

TC98-194

TC98-194

DOCKET NO.

In the Matter of

IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON,
SOUTH DAKOTA, AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTTEL, INC. REGARDING BILLING
ISSUES

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
10/26/98	Received;
10/29/98	Rechecked;
10/29/98	Weekly filing;
11/9/98	Order Denying Petition for Relief and Notice Requiring Answer;
11/25/98	Transcript of Hearing of 11/3/98;
11/30/98	Answer to Complaint, Counterclaim and Cert of Service (U.S. West);
11/30/98	Firstel's Answer to Complaint of Basec.net and Cross Claim against U.S. West;
12/11/98	Notice of Appearance by Todd D. Epp;
12/11/98	Answer to U.S. West's Counterclaim and Certificate of Service;
12/18/98	U.S. West's Answer to Cross-Claim of Firstel, Inc.;
12/21/98	Order for Appointment of Non-Resident Attorney (James H. Gulega);
12/30/98	Request for Production of Documents to Basec.net;
12/30/98	Order Requiring Expedited Response Time;
12/30/98	Order for and Notice of Hearing;
1/5/99	Two Responses from Jackson Larry Tall and Neil Schmidt;
1/5/99	Two Motions for Order Requiring Expedited Response Time;
1/6/99	Order Granting Motion for Expedited Response Time;
1/6/99	U.S. West's Response to Basec.net's Motion for Expedited Response Time;
1/15/99	Order Denying Motion for Expedited Response Time; Hearing set for 1/20/99 at 10:00 a.m. in Room 101, South Dakota Public Utilities Commission, 400 North 4th Street, Pierre, SD 57501-1001.
1/15/99	Order Denying Motion for Expedited Response Time; Hearing set for 1/20/99 at 10:00 a.m. in Room 101, South Dakota Public Utilities Commission, 400 North 4th Street, Pierre, SD 57501-1001.

2/18/99 US West's Interrogatories to Basic Set and Requests for Production of Documents (First Set);
 2/24/99 Basic Set's First Set of Interrogatories to US West and Firstel;
 2/24/99 Firstel's First Set of Interrogatories to US West;
 2/24/99 Firstel's First Set of Interrogatories to Basic Set;
 2/24/99 Certificate of Service;
 3/1/99 US West's Interrogatories to Firstel, Inc. (First Set);
 3/1/99 Motion to Amend US West's Answer to Cross Claim of Firstel, Inc.;
 3/1/99 US West's Amended Answer to Cross Claim of Firstel, Inc.;
 3/3/99 Motion to Dismiss Cross-Claim of Firstel, Inc. against US West;
 3/3/99 US West's Memorandum of Decision in support of Motion to Dismiss Cross-Claim of Firstel, Inc. against US West;
 3/8/99 Response of Firstel to US West's Motion to Amend Answer which includes the ^{part of the answer to US West's} ^{dismissal, 10 pages} ^{of the answer};
 3/9/99 Motion of Firstel to Supplement Argument;
 3/10/99 US West's Opposition to Motion of Firstel to Supplement Argument;
 3/11/99 Memorandum in Opposition to US West's Motion to Dismiss Cross-Claim;
 3/15/99 Order Granting Motion to Amend Answer; Motion to Supplement Argument, and
 3/30/99 Order Scheduling Hearings;
 7/13/99 Deposition and proposed Order for Dismissal with Prejudice;
 8/1/99 Order Denying Complaint about Closing Docket;
 8/6/99 Docket Closed.

TC98-194

RECEIVED

OCT 26 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSIONBEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

500 E. Capitol, State Capitol Building, Pierre SD 57501

COMPLAINT

Complainant(s) (Please Print or Type Name)		Respondent(s) (Persons or Company complained Against)	
Name	Bosec, Vel	Contact Person	
Address	PO 214	Company	W. West / FirstTel
City, State, Zip	Huron, SD 57350	Address	
Home Phone	605-699-2474	City, State, Zip	
Work Phone	605-352-0005	Work Phone	
Cellular Phone	605-354-0231	Cellular Phone	
Fax #	605-352-3277	Fax #	
If the Complainant is represented by an attorney, please list the attorney's name, address, telephone number and fax number below. (If Complainant is not represented by an attorney, please leave blank.)			

These are the facts giving rise to my complaint: see attached

NOTE: Please attach additional pages, if necessary, to explain your situation. Also enclose copies of any bills or other documents which may pertain to your complaint.

RESOLUTION REQUEST

I ask that the Public Utilities Commission grant the following relief. (What do you think the Commission should do to solve this problem?)

- 1) Request US West to inform promptly of facilities issues
- 2) Some sort of financial compensation for loss of service

NOTE: Please attach any additional pages if necessary.

VERIFICATION

Complainant's signature must be witnessed by a notary public.

James Schetter
Complainant's Signature

10-6-98
Date

State of South Dakota)

) SS

County of Beadle)

On this 6th day of September, 1998.

before me personally came and appeared Marvie Tschetter,
known to me to be the individual described herein and who executed the foregoing instrument, and who
duly acknowledged to me that he/she executed same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Melinda Lopez
Signature of Notary Public

(SEAL)

My commission expires: Feb 14, 2003

October 6, 1998

In March of 1998, discussions began between Mitchell On-Line and Basec.Net regarding the purchase of Mitchell On-Line by Basec.Net. Mitchell On-Line was a privately owned business in Mitchell by Jay Shank. Basec.Net is an LLC, based in Huron, South Dakota. Both organizations are Internet Service Providers.

Mitchell On-Line, at the time these talks began, was doing business with a company from Minnesota called ISD. ISD was also a Internet Service Provider. However, this scenario was going to change and Mr. Shank was wanting to sell Mitchell On-Line.

ISD had installed digital T1's in Mitchell for servicing Mitchell On-Line customers. In late April of 1998, when it was apparent that Basec.Net would purchase Mitchell On-Line, Basec.Net contacted US West regarding taking over the digital T1's, to continue to provide access for the customers. An e-mail was sent to gajhons@uswest.com, Gary Johnson. Basec.Net was informed that Basec.Net could not take over payment of the lines, unless all dollars owed on the account were paid and made current. Basec.Net had no desire to either pay the back amounts owed or continue long term operation of the digital T1's, because of economics.

As a result, Basec.Net began to explore other options for service. The digital T1's continued to be in ISD's name and the Mitchell customers continued to utilize these lines, even after Basec.Net purchased Mitchell On-Line, which was late May.

Basec.Net identified an alternative site for the location of the equipment in June. The decision to move the equipment was based on economics of staying at the current facility and strategic plans for future growth of the network. Basec.Net requested an facilities check for the identified new location via FirsTel, a US West reseller. The facilities check requested acknowledgment that there would be enough facilities for at least 90 lines. (Note: Basec.Net purchases local dial-up lines through FirsTel because of a cost savings.) Basec.Net was informed by the FirsTel representative that the lines were there. The order was placed for 60 analog lines. In addition, the T1 frame connection was ordered through US West. The process of facilities verification, confirming this with Basec.Net and the ordering of the phone lines transpired over a 3-4 week period.

At the new location in Mitchell, 2 analog lines were installed, then 6 or 7 more. Then the strike took place. We accepted that the strike may push things back. However, we received an E-mail from US West stating that the T1 was to be installed 9-24-98. Another E-mail was received that stated the T1 would not be installed to late October.

On Friday, September 25, 1998, I called Lori DeSmith of US West, expressing concern about the late installation of the T1 frame to the new Mitchell site. Lori informed me that it was due to facilities not being available, and did I know that I was going to be charged \$22,000.00 for installation/construction fees for the 60 analog lines. I had never been informed of this.

I then called FirsTel to find out why I had not been informed and if there was any other options.

I talked with Rick Newnan and Jana Peterson. FirsTel did not know about the construction fees, either.

Because of this large expense, I immediately began to investigate other options during the week of September 28, 1998. At some point in this week, someone called ISD, the firm in Minneapolis that "leased the lines" from US West and told them that Basec.Net was not going to pay for the digital T1's. ISD then ordered a disconnect. 1. Basec.Net could not take over those lines unless there was full payment, which was in excess of \$30,000.00. 2. Basec.Net had never entered into any type of negotiations or agreement that said Basec.Net would pay for those services. Instead, the agreement was for Basec.Net to lease their own lines, which we were attempting to do.

A call was placed to Larry Toll on Tuesday, September 29, 1998. Colleen returned my call and began working the issue. Colleen did inform me, however, that she would not be able to continue to talk with me, because I was a FirsTel customer and the US West Legal department had instructed them not to talk with Basec.Net. The disconnect was held until the week of October 5, 1998.

On Friday, October 2, 1998, several phone calls transpired between FirsTel and US West and Basec.Net. FirsTel proposed a plan whereby the lines that were already installed would be used to create 2 T spans. The cost on this would be more than a typical install of analog, but less than the \$22,000.00 construction fee. This process would take a minimum of 15 days.

On Friday, October 2, 1998, Larry Toll called me to inform me that the lines would be disconnected at the old location the following week. I asked for some time until the new facility could be ready. He made a phone call to someone, called me back and said that if I sent a check for \$16,000.00 on Monday, the 5th, that would keep the digital T1's at the old location operational. This was not typical operating procedure, Larry explained, but if I sent the check Monday, it would ensure uninterrupted service. This \$16,000.00 represents the amount of dollars that I would have paid if the digital T1's were mine since May 1, 1998.

Because of the low profit margin in being an ISP, a \$4,000.00 a month phone bill is not a good return on investment. Due to this and other factors, the decision was made to move the site and use just analog lines. That was why the facility check request was made and 60 analog lines ordered in early August. On Friday, October 2, 1998 at 4:00 pm, Basec.Net is faced with:

- 1) pay US West \$16,000.00 to keep the digital T1's at the old location on. There would be an additional \$4,000.00 per month until another option is available, and
- 2) pay US West \$22,000.00 to construct facilities at the new location where 6-9 analog lines have already been installed. However, this construction would not be completed until at least November 1 or later, or
- 3) go with the FirsTel plan, with minimum installation fee and monthly service fees, but this would take a minimum of 15-20 days to complete. In the meantime, if the T1's go down, the Basec.Net customers have no access, and/or
- 4) order 30 analog lines at the old site until the new facility is ready to maintain service. This would cost approximately \$4500.00 to get these lines ready. However, this site would be moved as soon as the new facility is ready.

Basing the decision on economics and ROI, Basec.Net made the decision to go with the FirstTel plan. US West was informed that Basec.Net would not be paying either the \$20,000.00 install fee or the \$16,000.00 fee. Larry Toll said that he would try to extend the disconnect out a couple of days in order for Basec.Net customers to find another service. Basec.Net informed all Mitchell customers on Friday evening, October 2, via e-mail, that their service would be interrupted and that Basec.Net would not be charging them for their services.

I have several questions:

1. Why was I not informed in August that I was facing a \$22,000.00 install fee?
2. Why was I not told why orders were being held back or delayed?
3. Why was ISD told that Basec.Net would not be paying the back bills?
3. Why was it so important that the disconnect happen the week of October 5, when ISD already owed US West over \$30,000.00 for past services?
4. Why could I not take over payment of the digital T1's in May, but can take them over in October, but pay the entire back pay amount?

Basec.Net has suffered a substantial loss due to the inefficiencies of US West. This is the second time in less than 6 months, US West has made it difficult, if not impossible, to deliver services to Basec.Net customers. I am not opposed to paying for services that are used. However, in this case, Basec.Net was not informed that there would be an additional construction fee, only that the order continued to be held. Re: the \$16,000.00 fee, Basec.Net would have been off those lines in a short time, if US West/FirstTel would either have had the facilities that were ordered been available, or had US West/FirstTel informed Basec.Net in order for Basec.Net to make alternative plans.

The same situation exists in Watertown. Earlier this summer, additional requests for analog lines for the Watertown POP were ordered, a total of 12 lines were on the order. July 7, we are informed that 6 lines are in, 6 lines are on hold. In August, we are informed that we have to have backboard up for a new demarcation terminal. This was done August 13. We were informed August 13, by FirstTel, that the lines are on hold until September 15. October 5 we are informed that the lines will not be installed until October 14. I have not been informed of any additional construction fees. Nor has any other information been sent to Basec.Net regarding these lines. We have a number of customers in Watertown who get busy signals because we lack the facilities to get them connected.

October 2, 1998

To Mitchell On-Line Customers;

I look forward to the day that I can send an e-mail containing good news. From the beginning of the merger of Basec.Net and Mitchell On-Line, the saga has been one of continuing trials. Unfortunately, the saga continues. As a customer that depends on the Internet, I feel you are entitled to know what has transpired in the past few months, and what will transpire in the future.

There have been transitions of equipment and phone lines. The first "outage" was due to the turning off of phone lines, by mistake. The second "outage" was due to a security compromise. And there is to be yet a third "outage." This third outage will last a substantial length of time. During this time, we will not be charging you for your service. If you have not yet paid for October's services, please do not send payment. If you have paid for those services, we will reimburse you.

All websites stored on the Basec.net server will be secure. All emails directed to Mitchell.Net customers will be secure and safe. You will be able to retrieve those emails. Dial Up capabilities will be extremely limited, if available at all.

The situation is this, a new site for the equipment that serviced the Mitchell customers was to be established. Unbeknownst to Basec.Net, there were no telephone facilities at the new site. The order was put on hold for several weeks. Only a week ago, did Basec.Net learn that there would be a \$22,000.00 construction fee for more telephone facilities. With such a figure, Basec.Net decided to keep the equipment in the current location. However, another problem arose, in that the lines currently used by some of the dial up customers were actually being leased by another firm. Unless Basec.Net paid some \$16,000.00 to the telephone company by this coming Tuesday to keep those lines open, they would be shut off.

I hope you can see the result of this equation. Basec.Net either pays the phone company \$22,000.00 to build new facilities, or we pay the phone company \$16,000.00 to buy us some time. At \$19.95 a month, or less, that is not a winning proposition.

Basec.Net will be moving the equipment to a new location. If the phone company escalates the order, the facilities will be installed in 15 days. At that time, the facilities will be secure and stable.

I do not blame you for being upset, angry, unimpressed. This is not the quality of service I want to provide. Unfortunately, I am at the mercy of the phone companies. I cannot provide facilities nor do I control the timing of connecting or disconnecting facilities. Nor can I control the cost of those facilities. I must make the decisions based on economic impact and return on investment in the long run.

Many of you may choose to go with another provider and will not return. I certainly understand that Basec.net must prove to you and the rest of the Mitchell community that we can provide a

0010004400
quality connection.

If you have any questions, please feel free to call the Basec.Net office.

Thank you.
Marvie Tschetter
VP Operations

0.4.4.001-0
Held Order

Subject: Held Order

Date: Mon, 21 Sep 1998 15:28:52 -0500

From: "Lori DeSmith" <lidesmit@uswest.com>

To: missm@basec.net

Hi,

The Frame Relay circuit that you ordered from 514 N Main St in Mitchell to Phillips Av in Sioux Falls is in held order status because of problems in the central office. The new installation date will be sometime at the end of October.

I will let you know when I have more information but I wanted to give you a heads up.

Thanks,

Lori

015004410
Frame T-1

Subject: Frame T-1

Date: Fri, 18 Sep 1998 13:25:32 -0500

From: "Lori DeSmith" <lidesmit@uswest.com>

To: missm@basec.net

Here it is!!!

----- Forwarded by Lori DeSmith/COMPLEX/USWEST/US on
09/18/98 01:25 PM -----

Lori DeSmith
09/08/98 02:12 PM

To: missm @ basec.net
cc: marvie @ basec.net
Subject: Frame T-1

Hi,

The new Frame T-1 at 514 N Main St in Mitchell will be due on 9-24-98 with the order # of FRSR229630. The new T-1 will be d1c1 16 and the Phillips address will be d1c1 32.

Please email back if you need anything else.

Thanks,

Lori

From: Richard Heier <richard@ultra-inc.com>
To: 'Reception' <office@basec.net>
Date: Thursday, August 13, 1998 5:22 PM
Subject: RE: Installation of New Lines

On 8-11 they came in and said they need to put in a second Demarcation Terminal this will give you the ability to add 50 more lines. It sounded like they were in a hurry because they ask how soon we could have the backboard up, so on 8-12 the landlord put up backboard for the new Demarcation Terminal. It is ready for US West to do their thing.

That is all the info I have at this time.

Thank You,

-----Original Message-----

From: Reception [SMTP:office@basec.net]
Sent: Thursday, August 13, 1998 7:25 PM
To: richard@ultra-inc.com
Subject: Installation of New Lines

Rich,

Did you talk to US West 8-12 about phone lines or a backboard? I had a due date of the 12th for the last 6 lines that I have been waiting since June. Now I am told that the date has been changed to Sept. 15 and they talked to the customer and informed them of that.

I'd appreciate any info you could give me on the situation.

Thank You,

Patrick Palmer
Technical Support Supervisor
basechelp@basec.net
352-2754 1-888-873-2903
<< File: ATT00000.html >>

8/14/98

01500.44.12
August 10, 1998

Mr. Larry Toll
US West Communications
125 South Dakota Avenue
8th Floor
Sioux Falls, South Dakota 57194

Dear Larry;

This letter is just a short follow up on the letter that was sent to you the end of July. In fact, you should have received the letter August 1, 1998, as it was sent certified mail.

I realize that the amounts stated in the letter were quite astounding, which may be reason for you to take time to investigate what transpired with this particular account. I also realize that US West is in the middle of a difficult time with a pending strike of US West employees.

However, I would appreciate some sort of response to my requests for compensation.

I look forward to hearing from you.

Respectfully,

Marvie Tschetter
Vice President of Operations
Basec.Net

01500.44.13
Re [Fwd: TI]

Lori,

Can you get me a exact construction estimate and who pays for what and what is all included? Does that \$5000 to you mean that you (US West) will pay for the digging and repairing of the lot?

I have never had this happen before, so I really don't know.

Thanks,

Melissa


Lori DeSmith wrote:

> Hi,
>
> How are things going? It's going to be a very rainy weekend here. Lots of
> indoor activities which usually means house cleaning!!!
>
> As far as the new T-1 that you are requesting below, will this be billed to
> you or to Connecting Point? Should this be on a 3 year contract like all
> your other circuits? Where is it going to?
>
> Also, as far as the SEBHC circuits, the circuit at 334 W 8th was installed
> on 8-31. The circuits at 100 W 5th and 2000 S Summit are due on 10-7. I
> was just informed that the circuit at 2020 S Norton is in need of special
> construction. The drop into that building is out of pairs. In order to
> get them into the building we would need to run new cable underground which
> would also entail digging up some of there blacktop. The engineer
> estimated that the special construction charges would be around
> \$5,000.00.
> This is not a firm quote but they would need an approval to go ahead.
> Would one of you please let me know what they want to do.
>
> Marvie, has a decision been made with the Mitchell circuit yet? I need to
> know what to tell the special construction people. They still have the
> quote for \$22,571.62 waiting for an approval or denial. Please let me
> know.
>
> Hope both of you have a great weekend!!!
>
> Thanks,
>
> Lori
>
>
> (Embedded
> image moved missm @ basec.net
> to file: 09/30/98 04:53 AM
> pic11402.pcx)
>
>
> Please respond to missmt@basec.net
>
> To: ldesmit @ uswest.com

015044.14
Re: [Fwd: T1]

> cc:
> Subject: T1
>
> Lori,
>
> I need to order a T1 Frame Relay at 3300 West 49th Street Sioux Falls,
> SD (Connecting Point) Randy Sorenson 605-361-8881. We are moving our
> server and modems all back to Connecting Point from the 110 S Phillips
> Ave Sioux Falls.
>
> We will be moving some other circuits there later. I just wanted to get
> this T1 ordered asap.
>
> If we are looking at 3-4 weeks on some of the other orders like the 56K
> from Prairie Lakes and Southeastern Behavioral Care lets move them to
> the new location of 3300 W 49th Sioux Falls instead of the 110 S
> Phillips. Let me know, I know some of those orders were held up in the
> main office up there.
>
> Let me know if you have any questions.
>
> Thanks,
>
> Melissa
>
>

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> Name: pic11402.pcx
> pic11402.pcx Type: PCX Image Document
> (application/x-unknown-content-type-PCXImage.Document)
> Encoding: base64

 pic16772.pcx	Name: pic16772.pcx Type: PCX Image Document (application/x-unknown-content-type-PCXImage.Document) Encoding: base64
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NOTES ON FIRST TEL AND U.S. WEST /Watertown & Rapid City Lines

- 7/7/98 First Tel- 8am - Left message for Sue Lowrie pertaining to the installation of the Watertown lines.
 10:10am - Left another mess. With secretary for Sue.
 11am - Sue returned call, she will check on lines and call me back with information.
 12:30am - Called Sue again, informed me that Randy from Equipment working with Greg on the last 9 lines in the rollover in S. Falls.
 1pm - Called connecting point in Watertown, talked to Greg, as of 1pm no lines had been installed.
 2pm - Sue returned call, Watertown 6 lines to go in and 6 lines on hold for facility issues.
 6pm - Sue left message, rollover to be done in watertown by tomorrow morning and 6 lines to go in today and the other 6 still on hold for facility issues. Rapid City's 10 lines to be installed tomorrow.
- 7/8/98 8am - Left voice mail for Sue for confirmation on the rollover for Watertown and also for the phone lines for Rapid City and Watertown.
 10:30am - Sue returned call - Now the 6 lines to go in on 7-10 for Watertown and 10 lines to go in on 7-8 in Rapid.
 10:45am - Called Sue and Shilo, about the bottom 6 numbers on the S. Falls roll not coming to the D-Mark correctly. They are consulting with Rick and will return my call.
 1:50pm - Sue returned call - Informed me that U.S. West called from Dallas and told her that a work order had been opened on the Watertown rollover situation. Also had them busy out Port 1 in S. Falls.
 9pm - Sue notified me that the rollover in Watertown was done. But still not done according to the rollover test I had done.
- 7/9/98 8am - Rollover in Watertown still not done.
 - Sue will call to confirm again that this is done or not?
 - Also in S. Falls, John, will check the D-Mark and the Port phone lines at First Tel to get the lines in the right order. Also will confirm Rapid today.
 8:15am - Confirmation from Sue that Watertown rollover is fixed. We will test again today.
 2:50pm - Left message for Sue to call, still waiting on confirmation on Rapid lines.
 3:15pm - U.S. West did find a error on last test, if they haven't locked the program down in their control center then the rollover in Watertown will be fixed by 5pm today. If not then it will be tomorrow again. This was relayed to Pat from Sue and Jana at First Tel.
 5pm - Jana called to check in if it has got fixed or not yet? Will call office to see what is going on. Sue also called to check in on the progress.
 5:15pm - Still getting busy's in Watertown.
- 7/10/98 8:30am - Sue called and said that US West said the lines in Rapid are in. Will call with confirmation and the numbers themselves, and when they will be wired.
 - Also is checking on a Trouble TK# for Watertown Rollover.
 12pm - Watertown not working yet?
 2pm - Watertown not working yet still?
 - Rapid lines are in and Tech has been dispatched and is wiring them in.
 - Watertown 6 lines in and to be wired by First Tel Monday the 7-13.
 2:30pm - Jeff Karmen from US West called to inform us that Larry Toll dispatched him to check into the issue in Watertown, with the 6 lines on hold for facility issues.
 339-6871

3pm	- US West has been told that Watertown is to fixed today by First Tel - Contacted Sue and Shilo to inform them that we want our lines in Mitchell to hunt or roll from 996-6554 instead of being forwarded, and also 996-5963 to do the same to 996-2231. I was told we couldn't do it from 5963 and I then informed Marvie of the situation.
7/13/98 9am	- Gene from First Tel called to confirm that the Watertown lines are in and that he would wire them in first thing in the morning 7-14-98 - Sue will call back with info on S Falls and with access #'s in the morning.
7/14/98 10:00 AM	- Was confirmed that Watertown lines are wired and ready by Gene.
7/15/98 11:00am	- Will have Mitchell done today and will mail me phone #'s for Watertown and Rapid
7/17-19/98	- Mitchell lines had been disconnected after I requested a check on the rollover because of busy signals in Mitchell. Had a long drawn out problem no one knew who could solve. Informed Marvie and she took the situation to a higher level.
7/20/98 11:44pm	- Redfield log on test fully operational after major line problems.
7/24/98 1pm 5pm	- Called to order 2 new lines for Rapid and Sioux Falls - NO RETURN ON CALL!!
7/27/98 1PM 3pm	- Called and left message for Sue again in regards to new phone lines. - Decided against the new lines and decided to use the existing ones we have.
7/31/98 9-10pm	- Sue confirmed that the problems with the phone lines on pop in S. Falls have been fixed. Also informed her about problem with S. Port 8 in Huron and called back to confirm that it would be addressed by Mon. - Had more calls from Miss Schneider on the problem with one of our #'s rolling to hers.
8/1/98	- Found problem with the Schneider deal. First Tel contacted and returned confirmation that it will be fixed by 4pm Monday the 3rd.
8/3/98 12:30pm 4pm	- No word from Sue on the hunt for Rapid yet or confirmation on the #'s for Huron - US West and Bergman checked the line problem on port 8 in Huron. Everything fine but still have discrepancies with phone # order will be checking shortly. - Sue followed up with me on the port 8 issue.
8/4/98 8am	- Left message for Sue about Rapid rollover. She returned call at 8:30am and confirmed that Rapid rollover is done. Will test to make sure.
8/12/98 8am	- Left message for Sue(First Tel)on status of Watertown's lines.
8/13/98 8:45am	- Called First Tel to inquire on Watertown lines, left message for Sue to return call.

0150044
7-1-4
10:30am -Sue from First Tel returned call and will check with Rick on order for Watertown.

12:30pm -Sue called backed and said as soon as Rick was in, with the information on Watertown lines.

2pm -Sue (First Tel) called and informed us that the 6 lines would continue to be on hold for installation until 9/15/98 and also said they had talked to the customer about this.

10/1/98 10 am -Left message for Sue(First Tel) inquiring on status of Watertown. Mitchell as we haven't heard for a long time.

10/5/98 10am -Amy (First Tel) called and informed me of the Watertown lines would not be in until 10/15/98. These were supposedly going in on 9/15/98.

4:30pm -Amy then called back saying 10/14/98 was the expected install on the last 6 lines for Watertown.

Re: South Eastern Behavioral Health Care

JB1

Subject: Re: South Eastern Behavioral Health Care

Date: Thu, 6 Aug 1998 15:45:44 -0500

From: "Lori DeSmith" <lidesmit@uswest.com>

To: missm@basec.net

Hi Melissa,

I have a couple questions for you on this. Should all of the four locations that are not Basec Net be listed as Southeastern Behavioral Health Care? Do they want all the bills going to one location or to each site? Do they have any existing frame relay circuit right now? Do they want a 3 year contract like you have or 1 year, 5 year, etc. (Or do you want me to give you pricing on all)?

Let me know,

Thanks,

Lori

(Embedded
image moved Melissa Hofer <missm@basec.net>
to file: 08/06/98 11:51 AM
pic29937.pcx)

Please respond to missm@basec.net

To: Lori DeSmith <lidesmit@uswest.com>

cc: marvie@basec.net

Subject: South Eastern Behavioral Health Care

Lori,

I recently faxed you a LOA for this order. The diagram is what I am looking to accomplish.

- 3 - 56K Frame relay Circuits
- 1 - T1 Frame relay Circuits
- 1 - T1 from 100 West 5th, Sioux Falls, SD
to 2000 South Summit, Sioux Falls, SD
- 1 - 56K from 2020 S Norton, Sioux Falls, SD
to 2000 S Summit, Sioux Falls, SD
- 1 - 56K from 335 West 8th, Sioux Falls, SD
to 2000 S Summit, Sioux Falls, SD
- 1 - 56K from 2000 S Summit, Sioux Falls, SD
to Basec.Net 51.ybga.95104..acso
110 South Phillips, Sioux Falls, SD

Please let me know on an install date and please let me know if you have any questions.

Subject: Re: South Eastern Behavioral Health Care

Date: Fri, 7 Aug 1998 08:58:28 -0500

From: "Lori DeSmith" <lidesmit@uswest.com>

To: missm@basec.net

Hi,

So just to be completely clear on this, you want the PVC that goes to you to be billed to you and on your contract and all other circuits & PVC's should be billed on a new 3 year contract to Southeastern Behavioral Health Care and billing should go to the 2000 S Summit location.

Please confirm!

Thanks Alot,

Lori

(Embedded
image moved Melissa Hofer <missm @ basec.net>
to file: 08/06/98 04:53 PM
pic29096.pcx)

Please respond to missm@basec.net

To: Lori DeSmith <lidesmit @ uswest.com>

CC:

Subject: Re: South Eastern Behavioral Health Care

These should all be under the Basec.Net contract, but our PVC. Our PVC can be billed directly on the Basec.Net bill, the other circuits and lines need the 2000 S Summit, Sioux Falls, SD 57105 billing address. I do not believe they have any circuits now.

Thanks,

Melissa

Lori DeSmith wrote:

> Hi Melissa,
>
> I have a couple questions for you on this. Should all of the four
> locations that are not Basec Net be listed as Southeastern Behavioral
> Health Care? Do they want all the bills going to one location or to each
> site? Do they have any existing frame relay circuit right now? Do they
> want a 3 year contract like you have or 1 year, 5 year, etc. (Or do you
> want me to give you pricing on all)?
>
> Let me know,

01500.44.20
Re: South Eastern Behavioral Health Care

23

Subject: Re: South Eastern Behavioral Health Care

Date: Thu, 13 Aug 1998 13:00:06 -0500

From: "Lori DeSmith" <lidesmit@uswest.com>

To: missm@basec.net

Hi Melissa,

Here is your information for the new frame relay circuits for SEBHC. The due date is 8-31-98 and the order # is FRSR226566. The dlcis & pvc's are as follows:

100 W 5 St.-dlci 16	to	2000 S Summit Av-dlci 18	New PVC# 226021
2020 S Norton-dlci 16	to	2000 S Summit Av-dlci 20	New PVC# 226022
334 W 8 St.-dlci 16 to		2000 S Summit Av-dlci 22	New PVC# 226024
Basec Net-dlci 20 to		2000 S Summit Av-dlci 16	New PVC# 226023

Please let me know if you need anything else!!!

Thanks,

Lori

(Embedded
image moved Melissa Hofer <missm @ basec.net>
to file: 08/10/98 02:39 PM
pic23497.pcx)

Please respond to missm@basec.net

To: Lori DeSmith <lidesmit @ uswest.com>
cc:
Subject: Re: South Eastern Behavioral Health Care

That should work.

Lori DeSmith wrote:

> Hi,
>
> So just to be completely clear on this, you want the PVC that goes to you
> to be billed to you and on your contract and all other circuits & PVC's
> should be billed on a new 3 year contract to Southeastern Behavioral
> Health.
> Care and billing should go to the 2000 S Summit location.
>
> Please confirm!
>
> Thanks Alot,
>
> Lori
>
>
> (Embedded

0150.44.21
Re: South Eastern Behavioral Health Care

584

Subject: Re: South Eastern Behavioral Health Care

Date: Fri, 18 Sep 1998 13:16:36 -0500

From: "Lori DeSmith" <lidesmit@uswest.com>

To: missm@basec.net

Here is that email!!!

----- Forwarded by Lori DeSmith/COMPLEX/USWEST/US on
09/18/98 01:16 PM -----

Lori DeSmith
08/13/98 01:00 PM

To: missm @ basec.net

cc:

Subject: Re: South Eastern Behavioral Health Care (Document link not
converted)

Hi Melissa,

Here is your information for the new frame relay circuits for SEBHC. The
due date is 8-31-98 and the order # is FRSR226566. The dci # & pvc's are
as follows:

100 W 5 St.-dci 16	to	2000 S Summit Av-dci 18	New PVC# 226021
2020 S Norton-dci 16	to	2000 S Summit Av-dci 20	New PVC# 226022
334 W 8 St.-dci 16	to	2000 S Summit Av-dci 22	New PVC# 226024
Basec Net-dci 20	to	2000 S Summit Av-dci 16	New PVC# 226023

Please let me know if you need anything else!!!

Thanks,

Lori

(Embedded
image moved Melissa Hofer <missm @ basec.net>
to file: 08/10/98 02:39 PM
pic05620.pcx)

Please respond to missm@basec.net

To: Lori DeSmith <lidesmit @ uswest.com>

cc:

Subject: Re: South Eastern Behavioral Health Care

That should work.

Lori DeSmith wrote:

> Hi,
>

> So just to be completely clear on this, you want the PVC that goes to you

015004422
Re: T1 frame relay and isdn quote

585

Subject: Re: T1 frame relay and isdn quote
Date: Tue, 22 Sep 1998 13:31:49 -0500
From: "Lori DeSmith" <lidesmit@uswest.com>
To: missm@basec.net

Hi,

So did you want me to place an order??? I thought you just wanted a quote so just let me know what you want me to order and on what contract. I don't have any news on the orders for SEBH. I hope to have something this afternoon or tomorrow morning. I will let you know as soon as I know anything.

Thanks,

Lori

(Embedded
image moved Melissa Hofer <missm@basec.net>
to file: 09/22/98 10:00 AM
pic26@15.pcx)

Please respond to missm@basec.net

To: Lori DeSmith <lidesmit@uswest.com>
CC:
Subject: Re: T1 frame relay and isdn quote

Lori,

If you could include the circuit numbers for all these new orders that would be greatly appreciated. Also, I need a status on the Southeastern Behavioral install - the client said one is installed but the other 3 are not. The install date was for 8-31-98, but they are not there according to the client. Please let me know.

Thanks,

Melissa

Lori DeSmith wrote:

> Hi,
>
> Did you get all my emails on Friday? Hopefully you had a good weekend,
> mine went way to fast.
>
> Here are your quotes you requested--
>
> ISDN
>

0150
44
32
Re: TI

286

Subject: Re: TI
Date: Fri, 02 Oct 1998 15:01:56 -0500
From: Melissa Hofer <missm@basec.net>
Organization: Basec Net
To: Lori DeSmith <ldesmit@uswest.com>

Lori,

Can you get me a exact construction estimate and who pays for what and what is all included? Does that \$5000 to you mean that you (US West) will pay for the digging and repairing of the lot?

I have never had this happen before, so I really don't know.

Thanks,

Melissa

Lori DeSmith wrote:

> Hi,
>
> Now are things going? It's going to be a very rainy weekend here. Lots of
> indoor activities which usually means house cleaning!!!
>
> As far as the new T-1 that you are requesting below, will this be billed to
> you or to Connecting Point? Should this be on a 3 year contract like all
> your other circuits? Where is it going to?
>
> Also, as far as the SEBNC circuits, the circuit at 334 W 8th was installed
> on 8-31. The circuits at 100 W 5th and 2000 S Summit are due on 10-7. I
> was just informed that the circuit at 2020 S Norton is in need of special
> construction. The drop into that building is out of pairs. In order to
> get them into the building we would need to run new cable underground which
> would also entail digging up some of there blacktop. The engineer
> estimated that the special construction charges would be around \$5,000.00.
> This is not a firm quote but they would need an approval to go ahead.
> Would one of you please let me know what they want to do.
>
> Marvie, has a decision been made with the Mitchell circuit yet? I need to
> know what to tell the special construction people. They still have the
> quote for \$22,571.62 waiting for an approval or denial. Please let me
> know.
>
> Hope both of you have a great weekend!!!
>
> Thanks,
>
> Lori
>
> (Embedded
> image moved missm @ basec.net
> to file: 09/30/98 04:53 AM
> pic11402.pcx)
>
> Please respond to missmt@basec.net
>

01504424
Re: T1

587

> To: ldesmit @ uswest.com
> cc:
> Subject: T1
>
> Lori,
>
> I need to order a T1 Frame Relay at 3300 West 49th Street Sioux Falls,
> SD (Connecting Point) Randy Sorenson 605-361-8881. We are moving our
> server and modems all back to Connecting Point from the 110 S Phillips
> Ave Sioux Falls.
>
> We will be moving some other circuits there later. I just wanted to get
> this T1 ordered asap.
>
> If we are looking at 3-4 weeks on some of the other orders like the 56K
> from Prairie Lakes and Southeastern Behavioral Care lets move them to
> the new location of 3300 W 49th Sioux Falls instead of the 110 S
> Phillips. Let me know, I know some of those orders were held up in the
> main office up there.
>
> Let me know if you have any questions.
>
> Thanks,
>
> Melissa
>
> -----
>
> Name: pic11402.pcx
> pic11402.pcx Type: PCX Image Document
> (application/x-unknown-content-type-PCXImage.Document)
> Encoding: base64

01500.44.25
Re: [Fwd: TI]

588

Subject: Re: [Fwd: TI]
Date: Tue, 6 Oct 1998 14:27:33 -0500
From: "Lori DeSmith" <lidesmit@uswest.com>
To: missm@basec.net

Hi Melissa,

This order is officially considered held and is now in the hands of the Special Construction group. They have 30 days to get back to me with an exact break down of charges. I have left the supervisor a message to see how far along in the process they are. When I hear from him I will let you know but I will definitely not have the exact break down today or most likely not even this week.

I will let you know when I hear something.

Thanks,

Lori

(Embedded
image moved Melissa Hofer <missm@basec.net>
to file: 10/06/98 09:05 AM
pic16772.pcx)

*Re: SEBC
Southwestern*

Please respond to missm@basec.net

To: Lori DeSmith <lidesmit@uswest.com>
cc:
Subject: [Fwd: TI]

Lori,

This customer needs the information asap. Can I get it today?

Thanks,
Melissa

Message-ID: <36153134.D0400BEA@basec.net>
Date: Fri, 02 Oct 1998 15:01:56 -0500
From: Melissa Hofer <missm@basec.net>
Reply-To: missm@basec.net
Organization: Basec.Net
X-Mailer: Mozilla 4.05 [en] (Win95; I)
MIME-Version: 1.0
To: Lori DeSmith <lidesmit@uswest.com>
Subject: Re: TI
References: <86256691.00590992.00@notes.mnet.uswest.com>
Content-Type: text/plain; charset=us-ascii
Content-Transfer-Encoding: 7bit

From: SDFS Rick Noonan <rnoonan@acginc.net>
To: 'marvie@basec.net'
Subject: RE: Revised US West Letter
Date: Wednesday, July 29, 1998 8:44 AM

From: SDFS Rick Noonan <rnoonan@acginc.net>
To: 'marvie@basec.net'
Subject: RE: Revised US West Letter
Date: Wednesday, July 29, 1998 8:44 AM

Dear Marvie:

Have read your letter this morning and find it acceptable. However, I think more attention should be focused on you volume sensitive lead number from USWEST. It is clear that an ISP would find NO need for a measured business service. This again shows the poor communication of USWEST and the centers that take these orders. Also, one small adjustment. We are very sure that 7 lines were down, but all 10 line were out of service. You may wish to point out to Larry that we are building our case to submit to the P.U.C. also.

I would like to take this opportunity to apologize for the down time. Our records indicate that we placed the order in a timely manner and placed correctly to the appropriate center. I did respond to your escalation according to the standards that USWEST has asked us to submit. This was clearly a typing error by USWEST and I do not understand the delay in recovery of your service. As soon as I get another free hour I will pass my log entries on to you. Thank you for your continued patronage to Firstel. It is greatly appreciated.

> -----Original Message-----

> From: **Marvie Tschetter** [SMTP:marvie@basec.net]

> Sent: Tuesday, July 28, 1998 12:53 PM

> To: moonan@acginc.net

> Subject: Revised US West Letter

2

> The attached letter was created in Word. I have edited it, again.

> adding specific dollar figures. As I totalled these, I was totally

> amazed at what such an even could cost Basec.Net. But these are real

> numbers! I don't know if US West will tell me to take a leap or not.

> If they do, I will certainly present this to the PUC asap.

➤

> Let me know what you think.

✓

> And thanks for all your help, again. << File: USWEST.doc >>

✓N: 44: 05110

Marvie Tschetter

From: Marvie Tschetter <marvie@basec.net>
To: WEISD <we@weisd.com>
Subject: Re: access number
Date: Wednesday, July 29, 1998 8:56 AM

Thank you, Mel. Your e-mail could not have been more timely! Let me explain why I am so grateful for your e-mail, which certainly was not to applaud Basec Net for it's wonderful service!

Every since Basec Net merged with Mitchell On-line and took over the account, we have had problems with US West. Mitchell On-line was running a tight ratio of modem to users and we bumped the lines. Unfortunately, US West could not get the hunting or roll over to work correctly. Thus customers experienced busy signals. Last week, we continued to request service from our vendor, but instead of fixing the problem, US West proceeded to disconnect the lines. It took them three days to figure out how to correct what they had done.

In the meantime, we knew that some numbers still worked and would allow customers access, therefore we provided that number to customers. We are as frustrated as you are, as a customer of US West. I have put together a lengthy letter documenting all of these issues and requested that my customers receive compensation from US West for this. Your guess is as good as mine as to what their response will be. However, I will continue to work this issue, even if it means going to the PUC. Your letter will only solidify what I have expressed in the letter.

The impression that is given is that Basec Net is a poor ISP. Far be from the truth. We work extremely hard to ensure that our customers are receiving the best service. But, when we cannot get it from US West, unfortunately it rolls down hill from there.

Again, thank you.

Internet with an Attitude!

0120 44 00143

Marvie Tschetter

From: WEISD <weid@weisd.com>

To: webmaster@basec.net

Subject: access number

Date: Thursday, July 23, 1998 8:37 AM

What is the problem with your operations people? You have changed the Mitchell access number back and forth between 6554 and 2231 several times in the last few weeks which makes your service very poor!! If your service is for hobby applications and not business please advise.

Mel Pooley

Wholesale Electronics Inc

The sign so much of what happens if we fail to pay - you failed to mention how much we can deduct when you fail to give us service?

The enclosed invoice is for August Internet services. Payment for this invoice is due by

The enclosed invoice is for August Internet services. Payment for this invoice is due by 08/15/98. Please remit your payment to:

Basec.Net
P. O. Box 214
Huron, SD 57350

Loyd
Pleson

Per our prior correspondence, payments are due by the 15th of each month. If payment is not received by the 15th, you will be sent a reminder via e-mail giving you a grace period of 10 days - or until the 25th of the month. It is necessary to remit payment by the 25th to avoid any interruption in your service.

If your current invoice shows a prior balance, this means you have not paid your July services. According to our new policies and procedures, your account would have been suspended by now, however, due to the switch to the new billing program we have extended your grace period from July 25th to August 10th **THIS ONE TIME ONLY.**

Please don't hesitate to give our office a call (1-800-233-0206) if you should have any questions regarding your invoice.

Thank you!

... Basec.Net

Internet with an Attitude!

605.352.0005 1-800.233.0206 FAX 605.352.3277

www.basec.net

76 3rd Street SW

PO Box 214

Huron, SD 57350-0214

July 1, 1998

Shirley Petersen
504 S. Isadore
Mitchell, SD 57301

Please remit the fees to:
Basec.Net
PO Box 214
Huron, South Dakota 57350

Prior Balances	\$0.00
Monthly Fee - July	\$14.95
Miscellaneous	
Federal Communications Fee	\$1.00
Sales Tax	\$0.90
Late Fee	
Total Amount Due	\$16.85

I pay this under protest! I was not able to use Internet or E-mail for the entire month of July because of problem with Basec.Net

Just a reminder: Our invoices are due by the 15th of the month. An account is considered delinquent on the 25th of the month and will be suspended pending payment. If an account is not paid by the end of the month it will be removed from the system and a reconnect fee will be charged upon reactivation. Thank you.

