

TC 98-097

TC 98-097

DOCKET NO.

In the Matter of _____ IN THE MATTER OF THE FILING BY
_____ SOUTH DAKOTA INDEPENDENT
_____ TELEPHONE COALITION FOR
_____ APPROVAL OF RECIPROCAL
_____ TRANSPORT AND TERMINATION
_____ AGREEMENT BETWEEN COMMNET
_____ CELLULAR, INC. AND BROOKINGS
_____ MUNICIPAL TELEPHONE COMPANY

Public Utilities Commission of the State of South Dakota

DATE _____

MEMORANDA

5/11 98 Fed and Packaged;
5/14 98 TC Fed Filing;
6/19 98 Offer Approving Agreement;
6/19 98 Packet Closed.

SDITC

TC98-097

South Dakota Independent
Telephone Coalition, Inc.

Richard D. Coit
Executive Director

May 7, 1998

Bette Dozier
Administrative Assistant

Bill Bullard
Public Utilities Commission
500 East Capitol
Pierre, SD 57501

RECEIVED

MAY 11 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: Reciprocal Transport and Termination Agreements

Dear Bill:

Enclosed for Commission review pursuant to 47 U.S.C. § 252(e) are true and correct copies of "Reciprocal Transport and Termination Agreements" negotiated and entered into between CommNet Cellular, Inc. and the independent local exchange carriers ("LECs") listed below:

Brookings Municipal Telephone Company
Kadoka Telephone Company

SDITC, on behalf of the above listed companies, and CommNet are requesting Commission approval of each of the negotiated agreements. The agreements are identical in their terms and conditions and the rates agreed upon are reflected in "Exhibit A" attached to each agreement. It should also be noted that the agreements are identical with respect to the included terms, conditions and rates to those that the Commission recently approved in Dockets TC98-017 through TC98-052.

The agreements have already been signed and are considered in affect by the parties. There was an urgency to get the agreements in effect as soon as possible, because, since US WEST in 1996 cancelled its LATA-wide cellular termination arrangements, no mechanism has been in place to provide for compensation between the parties. If through the Commission review process it is determined that changes to the agreements should be made and any such changes would have the affect of changing the rates or compensation provided for, the parties agree to make true-ups as necessary to comply with any Commission ordered changes.

Sincerely,


Richard D. Coit

Executive Director and General Counsel

RDC: ms
Enclosures

cc: Valerie Kendrick, CommNet Cellular, Inc.
Craig Osvog, Brookings Municipal Telephone
Pat Morse, Kadoka Telephone Company



MAY 11 1998

Reciprocal Transport and Termination Agreement SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

This Reciprocal Transport and Termination Agreement (the "Agreement") is effective as of the 24th day of March, 1998 (the "Effective Date"), by and between CommNet Cellular, Inc. ("CommNet") with offices at 8350 East Crescent Parkway, Room 400, Englewood, CO 80111 and Brookings Municipality ("Carrier") with offices at 525 Western Avenue Brookings, SD 57006. CommNet and Carrier are each individually a "Party" and are together the "Parties" to this Agreement.

CommNet is licensed by the Federal Communications Commission ("FCC") as a Commercial Mobile Radio Service Provider ("CMRS") provider. Carrier and CommNet agree to exchange wireline to wireless and wireless to wireline traffic for the benefit of the Parties. Services provided by Carrier to CommNet under this Agreement are provided pursuant to CommNet's status as a CMRS provider.

WHEREAS, the Parties currently extend arrangements to one another allowing for the transport and termination of wireline to wireless and wireless to wireline traffic over each other's network facilities, between each other's subscribers; and

WHEREAS, the Parties wish to put in place an arrangement for the mutual exchange and reciprocal compensation of local telecommunications traffic in accord with the Telecommunications Act of 1996, and which is intended to supersede any previous arrangements between the parties relating to such traffic;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CommNet and Carrier hereby agree as follows:

1. SCOPE. This Agreement addresses the parties' reciprocal compensation obligations as described in § 251(b)(5) of the Telecommunications Act of 1996 (the "Act"). By this Agreement, neither Party waives any other rights it may have under the Act or the rule of the FCC or of the State Public Utilities Commission ("Commission"). Such rights may include CommNet's right to request unbundled network elements and a review of Carrier's rural telephone company exemption provided for under § 251(f)(1)(A) of the Act and Carrier's right to seek to maintain the rural exemption.

