order*").

<sup>11</sup> The Joint Board recommended, and the Commission adopted, interim rules that limit the rate of growth of the USF to the rate of growth in the total number of working loops nationwide. See generally Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Recommended Decision*, 9 FCC Rcd 334 (1993) ("*1993 Joint Board Recommended Decision*"); *id.*, *Report and Order*, 9 FCC Rcd 301 ("*Interim Cap Order*"). The Commission extended these interim rules through July 1, 1996. Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, *Report and Order*, 11 FCC Rcd 1077 (1995), summarized in 60 Fed. Reg. 65011 (1995). Recently, the Joint Board recommended, and the Commission adopted, an extension of the interim cap rules on the USF until the final universal service rules become effective. Federal-State Joint Board on Universal Service, *Recommended Decision*, 11 FCC Rcd 7928 (1996) ("*1996 Joint Board Recommended Decision*"); *id.*, *Report and Order*, 11 FCC Rcd 7920 (1996) ("*Extension of Interim Cap Rules*").

<sup>12</sup> See *U.S. WEST-Eagle Study Area Order*, *supra* note 10, ¶¶ 14-17.

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limitation by disaggregating a single large sale of exchanges into a series of smaller transactions that in the aggregate have the same effect on the USF, the Commission further requires that the guideline be applied to all study area waivers granted to either carrier, as a purchaser or seller, pending completion of the current review of the universal service program.<sup>15</sup>

**B. Pleadings**

6. U S WEST currently serves approximately 250,000 access lines in South Dakota. Baltic currently serves approximately 1,400 access lines in South Dakota. U S WEST intends to sell the Alcester exchange, serving 792 access lines, to Baltic. Baltic has established East Plains, a wholly-owned subsidiary, to operate the Alcester exchange after the sale. U S WEST seeks waiver of the rule freezing study area boundaries to enable it to remove the Alcester exchange from its South Dakota study area.<sup>16</sup> East Plains also seeks waiver of that rule to create a new study area for this exchange.

7. Petitioners state that the proposed changes would serve the public interest. They state that East Plains intends to maintain operating staff in Alcester; as a result, East Plains' customers will receive maintenance and other customer support services on a more localized basis.<sup>17</sup> The petitioners also state that East Plains plans to install a digital switch which will support CLASS and other SS7-related services.<sup>18</sup> In addition, the petitioners state that East Plains plans to upgrade outside plant by providing fiber in the loop to eliminate multi-party services.

8. Petitioners state that there will be no USF impact arising from its transaction. Specifically, petitioners state that neither U S WEST nor Baltic currently receives USF support for their South Dakota study areas and that neither U S WEST, Baltic, nor East Plains will receive USF support after the acquisition.<sup>19</sup> Further, the petitioners state that, if Baltic and East Plains are required to combine into one study area, there will be no USF impact.

<sup>15</sup> *Id.* In this context, the Commission defines the term ILEC to include all affiliated ILECs (i.e., those that are in common control, as the term "control" is defined in Section 32.9000 of the Commission's rules, 47 C.F.R. § 32.9000). *Id.* ¶ 14 note 34.

<sup>16</sup> Petition at 2.

<sup>17</sup> *Id.* at 5.

<sup>18</sup> Custom Local Area Signaling Services, or CLASS, includes automatic callback, automatic recall, call waiting, call forwarding, and other similar services.

<sup>19</sup> See Petition, Attachment A at Appendices B and C.

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## C. Discussion

9. *Request for waivers.* We have reviewed the data the petitioners filed with NECA<sup>18</sup> and the estimates filed in this proceeding and have determined that there will be no USF impact arising from this transaction. In addition, the South Dakota Public Utilities Commission states that it does not object to these requested waivers.<sup>19</sup> The petitioners state that planned upgrades would enable East Plains to improve customer services in the Alcester exchange. We believe the petitioners have demonstrated that their customers will likely be well served by East Plains,<sup>20</sup> and therefore, the requested study area waivers are likely to serve the public interest. As a result, we find that the three-prong standard for granting a study area waiver has been met and that the study area waiver requests should be granted.

10. *Request for separate study area.* East Plains seeks permission to place the acquired exchange into a newly created study area that is separate from its affiliates' (i.e., Baltic) study area. East Plains asserts that this change would be consistent with Commission policy and precedent in freezing study area boundaries.<sup>21</sup> Specifically, East Plains states that it will not gain any advantage under the USF support rules or the small carrier assistance rules.<sup>22</sup> The petitioners also state that Baltic is a cooperative and East Plains is a for-profit corporation and due to their divergent ownership structures, they can be operated most reasonably, efficiently, and equitably as separate study areas.

11. Regarding East Plains' assertion that setting up a separate study area would be consistent with the Commission's policy and precedent in freezing study area boundaries, we disagree. It is the *consolidation* of study areas located within the same state for affiliated companies, not the *disaggregation* of such areas, that is the type of study area configuration that the Commission encourages as serving the public interest.<sup>23</sup> While the USF impact is of genuine

<sup>18</sup> See NECA USF 1995 Submission of 1995 Study Results filed October 1, 1996.

<sup>19</sup> South Dakota Public Utilities Commission, *Order*, TC96-010, dated June 20, 1996.

<sup>20</sup> See *supra* at ¶ 7.

<sup>21</sup> Petition, Attachment A at 6.