NOTES ON FIRST TEL AND U.S. WEST /Watertown & Rapid City Lines

- 7/7/98 First Tel- 8am- Left message for Sue Lowrie pertaining to the installation of the Watertown lines
- 10:10am - Left another mess. With secretary for Sue
 - 11am - Sue returned call, she will check on lines and call me back with information.
 - 12:30am - Called Sue again, informed me that Randy from Equipment working with Greg on the last 9 lines in the rollover in S. Falls
 - 1pm - Called connecting point in Watertown, talked to Greg, as of 1pm no lines had been installed.
 - 2pm - Sue returned call, Watertown 6 lines to go in and 6 lines on hold for facility issues.
 - 6pm - Sue left message, rollover to be done in watertown by tomorrow morning and 6 lines to go in today and the other 6 still on hold for facility issues. Rapid City's 10 lines to be installed tomorrow.
- 7/8/98 8am - Left voice mail for Sue for confirmation on the rollover for Watertown and also for the phone lines for Rapid City and Watertown.
- 10:30am - Sue returned call - Now the 6 lines to go in on 7-10 for Watertown and 10 lines to go in on 7-8 in Rapid.
 - 10:45am - Called Sue and Shilo, about the bottom 8 numbers on the S Falls roll not coming to the D-Mark correctly. They are consulting with Rick and will return my call.
 - 1:50pm - Sue returned call - Informed me that U.S. West called from Dallas and told her that a work order had been opened on the Watertown rollover situation. Also had them busy out Port 1 in S. Falls.
 - 9pm - Sue notified me that the rollover in Watertown was done. But still not done according to the rollover test I had done.
- 7/9/98 8am - Rollover in Watertown still not done.
- Sue will call to confirm again that this is done or not?
 - Also in S. Falls, John, will check the D Mark and the Port phone lines at First Tel to get the lines in the right order. Also will confirm Rapid today.
 - 8:15am - Confirmation from Sue that Watertown rollover is fixed. We will test again today.
 - 2:50pm - Left messenger for Sue to call, still waiting on confirmation on Rapid lines.
 - 3:15pm - U.S. West did find a error on last test, if they have't locked the program down in their control center then the rollover in Watertown will be fixed by 5pm today. If not then it will be tomorrow again. This was relayed to Pat from Sue and Jana at First Tel.
 - 5pm - Jana called to check in if it has got fixed or not yet? Will call office to see what is going on. Sue also called to check in on the progress.
 - 5:15pm - Still getting busy's in Watertown.
- 7/10/98 8:30am - Sue called and said that US West said the lines in Rapid are in. Will call with confirmation and the numbers themselves, and when they will be wired. Also is checking on a Trouble TK# for Watertown Rollover.
- 12pm - Watertown not working yet?
 - 2pm - Watertown not working yet still?
 - Rapid lines are in and Tech has been dispatched and is wiring them in. Watertown lines in and to wired by First Tel Monday the 7-13
 - 2:30pm - Jeff Karmen from US West called to inform us that Larry Toll dispatched him to check into the issue in Watertown, with the 6 lines on hold for facility issues.
- 339-6871

- 3pm - US West has been told that Watertown is to fixed today by First Tel.
- Contacted Sue and Shilo to inform them that we want our lines in Mitchell to hunt or roll from 996-6554 instead of being forwarded, and also 996-5963 to do the same to 996-2231. I was told we couldn't do it from 5963 and I then informed Marvie of the situation.
- 7/13/98 9am - Gene from First Tel called to confirm that the Watertown lines are in and that he would wire them in first thing in the morning 7-14-98
- Sue will call back with info on S Falls and with access #'s in the morning.
- 7/14/98 10:00 AM - Was confirmed that Watertown lines are wired and ready by Gene.
- 7/16/98 11:00am - Will have Mitchell done today and will mail me phone #'s for Watertown and Rapid.
- 7/17-19/98 - Mitchell lines had been disconnected after I requested a check on the rollover because of busy signals in Mitchell. Had a long drawn out problem no one knew who could solve. Informed Marvie and she took the situation to a higher level.
- 7/20/98 11:44pm - Redfield log on test fully operational after major line problems.
- 7/24/98 1pm
5pm - Called to order 2 new lines for Rapid and Sioux Falls.
- NO RETURN ON CALL!!
- 7/27/98 1PM
3pm - Called and left message for Sue again in regards to new phone lines.
- Decided against the new lines and decided to use the existing ones we have.
- 7/31/98 - Sue confirmed that the problems with the phone lines on pop in S Falls have been fixed. Also informed her about problem with S. Port 8 in Huron and called back to confirm that it would be addressed by Mon.
9-10pm - Had more calls from Miss Schnieder on the problem with one of our #'s rolling to hers.
- 8/1/98 - Found problem with the Schnieder deal. First Tel contacted and returned confirmation that it will be fixed by 4pm Monday the 3rd.
- 8/3/98 - No word from Sue on the hunt for Rapid yet or confirmation on the #'s for Huron
12:30pm - US West and Bergman checked the line problem on port 8 in Huron. Everything fine but still have discrepancies with phone # order will be checking shortly.
4pm - Sue followed up with me on the port 8 issue.
- 8/4/98 8am - Left message for Sue about Rapid rollover. She returned call at 8:30am and confirmed that Rapid rollover is done. Will test to make sure.

0150444333
Re: follow up

A1

Subject: Re: follow up
Date: Thu, 24 Sep 1998 10:18:34 -0500
From: "Lori DeSmith" <lidesmit@uswest.com>
To: missm@basec.net

Hi,

#2 on the list is regarding Building Products. It would be great if you have some repair ticket numbers. If you don't I just need to get some additional information from you as to more specific dates and we will certainly get them a credit for when the service was not working.

Thanks,

Lori

----- Forwarded by Lori DeSmith/COMPLEX/USWEST/US on
09/24/98 10:14 AM -----

Lori DeSmith
09/18/98 09:19 AM

To: marvie @ basec.net
CC:
Subject: Re: follow up (Document link not converted)

Hi Marvie,

Here are your answers to the below questions!!!

#1 The Agar School circuit was the one that had the PVC to Commercial bank and when that was disconnected back on 6-16 the Agar School circuit had no PVC's on it until it was requested to be disconnected as of 9-9. Please let me know if you need me to send you all of the emails regarding this.

#2 If you reported this to the repair department I can note the account and you will get a credit based on the outage of the repair ticket but this does take up to 3 months sometimes. If you didn't report it through repair I would need to get more information from you. Please let me know if there was a ticket in repair or not.

#3 This PVC was disconnected as of 8-6-98 but the billing stopped as of 8-1-98.

Thanks,

Lori

(Embedded
image moved Marvie Tschetter <marvie @ basec.net>
to file: 08/24/98 04:30 PM
pic11991.pcx)

Please respond to marvie@basec.net

Re: follow up

41

To: "ldesmit@uswest.com" <ldesmit @ uswest.com>, missm @ basec.net
cc:
Subject: follow up

Lori,

On August 6 you sent me an email with answers to some questions I had on our account. You were to continue to follow up and get some answers back to me. I have not received those answers.

Specifically,


Circuit 51.qeea.94958

* This circuit was taken down by US West in early June. We never asked for this to be disconnected. The school was without access all summer. They deserve a credit for this, as well as an explanation of why their circuit was taken down. BTW, it was never brought back up.

Circuit 95558

* this circuit was down a great deal of the time the first month. I understand that US West has the out to not provide service for 24 hours, however after that, there is some liability. Building Products also deserves a credit for lost time.

PVC 200249 - was this pvc disconnected August 1?

 pic11991.pcx	Name: pic11991.pcx Type: PCX Image Document (application/x-unknown-content-type-PCXImage Document) Encoding: base64
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...Basec.Net

Internet with an Attitude!

605-352-0005 1-800-233-0206 FAX 605-352-3277

www.basec.net

76 3rd Street SW
PO Box 214
Huron, SD 57350-0214

July 22, 1998

Dear Larry:

The following is documentation of the Mitchell concerns:

10 Lines were ordered from FirstTel on April 23, 1998. The last number was to roll over to a digital T1. The number 996.6554 was requested. We were told we could not have that number.

It was over three weeks before lines were installed. We do not know why it took such a long period of time for these lines to be installed. However, because it was taking such a long period of time, lines were also ordered directly through US West. The 996.6554 was available. The same day that the install was finalized with FirstTel, US West made the install. It was discussed with FirstTel, and FirstTel was suppose to be getting the lines moved over to their billing. However, what happened is that FirstTel ordered 10 lines and US West kept the first number of 996.6554. We have no idea why this was done. It was not at our request.

After the install, we consistently had calls that our customers were receiving busy signals. The Basec.Net equipment was thoroughly checked out. The equipment was satisfactory. The customer ratio was 8/1. No reason for customer to receive busy signals. Further investigation found:

1. The US West order was placed as measured business lines. We did not request measured business lines. With over 200 lines, we know what type of lines to order. The individual taking the order entered it incorrectly and was obviously not thinking. Why would a Internet provider order measured lines? As you can see by the attached phone bill, there is a total amount owed on this line of \$2,7774.81.
2. 996.6554 was call forwarded to 996.5964, which meant a per minute charge on every roll over and if someone had been call forwarded, the next person received a busy signal.
3. The last number in the analog roll over, 996.5963, was also call forwarded to 996.2231, which is the first number on the digital T1. Again, because of the call forward, we were being billed on a per minute basis, and individuals were getting busy signals if 996.5963 was call forwarded.

Two weeks ago, we finally were able to secure the assistance of a US West technician. After thorough investigation of the lines, the US West technician informed us that the call forwarding was the problem and that the order should have been a series completion order, not call forwarding.

As of Monday, July 20, 1998, it appeared that the situation had been resolved. However, Monday evening we again received numerous complaints about busies. This was confirmed by our testing. We reported the issue to FirsTell, who immediately took this to US West. In attempting to correct the problem, US West disconnected 7 of our lines, including the very first dial up number, and all 11 lines were out of service. That meant that the 500 plus customers in Mitchell could not log on at all. This happened at approximately 3:00 pm on Tuesday, the 21st of July. At approximately 10:30 Tuesday evening, FirsTell submitted an order to have the 1st dial up line call forwarded to the first line in the digital roll over, in an attempt to just provide us service. However, this was a call forward, which meant individuals were getting busy signals and the other 10 analog lines were skipped.

At 3:30, on Wednesday afternoon, July 22, 1998, the lines were still not working. In fact, not only have modem lines been affected at this location, but also the office lines at the Mitchell location have been down, as well. FirsTell has been working this issue to the best of their ability. Basec.Net phones have been ringing constantly with unhappy Mitchell customers.

FirsTell has worked diligently to correct these issues. It is unfair that FirsTell should be caught in the middle. I realize that we could secure our services directly with US West, however, because of the cost savings, and the attentiveness to customer service, we choose to do business with FirsTell. The issue is the ability of US West to follow through and complete orders correctly.

It is now July 22, 1998. We have been working this issue with FirsTell and US West for over two months. Basec.Net has suffered significant damage as a credible Internet Service Provider in the Mitchell area. Daily, we receive comments about our poor service. Customers are demanding refunds because of our service and inability of customers to get connected. Basec.Net is faced with astronomical phone bills, that were generated because of errors with orders placed by US West. Needless to say, the lines themselves have not worked properly.

7/23/98 9:18 AM

Last night, the Basec.Net technicians ran hourly checks on the Mitchell lines and modems. Each of these tests failed. At this time, we have given the majority of Mitchell customers an alternate telephone number to dial which will take the call on the digital T1. Unfortunately, the 48 lines are being heavily utilized, so it is likely the Mitchell customers will receive busy signals due to the high modem ratio.

We have mixed responses from the customers, some are understanding, many are completely dissatisfied. Our credibility continues to slide as we have told them we would be fixed in a few hours, and it is now over 48 hours.

I have talked with Rick Noonan of FirsTell on a consistent basis. Last night, at 4:00, I talked with the US West technician on sight. This gentleman informed me that for whatever reason the lines were disconnected on Tuesday, when they were reconnected, they were connected to the wrong pair, and they were attempting to locate the connection and get that changed.

7/23/98 9:59 AM

7/23/98 9:59 AM

The Basec.Net technicians have now verified that the eleven analog lines are working. However, the last analog number 996.5963 is not rolling to the first number on the T1. This is where we have been for the past two weeks, at least we are back to where we were. In addition, the 996.0579, in the office, was taken down and is still not functioning. Mitchell customers are becoming exasperated at having no Internet access for nearly three days. These are business people who require Internet access, not just individuals who are using the Internet for a hobby. As you can see from the attached e-mail, this is the exact sentiment of our customer's.

7/23/98 12:43 PM

Basec.Net technicians have completed another testing of the Mitchell lines. The second time, the lines finally worked.

I would strongly suggest that US West review their procedures and policies. It seems unlikely that the technical issues related to this problem were highly complicated, demonstrated by the fact that once the issue was addressed, and isolated, it was fixed in less than a two hour time frame.

At this point, Larry, I am past the point of needing an apology. I know that you are sincere in offering such. However, right now, our customers deserve compensation for their inconvenience. I do not know what avenues I need to go through to seek this compensation from US West, but I would appreciate assistance in securing this. US West should also take the responsibility for this service issue, and inform the Basec.Net/Mitchell customers that indeed it was a US West issue. In addition, Basec.Net should not be expected to pay for services not rendered. FirsTell should not be responsible for services that were not rendered. The issue is truly a US West responsibility.

We keep weekly tabulations on new customers and customers who choose to terminate their access with us. We purchased Mitchell On-Line in May of 1998. From that point in time, we have had continued problems with our telephone service. This has jeopardized our reputation as an Internet Provider in the Mitchell community. In fact, in the last month, we have lost 21 customers due to the service issues we have experienced. US West's lack of performance has affected Basec.Net's bottom line. There must be compensation for this. As a result of this latest saga with US West, I have tabulated the following claim:

Lost Customers	21
Monthly Rate	\$19.95
Yearly Loss of Income	\$5,027.40

As we all know, one customer who has a negative experience, will tell 10 other individuals. In a community where we are attempting to establish market share, this has been a huge deterrent.

Lost Market Share	21 x 10 = 210 customers
Monthly Rate	\$19.95
Monthly Loss of Income	\$4189.50
Yearly Loss of Income	\$50,274.00

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In addition, because of the mistake of order processing by US West, Basec.Net has been presented phone bills that reflect per minute charges. The rollover was incorrectly configured making the access at some points limited to two lines, sometimes to 10 lines. Only customers provided with the optional number were insured of access on the digital T1. Again, providing alternate numbers does not impress the customer. Therefore, the total amount of the phone bills that should be covered by US West is **\$3660.76**.

Finally, there is the issue of the customers who choose to remain with Basec.Net, but experienced continued busy signals and ultimately no access for several days. These individuals need to be compensated for the inconvenience they experienced.

500 Customers	\$14.95
Monthly Rate	\$7475.00
Two Months of Difficulties	\$14,950.00

If the amounts of the claim are totaled, the total is **\$77,572.92**. Do I expect US West to write me a check for that amount? In all honesty, the answer is yes. These are hard facts and figures that have been presented, with no exaggeration. I realize this is somewhat of a shocking ending. I have tried throughout the past few months to work in a gracious fashion with US West. This last incidence, however, was intolerable. The impact to my business was real and hit the bottom line.

I look forward to hearing from you.

Respectfully,
Marvie Tschetter
VP Operations
Basec.Net

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of October 23, 1998 through October 29, 1998

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this filing.
 Phone: 605-773-3705 Fax: 605-773-3809

TELECOMMUNICATIONS

TC98-187 In the Matter of the Petition for an Order Directing U S WEST Communications, Inc., to File Updates to its Exchange and Network Services Catalog, Access Service Catalog, Advanced Communications Services Catalog, and Private Line Transport Services Catalog.

On October 26, 1998, Staff of the Commission petitioned the Commission to issue an Order requiring U S WEST Communications, Inc. to file updates to its Exchange and Network Services Catalog, Access Service Catalog, Advanced Communications Services Catalog and Private Line Transport Services Catalog.

Staff Attorney: Camron Hoseck
 Staff Analyst: Harlan Best
 Date Filed: 10/26/98
 Intervention Deadline: NA

TC98-188 In the Matter of the Complaint filed by Donna Beitelspacher, Webster, South Dakota, against Buyers United Regarding Unauthorized Billing

Complaint by Donna Beitelspacher vs. Buyers United. The Complainant claims that she was billed by ITC and Buyers United for the same calls. The Complainant states "more than once, I discussed this by phone with representatives of Buyers United. Several months ago, I received a billing from a collection agency. I responded telling them that I had evidence that the calls had been paid through ITC." The Complainant seeks the following relief: "I would ask that the PUC determine which company had the rightful claim to the payments, and that all collection claims be ended. I further would ask that records of this be removed from my credit record. Also, I do not feel that I should be assessed attorney/collection costs."

Staff Attorney: Karen Cremer
 Consumer Affairs: Leni Healy
 Date Filed: 10/01/98
 Intervention Deadline: NA

TC98-189 In the Matter of the Complaint filed by Suzanne Hanson, McCook Lake, South Dakota, against CommChoice, LLC, Regarding Poor Quality of Service and a Request to be Served by U S WEST

Complaint by Suzanne Hanson vs. CommChoice, LLC. The Complainant claims that confusion and poor service have lead her to file a complaint. The Complainant seeks the following relief: "We would like the approval of the PUC to allow U S WEST to bring service into the Deer Run Subdivision in McCook Lake, SD. Due to the nature of our businesses (general sales) it is imperative we have a dependable, quality oriented telephone service."

Staff Attorney: Karen Cremer
 Consumer Affairs: Leni Healy
 Date Filed: 10/19/98
 Intervention Deadline: NA

TC98-190 In the Matter of the Application of ENHANCED COMMUNICATIONS NETWORK, INC. for a Certificate of Authority to provide intrastate telecommunications services in South Dakota

Application by ENHANCED COMMUNICATIONS NETWORK, INC. to provide intrastate, interexchange telecommunications services in the State of South Dakota. ENHANCED COMMUNICATIONS is proposing to provide outband intrastate interexchange service and prepaid calling card service within South Dakota.

Staff Attorney: Karen Cremer
 Staff Analyst: Dave Jacobson
 Date Filed: 10/28/98
 Intervention Deadline: 11/12/98

TC98-191 In the Matter of the Application of Special Accounts Billing Group, Inc., for a Certificate of Authority to Provide Telecommunications Services in South Dakota

Application of Special Accounts Billing Group, Inc. for a certificate of authority to provide a full-range of resold 1+ interexchange telecommunications services in South Dakota. The services to be provided include MTS, out-WATS, in-WATS, and Calling Card services.

Staff Attorney: Camron Hoseck
 Staff Analyst: Kylie Tracy
 Date Filed: 10/28/98
 Intervention Deadline: 11/13/98

TC98-192 In the Matter of the Complaint filed by Greg and Marilyn Bolt, Rapid City, South Dakota, against McLeod USA, Regarding Delayed Transfer of Service

Complaint by Greg and Marilyn Bolt vs. McLeod USA. The Complainant claims that a delay in transfer of telephone service caused loss of income. The Complainants seek the following relief: "I know we lost a \$10,000 job because of not having a phone. Plus other jobs and 10 hours of time spent at a payphone. And no phone for emergency reasons. We feel we lost a minimum of \$12,000."

TC98-189 In the Matter of the Complaint filed by Suzanne Hanson, McCook Lake, South Dakota, against CommChoice, LLC, Regarding Poor Quality of Service and a Request to be Served by U S WEST.

1

Complaint by Greg and Marilyn Bell vs. McCook Lake. The Complainant claims that a delay in transfer of telephone service caused loss of income. The Complainants seek the following relief: "I know we lost a \$10,000 job because of not having a phone. Plus other jobs and 10 hours of time spent at a payphone. And no phone for emergency reasons. We feel we lost a minimum of \$12,000."

2

Staff Attorney: Karen Cremer
Consumer Affairs: Leni Healy
Date Filed: 10/27/98
Intervention Deadline: NA

TC98-193 In the Matter of the Complaint filed by Debra Esche, Canton, South Dakota, against U S WEST Communications, Regarding Unacceptable Service.

Complaint by Debra Esche vs. U S WEST Communications. The Complainant describes frustration, effort and expenses caused by a delay in obtaining telephone service. The Complainant seeks the following relief: "require U S West to reimburse me for long distance calls and the time I spent dealing with this situation. Require U S West to provide brick type phones for all customers with delayed service. Require U S West to come up with a written policy that includes these items."

Staff Attorney: Camron Hoseck
Consumer Affairs: Leni Healy
Date Filed: 10/26/98
Intervention Deadline: NA

TC98-194 In the Matter of the Complaint filed by Basec.net, Huron, South Dakota, against U S WEST Communications and FirsTel, Inc., Regarding Billing Issues.

Complaint by Marvie Tschetter of Basec.net vs. U S WEST Communications and FirsTel, Inc. The Complainant purchased an existing business and contacted U S WEST to continue customer access through T-1 lines. U S WEST informed the Complainant that Basec.net could not take over payment of the lines unless the previous owner's debt was paid in full. Basec.net decided to move the equipment and obtain services through FirsTel. After obtaining the services, Basec.net was informed by U S WEST that they would be charged for installation/construction fees, the old billings of the previous owner, and additional charges for monthly service until other options were available. Neither U S WEST nor FirsTel disclosed these costs prior to providing service. FirsTel offered a plan with minimal installation fees but could not offer the service for 15-20 days which would not allow Basec.net's customers access to their services. The Complainant seeks the following relief: "1) Require U S WEST to inform promptly of facilities issues. 2) Some sort of financial compensation for loss of revenue."

Staff Attorney: Karen Cremer
Consumer Affairs: Leni Healy
Date Filed: 10/26/98
Intervention Deadline: NA

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3

0150-44-41

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED)	ORDER FINDING
BY BASEC.NET, HURON, SOUTH DAKOTA,)	PROBABLE CAUSE AND
AGAINST U S WEST COMMUNICATIONS, INC.)	NOTICE REQUIRING
AND FIRSHEL, INC. REGARDING BILLING)	ANSWER
ISSUES)	TC98-194

On October 26, 1998, the Public Utilities Commission (Commission) received a complaint by Marvie Tschetter of Basec Net (Basec Net), Huron, South Dakota, against U S WEST Communications, Inc. (U S West) and FirstTel, Inc. (FirstTel). Basec Net states that it purchased an existing business and contacted U S WEST to continue customer access through T-1 lines. U S WEST informed Basec Net it could not take over payment of the lines unless the previous owner's debt was paid in full. Basec Net decided to move the equipment and obtain services through FirstTel. After obtaining the services, Basec Net was informed by U S WEST that they would be charged for installation/construction fees, the old billings of the previous owner, and additional charges for monthly service until other options were available. Neither U S WEST nor FirstTel disclosed these costs prior to providing service. FirstTel offered a plan with minimal installation fees but could not offer the service for 15-20 days which would not allow Basec Net's customers access to their services. Basec Net seeks the following relief: "1) Require U S WEST to inform promptly of facilities issues. 2) Some sort of financial compensation for loss of revenue."

Pursuant to ARSD 20.10.01.08.01 and 20.10.01.09, if a complaint cannot be settled without formal action, the Commission shall determine if the complaint shows probable cause of an unlawful or unreasonable act, rate, practice or omission to go forward with the complaint.

On November 3, 1998, at a duly noticed meeting, Basec Net explained its complaint to the Commission. U S WEST and FirstTel each explained its actions in this matter to the Commission.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13, including 49-13-1 through 49-13-14, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-11, 49-31-60 through 49-31-68, inclusive, and ARSD 20.10.01.07.01 through 20.10.01.15.01, inclusive. The Commission voted unanimously to find probable cause. It is therefore

ORDERED, that pursuant to ARSD 20.10.01.09, the Commission finds that there is probable cause of an unlawful or unreasonable act, rate, practice, or omission and that the complaint shall be forwarded to U S WEST and FirstTel and U S WEST and FirstTel shall file with the Commission their answers in writing within twenty (20) days of service of this order.

Dated at Pierre, South Dakota, this 04th day of November, 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 William K. Schoenfelder

Date 11/10/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

0150.44.42

THE PUBLIC UTILITILS COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

NOV 25 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON,
SOUTH DAKOTA, AGAINST U S WEST
COMMUNICATIONS AND FIRSTEL, INC.,
REGARDING BILLING ISSUES.

TC98-194

HEARD BEFORE THE PUBLIC UTILITIES COMMISSION

PROCEEDINGS:

November 3, 1998
2:45 P.M.
Room 412, Capitol Building
Pierre, South Dakota

PUC COMMISSION:

Jim Burg, Chairman
Laska Schoenfelder, Commissioner
Pam Nelson, Commissioner

COMMISSION STAFF

PRESENT:

Rolayne Ailts Wiest
Karen Cremer
Camron Hoseck
Harlan Best
Bob Knadle
Gregory A. Rislov
Steve Wegman
David Jacobson
Leni Healy
Shirleen Fugitt
Kylie Tracy

Reported by:

Lori J. Grode, RMR

ORIGINAL

A P P E A R A N C E S

(Appearances by Telephone)

For US West: Thomas J. Welk and
Colleen Sevoid
P.O. Box 5015
Sioux Falls, South Dakota,
57117-5015

Jim Gallegos
1801 California Street, Suite 5100
Denver, CO 80202

For FirstTel: Robert C. Riter, Jr.
P.O. Box 280
Pierre, SD 57501

and

Donna Bult
Chet Jones
Rick Noonan
Neal Schmidt

Also Present: Marvie Tschetter

P R O C E E D I N G S

1 CHAIRMAN BURG: In the matter of the
2 complaint filed by Basec.Net, Huron, South Dakota,
3 against U S West Communications and FirstTel,
4 Incorporated, regarding billing issues.
5

6 Today, does the Commission find probable
7 cause of an unlawful or unreasonable act, rate,
8 practice or omission to go forward with this complaint
9 and serve it upon the respondent.

10 Who is here to represent them?

11 MS. TSCHETTER: My name is Marvie Tschetter.
12 I am the owner of Basec.Net. Basec.Net is an Internet
13 service provider. I have submitted several documents
14 already to Leni, and I know they were quite lengthy and
15 cumbersome, so what I have developed also is a short
16 synopsis of an outline of events. I'm not sure I have
17 enough for everybody.

18 First of all, I know earlier this year you
19 had a taste of what an Internet provider is. Let me
20 give you just a short synopsis of Basec.Net. We are a
21 privately-owned Internet service provider. That means
22 that my husband and I and another couple own
23 Basec.Net. We're a limited liability company. We have
24 equipment in Huron, Sioux Falls, Mitchell, Redfield,
25 Rapid City, meaning that we offer local dial-up in

1 those communities. Through an agreement with South
2 Dakota Network, we also are able to service various
3 rural telephone companies. We have -- Basec.Net has
4 over 2,500 customers in these areas.

5 In addition to that, those dial-up customers,
6 we have a number of customers that we service via 56 K
7 or T-1, meaning that what they do is they lease a line
8 through U S West and then connect to our main POP in
9 Sioux Falls to get Internet access. In these
10 communities we have over 220 dial-up connections,
11 meaning that we have 220 dial in phone lines connected
12 to our equipment. It was an economic decision that we
13 decided to move our dial-up lines instead of via U S
14 West to FirstTel. FirstTel resells U S West facilities.
15 And I asked FirstTel to join me today because the issue
16 that is on the table involves FirstTel as well, and I'm
17 sure that they have other information that would
18 supplement what I am going to discuss.

19 Basically what I'd like to be the issue today
20 primarily is a POP that I have in Mitchell which
21 services over 450 customers' dial-up. In April of this
22 year Basec.Net and Mitchell On Line, which was the
23 Internet service in Mitchell, proceeded to have
24 discussions about merging, or basically I would buy
25 them out. In that same time frame I called U S West,

1 to my account rep, because Mitchell On Line currently
2 had service that was paid by another Internet service
3 provider out of Mitchell who was servicing Mitchell via
4 two digital T-1s.

5 I called U S West and I said, "Can I take
6 over payment of those two digital T-1s because I'm
7 going to buy Mitchell On Line?" My account rep, Gary
8 Johnson, at that time told me absolutely not. There is
9 a substantial amount of money owed on those lines,
10 therefore you cannot take them over. You can order
11 brand new ones and pay for the install, or you can seek
12 other facilities. The decision was already made that
13 the facility was going to be moved from the current
14 location, but knowing that those two digital T-1s were
15 not mine until I could get additional facilities ready,
16 I ordered ten analog lines to be added onto those
17 digital T-1s. That would basically serve as a safety
18 net in case those two digital T-1s went down because
19 they were not mine.

20 April 23rd those lines were installed. Now,
21 I ordered those lines via FirstTel. These ten lines
22 were to precede the digital T-1s and they were to roll
23 over to those digital T-1s. So, in other words, the
24 customer received a new dial-up number that he would
25 call a 996 number. Unfortunately, it took over three

1 weeks for those ten analog lines to be installed. Once
2 they were installed, my customers continued to receive
3 busy signals. Now, with close to 500 customers and 58
4 lines, there is no reason that my customers should be
5 receiving busy signals.

6 As you can see in July there were several
7 phone calls almost on a daily basis that I made to
8 FirstTel in regards to this issue. Now, because FirstTel
9 resells U S West, it ultimately was a U S West problem,
10 but I could not talk to U S West. I would have to call
11 FirstTel, who would then call U S West. I knew what the
12 problem was from experience with this sort of situation
13 before, and the problem was that when the line order
14 was placed, they proceeded to configure that first line
15 as call forwarding. So that my first customer called
16 up, got connected just fine; the second customer was
17 call forwarded to the second line. The third customer
18 wasn't forwarded anywhere because call forwarding
19 doesn't roll over.

20 In addition to that problem, I was being
21 charged on a permanent basis for each of these calls.
22 So if I had a heavy-duty user that was using that
23 second line, he was racking up some pretty heavy-duty
24 dollars for me.

25 July 20th -- now this, as you know, started

1 in May. I finally reached my boiling point, and we did
2 get U S West to act. Unfortunately, the way U S West
3 decided to act was to disconnect at least seven of
4 those initial ten lines. It took three days for U S
5 West to figure out how to get those lines operational
6 again.

7 Now, understand from my perspective, I'm a
8 new business owner in Mitchell with these customers.
9 I've given them a new number, one that's a change to.
10 Now, I've owned them for less than three or four
11 months. They're getting busy signals and now they
12 can't get on at all because U S West just disconnected
13 the lines. Now, if they do happen to call my office,
14 which, believe me, almost every one of them did do, I
15 gave them another telephone number after those seven
16 numbers that were disconnected so they were able to get
17 logged on. But, of course, you can imagine the cost to
18 me of having to man the phone and pay for the 800
19 number of all of those customers calling in.

20 July 24th a letter was sent to Larry Toll
21 documenting the scenario, and that is included in your
22 packet. I received no response from him. August 10th
23 I submitted another letter to Mr. Toll following up on
24 the first letter. And he told me that simply it was in
25 the legal department. I did not -- I decided at that

1 point on this issue that I really was going to try to
2 work the issue with FirstTel and U S West rather than
3 issuing a complaint with the PUC. However, the
4 scenario continued and I -- when I bought Mitchell On
5 Line, the agreement was that I was to relocate those
6 facilities. Obviously, all I had done thus far is try
7 to hold on to the customers that I did have. So we
8 were not able to locate a new facility.

9 However, in August I did make a request for a
10 facilities check at 514 North Main Street in Mitchell.
11 I did it out of a learning experience in another
12 community where I didn't do a facilities check and I
13 had to end up moving my equipment because U S West
14 could not provide the facilities. In August FirstTel
15 informs me that there are lines available and I have
16 requested a facilities check for 60. That there are 60
17 lines available at this new site.

18 In August I order a T-1 via U S West for my
19 frame connection. Now, in August I was unaware -- and
20 I can't speak for FirstTel. I do not know if in August
21 FirstTel could have sold me the T-1 connection.
22 Understanding what I'm getting here are lines coming in
23 from my customers and lines going from my equipment
24 back in Mitchell back to my equipment in Sioux Falls.
25 So the T-1 frame is taking the information to my

1 equipment in Sioux Falls.

2 I ordered in August the T-1 from U S West.
3 August 26th I receive an E-mail from U S West saying
4 that there may be a delay due to lack of facilities.
5 September fourth we are given seven numbers from
6 FirstTel of lines that are installed at 514 North Main
7 Street. September 18th I receive a confirmation from U
8 S West that my T-1 is to be installed on September
9 24th. September 21st I now receive an E-mail from U S
10 West stating that the T-1 frame is in held order status
11 because of problems in the central office. New
12 install, late October.

13 Obviously, I'm getting a little antsy at this
14 point in this scenario because I know that I have
15 digital T-1s that I am using that are not mine that can
16 go down at any point. I need to get my equipment out
17 of the existing location. I proceed to call U S West
18 directly and talk to my account rep, who informs me
19 that, well, Marvie, the reason that they're on delay is
20 because you have not approved the \$22,000 install at
21 that facility. This was the first time that I had
22 heard about any \$22,000 install. In fact, quite the
23 contrary. I had been told that the facilities were
24 there. Obviously from September 25th on there were
25 numerous phone calls between myself, U S West, and

1 FirstTel.

2 September 28th I'm informed that someone from
3 U S West has taken it upon themselves to call ISD, who
4 is the party responsible for the digital T-1s, to tell
5 them that I will not pay for the back services. Now, I
6 had never made an agreement with ISD to pay for those
7 facilities. In fact, if you remember, I had asked U S
8 West initially if I could take over those lines and I
9 was told no. I'm now told that a disconnect has been
10 ordered for those digital T-1s. I still do not know
11 where my facilities are that I've ordered at my new
12 locations.

13 A call is placed to Larry Toll on 29th. The
14 end result is that there will be a disconnect but he'll
15 try to hold it off until October 5th. October 2nd,
16 which is now a Friday, late afternoon, I receive
17 another phone call from Mr. Toll, who informs me that,
18 in fact, those lines digital T-1s will be disconnected
19 on Monday. Now, if those digital T-1s go down, I have
20 ten analog lines serving 500 customers. That's a 50:1
21 ratio. Of course, I could send U S West a check for
22 \$16,000 on Monday morning to assure that those digital
23 T-1s stay up. The \$16,000 is to account for what I
24 would have paid since May for those lines.

25 Now, excuse me, but if they would have told

1 me that I didn't have facilities, I would have found an
2 alternate site. I would not be using these digital
3 T-1s. I found no choice at that point either looking
4 at \$16,000 to buy me some time for some lines that I'm
5 not going to continue to use because I'm going to move,
6 or a \$22,000 install fee for something I didn't know I
7 was facing, but to write my customers in Mitchell and
8 tell them, I'm sorry, at some point during this given
9 month U S West is going to disconnect our digital
10 T-1s. You will be compensated in the sense that I will
11 not charge you for the month of October because I do
12 not know when you will not be able to receive Internet
13 access. Obviously, that's several hundred dollars that
14 I lost in October.

15 Daily there were phone calls between FirstTel
16 and Basec.Net and between U S West and FirstTel. It was
17 interesting and frustrating in that as we're trying to
18 coordinate the install of the new facilities, that U S
19 West will not talk to FirstTel about coordinating these
20 lines. And it was very almost comical on a daily basis
21 because we would be told that the lines facilities were
22 there; then I would be told, no, they're not there. U
23 S West -- at one point FirstTel came up with a plan of
24 what we could do is take supposedly those existing
25 seven lines that were installed and combine them to get

1 me the digital T-1s. Of course, before we could do
2 that, we had to get a disconnect order from U S West.
3 But then we found out that those lines really weren't
4 there. So I'm not sure where we were to get a
5 disconnect for facilities that weren't there.

6 Obviously, this gets rather confusing and
7 rather frustrating because I know at any date those
8 T-1s are going down. On October 28th, that is a
9 Wednesday, at quarter to 5:00, U S West takes down my
10 digital T-1s. I'm now operating on ten analog lines.
11 October 29th, obviously, I call FirstTel and ultimately
12 the bottom line is that FirstTel tells me according to
13 their conversations with U S West, that there are no
14 facilities. In fact, I've even given them a second
15 location which they tell me there are no facilities
16 at.

17 I physically drive to Mitchell myself on
18 October 30th. The second facility is next door to U S
19 West. It is the old location where Martin and
20 Associates used to be, and you're familiar with Martin
21 and Associates. They're quite a large user of phone
22 lines, and there were 60 some phone lines coming into
23 the second facility I had identified. I came back,
24 talked to FirstTel, and was told that if we move the
25 order, we would be facing an install fee on the first

1 order any way and that they were told that there were
2 no facilities at the second location.

3 Now, this is October 30th. Monday, I am told
4 -- I receive a call from U S West, a John at
5 800-373-1368, telling me that my Frame Relay circuit
6 amazingly is installed at the first location where
7 there were no facilities. I am also told by FirstTel
8 that my two digital T-1s are installed. However, when
9 we physically go to the location, there is only one
10 digital T-1 installed. Now, if you remember, I need 60
11 lines. Two digital T-1s give me 48.

12 When I talked to U S West today to clarify
13 what exactly they put in there, they told me they only
14 had one order for one digital T-1. Now, I cannot move
15 my equipment to the new facility until the facility is
16 ready. I have not been told what I am facing for an
17 installation charge. I am running on ten analog lines
18 for some 400 customers. I have lost over a hundred
19 customers due to this scenario, and I can document
20 them. They have specifically disconnected because of
21 this issue. There are a number of these customers that
22 are small business users who rely on the Internet for
23 business.

24 Now, what I have done is I monitor those ten
25 lines carefully. And if, in fact, someone is on there

1 for an extended period of time, I kick them off. If a
2 small business owner or business customer calls me and
3 needs access to the Internet immediately, I kick
4 someone else off to allow him access. That is how I
5 have addressed the situation. There has been little or
6 no communication or cooperation from U S West regarding
7 this install. I have asked FirstTel to be here, and I
8 am not going to determine who's at fault here, U S West
9 or FirstTel. I can tell you that FirstTel has been very
10 very cooperative in terms of trying to work with me on
11 this situation. I can't imagine the long distance fees
12 between FirstTel and Basec.Net that have been accrued
13 through this. I do not understand why I was told that
14 I cannot take over the lines in May and yet Sunday when
15 U S West can't provide the facilities, if I will write
16 a check for \$16,000, now I can suddenly take them
17 over. I see FirstTel being caught in the middle between
18 U S West and the end user. And if U S West doesn't
19 want the middle man, then they shouldn't do this sort
20 of thing.

21 Due to this scenario, many of my customers
22 have had little or no Internet access. We've accrued a
23 great loss of revenue, both real and projected. We
24 have yet to be informed of the installation charges
25 and, quite frankly, I don't know what I've got for

10 And I also believe that Basec.Net deserves
11 some sort of financial compensation due to lost
12 revenue, both real and projected, because as a new
13 business, as you know, going into a community,
14 Basec.Net obviously doesn't have a good name on the
15 streets in Mitchell at this time.

19 MS. BULT: Yes, I am.

22 MS. BULT: Bob is there for us.

23 MR. RITER: Thank you, Mr. Chairman and
24 Members of the Commission. Bob Riter from Pierre. I'm
25 an attorney here. I represent FirstTel. With me this

1 afternoon is Neal Schmidt, who's the director of
2 regulatory affairs and also Rick Noonan and a couple
3 other personnel from FirstTel. We're here today to
4 respond and also to support the issues.

5 MS. SEVOLD: Commissioner Burg, this is
6 Colleen from U S West, and we cannot hear anything.

7 MR. RITER: There hasn't been anything of
8 real significance said. This is Bob Riter. All I did
9 is introduce myself and Neal, who's now going to step
10 up to the microphone.

11 CHAIRMAN BURG: Go ahead, Neal.

12 MR. SCHMIDT: Thank you. Good afternoon,
13 Commissioners and staff. My name is Neal Schmidt. I
14 am the director of regulatory affairs for FirstTel. We
15 are a little bit handicapped, and I apologize to the
16 Commission. We received this complaint -- I received
17 this complaint on Friday via the Internet through the
18 normal agenda distribution process, and I wasn't aware
19 of it until then. I was out of town on Friday. On
20 Monday I dug into it and found out in fact there was a
21 complaint filed.

22 I concur with what Marvie has told you. The
23 facts from our standpoint is that on August 20th we
24 placed an order for 60 lines. We were informed by U S
25 West that there were 90 lines available at the 514

1 North Main location. On September 2nd we were notified
2 there were not facilities there, that there were only
3 seven lines available and subsequent to that about 20
4 days we heard through Marvie that there was a \$22,000
5 buildout expense required for facilities to be brought
6 into this location. We do not have record of the
7 \$22,000 buildout expense. We never did receive a
8 quote.

9 And so we are here as an advocate for
10 Marvie. She is our customer, and we're working hard to
11 try to get her taken care of. And I guess all I would
12 say is that, you know, I don't disagree with her time
13 line at all. We did prepare one ourselves, which I'd
14 be glad to distribute to the Commission. I just got it
15 this afternoon right before we departed for Pierre. So
16 on behalf of FirstTel, we're here to try to work through
17 the issue. We understand that Marvie is under duress,
18 and FirstTel will do everything we can to provide her
19 service.

20 CHAIRMAN BURG: Just a question or two I'd
21 have for you. One, with the 22,000 buildout request,
22 would that be billed to you as the customer of U S West
23 that you may in turn have to rebill? Or how does that
24 work?

25 MR. SCHMIDT: That's correct. We should be

1 as a competitive local exchange carrier, we are the one
 2 responsible for receiving that quote and passing it
 3 on. I have some new information which I'd like to have
 4 -- generally we would pass that on to the customer.
 5 But I'd like to have the technical issues addressed by
 6 Rick Noonan, who's with me.

7 CHAIRMAN BURG: Rick, if you want to use that
 8 one on the corner.

9 MR. NOONAN: Thank you, Commissioner. It's
 10 my understanding that the facility from the pole to the
 11 end user location would be the responsibility of the
 12 end user. The basic issue here was the pole outside of
 13 Marvie's new location is served by a 50-pair but
 14 there's only 25-pair going to the building. And that's
 15 why the quote -- well, there's a little bit of gray
 16 area on how this is supposed to work. The quote was
 17 actually supposed to be given to us to ask Marvie if
 18 that was going to be acceptable, but it's my
 19 understanding that U S West does not cover that. So
 20 there's a little gray area as to who is responsible for
 21 that charge if there's additional facilities. If it
 22 would be a pass-through from FirstTel, or if it would be
 23 the end user's responsibility. So it was explained to
 24 me that we were actually supposed to receive the quote
 25 to give to her for that.

1 But this facility issue, I'd like to clarify
2 something if I could. It's my understanding that when
3 you do a facilities check, you're doing it at a couple
4 locations. One is at the switch level and one is at
5 the dispatch level. So when the tec got out to the
6 location, apparently this is when everything evolved as
7 to what the problem exactly was, that there wasn't
8 adequate facility going from the pole outside from her
9 building.

10 CHAIRMAN BURG: Okay. Anything else to add,
11 either one of you?

12 COMMISSIONER NELSON: I have a question. Who
13 explained whatever was explained to you?

14 MR. NOONAN: Who explained it to me? First
15 of all, let me identify. I'm the local service manager
16 for FirstTel. We do not deal with the business office
17 of U S West. We're required by contract to deal with
18 the interconnect management offices, which are located
19 in Denver, Minneapolis, Duluth, and I think there's one
20 in Wyoming. So most of the information we got on this
21 account is coming directly from the Denver interconnect
22 center.

23 COMMISSIONER NELSON: Thank you.

24 MS. TSCHETTER: What happened was when I
25 called U S West because of the delay on the Frame

1 Relay, which I did not realize was also causing the
2 delay on the other installation, is that I was told by
3 U S West that I had not approved the 22,000. And, in
4 fact, in the packet you'll see E-mails from my account
5 rep asking me am I approving that \$22,000 install fee.

6 COMMISSIONER NELSON: I'm a little confused.
7 I'm confused about why you are dealing with U S West at
8 all if because I thought you were a FirstTel customer?

9 MS. TSCHETTER: Okay. I decided to deal with
10 FirstTel for my dial-up lines. And, in fact, I was
11 going to use dial-up lines at my new location because
12 digital lines are more expensive to do. However, so I
13 ordered 60 analog lines from FirstTel. In August I did
14 not know if -- I did not know that FirstTel could
15 provide me with my T-1 frame connection. I don't know
16 if they still -- if they can do that.

17 COMMISSIONER NELSON: So it was always your
18 intent to do some of the stuff from U S West and some
19 of it FirstTel?

20 MS. TSCHETTER: You have to do that. If, in
21 fact, FirstTel cannot provide my Frame Relay circuit,
22 then I have to get that from U S West.

23 COMMISSIONER NELSON: Or you could have got
24 it all from U S West; right?

25 MS. TSCHETTER: Or I could have got it all

1 from U S West, that's correct. And, in fact, I have
2 been told by an account rep at U S West that they
3 prefer me to be an either all or nothing customer.

4 CHAIRMAN BURG: Let me ask you another
5 question, Marvie. What do I understand of monthly
6 payments? What would you pay U S West for this kind of
7 facility?

8 MS. TSCHETTER: For?

9 CHAIRMAN BURG: Well, if you want -- what do
10 you want, 60 lines? You wanted 90; right?

11 MS. TSCHETTER: Right. U S West, with the
12 taxes and everything, it comes to about \$72.00 a line.
13 With FirstTel I'm saving approximately \$22.00 a line.

14 CHAIRMAN BURG: For 90 lines?

15 MS. TSCHETTER: Yes.

16 CHAIRMAN BURG: So you take 72 times 90 to
17 find out what you would actually be paying them per
18 month for --

19 MS. TSCHETTER: 60 lines is what I actually
20 placed the order for. I needed 90. If I'm going to
21 have any growth whatsoever, I need to be able to have
22 90. I need 60 to service the growth that I've got to
23 service the customers I got right now.

24 COMMISSIONER NELSON: So when you said you
25 were going to move, is that because you don't have

1 facilities?

2 MS. TSCHETTER: No. I purchased Mitchell on
3 line from an individual and that facility where that
4 equipment is housed is not mine, the building. I need
5 it to get that equipment out of there and move
6 someplace else.

7 CHAIRMAN BURG: Do you have anything else to
8 add at this time?

9 MS. TSCHETTER: Nothing else at this at this
10 time, Commissioner.

11 MS. BULT: Mr. Chairman, this is Donna Bult
12 with FirstTel Communications. I would like to make a
13 comment.

14 CHAIRMAN BURG: Who's going to make the
15 comment?

16 MS. BULT: Chet Jones.

17 CHAIRMAN BURG: Chet Jones, are you on the
18 line?

19 MR. JONES: Yes, I am, Mr. Commissioner. I
20 would like to address the \$22,000 quote, that, yes, the
21 way the process is supposed to work is that we are
22 informed, as the reseller, of what that charge would
23 be. U S West would in turn bill us as a company for
24 the \$22,000, so therefore we would be responsible for
25 passing that on to the customer or determining whether

1 we want to discount that on our own. But U S West is
2 not to contact our customer directly, but contact us,
3 give us a quote, and we deal with how we present that
4 to our customer. But that didn't happen here.