2. Interpretation and Construction. The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, regulations or guidelines that subsequently may be prescribed by any federal, state or local government authority. To the extent required by any such subsequently prescribed law, rule, regulation or guideline, the Parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, regulation or guideline.

04-234-04-1-18

The Parties agree and understand that certain provisions in this Agreement are based on the FCC's First Report and Order, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, rel. Aug. 8, 1996 ("FCC 1st Order") and the Second Report and Order and Memorandum Opinion and Order, In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, rel. Aug. 8, 1996 ("FCC 2nd Order"). To the extent that certain of the rules contained in the FCC 1st Order and the FCC 2nd Order, or any other FCC Order adopted to implement the Telecommunications Act of 1996, are ultimately deemed by the courts to be not effective, this Agreement shall be modified to comport with the final court decisions and subsequent FCC rules adopted to comply with the court's decisions.

The Parties further agree and understand that the rates for local transport and termination agreed to, as set forth in Exhibit A hereto, are not based on a specific costing methodology or company specific cost data and that they may have to be adjusted when an appropriate costing methodology consistent with § 252(d)(2) of the Telecommunications Act is established and actual cost information or an acceptable cost proxy which reasonably reflects the actual costs of providing the local transport and termination services becomes available.

The Parties enter into this agreement without prejudice to any position they may take with respect to similar future agreements between the Parties or with respect to positions they may have taken previously, or may take in the future in any legislative, regulatory or other public forum addressing any matters including matters related to the rates to be charged for transport and termination of local traffic or the types of arrangements prescribed by this agreement.

3. Definitions

3.1 "Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or a Commission within its state of jurisdiction.

3.2 "CMRS" or "Commercial Mobile Radio Service" is as defined in the Communications Act of 1934 as amended by the Telecommunications Act of 1996.

3.3 "Commission" means the South Dakota Public Utilities Commission.

3.4 "Local Calling Area (LCA)" for purposes of this Agreement, is a geographic area defined by the Major Trading Area (MTA) within which CommNet provides CMRS services where local transport and termination rates apply as set forth in FCC 1st Order and 47 CFR 51.701(b)(2).

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3.5 "Local Traffic" for purposes of this Agreement means traffic which originates and terminates, based on the location of the wireless subscriber and landline end user, within the same CMRS LCA.

3.6 "Major Trading Area (MTA)" is a geographic area established in Rand McNally's Commercial Atlas and Marketing Guide and used by the FCC in defining CMRS license boundaries for CMRS providers for purposes of Sections 251 and 252 of the Communications Act of 1934 as amended.

3.7 "Non-Local Traffic" is the completion of interMTA calls based on the location of the wireless subscriber and the land line end user and the completion of that roaming traffic, as defined in FCC 1st Order, par. 1043, to which switched access charges are applicable.

3.8 "Reciprocal Compensation Credit" for purposes of this Agreement and based on current traffic trends is a monetary credit for wireline to wireless traffic which is originated by a landline subscriber of Carrier and terminates to a subscriber of CommNet within the LCA. Should traffic patterns change so that more wireless traffic is terminated by CommNet than Carrier within a prescribed billing period, the reciprocal compensation credit shall be changed to reflect such difference.

3.9 "Transit Traffic" is traffic that originates from one provider's network, transits another telecommunication carrier's network, substantially unchanged, and terminates to yet another provider's network.

3.10 "Wireless Traffic" for purposes of this Agreement, means all calls in either direction between a user of CommNet's CMRS (where CommNet provides the wireless equivalent of dial tone to the user) and an end user served by Carrier.

4. Reciprocal Traffic Exchange. Each Party shall reciprocally terminate wireless local traffic originating on each other's network. Reciprocal traffic exchange addresses the exchange of wireless traffic between CommNet subscribers and Carrier end users. Consistent with Carrier's current practice with CommNet, either Party's wireless local traffic may be routed through an intermediary for interconnection with the other Party's system. Any such arrangement may be modified by a separate agreement if both Parties wish to provide for two-way direct interconnection. Reciprocal traffic exchange per this Agreement covers only transport and termination services provided for CMRS carriers only in association with CMRS services. Other services, including any direct interconnect arrangement established between the parties, shall be covered by a separate contract, tariff or price list. The transport and termination services provided hereunder are intended for wireless to wireline or wireline to wireless, but not wireline to wireline communications. Such services will not be used to terminate other types of traffic on Carrier's network (such as wireline originated

traffic), and services provided in violation hereof shall constitute a breach of this Agreement. In addition to any other remedies available, the Party whose services have been improperly used shall be entitled to recover the charges applicable to such traffic for the entire period of misuse. Any incidental services (e.g. directory assistance, operator services, etc.) will be billed at the standard rates for those services.