<sup>22</sup> See 47 C.F.R. § 36.125(f). These rules are commonly referred to as the DEM rules (dial equipment minute-of-use rules).

<sup>23</sup> See generally *U.S. WEST Comm., Inc., and Range Tel. Corp., Inc., Joint Petition for Waiver of the Definition of Study Area, Order on Reconsideration*, 10 FCC Rcd 11264, ¶¶ 15-21 (Com. Car. Bur., 1995) ("U.S. WEST-Range Recon Order"); *ALLTEL Serv. Corp., Petition for Waiver of the Definition of Study Area, Memorandum Opinion and Order*, 9 FCC Rcd 4450, 4451, ¶¶ 6-7 (Com. Car. Bur., 1994); *ALLTEL Serv. Corp., Petition for Waiver of the Definition of Study Area, Memorandum Opinion and Order*, 8 FCC Rcd 6411, ¶ 6 (Acct. & Audits Div. (Com. Car. Bur. 1993); *Study Area Notice*, *supra* note 5, ¶¶ 6, 17, 1984 *Joint Board Recommended Decision*, *supra* note 5, ¶ 66; 1985 *Order Adopting Recommendation*, *supra* note 5, ¶ 1.

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concern, it is not the only concern. It would not be consistent with Commission goals to create a new study area for East Plains' Alcester, South Dakota exchange since its affiliate, Baltic, has been operating in South Dakota for many years.<sup>24</sup>

12. As explained above, the primary intent of the study area freeze rule is to prohibit ILECs from setting up exchanges within their service territories as separate study areas to maximize USF support. ILECs would have no incentive to do this if USF assistance were distributed on an exchange basis. Yet, because it is distributed on a study area basis, an ILEC's USF payment will often be greater in the future if the ILEC can isolate exchanges in one or more separate study areas. Such action permits the ILEC to report average loop cost in the high-cost study areas further above the USF eligibility threshold than would be possible if the exchanges remained consolidated with lower-cost exchanges.

13. East Plains asserts that, if it is granted average schedule status, grant of a separate study area would not provide it an advantage under either the USF or the small carrier assistance programs.<sup>25</sup> Under our rules, an average schedule carrier can convert to cost settlement status without requesting a waiver. As a result, even if East Plains and Baltic would not be able to maximize their interstate cost allocations as separate average schedule companies, they could do so as separate cost companies, should they choose such treatment.

14. East Plains states that due to its divergent ownership structures, infrastructure and investment needs, and accounting systems, the existing Baltic exchanges and new East Plains exchange can be operated most reasonably, efficiently and equitably as separate study areas.<sup>26</sup> We do not oppose the plans that Baltic has to create a new, wholly-owned subsidiary for the acquired exchange. Nor do we oppose Baltic's plans to treat the acquisition as a company that is separate and apart from its current South Dakota operation. We do not agree, however, that these plans would necessitate separate study areas for the acquired exchange.

15. East Plains further claims that we are required to permit it to create a new study area because of Commission precedent. East Plains cites three of our decisions to allow ILECs to establish second study areas because their USF draws would increase by only a small amount, as support for East Plains creating a separate study area where there would be no USF assistance.<sup>27</sup> We granted those waivers shortly before we became aware of the magnitude of the

<sup>24</sup> East Plains acknowledges that it has an affiliate with an existing study area in South Dakota. See Petition, Attachment A at 6.

<sup>25</sup> See Petition, Attachment A at Appendices C1-C4.

<sup>26</sup> Petition, Attachment A at 7.

<sup>27</sup> See Nevada Bell and Oregon-Idaho Utilities, Inc., 9 FCC Rcd 5236 (1994); U.S. WEST Communications, Inc. and Central Utah Tel., 9 FCC Rcd 194 (1993); and U.S. WEST Communications, Inc. and Triangle Telephone Cooperative Association, Inc., 9 FCC Rcd 202 (1993).

## Federal Communications Commission

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potential cumulative effect of other similar waivers. Numerous ILECs had announced their intent to file study area waiver requests affecting hundreds of exchanges. This heightened activity increased our concern that such transactions, in the aggregate, may have a substantial impact on the USF program. It also increased our concern that permitting ILECs to create new study areas in states where they have existing operations raises regulatory costs. Moreover, we have had a growing concern that USF payments have been increasing at an unexpected rate for some ILECs after they were granted study area waivers.<sup>28</sup>

16. In conclusion, we find that in this case, where ILECs are operating in the same state, the rule is intended to prevent companies from creating additional study areas when transferring exchanges among themselves. We therefore deny East Plains' request for the creation of a new study area.

### III. COST SETTLEMENT WAIVERS

#### A. Background

17. Section 69.605(c) of the Commission's rules states, in pertinent part, that "a telephone company that was participating in average settlements on December 1, 1982, shall be deemed to be an average schedule company."<sup>29</sup> Average schedule status has certain advantages for small ILECs and for interstate ratepayers. Average schedule companies are able to avoid certain administrative burdens and interstate ratepayers are not required to pay the expenses that cost settlement ILECs incur in the performance of interstate cost studies. The Commission has concluded, however, that an unrestricted opportunity for cost companies to convert to average schedule status is likely to operate to the detriment of interstate ratepayers because the conversion may result in inflated interstate revenue requirements.<sup>30</sup>

<sup>28</sup> For examples of unexpected growth in USF payments, see, e.g., Delta Tel. Co., Inc., Waiver of the Definition of "Study-Area," *Memorandum Opinion and Order*, 5 FCC Rcd 7100 (1990) (USF payments grew from \$82,500 in 1991 to approximately \$445,700 in 1993); U.S. WEST Comm. and Gila River Telecomm., Inc., Petition for Waiver of the Definition of "Study Area," *Memorandum Opinion and Order*, 7 FCC Rcd 2161, ¶ 7 (1992) (Gila River estimated 1992 high-cost support to be \$169,155, yet actual 1992 payment was \$390,993, and the 1995 payment was approximately \$750,000).