5 CHAIRMAN BURG: Let me ask anybody from
6 FirstTel. In your contract with U S West, do you have
7 any recourse that you can visualize for this
8 situation?

9 Mr. JONES: I think what we do is our
10 complaint process is still to come to you with any
11 complaints or disagreements we have. We try and work
12 out any differences locally with our account exec who
13 is Jim Mallis (sp) with U S West. We would file a
14 complaint there. If we couldn't get that rectified, we
15 would come to you.

16 CHAIRMAN BURG: Right now my confusion is
17 Basec.Net appears to be a customer of FirstTel, and
18 FirstTel is the customer of U S West; is that correct?

19 MR. SCHMIDT: That's correct.

20 CHAIRMAN BURG: I'm wondering under your
21 contract with U S West with this kind of service, are
22 you filing a complaint from FirstTel? Do you have
23 recourse under the contract you have with U S West for
24 the type of service we're talking about? Because, you
25 know, I think we may run into a problem with Basec.Net

1 filing a complaint against U S West of whom they are
2 not even a customer.

3 MR. SCHMIDT: The lines that were
4 disconnected were not FirstTel lines.

5 CHAIRMAN BURG: But the complaint is not
6 limited to the disconnected lines. That's the problem.

7 MR. SCHMIDT: Yes.

8 MR. JONES: And, Mr. Commissioner, we are not
9 saying that we're not going to file a complaint against
10 U S West. We want to see what is going to happen here
11 before we know what course we need to take from there.

12 CHAIRMAN BURG: Okay. I think at this time
13 we need some comments from U S West. Does any
14 Commissioner have any question? Okay. Who's
15 representing U S West on this one?

16 MS. SEVOLD: Commissioner Burg, this is
17 Colleen. And I'll start with, first of all, I believe
18 there are a great deal of factual issues here that need
19 to be decided. And I would agree that Basec.Net is a
20 FirstTel customer. Our customer is FirstTel. So I
21 believe that Basec.Net should have filed the complaint
22 against FirstTel, therefore it's between FirstTel and U S
23 West. So I believe that we feel that it should go to a
24 hearing because there are many factual issues to be
25 decided here.

1 Also, there is probably an issue of a
2 counterclaim by U S West against Basec.Net for using
3 these lines from May 1st until very recently without
4 any compensation to U S West for those lines.
5 Therefore, I believe that the way to resolve this would
6 be to go to a hearing and get facts out.

7 CHAIRMAN BURG: I'm so confused. I don't
8 know if I want it, but I suppose we don't have any
9 choice. Okay. Anything else to add?

10 MS. TSCHETTER: I have a concern in that I
11 still don't have facilities. I have ten analog lines
12 serving over 500 customers in Mitchell. And U S West
13 today installed a Frame Relay and one digital T-1.
14 Now, that gives me 24 lines at a new facility. I don't
15 know if there are any more facilities there for the
16 additional lines. What am I going to do with those
17 customers in Mitchell?

18 COMMISSIONER NELSON: I have a question. Are
19 you expecting FirstTel to find those lines, or are you
20 expecting U S West to find the lines? Whose customer
21 do you want to be?

22 MS. TSCHETTER: I guess I go to the quick of
23 the things, Commissioner, and I apologize for doing
24 that.

25 COMMISSIONER NELSON: I'm probably lost

1 somewhere here.

2 MS. TSCHETTER: Ultimately U S West is
3 responsible for getting those lines, even though I
4 order them through FirstTel, you know. And I know that
5 as a customer, that's a decision that I made that there
6 would be a middleman. You know, I could have gone
7 directly with U S West and paid the money. But I
8 expect somebody, FirstTel or U S West, to tell me where
9 there are facilities and when I'm going to have them.

10 MS. SEVOLD: If I could comment? This is
11 Colleen again from U S West. And two things: First of
12 all, the lines that were disconnected were the T-1
13 lines that were not in the name of Basec.Net or
14 Mitchell On Line. They were in a U S West customer.
15 So when those lines were disconnected, they were not
16 FirstTel lines that were disconnected, nor Basec.Net
17 lines. They were being used since May 1 by Basec.Net
18 but with no compensation to U S West so they were
19 disconnected. Now, it's my understanding they were at
20 the new location. One was from U S West. I ordered to
21 U S West, I should say, for T-1. There was also an
22 order for FirstTel for a T-1. One of those orders was
23 completed yesterday, and those orders was completed
24 this morning.

25 COMMISSIONER NELSON: It seems to me that if

1 you want those lines and you want FirstTel to provide
2 them, then you ought to be dealing with FirstTel and
3 they ought to be dealing with U S West.

4 MS. TSCHETTER: I have been dealing with
5 FirstTel, Commissioner, and I have also been dealing
6 with U S West because I am a customer of both.

7 COMMISSIONER SCHOENFELDER: Mr. Chairman, I
8 would like to request a recess so we can confer with
9 counsel.

10 CHAIRMAN BURG: Granted. I've got a
11 question.

12 (AT THIS TIME A SHORT RECESS WAS TAKEN.)

13 CHAIRMAN BURG: Okay. We'll go back into
14 session. I think the first question I guess I'd have
15 this question of U S West. You have indicated that
16 there are now two T-1s available at that site; is that
17 correct?

18 MS. SEVOLD: At the new location that was
19 requested, that's correct. One is a U S West and one
20 is a FirstTel.

21 CHAIRMAN BURG: Right. Marvie.

22 MS. TSCHETTER: Clarification. And Rick drew
23 during the break a diagram to maybe help you
24 understand. We have three T-1s ordered at the new
25 location. One is outgoing. We have a computer in

1 Mitchell, and we have a computer in Sioux Falls. That
2 is data only. That is the T-1 frame. That was ordered
3 via U S West. I have to order it via U S West. I
4 then, because there were not enough facilities at the
5 new location for 60 lines, what we decided to do the
6 strategy with FirstTel was take the existing lines,
7 twist the pair and give me two digital lines. Two
8 digital lines would give me 48 dial up connections at
9 the new location. Those two digital T-1s were ordered
10 at exactly the same time. What U S West has done is
11 taken the available facilities at that location,
12 connected their Frame Relay and one T-1 incoming. I
13 have 24 dial-up lines at the new location. And I would
14 bet if we asked for a facilities check, U S West is
15 going to tell us there are no more facilities for the
16 second T-1 for incoming.

17 CHAIRMAN BURG: So what you're saying is
18 you've got the T-1 connection with U S West from that
19 site to Sioux Falls?

20 MS. TSCHETTER: That's correct.

21 CHAIRMAN BURG: But on the incoming side
22 you've only got one T-1 because they used one of them
23 to go the other way?

24 MS. TSCHETTER: That is correct.

25 CHAIRMAN BURG: Did I hear you right?

1 MS. TSCHETTER: You heard me.

2 CHAIRMAN BURG: Okay. U S West, do you
3 dispute that scenario at all?

4 MS. SEVOLD: Well, the only thing I can
5 think, Commissioner Burg, it's my understanding if
6 there's another order for a T-1 out there, I will tell
7 you this I'm not aware of it but I'm not saying there's
8 not. I'll need to check on that. I was just informed
9 that there were two T-1s that went in. One was the one
10 that she had ordered from U S West and one that was
11 ordered for FirstTel. If there's another order out
12 there, I can honestly say I'm not aware of it and I
13 will need to check on that.

14 CHAIRMAN BURG: FirstTel, do you have a record
15 of another order?

16 MR. NOONAN: Yes, I do.

17 CHAIRMAN BURG: Did you order both of them at
18 the same time?

19 MR. NOONAN: Yes, we did.

20 CHAIRMAN BURG: At this time what we're
21 really after is to find out how she can get adequate
22 facilities for Basec.Net to operate, and then we will
23 find probable cause I think and then proceed from
24 there.

25 MR. WELK: Mr. Chairman, this is Tom Welk.

1 One thing I think the Commission should know about
2 there is an applicable tariff provision that exists
3 here that's found in -- Colleen has sent that to me.
4 That's under the General Regulations Conditions of
5 Offering under paragraph 2.21. And it essentially says
6 when there's a transfer between customers -- and
7 remember what she said was that she acquired the assets
8 of a business. There is essentially two things that
9 the tariff provides. She can either continue the
10 existing service and assume the responsibility for the
11 outstanding charge, or reestablish the service and pay
12 the nonrecurring charge as provided in the tariff.

13 What I'd like to know, has she paid anything
14 for the services that she's been given?

15 MS. TSCHETTER: Excuse me, sir, but when I
16 asked U S West representative Gary Johnson if I could
17 take over those existing facilities, I was told
18 emphatically, no. And I have an E-mail to document
19 that.

20 MR. WELK: Ma'am, you may have that. My
21 question is have you paid anything since May for the
22 services you've got?

23 MS. TSCHETTER: No, sir, because I've been
24 waiting for you to install my new facilities.

25 COMMISSIONER SCHOENFELDER: This is

1 Commissioner Schoenfelder. Mr. Welk, I understand that
2 what you're making is a legal point. I guess I would
3 just like to make a recommendation that the Commission
4 do this: That we ask that between FirstTel and U S West
5 that this customer somehow get the facilities that are
6 required. And she should give you an understanding
7 that they will be paid for and then, you know, so that
8 the customer is up and has the facilities that she
9 needs to operate her business and whatever agreements
10 that takes to go forward with immediately.

11 Then we will find -- I would move then that
12 we find probable cause and we sort out the facts that
13 have happened up to this point in a hearing. Does
14 anyone have an objection to that? I guess you need to
15 voice that, Mr. Welk.

16 MR. WELK: Commissioner, I don't have a
17 problem with that. But what happens about the service
18 she's got and the service we're going to provide? We
19 should be entitled to a bond. She just told you she
20 hadn't paid anything since May and here's our problem
21 for U S West, as I understand it, and, Colleen, correct
22 me. What happened here is that that prior business
23 that she bought the assets from, she bought the assets
24 and didn't want the liabilities, and that's the number,
25 the 16,000. So she doesn't want to pay that. She

1 doesn't want to pay the \$22,000 install charge. And
2 she's used some services. I'll put aside whether
3 there's been problems or not, but she's used services
4 since May 1. If we turn up these new facilities, I do
5 believe the company should be entitled to some
6 indemnity for something for past service and something
7 for future services.

8 MR. JONES: Mr. Chairman, if I could speak to
9 that for a short bit here? We're talking about apples
10 and oranges here. We ordered T-1s for this business to
11 go in a new location, and they've not delivered that
12 service to us. And I understand where he's coming with
13 his legal fees. But we're still dealing with giving
14 service at the new location so we can get the customer
15 up and running. And I believe Commissioner
16 Schoenfelder is right on that we need to get her
17 established with service for what we ordered and then
18 move on to do the rest of it. The rest they need to
19 sort out somewhere else.

20 COMMISSIONER SCHOENFELDER: However,
21 Mr. Jones and Mr. Welk, I did not intend that she
22 should not pay for things going forward and that the
23 past due stuff I think could be sorted out in hearing.
24 I do believe that she's going to have to make a
25 commitment that she's going to pay for services going

1 forward.

2 MR. JONES: Absolutely. As our customer I'm
3 sure she will.

4 MS. TSCHETTER: If you would look at my U S
5 West past frame bills, you will find that I have paid
6 in all of those sites my U S West frame bills.

7 CHAIRMAN BURG: Yes. You know, my observance
8 is this is between U S West and FirstTel. You've
9 contracted with FirstTel to provide you with service.
10 And I think that, you know, the best thing is to step
11 aside and our recommendation is that FirstTel, you find
12 a way to get that service to them, whatever is
13 necessary, because she's your customer. And then we
14 will try to sort out all the rest of it. So I'll
15 second the motion to find probable cause. I believe at
16 this time -- and I would ask counsel's recommendation.
17 I don't know if we have any grounds to order anything.

18 MS. WIEST: Right.

19 CHAIRMAN BURG: So I don't want to insinuate
20 that we're ordering, but our goal is to get you
21 service.

22 COMMISSIONER SCHOENFELDER: My motion wasn't
23 to order. It was to ask them to work something out.

24 CHAIRMAN BURG: I agree. Mine was too.
25 That's what I was indicating. I did not want anybody

1 to infer we are trying to order something at this time
2 without a hearing and without process. But we would
3 like to see our inference and we would like to see you
4 get the service that you need to keep these customers
5 because that's what you're in business for. Anything
6 further? Did you want to add anything?

7 MS. WIEST: No.

8 MR. SCHMIDT: FirstTel would request that we
9 resolve the issues between FirstTel and U S West at the
10 same hearing rather than have a separate hearing.

11 CHAIRMAN BURG: Is that agreeable to U S
12 West?

13 MR. WELK: Yes, I agree with Mr. Schmidt.
14 This is Tom Welk. All these issues should be in one
15 hearing, and the complaints and counterclaims for past
16 services should be decided by the Commission in one
17 hearing. Is that agreeable with you, too, Marvie?

18 MR. GALLEGOS: This is Jim Gallegos.
19 Commissioners, if FirstTel would call me, and I can get
20 the process rolling as far as getting them service
21 (inaudible) any possibility (inaudible) is advising for
22 all interconnection agreements for all our states, so I
23 can start moving things in working with FirstTel.

24 MR. SCHMIDT: Jim, this is Neal Schmidt.
25 We'll contact you tomorrow morning right away.

1 CHAIRMAN BURG: We've had a motion to second
2 to find probable cause.

3 COMMISSIONER NELSON: I agree.

4 CHAIRMAN BURG: We have found probable cause,
5 and we would encourage the companies to work something
6 out so she can get service to keep customers for
7 Basec.Net. Thank you.

8 (THE HEARING CONCLUDED AT THIS TIME.)

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7-7-44-88-10

1 STATE OF SOUTH DAKOTA)
2 COUNTY OF HUGHES)

3

4 I, Lori J. Grode, RMR, Notary Public, in and
5 for the State of South Dakota, do hereby certify that
6 the above hearing, pages 1 through 35, inclusive, was
7 recorded stenographically by me and reduced to
8 typewriting.

9 I FURTHER CERTIFY that the foregoing
10 transcript of the said hearing is a true and correct
11 transcript of the stenographic notes at the time and
12 place specified hereinbefore.

13 I FURTHER CERTIFY that I am not a relative or
14 employee or attorney or counsel of any of the parties,
15 nor a relative or employee of such attorney or counsel,
16 or financially interested directly or indirectly in
17 this action.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and seal of office at Pierre, South Dakota, this
20 20th day of November 1998.

21

22

Lori J. Grode
Lori J. Grode, RMR, RPR

23

24

25

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.

ATTORNEYS AT LAW

RECEIVED

Jeremiah D. Murphy
Russell R. Greenfield
David J. Valken
Gary J. Pashby
Vance R.C. Goldammer
Thomas J. Weis
Terry N. Pendergast
James E. McMahon
Michael A. McRough
Gregg S. Greenfield
Tamara A. Wilka
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Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424
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DEC 01 1998
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

J.W. Boyce (1884-1915)
John S. Murphy (1924-1966)

November 30, 1998

FAX Received NOV 30 1998

William Bullard, Executive Director
Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

VIA FACSIMILE - 773-3809

Re: In the Matter of the Complaint Filed by Basec.Net, Huron, South Dakota Against US
WEST Communications, Inc. and FirTel, Inc. Regarding Billing Issues (TC 98-194)

Dear Bill:

Enclosed please find the Answer to Complaint, Counterclaim and Certificate of Service in the
above referenced file. The original and ten (10) copies are being mailed to you today.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.

Thomas J. Welk

TJW/vjj
Enclosure

cc: Colleen Sevoid (w/enc.)
Jim Gallegos (w/enc.)
Marvie Tschetter (w/enc.)
Robert Riter (e/enc.)

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DEC 01 1998

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

IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC. REGARDING BILLING
ISSUES

TC-98-194

ANSWER TO COMPLAINT,
COUNTERCLAIM AND
CERTIFICATE OF SERVICE

FAX Received NOV 30 1998

Pursuant to the November 9, 1998 Order of the Public Utilities Commission ("Commission") in this docket, received on November 12, 1998, and pursuant to ARSD 20.10.01.11.01 U S WEST Communications, Inc. ("U S WEST") provides the following Answer to the Complaint in this matter, and also serves the attached counterclaim upon Basec Net for compensation for services rendered.

1. Upon information and belief, U S WEST admits that Complainant Basec Net is an Internet service provider. Further upon information and belief, U S WEST admits that Mitchell On-Line was also an Internet service provider. U S WEST is without sufficient information or knowledge regarding the other averments contained in the first paragraph of the October 6, 1998 letter of Complainant Marvie Tschetter.

2. U S WEST is without sufficient information or knowledge regarding any of the averments contained in the second paragraph of the October 6, 1998 letter of Complainant.

3. Upon information and belief, U S WEST admits that ISD had U S WEST install digital T1's in Mitchell for servicing Mitchell On-Line customers. Upon information and belief, U S WEST admits that Basec Net contacted U S WEST about taking over the payment for the digital T1's. Upon information and belief, U S WEST admits that Basec Net sent an e-mail to Gary Johnson of U S WEST. Upon information and belief U S WEST admits that Basec Net

was informed that Basec Net could not take over payment of the lines, unless all amounts owing on the account were paid and made current in accordance with its tariffs. U S WEST is without sufficient information and knowledge regarding the other averments contained in paragraph 3 of the October 6, 1998 letter.

4 U S WEST admits that the digital T1's continued to be in the name of ISD and that the Mitchell customers continued to use the lines, even though Basec Net purchased Mitchell On-Line. U S WEST is without sufficient information and knowledge regarding the other averments contained in paragraph 4 of the October 6, 1998 letter.

5 U S WEST admits that Basec Net is a customer of FirsTel, whose a reseller of U S WEST services. U S WEST is without sufficient information and knowledge regarding the other averments contained in paragraph 5 of the October 6, 1998 letter.

6 U S WEST admits that at a Mitchell location, 2 analog lines were installed. U S WEST admits that an e-mail was sent to Basec Net informing them that the T1 was to be installed on September 24, 1998. U S WEST admits that another e-mail was received that stated the T1 would not be installed until late October. U S WEST is without sufficient information and knowledge regarding the other averments contained in paragraph 6 of the October 6, 1998 letter.

7. U S WEST admits Basec Net was informed that any delay in service of the T1 was due to facilities not being available. U S WEST admits that Basec Net was also informed that it would be charged \$22,000.00 for installation/construction fees for the 60 analog lines. U S WEST is without sufficient information and knowledge regarding the other averments contained in paragraph 7 of the October 6, 1998 letter.

8 U S WEST is without sufficient information and knowledge regarding all of the averments contained in paragraph 8 of the October 6, 1998 letter.

9 U S WEST admits that ISD ordered a disconnect of the digital T1's. U S WEST is without sufficient information and knowledge regarding the other averments contained in paragraph 9 of the October 6, 1998 letter.

10 U S WEST admits that Basec Net did call Larry Toll. U S WEST admits that Colleen returned the telephone call and worked on the issue. U S WEST does admit that Colleen did inform Basec Net that she would not be able to work with Basec Net because Basec Net was a FirsTel customer, and Colleen had been informed that she should not talk with Basec Net. U S WEST is without sufficient information and knowledge regarding the other averments contained in paragraph 10 of the October 6, 1998 letter.

11 U S WEST admits that on Friday, October 2, 1998, several conversations via telephone took place between FirsTel and U S WEST. U S WEST is without sufficient information and knowledge regarding the other averments contained in paragraph 11 of the October 6, 1998 letter.

12 U S WEST admits that on October 2, 1998 Larry Toll called Basec Net to inform them that the following week the lines would be disconnected at the old location. U S WEST admits that Basec Net requested some additional time before the disconnect in order that the new facilities could be ready. U S WEST admits that Larry Toll informed Basec Net that if they could send in a check for services used since May 1, 1998, by Monday, October 5, 1998, that Basec Net could keep the digital T1's at the old location operational. U S WEST is without sufficient information and knowledge regarding the other averments contained in paragraph 12 of the October 6, 1998 letter.

13 U S WEST is without sufficient information and knowledge regarding the averments contained in paragraph 13 of the October 6, 1998 letter.

14 U S WEST is without sufficient information and knowledge regarding the averments contained in paragraph 14 of the October 6, 1998 letter.

15 U S WEST is without sufficient information and knowledge regarding the averments contained in paragraph 15 of the October 6, 1998 letter.

16 U S WEST denies that Basec Net was not informed that there would be construction fees. U S WEST is without sufficient information and knowledge regarding the averments contained in paragraph 16 of the October 6, 1998 letter.

17 U S WEST is without sufficient information and knowledge regarding the averments contained in paragraph 17 of the October 6, 1998 letter.

AFFIRMATIVE DEFENSES

1 Basec Net is not a customer of U S WEST, but a customer of FirsTel, consequently, all relief which Basec Net seeks must be obtained from FirsTel.

2 Complainant failed to mitigate their damages, if any.

3 Complainant is barred because they benefited from existing U S WEST facilities

4 The Complaint fails to state a claim upon which relief may be granted against U S WEST and should be dismissed.

WHEREFORE, U S WEST respectfully requests that the Court dismiss Complaint with prejudice and grant all other relief the Commission deems appropriate under the circumstances.

COUNTERCLAIM

As grounds for its Counterclaim, U S WEST states as follows:

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1 As noted in the October 6, 1998 letter attached to the complaint, after Basec Net purchased On-Line, Basec Net continued to use the digital T1s and other services that On-Line was purchasing from U S WEST on a recurring basis. On-Line purchased the services from U S WEST directly

2 On-Line had at least four accounts with U S WEST, which are account numbers 605-996-3342-067, 605-D52-0026, 605-D08-6205, and 605-995-0923. From May 1, 1998 to October 21, 1998, when the accounts were disconnected, there is a total outstanding balance of \$21,439.98

3 Basec Net has refused to pay for use of these services although it used the services, and benefited financially from that use.

4 The Commission should require Basec Net pay the outstanding balance. To not require Basec Net to pay for such services would amount to unjust enrichment for Basec Net since it used the facilities, and benefited financially from their use.

DATED this 30th day of November, 1998


Thomas J. Welk
BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.
101 North Phillips Avenue, Suite 600
P.O. Box 5015
Sioux Falls, SD 57117-5015
(605) 336-2424

James H. Gallegos
U S WEST Communications, Inc.
1801 California Street, Suite 5100
Denver, CO 80202
(303) 672-2877
Attorneys for U S WEST Communications, Inc.

CERTIFICATE OF SERVICE

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, L.L.P., and on the 30th day of November, 1998, a true and correct copy of U S WEST's Answer to Complaint and Counterclaim was sent via US mail, postage prepaid, to the following addresses:

Marvie Tschetter
P.O. Box 214
Huron, SD 57350

Robert C. Riter, Jr.
Riter, Mayer, Hofer, Wattier & Brown
319 S. Coteau
P.O. Box 280
Pierre, SD 57501-0280
Attorney for FirsTel



Thomas J. Welk

01508.44.4

LAW OFFICES
RITER, MAYER, HOFER, WATTIER & BROWN, LLP
Professional & Executive Building
319 South Coteau Street
P. O. Box 280
Pierre, South Dakota 57501-0280

R. C. RITER (1912-1994)
E. D. MAYER
ROBERT D. HOFER
ROBERT C. RITER, JR.
JERRY L. WATTIER
JOHN L. BROWN

TELEPHONE
605-224-5825
TELECOPIER
605-224-7102

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NOV 30 1998

TRAVIS B. JONES, ASSOCIATE

November 30, 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

Re: In the Matter of the Complaint Filed
by Basec.Net, Huron, South Dakota
Against U.S. West Communications, Inc.
and Firstel, Inc.
TC 98-194

Dear Mr. Bullard:

Enclosed herewith please find original and ten copies of Firstel, Inc.'s Answer to Complaint of Basec.Net and Cross Claim Against U.S. West Communications, Inc., as well as original Certificate of Service for filing in your office.

I also enclose copy of first page of our Answer and would ask that you file stamp the same.

By copy of this letter to all parties of interest, I enclose a copy of our Answer to each of them, intending it as service upon them by mail.

Thank you.

Very truly yours,

RITER, MAYER, HOFER, WATTIER &
BROWN, LLP

By 

RCR Jr-wb
Enclosures
cc: Marvie Tschetter
James Gallegos
Colleen Sevold
Thomas J. Welk/Tamara Wilka
Karen Cremer

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NOV 30 1998

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

IN THE MATTER OF THE COMPLAINT FILED	)	FirStel, Inc.'S ANSWER
BY BASEC.NET, HURON, SOUTH DAKOTA,	)	TO COMPLAINT OF
AGAINST U S WEST COMMUNICATIONS, INC.	)	BASEC.NET AND CROSS
AND FirStel, Inc.	)	CLAIM AGAINST U S WEST
	)	COMMUNICATIONS, INC.
)	
	)	TC 98-194

COMES NOW FirStel, Inc., hereinafter FirStel, and for its Answer to the Complaint filed herein and its Crossclaim against U S West Communications, Inc., states and alleges as follows:

1. On or about October 26, 1998 Basec.Net, Huron, South Dakota, filed certain complaints regarding U S West and because Basec.Net was a FirStel customer during some of the pertinent time involved also against FirStel. FirStel disputes that certain facts relied upon by Basec.Net are applicable to FirStel, however, it does agree with many of the facts claimed therein. In fact, FirStel admits many of the claims asserted therein as regards actions or inactions of U S West. Accordingly, by this pleading, FirStel crossclaims against U S West and states that as regards any allegations that are found to involve FirStel, that the same could only have arisen by virtue of the actions or inactions of U S West. Hence, FirStel is entitled to complete indemnity from U S West inasmuch as its actions were the active and primary cause of the claim as asserted herein by Basec.Net, and the actions of FirStel were merely inactive or passive. Alternatively FirStel is entitled to contribution from U S West to all claims asserted against it. Furthermore, FirStel has acted in good faith throughout and in accordance with applicable law and has not committed any unlawful or unreasonable act, rate, practice or omission in its actions with Basec.Net and its principals.

2. FirStel alleges that the complaint filed by Basec.Net does not assert a claim against FirStel and hence ought to be dismissed as against FirStel as the claim and its underlying facts relate to actions or inactions of U S West.

3. FirStel does admit that Basec.Net in August of 1998 did request a facilities check for an identified new location via FirStel, a U S West reseller. FirStel contacted the appropriate entity within the U S West organization and learned there was room for ninety lines for the facilities designated by Basec.Net. Upon advising the customer thereof, an order was placed for sixty analog lines to be installed for Basec.Net in the Mitchell, South Dakota location at 514 N. Main. This order was submitted on August 20, 1998 and U S West contacted FirStel that same date

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confirming the order for sixty lines.

4. That U S West advised FirstTel that the probable due date for the lines was in late September. Upon conveying this information to Basec.Net, FirstTel was advised that the customer needed the lines sooner and could not wait until late September. Accordingly, FirstTel's representative contacted U S West's interconnect department to escalate the order ticket. Several phone calls and voice mails occurred between U S West employees and FirstTel on September 2, 1998. Ultimately FirstTel learned from U S West representatives that they could only issue seven lines at that time. The due date for those seven lines was September 4, 1998.

5. The following day, September 3, 1998, FirstTel was contacted by U S West advising that only two lines would go in and the earliest available date for those would be five days. FirstTel again contacted U S West and ultimately they advised that the seven lines ordered would be issued. FirstTel was given the telephone numbers for those lines and was advised that there were certain remaining lines on order. U S West later advised that the due date for those seven lines would be September 21, 1998 the same due date previously advised. U S West did, however, confirm that the due date would be escalated.

6. On September 4, 1998, FirstTel was advised by a U S West technician in Mitchell that he might be able to install the lines that day. Due to the U S West strike, U S West did not allow FirstTel to escalate the order because U S West was short on technicians.

7. Ultimately FirstTel contacted U S West on September 22, 1998 to inquire as to lines as the due date of September 21, 1998 had passed. FirstTel was advised that the orders were still pending.

8. FirstTel does not have specific knowledge as to the date when U S West advised Basec.Net as to the installation/construction fees which it expected to charge for the sixty analog lines, however, FirstTel was not made aware said charge was anticipated until the early part of October, 1998.

9. FirstTel did work with the customer and proposed and discussed plans to install two T-1 scans. FirstTel was advised by U S West that there was room available for such T-1 circuits.

10. Ultimately, however, FirstTel learned that U S West had utilized the room for one of the T-1 circuits although the FirstTel order for two T-1 circuits had been received prior thereto. Because U S West used one of the two T-1 circuits for its own purposes and relationship with customer, it was unable to make room for the two T-1 orders of FirstTel and the sixty line

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order. Hence, U S West preferred its own order over the earlier order of FirstTel, to the detriment of FirstTel and the customer.

11. In early November of 1998, two inbound T-1 circuits were installed at Basec.Net's location.

12. In response to Basec.Net's complaint that it was not informed in August of 1998 that it was facing a \$22,000 installation fee, FirstTel responds by stating that it was not aware of the \$22,000 installation fee at that time. Rather, it understands and alleges that the information regarding the fee was relayed directly between U S West and Basec.Net.

13. Basec.Net did learn on September 3, 1998 that the initial orders for the lines were being delayed.

14. As regards allegation of the complaint that ISD, the firm in Minneapolis which leased lines from U S West, was advised that Basec.Net would not be paying back bills, FirstTel does not have specific information or belief as to the contacts in that regard as they all were instituted by U S West.

15. Similarly as regards the disconnection complained of by Basec.Net, and the timing of the disconnect, FirstTel states that U S West is the entity that completed the disconnect and FirstTel was not involved in that issue nor in those actions.

16. Basec.Net also complains of the fact that it could not take over payment of the digital T-1's in May but could take them over in October if the entire back pay amount was received by U S West; however, this issue does not involve FirstTel as it relates to actions of U S West and its direct relationship with Basec.Net.

17. During October of 1998, Basec.Net was still technically a U S West customer because an outbound T-1 needed to be ordered directly from U S West. Hence, during the time frame involved, U S West should have been in contact directly with Basec.Net and should have conferred with them even knowing FirstTel was performing some services for Basec.Net.

18. FirstTel alleges that throughout it acted in good faith and in accordance with applicable law. Of necessity, its abilities depended in large part upon the actions of U S West in complying with and properly handling customers' requests and complaints. Hence, the claim of Basec.Net is directed principally at U S West and its actions or inactions. Accordingly, any relief ought to be granted from U S West and FirstTel should be entitled to complete indemnification from U S West or alternatively appropriate contribution.

19. Affirmatively allege that any harm complained of as

against the answering parties could only have arisen by reason of the negligent acts or omissions of U S West which are the sole and only cause of the claim asserted.

20. That the complaint filed herein fails to reference any law, statute, order, or rule which it has claimed FirstTel violated and as there are none which were violated by FirstTel, the complaint should be dismissed against it.

21. That there is not good and sufficient reason for making this complaint against FirstTel and it fails to show probable cause against FirstTel. Accordingly the claim should be dismissed against FirstTel.

22. Affirmatively allege that as regards any portion of the complaint claiming negligence of any kind or nature against FirstTel, that the actions or inactions of U S West were the intervening and legal cause of the problems complained of and that the actions or inactions of the complainant in comparison with those of FirstTel constitute contributory negligence sufficient to bar complainant's claim against FirstTel.

23. Affirmatively allege that as to any claim against FirstTel, the complainant has failed to properly mitigate its damages.

24. Affirmatively allege that the relief requested by complainant as against FirstTel is not recognized under the statutes or rules of the Public Utilities Commission and is in excess of any relief which this Commission could enter against FirstTel

25. Affirmatively allege that pursuant to the tariff under which FirstTel, Inc. operates in South Dakota, and as approved by South Dakota Public Utilities Commission, the claim is in excess of any relief which could be properly authorized and recovered thereunder as against FirstTel. See Sections 2.4.1 A and 2.4.1B of FirstTel's tariff.

CROSSCLAIM AGAINST U S WEST

For its Crossclaim against U S West, FirstTel states:

26. FirstTel realleges all of paragraphs 1-25, inclusive.

27. Pursuant to the resale agreement between FirstTel and U S West and otherwise, FirstTel is entitled to complete indemnity from U S West because complainant's claim could only have arisen by virtue of the negligent acts or omissions of U S West.

28. Any allegations involving FirstTel could only have arisen vicariously and by imputation, by virtue of the actions,

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Respectfully submitted, this 30th day of November, 1998.

BY:

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

IN THE MATTER OF THE COMPLAINT FILED BY)	TO 98-194
BASEC.NET, HURON, SOUTH DAKOTA, AGAINST)	
U S WEST COMMUNICATIONS, INC. AND)	CERTIFICATE OF SERVICE
FIRSTEL, INC.)	

I, Robert C. Riter, Jr., certify that a true and correct copy of FirstTel, Inc.'s Answer to Complaint of Basec.Net and Cross Class Against U S West Communications, Inc. was mailed by first class mail to each of the following on the 30th day of November, 1998:

Karen Cremer
Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

Marvie Tschetter
Basec.Net
P. O. Box 214
Huron, SD 57350

James Gallegos
Senior Attorney
US West Communications, Inc.
1801 California Street
Ste. 5100
Denver, CO 80202

Colleen E. Sevold
US West Communications, Inc.
125 South Dakota Avenue
8th Floor
Sioux Falls, SD 57194

Thomas J. Welk
Tamara A. Wilka
Attorneys at Law
P. O. Box 5015
Sioux Falls, SD 57117-5015


Robert C. Riter, Jr.

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

LAW OFFICES

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Sioux Falls Office
William F. Day, Jr.
Lee A. Magnuson
Jon C. Sogn
R. Alan Peterson
David L. Nadolski
Steven J. Morgan
Daniel R. Fritz*
Amy Heinrich Arndt
Todd D. Epp**

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REPLY TO: Sioux Falls 605-332-5999

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Haven L. Strack
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Jane Wipf Pfeifle
Kurt E. Solay
Leah Jeffries
Craig A. Pfeifle
Steven J. Oberg
Robert Gunzowsky
Molly E. Slaughter

Kelton S. Lynn
(1946-1974)
Horace R. Jackson
(1961-1985)

*Also Admitted in Minnesota

**Also Admitted in Kansas

December 9, 1998

Public Utilities Commission
500 E. Capitol
State Capitol Building
Pierre, SD 57501

Re: IN THE MATTER OF THE COMPLAINT OF BASEC.NET OF HURON, SOUTH
DAKOTA, AGAINST U S WEST TELECOMMUNICATIONS, INC. AND FIRSTTEL,
INC., TC-98-194
Our File # 98-2150-1

Dear Public Utilities Commission:

Enclosed please find copies of the following for filing on behalf of Basec.Net:

1. Notice of Appearance; and
2. Answer to US West's Counterclaim

Thank you for your consideration.

Regards,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

Todd D. Epp
Todd D. Epp

TDE:jkm

44-44-0001-00
December 9, 1998

Page 2

Enclosures

cc: Thomas J. Welk
James H. Gallegos
Robert C. Riter
Marvie Tschetter

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE
COMPLAINT OF BASEC.NET OF
HURON, SOUTH DAKOTA,
AGAINST U S WEST
TELECOMMUNICATIONS, INC. AND
FIRSTEL, INC.

TC-98-194

NOTICE OF APPEARANCE

TO: THE ABOVE NAMED PARTIES AND THEIR ATTORNEYS:

Please take notice that Todd D. Epp of Lynn, Jackson, Shultz & LeBrun, P.C. hereby makes an appearance as attorney for Basec.Net in the above-entitled action, and requests that copies of all further pleadings, affidavits, or motions in the above-entitled matter be served upon the undersigned attorney.

Dated this 1st day of December, 1998.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

BY: Todd D. Epp
Todd D. Epp
Attorneys for Basec.Net
141 N. Main Ave., 8th Floor
PO Box 1920
Sioux Falls, SD 57101-3020
(o) 605-332-5999
(f) 605-332-4249
email: tepp@lynnjackson.com

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED
DEC 1 1998
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE
COMPLAINT OF BASEC.NET OF
HURON, SOUTH DAKOTA,
AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC.

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TC-98-194

**ANSWER TO U S WEST'S
COUNTERCLAIM AND
CERTIFICATE OF SERVICE**

COMES NOW BASEC.NET, through its attorney of record, with an Answer to
US West's Counterclaim in the above captioned action.

ANSWER

1. Basec.Net generally denies each and every material allegation, matter and
thing contained in US West's Answer to Complaint, Counterclaim and Certificate of
Service except as hereinafter admitted or otherwise qualified.

2. As to Paragraph 1 of US West's Counterclaim, Basec.Net admits that it
used a portion of the capacity of the digital T-1 line previously installed for use by
Mitchell On-Line, but only because of US West's inability or unwillingness to provide
requested service either directly to Basec.Net or indirectly through FirsTel, Inc.

3. As to Paragraph 2 of US West's Counterclaim, Basec.Net states that it is
without sufficient information or knowledge to form a belief as to the truth of the
averment and therefore denies the statement.

4. As to Paragraph 3 of US West's Counterclaim, Basec.Net denies the statements contained therein.

5. As to Paragraph 4 of US West's Counterclaim, Basec.Net denies the statements contained therein.

AFFIRMATIVE DEFENSES

1. Due to US West's failure to perform services for Basec.Net required of it via contract, third party beneficiary contract, statute, and/or administrative regulation, US West is estopped from asserting a Counterclaim against Basec.Net in this action.

2. Due to US West's failure to abide by its own tariff as to the termination and resumption of service by a new customer (Basec.Net) taking over service from a prior customer (Mitchell On-Line), US West is estopped from asserting a Counterclaim against Basec.Net in this action.

3. Any use that may have been made by Basec.Net of US West facilities were made under duress due to US West's inability or refusal to provide service to Basec.Net in conformance of applicable contracts, third party beneficiary contracts, statutes, administrative regulations, and/or tariffs.

4. US West has waived any claims it may have against Basec.Net due to US West's inability or unwillingness to assist Basec.Net with its reasonable requests for phone lines and facilities checks in a timely and reasonable manner. US West's actions or inactions toward Basec.Net are the cause of Basec.Net's service problems; thus

015004437

because of such action or inactions, US West has waived its rights to assert otherwise against Basec.Net and is estopped from doing so.

Dated this 1st day of December, 1998.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

BY: Todd D. Epp
Todd D. Epp
Attorneys for Basec.Net
141 N. Main Ave., 8th Floor
PO Box 1920
Sioux Falls, SD 57101-3020
(o) 605-332-5999
(f) 605-332-4249
email: tepp@lynnjackson.com

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4
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8

CERTIFICATE OF SERVICE

I, Todd D. Epp, do hereby certify that I am a member of the law firm of Lynn, Jackson, Shultz & Lebrun, P.C., and on the 9th day of December, 1998, a true and correct copy of Basec.Net's Answer to US West's Counterclaim was sent via US Mail, postage prepaid, to the following addresses:

Robert C. Riter, Jr.
Riter, Mayer, Hofer, Wattier & Brown
319 S. Coteau
PO Box 280
Pierre, SD 57501-0280
Attorneys for FirsTel, Inc.

Thomas J. Welk
Boyce, Murphy, McDowell & Greenfield, LLP
101 N. Phillips Avenue, Suite 600
PO Box 5015
Sioux Falls, SD 57117-5015
Attorneys for US West Communications, Inc.

James H. Gallegos
US West Communications, Inc.
1801 California Street, Suite 5100
Denver, CO 80202

LAW OFFICES

Lynn, Jackson, Shultz & Lebrun, P.C.

Sioux Falls Office

William F. Day, Jr.
Lee A. Magnuson
Jon C. Sogn
R. Alan Peterson
David L. Nadolski
Steven J. Morgans
Daniel R. Fritz*
Amy Heinrich Arndt
Todd D. Ere**

*Also Admitted in Minnesota
**Also Admitted in Kansas

US Bank Building

141 N. Main Avenue
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E-Mail hjlawed@lynjackson.com

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605-342-2592
Fax 605-342-5185
E-Mail hlawrc@lynnjackson.com

www.lynnjackson.com
Member of Lex Mundi
A Global Association of 125 Independent Law Firms

REPLY TO: Sioux Falls 605-332-5999

RECEIVED

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Rapid City Office

Donald R. Shultz
Gene N. Lebrun
Thomas G. Fritz
Haven L. Stuck
Jay C. Shultz
Jane Wipf Pfeifle
Kurt E. Solay
Leah Jeffries
Craig A. Pfeifle
Steven J. Oberg
Robert Gustinaky
Molly E. Slaughter

Kelton S. Lynn
(1946-1974)
Horace R. Jackson
(1961-1987)

Public Utilities Commission
500 E. Capitol
State Capitol Building
Pierre, SD 57501

Re: IN THE MATTER OF THE COMPLAINT OF BASEC.NET OF HURON, SOUTH
DAKOTA, AGAINST U S WEST TELECOMMUNICATIONS, INC. AND FIRSTEL,
INC., TC-98-194
Our File # 98-2150-1

Dear Public Utilities Commission:

Attached to my previous correspondence to you dated December 9, 1998 were copies of the following documents:

1. Notice of Appearance; and
2. Answer to US West's Counterclaim

Enclosed please find the originals of these documents. I apologize for any inconveniences this may have caused.

Regards,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

Todd D. Epp

TDE/ikm

Enclosures

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

IN THE MATTER OF THE
COMPLAINT OF BASEC.NET OF
HURON, SOUTH DAKOTA,
AGAINST U S WEST
TELECOMMUNICATIONS, INC. AND
FIRSTEL, INC.

TC-98-194

NOTICE OF APPEARANCE

TO: THE ABOVE NAMED PARTIES AND THEIR ATTORNEYS:

Please take notice that Todd D. Epp of Lynn, Jackson, Shultz & LeBrun, P.C. hereby makes an appearance as attorney for Basec.Net in the above-entitled action, and requests that copies of all further pleadings, affidavits, or motions in the above-entitled matter be served upon the undersigned attorney.

Dated this 1st day of December, 1998.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

BY

Todd D. Epp
Attorneys for Basee.Net
141 N. Main Ave., 8th Floor
PO Box 1920
Sioux Falls, SD 57101-3020
(o) 605-332-5999
(f) 605-332-4249
email: tepp@lynnjackson.com

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

DEC 14 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE)
COMPLAINT OF BASEC.NET OF)
HURON, SOUTH DAKOTA,)
AGAINST U S WEST)
COMMUNICATIONS, INC. AND)
FIRSTEL, INC.)

TC-98-194

**ANSWER TO U S WEST'S
COUNTERCLAIM AND
CERTIFICATE OF SERVICE**

COMES NOW BASEC.NET, through its attorney of record, with an Answer to
U/S West's Counterclaim in the above captioned action.

ANSWER

1. Basec.Net generally denies each and every material allegation, matter and
thing contained in U/S West's Answer to Complaint, Counterclaim and Certificate of
Service except as hereinafter admitted or otherwise qualified.

2. As to Paragraph 1 of U/S West's Counterclaim, Basec.Net admits that it
used a portion of the capacity of the digital T-1 line previously installed for use by
Mitchell On-Line, but only because of U/S West's inability or unwillingness to provide
requested service either directly to Basec.Net or indirectly through Firstel, Inc.

3. As to Paragraph 2 of U/S West's Counterclaim, Basec.Net states that it is
without sufficient information or knowledge to form a belief as to the truth of the
avertment and therefore denies the statement.

4. As to Paragraph 3 of US West's Counterclaim, Basec.Net denies the statements contained therein.

5. As to Paragraph 4 of US West's Counterclaim, Basec.Net denies the statements contained therein.

AFFIRMATIVE DEFENSES

1. Due to US West's failure to perform services for Basec.Net required of it via contract, third party beneficiary contract, statute, and/or administrative regulation, US West is estopped from asserting a Counterclaim against Basec.Net in this action.

2. Due to US West's failure to abide by its own tariff as to the termination and resumption of service by a new customer (Basec.Net) taking over service from a prior customer (Mitchell On-Line), US West is estopped from asserting a Counterclaim against Basec.Net in this action.

3. Any use that may have been made by Basec.Net of US West facilities were made under duress due to US West's inability or refusal to provide service to Basec.Net in conformance of applicable contracts, third party beneficiary contracts, statutes, administrative regulations, and/or tariffs.

4. US West has waived any claims it may have against Basec.Net due to US West's inability or unwillingness to assist Basec.Net with its reasonable requests for phone lines and facilities checks in a timely and reasonable manner. US West's actions or inactions toward Basec.Net are the cause of Basec.Net's service problems; thus

because of such action or inactions, US West has waived its rights to assert otherwise against Basec, Net and is estopped from doing so.

Dated this 7th day of December, 1998.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

BY: 

Todd D. Epp
Attorneys for Basec, Net
141 N. Main Ave., 8th Floor
PO Box 1920
Sioux Falls, SD 57101-3020
(o) 605-332-5999
(f) 605-332-4249
email: tepp@lynnjackson.com

015044.104

CERTIFICATE OF SERVICE

I, Todd D. Epp, do hereby certify that I am a member of the law firm of Lynn, Jackson, Shultz & Lebrun, P.C., and on the 24th day of December, 1998, a true and correct copy of Basec.Net's Answer to US West's Counterclaim was sent via US Mail, postage prepaid, to the following addresses:

Robert C. Riter, Jr.
Riter, Mayer, Hofer, Wattier & Brown
319 S. Coteau
PO Box 280
Pierre, SD 57501-0280
Attorneys for FirsTel, Inc.