5. Local and Non-Local Traffic. This Agreement is intended to address the transport and termination of local wireless traffic between the Parties. Local wireless traffic is subject to only the local transport and termination charge(s) set forth below and is not subject to switched access charges. Non-local traffic is subject to either interstate or intrastate switched access charges, whichever is applicable.

Ancillary traffic which includes wireless traffic that is destined for ancillary services including, but not limited to, directory assistance, 911/E911, operator call termination (busy line interrupt and verify), 800/888, LIDB, and information services requiring special billing will be exchanged and charged in accordance with the appropriate tariffs, local or switched access.

CommNet agrees that it shall not use the services provided by Carrier under this agreement for the transport or termination of non-local wireless traffic. Any use of the services for non-local traffic shall constitute a breach of this agreement and, with respect to such improper use, in addition to any other remedies available, Carrier shall be entitled to recover the charges applicable to such traffic for the entire period of misuse.

For billing purposes, if either Party is unable to classify on an automated basis the local wireless traffic delivered by CommNet as intrastate or interstate, CommNet will provide Carrier with a Percent Interstate Use (PIU) factor, which represents the estimated interstate portion of intraMTA traffic delivered by CommNet. The PIU factors will be provided updated on an semi-annual basis to commence six (6) months after Commission approval of this Agreement.

6. Local Transport and Termination Rate. CommNet and Carrier shall reciprocally and symmetrically compensate one another for wireless local traffic terminated to their end users. The rate(s) for the termination and transport of such traffic are as set forth in Exhibit A attached hereto. Carrier will be responsible for measuring the total monthly minutes of use terminating into its network from CommNet's network. Measured usage begins when CommNet's mobile switching office is signalled by the terminating end office that the call has been answered. Measured usage ends upon recognition by the mobile switching office of disconnection by the earlier of the Carrier's customer or the disconnection signal from the terminating end office. Carrier will only charge CommNet for actual minutes of use and/or fractions thereof of completed calls. Minutes of use

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will be aggregated at the end of the billing cycle and rounded to the nearest whole minute.

7. Transit Traffic Rates. For transiting local traffic, the applicable local transit rate applies to the originating Party per Exhibit A attached. For transiting non-local traffic the Parties will charge the applicable switched access rates to the responsible carrier.

8. Reciprocal Compensation Credit. The monthly minutes of use terminated into CommNet's network from Carrier's network for purposes of this Agreement, which will determine the reciprocal compensation credit due CommNet, will be calculated using the formula set forth in Exhibit A.

The resulting number shall be multiplied by the local transport and termination rate to determine the monthly reciprocal compensation credit. The reciprocal compensation credit for the local transport and termination will appear on the monthly bill as a credit against the amounts due and payable from CommNet to Carrier.

9. Billing and Collecting Fees. CommNet will only bear the portion of billing and collecting fees that are associated with wireless traffic transport and termination to its subscribers. This will apply to billing and collection costs incurred by the Carrier directly or indirectly. For the purpose of this agreement, CommNet will bear cost for billing and collection services in order for the Carrier to render an accurate bill in an amount not to exceed the percentage used to calculate the reciprocal compensation credit to CommNet per Exhibit A of the total direct or indirect billing and collection costs incurred by the Carrier. Billing and collection arrangements entered into by CommNet or the Carrier with any intermediaries will be addressed separately and are not a part of the Agreement.

10. Term. Subject to the termination provisions contained in this Agreement, the term of this Agreement shall be one (1) year from the effective date and shall continue in effect for consecutive one (1) year terms until either Party gives the other Party at least sixty (60) days written notice of termination, which termination shall be effective at the end of the notice period.

11. Termination Upon Default. Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party, provided, however, that the non-defaulting Party notifies the defaulting Party in writing of the alleged default and that the defaulting Party does not cure the alleged default within thirty (30) calendar days of receipt written notice thereof.