<sup>29</sup> 47 C.F.R. § 69.605(c).

<sup>30</sup> NECA's Proposed Waiver of Section 69.605(c) of the Commission's Rules, *Memorandum Opinion and Order*, 2 FCC Rcd 3960 (Common Carrier Bureau 1987).

## Federal Communications Commission

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**B. Pleadings**

18. As a newly created company, East Plains seeks a waiver of this rule in order to permit it to have average schedule status for interstate settlement purposes. East Plains states that this structure is necessary to enable it to avoid performing cost studies that would be unnecessarily costly in view of its small size.<sup>11</sup>

**C. Discussion**

19. We are persuaded that a deviation from the general rule is warranted for East Plains because we have decided herein<sup>12</sup> that it would share a study area with its parent, Baltic, an average schedule company. Because jurisdictional separations and USF calculations are performed at the study area level, all affiliates in a single study area must be under the same settlement method for performing interstate settlements. Hence, an application of Section 69.605(c) in this instance would have the unintended effect of requiring the parent company, which now operates over 1,400 access lines and has average schedule status, to convert to cost-based settlement in order to be able to acquire the subject exchange, which operates fewer than 800 access lines. That effect would be unnecessarily burdensome on East Plains and its parent. We therefore find that this requested waiver should be granted.

20. The waiver for East Plains is subject to three conditions. First, East Plains and its parent Baltic, shall report to NECA on a combined basis for interstate average schedule and USF purposes and receive distributions on that basis. This condition implies that, for interstate regulatory purposes, the two companies effectively are one company. Second, if one of the two affiliates in this study area converts from average schedule status to cost-based settlements, or elects Section 61.39 treatment,<sup>13</sup> the other affiliate in this study area must convert to that settlement status. Third, the average schedule status of East Plains shall remain in effect only while it is under common control with its parent, Baltic. This condition implies that East Plains' average schedule status shall terminate when it is sold, transferred, or otherwise assigned. These conditions will ensure that the waiver will not result in unintended effects on the petitioners' interstate revenue requirements or result in an administrative burden on the Commission or NECA.

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<sup>11</sup> Petition at 7.

<sup>12</sup> See *supra* at ¶ 16.

<sup>13</sup> 47 C.F.R. § 61.39.

## Federal Communications Commission

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## IV. OTHER ISSUES

21. Baltic and East Plains seek waivers of Section 69.3(i)(4) to the extent necessary.<sup>34</sup> That rule states that, if an ILEC elects to withdraw from participation in NECA tariffs and then becomes subject to price cap regulation, neither the ILEC nor any of its withdrawing affiliates shall be permitted to participate in any NECA tariffs.<sup>35</sup> Neither Baltic nor East Plains is subject to price cap regulation. Thus, neither East Plains nor Baltic needs a waiver of Section 69.3(i)(4) to participate in NECA tariffs.

22. To the extent necessary, Baltic and East Plains seek waiver of Section 69.3(e)(11) of the Commission's rules.<sup>36</sup> That rule requires that any changes in NECA common line tariff participation and long term support resulting from a merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following the merger or acquisition. Baltic and East Plains are concerned that under a strict interpretation of this rule they, rather than NECA, would be required to file a tariff on the next annual access tariff filing date. Assuming East Plains' acquisition occurs this year, East Plains and Baltic represent that they plan to utilize NECA as their interstate tariff administrator; consequently, East Plains' and Baltic's carrier common line costs will be included in NECA's 1997 filing. We conclude that neither East Plains nor Baltic is required to make a separate annual access filing for their carrier common line costs, and therefore, a waiver of Section 69.3(e)(11) is not required.

## V. ORDERING CLAUSES

23. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 5(c), 201 and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201 and 202, and Sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the Petition of Baltic Telecom Cooperative, Inc., East Plains Telecom, Inc. and U S WEST Communications, Inc. for Waiver of Part 36, Appendix-Glossary, of the Commission's rules, 47 C.F.R. Part 36 Appendix-Glossary IS GRANTED IN PART.

24. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 5(c), 201 and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201 and 202, and Sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291 and 1.3, that the Petition of East Plains Telecom, Inc. for Waiver of Part 36, Appendix-Glossary, of the Commission's rules, 47 C.F.R. Part 36 Appendix-Glossary IS DENIED as to the establishment of a separate study area containing the acquired exchange.

<sup>34</sup> Petition at 2.

<sup>35</sup> 47 C.F.R. § 69.3(i)(4).

<sup>36</sup> 47 C.F.R. § 69.3(e)(11).



## Federal Communications Commission

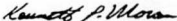
DA 97-435

25. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 5(c), 201 and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201 and 202, and Sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the Petition of East Plains Telecom, Inc. for Waiver of Section 69.605(c) of the Commission's rules, 47 C.F.R. § 69.605(c), IS GRANTED subject to the conditions stated in paragraph 20 of this Order.

26. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 5(c), 201 and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201 and 202, and Sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that if and when East Plains Telecom, Inc. or any of its affiliates in South Dakota convert from average schedule status to cost-based settlements or are sold, assigned or otherwise conveyed, the affected companies and the National Exchange Carrier Association shall promptly notify this Division of the change.

27. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 5(c), 201 and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201 and 202, and Sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that this Order IS EFFECTIVE IMMEDIATELY UPON RELEASE.

## FEDERAL COMMUNICATIONS COMMISSION



Kenneth P. Moran  
Chief, Accounting and Audits Division  
Common Carrier Bureau

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

IN THE MATTER OF THE APPLICATION OF )  
EAST PLAINS TELECOM, INC. FOR A )  
CERTIFICATE OF AUTHORITY TO PROVIDE )  
TELECOMMUNICATIONS SERVICES IN )  
SOUTH DAKOTA )

**ORDER GRANTING  
CERTIFICATE OF  
AUTHORITY**

**TC97-026**

On March 13, 1997, the Public Utilities Commission (Commission), in accordance with SDCL 49-31-3 and ARSD 20 10 24 02, received an application for a certificate of authority from East Plains Telecom, Inc. (East Plains Telecom, Inc.).

East Plains Telecom, Inc. proposes to offer local exchange service and toll access to exchanges specified in the application for a certificate of authority. U S WEST Communications, Inc., sold East Plains Telecom, Inc. the local exchanges specified in the application, and the sale and conditions of the purchase as approved by the Commission are contained in Dockets TC96-010 and TC96-125.

On March 13, 1997, the Commission electronically transmitted notice of the filing and the intervention deadline of March 28, 1997, to interested individuals and entities. No petitions to intervene or comments were filed and at its regularly scheduled April 15, 1997, meeting, the Commission considered East Plains Telecom, Inc.'s request for a certificate of authority. Commission Staff recommended granting a certificate of authority.

The Commission finds that it has jurisdiction over this matter pursuant to Chapter 49-31, specifically 49-31-3 and ARSD 20 10 24 02 and 20 10 24 03. The Commission finds that East Plains Telecom, Inc. has met the legal requirements established for the granting of a certificate of authority. East Plains Telecom, Inc. has, in accordance with SDCL 49-31-3, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. The Commission approves East Plains Telecom, Inc.'s application for a certificate of authority to operate in the geographic service area specified in its application for a certificate of authority (Commissioner Schoenfelder dissenting). As the Commission's final decision in this matter, it is therefore

**ORDERED**, that East Plains Telecom, Inc.'s application for a certificate of authority is hereby granted effective May 13, 1997, upon furnishing proof of the closing of the sale, for the service area specified in its application for a certificate of authority. It is

**FURTHER ORDERED**, that East Plains Telecom, Inc. shall file informational copies of tariff changes with the Commission as the changes occur.

Dated at Pierre, South Dakota, this 28<sup>th</sup> day of April, 1997.

**CERTIFICATE OF SERVICE**

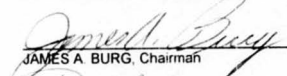
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

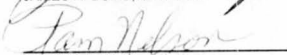
By

Date

(OFFICIAL SEAL)

**BY ORDER OF THE COMMISSION:**

  
JAMES A. BURG, Chairman

  
PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner  
dissenting



# South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



April 28, 1997

Capitol Office  
Telephone (605)773-3201  
FAX (605)773-3809

Transportation/  
Warehouse Division  
Telephone (605)773-5280  
FAX (605)773-3225

Consumer Hotline  
1-800-332-1782

TTY Through  
Relay South Dakota  
1-800-877-1113

Internet  
bill@pac.state.sd.us

Jim Burg  
Chairman  
Pam Nelson  
Vice-Chairman  
Laska Schoenfelder  
Commissioner

William Bullard Jr.  
Executive Director

Edward R. Anderson  
Harlan Best  
Martin C. Bettmann  
Charlie Bolle  
Sue Cichos  
Karen E. Cremer  
Marilyn Frischbach  
Shirleen Fugitt  
Lewis Hammond  
Loni Healy  
Cameron Horack  
Dave Jacobson  
Bob Koadie  
DeLaine Koelbo  
Terry J. Leuenroeder  
Jeffrey P. Lorenson  
Terry Norum  
Gregory A. Rislos  
Tammi Stangor  
Steven M. Wegman  
Rosalynne Aills West

Mr. Brian J. Donahoe  
Attorney at Law  
Cutler, Donahoe & Mickelson, LLP  
100 North Phillips Avenue, Suite 901  
Sioux Falls, SD 57104-6725

Re: East Plains Telecom, Inc.  
Docket No. TC97-026

Dear Mr. Donahoe:

Enclosed you will find a copy of the Order Granting Certificate of Authority with reference to East Plains Telecom, Inc. As soon as you furnish us proof of the closing of the sales from U.S. WEST Communications to East Plains Telecom, Inc., we will send you their Certificate of Authority.

Very truly yours,

Karen E. Cremer  
Staff Attorney

KEC:dk  
Enc.



# South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



May 27, 1997

Capitol Office  
Telephone (605)773-3201  
FAX (605)773-3809

Transportation/  
Warehouse Division  
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FAX (605)773-3225

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•  
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Commissioner

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Bob Knadle

DeLaine Kolbe  
Terry J. Lemerster

Jeffrey P. Lorenson  
Terry Norum

Gregory A. Rislov  
Tamara Stangor

Sтивен M. Wegman  
Rosalynne Adits West

Mr. Brian J. Donahoe  
Attorney at Law  
Cutler, Donahoe & Mickelson, LLP  
100 North Phillips Avenue, Suite 901  
Sioux Falls, SD 57104-6725

Re East Plains Telecom, Inc.  
Docket No. TC97-026

Dear Mr. Donahoe

On April 28, 1997, we sent you a copy of East Plains Telecom's Order Granting Certificate of Authority asking that you furnish us proof of the closing of the sales from U.S. WEST to East Plains Telecom at which time we would send you their Certificate of Authority. To date, we have not received that proof of closing. We would appreciate it if you would furnish that to us so we can send you the Certificate of Authority.

Thank you

Very truly yours,

Karen E. Cremer  
Staff Attorney

KEC:dk

RICHARD A. CUTLER  
KENT R. CUTLER  
BRIAN J. DONAHOE  
CYNTHIA H. MICKELSON  
MARK E. SALTER

CUTLER, DONAHOE & MICKELSON, LLP  
ATTORNEYS AT LAW

Telephone (605) 335-4950  
Fax (605) 335-4961

JEAN BROCKMUELLER, CPA  
BUSINESS MANAGER

\*Also licensed to practice  
in Minnesota and Iowa  
\*Also licensed to practice  
in Minnesota

June 9, 1997

RECEIVED

JUN 12 1997

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Karen Cremer  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501

RE: Certificate of Authority - East Plains Telecom, Inc.

Dear Karen:

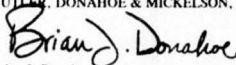
You wrote to me requesting confirmation of the closing of the sale of the Alcester and Hudson exchanges from US West to East Plains Telecom, Inc. I am enclosing copies of the following documents as proof of the closing:

1. Bill of Sale, Deed and Assignment;
2. Quit Claim Deed - Alcester;
3. Quit Claim Deed - Hudson.

I hope that this is sufficient to satisfy the Commission's need for confirmation of these exchange sales. Please contact me immediately if there is anything further that I can provide to assist you in this matter. I assume that if you need nothing further the Certificate of Authority will be issued as soon as possible. If this is not correct, please contact me immediately as well.

Sincerely,

CUTLER, DONAHOE & MICKELSON, LLP

  
Brian J. Donahoe  
For the Firm

BJD:rk  
Enclosures

COPY

BILL OF SALE, DEED, AND ASSIGNMENT

This Bill of Sale, Deed, and Assignment (hereinafter referred to as the "Bill of Sale") is made effective as of the 1st day of June, 1997, by U S WEST Communications, Inc., successor in interest to Northwestern Bell Telephone Company ("Seller"), to **BALTIC TELECOM COOPERATIVE, INC., as assigned to EAST PLAINS TELECOM, INC., a South Dakota corporation ("Buyer").**

JUN 12 1997

WITNESSETH:

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

WHEREAS, pursuant to the terms of an Agreement for Purchase and Sale of Exchanges dated as of November 15, 1995, by and among Seller and Buyer, as amended (the "Purchase Agreement"), the Seller has agreed to sell, transfer, and convey to Buyer, and Buyer has agreed to purchase from Seller, certain of the assets, properties, and business of Seller used to provide wireline telecommunication services in the State of South Dakota, as more particularly described in the Purchase Agreement, which assets include, but are not limited to, the assets described on the attached Continuous Property Records (the "Assets").

NOW, THEREFORE, in consideration of Ten Dollars and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, SET OVER, AND DELIVER unto Buyer, and unto its successors and assigns, all its right, title, and interest in and to the Assets, excluding the Excluded Assets, as defined in the Purchase Agreement.

TO HAVE AND TO HOLD all and singular the Assets and rights hereby GRANTED, BARGAINED, SOLD, CONVEYED, ASSIGNED, TRANSFERRED, SET OVER, AND DELIVERED, or intended to be, unto Buyer and its successors and assigns forever.

Seller, for itself and its successors and assigns, hereby covenants and agrees to and with Buyer, its successors and assigns, to execute, acknowledge, and deliver all and every such further conveyance and other instruments and to do or cause to be done such further acts as Buyer, and its successors or assigns, shall reasonably request in order to carry out fully the intent of this Bill of Sale and the consummation of the transactions contemplated by the Purchase Agreement.

This Bill of Sale and the covenants herein shall inure to the benefit of Buyer and its successors and assigns, and shall bind Seller and its successors and assigns.

Seller hereby constitutes and appoints Buyer the Seller's true and lawful attorney in fact, with full power of substitution, for it and in its name and stead, but on behalf and for the benefit of Buyer, to demand, receive, and collect from time to time any and all monies, credits, claims, or rights due or to become due relating to the Assets and rights GRANTED, BARGAINED, SOLD, CONVEYED, ASSIGNED, TRANSFERRED, SET OVER, AND DELIVERED, or intended so to be, by this Bill of Sale or by any other instruments of

conveyance or assignment from Seller to Buyer, and to give receipts and releases for and in respect of the same or any part thereof.