Thomas J. Welk
Boyce, Murphy, McDowell & Greenfield, LLP
101 N. Phillips Avenue, Suite 600
PO Box 5015
Sioux Falls, SD 57117-5015
Attorneys for US West Communications, Inc.

James H. Gallegos
US West Communications, Inc.
1801 California Street, Suite 5100
Denver, CO 80202

015044.103

U S WEST, Inc.
1821 California Street, Suite 5100
Denver, Colorado 80202
303 672-2877
Facsimile 303 298-8197

James H. Gallegos
Senior Attorney

USWEST

RECEIVED

DEC 18 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

VIA FEDERAL EXPRESS

December 17, 1998

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

**Re: Filing of U S WEST's Answer to Cross-Claim of FirsTel, Inc. for the State of
South Dakota, Docket No. TC98-194**

Dear Mr. Bullard:

Enclosed for filing are an original and ten (10) copies of U S WEST's Answer to Cross-Claim of FirsTel, Inc.

An eleventh copy of U S WEST's answer is also enclosed. Please file-stamp this copy and return it in the enclosed self-addressed stamped envelope. Thank you for your cooperation.

Sincerely,

James H. Gallegos / BTA

James H. Gallegos

Enclosures

cc: Jon Lehner
Colleen Sevold
Robert Riter
Todd Epp
Tom Welk

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Complaint Filed by Basec.Net,)	
Huron, South Dakota, Against U S WEST	)	Docket No. TC98-194
Communications, Inc. and FirsTel, Inc.)	
Regarding Billing Issues)	

U S WEST'S ANSWER TO CROSS-CLAIM OF FIRSHEL, INC.

U S WEST Communications, Inc. ("U S WEST"), through the undersigned attorneys, hereby files this answer to the cross-claim asserted by FirsTel, Inc. ("FirsTel") and states as follows:

1. FirsTel's cross-claim as made against U S WEST fails to state a claim on which relief can be granted.
2. U S WEST denies that FirsTel is entitled to receive any compensation based on its cross-claim for indemnity because FirsTel was negligent and failed to perform its obligations, and as such indemnity is unavailable.
3. U S WEST's obligations are limited to those contained in the interconnection agreement which was entered into between U S WEST and FirsTel, and the relief FirsTel seeks in its cross-claim is beyond the relief allowed under the interconnection agreement.

015004410
DATED this 17th day of December, 1998.

James H. Gallegos / BTA
James H. Gallegos
U S WEST, Inc.
1801 California Street, Suite 5100
Denver, CO 80202
(303) 672-2877

Thomas J. Welk
BOYCE, MURPHY, McDOWELL & GREENFIELD,
L.L.P.
101 North Phillips Avenue, Suite 600
P.O. Box 5015
Sioux Falls, SD 57117-5015
(605) 336-2424
Attorneys for U S WEST Communications, Inc.

CERTIFICATE OF SERVICE

I, James H. Gallegos, do hereby certify that I am a lawyer employed by U S WEST, Inc. in the Law Department, and on this 17th day of December, 1998, a true and correct copy of U S WEST's Answer to Cross-Claim of FirsTel, Inc. was sent via US mail, postage prepaid, to the following addresses:

Todd D. Epp
Lynn, Jackson, Shultz & Lebrun
P. O. Box 1920
Sioux Falls, SD 57101-3020
Attorney for Marvie Tschetter

Robert C. Riter, Jr.
Riter, Mayer, Hofer, Wattier & Brown, L.L.P.
319 S. Coteau
P.O. Box 280
Pierre, SD 57501-0280
Attorney for FirsTel, Inc.

James H. Gallegos / BTA
James H. Gallegos

LAW OFFICES

Lynn, Jackson, Shultz & Lebrun, P.C.

Sioux Falls Office

William F. Day, Jr.
Lee A. Magnuson
Jon C. Segn
R. Alan Peterson
David L. Nadolski
Steven J. Morgans
Daniel R. Fritz*
Amy Heinrich Arnold
Todd D. Epp**

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Fax 605-342-5185
E-Mail: ljlawrc@lynjackson.com

Rapid City Office

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Steven J. Obeng
Robert Gainsky
Molly E. Slaughter

Kelton S. Lynn
(1946-1974)
Horace R. Jackson
(1961-1987)

* Also Admitted in Minnesota

** Also Admitted in Kansas

Member of Lex Mundi
A Global Association of 125 Independent Law Firms

REPLY TO: Sioux Falls 605-332-5999

December 16, 1998

RECEIVED

DEC 21 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Executive Secretary
Public Utilities Commission
500 E. Capitol
State Capitol Building
Pierre, SD 57501

Re: IN THE MATTER OF THE COMPLAINT OF BASEC.NET OF HURON, SOUTH
DAKOTA, AGAINST U S WEST TELECOMMUNICATIONS, INC. AND
FIRSTTEL, INC.
Matter # TC-98-194
Our File # 98-2150-1

Dear Executive Secretary:

Pursuant to SDAR 20:10:01:17, I, Todd D. Epp, the attorney for the Petitioner in the above captioned action, request the PUC to issue subpoenas for the following witnesses for the hearing scheduled January 19-20, 1999, in Pierre:

1. Larry Toll, US West, Sioux Falls, SD; and
2. Gary Johnson, US West, Minneapolis, MN; and
3. Lori DeSmith, US West, Minneapolis, MN.

I also request the PUC to issue subpoenas for the following documents. I would like receipt of these subpoenaed documents by January 5, 1999:

1. All records in US West's possession or control pertaining to the transactions involved in this action between and among US West and Basec.Net and US West and FirstTel; and

December 16, 1998

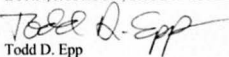
Page 2

2. All records in US West's possession or control regarding the sale of telecommunications services to Internet Service Providers (ISPs) in US West's service territory; and
3. All records in US West's possession or control regarding US West's plans to introduce or expand ISP services in South Dakota;
4. All records in US West's possession or control regarding billing practices or policies and tariffs or rate information regarding services US West offers or provides to ISPs in South Dakota.

Please call me if you have any concerns or questions. I will be out of the office December 17 and 18, 1998 and back in the office Monday, December 21, 1998. Thank you for your consideration.

Regards,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.


Todd D. Epp

TDE/jkm

cc: Marvie Tschetter, Basec.Net

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.

ATTORNEYS AT LAW

Jeremiah D. Murphy
Russell R. Greenfield
David J. Vickers
Gary J. Pashby
Vance R.C. Goldammer
Thomas J. Weik
Terry N. Pendergast
James E. McMahon
Michael S. McKinley
Gregg S. Greenfield
Tamara A. Wilka
Roger A. Sallbeck
Carlynn A. Thompson
Lori Hansen-Marco

Northwest Center, Suite 600
101 North Phillips Avenue
Sioux Falls, South Dakota 57104
P.O. Box 5015
Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424
Facsimile 605 334-0618

Of Counsel:
John R. McDowell

J.W. Boyce (1894-1975)
John S. Murphy (1924-1996)

December 17, 1998

William Bullard, Executive Director
Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

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DEC 21 1998
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

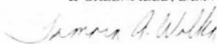
Re In the Matter of the Complaint Filed by Basec Net, Huron, South Dakota Against US
WEST Communications, Inc. and FirsTel, Inc. Regarding Billing Issues (TC 98-194)

Dear Bill:

Enclosed please find a copy of the Order for Admission of Non-Resident Attorney

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.



Tamara A. Wilka

TAW/vjj
Enclosure

cc: Colleen Sevold (w/enc)
Jim Gallegos (w/enc)

RECEIVED -

STATE OF SOUTH DAKOTA)

DEC 21 1998

IN CIRCUIT COURT

COUNTY OF HUGHES)

SS SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC. REGARDING BILLING
ISSUES (TC-98-194)

Civ. No. 98-490

Ex. 98-22


ORDER FOR ADMISSION OF
NON-RESIDENT ATTORNEY

It is hereby

ORDERED that the Motion for Admission for James H. Gallegos, a non-resident attorney, to appear on behalf of U S WEST Communications, Inc. before the Public Utilities Commission for the State of South Dakota relating to this matter is granted.

Dated this 15, day of Dec, 1998.

BY THE COURT:


Hon. Steven L. Zinter
Circuit Court Judge
Sixth Judicial District

ATTEST:

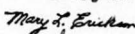

Mary Erickson, Clerk

By: 
Deputy
(SEAL)

STATE OF SOUTH DAKOTA,
CIRCUIT COURT, HUGHES CO.

FILED

DEC 16 1998

 CLERK
By:  Deputy

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
ATTORNEYS AT LAW

Jeremiah D. Murphy
Russell R. Greenfield
David J. Vickers
Gary J. Pashley
Vance R.C. Gildammer
Thomas J. Weik
Terry N. Prendergast
James E. McMahon
Michael S. McKnight
Gregg S. Greenfield
Tamara A. Wilka
Roger A. Sudbeck
Carolyn A. Thompson
Lisa Hansen-Mercer

Norwest Center, Suite 600
101 North Phillips Avenue
Sioux Falls, South Dakota 57104
P.O. Box 5215
Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424
Facsimile 605 334-0618

Of Counsel
John R. McDowell

J.W. Boyce (1894-1915)
John S. Murphy (1924-1964)

December 28, 1998

RECEIVED

DEC 30 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

William Bullard, Executive Director
Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

Re In the Matter of the Complaint Filed by Basec Net, Huron, South Dakota Against US
WEST Communications, Inc. and FirsTel, Inc. Regarding Billing Issues (TC 98-194)

Dear Bill:

Enclosed please find the original and ten (10) copies of U S WEST, Inc.'s Request for Production
of Documents and Motion for Order Requesting Expedited Response Time with Certificate of
Service

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.


Tamara A. Wilka

TAW/vjj
Enclosure

cc: Colleen Sevold
Todd Lundy
Todd D. Epp
Robert C. Riter, Jr.

RECEIVED

DEC 10 1998

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

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

**IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC. REGARDING BILLING
ISSUES**

TC-98-194

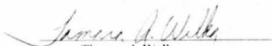
**REQUEST FOR
PRODUCTION OF DOCUMENTS
TO BASEC.NET**

Please produce the following documents, as defined in the rules of civil procedure for the circuit courts of South Dakota, including documents in either written or electronic form

1. Produce all contracts, agreements, or letters of intent between Basec net and Mitchell On-Line
2. Produce all contracts, agreements or letters of intent between Basec net and ISD
3. Produce all contracts or agreements between Mitchell On-Line and ISD
4. Produce all contracts or agreements, including applicable tariffs, between Basec net and U S WEST regarding service in Mitchell, South Dakota
5. Produce all correspondence between Basec net and Mitchell On-Line
6. Produce all correspondence between Basec net and Jay Shank
7. Produce all correspondence between Basec net and ISD
8. Produce all contracts or agreements, including applicable tariffs, between Basec net and FirsTel regarding the purchase or lease of lines from FirsTel or regarding services in Mitchell, South Dakota
9. Produce all correspondence between Basec net and FirsTel
10. Produce all contracts or agreements, or the form contracts to the extent multiple contracts contain the same terms and conditions, between Basec net and its customers serviced in the Mitchell, South Dakota, area

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11. Produce all contracts, or the form contracts to the extent multiple contracts contain the same terms and conditions, between Mitchell On-Line and its customers serviced in the Mitchell, South Dakota area since May 1, 1998
 12. Produce all correspondence between Basec net, or Mitchell On-Line, and their customers from Mitchell, South Dakota, regarding any cessation of service or service quality issues
 13. Produce all correspondence between Basec net, or Mitchell On-Line, and any customer who is the subject of any damage claim against U S WEST or FirsTel
 14. Produce all documents reflecting any calculation of damages sought against U S WEST or FirsTel.
 15. Produce all ledgers or other documentation reflecting or summarizing all costs incurred in providing services to customers in Mitchell, South Dakota
 16. Produce all invoices or billings for facilities or services received from U S WEST or FirsTel for services provided in Mitchell, South Dakota
 17. Produce all documents concerning or reflecting the "security compromise" discussed in Basec net's October 2, 1998, letter to Mitchell On-Line customers.

Dated: December 28, 1998



Thomas J. Welk
Tamara A. Wilka
BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.
101 North Phillips Avenue, Suite 600
P O Box 5015
Sioux Falls, SD 57117-5015
(605) 336-2424

Todd Lundy
U S WEST Communications, Inc
1801 California Street, Suite 5100
Denver, CO 80202
(303) 672-2877
Attorneys for U S WEST Communications,
Inc.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

DEC 14 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

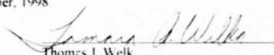
IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC. REGARDING BILLING
ISSUES

TC-98-194

MOTION FOR ORDER
REQUIRING EXPEDITED
RESPONSE TIME

U S WEST Communications, Inc. ("U S WEST"), through the undersigned attorneys,
moves this court pursuant to ARSD 20:10-01-22.01 and SDCL 15-6-34(b) for an order requiring
Basec.net to serve its responses to U S WEST's Request for Production of Documents via
overnight delivery on or before January 12, 1999.

Dated this 28th day of December, 1998



Thomaz J. Welk
Tamara A. Wilka
BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.
101 North Phillips Avenue, Suite 600
P.O. Box 5015
Sioux Falls, SD 57117-5015
(605) 336-2424

Todd Lundy
U S WEST Communications, Inc.
1801 California Street, Suite 5100
Denver, CO 80202
(303) 672-2877
Attorneys for U S WEST Communications, Inc.

01504441117

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC. REGARDING BILLING
ISSUES

TC-98-194

CERTIFICATE OF SERVICE

I, Tamara A Wilka, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, L.L.P., and on the 28th day of December, 1998, true and correct copies of U S WEST, Inc.'s Request for Production of Documents and Motion for Order Requesting Expedited Response Time were served on the following by hand delivery and U S mail, postage prepaid, respectively, to the following addresses:

Todd D Epp
Lynn, Jackson, Shultz & Lebrun
U S Bank Building
141 N. Main Avenue
Sioux Falls, SD 57104
Attorney for Basec Net

VIA HAND DELIVERY

Robert C. Riter, Jr.
Riter, Mayer, Hofer, Wattier & Brown
319 S. Coteau
P O Box 280
Pierre, SD 57501-0280
Attorney for Firstel

VIA US MAIL



Tamara A Wilka

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Commission shall determine (1) whether U S WEST and/or FirstTel committed an unlawful or unreasonable act, rate, practice, or omission in providing or failing to provide services to Basec.Net and, if so, what relief would be appropriate; (2) whether Basec.Net is liable to U S WEST for payment for services provided by U S WEST; and (3) whether FirstTel is entitled to complete indemnity against U S WEST or, alternatively, a determination of proper contribution. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED that a hearing shall be held at the time and place specified above on the issues of (1) whether U S WEST and/or FirstTel committed an unlawful or unreasonable act, rate, practice or omission in providing or failing to provide services to Basec.Net and, if so, what relief would be appropriate; (2) whether Basec.Net is liable to U S WEST for payment for services provided by U S WEST; and (3) whether FirstTel is entitled to complete indemnity against U S WEST or, alternatively, a determination of proper contribution.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 30th day of December, 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

Date

William Bullard, Jr.
12/30/98

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Commissioners Burg, Nelson and
Schoenfelder

William Bullard, Jr.
WILLIAM BULLARD, JR.
Executive Director

ORDER GRANTING MOTION
FOR EXPEDITED
RESPONSE TIME
TC98-194

On December 30, 1998, the Commission received a motion from U S WEST requesting an order requiring Basec.Net to serve its responses to U S WEST's Request for Production of Documents via overnight delivery on or before January 12, 1999. At its January 6, 1999, meeting, the Commission considered the motion.

6155080441
The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26, 49-2, 49-13, including 49-13-1 through 49-13-14, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7 1, 49-31-7 2, 49-31-10, 49-31-11, 49-31-38, 49-31-38 1, 49-31-38 2, 49-31-38 3, 49-31-60 through 49-31-68, inclusive, and ARSD 20 10:01.07.01 through 20:10:01.28, inclusive.

At the hearing, Basec Net, through its attorney Todd Epp, stated that it did not oppose U S WEST's motion. The Commission voted unanimously to grant the motion. It is therefore

ORDERED, that Basec Net shall serve its responses to U S WEST's Request for Production of Documents via overnight delivery on or before January 12, 1999.

Dated at Pierre, South Dakota, this 12th day of January, 1999.

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 Helene Kalko

Date 1/6/99

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

FAX Received JAN 05 1999

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LAW OFFICES

JAN 08 1999

Lynn, Jackson, Shultz & Lebrun, P.C.

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Sioux Falls Office

William F. Day, Jr.
Lee A. Magnuson
Jon C. Sogn
R. Alan Peterson
David L. Wadewski
Steven J. Morgano
Daniel R. Fritz*
Amy Heinrich Arnold
Todd D. Epp**

US Bank Building

141 N. Main Avenue
P.O. Box 1920 • Sioux Falls, SD 57101-3020
605-332-5999
Fax 605-332-4249
E-Mail ljlaw@lynnjackson.com

First National Bank Building

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Rapid City Office

Donald R. Shultz
Gene N. Lebrun
Thomas R. Fritz
Haven L. Struck
Joy C. Shultz
Jane Wigf Pfeifle
Kurt E. Solay
Leah Jeffries
Craig A. Pfeifle
Steven J. Oberg
Robert Gumsky
Molly E. Slaughter

Member of *Lex Mundi*

A Global Association of 125 Independent Law Firms

REPLY TO: Sioux Falls 605-332-5999

January 5, 1999

*Also Admitted in Minnesota

**Also Admitted in Kansas

Kelton S. Lynn
(1946-1974)
Horace R. Jackson
(1961-1987)

Executive Director
Public Utilities Commission
500 E. Capitol
State Capitol Building
Pierre, SD 57501

Re: IN THE MATTER OF THE COMPLAINT OF BASEC.NET OF HURON, SOUTH
DAKOTA, AGAINST U S WEST TELECOMMUNICATIONS, INC. AND FIRSTEL,
INC., TC-98-194
Our File # 98-2150-1

Dear Public Utilities Commission:

Enclosed please find Basec.Net's original signed Subpoena Duces Tecums and Motions for Order
Requiring Expedited Response Time. Both were served via fax and US Mail upon counsel for US
West and Firstel.

It is my understanding that the Commission has scheduled a hearing on US West's Motion for
Expedited Response Time vis-a-vis Basec.Net's compliance with their document request. It seems
to me it would be logical to hear all of these Motions at the same time as well as any other issues
which may arise. Please have someone at the PUC contact me regarding this concern.

Thank you for your consideration.

Regards,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.


Todd D. Epp

TDE/jkm

Enclosures

January 5, 1999

Page 2

cc: Marvie Tschetter
Todd Lundy, Esq.
Robert C. Riter, Esq.
Thomas J. Welk, Esq.

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

RECEIVED

JAN 08 1995

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE
COMPLAINT OF BASEC.NET OF
HURON, SOUTH DAKOTA,
AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC.

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)
)

FAX Received JAN 05 1995

TC-98-194

SUBPOENA DUCES TECUM

THE PUBLIC UTILITIES COMMISSION TO:

Larry Toll
US West Communications, Inc.
Sioux Falls, SD
Through US West's attorneys of record:

Pursuant to SDAR 20:10:01:17, you are commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

1. All records, whether in electronic or written form, in US West's possession or control pertaining to the transactions involved in this action between:
 - a. US West and Basec.Net; and
 - b. US West and FirsTel as regarding Basec.Net; and
 - c. US West, FirsTel and Basec.Net.
2. All records, whether in electronic or written form, in US West's possession or control regarding billing practices, policies, tariffs, and rate information regarding

services US West offers or provides to ISPs (Internet Service Providers) in South Dakota.

3. Anything in US West's possession that would be responsive to Items 1-17 of US West's Request for Production served previously on Basec.Net.
4. All records, whether in electronic or written form, in US West's possession or control regarding US West's plans to introduce or expand ISP services in South Dakota;
5. All records, whether in electronic or written form, in US West's possession or control pertaining to the number of USWest.net subscribers in Huron, Mitchell, Watertown, and Redfield, South Dakota and their date of activation.

The above-noted documents and materials are to be produced on January 12, 1999 to Todd D. Epp, attorney for the Petitioner Basec.Net, at the offices of Lynn, Jackson, Shultz & Lebrun, P.C., 141 N. Main Avenue, 8th Floor, PO Box 1920, Sioux Falls, SD 57101-3020.

Issued in the name of the PUC this 5th day of January, 1999.

By: Todd D Epp

Todd D Epp
LYNN, JACKSON, SHULTZ & LEBRUN, P.C.
Attorneys for Basec.Net
141 N. Main Ave., 8th Floor
PO Box 1920
Sioux Falls, SD 57101-3020
(o) 605-332-5999
(f) 605-332-4249
email: tepp@lynnjackson.com

CERTIFICATE OF SERVICE

I, Todd D. Epp, do hereby certify that I am a member of the law firm of Lynn, Jackson, Shultz & Lebrun, P.C., and on the 5th day of January, 1999, a true and correct copy of Basec.Net's Subpoena Duces Tecum was sent via facsimile machine and US Mail, postage prepaid, to the following addresses:

By:


Todd D. Epp

Thomas J. Welk, Esq.
Boyce, Murphy, McDowell & Greenfield, LLP
101 N. Phillips Avenue, Suite 600
PO Box 5015
Sioux Falls, SD 57117-5015
Attorneys for US West Communications, Inc.
fax 605-334-0618

Todd Lundy, Esq.
US West Communications, Inc.
1801 California Street, Suite 5100
Denver, CO 80202
fax 303-298-8197

Robert C. Riter, Jr., Esq.
Riter, May, Hofer, Wattier & Brown
PO Box 280
Pierre, SD 57501-0280
fax 605-224-7102

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

JAN 08 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

FAX Received JAN 05 1999

IN THE MATTER OF THE
COMPLAINT OF BASEC.NET OF
HURON, SOUTH DAKOTA,
AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC.

TC-98-194

**MOTION FOR ORDER REQUIRING
EXPEDITED RESPONSE TIME**

COMES NOW THE PETITIONER, BASEC.NET, by and through its attorneys of
record:

Basec.Net, through the undersigned attorney, moves the South Dakota Public Utilities
Commission pursuant to ARSD 20:10:01:22.01 and SDCL 15-6-34(b) for an order requiring
US West to serve its responses to Basec.Net's Subpoena Duces Tecum via overnight delivery
on or before January 12, 1999.

Dated this 5th day of January, 1999.

By: Todd D. Epp

Todd D. Epp
LYNN, JACKSON, SHULTZ & LEBRUN, P.C.
Attorneys for Basec.Net
141 N. Main Ave., 8th Floor
PO Box 1920
Sioux Falls, SD 57101-3020
(o) 605-332-5999
(f) 605-332-4249
email: tepp@lynnjackson.com

CERTIFICATE OF SERVICE

I, Todd D. Epp, do hereby certify that I am a member of the law firm of Lynn, Jackson, Shultz & Lebrun, P.C., and on the 5th day of January, 1999, a true and correct copy of Basec.Net's Motion for Order Requiring Expedited Response Time via facsimile machine and US Mail, postage prepaid, to the following addresses:

By: Todd D. Epp

Todd D. Epp

Thomas J. Welk, Esq.
Boyce, Murphy, McDowell & Greenfield, LLP
101 N. Phillips Avenue, Suite 600
PO Box 5015
Sioux Falls, SD 57117-5015
Attorneys for US West Communications, Inc.
fax 605-334-0618

Todd Lundy, Esq.
US West Communications, Inc.
1801 California Street, Suite 5100
Denver, CO 80202
fax 303-298-8197

Robert C. Riter, Jr., Esq.
Riter, May, Hofer, Wattier & Brown
PO Box 280
Pierre, SD 57501-0280
fax 605-224-7102

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

RECEIVED

JAN 08 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE
COMPLAINT OF BASEC.NET OF
HURON, SOUTH DAKOTA,
AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC.

)
)
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FAX Received JAN 05 1999

TC-98-194

SUBPOENA DUCES TECUM

THE PUBLIC UTILITIES COMMISSION TO:

Neil Schmid
FirsTel
Sioux Falls, SD
Through FirsTel's attorneys of record:

Pursuant to SDAR 20:10:01:17, you are commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

1. All records, whether in electronic or written form, in FirsTel's possession or control pertaining to the transactions involved in this action between:
 - a. FirsTel and Basec.Net; and
 - b. FirsTel and US West as regarding Basec.Net; and
 - c. US West, FirsTel and Basec.Net.

The above-noted documents and materials are to be produced on January 12, 1999 to
Todd D. Epp, attorney for the Petitioner Basec.Net, at the offices of Lynn, Jackson, Shultz &
Lebrun, P.C., 141 N. Main Avenue, 8th Floor, PO Box 1920, Sioux Falls, SD 57101-3020.

Issued in the name of the PUC this 5th day of January, 1999.

By: Todd D. Epp

Todd D. Epp
LYNN, JACKSON, SHULTZ & LEBRUN, P.C.
Attorneys for Basec.Net
141 N. Main Ave., 8th Floor
PO Box 1920
Sioux Falls, SD 57101-3020
(o) 605-332-5999
(f) 605-332-4249
email: tepp@lynnjackson.com

CERTIFICATE OF SERVICE

I, Todd D. Epp, do hereby certify that I am a member of the law firm of Lynn, Jackson, Shultz & Lebrun, P.C., and on the 5th day of January, 1999, a true and correct copy of Basec.Net's Subpoena Duces Tecum was sent via facsimile machine and US Mail, postage prepaid, to the following addresses:

By:

Todd D. Epp
Todd D. Epp

Thomas J. Welk, Esq.
Boyce, Murphy, McDowell & Greenfield, LLP
101 N. Phillips Avenue, Suite 600
PO Box 5015
Sioux Falls, SD 57117-5015
Attorneys for US West Communications, Inc.
fax 605-334-0618

Todd Lundy, Esq.
US West Communications, Inc.
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Denver, CO 80202
fax 303-298-8197

Robert C. Riter, Jr., Esq.
Riter, May, Hofer, Wattier & Brown
PO Box 280
Pierre, SD 57501-0280
fax 605-224-7102

BEFORE THE PUBLIC UTILITIES COMMISSION

RECEIVED

JAN 08 1999

OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF)
COMPLAINT OF BASEC.NET OF)
HURON, SOUTH DAKOTA,)
AGAINST U S WEST)
COMMUNICATIONS, INC. AND)
FIRSTEL, INC.)

FAX Received JAN 05 1999
TC-98-194

**MOTION FOR ORDER REQUIRING
EXPEDITED RESPONSE TIME**

COMES NOW THE PETITIONER, BASEC.NET, by and through its attorneys of
record:

Basec.Net moves the South Dakota Public Utilities Commission pursuant to ARSD
20:10:01:22.01 and SDCL 15-6-34(b) for an order requiring Firstel to serve its responses to
Basec.Net's Subpoena Duces Tecum via overnight delivery on or before January 12, 1999.

Dated this 5th day of January, 1999.

By: Todd D. Epp

Todd D. Epp
LYNN, JACKSON, SHULTZ & LEBRUN, P.C.
Attorneys for Basec.Net
141 N. Main Ave., 8th Floor
PO Box 1920
Sioux Falls, SD 57101-3020
(o) 605-332-5999
(f) 605-332-4249
email: tepp@lynnjackson.com

CERTIFICATE OF SERVICE

I, Todd D. Epp, do hereby certify that I am a member of the law firm of Lynn, Jackson, Shultz & Lebrun, P.C., and on the 5th day of January, 1999, a true and correct copy of Basec.Net's Motion for Order Requiring Expedited Response Time via facsimile machine and US Mail, postage prepaid, to the following addresses:

By: Todd D. Epp
Todd D. Epp

Thomas J. Welk, Esq.
Boyce, Murphy, McDowell & Greenfield, LLP
101 N. Phillips Avenue, Suite 600
PO Box 5015
Sioux Falls, SD 57117-5015
Attorneys for US West Communications, Inc.
fax 605-334-0618

Todd Lundy, Esq.
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Robert C. Riter, Jr., Esq.
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PO Box 280
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BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
ATTORNEYS AT LAW

Jeremiah D. Murphy
Russell R. Greenfield
David J. Vickers
Gary J. Pashby
Vance R. G. Gollanmer
Thomas J. Wolk
Terry N. Prosserant
James F. McMahon
Michael S. McKnight
Gregg S. Greenfield
Tamara A. Wilke
Roger A. Szaback
Carolyn A. Thompson
Lisa Hansen-Memo

Norwest Center, Suite 600
101 North Phillips Avenue
Sioux Falls, South Dakota 57104
P.O. Box 5015
Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424
Facsimile 605 334-0618

RECEIVED

JAN 08 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Of Counsel
John R. McDowell

J.W. Boyce (1894-1915)
John S. Murphy (1924-1964)

January 6, 1999

VIA FACSIMILE - 773-3809

FAX Received JAN 08 1999

William Bullard, Executive Director
Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

Re: In the Matter of the Complaint Filed by Basec.Net, Huron, South Dakota Against US
WEST Communications, Inc. and FirsTel, Inc. Regarding Billing Issues (TC 98-194)

Dear Bill:

Enclosed please find U S West's Response To Basec.Net's Motion For Expedited Response Time,
Motion For A Continuance Of The Hearing Or, In The Alternative, For A Protective Order, And
Motion To Strike Requests For Irrelevant And Proprietary Information with Certificate of Service
in the above referenced file. The original and ten (10) copies are being mailed to you today.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.


Michael S. McKnight

MSM/vjj
Enclosure

cc: Colleen Sevoid (w/enc.)
Todd Lundy (w/enc.)
Todd Epp
Robert Riter

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

JAN 08 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC. REGARDING BILLING
ISSUES

TC-98-194

FAX Received JAN 06 1999

**U S WEST'S RESPONSE TO BASEC.NET'S MOTION FOR EXPEDITED RESPONSE
TIME; MOTION FOR A CONTINUANCE OF THE HEARING OR, IN THE
ALTERNATIVE, FOR A PROTECTIVE ORDER; AND MOTION TO STRIKE
REQUESTS FOR IRRELEVANT AND PROPRIETARY INFORMATION**

U S WEST Communications, Inc. ("U S WEST"), through counsel, responds to Basec.net of Huron, South Dakota's ("Basec") Motion for Expedited Response Time. U S WEST moves for a continuance of the hearing presently set for January 19, 1999 to allow it reasonable time to collect and deliver the documents requested by Basec. Alternatively, if Basec still wants the January 19, 1999 hearing to proceed, then U S WEST requests that Basec's document request to U S WEST be withdrawn. In addition, U S WEST requests certain document requests to be stricken, because they are irrelevant to this proceeding and seek disclosure of proprietary information. As grounds, U S WEST states as follows:

On January 5, 1999, at approximately 11:00AM, plaintiff Basec faxed to U S WEST a subpoena duces tecum demanding production of documentation within five working days on Tuesday, January 12, 1999. A copy of the subpoena duces tecum is attached as Exhibit 1. Also on January 5, 1999, Basec faxed to U S WEST its Motion for Expedited Response Time requesting the Commission to require U S WEST to produce the documents identified in the subpoena by January 12, 1999.

Basec's January 5 subpoena requests voluminous and extensive documentation from U S WEST. For example, Basec requests: (1) all records pertaining to the transactions involved in this action; (2) all records regarding billing practices, policies, tariffs, and rate information regarding U S WEST's services to Internet Service Providers ("ISP"); (3) all documents relating to U S WEST's previous document request to Basec; (4) all documents regarding U S WEST's plans to introduce or expand ISP services in South Dakota; and (5) the number of U S WEST net subscribers in Huron, Mitchell, Watertown, and Redfield, South Dakota.

U S WEST must not only identify, collect, and copy the requested documents, but also review the documents for privileges and proprietary information. As of the filing of this Response, U S WEST does not know when it may be able to deliver the documents that Basec requests, but U S WEST currently believes that it cannot do so before the January 19, 1999 hearing, and most certainly not by Tuesday, January 12, 1999.

The Rules of the Circuit Court, which govern discovery in proceedings before the Commission, grant a party thirty days to respond to requests for production of documents. SDCL 15-6-34(b). Therefore, the rules allow U S WEST until at least February 4, 1999 to deliver the documents requested by Basec. Indeed, the voluminous nature of the request may require U S WEST to seek an extension of time beyond the typical thirty days.

The timing and volume of Basec's requests are unreasonable. U S WEST has multiple departments and offices that may have documents responsive to Basec's requests. It is extremely doubtful that U S WEST could deliver the requested documents before the January 19, 1999 hearing.

U S WEST therefore requests an order of the Commission which either: (1) continues the January 19, 1999 hearing in order to allow U S WEST reasonable time to respond to Basec's

document request, or (2) relieves U S WEST from producing the documents, allowing the hearing to proceed as scheduled on January 19.

Counsel for U S WEST has conferred with counsel for Basec, Mr. Todd Epp, regarding this matter. Mr. Epp stated that Basec stands by its requests for documents, but will not agree to a continuance of the hearing. Thus, Basec has created this untenable position of demanding a production of documents which requires probably the entire thirty-day response period under section 15-6-34(b), but Basec will not agree to continue the hearing to allow U S WEST to gather, review, and deliver the documents. Basec cannot have it both ways. Basec should either continue the hearing to allow U S WEST to deliver the requested documents, or it should withdraw its document request.

Basec commented during the Commission's January 6, 1999 meeting that U S WEST should respond to discovery, just as Basec plans to do. There are several significant differences between the timing and scope of the parties' discovery requests, as well as the parties' willingness to be flexible to allow the other party the time to gather requested documents.

U S WEST's request to Basec is not as broad as Basec's. U S WEST attempted to define the documents with particularity, such as "correspondence," or "agreements." Basec requests all documents relating to the transactions at issue. Basec's request requires a broad look at the issues and circumstances involved in this case and a comprehensive search of anything relating to these issues. There are several departments, offices, and individuals involved from U S WEST's perspective of this case. U S WEST must contact all of these departments and employees to determine whether they have any responsive documentation. In contrast, Basec must only confer with one or two individuals and examine documents reposing in one office.

Further, Basec demands U S WEST to produce documents within a shorter period of time than U S WEST granted to Basec. Basec received U S WEST's request on December 28,

1998, and U S WEST requested delivery of the documents in fifteen days. Basec wants U S WEST to comply in seven days, and even if Basec granted the same amount of time that U S WEST gave Basec, U S WEST would have until January 20, 1999, which would be after the completion of the hearing.

More to the point, U S WEST is willing to be flexible to allow Basec to gather the documents that U S WEST requests, whereas Basec will not grant U S WEST similar flexibility. If Basec required more time to gather the documents requested by U S WEST, then U S WEST would be willing to continue the January 19 hearing. In contrast, Basec wants documents that cannot be gathered by January 19, yet it opposes a continuance.

Basec also stated during the January 6 meeting of the Commission that Basec provided US WEST with "informal" discovery on December 28, 1999, and then provided its "formal" discovery request on January 5, 1999. Basec's statement does not illustrate the complete scenario and the understandings reached among counsel.

U S WEST received Basec's letter requesting documents on December 28, 1998. U S WEST immediately contacted Basec stating that Basec's request was extremely broad and required better definition. Basec agreed to re-draft the request, and U S WEST understood that it would begin gathering the documents after Basec had provided a clearer definition of the requested documents. On December 30 and 31, 1998, U S WEST advised Basec that U S WEST had not received Basec's revised request. U S WEST also advised Basec that its delay in providing a revised request could jeopardize the hearing date. It was not until January 5, 1999, that Basec provided U S WEST with a revised request, and it is still extremely broad.

U S WEST submits that a hearing on the merits in which both parties have full discovery is preferable, and therefore the Commission should continue the hearing and allow U S WEST to provide the documents to Basec. Basec will not be prejudiced by a continuance. Soon after the


Commission's November 5, 1998 meeting on this matter, U S WEST connected Basec to additional facilities. Thus, there is no service issue requiring the Commission's immediate attention. Rather, the remaining issues only concern damages, and a relatively brief postponement will not prejudice Basec or any other party to this case. Finally, if Basec wanted to ensure that the hearing proceed on January 19, then it should not have waited until January 5 to serve its voluminous request upon U S WEST.

Apart from the issue of a continuance, two of Basec's requests are irrelevant to the issues before the Commission. The proper issues are whether Basec may recover damages from FirsTel or U S WEST for lost customers in Mitchell South Dakota, and whether U S WEST may recover damages from Basec for failure to pay for services it admittedly received. However, Basec requests documentation regarding U S WEST's plans to introduce or expand ISP services in South Dakota (Request No. 4). Basec also wants U S WEST to provide documents showing the numbers of U S WEST net subscribers in Huron, Mitchell, Watertown, and Redfield, South Dakota (Request No. 5). This information is entirely unrelated to the service that Basec received in Mitchell and the extent to which it may have been damaged.

In addition, Basec requests proprietary and confidential information. U S WEST's plans for expansion of its business, and U S WEST's customers in various South Dakota towns, constitute proprietary trade secret information. The confidential nature of this information, coupled with its irrelevance to the issues in this matter, suggest that Basec is attempting to obtain information for purposes unrelated to the legal issues before the Commission in this proceeding.

Therefore, in addition to U S WEST's request for a continuance of the hearing, U S WEST moves that the Commission strike Basec's request numbers 4 and 5, because they seek irrelevant and proprietary information.

0150044411
DATED this 6th day of January, 1999.


Thomas J. Welk
Michael S. McKnight
BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.
101 North Phillips Avenue, Suite 600
P.O. Box 5015
Sioux Falls, SD 57117-5015
(605) 336-2424

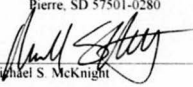
Todd Lundy
U S WEST Communications, Inc
1801 California Street, Suite 5100
Denver, CO 80202
(303) 672-2783
Attorneys for U S WEST Communications, Inc

CERTIFICATE OF SERVICE

I, Michael S. McKnight, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, L.L.P., and on the 6th day of January, 1999, a true and correct copy of U S West's Response To Basec.Net's Motion For Expedited Response Time, Motion For A Continuance Of The Hearing Or, In The Alternative, For A Protective Order, And Motion To Strike Requests For Irrelevant And Proprietary Information was served by personal delivery via fax to Mr. Riter at approximately 3:45 p.m. and via hand delivery to Mr. Epp.

Todd D. Epp VIA HAND DELIVERY
Lynn, Jackson, Shultz & Lebrun
U S Bank Building
141 N. Main Avenue
Sioux Falls, SD 57104

Robert C. Riter, Jr. VIA FAX - 605-224-7102
Riter, Mayer, Hofer, Wattier & Brown
319 S. Coteau
P.O. Box 280
Pierre, SD 57501-0280


Michael S. McKnight

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE)
COMPLAINT OF BASEC.NET OF)
HURON, SOUTH DAKOTA,)
AGAINST U S WEST)
COMMUNICATIONS, INC. AND)
FIRSTTEL, INC.)

TC-98-194

SUBPOENA DUCES TECUM

THE PUBLIC UTILITIES COMMISSION TO:

Larry Toll
US West Communications, Inc.
Sioux Falls, SD
Through US West's attorneys of record:

Pursuant to SDAR 20:10:01:17, you are commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

1. All records, whether in electronic or written form, in US West's possession or control pertaining to the transactions involved in this action between:
 - a. US West and Basec.Net; and
 - b. US West and FirsTel as regarding Basec.Net; and
 - c. US West, FirsTel and Basec.Net.
2. All records, whether in electronic or written form, in US West's possession or control regarding billing practices, policies, tariffs, and rate information regarding

EXHIBIT

1

services US West offers or provides to ISPs (Internet Service Providers) in South Dakota.

3. Anything in US West's possession that would be responsive to Items 1-17 of US West's Request for Production served previously on Basec.Net.
4. All records, whether in electronic or written form, in US West's possession or control regarding US West's plans to introduce or expand ISP services in South Dakota;
5. All records, whether in electronic or written form, in US West's possession or control pertaining to the number of USWest.net subscribers in Huron, Mitchell, Watertown, and Redfield, South Dakota and their date of activation.

The above-noted documents and materials are to be produced on January 12, 1999 to Todd D. Epp, attorney for the Petitioner Basec.Net, at the offices of Lynn, Jackson, Shultz & Lebrun, P.C., 141 N. Main Avenue, 8th Floor, PO Box 1920, Sioux Falls, SD 57101-3020.

Issued in the name of the PUC this 5th day of January, 1999.

By: Todd D. Epp

Todd D. Epp
LYNN, JACKSON, SHULTZ & LEBRUN, P.C.
Attorneys for Basec.Net
141 N. Main Ave., 8th Floor
PO Box 1920
Sioux Falls, SD 57101-3020
(o) 605-332-5999
(f) 605-332-4249
email: tepp@lynnjackson.com

CERTIFICATE OF SERVICE

I, Todd D. Epp, do hereby certify that I am a member of the law firm of Lynn, Jackson, Shultz & Lebrun, P.C., and on the 5th day of January, 1999, a true and correct copy of Basec.Net's Subpoena Duces Tecum was sent via facsimile machine and US Mail, postage prepaid, to the following addresses:

Thomas J. Welk, Esq.
Boyce, Murphy, McDowell & Greenfield, LLP
101 N. Phillips Avenue, Suite 600
PO Box 5015
Sioux Falls, SD 57117-5015
Attorneys for US West Communications, Inc.
fax 605-334-0618

Todd Lundy, Esq.
US West Communications, Inc.
1801 California Street, Suite 5100
Denver, CO 80202
fax 303-298-8197

Robert C. Riter, Jr., Esq.
Riter, May, Hofer, Wattier & Brown
PO Box 280
Pierre, SD 57501-0280
fax 605-224-7102

TC98-194

LAW OFFICES

Lynn, Jackson, Shultz & Lebrun, P.C.

Sioux Falls Office

William F. Dav, Jr.
Lee A. Magnuson
Jon C. Sogn
R. Alan Peterson
David L. Nadolaki
Steven J. Morganti
Daniel R. Frost*
Amy Heinrich Arnold
Todd D. Epp**

US Bank Building

141 N. Main Avenue
P.O. Box 1920 • Sioux Falls, SD 57101-3020
605-332-5999
Fax 605-332-4249
E-Mail jlaw@lynjackson.com

First National Bank Building

8th Floor • 909 St. Joseph
PO. Box 8250 • Rapid City, SD 57709-8250
605-342-2592
Fax 605-342-5185
E-Mail jlaw@lynjackson.com

Rapid City Office

Donald R. Shultz
Gene N. Lebrun
Thomas G. Fritz
Haven L. Struck
Jay C. Shultz
Jette Wipf Pfeifle
Kurt E. Selay
Leah Jeffries
Craig A. Pfeifle
Steven J. Oberg
Robert Guntzky
Molly E. Slaughter

www.lynjackson.com

Member of Lex Mundi

A Global Association of 125 Independent Law Firms

REPLY TO: Sioux Falls 605-332-5999

January 11, 1999

*Also Admitted in Minnesota

**Also Admitted in Kansas

Via Fax

Todd L. Lundy, Esq.
U.S. West, Inc.
1801 California Street
Suite 5100
Denver, CO 80202

RECEIVED

JAN 12 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: Basec Net v. US West and FirsTel
Our File # 98-2150-1

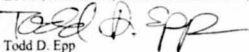
Dear Todd:

I just wanted to reconfirm your statement from this morning's hearing before the PUC that Basec Net now has 30 days from its receipt of US West's Request for Production to comply. My client and I appreciate this courtesy.

Please call or fax me if I misunderstood your elocution on this issue at the hearing.

Best regards,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.


Todd D. Epp

cc: Marvie Tschetter (via US Mail)
Robert C. Riter, Jr. (via US Mail)
Thomas J. Welk (via US Mail)
Executive Director, PUC (via US Mail)

On December 30, 1998, the Commission received a motion from U S WEST requesting an order requiring Basec.Net to serve its responses to U S WEST's Request for Production of Documents via overnight delivery on or before January 12, 1999. At its January 6, 1999, meeting, the Commission considered the motion. Basec.Net did not oppose the motion. The Commission unanimously voted to grant the motion.

On January 5, 1999, the Commission received from Basic Net two Motions for Orders Requiring Expedited Response Time. The motions requested that U S WEST and FirstTel be ordered to respond to Basic Net's Subpoenas Duces Tecum by January 12, 1999. On January 6, 1999, U S WEST filed with the Commission its Response to Basic Net's Motion for Expedited Response Time, a Motion for a Continuance of the Hearing, or, in the Alternative, for a Protective Order, and a Motion to Strike Requests for Irrelevant and Proprietary Information.

At its January 11, 1999, meeting, the Commission considered the motions. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26, 49-2, 49-13, including 49-13-1 through 49-13-14, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, 49-31-60 through 49-31-68, inclusive, and ARSD 20:10.01.07.01 through 20:10.01.28, inclusive. After listening to arguments of the parties, the Commission unanimously ruled as follows: 1) Basic Net's Motions for Orders Requiring Expedited Response Time are denied; 2) U S WEST's Motion for a Continuance of the Hearing is granted and the hearing scheduled for January 19-20, 1999, is cancelled; and U S WEST's Motion to Strike Requests for Irrelevant and Proprietary Information is denied. The parties were also directed to work out any necessary protective agreements. It is therefore

ORDERED, that Basic Net's Motions for Orders Requiring Expedited Response Time are denied, and it is

FURTHER ORDERED, that U S WEST's Motion for a Continuance of the Hearing is granted and the hearing scheduled for January 19-20, 1999, is cancelled, and it is

FURTHER ORDERED, that U S WEST's Motion to Strike Requests for Irrelevant and Proprietary Information is denied.

Dated at Pierre, South Dakota, this 15th day of January, 1999.

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 Nelaine Kachro

Date 1/19/99

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

01560449

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.

ATTORNEYS AT LAW

Deborah D. Murphy
Russell R. Greenfield
David J. Vickers
Curtis J. Dandley
Yvonne R. C. Goldammer
Thomas J. Wilka
Terry N. Frembergart
Jenne E. McMahon
Michael B. McCaught
Gregg S. Greenfield
Tamara A. Wilka
Roger A. Sudbeck
Caroline A. Thompson
Lisa Hansen-Martin

Norwest Center, Suite 600
101 North Phillips Avenue
Sioux Falls, South Dakota 57104
P.O. Box 5015
Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424
Facsimile 605 334-0618

Off Counsel
John R. McDowell

TW Boyce 1844-1915
John J. Murphy 1124-1766

January 18, 1999

William Bullard, Executive Director
Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

RECEIVED
JAN 20 1999
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re In the Matter of the Complaint Filed by Basec Net, Huron, South Dakota Against US WEST Communications, Inc. and FirsTel, Inc. Regarding Billing Issues (TC 98-194)

Dear Bill:

Please find enclosed a file stamped copy of the Order for Admission of Todd Lundy in the above matter. Please file the same in the Commission's file.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.


Thomas J. Wilka

TJW/vjj
Enclosure

cc: Todd Lundy
Todd D. Epp
Robert C. Riter, Jr.

RECEIVED

JAN 20 1999

TC 98-194

STATE OF SOUTH DAKOTA)

IN CIRCUIT COURT

SS

SOUTH DAKOTA PUBLIC

COUNTY OF HUGHES)

UTILITIES COMMISSION SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC. REGARDING BILLING
ISSUES (TC-98-194)

Civ. No. 98-194


ORDER FOR ADMISSION OF
NON-RESIDENT ATTORNEY

It is hereby

ORDERED that the Motion for Admission for Todd L. Lundy, a non-resident attorney,
to appear on behalf of U S WEST Communications, Inc. before the Public Utilities Commission
for the State of South Dakota relating to this matter is granted

Dated this 14 day of January, 1999.

BY THE COURT:


Hon. Steven L. Zinter
Circuit Court Judge
Sixth Judicial District


ATTEST

Mary Erickson, Clerk

By _____

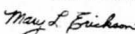
Deputy

(SEAL)

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

JAN 14 1999

 CLERK

By _____ Deputy

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED)	AMENDED ORDER FOR
BY BASEC.NET, HURON, SOUTH DAKOTA,)	AND NOTICE OF HEARING
AGAINST U S WEST COMMUNICATIONS, INC.)	
AND FIRS TEL, INC. REGARDING BILLING)	TC98-194
ISSUES)	

On October 26, 1998, the Public Utilities Commission (Commission) received a complaint by Marvie Tschetter of Basec.Net, Huron, South Dakota (Basec.Net), against U S WEST Communications, Inc. (U S West) and FirstTel, Inc. (FirstTel). Basec.Net states that it purchased an existing business and contacted U S WEST to continue customer access through T-1 lines. U S WEST informed Basec.Net it could not take over payment of the lines unless the previous owner's debt was paid in full. Basec.Net decided to move the equipment and obtain services through FirstTel. After obtaining the services, Basec.Net was informed by U S WEST that they would be charged for installation/construction fees, the old billings of the previous owner, and additional charges for monthly service until other options were available. Neither U S WEST nor FirstTel disclosed these costs prior to providing service. FirstTel offered a plan with minimal installation fees but could not offer the service for 15-20 days which would not allow Basec.Net's customers access to their services. Basec.Net seeks the following relief: "1) Require U S WEST to inform promptly of facilities issues. 2) Some sort of financial compensation for loss of revenue."

Pursuant to ARSD 20:10:01:08:01 and 20:10:01:09, if a complaint cannot be settled without formal action, the Commission shall determine if the complaint shows probable cause of an unlawful or unreasonable act, rate, practice or omission to go forward with the complaint.

On November 3, 1998, at its duly noticed meeting, the Commission reviewed the complaint. The Commission voted unanimously to find probable cause and served the complaint on U S WEST and FirstTel. U S WEST filed its Answer to Complaint and Counterclaim on November 30, 1998. FirstTel filed its Answer to Complaint of Basec.Net and Cross Claim against U S WEST's Communications, Inc., on November 30, 1998. Basec.Net filed its Answer to U S WEST's Counterclaim on December 11, 1998. U S WEST filed its Answer to Cross-Claim of FirstTel on December 18, 1998.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26, 49-2, 49-13, including 49-13-1 through 49-13-14, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, 49-31-60 through 49-31-68, inclusive, and ARSD 20:10:01:07:01 through 20:10:01:28, inclusive. The Commission may rely upon any or all of these or other laws of this state in making its determination.

A hearing shall be held on January 19-20, 1999, beginning at 8:30 o'clock A.M., on January 19, in the City Commission Room, 222 East Dakota; March 31 to April 1, 1999, beginning at 8:30 o'clock A.M., on March 31, in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. All persons so testifying will be subject to cross-examination by the parties. The order of the proceeding will be in the following sequence: (1) Complainant; (2) U S WEST; (3) FirstTel; and (4) Staff.

The issues at the hearing are: (1) whether U S WEST and/or FirstTel committed an unlawful or unreasonable act, rate, practice or omission in providing or failing to provide services to Basec.Net and, if so, what relief would be appropriate; (2) whether Basec.Net is liable to U S WEST

for payment for services provided by U S WEST, and (3) whether FirstTel is entitled to complete indemnity against U S WEST or, alternatively, a determination of proper contribution.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Commission shall determine (1) whether U S WEST and/or FirstTel committed an unlawful or unreasonable act, rate, practice, or omission in providing or failing to provide services to Basec Net and, if so, what relief would be appropriate; (2) whether Basec Net is liable to U S WEST for payment for services provided by U S WEST; and (3) whether FirstTel is entitled to complete indemnity against U S WEST or, alternatively, a determination of proper contribution. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED that a hearing shall be held at the time and place specified above on the issues of (1) whether U S WEST and/or FirstTel committed an unlawful or unreasonable act, rate, practice or omission in providing or failing to provide services to Basec Net and, if so, what relief would be appropriate; (2) whether Basec Net is liable to U S WEST for payment for services provided by U S WEST; and (3) whether FirstTel is entitled to complete indemnity against U S WEST or, alternatively, a determination of proper contribution.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 25th day of January, 1999.

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 Nelaine Lacro

Date 1/25/99

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION
Commissioners Burg, Nelson and
Schoenfelder

William Bullard, Jr.
WILLIAM BULLARD, JR.
Executive Director

015044
35

LAW OFFICES
RITER, MAYER, HOFER, WATTIER & BROWN, LLP
Professional & Executive Building
319 South Coteau Street
P. O. Box 280
Pierre, South Dakota 57501-0280

R. C. RITER (1912-1994)
E. D. MAYER
ROBERT D. HOFER
ROBERT C. RITER, JR.
JERRY L. WATTIER
JOHN L. BROWN

TELEPHONE
605-224-5825
TELECOPIER
605-224-7102

TRAVIS B. JONES, ASSOCIATE

January 29, 1999

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

RECEIVED
JAN 29 1999
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: In the Matter of the Complaint Filed
by Basec.Net, Huron, South Dakota
Against U.S. West Communications, Inc.
and Firstel, Inc.
TC 98-194

Dear Mr. Bullard:

Enclosed herewith please find original and eight copies of FirstTel's Response to US West's Request for Production of Documents and Response to Subpoena Duces Tecum, as well as original Certificate of Service for filing in your office.

I also enclose copy of first page of our Response and would ask that you file stamp the same.

By copy of this letter to all parties of interest, I enclose a copy of our Response to each of them, intending it as service upon them by mail.

Thank you.

Very truly yours,

RITER, MAYER, HOFER, WATTIER &
BROWN, LLP

By: 

RCR Jr-wb
Enclosures
cc: Todd L. Lundy
Thomas J. Welk
Todd D. Epp
Marvie Tschetter
Karen Cremer
Neil Schmid

RECEIVED

JAN 23 1993

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSIONBEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED BY) TC 98-194
 BASEC.NET, HURON, SOUTH DAKOTA, AGAINST) FIRSTTEL'S RESPONSE
 U S WEST COMMUNICATIONS, INC. AND) TO US WEST'S REQUEST
 FIRSTTEL, INC.) FOR PRODUCTION OF
) DOCUMENTS AND RESPONSE
) TO SUBPOENA DUCES
) TECUM

TO: US WEST COMMUNICATIONS, INC. AND THEIR ATTORNEYS OF RECORD,
 THOMAS J. WELK AND TODD L. LUNDY, AND BASEC.NET AND ITS ATTORNEY,
 TODD D. EPP:

FirstTel, Inc., by and through its attorney of record,
 Robert C. Riter, Jr., hereby responds to the Request for
 Production of Documents to FirstTel, Inc. filed by US West and the
 Subpoena Duces Tecum directed to FirstTel, Inc. from Basec.Net as
 follows:

REQUEST NO. 1: Produce all contracts or agreements
 between Basec.Net, or Mitchell On-Line, and FirstTel regarding
 services in the Mitchell, South Dakota area.

RESPONSE

1. See attached documents labelled Response to Request
 No. 1.

REQUEST NO. 2: Produce all correspondence or documents
 exchanged between Basec.Net and FirstTel regarding services in
 Mitchell, South Dakota.

RESPONSE

2. See attached documents labelled Response to Request
 No. 2.

REQUEST NO. 3: Produce all correspondence or documents
 exchanged between US West and FirstTel regarding services for
 Basec.Net or Mitchell On-Line.

01500.44
1556

RESPONSE TO REQUEST FOR PRODUCTION NO. 1

NEXT

DOCUMENT (S)

BEST IMAGE

POSSIBLE



12 Month Program

OFFERING:

- ☒ Outbound long distance
☒ 800 Service

089

QUALIFICATION:

- Subscriber must be a *FIRSTEL* customer.
- Subscriber agrees to use *FIRSTEL* as its exclusive carrier for all intrastate and interstate calls and/or 800 services for twelve (12) months.

EARLY TERMINATION OR DEFAULT:

In the event customer cancels *FIRSTEL* service or subscribes to another carrier for the purpose of placing interstate or intrastate calls and/or 800 services prior to twelve (12) months, customer will be subject to the following penalty:

Customer will reimburse *FIRSTEL* within thirty (30) days of termination or default of this agreement an amount equal to 15% of customer's average monthly usage times the remaining number of months under the program.

The undersigned hereby subscribes to the 12 MONTH PROGRAM provided by *FIRSTEL* and agrees to terms herein stated. The undersigned acknowledges that this agreement is subject to approval by *FIRSTEL*.

Company Name Basec Net Consultant
Address AKRON Signature
By _____

Jamelle Peterson

Authorized Signature [Signature] Date 8/18/98



LOCAL SERVICE AGREEMENT

☐ New ☒ Existing Customer ☐ Local Only ☐ Dialer
☒ Re-Sale Discount 60% ☐ 1 Year ☒ 3 Years ☐ 5 Years
☐ Local Service 21 ☐ 3 Years ☐ 5 Years
Interconnect Vendor: _____ Phone #: _____
Phone System: _____

Please have customer initial after term.

Firm Name: Basec. Net
Service Address: 517 St. Mary
City, State: Mitchell SD
Zip Code: 57301 Country: _____
Billing Address, if different: _____
Billing Date: ☐ 1 ☐ 8 ☐ 16 ☐ 22
Phone Number: 605-362-3077
Contact Person: _____
Welcome Pack: ☐ Rep ☐ Customer

OFFICE USE ONLY

Accounts: 3
Tax Exempt: _____ Federal: _____
State: _____
Number of Lines: 60
QVC 21 Fee: \$ _____
Installation/Activation Fee: \$ _____
Auditing Fees: \$ _____
Local Monthly Usage: \$ _____

Ownership Type: ☐ Corporation ☐ Partnership ☐ Sole Proprietorship
Home Address: _____
Home Phone: (_____) _____
SSN: _____
Federal ID #: _____
Bank Name, Address & Acct#: _____

This authorizes FirstTel to request and receive data and billing information and to act as our representative for telecommunication services. FirstTel is authorized to request information from local and long distance telephone companies or other telecommunication service providers for the telephone number(s) listed on this form.

We understand that we will be billed a one time activation/installation fee equal to the monthly savings we receive on our local services. This charge will be shown on your first bill for local service from FirstTel.

We agree that any past due charges for local services must be paid prior to FirstTel's acceptance and transfer of our local, long distance or any other services. We understand that these services may not be converted for up to 90 days.

Marile Ischetter
Customer Name (Please Print)

James Smith
Customer Representative Title

9/18/88
Date

Basec. Net
Business Name (As listed on LEC bill)

James Smith
FirstTel Representative

100-ATS
Consultant Number

EXISTING TELEPHONE NUMBERS:

☐ _____
☐ _____
☐ _____

Additional # of Lines desired: 60

Add new Line to existing Hunt Group: Yes ☒ No ☐

What Features to add to new Lines: att'n hunt / Mashead

Subject to Credit Approval by FirstTel

*****OFFICE COPY ***** TELECOM-INDUSTRY COPY ***** NON-CUSTOMER COPY

ASH
43232

facilities for 90 lines

Business Lines

09/03/1998 14:15 6053523277
SEP-03-98 THU 02:27 PM FIRSTTELBASEC NET
FAX NO. 605 3329004PAGE 02
P. 02

LOCAL SERVICE AGREEMENT

100793

☐ New ☒ Existing Customer ☐ Local Only ☐ Dialer
☒ Re-Sale Discount _____ % ☐ 1 Year ☒ 3 Years ☐ 5 Years
☐ Local Service 21 ☒ 3 Years ☐ 5 Years
 Interconnect Vendor: _____ Phone #: _____
 Phone System: _____

Please have customer initial after term.

Firm Name: Basec. Net
 Service Address: 514 N. Main
 City, State: Frederick, MD
 Zip Code: 20701 County: _____

Billing Address, if different: _____

Billing Date: ☐ 01 ☐ 15 ☒ 22 October
 Phone Number: 605 352-0005
 Contact Person: _____
 Welcome Packet: ☐ Rep ☐ Customer

OFFICE USE ONLY

Account: 25390
 Tax Exempt: ☐ Federal ☐
 State: _____
 Number of Lines: 24 T-1
 SVC 21 Fee: \$ _____
 Installation/Activation Fee: \$ _____
 Auditing Fees: \$ _____
 Local Monthly Usage: \$ _____

Credit Information

Ownership Type: ☐ Corporation ☐ Partnership ☐ Sole Proprietorship
 Home Address: _____
 Home Phone: () _____
 SSN#: _____
 Federal ID #: _____
 Bank Name Address & Acct#: _____

This authorizes FirstTel to request and receive data and billing information and to act as our representative for telecommunication services. FirstTel is authorized to request information from local and long distance telephone companies or other telecommunication service providers for the telephone number(s) listed on this form.

We understand that we will be billed a one time activation/installation fee equal to the monthly savings we receive on our local services. This charge will be shown on your first bill for local service from FirstTel.

We agree that any past due charges for local services must be paid prior to FirstTel's acceptance and transfer of our local, long distance or any other services. We understand that these services may not be converted for up to 90 days.

Customer Name (Please Print) _____

Walter Smith
 Customer Signature: _____
 Date: 9/3/98

Business Name (as listed on LEC bill) _____

Basec. Net
 FirstTel Representative: MDA ATG
 Consultant Number: _____

EXISTING TELEPHONE NUMBERS:

☐ _____ () _____ ()
☐ _____ () _____ ()

Additional # of Lines desired: _____

Add new Line to existing Hunt Group: Yes _____ No _____

What Features to add to new Lines: _____

Subject to Credit Approval by FirstTel

***OFFICE COPY - YELLOW-CONSULTANT COPY - PINK-CUSTOMER COPY

0150.44.161

RESPONSE TO REQUEST FOR PRODUCTION NO. 2

SDFSD Sue Lowrie

From: Pat [basehelp@basec.net]
Sent: Wednesday, July 22, 1998 2:41 PM
To: Sue Lowrie
Subject: CSR for TN 6053520005

Sue,

Don't want to seem slow, but what does this CSR mean.

By th By have we had another target for Mitchell??? I also need those Huron #'s for the Modem site not my business office.

I have 60 lines in a rollover status now, and I have another 10 lines that are installed and wired. I need the phone #'s for those last 10 so I can have them tested before we turn them on to the Hunt Group Status. If I have confused you further please give me a call.

Patrick Palmer
Technical Support Supervisor
basehelp@basec.net
352-2754 1-888-873-2903

...Basec.Net

Internet with an Attitude!

605-352-0005 1-800-233-0206 FAX 605-352-3277

www.basec.net

76 3rd Street SW
PO Box 214
Huron, SD 57350-0214

Mr. Larry Toll
US West Communications

July 22, 1998

Dear Larry,

The following is documentation of the Mitchell concerns:

10 Lines were ordered from FirsTel on April 23, 1998. The last number was to roll over to digital T1. The number 996.6554 was requested. We were told we could not have that number.

It was over three weeks before lines were installed. We don't know why it took such a long period of time for these lines to be installed. However, because it was taking such a long period of time, lines were also ordered directly through US West. The 996.6554 was available. The same day that the install was finalized with FirsTel, US West made the install. It was discussed with FirsTel, and FirsTel was suppose to be getting the lines moved over to their billing. However, what happened is that FirsTel ordered 10 lines and US West kept the first number of 996.6554. We have no idea why this was done. It was not at our request.

After the install, we consistently had calls that our customers were receiving busy signals. The Basec.Net equipment was thoroughly checked out. The equipment was satisfactory. The customer ratio was 8/1. No reason for customer to receive busy signals. Further investigation found:

1. The US West order was placed as measured business lines. We did not request measured business lines. With over 200 lines, we know what type of lines to order. The individual taking the order entered it incorrectly and was obviously not thinking. Why would a Internet provider order measured lines? As you can see by the attached phone bill, there is a total amount owed on this line of \$2,7774.81.
2. 996.6554 was call forwarded to 996.5964, which meant a per minute charge on every roll over and if someone had been call forwarded, the next person received a busy signal.
3. The last number in the analog roll over, 996.5963, was also call forwarded to 996.2231, which is the first number on the digital T1. Again, because of the call forward, we were being billed on a per minute basis, and individuals were getting busy signals if 996.5963 was call forwarded.

Two weeks ago, we finally were able to secure the assistance of a US West technician. After thorough investigation of the lines, the US West technician informed us that the call forwarding was the problem and that the order should have been a series completion order, not call forwarding.

As of Monday, July 20, 1998, it appeared that the situation had been resolved. However, Monday evening we again received numerous complaints about busies. This was confirmed by our testing. We reported the issue to FirsTel, who immediately took this to US West. In attempting to correct the problem, US West disconnected 7 of our lines, including the very first dial up number, and all 11 lines were out of service. That meant that the 500 plus customers in Mitchell could not log on at all. This happened at approximately 3:00 pm on Tuesday, the 21st of July. At approximately 10:30 Tuesday evening, FirsTel submitted an order to have the 1st dial up line call forwarded to the first line in the digital roll over, in an attempt to just provide us service. However, this was a call forward, which meant individuals were getting busy signals and the other 10 analog lines were skipped.

At 3:30, on Wednesday afternoon, July 22, 1998, the lines were still not working. In fact, not only have modem lines been affected at this location, but also the office lines at the Mitchell location have been down, as well. FirsTel has been working this issue to the best of their ability. Basec.Net phones have been ringing constantly with unhappy Mitchell customers.

FirsTel has worked diligently to correct these issues. It is unfair that FirsTel should be caught in the middle. I realize that we could secure our services directly with US West, however, because of the cost savings, and the attentiveness to customer service, we choose to do business with FirsTel. The issue is the ability of US West to follow through and complete orders correctly.

It is now July 22, 1998. We have been working this issue with FirsTel and US West for over two months. Basec.Net has suffered significant damage as a credible Internet Service Provider in the Mitchell area. Daily, we receive comments about our poor service. Customers are demanding refunds because of our service and inability of customers to get connected. Basec.Net is faced with astronomical phone bills, that were generated because of errors with orders placed by US West. Needless to say, the lines themselves have not worked properly.

7/23/98 9:18 AM

Last night, the Basec.Net technicians ran hourly checks on the Mitchell lines and modems. Each of these tests failed. At this time, we have given the majority of Mitchell customers an alternate telephone number to dial which will take the call on the digital T1. Unfortunately, the 48 lines are being heavily utilized, so it is likely the Mitchell customers will receive busy signals due to the high modem ratio.

We have mixed responses from the customers, some are understanding, many are completely dissatisfied. Our credibility continues to slide as we have told them we would be fixed in a few hours, and it is now over 48 hours.

I have talked with Rick Noonan of FirsTel on a consistent basis. Last night, at 4:00, I talked with the US West technician on sight. This gentleman informed me that for whatever reason the lines were disconnected on Tuesday, when they were reconnected, they were connected to the wrong pair, and they were attempting to locate the connection and get that changed.

7/23/98 9:59 AM

The Basec.Net technicians have now verified that the eleven analog lines are working. However, the last analog number 996.5963 is not rolling to the first number on the T1. This is where we have been for the past two weeks, at least we are back to where we were. In addition, the 996.0579, in the office, was taken down and is still not functioning. Mitchell customers are becoming exasperated at having no Internet access for nearly three days. These are business people who require Internet access, not just individuals who are using the Internet for a hobby. As you can see from the attached e-mail, this is the exact sentiment of our customer's.

7/23/98 12:43 PM

Basec.Net technicians have completed another testing of the Mitchell lines. The second time, the lines finally worked.

I would strongly suggest that US West review their procedures and policies. It seems unlikely that the technical issues related to this problem were highly complicated, demonstrated by the fact that once the issue was addressed, and isolated, it was fixed in less than a two hour time frame.

At this point, Larry, I am past the point of needing an apology. I know that you are sincere in offering such. However, right now, our customers deserve compensation for their inconvenience. I do not know what avenues I need to go through to seek this compensation from US West, but I would appreciate assistance in securing this. US West should also take the responsibility for this service issue, and inform the Basec.Net/Mitchell customers that indeed it was a US West issue. In addition, Basec.Net should not be expected to pay for services not rendered. FirstTel should not be responsible for services that were not rendered. The issue is truly a US West responsibility.

We keep weekly tabulations on new customers and customers who choose to terminate their access with us. We purchased Mitchell On-Line in May of 1998. From that point in time, we have had continued problems with our telephone service. This has jeopardized our reputation as an Internet Provider in the Mitchell community. In fact, in the last month, we have lost 21 customers due to the service issues we have experienced. US West's lack of performance has affected Basec.Net's bottom line. There must be compensation for this. As a result of this latest saga with US West, I have tabulated the following claim:

Lost Customers	21
Monthly Rate	\$19.95
Yearly Loss of Income	\$5,027.40

As we all know, one customer who has a negative experience, will tell 10 other individuals. In a community where we are attempting to establish market share, this has been a huge deterrent.

Lost Market Share	$21 \times 10 = 210$ customers
Monthly Rate	\$19.95
Monthly Loss of Income	\$4189.50
Yearly Loss of Income	\$50,274.00

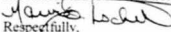
In addition, because of the mistake of order processing by US West, Basec.Net has been presented phone bills that reflect per minute charges. The rollover was incorrectly configured making the access at some points limited to two lines, sometimes to 10 lines. Only customers providing with the optional number were insured of access on the digital T1. Again, providing alternate numbers does not impress the customer. Therefore, the total amount of the phone bills that should be covered by US West is **\$3660.76**.

Finally, there is the issue of the customers who choose to remain with Basec.Net, but experienced continued busy signals and ultimately no access for several days. These individuals need to be compensated for the inconvenience they experienced.

500 Customers	\$14.95
Monthly Rate	\$7475.00
Two Months of Difficulties	\$14,950.00

If the amounts of the claim are totaled, the total is **\$77,572.92**. Do I expect US West to write me a check for that amount? In all honesty, the answer is yes. These are hard facts and figures that have been presented, with no exaggeration. I realize this is somewhat of a shocking ending. I have tried throughout the past few months to work in a gracious fashion with US West. This last incidence, however, was intolerable. The impact to my business was real and hit the bottom line.

I look forward to hearing from you.



Respectfully,
Marvie Tschetter
VP Operations
Basec.Net

CC: Brad VanLeur - FirsTel
Rick Noonan - Advanced Communications

Marvie Tschetter

From: SDFSD Rick Noonan <moonan@agcinc.net>
To: 'marvie@basec.net'
Subject: RE: Revised US West Letter
Date: Wednesday, July 29, 1998 8:44 AM

Dear Marvie:

I have read your letter this morning and find it acceptable. However, I think more attention should be focused on you volume sensitive lead number from USWEST. It is clear that an ISP would find NO need for a measured business service. This again shows the poor communication of USWEST and the centers that take these orders. Also, one small adjustment. We are very sure that 7 lines were down, but all 10 lines went out of service. You may wish to point out to Larry that we are building our case to submit to the P.U.C. also.

I would like to take this opportunity to apologize for the down time. Our records indicate that we placed the order in a timely manner and placed correctly to the appropriate center. I did respond to your escalation according to the standards that USWEST has asked us to submit. This was clearly a typing error by USWEST and I do not understand the delay in recovery of your service. As soon as I get another free hour I will pass my log entries on to you. Thank you for your continued patronage to Firstel. It is greatly appreciated.

> -----Original Message-----

> From: Marvie Tschetter [SMTP:marvie@basec.net]

> Sent: Tuesday, July 28, 1998 12:53 PM

> To: moonan@agcinc.net

> Subject: Revised US West Letter

>

> The attached letter was created in Word. I have edited it again.

> adding specific dollar figures. As I totalled these, I was totally
> amazed at what such an even could cost Basec Net. But these are real
> numbers! I don't know if US West will tell me to take a leap or not.
> If they do, I will certainly present this to the PUC asap.

>

> Let me know what you think.

>

> And thanks for all your help, again. << File: USWEST.doc >>

0150.44168

Jana:

First of all, I would like to apologize for my account being so far behind. I am attempting to get the account organized and address the overdue balance. I have several questions and issues re: my account that I would like to have you address. If you have any questions, please call me. Brad has spoken with me re: the large balance due, as he should. I would like to address these issues as quickly as possible.

Lead

- 7220

5. Beginning in July, there is a \$125.00 cellular monthly access charge. This is a new charge for cellular service on the bill. It appears the next month, as well. What is this for?
6. Beginning in August, some of the dial-up modem numbers appear on the detail sheet. One of the numbers is for one modem in Huron, the other numbers are for the modems in Redfield. Is there a reason for this?

1

- 0
1
5
0
.
4
4
.
1
6
9
7. On the September bill, there is a local service charge of \$6867.77. Can you explain where these figures are coming from?
 8. On the August bill, it details outbound services since April, May, and June. Can you explain why these are reappearing on this bill in August? *Local Toll*
 9. On 882.0238, why is the Federal Access Charge \$9.00 in August and \$3.50 in Sept? *Local*
 10. Since at least May, we have asked that 336.1253 be corrected. This should be Basec.Net market expansion number. It should be directed to 605.352.0005. It is not directed to this number and it continues to have outgoing calls on it from some business other than Basec.Net.
 11. Account 362.8877 was credited for services July 16 through August 14, one month. However, those services were disconnected April 22. Therefore, there should be credit for two additional months on the bill. *Local*
 12. We continue to receive bills for 362-9966. We have no record of this number. It does not belong to our modems, our expansion office, or any other related business.
 13. As you remember, in April and May, there were several problems with our service. I do not know if this was an issue with US West for FirsTel, but it was a definite problem. We logged several service calls to no avail. As a last resort, I called and specifically said I was not paying for service due, because I was not receiving any. I stopped payment on the check. Your records show you received payment on the June invoice. This payment was canceled. It reappears on the July statement. I do not intend to pay for those services, at this time. When the issues between Basec.Net, FirsTel, and US West are resolved, I may revisit this, but not at this time.
 14. We have discussed before that if there is a charge on the bill for installation, why are we receiving additional billings for installations?

I would appreciate a response back on these issues. I have included a small payment with this letter. I will continue to pay on this account, as issues are resolved.

Thank you.

Respectfully,
Marvie Tschetter
VP Operations

October 21, 1998

0150
•44
•170

RESPONSE TO REQUEST FOR PRODUCTION NO. 3

Order Summary:

PON: 6059966554CC	VER: ---	LSR NO: ---	SUP: ---
TOS: IAF	DDD: 07/16/98	DDDO: ---	DFDT: ---

Line Summary			
REF NO	TN	OTN	LNA
I	605 996-6554	---	---

Submit Order

LSA#
29680
42

~~996-6554~~
0579

SERIES COMPLETION -

MARVIE
352-0005

996-6554 - CRUC
(^{DEB912}303 28' 2492)

7-22-98

- CALLED TERRA/ SIMONS 12:50 VM
- CALLED KEN BELK - AND TO CALL DON
- 12:53 - CALLED JIM - LEFT MESSAGE
- 12:55 - CALLED CHRISTIAN BENDER/ LEFT VM MESSAGE
- 1:17 - CALLED MARY BAER LEFT VM MESSAGE.

1:35 - ~~CALL~~ ~~CALL~~ I SPoke w/mary AND SHE SMD SHE WILL CONTACT
DON & TERRA AND CALL ME BACK

20498337 PM

LSRC Summary for LSR_ID: 29680

***** ADMINISTRATIVE SECTION *****

CCNA PON----- VER LSR-NO CFLAG
 F01 6059966554CC N
 INIT----- CD/TSENT-----
 KELLY KUYPER 07/16/1998 10:23, MDT
 REP----- TEL-NO-----
 U S WEST Rep 888-796-9087
 IBT CN-TYP CHC FDT DDD-----
 C 07/16/1998
 BAN1 DSGCON LSP-DSGCON LSP-TELNO

1) 7/21/98 Pat in Denver
 got us to show in
 Phoenix

***** LINE INFORMATION SECTION *****

REF-NUM AN----- RNEX ECCKT TN
 0 6059966554
 MAIN CKR ISPID
 SDI CFA
 SEC-CFA TER

2) Pat in Denver - long - 10:23
 8:18 PM
 9:20 - 10:23 PM
 10:23 PM
 10:23 PM

***** ORDER SECTION FOR LINE REF NUM: 0 *****

ORDER-REF-NUM DO----- ORD----- LORD DTSC-ORD EBD-----
 1 07/17/1998 C21970516 07/17/1998

***** REMARKS SECTION *****

REMARKS
 LSR ISSUED 7-16 BY MDG ORD INCL 1 LINE BAN# 320 R07-7000-955 COMBINED 605 996-
 6554W/ 605 996-0579 C21970516 & DISC ORD# D21970544 (PON# 6059966554CC).

2) 7/21/98 Pat. someone will be out
 these today. ~~Pat in Denver~~
 8:00-9:54-12:11 = Pat in

- 1) Per Pat analog lines getting fast better
- 2) Per Sandy order never got completed call interconnect
 she will dig out 6554
- 3) Per Ron 2010 H2 will escalate + have it done today.
- 4) Per Pat 605-996-6554 completely disconnected. I called Ron + he
 is finding escalation dept. Shari is working on + will have
 it back on ASAP.

Revised 9-3-97. Use additional paper when necessary. Please note the number of pages used when >1.

0150.44.174

NEW CONNECT/ADD 60 B1M MEASURED BUSINESS LINES/TAG @ D-
MARC/PIC 0475 LPIC 0475/ALL LINES TO BE IN HUNT, PLEASE INFORM AMY
AT FIRSTEL WITH HUNT SEQUENCES/CALL AMY AT 605-332-3232 IF ANY
QUESTIONS/AJ

0150.44175

PON: N01055AJ	VER: ---	LSR NO: ---	SUP: ---
TOS: 1AM	DDD: 09/21/98	DDDO: ---	DFDT: ---

CONF:	0318KP4A01
ACC:	C:10:00A CONF:0318KP4A01

Line Summary			
REF NO	TN	OTN	LNA
1	605-996-7649	---	N

ALI	RTY
...	LML

[Submit Order](#)

Review CSR Response

AN: 605-996-7649 Cust Code: 341 Name: BASEC NET

Summary Billing Number:

Orig. Svc. Established:

Class Of Svc: B1M

Reseller ID: F01

Complete Customer Record displayed

Listing

LN BASEC:NET
LA 514 N MAIN ST, MITCHELL
SIC 54899

Billing

BN1 FIRSTEL
BAL 110 S PHILLIPS AV
FO SIOUX FALLS SD 57104
RSID F01
TAR ICL
CSG 037
TAX RF,RS,AF,AS

Service and Equipment

1 B1M
/TN 996-7649
/HTG A
/RSID F01
/MP 10-10-98
/PIC 0475
/PCA 80,09-21-98
/LPIC 5123
/EDT 80,08-20-1998

1 B1M
/TN 996-7847
/HTG A
/RSID F01
/MP 10-10-98
/PIC 0475
/PCA 80,09-21-98
/LPIC 5123
/EDT 80,08-20-1998

1 HTG
/TN 996-7649
/RSID F01
/MP 10-10-98

1 HTG
/TN 996-7847

1 AHS /RSID F01
/MP 10-10-98
/TN 996-7649
/RSID F01
1 AHS /TN 996-7847
/RSID F01
1 UXTEF /TN 996-7649
/RSID F01
1 UXTEF /TN 996-7847
/RSID F01
1 SIR /TN 996-7649
/RSID F01
/MP 10-10-98
1 SIR /TN 996-7847
/RSID F01
/MP 10-10-98

Order Confirmation

PON N01055AJ VER 2

DDD 19981028

ACT C - Change an Existing Account

SUP 1

LSR ID 86986

Firm Order request has been successfully submitted

Local Service Request

Administrative Section

CCNA	PON	VER	LSR NO	SC	PORTTYP	PG_OF
F01	N01055AJ	2		USWD		
D/T						
SENT	DDD	DDDO	APPTIME	DFDT	PROJECT	CHC REQTYP
199810261520	1998/10/28					EB
ACT SUP	EXP	AFO	RTR	CC	AENG	ALBR SCA
C	1 - Cancel		C - Confirmation			
AGAUTH	DATED	AUTHNM	ACTL	AI		
Y - Yes	1998/08/18	MARVIE				
APOT:	LST:	LSO	TOS SPEC:	IBT:	NC:	SECNCI:
			IAM			
RPON:		RORD				
LSP AUTH:	LSP AUTH DATE:	LSP AUTH NAME:	CIC			

CUST:

Bill Section

BI1: BAN1 BAPC: BI2: BAN2 ACNA: EBD:
605-R25-6000-104 25

BILLNM: SBILLNM: TE: EBP:
FIRSTEL, INC L

STREET: FLOOR: ROOM: CITY: STATE:
110 S. PHILLIPS AVE. 202 SIOUX FALLS SD

ZIP CODE: BILLCON: TEL NO: VTA:
57104

Contact Section

INIT: TEL NO: EMAIL:
AMY JOHNSON 605-332-3232- ajohnson@acginc.net

FAX NO: STREET:
605-332-0119 1505 E 10 ST

FLOOR: ROOM/MAIL STOP: CITY: STATE: ZIP CODE:
SIOUX FALLS SD 57103

IMPCON: TEL NO: PAGER:

ALT IMPCON: TEL NO: PAGER:

DSGCON: DRC: TEL NO: FAX NO:

EMAIL: STREET:

FLOOR: ROOM/MAIL STOP: CITY: STATE: ZIP CODE:

Remarks Section

REMARKS

CANCEL PON N01055AJ ORDER #'S C72322360,
C72322361, C72322363, C32480009/CUST NO LONGER
NEEDS LINES/AJ

End User Information

Administrative Section

PON	VER	DQTY	Pg	Of
N01055AJ	2	0		

Location and Access Section

Name: ANV
BASEC NET Y - Address not validated

Validated Addresses:

Clear out address fields

Street #:	Street # Suffix:	Street Name:
514		N MAIN ST
APT	Floor:	BLDG
		AHN:
		Route:
		Box:

City:	State:	Zip Code:	APTCON:
MITCHELL	SD	57301	
LCON:	TEL NO:	EUMI:	

ACC:

CPE MFR:

CPE MOD:

Inside Wire Section

IWO:

IWBAN:

IWCON:

TEL NO:

Bill Section

AN:

EAN:

FBI:

BILLNM:

605-996-7649-

SBILLNM:

Street #:

Street # Suffix:

Street Name:

FLOOR:

ROOM:

CITY:

STATE:

ZIP CODE:

BILLCON:

TEL NO:

SSN:

Disconnect Section

Remarks Section

REMARKS:

0150044.187

Amy Johnson

From: Interconnect@uswest.com
Sent: Tuesday, October 27, 1998 10:08 AM
Subject: LSRC Summary

LSRC Summary for LSR_ID: 86986

Administration Section

CCNA PON----- VER LSR-NO CFLAG
F01 N01055AJ 2 N

INIT----- CD/TSENT-----
AMY JOHNSON 10/27/1998 9:08_MST

IBT CN-TYP CHC DDD-----
C 10/28/1998

BAN1-----
605-R25-6000-104

Line Information Section

REF-NUM TN----- AN-----
0 605-996-7649 605-996-7649

SAN HID RNEX ECCKT
0

MATN CKR ISPID

SDI CFA

SEC-CFA TER

ORDER SECTION FOR LINE REF NUM: 0

ORDER-REF-NUM ORD----- DD----- APPT-TIME EBD-----
1 C99999999 10/28/1998 10/28/1998

REMARKS SECTION

REMARKS

lsr issued by kxc cancelled pon n01055aj (pon n01055aj 2)

10/29 Tasha

Review CSR Response

AN: 605-D52-0033 Cust Code: 268

Name : MITCHELL

ECCKT :

Summary Billing Number:

Orig. Svc. Established:

Class Of Svc: HETBN

Reseller ID: F01

Complete Customer Record displayed

Listing

ACN 1-MITCHELL ON LINE
ACA 1-514 N MAIN ST
ACTL 1-MTCHSDASHAA
SIC S4813

Billing

BN1 FIRSTEL
BA1 110 S PHILLIPS AV
PO SIOUX FALLS SD 57104
RSID F01
TAR ICL
CSG 037
TAX RF,RS,AF,AS

Service & Equipment

CKI A1
/CLF 101 TIEP MTCHSDASHAA MTCHSDOODC1
CKL 1-514 N MAIN ST,MITCHELL,SD
/LSO 605 996
/NC HCED
/NCI 04DU9.1SN
/TAR ICL
/SN MITCHELL ON LINE
1 D7Z
/NC HCED
/NCI 04DU9.1SN
/RRF (1)
/RSID F01
/NRT 1650.00
/SP 11-05-99
CKLT 2-MTCHSDOODC1
/LSO 605 996
/SN USWEST CO

0150.44.185

Response No. 4

7/10/98 3pm

- Contacted Sue and Shilo to inform them that we want our lines in Mitchell to hunt or roll from 996-6554 instead of being forwarded, and also 999-5963 to do the same to 996-2231. I was told we couldn't do it from 5963 and I then informed Marvie of the situation.

7/18/98 11:00am

- Will have Mitchell done today and will mail me phone #'s for Watertown and Rapid.

7/17-19/98

- Mitchell lines had been disconnected after I requested a check on the rollover because of busy signals in Mitchell. Had a long drawn out problem no one knew who could solve. Informed Marvie and she took the situation to a higher level.

7-22-58

- DEB SMD REMOVED 994-0579 CHANGED A DEAD LINE IN
194 6534

- 5:35 LEFT ON MSG 11/TERRY

10/1/58
2:15

Kerry - left message for me to call her back

8811440055

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED BY) TC 98-194
BASEC.NET, HURON, SOUTH DAKOTA, AGAINST)
U S WEST COMMUNICATIONS, INC. AND) CERTIFICATE OF SERVICE
FIRSTEL, INC.)

I, Robert C. Riter, Jr., certify that a true and correct copy of Firstel's Response to US West's Request for Production of Documents and Response to Subpoena Duces Tecum was mailed by first class mail to each of the following on the 29th day of January, 1999:

Karen Cremer
Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

Marvie Tschetter
Basec.Net
P. O. Box 214
Huron, SD 57350

Todd Lundy
US West Communications, Inc.
1801 California Street
Ste. 5100
Denver, CO 80202

Todd D. Epp
Attorney at Law
P. O. Box 1920
Sioux Falls, SD 57101-3020

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Attorney at Law
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Sioux Falls, SD 57117-5015


Robert C. Riter, Jr.

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
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Robert A. Hoffman
James B. Thompson
Lisa Marie Mann

Northwest Center, Suite 600
101 North Phillips Avenue
Sioux Falls, South Dakota 57104
P.O. Box 5015
Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424
Facsimile 605 334-0618

John C. Conard
John R. McDowell

J.W. Hoyer 1984-1993
John C. Murphy 1993-1995

February 16, 1999

Todd D. Epp VIA FACSIMILE - 332-4249
Lynn Jackson, Shultz & Lebrun
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Sioux Falls, SD 57104

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319 S. Coteau
P.O. Box 280
Pierre, SD 57501-0280

RECEIVED
FEB 16 1999
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

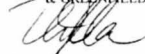
Re In the Matter of the Complaint Filed by Basec Net, Huron, South Dakota Against US WEST Communications, Inc. and FirsTel, Inc. Regarding Billing Issues (TC 98-194)

Dear Mr. Epp, Mr. Riter and Ms. Cremer

Enclosed please find a copy of U S WEST Communications, Inc.'s Interrogatories to Basec Net and Request for Production of Documents (First Set). This is intended as personal service upon you by facsimile and U S mail, respectively.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.



Thomas J. Welk

TJW:vjj
Enclosure
cc: Todd Lundy
Colleen Sebold

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED
FEB 18 1999
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND FIRSTEL,
INC. REGARDING BILLING ISSUES
(TC-98-194)

Civ No 98-194

U S WEST COMMUNICATIONS INC.'S
INTERROGATORIES TO BASEC.NET
AND REQUESTS FOR PRODUCTION OF
DOCUMENTS (FIRST SET)

TO BASEC.NET AND MARVIE TSCHETTER, VICE PRESIDENT OF OPERATIONS FOR
BASEC.NET AND ITS ATTORNEY, TODD EPP

U S WEST Communications, Inc. ("U S WEST"), pursuant to ARSD 20:10-01-22.01, SDCL
15-6-33 and 15-6-34, propounds the following written interrogatories and document requests to
Basec Net, for answer under oath within thirty (30) days of the service hereof. These interrogatories
and document requests shall be deemed continuing in nature, requiring Basec Net to supplement said
interrogatories or document requests when Basec Net or their attorney obtains information in addition
to or different from any information provided in the original answers to the interrogatories or
responses to the document requests.

You are reminded that your answers must include all information available not only to you,
but also available to your agents, attorneys, insurers, or others who have information available to you
upon your inquiry of them.

In these interrogatories and document requests to you, the following definitions and
instructions apply. Note that when documents are identified (as defined in Definition No. 3 below),
there is an automatic demand for production, made pursuant to SDCL 15-6-34 (with an option to you
to produce copies in lieu of the formal inspection).

DEFINITIONS AND INSTRUCTIONS

1 "You" or "your" shall refer to Basec Net and any of its agents, representatives, or employees

2 "Person" shall be deemed to mean the plural as well as the singular, any natural person, firm, association, partnership, corporation, or other form of legal entity or governmental body, and its agents, officers, directors, or employees, unless the context requires otherwise

3 "Document" shall mean the original and any copy of any written, typed, printed, recorded, or graphic matter of any kind, however produced or reproduced, including, but not limited to, letters or other correspondence, telegrams, memoranda, facsimiles, e-mail messages, reports, notes, summaries, tabulations, work papers, cost sheets, cancelled checks, financial reports and statements, bookkeeping and accounting records of all types, photographs, advertisements, tape recordings, micro film, and other data compilations including computer data

4 "Identify" means, with respect to a natural person, to set forth, on the first occasion that such person is identified, the following information, as far as known to you

- (a) Full name,
- (b) Job title and employer at the time of the events complained of in the complaint in this lawsuit,
- (c) Present or last known residence address and telephone number,
- (d) Present or last known job title and business address,
- (e) Present or last known employer, and
- (f) Employment history with you, if any, of such person

5 "Identify" means, with respect to any entity other than a natural person, to set forth the full name or title of the entity, and, on the first occasion as such entity is identified, to also state the

address and principal place of activity of such entity

6. "Date" means the exact day, month, and year, if ascertainable, if not, the closest approximation that can be made thereto

INTERROGATORIES

1. Identify the persons you intend to call in your case in chief at the hearing before the Public Utilities Commission of the State of South Dakota ("Commission")

2. Please identify each person you intend to call as an expert witness at the hearing of this matter, and for each such expert witness, please provide their name, present business address, telephone number, and area or field of expertise

3. As to each such expert witness, please state the following

- a. The full curriculum vitae of such person,
- b. Whether you have received or obtained written statements, reports, letters, memoranda or other writings from such persons and, if so, identify such writings and show the date thereto, or, in lieu of an answer to this subpart, please attach copies of said writings to your Answers to these Interrogatories,
- c. The substance of the facts to which each such proposed expert witness is expected to testify, and the substance of the opinions to which he or she is expected to testify, and a summary of the grounds for each such opinion, provided that this subpart need not be answered if such facts, opinions and grounds are fairly and fully covered by submission of copies of writings or statements referred to in any attached documents.

4. State the amount of damages you will contend at the hearing should be awarded by the Commission arising from your complaint in this matter.

5. Describe how you computed the amount you allege in the Answer to Interrogatory 4.

6. State the number of Basec Net customers that discontinued their service with Basec Net as a result of the matters you complain of to the Commission

7. Identify the Basec Net customers that comprise the number listed in Answer to Interrogatory No. 6

8 State whether Basec Net has filed or will have filed an income tax return for 1998 prior to the hearing in this matter

9 If a federal income tax return has not been filed, or will not be filed by the hearing in this matter, state the estimate of the income and expenses and taxable income for the business operations of Basec Net for the year 1998

REQUESTS FOR PRODUCTION OF DOCUMENTS

1 Produce copies or identify documents you have already produced of all exhibits you intend to offer during your case in chief at the hearing before the Commission

2 Produce all documents you contend support the computation of the damages you are seeking in this matter from the Commission

3 Produce all financial statements (profit and loss, income statements, statements of operations (however designated) and balance statements) and any comparative statements showing the results of the financial operations of Basec Net for the years 1997, 1998, and 1999 year to date

4 Produce all applicable South Dakota sales tax returns and federal income tax returns of Basec Net for the years 1997, 1998 and 1999 year to date

5 Produce all financial statements (as defined in Production Request No. 3) and all South Dakota sales tax returns or federal income tax returns of Mitchell On Line you ever received

6 Produce documents reflecting the names, addresses and telephone numbers of Basec Net's customers from May 1, 1998 to the present, along with the start date for each customer

7 Produce documents reflecting the names, addresses and telephone numbers of all customers that Basec Net lost from May 1, 1998 to the present, along with the date each customer was lost

8 Produce all documents upon which Basec Net relies to quantify the customers lost to Basec Net as a result of U S WEST's conduct

Dated this 16th day of February, 1999



Thomas J. Welk
Jeffrey C. Clapper
BOYCE, MURPHY, MCDOWELL & GREENFIELD
P O Box 5015
Sioux Falls, SD 57117-5015
Telephone (605) 336-2424

Attorneys for U S WEST Communications, Inc

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

FEB 18 1999

SOUTH DAKOTA PUBLIC
UTILITY COMMISSION

IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC. REGARDING BILLING
ISSUES

TC-98-194

CERTIFICATE OF SERVICE

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, L.L.P., and on the 16th day of February, 1999, true and correct copies of U S WEST Communications, Inc.'s Interrogatories to Basec Net and Request for Production of Documents (First Set) were served by personal service via facsimile at approximately 3:30 p.m. on the following:

Todd D. Epp 332-4249
Lynn Jackson, Shultz & Lebrun
U S Bank Building
141 N. Main Avenue
Sioux Falls, SD 57104

And by U S mail, postage prepaid to the following addresses:

Robert C. Riter, Jr.
Riter, Mayer, Hofer, Wattier & Brown
319 S. Coteau
P.O. Box 280
Pierre, SD 57501-0280

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



Thomas J. Welk

TC98-194

LAW OFFICES
RITER, MAYER, HOFER, WATTIER & BROWN, LLP
 Professional & Executive Building
 319 South Coteau Street
 P. O. Box 280
 Pierre, South Dakota 57501-0280

R. C. RITER (1912-1994)
 E. D. MAYER
 ROBERT D. HOFER
 ROBERT C. RITER, JR.
 JERRY L. WATTIER
 JOHN L. BROWN

TELEPHONE
 605-224-5825
 TELECOPIER
 605-224-7102

TRAVIS B. JONES, ASSOCIATE

February 22, 1999

Mr. Todd D. Epp
 Attorney at Law
 P. O. Box 1920
 Sioux Falls, SD 57101-3020

Ms. Karen Cremer
 SD Public Utilities Commission
 500 E. Capitol
 Pierre, SD 57501

Mr. Thomas J. Welk
 Attorney at Law
 P. O. Box 5015
 Sioux Falls, SD 57117-5015

Re: Basec.Net

Dear Folks:

I received Tom Welk's Interrogatories to Basec.Net and Request for Production of Documents. By this letter and notification to Todd, I would join in those Requests for Production and ask that we be provided copies of the same documents as well as the Answers to Interrogatories. I trust this request is sufficient, however, if something more formal is desired by Todd, I would ask that he please advise me so I can comply.

Thank you.

Very truly yours,

RITER, MAYER, HOFER, WATTIER
 & BROWN, LLP

By: *[Signature]*
 Robert C. Riter, Jr.

RCR Jr-wb

RECEIVED
 FEB 24 1999
 SOUTH DAKOTA PUBLIC
 DEFENDITION

0155844

FAX Received FEB 24 1999
LAW OFFICES

RECEIVED

FEB 24 1999

Lynn, Jackson, Shultz & Lebrun, P.C.
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Sioux Falls Office
William E. Dow, Jr.
Lar A. Magnuson
Jon C. Sogn
R. Alan Peterson
David L. Nadeau
Steven J. Morgans
Daniel R. Fritz*
Amy Hearnick-Arnold
Todd D. Epp**

US Bank Building
141 N. Main Avenue
P.O. Box 1920 • Sioux Falls, SD 57101-3020
605-332-5999
Fax 605-332-4249
E-Mail: ljlaw@lynnjackson.com

First National Bank Building
8th Floor • 909 St. Joseph
P.O. Box 8250 • Rapid City, SD 57709-8250
605-342-2592
Fax 605-342-5185
E-Mail: jlawrc@lynnjackson.com

Rapid City Office
Donald R. Shultz
Gene N. Lebrun
Thomas G. Fritz
Haven L. Struck
Jon C. Shultz
Jane Wigd Piefle
Kurt E. Solay
Leah Jeffries
Craig A. Piefle
Steven J. Oberg
Robert Gutzki
Molly E. Slaughter

Member of Law Manda
A Global Association of 125 Independent Law Firms

REPLY TO: Sioux Falls 605-332-5999

February 22, 1999

*Also Admitted in Minnesota
**Also Admitted in Kansas

Keiton S. Lynn
(1946-1974)
Horace R. Jackson
(1961-1987)

Via Fax and US Mail

Attorneys for US West

Thomas J. Welk, Esq.
Boyce, Murphy, McDowell & Greenfield
PO Box 5015
Sioux Falls, SD 57117-5015

Todd L. Lundy, Esq.
U.S. West, Inc.
1801 California Street, Suite 5100
Denver, CO 80202

RE: Basec.Net v. US West and FirsTel
Our File # 98-2150-1

Dear Tom, Todd, Bob, and PUC:

Enclosed please find a copy of BASEC.NET's Interrogatories (First Set) to US West and FirsTel.
This is intended as personal service upon you by fax and US Mail.

Best regards,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.


Todd D. Epp

Enclosure

cc: Marvie Tschetter (w/ encl.)

Attorneys for FirsTel

Robert C. Riter, Jr., Esq.
Riter, May, Hofer, Wattier & Brown
PO Box 280
Pierre, SD 57501-0280

Public Utilities Commission

Executive Director
SD Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

FAX Received FEB 24 1999

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

FEB 24 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT *
FILED BY BASEC.NET, HURON, SOUTH *
DAKOTA AGAINST US WEST *
COMMUNICATIONS, INC. AND FIRSHEL, *
INC., REGARDING BILLING ISSUES *

TC 98-194
BASEC.NET'S FIRST SET OF
INTERROGATORIES TO US
WEST COMMUNICATIONS, INC.
AND FIRSHEL, INC.

To US West Communications, Inc. and FirsTel, Inc., above named and their attorneys of record:

You and each of you will please take notice and be advised:

That Basec Net above-named, by and through the undersigned attorney, Todd D. Epp, pursuant to S.D.C.L. § 15-6-33 and § 15-6-34 of the South Dakota Rules of Civil Procedure, and any acts amendatory thereof, demands answers, under oath, to the following written interrogatories within thirty (30) days of the service upon you of said interrogatories.

These Interrogatories shall be deemed to be continuing, and if information is discovered by or becomes known to you or your attorney or to anyone acting on your behalf, after answering the same and before trial, which would change or add to the answers given, and such additional or supplemental information is not timely furnished to the undersigned, then, and in that event, at the trial or during the course thereof, the undersigned will move the court for an order suppressing the testimony of undisclosed witnesses and the use of undisclosed evidence should you, or any of you, attempt to use the same.

INTERROGATORIES

1. State the names, address, telephone numbers, occupations, and places of employment of any person known to you or your attorney who has any knowledge of any fact or issue in controversy in this matter. Identify each of the persons listed in your response to this Interrogatory who will be called as a witness on your behalf.

2. Please state the name, address, employer, and occupation of each person whom you expect to call as an expert witness at the hearing on this matter, and, as to each such person, please state:

a. The subject matter on which the expert is expected to testify;


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b. The substance of the facts and opinions to which the expert is expected to testify;

c. A summary of the grounds for each opinion.

Dated this 22^d day of February, 1999.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.


Todd D. Epp
Attorneys for Basec.Net
141 North Main Avenue - 8th Floor
P.O. Box 1920
Sioux Falls SD 57101-3020
(605) 332-5999

CERTIFICATE OF SERVICE

Todd D. Epp, the undersigned attorney for Basec.Net, certifies that a true and correct copy of the foregoing BASEC.NET'S FIRST SET OF INTERROGATORIES TO US WEST COMMUNICATIONS, INC. in the above-referenced matter was sent by fax and first class United States mail, postage prepaid, upon:

Thomas J. Welk
Attorneys for US West, Inc.
Boyce Murphy McDowell & Greenfield, L.L.P.
Norwest Center, Suite 600
101 North Phillips Avenue
P.O. Box 5015
Sioux Falls SD 57117-5015
(fax) 605-334-0618

Todd L. Lundy, Esq.
U.S. West, Inc.
1801 California Street
Suite 5100
Denver, CO 80202
(fax) 303-298-8197

0150
•44
•200

Todd D. Epp

Todd D. Epp

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LAW OFFICES
RITER, MAYER, HOFER, WATTIER & BROWN, LLP
Professional & Executive Building
319 South Coteau Street
P. O. Box 280
Pierre, South Dakota 57501-0280

R. C. RITER (1912-1994)
E. D. MAYER
ROBERT D. HOFER
ROBERT C. RITER, JR.
JERRY L. WATTIER
JOHN L. BROWN

TELEPHONE
605-224-5825
TELECOPIER
605-224-7102

TRAVIS B. JONES, ASSOCIATE

February 24, 1999

RECEIVED

FEB 24 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

Re: In the Matter of the Complaint Filed
by Basec.Net, Huron, South Dakota
Against U.S. West Communications, Inc.
and Firstel, Inc.
TC 98-194

Dear Mr. Bullard:

Enclosed herewith please find original and ten copies of
Firstel's First Set of Interrogatories to US West Communications,
Inc. and FirstTel's First Set of Interrogatories to Basec.Net, as
well as original Certificate of Service for filing in your
office.

I also enclose copy of first page of both sets of
Interrogatories and would ask that you file stamp the same.

Thank you.

Very truly yours,

RITER, MAYER, HOFER, WATTIER &
BROWN, LLP

By: 

RCR Jr-wb

Enclosures

cc: Neil Schmid w/encl.

RECEIVED

FEB 7 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED BY) TC 98-194
BASEC.NET, HURON, SOUTH DAKOTA, AGAINST)FIRSTEL'S FIRST
U S WEST COMMUNICATIONS, INC. AND)SET OF INTERROGATORIES
FIRSTEL, INC.)TO US WEST COMMUNI-
CATIONS, INC.

TO: US West Communications, Inc. and its attorney of record:

You and each of you will please take notice and be
advised:

FirstTel, Inc., by and through its attorney, Robert C.
Riter, Jr. of Pierre, South Dakota, pursuant to SDCL §15-6-33 and
§15-6-34 of the South Dakota Rules of Civil Procedure, and any
acts amendatory thereof, demands answers, under oath, to the
following written Interrogatories within thirty (30) days of the
service upon you of said Interrogatories.

These Interrogatories shall be deemed to be continuing,
and if information is discovered by or becomes known to you or
your attorney or to anyone acting on your behalf, after answering
the same and before trial, which would change or add to the
answers given, and such additional or supplemental information is
not timely furnished to the undersigned, then, and in that event,
at the trial or during the course thereof, the undersigned will
move the court for an order suppressing the testimony of
undisclosed witnesses and the use of undisclosed evidence should
you, or any of you, attempt to use them.

INTERROGATORIES

INTERROGATORY NO. 1: State the name, present age,
address and occupation of the persons furnishing information or
assisting in answering these Interrogatories.

INTERROGATORY NO. 2: Identify each and every person
who provided information or otherwise consulted with you or
assisted you in providing answers to these interrogatories,
including an identification of the specific interrogatories and
subparts thereof for which each such person supplied information,
consultation, or assistance, the nature of the information,
consultation, or assistance and whether the information supplied
is based on the personal knowledge of each person, and if not,
the source of the information supplied.

INTERROGATORY NO. 3: State the name, personal address
and occupation of all persons known to you to have personal
knowledge of any facts relevant to the subject matter of this
action.

INTERROGATORY NO. 4: Do you intend to call any witnesses at the trial in this matter? If yes, please answer the following questions:

- a. Please give the names and addresses of all the witnesses you intend upon calling; and
- b. Give the nature of the testimony that each and every witness will provide at such trial, including all pertinent dates and places.

INTERROGATORY NO. 5: Please state the name, address and present occupation of each person with whom you have consulted as an expert, and whether you have received a written report from any such expert.

INTERROGATORY NO. 6: Do you expect to call an expert witness to testify on your behalf at the trial herein? If the answer is in the affirmative, please state:

- a. The individual whom you will call as an expert witness at trial;
- b. The subject matter on which the expert is expected to testify;
- c. The substance of facts and opinions and a summary of grounds for each opinion, to which the expert is expected to testify;
- d. A summary of his or her qualifications within the field in which he or she is expected to testify;
- e. The dates of all reports rendered by such expert and for whom prepared and in whose custody the reports are at the present time;
- f. The substance of the opinions to which the expert is expected to testify and a summary of the grounds for each opinion; and
- g. By way of a request for production, please attach copies of the written reports to your Interrogatory answers.

INTERROGATORY NO. 7: Please state the full professional curriculum vitae for any expert mentioned in your answers to these Interrogatories.

DATED this 24th day of February, 1999.

RITER, MAYER, HOFER, WATTIER
& BROWN, LLP

By: 

Robert C. Riter, Jr.
A member of said firm
319 S. Coteau - P. O. Box 280
Pierre, SD 57501-0280
Attorneys for FirstTel, Inc.

RECEIVED
FEB 24 1999
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED BY) TC 98-194
BASEC.NET, HURON, SOUTH DAKOTA, AGAINST) FIRSTEL'S FIRST
U S WEST COMMUNICATIONS, INC. AND) SET OF INTERROGATORIES
FIRSTEL, INC.) TO BASEC.NET

TO: Basec.Net and its attorney of record:

You and each of you will please take notice and be advised:

FirstTel, Inc., by and through its attorney, Robert C. Riter, Jr. of Pierre, South Dakota, pursuant to SDCL §15-6-33 and §15-6-34 of the South Dakota Rules of Civil Procedure, and any acts amendatory thereof, demands answers, under oath, to the following written interrogatories within thirty (30) days of the service upon you of said Interrogatories.

These Interrogatories shall be deemed to be continuing, and if information is discovered by or becomes known to you or your attorney or to anyone acting on your behalf, after answering the same and before trial, which would change or add to the answers given, and such additional or supplemental information is not timely furnished to the undersigned, then, and in that event, at the trial or during the course thereof, the undersigned will move the court for an order suppressing the testimony of undisclosed witnesses and the use of undisclosed evidence should you, or any of you, attempt to use them.

INTERROGATORIES

INTERROGATORY NO. 1: State the name, present age, address and occupation of the persons furnishing information or assisting in answering these Interrogatories.

INTERROGATORY NO. 2: Identify each and every person who provided information or otherwise consulted with you or assisted you in providing answers to these interrogatories, including an identification of the specific interrogatories and subparts thereof for which each such person supplied information, consultation, or assistance, the nature of the information, consultation, or assistance and whether the information supplied is based on the personal knowledge of each person, and if not, the source of the information supplied.

INTERROGATORY NO. 3: State the name, personal address and occupation of all persons known to you to have personal knowledge of any facts relevant to the subject matter of this action.

INTERROGATORY NO. 4: Do you intend to call any witnesses at the trial in this matter? If yes, please answer the following questions:

- a. Please give the names and addresses of all the witnesses you intend upon calling; and
- b. Give the nature of the testimony that each and every witness will provide at such trial, including all pertinent dates and places.

INTERROGATORY NO. 5: Please state the name, address and present occupation of each person with whom you have consulted as an expert, and whether you have received a written report from any such expert.

INTERROGATORY NO. 6: Do you expect to call an expert witness to testify on your behalf at the trial herein? If the answer is in the affirmative, please state:

- a. The individual whom you will call as an expert witness at trial;
- b. The subject matter on which the expert is expected to testify;
- c. The substance of facts and opinions and a summary of grounds for each opinion, to which the expert is expected to testify;
- d. A summary of his or her qualifications within the field in which he or she is expected to testify;
- e. The dates of all reports rendered by such expert and for whom prepared and in whose custody the reports are at the present time;
- f. The substance of the opinions to which the expert is expected to testify and a summary of the grounds for each opinion; and
- g. By way of a request for production, please attach copies of the written reports to your Interrogatory answers.

INTERROGATORY NO. 7: Please state the full professional curriculum vitae for any expert mentioned in your answers to these Interrogatories.

DATED this 24th day of February, 1999.

RITER, MAYER, HOFER, WATTIER
& BROWN, LLP

By: 

Robert C. Riter, Jr.
A member of said firm
319 S. Coteau - P. O. Box 280
Pierre, SD 57501-0280
Attorneys for FirstTel, Inc.

RECEIVED

FEB 26 1999

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

IN THE MATTER OF THE COMPLAINT FILED BY)	TC 98-194
BASEC.NET, HURON, SOUTH DAKOTA, AGAINST)	
U S WEST COMMUNICATIONS, INC. AND)	CERTIFICATE OF SERVICE
FIRSTEL, INC.)	

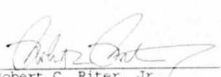
I, Robert C. Riter, Jr., certify that true and correct copies of FirstTel's First Set of Interrogatories to Basec.Net and FirstTel's First Set of Interrogatories to US West Communications, Inc. were mailed by first class mail to each of the following on the 24th day of February, 1999, and faxed to each of the following on the 24th day of February, 1999:

Karen Cremer
Public Utilities Commission
500 E. Capitol
Pierre, SD 57501
Fax: 605-773-3809

Todd D. Epp
Attorney at Law
P. O. Box 1920
Sioux Falls, SD 57101-3020
Fax: 605-332-4249

Todd Lundy
US West Communications, Inc.
1801 California Street
Ste. 5100
Denver, CO 80202
Fax: 303-298-8197

Thomas J. Welk
Attorney at Law
P. O. Box 5015
Sioux Falls, SD 57117-5015
Fax: 605-334-0618


Robert C. Riter, Jr.

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
ATTORNEYS AT LAW

Jonathan D. Murphy
Russell R. Greenfield
David J. Vinken
Lynn J. Pashley
Victor A.C. Grifflammer
Thomas J. Bink
Terry W. Remington
James E. McMahon
Michael J. McLaughlin
Gregg J. Greenfield
Roger A. Sudbeck

101 North Phillips Avenue, Suite 600
Sioux Falls, South Dakota 57104
P.O. Box 5015
Sioux Falls, South Dakota 57117-5015

Telephone: 605 336-2424
Facsimile: 605 334-0618

Tamara A. Wilka
Caroline A. Thompson
Lisa Hansen-Marx
Jeffrey C. Clapper

Of Counsel:
John R. McDowell

100 Boyce 1984-1993
John F. Murphy 1924-1996

February 26, 1999

Todd D. Epp
Lynn, Jackson, Shultz & Lebrun
U S Bank Building
141 N. Main Avenue
Sioux Falls, SD 57104

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

RECEIVED

MAR 01 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Robert C. Riter, Jr.
Riter, Mayer, Hofer, Wattier & Brown
319 S. Coteau
P.O. Box 280
Pierre, SD 57501-0280

Re In the Matter of the Complaint Filed by Basec Net, Huron, South Dakota Against US WEST Communications, Inc. and FirsTel, Inc. Regarding Billing Issues (TC 98-194)

Dear Mr. Epp, Mr. Riter and Ms. Cremer:

Enclosed please find a copy of U S WEST Communications, Inc.'s Interrogatories to FirsTel, Inc. (First Set). This is intended as service upon you by mail.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.



Jeffrey C. Clapper

JCC:vjj
Enclosure

cc: Todd Lundy
Colleen Sevold

015044
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RECEIVED

MAR 01 1999

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC. REGARDING BILLING
ISSUES

TC- 98-194

U S WEST COMMUNICATIONS, INC.'S
INTERROGATORIES TO FIRSTEL, INC.
(FIRST SET)

TO FIRSTEL, INC. AND ROBERT C. RITER, JR., ITS ATTORNEY

U S WEST Communications, Inc. ("U S WEST"), pursuant to ARSD 20.10.01.22.01, SDCL 15-6-33 and 15-6-34, propounds the following written interrogatories and document requests to Firstel, for answer under oath within thirty (30) days of the service hereof. These interrogatories and document requests shall be deemed continuing in nature, requiring Firstel to supplement said interrogatories or document requests when Firstel or their attorney obtains information in addition to or different from any information provided in the original answers to the interrogatories or responses to the document requests.

You are reminded that your answers must include all information available not only to you, but also available to your agents, attorneys, insurers, or others who have information available to you upon your inquiry of them.

In these interrogatories and document requests to you, the following definitions and instructions apply. Note that when documents are identified (as defined in Definition No. 3 below), there is an automatic demand for production, made pursuant to SDCL 15-6-34 (with an option to you to produce copies in lieu of the formal inspection).

DEFINITIONS AND INSTRUCTIONS

1. "You" or "your" shall refer to Firstel and any of its agents, representatives, or

employees

2. "Person" shall be deemed to mean the plural as well as the singular, any natural person, firm, association, partnership, corporation, or other form of legal entity or governmental body, and its agents, officers, directors, or employees, unless the context requires otherwise.

3. "Document" shall mean the original and any copy of any written, typed, printed, recorded, or graphic matter of any kind, however produced or reproduced, including, but not limited to, letters or other correspondence, telegrams, memoranda, facsimiles, e-mail messages, reports, notes, summaries, tabulations, work papers, cost sheets, cancelled checks, financial reports and statements, bookkeeping and accounting records of all types, photographs, advertisements, tape recordings, micro film, and other data compilations including computer data.

4. "Identify" means, with respect to a natural person, to set forth, on the first occasion that such person is identified, the following information, as far as known to you:

- (a) Full name;
- (b) Job title and employer at the time of the events complained of in the complaint in this lawsuit;
- (c) Present or last known residence address and telephone number;
- (d) Present or last known job title and business address;
- (e) Present or last known employer; and
- (f) Employment history with you, if any, of such person.

5. "Identify," means, with respect to any entity other than a natural person, to set forth the full name or title of the entity, and, on the first occasion as such entity is identified, to also state the address and principal place or activity of such entity.

6. "Date" means the exact day, month, and year, if ascertainable, if not, the closest approximation that can be made thereto.

0150.44.212

INTERROGATORIES

INTERROGATORY NO. 1 - State the name, present age, address and occupation of the persons furnishing information or assisting in answering these Interrogatories

INTERROGATORY NO. 2 Identify each and every person who provided information or otherwise consulted with you or assisted you in providing answers to these interrogatories including an identification of the specific interrogatories and subparts thereof for which each such person supplied information, consultation, or assistance, the nature of the information, consultation, or assistance and whether the information supplied is based on the personal knowledge of each person, and if not, the source of the information supplied

INTERROGATORY NO. 3 State the name, personal address and occupation of all persons known to you to have personal knowledge of any facts relevant to the subject matter of this action

INTERROGATORY NO. 4 Do you intend to call any witnesses at the trial in this matter? If yes, please answer the questions

- a. Please give the names and addresses of all the witnesses you intend upon calling, and
- b. Give the nature of the testimony that each and every witness will provide at such trial, including all pertinent dates and places

INTERROGATORY NO. 5 Please state the name, address and present occupation of each person with whom you have consulted as an expert, and whether you have received a written report from any such expert.


INTERROGATORY NO. 6 Do you expect to call an expert witness to testify on your behalf at the trial herein? If the answer is in the affirmative, please state

- a. The individual whom you will call as an expert witness at trial,

- b. The subject matter on which the expert is expected to testify.
- c. The substance of facts and opinions and a summary of grounds for each opinion, to which the expert is expected to testify.
- d. A summary of his or her qualifications within the field in which he or she is expected to testify.
- e. The dates of all reports rendered by such expert and for whom prepared and in whose custody the reports are at the present time.
- f. The substance of the opinions to which the expert is expected to testify and a summary of the grounds for seen opinion, and
- g. By way of a request for production, please attach copies of the written reports to your Interrogatory answers

INTERROGATORY NO 7 Please state the full professional curriculum vitae for any expert mentioned in your answers to these Interrogatories

Dated this 26th day of February, 1999.


Thomas J. Weik
Jeffrey C. Clapper
BOYCE, MURPHY, MCDOWELL & GREENFIELD
P.O. Box 5015
Sioux Falls, SD 57117-5015
Telephone (605) 336-2424

Attorneys for U S WEST Communications, Inc

0150.44.214

RECEIVED

MAR 01 1999

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC. REGARDING BILLING
ISSUES

TC-98-194

CERTIFICATE OF SERVICE

I, Jeffrey C. Clapper, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, L.L.P., and on the 26th day of February, 1999, true and correct copies of U S WEST Communications, Inc.'s Interrogatories to Firstel, Inc. (First Set) were served by U S mail, postage prepaid on the following:

Todd D. Epp
Lynn, Jackson, Shultz & Lebrun
U S Bank Building
141 N. Main Avenue
Sioux Falls, SD 57104

Robert C. Riter, Jr.
Riter, Mayer, Hofer, Wattier & Brown
319 S. Coteau
P O. Box 280
Pierre, SD 57501-0280

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


Jeffrey C. Clapper

015044215

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James E. McMahon
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Tamara A. Wilke
Candice A. Thompson
Lisa Hansen Maras
Jeffrey C. Clapper

Of Counsel
John B. McDowell

J.W. Boyce (1884-1915)
John S. Murphy (1924-1966)

February 25, 1999

RECEIVED

MAR 01 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

William Bullard, Executive Director
Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

Re In the Matter of the Complaint Filed by Basec Net, Huron, South Dakota Against U S WEST
Communications, Inc. and FirsTel, Inc. Regarding Billing Issues (TC 98-194)

Dear Mr. Bullard:

Please find enclosed the original and ten (10) copies of the Motion to Amend U S WEST
Communications, Inc.'s Answer to Cross Claim of FirsTel, Inc. with attached U S WEST's Amended
Answer to Cross Claim of FirsTel, Inc. and the Certificates of Service.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.



Jeffrey C. Clapper

JCC/vjj
Enclosure

cc: Todd D. Epp
Robert C. Riter, Jr.
Todd Lundy
Colleen Sevid

RECEIVED

MAR 11 1999

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION


IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND FIRSTEL,
INC. REGARDING BILLING ISSUES

TC- 98-194

MOTION TO AMEND U S WEST
COMMUNICATIONS INC.'s ANSWER
TO CROSS CLAIM OF FIRSTEL, INC.

Pursuant to ARSD 20.10.01-16, U S WEST Communications, Inc. ("U S WEST") through the undersigned attorneys, moves to amend U S WEST Communications, Inc.'s Answer to Cross Claim of FirTel, Inc. dated December 17, 1998 with the attached Amended Answer to Cross Claim of FirTel, Inc. U S WEST moves to add the affirmative defense of arbitration to its Answer to Cross Claim of FirTel, Inc.

Dated this 25th day of February, 1999.


Thomas J. Welk
Jeffrey C. Clapper
BOYCE, MURPHY, MCDOWELL & GREENFIELD
P O Box 5015
Sioux Falls, SD 57117-5015
Telephone (605) 336-2424

Attorneys for U S WEST Communications, Inc.


01500444
21117

CERTIFICATE OF SERVICE

I, Jeffrey C. Clapper, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, L.L.P., and on the 25th day of February, 1999, true and correct copies of Motion to Amend U S WEST Communications, Inc.'s Answer to Cross Claim of FirsTel, Inc. were served on the following by U S mail, postage prepaid, to the following addresses:

Todd D. Epp
Lynn, Jackson, Shultz & Lebrun
U S Bank Building
141 N. Main Avenue
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Attorney for Basec Net

Robert C. Riter, Jr.
Riter, Mayer, Hofer, Wattier & Brown
319 S. Coteau
P.O. Box 280
Pierre, SD 57501-0280
Attorney for FirsTel



Jeffrey C. Clapper

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

MAY 11 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND
FIRSTEL, INC. REGARDING BILLING
ISSUES

TC-98-194

U S WEST COMMUNICATIONS,
INC.'s AMENDED ANSWER
TO CROSS CLAIM OF
FIRSTEL, INC.

U S WEST Communications, Inc. ("U S WEST"), through the undersigned attorneys, for its amended answer to the cross-claim asserted by Firstel, states as follows:

1 Firstel's cross-claim as made against U S WEST fails to state a claim on which relief can be granted.

2 U S WEST denies that Firstel is entitled to receive any compensation based on its cross-claim for indemnity because Firstel was negligent and as such indemnity is unavailable. In regard to any claim for contribution, such claim has not been properly pled by Firstel.

AFFIRMATIVE DEFENSE

In the Agreement for Service Resale between Firstel, Inc. and U S WEST Communications, Inc. an arbitration provision is provided for in paragraph VII (Q) (Dispute Resolution) which states as follows:

"Except as provided by the Act, if any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents ("Dispute") cannot be settled through negotiation, it shall be resolved by arbitration conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association ("AAA"). The Federal Arbitration act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The laws of the state where the services


subject to this Agreement are provided shall govern the construction and interpretation of this Agreement."

Negotiations have occurred between U S WEST and FirstTel to resolve their differences.

Such negotiations have not resulted in an agreement. Thus, FirstTel's claims against U S WEST must be resolved by arbitration and not by the Commission.

WHEREFORE, U S WEST requests that FirstTel's cross claim be denied.

DATED this 25th day of February, 1999.


Thomas J. Welk
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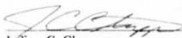
Todd Lundy
U S WEST Communications, Inc.
1801 California Street, Suite 5100
Denver, CO 80202
(303) 672-2783
Attorneys for U S WEST Communications, Inc.

CERTIFICATE OF SERVICE

I, Jeffrey C. Clapper, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, L.L.P., and on the 25th day of February, 1999, true and correct copies of U S WEST Communications, Inc.'s Amended Answer to Cross Claim of FirsTel, Inc were sent via US mail, postage prepaid, to the following addresses:

Todd D. Epp
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Attorney for Basec.Net

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Pierre, SD 57501-0280
Attorney for FirsTel


Jeffrey C. Clapper

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.

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Jeffrey C. Clapper

Of Counsel
John B. McDowell

J.W. Boyce (1884-1951)
John S. Murphy (1924-1966)

March 2, 1999

William Bullard, Executive Director
Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

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MAR 04 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: In the Matter of the Complaint Filed by Basec Net, Huron, South Dakota Against US
WEST Communications, Inc. and FirsTel, Inc. Regarding Billing Issues (TC 98-194)

Dear Mr. Bullard

Enclosed please find the original and ten (10) copies of the following:

1. Motion to Dismiss Cross-claim of FirsTel, Inc. Against U S WEST Communications, Inc.,
2. U S WEST Communications, Inc.'s Memorandum of Law in Support of Motion to
Dismiss Cross-claim of FirsTel, Inc. Against U S WEST Communications, Inc., and
3. Certificate of Service

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.



Thomas J. Welk

TJW/vij
Enclosure

cc: Todd D. Epp
Robert C. Riter, Jr.
Todd Lundy
Colleen Sevoid
Dennis DeLeon

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MAY 11 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

TC- 98-194

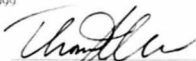
**IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND FIRSTEL,
INC. REGARDING BILLING ISSUES**

**MOTION TO DISMISS CROSS-CLAIM
OF FIRSTEL, INC. AGAINST U S WEST
COMMUNICATIONS, INC.**

U S WEST Communications, Inc. ("U S WEST") through the undersigned attorneys, moves to dismiss the cross-claim filed by FirTel, Inc. dated November 30, 1998 against U S WEST because the parties agreed that such claim should be determined by arbitration by a single arbitrator pursuant to the Dispute Resolution paragraph in the Agreement for Service Resale Between FirTel, Inc. and U S WEST ("Interconnection Agreement") if negotiations could not resolve their differences. U S WEST represents that negotiations have occurred between the parties to resolve FirTel's cross-claim but the parties have failed to reach an agreement.

Attached as Exhibit 1 is the Interconnection Agreement which provides, among other things, in paragraph VII (Q) that any claim between FirTel and U S WEST shall be resolved by arbitration conducted by a single arbitrator engaged in the practice of law under the then current rules of the American Arbitration Association. In addition, attached is Exhibit 2 which is the Demand for Arbitration dated March 1, 1999 filed by U S WEST with the American Arbitration Association which commences arbitration proceedings. Because the parties have agreed to arbitration pursuant to the Interconnection Agreement, the Commission must dismiss FirTel's cross-claim and order the parties to proceed to arbitration in accordance with paragraph VII (Q) of the Interconnection Agreement. In support of this motion, U S WEST also files the attached Memorandum of Law.

Dated this 2nd day of March, 1999



Thomas J. Welk

Jeffrey C. Clapper

BOYCE, MURPHY, MCDOWELL & GREENFIELD

P.O. Box 5015

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Todd L. Lundy

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Denver, CO 80202

Attorneys for U S WEST Communications, Inc.

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

TC- 98-194

IN THE MATTER OF THE COMPLAINT FILED BY BASEC.NET, HURON, SOUTH DAKOTA AGAINST U S WEST COMMUNICATIONS, INC. AND FIRS TEL, INC. REGARDING BILLING ISSUES

U S WEST COMMUNICATIONS, INC.'s MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS CROSS-CLAIM OF FIRS TEL, INC. AGAINST U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST") submits this Memorandum of Law in Support of its Motion to Dismiss Cross-claim of FirsTel, Inc. Against U S WEST Communications, Inc.

I. Arbitration Is Required Pursuant To The Agreement For Service Resale Between FirsTel, Inc. And U S WEST Communications, Inc.

In the Agreement for Service Resale between FirsTel, Inc. and U S WEST Communications, Inc., which is attached as Exhibit 1, ("Interconnection Agreement") an arbitration provision is provided for in paragraph VII (Q) (Dispute Resolution) which states as follows:

"Except as provided by the Act, if any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents ("Dispute") cannot be settled through negotiation, it shall be resolved by arbitration conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The laws of the state where the services subject to this Agreement are provided shall govern the construction and interpretation of this Agreement." (Emphasis added) ("Arbitration Provision")

6158.44.225

a Arbitration Is Required By Federal Law

The Arbitration Provision states the Federal Arbitration Act governs arbitrability. Indeed, the Federal Arbitration Act preempts state law and governs all written contracts involving interstate commerce. Dakota Wesleyan University v. HPG International, Inc., 560 NW2d 921, 922 (SD 1997). The "first task for a court to compel arbitration is to determine whether the parties agreed to arbitrate that dispute." Gans v. Merrill Lynch, 814 F.2d 493, 494 (8th Cir. 1987). In deciding if the parties have agreed to arbitration, the Commission "must find that a valid agreement to arbitrate exists between the parties and, if so, that this dispute falls within the scope of the arbitration agreement." Keymer v. Management Recruiters Int'l, Inc., No. 98-1635, slip op. at 5 (8th Cir. Dec. 4, 1998). The United States Supreme Court has stated that "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983). The Eighth Circuit has also stated recently "[w]hen a contract is clear and unambiguous, we must give effect to the agreement's express terms and need not go beyond its plain language to determine the rights of the parties." Keymer v. Management Recruiters Int'l, Inc., No. 98-1635, slip op. at 5 (8th Cir. Dec. 4, 1998).

In this case, an agreement to arbitrate clearly exists in the language of paragraph VII (Q) of the Interconnection Agreement. The language of the Arbitration Provision of the Interconnection Agreement provides that "any claim, controversy or dispute between the Parties cannot be settled through negotiation, it shall be resolved by arbitration conducted by a single arbitrator engaged in the

practice of law." The only exception to this provision is the first clause of paragraph VII (Q) which states, "[e]xcept as provided by the Act." This phrase is clearly a reference to the Telecommunications Act of 1996 which provides for arbitration of issues falling within Section 252 of the Act. Specifically, Section 252 of the Act provides for negotiation and arbitration of terms, services, or network elements of interconnection. It is apparent that paragraph R¹ of the Interconnection Agreement anticipates the negotiation of Section 252 issues. Paragraphs Q and R must be read together to provide an harmonious interpretation of the contract. Unless language to a contract is ambiguous, language in a contract is given its plain and ordinary meaning. *American State Bank v. Adkins*, 458 NW2d 807, 809 (SD 1990). Moreover, "[a]n age-old precept of contract interpretation requires that agreements be interpreted as a whole to give meaning to all terms but when provisions conflict so that all cannot be given full weight, the more specific clauses are deemed to reflect the parties' intentions - a specific provision controls a general one." *State v. Greger*, 559 NW2d 854, 864 (SD 1997). It is apparent that, when read together, and applying the plain meaning of the paragraphs, no conflict of interpretation exists between paragraphs R and Q. Paragraph R requires arbitration before this Commission on Section 252 interconnection issues and paragraph Q addresses other claims and controversies. Otherwise, what would be the purpose of paragraph Q in the Interconnection Agreement?

In this case, the dispute raised in the cross-claim of FirsTel Inc. against U S WEST does not fall under Section 252 of the Act. Therefore, final and binding arbitration is required between FirsTel Inc. and U S West pursuant to the Arbitration Provision of the Interconnection Agreement. As a

¹ In the event Reseller and USWC are unable to agree on certain issues during negotiation, the Parties will identify such issues for arbitration before an appropriate state regulatory agency. Only those points identified by the Parties for arbitration will be submitted. All other terms on which the Parties reach agreement will be submitted for approval in their final form.

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result, the Dispute Resolution provision of the Interconnection Agreement requires the dispute between the parties to "be resolved by arbitration conducted by a single arbitrator engaged in the practice of law"

b Arbitration Is Required By State Law

The Arbitration Provision explicitly provides that the laws of South Dakota will apply to the "construction and interpretation" of the Interconnection Agreement. See Paragraph VII (S) (Governing Law). South Dakota, as most states, specifically has enacted the Uniform Arbitration Act. See SDCL Chapter 21-25A. SDCL 21-25A-1 provides:

A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives. (Emphasis added)

The Federal Arbitration Act and the Uniform Arbitration Act evidence a liberal policy favoring arbitration. Dakota Wesleyan University at 922, City of Hot Springs v. Gunderson's Inc., 322 NW2d 8, 10 (SD 1982). Arbitration is favored even when multiple suits arise from the same set of facts and circumstances. Id. at 11. Under the facts of this case, the Commission has no alternative but to dismiss the claim and allow arbitration to proceed. Indeed, if the Commission fails to enforce the arbitration proceeding the circuit court has jurisdiction to enforce arbitration. See SDCL 21-25A-4 et seq.

CONCLUSION

Based upon the Arbitration Provision, the Federal Arbitration Act and the Uniform Arbitration Act, this Commission must dismiss FirstTel's cross-claim and order U S WEST and FirstTel

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to resolve the cross-claim pursuant to arbitration as provided in Paragraph VII(Q) of the
Interconnection Agreement

Dated this 2nd day of March, 1999



Thomas J. Welk
Jeffrey C. Clapper
BOYCE, MURPHY, MCDOWELL & GREENFIELD
P.O. Box 5015
Sioux Falls, SD 57117-5015
Telephone: (605) 336-2424

Todd L. Lundy
U S WEST Communications, Inc.
1801 California Street, #5100
Denver, CO 80202

Attorneys for U S WEST Communications, Inc.

9222*44*001-0

AGREEMENT
FOR SERVICE RESALE
Between
FIRSTEL, Inc.
and
U S WEST COMMUNICATIONS, INC.

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AGREEMENT

FOR SERVICE RESALE

This is an Agreement for Service Resale ("Agreement"), between Firstel, Inc. ("Reseller"), a Certified Reseller and U S WEST Communications, Inc. ("USWC") (collectively, "the Parties") in which USWC will provide certain services to Reseller within the state of South Dakota. Where required, this Agreement or the portions of this Agreement relative to a particular state, will be submitted to the appropriate Public Utilities Commission ("Commission") and the Parties will specifically request that the Commission promptly approve this Agreement and refrain from taking any action to change, suspend or otherwise delay implementation of this Agreement. The Parties enter into this Agreement without prejudice to any positions they 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 types of arrangements prescribed by this Agreement.

The Parties agree and understand that USWC is proposing certain provisions in this contract based, in large part, on the FCC's First Report and Order, In the Matter of Implementing of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-38, rel. Aug. 8, 1996 ("FCC 1st Order") and the Second Report and Order and Memorandum Opinion 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 2d Order"). To the extent that certain of the rules contained in the FCC 1st Order and the FCC 2d Order are deemed by the courts to be not effective, this contract shall be modified to comport with the final court decisions and subsequent FCC or state Commission decisions or rules issued to comply with the courts' decisions.

I. RECITALS & PRINCIPLES

WHEREAS, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to, Telecommunications Carriers; and

WHEREAS, USWC is an Incumbent Local Exchange Carrier or has a majority ownership interest in local exchange companies which are Incumbent Local Exchange Carriers; and

WHEREAS, the Telecommunications Act of 1996 has specific requirements for service resale, commonly referred to as a part of the "checklist" and USWC desires that this Agreement meet those checklist requirements; and

WHEREAS, USWC, for itself and its Affiliates, is willing to sell services for resale, on the terms and subject to the conditions of this Agreement; and,

WHEREAS, Reseller is a Telecommunications Carrier and has requested that USWC negotiate an Agreement with Reseller for the provision of USWC services for resale pursuant to the Act and in conformance with USWC's duties under the Act; and

WHEREAS, the parties have arrived at this Agreement through voluntary negotiations undertaken pursuant to the Act,

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, Reseller and USWC hereby covenant and agree as follows:

II. SCOPE OF AGREEMENT

- A. This Agreement sets forth the terms, conditions and prices under which USWC agrees to provide services for resale. Unless otherwise provided in this Agreement, USWC will perform all of its obligations hereunder to the extent provided in the Appendices attached hereto. The Agreement includes all accompanying appendices.
- B. In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, the Act, FCC 1st and 2nd Orders, or a state Commission, (including, without limitation, the obligation of the parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.
- C. The Parties acknowledge that the terms and conditions herein represent a balancing of interests important to the parties, and for that reason will, unless otherwise agreed, implement this Agreement as an integrated package without alteration of any material term or condition, or the inclusion or deletion of terms and conditions that would serve to alter a material term or condition herein unless such term or condition is altered pursuant to Section IV, E. 1 herein or to comply with a court order or an FCC or state Commission order.

III. DEFINITIONS

- A. "Basic Exchange Telecommunications Service" means a service offered to end users which provides the end user with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such end user to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunication Services. As used solely in the context of this Agreement and unless otherwise agreed, Basic Exchange Telecommunication Services includes access to ancillary services such as 911, directory assistance and operator services.
- B. "Basic Exchange Switched features" are optional CLASS, Custom Calling, and AIN end user switched service features which include, but are not necessarily limited to: Automatic Call Back; Call Trace; Caller ID and Related Blocking Features; Distinctive Ringing/Call Waiting; Selective Call Forward; Selective Call Rejection. (See Bellcore documentation for definition.)

- C. "Commission" means the Public Utilities Commission(s) in the state of South Dakota.
- D. Directory Listings are any information: (1) identifying the listed names of subscribers of a telecommunications carrier and such subscribers' telephone numbers and addresses and (2) that the telecommunications carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.
- E. "Enhanced Services" means any service offered over common carrier transmission facilities that employ computer processing applications that act on format, content, code, protocol or similar aspects of the subscriber's transmitted information; that provide the subscriber with additional, different or restructured information; or involve customer interaction with stored information.
- F. "Pre-ordering and Ordering" includes the exchange of information between telecommunications carriers about current or proposed customer products and services.
- G. "Reseller" is a category of Local Exchange service providers that are certified to obtain dial tone and associated telecommunications services from another provider through the purchase of bundled finished services for resale to its end user customers.
- H. "Tariff Services" as used throughout this Agreement refers to USWC state tariffs, price lists, price schedules and catalogs.
- I. "Technically feasible". Branding of Operator Services and Directory Assistance shall be deemed technically feasible absent technical or operational concerns that prevent the fulfillment of a request by a telecommunications carrier for such branding. A determination of technical feasibility does not include consideration of economic, accounting, billing, space, or site concerns, except that space and site concerns may be considered in circumstances where there is no possibility of expanding the space available. The fact that an incumbent LEC must modify its facilities or equipment to respond to such request does not determine whether satisfying such request is technically feasible. An incumbent LEC that claims that it cannot satisfy such request because of adverse network reliability impacts must prove to the state Commission by clear and convincing evidence that such interconnection, access, or methods would result in specific and significant adverse network reliability impacts.
- J. "Telecommunications Service(s)" means the offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used. As used in this definition, "telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received.

IV. RESELLER SERVICES

A. Description.

1. USWC services (as defined in Section III.A. and B.) and intraLATA toll originating from USWC exchanges (hereinafter "intraLATA toll") will be available for resale by USWC pursuant to the Act and will reference terms and conditions (except prices) in USWC tariffs, where applicable. Appendix A lists services which are available for resale under this Agreement and the applicable discounts, and is attached and incorporated herein by this reference.
2. The Parties agree that, at this time, certain USWC services are not available for resale under this Agreement, including but not limited to promotions of more than 90 days duration and packages of services comprised of services available for resale separately, and certain other USWC services are available for resale but at no discount, as identified in Appendix A or in individual state tariffs. The availability of services and applicable discounts identified in Appendix A or in individual tariffs are subject to change pursuant to Section IV E.1.

B. Scope.

1. Basic Exchange Telecommunications Service, Basic Exchange Switched Features and IntraLATA toll may be resold only for their intended or disclosed use and only to the same class of customer to whom USWC sells such services; e.g., residence service may not be resold to business customers.
2. USWC shall provide to Reseller services for resale that are equal in quality, subject to the same conditions (including the conditions in USWC's effective tariffs), within the same provisioning time intervals that USWC provides these services to others, including end users, and in accordance with any applicable state Commission service quality standards, including standards a state Commission may impose pursuant to Section 252 (e)(3) of the Act.

C. Ordering and Maintenance.

1. Reseller or Reseller's agent shall act as the single point of contact for its end users' service needs, including without limitation, sales, service design, order taking, provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, billing, collection and inquiry. Reseller shall make it clear to its end users that they are customers of the Reseller for resold services. Reseller's end users contacting USWC will be instructed to contact the Reseller; however, nothing in this Agreement, except as provided in Section IV.C.7(e), shall be deemed to prohibit USWC from discussing its products and services with Reseller's customers who call USWC for any reason.

2. Reseller shall transmit to USWC all information necessary for the installation (billing, listing and other information), repair, maintenance and post-installation servicing according to USWC's standard procedures, as described in the USWC resale operations guide that will be provided to Reseller.

When USWC's end user or the end user's new service provider discontinues the end user's service in anticipation of moving to another service provider, USWC will render its closing bill to end user customer effective with the disconnection. If USWC is not the local service provider, USWC will issue a bill to Reseller for that portion of the service provided to the Reseller should Reseller's end user customer, a new service provider, or Reseller request service be discontinued to the end user. USWC will notify Reseller by FAX, OSS, or other processes when end user moves to another service provider. USWC will not provide Reseller with the name of the other reseller or service provider selected by the end user.

The Parties agree that they will not transfer their respective end user customers whose accounts are in arrears between each other. The Parties further agree that they work cooperatively together to develop the standards and processes applicable to the transfer of such accounts.

3. Reseller shall provide USWC and USWC shall provide Reseller with points of contact for order entry, problem resolution and repair of the resold services.
4. Prior to placing orders on behalf of the end user, Reseller shall be responsible for obtaining and have in its possession Proof of Authorization ("POA"). POA shall consist of documentation acceptable to USWC of the end user's selection of Reseller. Such selection may be obtained in the following ways:
 - a. The end user's written Letter of Authorization or LOA.
 - b. The end user's electronic authorization by use of an 800 number.
 - c. The end user's oral authorization verified by an independent third party (with third party verification as POA).
 - d. A prepaid returnable postcard supplied by Reseller which has been signed and returned by end user. Reseller will wait fourteen (14) days after mailing the postcard before placing an order to change.

Reseller shall make POAs available to USWC upon request. Prior to placing orders that will disconnect a line from another reseller's account the Reseller is responsible for obtaining all information needed to process the disconnect order and re-establish the service on behalf of the end user. If a Reseller is displaced by another reseller or service provider,

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the Reseller is responsible for coordination with the other reseller or service provider. Should an end user dispute or a discrepancy arise regarding the authority of Reseller to act on behalf of the end user, the Reseller is responsible for providing written evidence of its authority to USWC within three (3) business days. If there is a conflict between the end user designation and Reseller's written evidence of its authority, USWC shall honor the designation of the end user and change the end user back to the previous service provider. If the Reseller does not provide the POA within three (3) business days, or if the end user disputes the authority of the POA, then the Reseller must, by the end of the third business day:

- notify USWC to change the end user back to the previous reseller or service provider, and
- provide any end user information and billing records the Reseller has obtained relating to the end user to the previous reseller, and
- notify the end user and USWC that the change has been made,
- remit to USWC a charge of \$100.00 ("slamming charge") as compensation for the change back to the previous reseller or service provider.

If an end user customer is switched from Reseller back to USWC and there is a dispute or discrepancy with respect to such change in service provider, Reseller may request to see a copy of the POA which USWC has obtained from the end user to effectuate a return to USWC as the end user's service provider. If USWC is unable to produce a POA within three (3) business days, USWC shall change the end user back to Reseller (or other previous reseller) without imposition of any Customer Transfer Charge.

5. Reseller shall designate Primary Interexchange Carrier (PIC) assignments on behalf of its end-users for interLATA services and intraLATA services when intraLATA presubscription is implemented.
6. When end user customers switch from USWC to Reseller, or to Reseller from any other reseller, such customers shall be permitted to retain their current telephone numbers if they so desire and do not change their service address to an address served by a different central office. USWC shall take no action to prevent Reseller customers from retaining their current telephone numbers.
7. Reseller and USWC will employ the following procedures for handling misdirected repair calls:
 - a. Reseller and USWC will provide their respective customers with the correct telephone numbers to call for access to their respective repair bureaus.

- b. Customers of Reseller shall be instructed to report all cases of trouble to Reseller. Customers of USWC shall be instructed to report all cases of trouble to USWC.
- c. To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of Basic Exchange Telecommunications Service.
- d. Reseller and USWC will provide their respective repair contact numbers to one another on a reciprocal basis.
- e. Notwithstanding the provisions of Section IV. C. 1., USWC will not discuss its products and services with Reseller's customers during the course of repair calls or visits.

D. Reseller Responsibilities.

1. Reseller must send USWC complete and accurate end-user listing information for Directory Assistance, Directory, and 911 Emergency Services using USWC's resale order form and process. Reseller must provide to USWC accurate end-user information to ensure appropriate listings in any databases in which USWC is required to retain and/or maintain end-user information. USWC assumes no liability for the accuracy of information provided by Reseller.
2. Reseller may not reserve blocks of USWC telephone numbers, except as allowed by tariffs.
3. Reseller is liable for all fraud associated with Service to its end-users and accounts. USWC takes no responsibility, will not investigate, and will make no adjustments to Reseller's account in cases of fraud unless such fraud is the result of any intentional act or gross negligence of USWC. Notwithstanding the above, if USWC becomes aware of potential fraud with respect to Reseller's accounts, USWC will promptly inform Reseller and, at the direction of Reseller, take reasonable action to mitigate the fraud where such action is possible.
4. Reseller will indicate the date it will offer to residential and business subscribers telephone exchange services. The Reseller will provide a two year forecast within ninety (90) days of signing this Agreement. During the first year of the term of this Agreement, the forecast shall be updated and provided to USWC on a quarterly basis. Thereafter, during the term of this Agreement, Reseller will provide updated forecasts from time to time, as requested by USWC. The initial forecast will provide:
 - The date service will be offered (by city and/or state)
 - The type and quantity of service(s) which will be offered
 - Reseller's anticipated order volume
 - Reseller's key contact personnel

The information provided pursuant to this paragraph shall be considered Proprietary Information under Section VII, O. of this Agreement.

5. In the event USWC terminates the provisioning of any resold services to Reseller for any reason, Reseller shall be responsible for providing any and all necessary notice to its end users of the termination. In no case shall USWC be responsible for providing notice to Reseller's end user customers. USWC will provide notice to Reseller of its termination of a resold service on a timely basis consistent with Commission rules and notice requirements.

E. Rates and Charges

1. Resold services as listed in Appendix A are available for resale at the applicable discount percentage or rate per minute set forth in Appendix A or at the retail tariff rates for services available for resale but excluded from the wholesale pricing arrangement in this Agreement.

However, state Commissions may do any of the following (collectively referred to hereinafter as "Order") during the term of this Agreement:

- establish wholesale discount rates through decisions in arbitration, interconnection and/or resale cost proceedings;
- establish other recurring and nonrecurring rates related to resale, including but not limited to Customer Transfer Charges and Slamming Charges ("Other Resale Charges"); and
- order that certain services be made available for resale at specified wholesale discount rates.

If a state Commission orders services to be available for resale, the Parties agree that they will, on a state-by-state basis, revise Appendix A to incorporate the services determined by such Order into this Agreement, effective on the date ordered by a Commission. When a state Commission, through a decision in arbitration, identifies services that must be available for resale at wholesale discount rates, such decision shall be deemed to have defined in that such services are generally available to resellers in that state. If a state Commission establishes wholesale discount rates and Other Resale Charges to be made generally available to resellers or establishes a resale tariff, the Parties agree that they will, on a state-by-state basis, revise Appendix A to incorporate such wholesale discount rates and/or Other Resale Charges into this Agreement effective on the date ordered by a Commission; provided, however, that USWC shall have a reasonable time to implement system or other changes necessary to bill the Commission ordered rates or charges.

The rates for those resold services initially included in the wholesale pricing arrangement under this Agreement shall be subject to true-up to the wholesale discount rates established by a Commission Order making

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such rates generally available to resellers or established by a resale tariff, retroactively to the effective date of this Agreement. Any true-up shall be on a service-by-service basis if wholesale discount rates are established by a Commission on such a basis.

Services excluded from the wholesale pricing arrangement under this Agreement as identified in Appendix A, shall be made available on a going forward basis from the date a Commission Order that orders such services be made generally available to any reseller in the state where such a Commission Order is issued. Such services shall be available at the discount rate applicable to basic exchange business service identified in Section 2 of Appendix A; provided, however, that when a Commission order establishes wholesale discount rates for such services as generally available to resellers, Appendix A shall be revised to incorporate the wholesale discount rates generally available to resellers.

If a state Commission fails to issue such an Order or make effective such a tariff by the end of the first year this Agreement, either USWC or Reseller may elect to renegotiate this Section of the Agreement.

2. If the resold services are purchased pursuant to Tariffs and the Tariff rates change, charges billed to Reseller for such services will be based upon the new Tariff rates less the applicable wholesale discount as agreed to herein or established by resale Tariff. The new rate will be effective upon Tariff effective date.
3. A Customer Transfer Charge (CTC) as specified in Appendix A applies when transferring any existing account or lines to a Reseller. Tariffed non-recurring charges will apply to new installations.
4. A Subscriber Line Charge (SLC) will continue to be paid by the Reseller without discount to USWC for each local exchange line resold under this Agreement. All federal and state rules and regulations associated with SLC as found in the applicable tariffs also apply.
5. Reseller will pay to USWC the PIC change charge without discount associated with Reseller end user changes of inter-exchange or intraLATA carriers.
6. Reseller agrees to pay USWC when its end user activates any services or features that are billed on a per use or per activation basis subject to the applicable discount in Appendix A as such may be amended pursuant to Section IV.E.1 (e.g., continuous redial, last call return, call back calling, call trace, etc.).
7. Resold services are available only where facilities currently exist and are capable of providing such services without construction of additional facilities or enhancement of existing facilities. However, if Reseller requests that facilities be constructed or enhanced to provide resold

services, USWC will review such requests on a case-by-case basis and determine, in its sole discretion, if it is economically feasible for USWC to build or enhance facilities. If USWC decides to build or enhance the requested facilities, USWC will develop and provide to Reseller a price quote for the construction. If the quote is accepted, Reseller will be billed the quoted price and construction will commence after receipt of payment.

8. Nonrecurring charges will not be discounted and will be billed at the applicable Tariff rates.
9. As part of the resold line, USWC provides and Reseller accepts, at this time, operator services, directory assistance, and IntraLATA long distance with standard USWC branding. Reseller is not permitted to alter the branding of these services in any manner when the services are a part of the resold line without the prior written approval of USWC. However, at the request of Reseller and where technically feasible, USWC will rebrand operator services and directory assistance in the Reseller's name, provided the costs associated with such rebranding are paid by Reseller.

F. Collateral and Training.

The Parties will jointly develop procedures regarding Reseller's use of USWC's retail product training materials. Except for any rights granted by USWC to Reseller for the use or copying of product training material, product training provided under this Agreement shall be considered "Proprietary Information" as described in Section VII. O., and shall be subject to the terms and conditions specified therein.

G. Cooperation

The Parties agree that this Agreement involves the provision of USWC services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, provisioning and billing and in reasonably resolving issues which result from such implementation on a timely basis.

V. ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS)

- A. The Parties acknowledge that USWC is developing a proposal for access to its Operational Support Systems (OSS) to meet the requirements of the FCC's 1st and 2nd Orders and to provide Reseller and other telecommunications carriers with electronic interfaces for pre-ordering, ordering, repair and billing functions by January 1, 1997 for Plain Old Telephone services (POTS). Subsequent phases of the plan will incorporate the capabilities to support designed services for pre-ordering, ordering and repair, which are estimated to be available between the second and third quarters of 1997. Reseller understands that

USWC is proposing that these interfaces will have the necessary mediation to protect the integrity of the network and protect the privacy of customer information.

- B. The Parties further acknowledge that USWC is, or soon will be, presenting its OSS proposal to state Commissions for approval, including approval of fees or cost recovery methods that USWC may charge or use to charge Reseller in connection with the design, implementation and on-going maintenance and support of the OSS ("OSS fees"). The Parties further acknowledge that, because the OSS is still in the conceptual stage of development at the time of execution of this Agreement, USWC is unable to specify or estimate the amount of OSS fees to be charged Reseller at this time.
- C. The Parties agree that, at such time as the interfaces to USWC's OSS become operational and a state Commission approves USWC's OSS plan and establishes OSS fees or cost recovery methods, the Parties will amend this Agreement to incorporate terms and conditions regarding Reseller's access to USWC's OSS, including OSS fees, on a state-by-state basis. The Parties further agree that Reseller may terminate this Agreement if the amount of OSS fees turns out to be so excessive as to make the overall terms and conditions of this Agreement uneconomic for Reseller. In the event of such termination, Reseller shall give USWC (sixty) 60 days written notice.
- D. Prior to approval and deployment of USWC's OSS interfaces, USWC shall continue to provide all pre-ordering, ordering, repair and billing functions and services through manual procedures outlined in a separately provided Resale Resource Guide. Such manual procedures shall be available where USWC's OSS interfaces are unable to handle pre-ordering, ordering, repair and billing functions for the services available to Reseller under this Agreement.
- E. Reseller reserves the right to intervene and participate in any manner in any state Commission proceeding that addresses USWC's OSS interface proposal, including the establishment of OSS fees to the extent such participation is permitted by a Commission.

VI. DIRECTORY LISTING.

USWC will accept at no charge one primary listing for each main telephone number belonging to Reseller's end user customer based on end user information provided to USWC by Reseller. USWC will place Reseller's listings in USWC's directory listing database for directory assistance purposes and will make listings available to directory publishers and other third parties. Additional terms and conditions with respect to directory listings are described in Appendix B which by this reference is incorporated and made a part of this Agreement.

VII. GENERAL PROVISIONS

- A. Term.

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B. Billing.

1. USWC shall bill Reseller and Reseller is responsible for all applicable charges for the resold services as provided herein. The Reseller shall also be responsible for all tariffed charges and charges separately identified in this Agreement associated with services that the Reseller resells to an end user under this Agreement.
2. USWC shall provide Reseller, on a monthly basis, within 7-10 days of the last day of the most recent billing period, in an agreed upon standard electronic billing format, billing information including (1) a summary bill, and (2) individual end user customer sub-account information consistent with the samples provided to Reseller for Reseller to render end user customer bills indicating all recurring and nonrecurring charges associated with each individual customer's account for the most recent billing period.

C. Payment.

1. Amounts payable under this Agreement are due and payable within thirty (30) days after the bill date of USWC's invoice. During the initial three billing cycles of this Agreement, Reseller and USWC agree that undisputed amounts shall be paid as provided herein. Reseller and USWC further agree that, during said three billing cycle period, they will cooperate to resolve amounts in dispute or billing process issues in a timely manner but no later than sixty (60) days after the bill date of USWC's invoice or identification and notice of the billing process issue. Disputed amounts will be paid within thirty (30) days following resolution of the dispute.
2. After the three (3) month period outlined in Section C.1. above, the Reseller will pay the bill in full within 30 days after the bill date of the invoice. Billing disputes will be processed and jointly resolved. Any disputed amounts that USWC remits to the Reseller will be credited on the next billing cycle including an interest credit of 1.5% per month compounded.
3. A late payment charge of 1.5% applies to all billed balances which are not paid by 30 days after the bill date shown on the invoice. USWC agrees, however, that the application of this provision will be suspended for the initial three billing cycles of this Agreement and will not apply to amounts billed during those three cycles.

4. USWC may discontinue processing orders for the failure by Reseller to make full payment for the resold services provided under this Agreement within thirty (30) days of the due date on Reseller's bill. USWC agrees, however, that the application of this provision will be suspended for the initial three billing cycles of this Agreement and will not apply to amounts billed during those three cycles.
5. USWC may disconnect for the failure by Reseller to make full payment for the resold services provided under this Agreement within sixty (60) days of the due date on Reseller's bill. Reseller will pay the tariff charge required to reconnect each end user line disconnected pursuant to this paragraph. USWC agrees, however, that the application of this provision will be suspended for the first three billing cycles under this Agreement and will not apply to amounts billed during those three cycles.

USWC will not disconnect an end user customer without first obtaining the approval of the Commission. USWC will notify Reseller of the date of Reseller's disconnection thirty (30) days prior to the effective date of the disconnection. Reseller shall notify its end user customers that service will be disconnected on the date specified in USWC's notice to Reseller for Reseller's failure to make payment due hereunder ten (10) days prior to the effective date of Reseller's disconnection. If Reseller is granted a stay of the disconnection, then Reseller shall notify its end users that service will be disconnected ten (10) days prior to the subsequent disconnection date, if any, established by the Commission or by USWC pursuant to Commission order.

6. Collection procedures and the requirements for deposit are unaffected by the application of a late payment charge.
7. The Parties agree that this payment and dispute resolution process is a new procedure and they further agree that this Section VII. C. can be re-opened for negotiation at any time within the first twelve (12) months of this Agreement.
8. USWC shall credit Reseller's account the amount due for any trouble or out-of-service conditions in the same manner that USWC credits the accounts of its own end-user customers and pursuant to any applicable provisions in USWC's tariffs. USWC shall reflect the amount of such credits on an individual customer telephone number basis in the billing information USWC provides Reseller.
9. In the event billing disputes relate to service quality issues, the dispute shall be referred to the USWC account executive assigned to Reseller who will evaluate the facts and circumstances of the service quality issues and will work with Reseller to resolve the dispute.

D. Deposit.

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1. USWC may require Reseller to make a suitable deposit to be held by USWC as a guarantee of the payment of charges. Any deposit required of an existing reseller is due and payable within ten days after the requirement is imposed. The amount of the deposit shall be the estimated charges for the resold Service which will accrue for a two-month period.
2. When the service is terminated, or when Reseller has established satisfactory credit, the amount of the initial or additional deposit, with any interest due as set forth in applicable tariffs, will, at Reseller's option, either be credited to Reseller's account or refunded. Satisfactory credit for a reseller is defined as twelve consecutive months service as a reseller without a termination for nonpayment and with no more than one notification of intent to terminate Service for nonpayment. Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or tariffs. Cash deposits and accrued interest will be credited to Resellers' account or refunded, as appropriate, upon the earlier of the termination of this Agreement or one full year of timely payments in full by Reseller. The fact that a deposit has been made does not relieve Reseller from any requirements of this Agreement.

E. Taxes.

Reseller shall be responsible for the collection, payment and remittance of all federal, state or local sales, use, excise or gross receipts taxes, fees or surcharges (collectively "Taxes") imposed on or with respect to its sale of services or equipment provided under this Agreement, except those Taxes which are explicitly required by a governmental authority to be collected by USWC. Reseller shall seek sale for resale exemptions from any applicable governmental or taxing body for payment of any and all Taxes related to Reseller's purchase of services or equipment from USWC under this Agreement. Until such time as exemptions are obtained or applicable, Reseller shall pay USWC for the amount of any such Taxes that USWC is required to pay or collect. Reseller shall in no event be liable for payment of any income taxes payable by USWC.

F. Force Majeure.

Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise

be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its best efforts to avoid or remove the cause of non-performance and both parties shall proceed to perform with dispatch once the causes are removed or cease.

G. Responsibility of Each Party.

Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations or, (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

H. Limitation of Liability.

Except for indemnity obligations, each Party's liability to the other for any loss related to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to the total amount that is or would have been charged to the other Party by such negligent or breaching Party for the service(s) or function(s) not performed or improperly performed.

In no event shall either Party be liable to the other in connection with the provision or use of services offered under this Agreement for indirect, incidental, consequential, reliance or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by such other Parties regardless of the form of action, whether in contract, warranty, strict liability, or tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result. Nothing contained in this Section H shall limit USWC's or Reseller's liability to the other for (i) willful or intentional misconduct (including gross negligence); (ii) bodily injury, death or damage to tangible real or tangible personal property proximately caused by USWC's or Reseller's negligent act or omission or that of their respective agents, subcontractors or employees, nor shall anything contained in this section limit the parties indemnification obligations, as specified below.

I. Indemnification.

1. Each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an "Indemnitee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, costs and attorneys' fees, whether suffered, made, instituted, or asserted by any other party or person, for invasion of privacy, personal injury to or death of any person or persons, or for loss, damage to, or destruction of property, whether or not owned by others, resulting from the indemnifying Party's performance, breach of Applicable Law, or status of its employees, agents and subcontractors; or for failure to perform under this Agreement, regardless of the form of action.
2. The indemnification provided herein shall be conditioned upon:
 - a. The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such Claim.
 - b. The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense.
 - c. In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party.

J. Patents and Trademarks.

1. Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding (hereinafter "claim") by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision of any facilities by either Party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.
2. No license or affiliation.

- a. Nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, tradename, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Reseller may not use any patent, copyright, logo, trademark, tradename, trade secret or other intellectual property right of USWC or its affiliates without execution of a separate agreement between the Parties.
- b. Reseller shall not, without the express written permission of USWC, state or imply that: 1) Reseller is connected, or in any way affiliated with USWC or its affiliates or, 2) Reseller is part of a joint business association or any similar arrangement with USWC or its affiliates or, 3) USWC and its affiliates are in any way sponsoring, endorsing or certifying Reseller and its goods and services or, 4) the resold goods and services are in any way associated with or originated from USWC or any of its affiliates. Notwithstanding the above, Reseller may state in response to a specific customer inquiry concerning the origin of the resold services that "Reseller is reselling USWC services." No other statements may be made.
3. Notwithstanding the above, unless otherwise prohibited by USWC pursuant to an applicable provision herein, Reseller may use the phrase "(Name of Reseller) is a reseller of U S WEST Communications services" (the "Authorized Phrase") in Reseller's printed materials provided:
 - a) The Authorized Phrase is not used in connection with any goods or services other than USWC services resold by Reseller.
 - b) Reseller's use of the Authorized Phrase does not, in USWC's sole discretion, cause customers to believe that Reseller is USWC.
 - c) The Authorized Phrase, when displayed, appears only in text form (Reseller may not use the U S WEST logo) with all letters being the same font and point size. The point size of the Authorized Phrase shall be no greater than one fourth the point size of the smallest use of Reseller's name and in no even shall exceed 8 point size.
 - d) Reseller shall provide all printed materials to USWC for its prior written approval.
 - e) If USWC determines that Reseller's use of the Authorized Phrase causes customer confusion, USWC may in it's sole discretion, immediately terminate Reseller's right to use the Authorized Phrase.
 - f) Upon termination of the Reseller's right to use the Authorized Phrase or termination of this Agreement, all permission of right to

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use the Authorized Phrase shall immediately cease to exist and Reseller shall immediately cease any and all such use of the Authorized Phrase. Reseller shall either promptly return to USWC or destroy all materials in its possession or control displaying the Authorized Phrase.

4. Reseller acknowledges the value of the marks "U S WEST" and "U S WEST Communications" (the "Marks") and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to U S WEST, Inc. and USWC respectively (the "Owners"). Reseller recognizes that nothing contained in this Agreement is intended as an assignment or grant to Reseller of any right, title or interest in or to the Marks and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Marks and is not assignable. Reseller will do nothing inconsistent with the Owner's ownership of the Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the benefit of the Owners. Reseller will not adopt, use (other than as authorized in Section 3 herein,) register or seek to register any mark anywhere in the world which is identical or confusingly similar to the Marks or which is so similar thereto as to constitute a deceptive colorable imitation thereof or to suggest or imply some association, sponsorship, or endorsement by the Owners; The Owners make no warranties regarding its ownership of any rights in or the validity of the Marks.
5. As a condition to the access or use of patents, copyrights, trade secrets and other intellectual property (including software) owned or controlled by a third party to the extent necessary to implement this Agreement or specifically required by the then applicable federal and state rules and regulations relating to resale and access to telecommunications facilities and services, the party providing access may require the other upon written notice, from time to time, to obtain permission for such access or use, make all payments in connection with obtaining such permission, and providing evidence of such permission.

K. Warranties.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

L. Assignment.

This Agreement is unique in nature and the result of negotiations between the Parties. As such, this Agreement can be assigned only with the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld.

M. Default.

If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may terminate this Agreement forthwith by written instrument. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

N. Severability.

The Parties recognize that the FCC has promulgated rules addressing issues contained in this Agreement. To the extent that certain of the rules contained in the FCC 1st Order and the FCC 2d Order are deemed by the courts to be not effective, this contract shall be modified to comport with the final court decisions and subsequent FCC or state Commission decisions or rules issued to comply with the courts' decisions. If any other term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not invalidate the entire Agreement. The Agreement shall be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each Party shall be construed and enforced accordingly; provided, however, that in the event that such invalid or unenforceable provision or provisions are essential elements of this Agreement and, in the opinion of either party, substantially impair the rights or obligations of either party, Reseller and USWC shall promptly negotiate a replacement provision or provisions. If the Parties cannot negotiate such a replacement provision or provisions, the Parties may agree to terminate the Agreement. In the event of termination as described herein, for service arrangements made available under this Agreement and existing at the time of termination, those arrangements shall continue without interruption under either a) a new agreement executed by the Parties, b) standard resale terms and conditions approved and made generally effective by the Commission, or c) tariff terms and conditions generally available to resellers. If a) does not come about, or b) or c) are not available, the Agreement shall remain in effect until a replacement provision is determined through arbitration.

O. Nondisclosure.

1. All information including, but not limited to, specifications, drawings, sketches, models, tools, technical information, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party or to which one Party provides to the other Party access (such as to a database) dealing with customer specific, facility specific, or usage

specific information, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential", "Proprietary" or other similar legend, or (iii) communicated orally or by visual presentation and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party.

2. Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.
3. The receiving Party acknowledges and agrees that Proprietary Information constitutes trade secrets of the disclosing Party. The receiving Party shall maintain in confidence all of the disclosing Party's Proprietary Information and shall use the disclosing Party's Proprietary Information only for performing the covenants contained, or exercising any rights granted, in this Agreement. Only the employees and agents with a need to know shall have access to the Proprietary Information and each such employee and agent shall be advised of his or her obligations under this Section O. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the parties in writing.
4. Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to the extent that such Proprietary Information:
 - a. was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential (evidenced by written records prepared prior to delivery by the disclosing Party);
 - b. is or becomes publicly known through no wrongful act of the receiving Party;
 - c. is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or
 - d. is independently developed by receiving Party individuals who do not have access to the Proprietary Information;
 - e. is disclosed to a third person by the disclosing Party without restrictions on disclosure;
 - f. is approved for release by written authorization of the disclosing Party; or

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g. is required to be made public by the receiving Party pursuant to applicable law, regulation, or governmental order, provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders where possible.

5. USWC grants Reseller the limited, personal, nonexclusive right and license to access and use information contained in certain of USWC's databases (Directory Assistance and Operator Services databases, certain Advanced Intelligent Network databases and Operation Support System databases) but only to the extent as specifically required by the then applicable federal and state rules and regulations relating to access to and use of such databases, as they may be amended from time to time, and for no other purpose. Without limiting the generality of the foregoing, this right and license to Reseller does not include the license and right to extract or copy (including by any manual, mechanical or electronic means) or use any such database information, in whole or in part, to enhance the quality of any of Reseller's own database services or offerings, as inputs to Reseller's or other's directory assistance or directory publishing operations or for the creation of marketing databases, in the absence of USWC's prior written consent. Reseller agrees that any and all information contained in any of such USWC's databases shall be Proprietary Information subject to the terms and conditions of this section O; provided, however, that Sections 4 a, b, and c shall not apply even though the individual parts or components of the information contained in any such databases may otherwise fall within such Sections.
6. Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.
7. The Parties acknowledge that this Agreement contains commercially confidential information that may be considered Proprietary Information by either or both Parties, and agree to limit distribution of this Agreement to those individuals in their respective companies with a need to know the contents of this Agreement.

P. Survival.

Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement; any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination thereof.

Q. Dispute Resolution.

Except as provided by the Act, if any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents ("Dispute") cannot be settled through negotiation, it shall be resolved by arbitration conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The laws of the state where the services subject to this Agreement are provided shall govern the construction and interpretation of this Agreement.

R. State Commission Arbitration Issues.

In the event Reseller and USWC are unable to agree on certain issues during negotiation, the Parties will identify such issues for arbitration before an appropriate state regulatory agency. Only those points identified by the Parties for arbitration will be submitted. All other terms on which the Parties reach agreement will be submitted for approval in their final form.

S. Governing Law.

This Agreement shall be deemed to be a contract made under and shall be construed, interpreted and enforced in accordance with the Act, where applicable, and the laws of the state of South Dakota and shall be subject to the exclusive jurisdiction of the courts in that state, unless otherwise provided by the Act.

USWC shall be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory Commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. Reseller shall be responsible for obtaining and keeping in effect all Federal Communications Commission, state regulatory Commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to Reseller Customers contemplated by this Agreement.

T. Limitation of Action.

No arbitration demand or judicial action, regardless of form, arising out of the transaction(s) under this Agreement, whether in contract, tort, or other theory, may be brought by either party more than two (2) years after the cause of action accrues.

U. Joint Work Product.

This Agreement is the joint work product of representatives of the Parties. For convenience, it has been drafted in final form by one of the Parties. Accordingly, in the event of ambiguities, no inferences will be drawn against either Party solely on the basis of authorship of this Agreement.

V. Notices.

Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in hard-copy writing (unless otherwise specifically provided herein) and shall be sufficiently given if delivered personally or delivered by prepaid overnight express service to the following (unless otherwise specifically required by this Agreement to be delivered to another representative or point of contact)

Any notices required by or concerning this Agreement shall be sent to the Parties at the addresses shown below:

USWC

Reseller

Katherine L. Fleming
U S WEST Communications
Interconnection Services
1801 California, Suite 4920
Denver, Colorado 80202-9184

Brad VanLeur
Firstel, Inc.
Sales & Marketing Director
110 South Phillips, Suite 202
Souix Falls, SD 57102

303-896-6100 (phone)
303- 896-9641 (fax)

605-332-3232 (phone)
605-332-8004 (fax)

Each Party shall inform the other of any changes in the above addresses.

W. No Third-Party Beneficiaries

Except as may be specifically set forth in this Agreement, 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.

X. Publicity and Advertising

Neither party shall publish or use any advertising, sales promotions or other publicity materials that use the other party's name, logo, trademarks or service marks without the prior written approval of the other party.

Y. Amendments or Waivers

Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same is in writing and signed by an

officer of the Party against whom such amendment, waiver or consent is claimed.

Z. Most Favored Nation

The Parties agree that the provisions of Section 252(l) of the Act shall apply, including state and federal interpretive regulations in effect from time to time.

AA. Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

BB. Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

Signature Fred L. Thurman

President
Title

Date June 4, 1997

Signature Katherine L Fleming

Exec. Director - Interconnect
Title

Date 6/06/97

Figure 1 is a line graph showing the percentage of total energy expenditure (TEE) for different activities over a 24-hour period. The Y-axis is 'Percentage of TEE' (0-100) and the X-axis is 'Time of Day' (0-24). The legend indicates: Sleeping (hatched), Sedentary (white), Light (diagonal lines), Moderate (cross-hatch), and Vigorous (solid black). Sleeping is highest at night (~30-40%). Sedentary is highest in the morning (~20-30%). Light activity is highest in the afternoon (~10-20%). Moderate and Vigorous activities are highest in the afternoon (~10-20%).

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a. **Customer Transfer Charge (CTC):** The following nonrecurring charges apply when converting a USWC account to a Reseller account or when changing an end user from one reseller to another.

Mediated access (OSS)	USOC	Nonrecurring Charge
• Residence		
First Line		\$12.84
Each Additional Line		\$11.16
• Business		
First Line		\$16.80
Each Additional Line		\$13.93

- Residence and Business
First Line
Each Additional Line

2. The following USWC services are available for resale at the rates listed below:

Category:	Discount Rate
• Basic Exchange Business, PBX Trunks	12%
• ISDN, Frame Relay	12%
• Listings, CO Features	12%

State:
South Dakota

Rate Per Minute of Use
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3. The following services are available for resale under this Agreement but are not included in the wholesale pricing reflected above unless and until the state public utilities Commission

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in a particular state orders that wholesale discount rates are generally available to resellers with respect to these products in that state:

- Basic Exchange Residence Line
- Centrex
- Private Line
- Special Access
- Public Access Lines
- Volume Discount and/or Term Arrangement (where contained in customer contracts or USWC tariffs)

4. The following services are not available for resale:

- Lifeline
- Concession Service
- Technical Trials
- Grandfathered Products and Services (except to customers currently served with such services)

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APPENDIX B
DIRECTORY LISTINGS

Directory Listings

1. Scope.

- a. Reseller Listings Service ("Listings") consists of USWC placing the names, addresses and telephone numbers of Reseller's and users in USWC's listing database, based on and user information provided to USWC by Reseller. USWC is authorized to use Listings in Directory Assistance (DA) and as noted in 1.D.i or 1.D.ii.
- b. Reseller will provide in standard format, and USWC will accept at no charge, one primary listing for each main telephone number belonging to Reseller's and user customers. Primary listings are as defined for USWC and users in USWC's general exchange tariffs. Reseller will be charged for privacy listings and premium listings, e.g., additional, foreign, cross reference, informational, etc., at USWC's general exchange listing tariff rates minus the applicable standard resale discount in each state.
- c. USWC will furnish Reseller the Listings format specifications. USWC cannot accept Listings with advance completion dates.
- d. Reseller grants USWC a non-exclusive license to incorporate Listings information into its directory assistance database. Reseller hereby selects one of two options for USWC's use of Listings and dissemination of Listings to third parties.

EITHER:

- i. **Treat the same as USWC's end user listings -- No prior authorization** is needed for USWC to release Listings to directory publishers or other third parties. USWC will incorporate Listings information in all existing and future directory assistance applications developed by USWC. Reseller will authorize USWC to sell and otherwise make Listings available to directory publishers including USWC's publisher affiliate for inclusion in white pages published on USWC's behalf. USWC shall be entitled to retain all revenue associated with any such sales. Listings shall not be provided or sold in such a manner as to segregate end users by carrier.

OR:

- ii. **Restrict to USWC's directory assistance -- Prior authorization required by Reseller for all other uses.** Reseller makes its own, separate agreements with USWC, third parties and directory publishers for all uses of its listings beyond DA. USWC will sell Listings to directory publishers (including USWC's publisher affiliate for inclusion in white pages published on USWC's behalf), other third parties and USWC products only after third party presents proof of Reseller's authorization. USWC shall be entitled to retain all revenue associated with any such sales. Listings shall not be provided or sold in such a manner as to segregate end users by carrier.

- e. To the extent that state tariffs limit USWC's liability with regard to Listings, the applicable state tariff(s) is incorporated herein and supersedes Section VII.G., "Limitation of Liability", of this Agreement with respect to Listings only.

2. USWC Responsibilities.

USWC is responsible for maintaining Listings, including entering, changing, correcting, rearranging and removing Listings in accordance with Reseller orders. USWC will take reasonable steps in accordance with industry practices to accommodate non-published and non-listed listings provided that Reseller has supplied USWC the necessary privacy indicators on such Listings.

USWC will include Reseller's Listings in USWC's Directory Assistance service to ensure that callers to USWC's Directory Assistance service have non-discriminatory access to Reseller's Listings.

USWC will incorporate Reseller's Listings provided to USWC in the white pages directory published on USWC's behalf.

3. Reseller Responsibilities.

- a. Reseller agrees to provide to USWC its end user names, addresses and telephone numbers in a standard format, as specified by USWC.
- b. Reseller will supply its ACNA/CIC or CLCC/OCN, as appropriate, with each order to provide USWC the means of identifying Listings ownership.
- c. Reseller represents and warrants the end user information provided to USWC is accurate and correct. Reseller further represents and warrants that it has reviewed all Listings provided to USWC, including end user requested restrictions on use such as non-published and non-listed. Reseller shall be solely responsible for knowing and adhering to state laws or rulings regarding Listings (e.g., no solicitation requirements in the states of Arizona and Oregon, privacy requirements in Colorado), and for supplying USWC the applicable Listing information.
- d. Reseller is responsible for all dealings with and on behalf of Reseller's end users, including:
 - i. All end user account activity, e.g., end user queries and complaints.
 - ii. All account maintenance activity, e.g., additions, changes, issuance of orders for Listings to USWC.
 - iii. Determining privacy requirements and accurately coding the privacy indicators for Reseller's end user information. If end user information provided by Reseller to USWC does not contain a privacy indicator, no privacy restrictions will apply.
 - iv. Any additional services requested by Reseller's end users.

**FIRST AMENDMENT TO AGREEMENT FOR SERVICE RESALE (SOUTH DAKOTA)
BETWEEN FIRSTEL, INC. AND U S WEST COMMUNICATIONS, INC.**

This First Amendment ("First Amendment") is made and entered into by and between U S WEST Communications, Inc. ("USWC") and Firstel, Inc. ("Reseller").

RECITALS

USWC and Reseller entered into that certain Agreement for Service Resale executed by Reseller on June 4, 1997 and by USWC on June 5, 1997 (the "Agreement"); and

USWC and Reseller wish to amend the Agreement for the state of South Dakota under the terms and conditions contained herein.

AGREEMENT

In consideration of the mutual promises and advantages to the parties, the parties incorporate by reference and agree to the accuracy of the above recitals and further agree as follows:

1. DESCRIPTION OF AMENDMENT AND MODIFICATIONS:

1.1 A new paragraph D shall be added to Section II (Scope) of the Agreement as follows:

- "D. This Agreement is entered into as a result of both private negotiations between the Parties and the incorporation of some of the results of arbitrated decisions by the Commission, acting pursuant to Section 252 (b) of the Act, and involving interconnection/resale agreements of other parties. The Parties have included for convenience certain rates, terms, or conditions in this Agreement which reflect rates, terms, or conditions established in some or all of those other arbitrations. Reseller acknowledges: (1) that those rates, terms, or conditions are extended only because of the arbitrated results in other dockets, (2) that USWC intends to appeal certain of those decisions, and (3) that any negotiations, appeal, stay, injunction, or similar proceeding impacting the applicability of those rates, terms, or conditions to the local service providers who were parties to those arbitrations will similarly impact the applicability of those rates, terms or conditions to Reseller. The Parties further recognize that this Agreement is subject to the generic proceedings by the Commission addressing the services in this Agreement."

1.2 Section IV.E.1. (Resale Services/Rates and Charges) of the Agreement shall be deleted in its entirety and replaced with the following:

- "1. Resold services as listed in Appendix A are available for resale at the applicable discount percentage or rate per minute set forth in Appendix A or at the retail tariff rates for services available for resale but excluded from the wholesale pricing arrangement in this Agreement.

"The discount rate set forth in Appendix A is pending before the Commission as a result of the March 20, 1997 arbitrator's decision in TC96-184, "In the Matter of the Interconnection Contract Negotiations between AT&T Communications of the Midwest, Inc. and U S WEST Communications, Inc. pursuant to 47 U.S.C. Section 252 (the "AT&T Arbitration"), which decision recommended the services which should be available for resale and a wholesale discount rate of 15.49% (the "AT&T Rate"). The Parties hereby agree that whatever services and wholesale discount rate the Commission establishes in its final decision in the AT&T Arbitration shall become effective with respect to this Agreement on a going-forward basis and without true-up to the effective date of this Agreement on the date of the Commission's decision. Appendix A will be modified to reflect such rates and services, if necessary.

"If the wholesale discount rates established in the AT&T Arbitration are established as interim rates and are pending the outcome of a final Commission decision in an interconnection cost docket, such rates, as adopted in this Agreement, will be subject to true-up from the date those rates became effective in this Agreement to the effective date of the final interconnection cost docket order.

"It is the intent of the Parties that, if the AT&T Rate is changed by any negotiations, appeal, stay, injunction, settlement, or similar proceeding, the AT&T Rate made available to Reseller shall be impacted in the same way and to the same extent. If the AT&T Rate or applicability of the wholesale discount rate(s) to the services set forth in Appendix A is stayed or enjoined; the Parties agree that the telecommunications services still available for resale following the stay or injunction will be available to Reseller, effective as of the date of the stay, order or injunction, at a wholesale discount rate of 12% (the "Standard Rate") until such time as a nonappealable order establishes a wholesale discount rate(s). If the Standard Rate becomes effective pursuant to this paragraph, the Standard Rate will also be subject to true-up to the rate(s) established in the nonappealable order for the period that the Standard Rate was in effect. If the AT&T Rate or the applicability of the rate to the services in Appendix A is changed by a nonappealable administrative or judicial order following approval of negotiated rates, rates reached in an approved settlement agreement, a decision on appeal or other similar proceeding, such changed rate(s) will be available to Reseller, effective as of the date of the order. The AT&T Rate shall be subject to true-up to the changed rates for the period of time the AT&T Rate was in effect.

"USWC shall have a reasonable time to implement system or other changes necessary to bill any Commission ordered rates or services."

1.3 Section VII.V (General Provisions/Notices) shall be amended by deleting the address listed for USWC and replacing it with the following:

"Director-Interconnection Compliance
150 South 5th Street, Room 2800
Minneapolis, Minnesota 55402

1.3 Section VII.V (General Provisions/Notices) shall be amended by deleting the address listed for USWC and replacing it with the following:

"Director-Interconnection Compliance
150 South 5th Street, Room 2800
Minneapolis, Minnesota 55402
612-663-3425 (phone)
612-663-3551 (fax)"

1.4 Appendix A to the Agreement shall be deleted in its entirety and replaced with Attachment 1 to this First Amendment which is attached hereto and incorporated herein and in the Agreement by this reference.

2. Effective Date.

This First Amendment shall be deemed effective upon approval by the South Dakota Public Service Commission.


3. Further Amendments.


Except as modified herein, the provisions of the Agreement shall remain in full force and effect. Neither the Agreement nor this First Amendment may be further amended or altered except by written instrument executed by an authorized representative of both parties.

The parties intending to be legally bound have executed this First Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

Firstel, Inc.

U S WEST Communications, Inc.


Signature
Fred L. Thurman
Name Printed/Typed
President
Title
President
Date 11-6-97


Signature
Katherine L. Fleming
Name Printed/Typed
Executive Director-Interconnect
Title
11/17/97
Date

Signature does not waive any rights of either Party to seek administrative/judicial review of all or part of the Agreement or to reform this Agreement as a result of successful administrative/judicial review and/or future settlement agreements between the Parties to this Agreement.

**Attachment 1 to First Amendment
APPENDIX A - SOUTH DAKOTA
LOCAL EXCHANGE SERVICES
RESALE OF SERVICES**

The Parties agree the following charges apply to the Resale of Local Services:

1. Nonrecurring Charges.

- a. Customer Transfer Charge (CTC): The following nonrecurring charges apply when converting a USWC account to a Reseller account or when changing an end user from one reseller to another.

Mediated access (OSS)	USOC	Nonrecurring Charge
• Residence		
First Line		\$12.64
Each Additional Line		\$11.16
• Business		
First Line		\$16.80
Each Additional Line		\$13.93
Non-Mediated Access (Manual)		
• Residence and Business		
First Line		\$22.20
Each Additional Line		\$16.38

- b. Product Specific Nonrecurring Charge: As set forth in USWC tariffs, the product specific nonrecurring charges, without discount, will apply when additional lines or trunks are added or when the end user adds features or services to existing lines or trunks.

2. Except as qualified below, all USWC telecommunications services shall be available for resale at a 15.49% discount.

(a) The following services are not available for resale:

- Customer Premises Equipment (separately or in a package)
- Enhanced Services
- USWC Calling cards
- Inside Wire (including installation, sale or maintenance)
- Dedicated or Switched Access Service
- Promotions of less than 90 days

(b) The following services are available only to the same class of customer eligible to purchase that service from USWC:

- Grandfathered
- Residence
- Lifeline/Link-up

462-44-801-8

American Arbitration Association

COMMERCIAL ARBITRATION RULES

To institute proceedings, please send three copies of this demand and the arbitration agreement, with the filing fee as provided in the rules, to the AAA. Send the original demand to the respondent.

DEMAND FOR ARBITRATION

DATE: March 1, 1999

TO: Name Brad Van Leer, Sales and Marketing Director, FirstTel, Inc.

Address 2900 W. 11th Street

City and State Sioux Falls, SD ZIP Code 57104

Telephone (605) 332-1212 Fax 605-112-8004

Name of Representative Robert C. Riter, Jr.

Name of Firm (if Applicable) Riter, Mayer, Hoyer, Wattier & Brown

Representative's Address 319 S. Coteau, P.O. Box 280

City and State Pierre, South Dakota ZIP Code 57501

Telephone (605) 224-5826 Fax 605-224-7102

The named claimant, a party to an arbitration agreement contained in a written contract, does in the
Agreement for Service Resale, VII(Q) and providing for arbitration under the
Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration thereunder.

THE NATURE OF THE DISPUTE:

Basec.Net, a South Dakota internet service provider, filed a claim with the Public Utilities Commission of the State of South Dakota in Docket 98-194 against U S WEST Communications, Inc. and FirstTel, Inc. U S WEST desires to arbitrate the cross claims filed by FirstTel, against

U S WEST
THE CLAIM OR RELIEF SOUGHT (the Amount, if Any):
Allocation of liability, if any, as to the claims of Basec.Net against U S WEST Communications, Inc. and FirstTel, Inc. arising from Basec.Net's complaint. See Exhibits 1-7

TYPES OF BUSINESS Claimant Telecommunications Respondent Telecommunications

HEARING LOCALE REQUESTED: Sioux Falls, South Dakota

(City and State)

You are hereby notified that copies of our arbitration agreement and this demand are being filed with the American Arbitration Association at its Minneapolis office, with a request that it commence administration of the arbitration. Under the rules, you may file an answering statement within ten days after notice from the administrator.

Signed [Signature] Title Attorney

(May Be Signed by a Representative)

Name of Claimant Larry Toll, Vice President

Address (to Be Used in Connection with This Case) U S WEST Communications, Inc., 125 S. Dakota Ave., 8th floor

City and State Sioux Falls, South Dakota ZIP Code 57194

Telephone (605) 332-5411 Fax 605-332-5190

Name of Representative Thomas J. Welk

Name of Firm (if Applicable) Boyer, Murphy, McDowell & Greenfield, LLP

Representative's Address 101 N. Phillips Ave., #600

City and State Sioux Falls, South Dakota ZIP Code 57104

Telephone (605) 332-2124 Fax 605-334-0613

☐ MEDIATION is a nonbinding process. The mediator assists the parties in working out a solution that is
which for the AAA to contact the other parties to ascertain whether they wish to mediate this matter.
is no additional administrative fee for this service.

EXHIBIT

2

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.
ATTORNEYS AT LAW

Jennalyn D. Murphy
Russell R. Greenfield
David J. Vickers
Gary J. Baubly
Yancey R.C. Goldammer
Thomas J. Welk
Terry N. Probst
James E. McMahon
Michael S. McLaughlin
George S. Greenfield
Robert A. Southwick

101 North Phillips Avenue, Suite 900
Sioux Falls, South Dakota 57104
P.O. Box 5015
Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424
Facsimile 605 334-9618

Western Direct Dial Number: 605 331-1234
twelk@boycemurphy.com

Tamara A. Wilks
Carson A. Thompson
Lisa Hansen-Marso
Jeffrey C. Clapper

Of Counsel
John R. McDowell

J.W. Boyce (1884-1931)
John S. Murphy (1924-1988)

March 1, 1999

VIA UPS OVERNIGHT

Mr. Ty Tonander
American Arbitration Association
514 Nicollette Mall - 6th floor
Minneapolis, MN 55402-1092

Re Claimant: U S WEST Communications, Inc.
Respondent: FirsTel, Inc.
Matter: Basec Net Complaint arising from Complaint filed with South Dakota Public Utilities Commission in Docket TC 98-194

Dear Ty

Please find enclosed the following:

1. The original and two copies of the Demand for Arbitration and three sets of Exhibits to Demand for Arbitration.
2. Agreement for Service Resale between FirsTel, Inc. and U S WEST Communications, Inc., as amended ("Resale Agreement"), and
3. Check in the amount of \$1,250 for the filing fee.

The filing fee is being submitted on the basis and belief that the claim in this matter would not exceed \$100,000. If for some reason, such claim would exceed that amount, U S WEST Communications will be responsible for any increased filing fee. A signed copy of the Resale Agreement will be submitted when received in that the enclosed is a conformed copy.

Sincerely yours,

BOYCE, MURPHY, McDOWELL
& GREENFIELD, L.L.P.

Thomas J. Welk

TJW/vjj
Enclosure
cc Dennis DeLeon
Todd Lundy
Colleen Sevold
Robert C. Riter
Brad Van Leur

8150442800

EXHIBITS TO DEMAND FOR ARBITRATION

Claimant U S WEST Communications, Inc.
Respondent FirsTel, Inc.
Matter Basec Net Complaint arising from Complaint filed with South Dakota Public Utilities
Commission in Docket TC 98-194

- 1 Agreement for Service Resale (as amended)
- 2 Complaint of Basec Net dated 10/6/98
- 3 U S WEST's Answer to Complaint and Counterclaim dated 11/30/98
- 4 FirsTel, Inc.'s Answer to Complaint of Basec Net and Cross Claim against U S WEST
Communications, Inc. dated 11/30/98
- 5 U S WEST's Answer to Cross-Claim of FirsTel, Inc. dated 12/17/98
- 6 Motion to Amend U W WEST Communications, Inc.'s Answer to Cross Claim of FirsTel, Inc.
dated 2/25/99
- 7 U S WEST Communications, Inc.'s Amended Answer to Cross Claim of FirsTel, Inc. dated
2/25/99

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

MAR 19 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

TC- 98-194

IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND FIRSHEL,
INC. REGARDING BILLING ISSUES

CERTIFICATE OF SERVICE

I Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, L.L.P., and on the 2nd day of March, 1999, true and correct copies of Motion to Dismiss Cross-claim of Firstel, Inc. Against U S West Communications, Inc. and U S WEST Communications, Inc.'s Memorandum of Law in Support of Motion to Dismiss Cross-claim of Firstel, Inc. Against U S West Communications, Inc. were served on the following by U S mail, postage prepaid, to the following addresses:

Todd D. Epp
Lynn, Jackson, Shultz & Lebrun
U S Bank Building
141 N. Main Avenue
Sioux Falls, SD 57104
Attorney for Basec Net

Robert C. Riter, Jr.
Riter, Mayer, Hofer, Wattier & Brown
319 S. Coteau
P.O. Box 280
Pierre, SD 57501-0280
Attorney for FirsTel



Thomas J. Welk

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LAW OFFICES
RITER, MAYER, HOFER, WATTIER & BROWN, LLP
Professional & Executive Building
319 South Coteau Street
P. O. Box 280
Pierre, South Dakota 57501-0280

R. C. RITER (1912-1994)
E. D. MAYER
ROBERT D. HOFER
ROBERT C. RITER, JR.
JERRY L. WATTIER
JOHN L. BROWN

TELEPHONE
605-224-5825
TELECOPIER
605-224-7102

TRAVIS B. JONES, ASSOCIATE

March 8, 1999

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

Re: In the Matter of the Complaint Filed
by Basec.Net, Huron, South Dakota
Against U.S. West Communications, Inc.
and Firstel, Inc.
TC 98-194

Dear Mr. Bullard:

Herewith hand delivered to you please find original and ten
copies of Response of Firstel, Inc. to US West Communications,
Inc.'s Motion to Amend Answer which Includes a Dismissal Request.
We also enclose copy of front page which we would ask you to file
stamp and return to us.

Also enclosed is Certificate of Service relating to the
Response.

Please file the enclosures.

Very truly yours,

RITER, MAYER, HOFER, WATTIER
& BROWN, LLP

By: 

Robert C. Riter, Jr.

RCR Jr-wb

Enclosures

RECEIVED
MAR 08 1999
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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LAW OFFICES
RITER, MAYER, HOFER, WATTIER & BROWN, LLP
Professional & Executive Building
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Pierre, South Dakota 57501-0280

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JERRY L. WATTIER
JOHN L. BROWN

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TRAVIS B. JONES, ASSOCIATE

March 8, 1999

Karen Cremer
Public Utilities Commission
500 E. Capitol
Pierre, SD 57501
Fax: 605-773-3809

Todd Lundy
US West Communications, Inc.
1801 California Street
Ste. 5100
Denver, CO 80202
Fax: 303-298-8197

Todd D. Epp
Attorney at Law
P. O. Box 1920
Sioux Falls, SD 57101-3020
Fax: 605-332-4249

Thomas J. Weik
Jeffrey C. Clapper
Attorneys at Law
P. O. Box 5015
Sioux Falls, SD 57117-5015
Fax: 605-334-0618

Re: TC 98-194
In the Matter of the Complaint
Filed by Basec.Net Against
US West Communications, Inc. and
FirstTel, Inc.

Dear Folks:

Enclosed to each of you please find copy of Response of
FirstTel, Inc. to US West Communications, Inc.'s Motion to Amend
Answer which includes a Dismissal Request.

This is intended as service upon you by mail.

Very truly yours,

RITER, MAYER, HOFER, WATTIER &
BROWN, LLP

By: 

Robert C. Riter, Jr.

RCR Jr-wb
Enclosure
cc: Neil Schmid

81-6644-0

RECEIVED

MAY 08 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED BY)	TC 98-194
BASFC.NET, HUKON, SOUTH DAKOTA, AGAINST)	RESPONSE OF FIRSTTEL,
U S WEST COMMUNICATIONS, INC. AND)	INC. TO US WEST
FIRSTEL, INC.)	COMMUNICATIONS, INC.'S
	MOTION TO AMEND ANSWER
	WHICH INCLUDES A
	DISMISSAL REQUEST

COMES NOW, FirstTel, Inc., and in response to the Motion of February 25, 1999 of US West Communications, Inc. to amend its pleadings which includes a dismissal request, and in opposition thereto states as follows:

1. That while the Agreement for Service Resale does provide as expressed in US West's draft amended affirmative defense, it also states in paragraph VII(R) as follows:

State Commission Arbitration Issues.

In the event Reseller and USWC are unable to agree on certain issues during negotiation, the Parties will identify such issues for arbitration before an appropriate state regulatory agency. Only those points identified by the Parties for arbitration will be submitted. All other terms on which the Parties reach agreement will be submitted for approval in their final form.

FirstTel submits that such provision anticipates the Public Utilities Commission is an appropriate entity to resolve identification of the issues and determine the issues themselves, all which have been set forth in the pleadings filed herein between the parties.

2. The paragraph in the Agreement for Resale cited by US West Communications, Inc. was specifically intended for "claims, controversies or disputes between the parties". In this case the issue which has arisen is a claim for the responsibility

against one or both of US West and FirstTel to Basec.Net, the complainant herein. Accordingly, the true effect of the submission of the Crossclaim is not a claim between the parties as much as it is a resolution the Public Utilities Commission needs to make as to the respective responsibilities, if any, of US West and FirstTel ultimately owing to Basec.Net.

3. As the Basec.Net claim only collaterally relates to the Agreement for Resale between US West Communications, Inc. and FirstTel, Inc., it is neither necessary nor appropriate to submit the Complaint and the issues pending between all parties to outside arbitration under the citation referenced by US West.

4. The Complaint filed herein by Basec.Net lists the party against whom the complaint is made as US West. FirstTel, Inc. appears to have been added only because it is a necessary party, rather than the Complaint being directed against it, hence, it is proper that the Public Utilities Commission retain jurisdiction of this matter.

5. That judicial economies would mandate this matter be handled in one proceeding before the Public Utilities Commission, as all of the issues between the parties have to be raised and considered in the underlying complaint by Basec.Net against the parties. Hence, the parties would only incur additional expenses by retrying the case if separate arbitration proceedings are undertaken.

6. That the Commission does have authority under SDCL Chapters 49-13 and 49-31 to review complaints of this nature and

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to resolve issues of this nature between the parties. An attempt as is sought by US West Communications, Inc. will only tend to eliminate the opportunity for a complete resolution of the issues before this Commission, which is appropriately charged with that responsibility.

7. That the Public Utilities Commission will likely have future claims against entities in similar capacities as US West and FirstTel and the Public Utilities Commission is the appropriate legal entity to consider and resolve such claims.

WHEREFORE, FirstTel, Inc. prays that the requested Motion to Dismiss be denied and all the issues presented by the Complaint, Answers and Crossclaims between the parties be properly heard and considered by the Public Utilities Commission at the hearing scheduled later this month.

Respectfully submitted this 8th day of March, 1999.

RITER, MAYER, HOFER, WATTIER
& BROWN, LLP

By: 

Robert C. Riter, Jr.
A member of said firm
319 S. Coteau - P. O. Box 280
Pierre, SD 57501-0280
Attorneys for FirstTel, Inc.

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RECEIVED

MAR 28 1999

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITY COMMISSION

IN THE MATTER OF THE COMPLAINT FILED BY) TO 98-194
BASEC.NET, HURON, SOUTH DAKOTA, AGAINST)
U S WEST COMMUNICATIONS, INC. AND) CERTIFICATE OF SERVICE
FIRSTEL, INC.)

I, Robert C. Riter, Jr., certify that a true and correct copy of Response of FirstTel, Inc. to US West Communications, Inc.'s Motion to Amend Answer which Includes a Dismissal Request was mailed by first class mail to each of the following on the 8th day of March, 1999, and faxed to each of the following on the 8th day of March, 1999:

Karen Cremer
Public Utilities Commission
500 E. Capitol
Pierre, SD 57501
Fax: 605-773-3809

Todd D. Epp
Attorney at Law
P. O. Box 1920
Sioux Falls, SD 57101-3020
Fax: 605-332-4249

Todd Lundy
US West Communications, Inc.
1801 California Street
Ste. 5100
Denver, CO 80202
Fax: 303-298-8197

Thomas J. Welk
Jeffrey C. Clapper
Attorneys at Law
P. O. Box 5015
Sioux Falls, SD 57117-5015
Fax: 605-334-0618


Robert C. Riter, Jr.

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LAW OFFICES
RITER, MAYER, HOFER, WATTIER & BROWN, LLP
Professional & Executive Building
319 South Coteau Street
P. O. Box 280
Pierre, South Dakota 57501-0280

R. C. RITER (1912-1994)
E. D. MAYER
ROBERT D. HOFER
ROBERT C. RITER, JR.
JERRY L. WATTIER
JOHN L. BROWN

TELEPHONE
605-224-5825
TELECOPIER
605-224-7102

TRAVIS B. JONES, ASSOCIATE

March 9, 1999

RECEIVED

MAR 09 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

Re: In the Matter of the Complaint Filed
by Basec.Net, Huron, South Dakota
Against U.S. West Communications, Inc.
and Firstel, Inc.
TC 98-194

Dear Mr. Bullard:

Herewith hand delivered to you please find original and ten copies of Motion of Firstel, Inc. to Supplement Argument. We would ask that you present this Motion to the Commission for its prompt consideration. In that manner, if the Motion is granted, we will have adequate time to submit our short memorandum.

Also enclosed is Certificate of Service relating to the Motion.

Please file the enclosures.

Thank you.

Very truly yours,

RITER, MAYER, HOFER, WATTIER
& BROWN, LLP

By: 

Robert C. Riter, Jr.

RCR Jr-wb

Enclosures

RECEIVED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SECTION OF THE PUBLIC
UTILITY COMMISSION

IN THE MATTER OF THE COMPLAINT FILED BY) TC 98-194
BASEC.NET, HURON, SOUTH DAKOTA, AGAINST)
U S WEST COMMUNICATIONS, INC. AND) MOTION OF FIRSHEL,
FIRSEL, INC.) INC. TO SUPPLEMENT
ARGUMENT

FirsTel, Inc. hereby moves that it be authorized to supplement its argument in resistance to US West Communication, Inc.'s Motion to Dismiss for the following grounds:

1. The memorandum of US West was only received by FirsTel several days before today's hearing and FirsTel has not had adequate opportunity to review the citations and respond in writing thereto, and

2. The Commission has taken the matter under advisement to allow further consideration of the legal issues, and FirsTel's additional citations will not delay this matter.

Hence, FirsTel, Inc. requests leave to submit a memorandum, not in excess of three pages, prior to close of business on Thursday, March 11, 1999.

Respectfully submitted this 9th day of March, 1999.

RITER, MAYER, HOFER, WATTIER
& BROWN, LLP

By: 

Robert C. Riter, Jr.
A member of said firm
319 S. Coteau - P.O. Box 280
Pierre, SD 57501-0280
Attorneys for FirsTel, Inc.

RECEIVED

MAR 9 1999

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

IN THE MATTER OF THE COMPLAINT FILED BY) TC 98-194
 BASEC.NET, HURON, SOUTH DAKOTA, AGAINST)
 U S WEST COMMUNICATIONS, INC. AND) CERTIFICATE OF SERVICE
 FIRSTEL, INC.)

I, Robert C. Riter, Jr., certify that a true and correct copy of Motion of Firstel, Inc. to Supplement Argument was mailed by first class mail to each of the following on the 9th day of March, 1999, and faxed to each of the following on the 9th day of March, 1999:

Karen Cremer
 Public Utilities Commission
 500 E. Capitol
 Pierre, SD 57501
 Fax: 605-773-3809

Todd D. Epp
 Attorney at Law
 P. O. Box 1920
 Sioux Falls, SD 57101-3020
 Fax: 605-332-4249

Todd Lundy
 US West Communications, Inc.
 1801 California Street
 Ste. 5100
 Denver, CO 80202
 Fax: 303-298-8197

Thomas J. Welk
 Jeffrey C. Clapper
 Attorneys at Law
 P. O. Box 5015
 Sioux Falls, SD 57117-5015
 Fax: 605-334-0618


 Robert C. Riter, Jr.

BOYCE, MURPHY, McDOWELL & GREENFIELD, L.L.P.

ATTORNEYS AT LAW

Jeremiah D. Murphy
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David J. Vickers
Gary J. Padden
Vance R. C. Goldammer
Thomas J. Webb
Terry N. Probstman
James F. McMahon
Michael S. McKinley
Gregory S. Greenfield
Roger A. Southwick

101 North Phillips Avenue, Suite 600
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Sioux Falls, South Dakota 57117-5015

Telephone 605 336-2424
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Wire's Direct Dial Number: 605 334-0208
tmw@klschopenmurphy.com

Thomas A. Wilke
Carolyn A. Thompson
Lisa Hansen-Mann
Jeffrey C. Clapper

Of Counsel
John R. McDowell

J.W. Boyce (1004-1911)
John S. Murphy (1004-1906)

March 10, 1999

William Bullard, Executive Director
Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

VIA FACSIMILE - 773-3809
AND UPS OVERNIGHT

FAX Received MAR 10 1999

RECEIVED

MAR 11 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

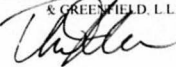
Re: In the Matter of the Complaint Filed by Basec.Net, Huron, South Dakota Against US
WEST Communications, Inc. and FirsTel, Inc. Regarding Billing Issues (TC 98-194)

Dear Mr. Bullard

Enclosed please find U S WEST Communications, Inc.'s Opposition to Motion of FirsTel, Inc. to
Supplement Argument. The original and ten copies are being sent by overnight mail today.

Sincerely yours,

BOYCE, MURPHY, MCDOWELL
& GREENFIELD, L.L.P.



Thomas J. Welk

TJW/vjj
Enclosure

cc: Todd D. Epp
Robert C. Riter, Jr.
Karen Cremer
Todd Lundy
Colleen Sevoid

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

MAR 11 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION


IN THE MATTER OF THE COMPLAINT
FILED BY BASEC.NET, HURON, SOUTH
DAKOTA AGAINST U S WEST
COMMUNICATIONS, INC. AND FIRSHEL,
INC. REGARDING BILLING ISSUESTC- 98-194
U S WEST COMMUNICATIONS, INC.'S
OPPOSITION TO MOTION OF FIRSHEL,
INC. TO SUPPLEMENT ARGUMENT

U S WEST Communications, Inc. ("U S WEST") objects to FirsTel, Inc.'s ("FirsTel") motion to supplement argument. U S WEST is the moving party on the motion to dismiss. At the regular Commission meeting on March 9, 1999 FirsTel, who had filed a written response as to its position, did not request any additional time to provide any legal argument nor did it object to the time that was allowed for it to furnish its response. FirsTel has now moved for additional time to submit argument without any specific reasons as to why these additional arguments could not have presented in its written or oral arguments to the Commission. U S WEST should have the opportunity as the moving party to file the final reply on this matter. U S WEST objects to simultaneous filings to supplement the record in this matter. If supplemental filings are to be granted, U S WEST should be given an opportunity to respond to FirsTel. FirsTel has, however, had an adequate opportunity to present its arguments and supplemental arguments should not be allowed.

The only reason that a continuance was allowed was to provide the Commission's counsel additional time to study this matter. U S WEST, therefore, objects to any arguments being made by FirsTel or alternatively, U S WEST should be afforded an opportunity to respond to any arguments by FirsTel.

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DATED this 10th day of March, 1999


Thomas J. Welk
BOYCE, MURPHY, McDOWELL &
GREENFIELD, L.L.P.
101 North Phillips Avenue, Suite 600
P O Box 5015
Sioux Falls, SD 57117-5015
(605) 336-2424

Todd Lundy
U S WEST Communications, Inc
1801 California Street, Suite 5100
Denver, CO 80202
(303) 672-2783
Attorneys for U S WEST Communications, Inc

CERTIFICATE OF SERVICE

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Murphy, McDowell & Greenfield, L.L.P., and on the 10th day of March, 1999, at approximately 4:30 pm true and correct copies of U S WEST Communications, Inc.'s Opposition to Motion of FirstTel, Inc. to Supplement Argument were personally served via facsimile on the following:

Todd D Epp
Lynn, Jackson, Shultz & Lebrun
U S Bank Building
141 N Main Avenue
Sioux Falls, SD 57104

332-4249

Robert C. Riter, Jr.
Riter, Mayer, Hofer, Wattier & Brown
319 S Coteau
P O Box 280
Pierre, SD 57501-0280

605-224-7102

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

605-773-3809


Thomas J. Welk

0002-44-001-0

LAW OFFICES
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R. C. RITER (1912-1994)
E. D. MAYER
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ROBERT C. RITER, JR.
JERRY L. WATTIER
JOHN L. BROWN

TRAVIS B. JONES, ASSOCIATE

TELEPHONE
605-224-5825
TELECOPIER
605-224-7102

March 11, 1999

RECEIVED

MAR 11 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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

Re: In the Matter of the Complaint Filed
by Basec.Net, Huron, South Dakota
Against U.S. West Communications, Inc.
and Firstel, Inc.
TC 98-194

Dear Mr. Bullard:

Herewith hand delivered to you please find original and ten
copies of Memorandum in Opposition to US West Communications,
Inc.'s Motion to Dismiss Crossclaim.

Also enclosed is Certificate of Service relating to the
Motion.

Please file the enclosures.

Thank you.

Very truly yours,

RITER, MAYER, HOFER, WATTIER
& BROWN, LLP

By: 

Robert C. Riter, Jr.

RCR Jr-wb

Enclosures

10022.44.005-10

RECEIVED

MAR 11 1999

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

IN THE MATTER OF THE COMPLAINT FILED BY) TC 98-194
BASEC.NET, HURON, SOUTH DAKOTA, AGAINST) MEMORANDUM IN
U S WEST COMMUNICATIONS, INC. AND) OPPOSITION TO US
FIRSTEL, INC.) WEST COMMUNICATIONS,
INC.'S MOTION TO
DISMISS CROSSCLAIM

There are two sections of the Resale Agreement pertinent herein. While US West Communications, Inc. rests its argument on VII (Q), likewise VII (R) (State Commission Arbitration Issues) is of equal consideration.

US West cites Keymer v. Management Recruiters International, Inc., 160 F. 3d 1154 (December 4, 1998), for its argument that if a contract is clear and unambiguous the Court need not go beyond its plain language. That case further holds, however, that the general policy in favor of arbitration "does not operate without regard to the intent of the contracting parties, for arbitration is a matter of consent, not of coercion." Slip Opinion, at page 5.

While US West also cites general law from South Dakota regarding interpretations of contract, they neglect to remind the Commission that our Courts will not interpret provisions to have no meaning, but rather will read contracts to give meaning to all provisions thereof. Dail v. Vodicka, 237 NW 2d 7, 9 (S.D. 1975).

US West suggests that there is no conflict in its interpretations of sections R and Q of paragraph VII. US West submits that only issues of terms, services and network elements of interconnection are appropriate for arbitration before the State Commission, however, section R does not so limit itself. While that may be a suggested interpretation, the Public Utilities Commission

should not so interpret that provision unless it determines it to be the true intent of the contracting parties.

Our Courts have held that a contract should be "liberally construed" to protect the public interest, where that interest is involved. First Northwestern Trust Co. v. Family Homes, 303 NW 2d 352, at 356 (S.D. 1981). In this case, certainly it is in the public's interest that the Public Utilities Commission is the entity which resolves claims of the nature asserted by Basec.Net and involving all three parties. See, SDCL Chapter 49-13. Accordingly, the Resale Agreement should be interpreted liberally to accomplish that end.

Also, the American Arbitration Act, to which reference is made in the Resale Agreement, appears to more particularly consider judicial proceedings before Courts rather than administrative proceedings of a regulatory body such as are involved herein. See, e.g. 9 U.S.C. § 3.

Also, while paragraph Q speaks of "any claim, controversy or dispute", it refers to those "between the parties". In this case the claims, controversies and disputes have been asserted by Basec.Net. Respondents, FirstTel, Inc. and US West Communications, Inc. are responding to those claims. In that regard, the Complaint of Basec.Net on the last page, second to last paragraph, claims damages "due to inefficiencies of US West" and goes on to further state "US West has made it difficult . . . to deliver services . . ." Clearly all issues are intertwined. Only by considering the ultimate facts regarding all claims can resolution be made.

The Resale Agreement does not evidence a clear intention to limit arbitration of the intertwined issues involved to the American

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MAR 11 1999

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE COMPLAINT FILED BY) TC 98-194
BASEC.NET, HURON, SOUTH DAKOTA, AGAINST)
U S WEST COMMUNICATIONS, INC. AND) CERTIFICATE OF SERVICE
FIRSTEL, INC.)


I, Robert C. Riter, Jr., certify that a true and correct copy of Memorandum in Opposition to US West Communications, Inc.'s Motion to Dismiss Crossclaim was mailed by first class mail to each of the following on the 11th day of March, 1999, and faxed to each of the following on the 11th day of March, 1999:

Karen Cremer
Public Utilities Commission
500 E. Capitol
Pierre, SD 57501
Fax: 605-773-3809

Todd D. Epp
Attorney at Law
P. O. Box 1920
Sioux Falls, SD 57101-3020
Fax: 605-332-4249

Todd Lundy
US West Communications, Inc.
1801 California Street
Ste. 5100
Denver, CO 80202
Fax: 303-298-8197

Thomas J. Welk
Jeffrey C. Clapper
Attorneys at Law
P. O. Box 5015
Sioux Falls, SD 57117-5015
Fax: 605-334-0618



Robert C. Riter, Jr.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED	)	ORDER GRANTING MOTION
BY BASEC.NET, HURON, SOUTH DAKOTA,	)	TO AMEND, DENYING
AGAINST U S WEST COMMUNICATIONS, INC.	)	MOTION TO SUPPLEMENT
AND FIRS TEL, INC. REGARDING BILLING	)	ARGUMENT, AND
ISSUES	)	GRANTING MOTION TO
	)	DISMISS CROSS-CLAIM
	)	TC98-194

On October 26, 1998, the Public Utilities Commission (Commission) received a complaint by Marvie Tschetter of Basec Net, Huron, South Dakota (Basec Net), against U S WEST Communications, Inc. (U S West) and FirstTel, Inc. (FirstTel). Basec Net states that it purchased an existing business and contacted U S WEST to continue customer access through T-1 lines. U S WEST informed Basec Net it could not take over payment of the lines unless the previous owner's debt was paid in full. Basec Net decided to move the equipment and obtain services through FirstTel. After obtaining the services, Basec Net was informed by U S WEST that they would be charged for installation/construction fees, the old billings of the previous owner, and additional charges for monthly service until other options were available. Neither U S WEST nor FirstTel disclosed these costs prior to providing service. FirstTel offered a plan with minimal installation fees but could not offer the service for 15-20 days which would not allow Basec Net's customers access to their services. Basec Net seeks the following relief: "1) Require U S WEST to inform promptly of facilities issues. 2) Some sort of financial compensation for loss of revenue."

Pursuant to ARSD 20 10 01 08 01 and 20 10 01 09, if a complaint cannot be settled without formal action, the Commission shall determine if the complaint shows probable cause of an unlawful or unreasonable act, rate, practice or omission to go forward with the complaint.

On November 3, 1998, at its duly noticed meeting, the Commission reviewed the complaint. The Commission voted unanimously to find probable cause and served the complaint on U S WEST and FirstTel. U S WEST filed its Answer to Complaint and Counterclaim on November 30, 1998. FirstTel filed its Answer to Complaint of Basec Net and Cross-Claim against U S WEST Communications, Inc., on November 30, 1998. Basec Net filed its Answer to U S WEST's Counterclaim on December 11, 1998. U S WEST filed its Answer to Cross-Claim of FirstTel on December 18, 1998.

A hearing was set for this matter for March 31 to April 1, 1999, beginning at 8:30 o'clock A.M., on March 31, in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The issues at the hearing were: (1) whether U S WEST and/or FirstTel committed an unlawful or unreasonable act, rate, practice or omission in providing or failing to provide services to Basec Net and, if so, what relief would be appropriate; (2) whether Basec Net is liable to U S WEST for payment for services provided by U S WEST; and (3) whether FirstTel is entitled to complete indemnity against U S WEST or, alternatively, a determination of proper contribution.

On March 1, 1999, U S WEST filed a Motion to Amend U S WEST's Answer to Cross-Claim of FirstTel. On March 3, 1999, U S WEST filed a Motion to Dismiss Cross-Claim of FirstTel against U S WEST. On March 8, 1999, FirstTel filed a response. At its March 9, 1999, meeting, the Commission considered this matter. The Commission has jurisdiction in this matter pursuant to

SDCL Chapters 1-26, 49-2, 49-13, including 49-13-1 through 49-13-14 inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, 49-31-60 through 49-31-68, inclusive, and ARSD 20 10 01 07 01 through 20 10 01 28 inclusive. After listening to the arguments of the parties the Commission unanimously voted to grant U S WEST's Motion to Amend. The Commission took the Motion to Dismiss Cross-Claim under advisement.

On March 9, 1999, FirstTel filed a Motion to Supplement Argument. On March 10, 1999, U S WEST filed its Opposition to Motion of FirstTel to Supplement Argument. On March 11, 1999, FirstTel filed its supplemental memorandum. At its March 11, 1999, meeting, the Commission again considered the matter. The Commission voted 2-1 to deny FirstTel's Motion to Supplement Argument (Chairman Burg, dissenting). The Commission then unanimously voted to grant U S WEST's Motion to Dismiss Cross-Claim of FirstTel against U S WEST. The Commission noted that FirstTel's Cross-Claim specifically states that it is asking for indemnification pursuant to the Agreement for Service Resale Between FirstTel, Inc. and U S WEST Communications, Inc. (Resale Agreement). The Commission found that since this is a claim for a specific remedy contained in the Resale Agreement, paragraph VII(Q) applies which provides that a claim between the parties is to be resolved by arbitration conducted by a single arbitrator under the American Arbitration Association rules.

It is therefore

ORDERED, that the Motion to Amend U S WEST's Answer to Cross-Claim of FirstTel is granted, and it is

FURTHER ORDERED, that FirstTel's Motion to Supplement Argument is denied, and it is

FURTHER ORDERED, that U S WEST's Motion to Dismiss Cross-Claim of FirstTel against U S WEST is granted.

Dated at Pierre, South Dakota, this 18th day of March, 1999.

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: Nelaine Kalkbrenner

Date: 3/19/99

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION

James A. Burg
JAMES A. BURG, Chairman

(dissenting on denial of Motion to Supplement Argument)

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

FAX TRANSMISSION

US BANK BUILDING
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TELEPHONE: (605)-332-5999
FAX: (605) 332-4249
E-MAIL: jlawsf@lynnjackson.com

DATE: March 30, 1999

TIME: 12:11 PM

TO: Bill Bullard (PUC), Tom Welk (US West), Bob Riter (FirsTel), Marvie Tschetter
(Basec Net)

FROM: Todd D. Epp
Client: Basec Net
File No: 98-2150-1

FAX NUMBER: Bill—(605)-773-3809, Marvie—(605) 352-3277; Tom—334-0618, Bob—(605)-
224-7102

We are sending 2 pages, including the Fax Cover Letter.

IF YOU HAVE ANY QUESTIONS REGARDING THIS TRANSMISSION, PLEASE CONTACT:
TODD OR SANDY AT 605-332-5999.

Comments/Message: Please see attached letter.

Enclosure(s):

- ☒ Not sent
☐ Mailed
☐ Sent by Overnight
☐ Courier

To Sender: Do you wish to be contacted if Fax CANNOT
be sent within one hour? ☒ Yes ☐ No

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March 30, 1999

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Steven J. Oberg
Robert Quastner
Molly E. Slaughter

Kelton S. Lynn
(1980-1974)
Horace R. Jackson
(1981-1987)

Via Fax

Mr. Bill Bullard
Executive Director
Public Utilities Commission
500 E. Capitol
State Capitol Building
Pierre, SD 57501

Re: IN THE MATTER OF THE COMPLAINT OF BASEC.NET OF HURON, SOUTH
DAKOTA, AGAINST U.S. WEST TELECOMMUNICATIONS, INC. AND FIRSTTEL,
INC., TC-98-194
Our File # 98-2150-1

Dear Bill:

This letter is to inform you that the parties in this action have agreed in principle to a settlement of the matter. However, we are still trying to finalize the settlement document. Therefore, with settlement nearly complete, Basec.Net will not be in attendance at the hearing scheduled for March 31 and April 1, 1999 in Pierre. Thus, the Commission may want to cancel the upcoming hearing. I will formally notify the Commission once the settlement agreement is completed and signed.

Thank you for all the courtesies you and the Commission have shown the parties in this matter. Please call me if you have any questions.

Best regards,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

Todd D. Epp

Todd D. Epp

cc: Marvie Tschetter
Tom Welk, Esq.
Robert C. Riter, Esq.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT FILED)	ORDER CANCELLING
BY BASEC.NET, HURON, SOUTH DAKOTA,)	HEARING
AGAINST U S WEST COMMUNICATIONS, INC.)	
AND FIRSTTEL, INC. REGARDING BILLING)	TC98-194
ISSUES)	

On October 26, 1998, the Public Utilities Commission (Commission) received a complaint by Marvie Tschetter of Basec.Net, Huron, South Dakota (Basec.Net), against U S WEST Communications, Inc. (U S West) and FirstTel, Inc. (FirstTel). Basec.Net states that it purchased an existing business and contacted U S WEST to continue customer access through T-1 lines. U S WEST informed Basec.Net it could not take over payment of the lines unless the previous owner's debt was paid in full. Basec.Net decided to move the equipment and obtain services through FirstTel. After obtaining the services, Basec.Net was informed by U S WEST that they would be charged for installation/construction fees, the old billings of the previous owner, and additional charges for monthly service until other options were available. Neither U S WEST nor FirstTel disclosed these costs prior to providing service. FirstTel offered a plan with minimal installation fees but could not offer the service for 15-20 days which would not allow Basec.Net's customers access to their services. Basec.Net seeks the following relief: "1) Require U S WEST to inform promptly of facilities issues. 2) Some sort of financial compensation for loss of revenue."

Pursuant to ARSD 20:10:01:03.01 and 20:10:01.09, if a complaint cannot be settled without formal action, the Commission shall determine if the complaint shows probable cause of an unlawful or unreasonable act, rate, practice or omission to go forward with the complaint.

On November 3, 1998, at its duly noticed meeting, the Commission reviewed the complaint. The Commission voted unanimously to find probable cause and served the complaint on U S WEST and FirstTel. U S WEST filed its Answer to Complaint and Counterclaim on November 30, 1998. FirstTel filed its Answer to Complaint of Basec.Net and Cross Claim against U S WEST Communications, Inc., on November 30, 1998. Basec.Net filed its Answer to U S WEST's Counterclaim on December 11, 1998. U S WEST filed its Answer to Cross-Claim of FirstTel on December 18, 1998.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26, 49-2, 49-13, including 49-13-1 through 49-13-14, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, 49-31-60 through 49-31-68, inclusive, and ARSD 20:10:01:07.01 through 20:10:01:28, inclusive. The Commission may rely upon any or all of these or other laws of this state in making its determination.

By order dated January 25, 1999, a hearing was scheduled for March 31 to April 1, 1999, beginning at 8:30 o'clock A.M., on March 31, in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. On March 30, 1999, the Commission received a letter from the Complainant's attorney stating that the parties have agreed in principle to a settlement of the matter, that the Complainant will not be in attendance at the hearing, and that the Commission may want to cancel the hearing. Based on the request of Complainant's attorney, the hearing scheduled for March 31 to April 1, 1999, is cancelled. It is therefore

ORDERED, that the hearing scheduled for March 31 to April 1, 1999, is cancelled.

Dated at Pierre, South Dakota, this 30th day of March, 1999.

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 William Kachko

Date 3/30/99

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

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JUL 12 1999

LAW OFFICES

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Steven J. Uberg
Robert Guszak
Molly E. Slaughter

Kelton S. Loran
(1946-1974)
Horace R. Jackson
(1961-1987)

July 9, 1999

Ms. Karen Cremer
Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

RE: In the Matter of the Complaint filed by Basec.Net against U.S. West Communications, Inc. and FirsTel, Inc.
TC-98-194
Our file #98-2150-1

Dear Karen:

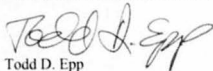
Please find enclosed a signed Stipulation and proposed Order for Dismissal With Prejudice in the above-referenced matter. The parties have come to a settlement. Please submit the proposed Order for Dismissal to the Commission for their review and, hopefully, their approval.

Please call me if you have any additional questions. Also, please notify me as to when this will be placed on the PUC docket.

Thank you for your assistance in this matter.

Best regards,

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.



Todd D. Epp

TDE/mjg

Ms. Karen Cremer

July 9, 1999

Page 2

Enclosure

cc: Marvie Tschetter (w/encl.)
Thomas J. Welk (w/encl.)
Todd Lundy (w/encl.)
Robert C. Riter, Jr. (w/encl.)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

JUL 12 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE)
COMPLAINT OF BASEC.NET OF)
HURON, SOUTH DAKOTA,)
AGAINST U S WEST)
COMMUNICATIONS, INC. AND)
FIRSTEL, INC.)

TC-98-194

STIPULATION AND ORDER
FOR DISMISSAL WITH PREJUDICE

IT IS HEREBY STIPULATED AND AGREED by and Todd D. Epp, for Lynn, Jackson, Shultz & Lebrun, P.C., of PO Box 1920, Sioux Falls, SD 57101-3020, lawyers for the above-named Basec.Net of Huron, South Dakota, Thomas J. Welk., for Boyce, Murphy, McDowell & Greenfield, PO Box 5015, Sioux Falls, SD 57117, lawyers for the above-named U.S. West Communications, Inc. and Robert C. Riter, Jr., for Riter, Mayer, Hofer, Wattier & Brown, lawyers for the above-named Firstel, Inc., that the above-entitled Complaint has been settled and that the lawyers, having the authority so to do, request that the Public Utilities Commission enter its Order of Dismissal of this action, with prejudice, each party to pay its own attorney fees and costs, without further notice to either party.

Dated this 7th day of July, 1999.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

By: Todd D. Epp

Todd D. Epp
P.O. Box 1920
Sioux Falls, SD 57101-3020

Attorneys for Basec.Net of Huron, S.D.

44-3891-8

BOYCE MURPHY, McDOWELL & GREENFIELD

By: Thomas J. Weik

Thomas J. Weik
P.O. Box 5015
Sioux Falls, SD 57117

Attorneys for U.S. West Communications, Inc.

RITER, MAYER, HOFER, WATTIER & BROWN

By: Robert C. Riter, Jr.

Robert C. Riter, Jr.
P.O. Box 280
Pierre, SD 57501-0280

Attorneys for FirsTel, Inc.

ORDER FOR DISMISSAL

It appearing to the satisfaction of the Public Utilities Commission, upon reviewing the foregoing Stipulation, that this matter has been settled and that Basec Net's Complaint against U.S. West Communications, Inc. and FirsTel, Inc. should be dismissed with prejudice, each party to pay its own attorney fees and costs.

NOW, THEREFORE, IT IS HEREBY

ORDERED, ADJUDGED AND DECREED that the above-entitled Complaint is hereby dismissed, with prejudice, each party to pay its attorney fees and costs.

Dated this ___ day of June, 1999.

PUBLIC UTILITIES COMMISSION

By: Its

0150044

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

IN THE MATTER OF THE COMPLAINT FILED)	ORDER DISMISSING
BY BASEC.NET, HURON, SOUTH DAKOTA,)	COMPLAINT AND CLOSING
AGAINST U S WEST COMMUNICATIONS, INC.)	DOCKET
AND FIRS TEL, INC. REGARDING BILLING)	
ISSUES)	TC98-194

On October 26, 1998, the Public Utilities Commission (Commission) received a complaint by Marvie Tschetter of Basec Net, Huron, South Dakota (Basec Net), against U S WEST Communications, Inc. (U S West) and FirstTel, Inc. (FirstTel). Basec Net states that it purchased an existing business and contacted U S WEST to continue customer access through T-1 lines. U S WEST informed Basec Net it could not take over payment of the lines unless the previous owner's debt was paid in full. Basec Net decided to move the equipment and obtain services through FirstTel. After obtaining the services, Basec Net was informed by U S WEST that they would be charged for installation/construction fees, the old billings of the previous owner, and additional charges for monthly service until other options were available. Neither U S WEST nor FirstTel disclosed these costs prior to providing service. FirstTel offered a plan with minimal installation fees but could not offer the service for 15-20 days which would not allow Basec Net's customers access to their services. Basec Net seeks the following relief: "1) Require U S WEST to inform promptly of facilities issues. 2) Some sort of financial compensation for loss of revenue."

Pursuant to ARSD 20 10 01 08 01 and 20 10 01 09, if a complaint cannot be settled without formal action, the Commission shall determine if the complaint shows probable cause of an unlawful or unreasonable act, rate, practice or omission to go forward with the complaint.

On November 3, 1998, at its duly noticed meeting, the Commission reviewed the complaint. The Commission voted unanimously to find probable cause and served the complaint on U S WEST and FirstTel. U S WEST filed its Answer to Complaint and Counterclaim on November 30, 1998. FirstTel filed its Answer to Complaint of Basec Net and Cross Claim against U S WEST Communications, Inc., on November 30, 1998. Basec Net filed its Answer to U S WEST's Counterclaim on December 11, 1998. U S WEST filed its Answer to Cross-Claim of FirstTel on December 18, 1998.

By order dated January 25, 1999, a hearing was scheduled for March 31, 1999. On March 30, 1999, the Commission received a letter from the Complainant's attorney stating that the parties have agreed in principle to a settlement of the matter, that the Complainant will not be in attendance at the hearing, and that the Commission may want to cancel the hearing. Based on the request of Complainant's attorney, the hearing scheduled for March 31 was cancelled. On July 12, 1999, the Commission received a Stipulation and Order for Dismissal with Prejudice executed by all parties. On July 29, 1999, at a regularly scheduled meeting, Commission Staff recommended that the complaint be dismissed and the docket closed.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL 49-13-1, 49-13-4, 49-13-13, 49-13-14 1, 49-31-3, 49-31-7, 49-31-7 1, 49-31-11, 49-31-60 through 49-31-68, inclusive, and ARSD 20 10 01 08 01 and 20 10 01 09. The Commission voted unanimously to dismiss the complaint with prejudice and close the docket. It is therefore

0150.44.296

6th

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: *William J. Kuehn*

Date: *8/6/99*

(OFFICIAL SEAL)

By NEIL M. KARP

Date 8/6/99

(OFFICIAL SEAL)

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

2