12. Liability Upon Termination. Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect for any act or omission occurring prior to the termination

relating to an obligation which is expressly stated in this Agreement. The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination of this Agreement.

13. General Responsibilities of Parties. Each Party is responsible to provide facilities within its network which are necessary for routing and terminating traffic from the other Party's network.

14. Assignments, Successors and Assignees. Notwithstanding anything to the contrary contained herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their successors and assignees.

15. Force Majeure. Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control, including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, power blackouts, other major environmental disturbances or unusually severe weather conditions (collectively, a "Force Majeure Event").

16. No Third Party Beneficiaries. This Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

17. Notices. Notices given by one Party to the other Party under this Agreement shall be in writing to the addresses of the Parties set forth above and shall be (i) delivered personally; (ii) delivered by express delivery service; (iii) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested; or (iv) delivered by telecopy.

18. Governing Law. For all claims under this Agreement that are based upon issues within the jurisdiction of the FCC, the Parties agree that remedies for such claims shall be governed by the FCC and the Communications Act of 1934, as amended. For all claims under this Agreement that are based upon issues within the jurisdiction of the State Public Utilities Commission, the parties agree that the jurisdiction for all such claims shall be with such Commission, and the remedy for such claims shall be as provided for by such Commission. In all other respects, this Agreement shall be governed by the domestic laws of the state of South Dakota without reference to conflict of law provisions.

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19. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, representations, statement, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this 1st day of March, 1998.

CommNet Cellular, Inc.

By: Thomas D. Fidelity

"Carrier" _____
(type company name)

By: [Signature]

03-034-004110

EXHIBIT A Page 1
Exchange Lines MOU Rate

ILEC

Accent Communications	1877	\$0.030
Armour Independent Telephone Co.	675	\$0.040
Baltic Telecom Coop	1483	\$0.035
Berestord Municipal Telephone	1199	\$0.035
Bridgewater-Canisota Independent	935	\$0.035
Brookings Municipal Telephone	14,421	\$0.030
Cheyenne River Sioux Tribe Tel.	2568	\$0.030
East Plains Telecom, Inc.	1021	\$0.035
Faith Municipal Telephone	359	\$0.053
Fort Randall Telephone	4132	\$0.030
Golden West Telecommunications Coop	13,812	\$0.030
Hanson Communications, Inc.	865	\$0.040
Hanson County Telephone Company	512	\$0.040
Heartland Communications, Inc.	1540	\$0.030
Interstate Telecommunications Coop	8943	\$0.030
Intrastate Telephone Company, Inc.	6407	\$0.030
James Valley Coop. Telephone	2083	\$0.030
Jefferson Telephone Company	551	\$0.040
Kadoka Telephone Company	542	\$0.040
Kennebec Telephone Company, Inc.	779	\$0.040
McCook Cooperative Telephone	739	\$0.040
Midstate Telephone Company	2804	\$0.030
Mobridge Telecommunications Company	2457	\$0.030
Mt. Rushmore Telephone Company	502	\$0.040
Roberts County Telephone Coop. Assoc.	485	\$0.053
RC Communications	1506	\$0.030
Sanborn Telephone Cooperative	2439	\$0.030
Sancom, Inc.	2430	\$0.030
Sioux Valley Telephone Company	5247	\$0.030
Splitrock Properties, Inc.	1576	\$0.030
Splitrock Telecom Cooperative, Inc.	3904	\$0.030
State Line Telecommunications, Inc.	2294	\$0.030
Stockholm-Strandburg Telephone	713	\$0.040
Sully Buttes Telephone Cooperative	4077	\$0.030
Tri-County Telecom, Inc.	437	\$0.053
Union Telephone Company	1499	\$0.035
Valley Cable & Satellite Communications	1580	\$0.030
Valley Telecommunications Coop. Assoc.	2019	\$0.030
Venture Communications, Inc.	6791	\$0.030
Vivian Telephone Company	17827	\$0.030
West River Coop. Telephone Company	1536	\$0.030
West River Telecommunications Coop.	645	\$0.040
Western Telephone Company	1086	\$0.035

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"Exhibit A"

Page 2

-TRANSIT TRAFFIC RATE
(Per MOU per route mile) \$0.0005

- RECIPROCAL COMPENSATION CREDIT - CALCULATION

Multiply the total monthly local minutes of use of wireless traffic delivered from CommNet's network for termination into Carrier's network by a factor of 0.17.