To the extent that any of the contracts, rights, leases, or other commitments for which assignment to Buyer is provided herein are not assignable without the consent or approval of another party, the execution of this Bill of Sale shall not constitute an assignment or an attempted assignment if such assignment or attempted assignment would constitute a breach thereof.

This Bill of Sale shall be construed, interpreted, and enforced in accordance with the laws of the State of South Dakota.

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale to be duly executed by its authorized representative as of the day and year first above written.

U S WEST COMMUNICATIONS, INC.

[CORPORATE SEAL]

By: *L. W. Toll*  
L. W. Toll  
Vice President - South Dakota

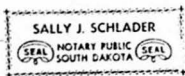
#### ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA     )  
  ) ss.  
COUNTY OF MINNEHAHA     )

On this the 24<sup>th</sup> day of May, 1997, before me, *Sally J. Schlader*, the undersigned officer, personally appeared L. W. Toll, who acknowledged himself to be the Vice President - South Dakota of U S WEST Communications, Inc., a corporation, and that he, as such Vice President being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President.

In witness whereof I hereunto set my hand and official seal.

[SEAL]



*Sally J. Schlader*  
Notary Public

My Commission Expires July 2, 1998

## **BILL OF SALE, DEED, AND ASSIGNMENT**

This Bill of Sale, Deed, and Assignment (hereinafter referred to as the "Bill of Sale") is made effective as of the 1st day of June, 1997, by U S WEST Communications, Inc., successor in interest to Northwestern Bell Telephone Company ("Seller"), to **EAST PLAINS TELECOM, INC., a South Dakota corporation ("Buyer")**.

### **WITNESSETH**

WHEREAS, pursuant to the terms of an Agreement for Purchase and Sale of Exchanges dated as of June 26, 1996, by and among Seller and Buyer, as amended (the "Purchase Agreement"), the Seller has agreed to sell, transfer, and convey to Buyer, and Buyer has agreed to purchase from Seller, certain of the assets, properties, and business of Seller used to provide wireline telecommunication services in the State of South Dakota, as more particularly described in the Purchase Agreement, which assets include, but are not limited to, the assets described on the attached Continuous Property Records (the "Assets")

NOW, THEREFORE, in consideration of Ten Dollars and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller does hereby GRANT, BARGAIN, SELL, CONVEY, ASSIGN, TRANSFER, SET OVER, AND DELIVER unto Buyer, and unto its successors and assigns, all its right, title, and interest in and to the Assets, excluding the Excluded Assets, as defined in the Purchase Agreement.

TO HAVE AND TO HOLD all and singular the Assets and rights hereby GRANTED, BARGAINED, SOLD, CONVEYED, ASSIGNED, TRANSFERRED, SET OVER, AND DELIVERED, or intended to be, unto Buyer and its successors and assigns forever.

Seller, for itself and its successors and assigns, hereby covenants and agrees to and with Buyer, its successors and assigns, to execute, acknowledge, and deliver all and every such further conveyance and other instruments and to do or cause to be done such further acts as Buyer, and its successors or assigns, shall reasonably request in order to carry out fully the intent of this Bill of Sale and the consummation of the transactions contemplated by the Purchase Agreement.

This Bill of Sale and the covenants herein shall inure to the benefit of Buyer and its successors and assigns, and shall bind Seller and its successors and assigns.

Seller hereby constitutes and appoints Buyer the Seller's true and lawful attorney in fact, with full power of substitution, for it and in its name and stead, but on behalf and for the benefit of Buyer, to demand, receive, and collect from time to time any and all monies, credits, claims, or rights due or to become due relating to the Assets and rights GRANTED, BARGAINED, SOLD, CONVEYED, ASSIGNED, TRANSFERRED, SET OVER, AND DELIVERED, or intended so to be, by this Bill of Sale or by any other instruments of conveyance or assignment from Seller to Buyer, and to give receipts and releases for and in respect of the same or any part thereof.



To the extent that any of the contracts, rights, leases, or other commitments for which assignment to Buyer is provided herein are not assignable without the consent or approval of another party, the execution of this Bill of Sale shall not constitute an assignment or an attempted assignment if such assignment or attempted assignment would constitute a breach thereof.

This Bill of Sale shall be construed, interpreted, and enforced in accordance with the laws of the State of South Dakota.

IN WITNESS WHEREOF, the Seller has caused this Bill of Sale to be duly executed by its authorized representative as of the day and year first above written.

U S WEST COMMUNICATIONS, INC.

[CORPORATE SEAL]

By

*L. W. Toll*  
L. W. Toll  
Vice President - South Dakota

ACKNOWLEDGMENT

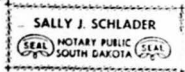
STATE OF SOUTH DAKOTA )  
COUNTY OF MINNEHAHA ) ss.  
)

On this the 24<sup>th</sup> day of May, 1997, before me, Sally J. Schlader, the undersigned officer, personally appeared L. W. Toll, who acknowledged himself to be the Vice President - South Dakota of U S WEST Communications, Inc., a corporation, and that he, as such Vice President being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President.

In witness whereof I hereunto set my hand and official seal.

*Sally J. Schlader*  
Notary Public

[SEAL]



My Commission Expires July 2, 1998

8142  
3  
4  
2

After recording send to:  
East Plains Telecom, Inc.  
Gregory R. Grablander, General Manager  
501 Second Street  
Baltic, SD 57003

Recording Information

COPY  
RECEIVED  
JUN 12 1997

T63009

QUIT CLAIM DEED

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

U S WEST Communications, Inc., a Colorado corporation, duly authorized to do business in the State of South Dakota, and whose address is 1600 Bell Plaza, Seattle, WA 98191, for itself and as successor in interest to Northwestern Bell Telephone Company, an Iowa corporation, which merged into The Mountain States Telephone and Telegraph Company whose name was changed to U S WEST COMMUNICATIONS, INC., Grantor, hereby conveys and QUIT CLAIMS to EAST PLAINS TELECOM, INC., a South Dakota corporation, with its principal mailing address being 501 Second Street, Baltic, SD 57003, Grantee, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, all interest in the following described tract of land in the County of Union, state of South Dakota to wit:

**Lots Thirteen, Fourteen, and Fifteen of Block Eighteen, City of Alcester, Union County, South Dakota, subject to restrictions of record and according to the recorded plat thereof.**

together with all hereditaments and appurtenances belonging thereto.

IN WITNESS WHEREOF, Grantor has caused its corporate name to be hereunto affixed by its duly authorized signatory this 29 day of May, 1997.

U S WEST COMMUNICATIONS, INC.

[CORPORATE SEAL]

BY L. W. Toll  
ITS Vice President / South Dakota

This document was prepared by: Henry B. Pickens, Esq.  
U S WEST, Inc.  
7800 E. Orchard Rd., Suite 490  
Englewood, CO 80111  
(303) 793-6505

ACKNOWLEDGMENT

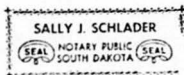
STATE OF SOUTH DAKOTA     )  
  ) ss.  
COUNTY OF MINNEHAHA     )

On this the 20<sup>th</sup> day of May, 1997, before me, Sally J. Schlader  
the undersigned officer, personally appeared L. W. Toll, who acknowledged himself to be the Vice  
President - South Dakota of U S WEST Communications, Inc., a corporation, and that he as such  
Vice President being authorized so to do, executed the foregoing instrument for the purposes  
therein contained, by signing the name of the corporation by himself as Vice President.

In witness whereof I hereunto set my hand and official seal.

Sally J. Schlader  
Notary Public

[SEAL]



My Commission Expires July 2, 1998

This document was prepared by: Henry B. Pickens, Esq.  
U S WEST, Inc.  
7800 E. Orchard Rd., Suite 490  
Englewood, CO 80111  
(303) 793-6505

CERTIFICATE OF REAL ESTATE VALUE [SDCL 7-9-7(a)]

STATE OF SOUTH DAKOTA, COUNTY OF Union

Seller(s) US WEST COMMUNICATIONS, INC.

Current Mailing Address: \_\_\_\_\_ (Street/Box No.) \_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip Code)

Buyer(s) EAST PLAINS TELECOM. INC.

Current Mailing Address: \_\_\_\_\_ (Street/Box No.) \_\_\_\_\_ (City) \_\_\_\_\_ (State) \_\_\_\_\_ (Zip Code)

Legal Description (Please include the number of acres for unplatted properties)

Lots Thirteen, Fourteen, and Fifteen of Block Eighteen, City of Alcester, Union County, South Dakota.

Date of Instrument

Type of Instrument

Contract for Deed	_____	Mineral Deed	_____
Warranty Deed	_____	Executor's Deed	_____
Quit Claim Deed	<u>X</u>	Gift	_____
Trustee's Deed	_____	Other (specify)	_____
Administrator's Deed	_____		_____

Relationship between buyer and seller? Yes \_\_\_\_\_ No X

Was this property offered on the open market? Yes X No \_\_\_\_\_

Was this property sold by owner? X agent? \_\_\_\_\_

Actual Consideration Exchanged \$2,000,000.00

In the blanks below, list any major items of personal property and their value which were included in the total purchase price (i.e. furniture, inventory, crops, leases, franchises) Equipment, software, licenses, rights-of-way, going concern value

Adjusted price paid for real estate \$106,205.37

Type of Buyer Financing

Conventional Bank Loan	<u>X</u>	Like Kind Exchange	_____
FHA, FmHA, SDHA Loan	_____	Farm Credit Service	_____
Cash Sale	_____		_____

Is this an assumed mortgage? \_\_\_\_\_

If none of the above - terms of payment - Contract for Deed

Down Payment \_\_\_\_\_

Monthly/Yearly Payment \_\_\_\_\_

Interest Rate \_\_\_\_\_ Number of Payments \_\_\_\_\_

Ballroom Payment \_\_\_\_\_

(Signature of Seller, Buyer or agent of \_\_\_\_\_)

PF 56 - (Rev. 5/95) SEE INSTRUCTIONS & LAMINATE GUIDE PAGES 50

Form Required Pursuant to SDCL 7-9-7 (a) & Administrative Rule 64.04.01.06.1

(Date)

RECEIVED

JUN 12 1997

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

After recording send to:  
East Plains Telecom, Inc.  
Gregory R. Grablander  
501 Second Street  
Baltic, SD 57003

Recording Information:

COPY

T63264

## QUIT CLAIM DEED

U S WEST Communications, Inc., a Colorado corporation, duly authorized to do business in the State of South Dakota, and whose address is 150 S. 5th Street, Minneapolis, MN 55402, for itself and as successor in interest to Northwestern Bell Telephone Company, an Iowa corporation, which merged into The Mountain States Telephone and Telegraph Company whose name was changed to U S WEST COMMUNICATIONS, INC., Grantor, hereby conveys and QUIT CLAIMS to EAST PLAINS TELECOM, INC., a South Dakota corporation, with its principal mailing address being 501 Second Street, Baltic, SD 57003, Grantee, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, all interest in the following described tract of land in the County of Lincoln, state of South Dakota to wit:

**Lot 1 and the North 28 feet of Lot 2, Block 30, Wheelock Addition to Hudson,  
Lincoln County, South Dakota, according to the recorded plat thereof.**

together with all hereditaments and appurtenances belonging thereto.

IN WITNESS WHEREOF, Grantor has caused its corporate name to be hereunto affixed by its duly authorized signatory this 29<sup>th</sup> day of May, 1997.

U S WEST COMMUNICATIONS, INC.

[CORPORATE SEAL]

BY: L. W. Toll

ITS: Vice President / South Dakota

This document was prepared by: Henry B. Pickens, Esq.  
U S WEST, Inc.  
7800 E. Orchard Rd., Suite 490  
Englewood, CO 80111  
(303) 793-6505

ACKNOWLEDGMENT

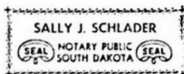
STATE OF SOUTH DAKOTA     )  
  ) ss.  
COUNTY OF MINNEHAHA     )

On this the 20<sup>th</sup> day of May, 1997, before me Sally Schlader  
the undersigned officer, personally appeared L. W. Toll, who acknowledged himself to be the Vice  
President - South Dakota of U S WEST Communications, Inc., a corporation, and that he as such  
Vice President being authorized so to do, executed the foregoing instrument for the purposes  
therein contained, by signing the name of the corporation by himself as Vice President.

In witness whereof I hereunto set my hand and official seal.

Sally J. Schlader  
Notary Public

[SEAL]



My Commission Expires July 2, 1998

This document was prepared by: Henry B. Pickens, Esq.  
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Englewood, CO 80111  
(303) 793-6505

CERTIFICATE OF REAL ESTATE VALUE (SDCL 7-9-7[4])

STATE OF SOUTH DAKOTA, COUNTY OF Lincoln

Seller(s) US WEST COMMUNICATIONS, INC.

Current Mailing Address \_\_\_\_\_  
(Street/Box No.) (City) (State) (Zip Code)

Buyer(s) EAST PLAINS TELECOM, INC.

Current Mailing Address \_\_\_\_\_  
(Street/Box No.) (City) (State) (Zip Code)

Legal Description (Please include the number of acres for unplatted properties):  
Lot land North 28 feet of Lot 2, Block 30,  
Wheelock Addition to Hudson, Lincoln County,  
South Dakota.

Relationship between buyer and seller? Yes \_\_\_\_\_ No X

Was this property offered on the open market? Yes X No \_\_\_\_\_

Was this property sold by owner? X agent? \_\_\_\_\_

Actual Consideration Exchanged: \$911,525.39

In the blanks below, list any major items of personal property and their value which  
were included in the total purchase price (i.e. furniture, inventory, crops, leases, fran-  
chises): Equipment, software, licenses, Rights-  
of-way, going concern value.

Adjusted price paid for real estate: \$141,376.14

Signature of Seller, Buyer or agent of \_\_\_\_\_

Date of Instrument \_\_\_\_\_

Type of Instrument

Contract for Deed	_____	Mortgage Deed	_____
Warranty Deed	_____	Executor's Deed	_____
Quit Claim Deed	<u>X</u>	Gift	_____
Trustee's Deed	_____	Other (specify)	_____
Administrator's Deed	_____		_____

Type of Buyer Financing

Conventional Bank Loan	<u>X</u>	Like Kind Exchange	_____
FHA, FmHA, SDHA Loan	_____	Farm Credit Service	_____
Cash Sale	_____		_____

Is this an assumed mortgage? \_\_\_\_\_

If none of the above: terms of payment - Contract for Deed

Down Payment \_\_\_\_\_

Monthly/Yearly Payment \_\_\_\_\_

Interest Rate \_\_\_\_\_

Number of Payments \_\_\_\_\_

Balloon Payment \_\_\_\_\_

**NEXT**

**DOCUMENT (S)**

**DISREGARD**

**BACKGROUND**



# **SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

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## ***CERTIFICATE OF AUTHORITY***

To Conduct Business As A Telecommunications Company  
Within The State Of South Dakota

Authority was Granted April 15, 1997, effective May 13, 1997  
Docket No. TC97-026

*This is to certify that*

**EAST PLAINS TELECOM, INC.**

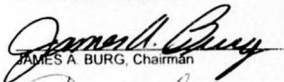
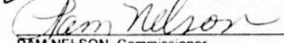
*is authorized to provide telecommunications services in South Dakota.*

This certificate is issued in accordance with SDCL 49-31-3 and ARSD 20:10 24 02, and is subject to all of the conditions and limitations contained in the rules and statutes governing its conduct of offering telecommunications services.

Dated at Pierre, South Dakota, this 12<sup>th</sup> day of June, 1997.

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION:**



  
JAMES A. BURG, Chairman  
  
PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner  
dissenting