South Dakota
Public Utilities Commission
State Capitol 500 E. Capitol
Pierre, SD 57501-5070
Phone: (605) 773-3705
Fax: (605) 773-3809

TELECOMMUNICATIONS SERVICE FILINGS

These are the telecommunications service filings that the Commission has received for the period of:

05/08/98 through 05/14/98

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five days of this filing.

DOCKET NUMBER	TITLE/STAFF/SYNOPSIS	DATE FILED	INTERVENTION DEADLINE
NEGOTIATED INTERCONNECTION AGREEMENT FILED			
TC98-096	Rural Cellular Corporation filed for approval by the Commission the negotiated Type 2 Wireless Interconnection Agreement between U S WEST Communications, Inc. and Rural Cellular Corporation. Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than June 3, 1998. Parties to the agreement may file written responses to the comments no later than June 22, 1998.	05/11/98	Response Due 06/03/98
TC98-097	The South Dakota Independent Telephone Coalition filed, on behalf of Brookings Municipal Telephone and CommNet Cellular, Inc., for approval by the Commission the negotiated Reciprocal Transport and Termination Agreement between Brookings Municipal Telephone and CommNet Cellular, Inc. Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than June 3, 1998. Parties to the agreement may file written responses to the comments no later than June 22, 1998.	05/11/98	Response Due 06/03/98
TC98-098	The South Dakota Independent Telephone Coalition filed, on behalf of Kadoka Telephone and CommNet Cellular, Inc., for approval by the Commission the negotiated Reciprocal Transport and Termination Agreement between Kadoka Telephone and CommNet Cellular, Inc. Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than June 3, 1998. Parties to the agreement may file written responses to the comments no later than June 22, 1998.	05/11/98	Response Due 06/03/98
TC98-099	Midwest Wireless Communications, L.L.C. filed for approval by the Commission the negotiated Type 2 Wireless Interconnection Agreement between U S WEST Communications, Inc. and Midwest Wireless Communications L.L.C. and SWITCH 2000 L.L.C. (upon becoming a wholly owned subsidiary of Midwest Wireless Communications L.L.C.) Any person wishing to comment on the parties' request for approval may do so by filing written comments with the Commission and the parties to the agreement no later than June 3, 1998. Parties to the agreement may file written responses to the comments no later than June 22, 1998.	05/14/98	Response Due 06/03/98

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY SOUTH)	ORDER APPROVING
DAKOTA INDEPENDENT TELEPHONE)	AGREEMENT
COALITION FOR APPROVAL OF)	
RECIPROCAL TRANSPORT AND)	TC98-097
TERMINATION AGREEMENT BETWEEN)	
COMMNET CELLULAR, INC. AND)	
BROOKINGS MUNICIPAL TELEPHONE)	
COMPANY)	

On May 11, 1998, the South Dakota Public Utilities Commission (Commission) received a filing from the South Dakota Independent Telephone Coalition (SDITC) seeking approval of a reciprocal transport and termination agreement between CommNet Cellular, Inc. and Brookings Municipal Telephone Company d/b/a Swiftel, Inc. (Swiftel) pursuant to 47 U.S.C. §§ 252(a)(1) and 252(e).

On May 14, 1998, the Commission electronically transmitted notice of this filing to interested individuals and entities. The notice stated that any person wishing to comment on the parties' request for approval had until June 3, 1998, to do so. Parties to the agreement had until June 22, 1998, to file written responses to the comments. No parties filed comments.

At its duly noticed June 11, 1998, meeting, the Commission considered whether to approve the negotiated agreement between CommNet Cellular and Swiftel. Commission Staff recommended approval.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31, and the Federal Telecommunications Act of 1996. Upon review of the agreement, the Commission found that, as required by 47 U.S.C. § 252(e)(2)(A), the agreement does not discriminate against a telecommunications carrier not a party to the agreement nor is the implementation of this agreement inconsistent with the public interest, convenience, and necessity. It is therefore

ORDERED, that pursuant to 47 U.S.C. § 252(e) the Commission approves the negotiated agreement.

Dated at Pierre, South Dakota, this 19th day of June, 1998.

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 Alfredo Krebs

Date 6/19/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner