

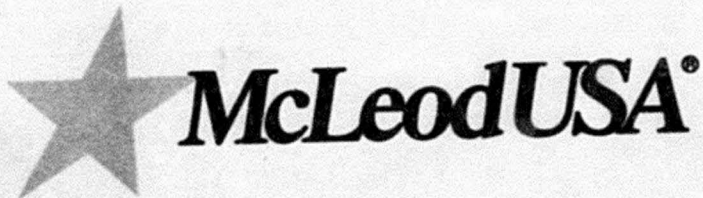
DOCKET NO.

**In the Matter of \_\_\_\_\_**

**IN THE MATTER OF THE PETITION OF  
DAKOTA TELECOM, INC. TO AMEND  
ITS CERTIFICATE OF AUTHORITY TO  
ALLOW DAKOTA TELECOM, INC. TO  
PROVIDE SERVICE TO THE  
JEFFERSON, SOUTH DAKOTA  
EXCHANGE**

## Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
12/6 99	Filed and Docketed;
12/9 99	Weekly Filings;
12/23 99	Petition to Intervene; Reply to Claim of <sup>PC Jefferson Telephone Co</sup> <del>Board</del> <sup>to</sup> <del>File</del> Request;
1/4 99	Response to Petition to Intervene;
1/6 00	Order for Admission by Resident Practicing Attorney (Patrick J. Heutel);
1/6 00	Order for Admission by Resident Practicing Attorney (William P. Stanton);
1/12 00	Order Granting Intervention;
1/1 01	Request to Dismiss Notice of Intent and Request to Amend Certificate;
1/24 01	Order Dismissing and Closing Docket;
1/24 01	Docket Closed.



December 2, 1999

**RECEIVED**

DEC 06 1999

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

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

RE: DTI Notice of Intent

Dear Mr. Bullard:

Please find enclosed the following regarding the above referenced matter:

1. Original and 5 copies of the Notice of Intent and Request to Amend Certificate with attachments.
2. Affidavit of Service by mail.

Thank you.

Sincerely,

Patrick J. Mastel  
Staff Attorney

Cc Jefferson Telephone



10 7 7 1 2 4  
**RECEIVED**  
DEC 06 1999  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

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

IN THE MATTER OF THE CERTIFICATE OF )  
AUTHORITY TO PROVIDE COMPETITIVE )  
LOCAL EXCHANGE SERVICE IN )  
JEFFERSON, SOUTH DAKOTA )

NOTICE OF INTENT AND  
REQUEST TO AMEND  
CERTIFICATE

**I.**

On October 22, 1996 the Public Utilities Commission (PUC) issued a Final Order and Decision Granting a Certificate of Authority to Dakota Telecorn, Inc. (DTI) to provide telecommunications services, including local exchange services, throughout the State of South Dakota. This grant was subject to the Commission's restriction with respect to rural telephone companies.

**II.**

DTI has been providing facilities based competitive local exchange services under that Certificate of Authority in Canton, Viborg, Centerville, Harrisburg, Tea, and Yankton, South Dakota and will be commencing service in the near future in North Sioux City and Elk Point. In the year 2000 DTI plans to add service to the residents of Dakota Dunes, and, upon the granting of this petition, Jefferson, South Dakota.

**III.**

Section 251(f)(1)(B) of the Telecommunications Act of 1996 and SDCL § 49-31-79 require that DTI provide to the Commission a notice of its bona fide request for

interconnection services. Attached hereto is a copy of that request. (Ex. 1) This filing is the required notice to the Commission.

IV.

DTI requests that the Commission amend its previous Order granting DTI its certificate and grant DTI the authority to provide service to the entire exchange of Jefferson, South Dakota, an exchange currently served by Long Lines, Inc. d/b/a Jefferson Telephone Company (Jefferson), a rural telephone company as that term is defined in Federal and State law. This request is made pursuant to SDAR 20:10:32:03(16) and SDCL §49-31-79.

V.

DTI is not seeking a waiver for any portion of the Jefferson exchange and service area in that DTI plans to serve the entire Jefferson exchange area with its competitive local exchange service.

VI.

DTI requests that any requirement for additional filings concerning financial information, management, principal office, types of services provided etc. as stated in 20:10:32:03 and 20:10:32:05 be waived as the current information is virtually identical to that attached to the original application and would be duplicated here. The Commission has previously reviewed the financial, technical, and managerial qualifications of DTI from these filings and granted a Certificate of Authority to DTI in October of 1996.

VII.

DTI will comply with the service requirements imposed by the Commission within the 24 month allotted time frame as provided in 20:10:32:15.



### VIII.

DTI understands that pursuant to 47 USC §251(f), and SDCL §49-31-79, the Commission must find that this request will not be unduly economically burdensome to Jefferson, is technically feasible, and is consistent with the Universal Service provisions of 47 USC §254.

### IX.

The Request for Amendment is not unduly economically burdensome in that DTI is only seeking a reciprocal compensation agreement with Jefferson. DTI has previously entered into a similar agreement with Fort Randall Telephone (Ex. 2, attached) for similar smaller communities, Viborg and Centerville. Therefore, if it is not economically burdensome for Fort Randall, it certainly can not be economically burdensome for Jefferson.

### X.

This Request for Amendment is technically feasible in that DTI has entered into similar agreements with Fort Randall Telephone in South Dakota and DTI and Fort Randall have been interconnected and exchanging traffic for more than two years.

### XI.

The Service to be provided by DTI to the Jefferson exchange will be in full compliance with the Universal Service Requirements set forth in 47 USC §254 in that:

- 1) The service provided will be the same high quality service that DTI provides to the communities listed in II. above. The rates charged will be fair, reasonable, and competitive as can be seen by the attached rate schedule from Elk Point (Ex. 3), a community currently under construction by DTI and

located within 10 miles of Jefferson. The rates, terms and conditions of service for Elk Point will be the same for Jefferson.

- 2) The service will contain the same advanced features as those which DTI offers in other cities including Caller ID, Call Waiting, Call Forwarding, Speed Calling and 3-Way Calling. These are the same services that DTI provides to customers in larger urban areas.
- 3) All residents of the exchange area will have access to these services if they so desire.
- 4) All schools, libraries and health care facilities will have access to these advanced telecommunication services. For example, the library for Union County/Elk Point Jefferson School is in Elk Point and will be connected to these advanced services in the near future.
- 5) The Jefferson exchange will be within the local calling area of the Elk Point/Jefferson School District and North Sioux City, which will enhance Universal Service for these communities.

Accordingly, DTI respectfully requests that the application be granted.

Respectfully submitted this 1st day of December, 1999.



Barbara E. Berkenpas  
Patrick J. Mastel  
William P. Heaston  
Dakota Telecom, Inc.  
29705 453<sup>rd</sup> Ave.  
Irene, SD 57037-0066  
605.263.3301  
Its Attorneys



# McLeodUSA®

October 13, 1999

Mr. James McKenna, EVP  
Long Lines, Ltd. d/b/a Jefferson Communications, LLC  
1 River Place  
600 Stevens Port Dr., Suite 150  
Dakota Dunes, SD 57049

RE: **Bona Fide Request-Jefferson, South Dakota Telephone Exchange**

Dear Mr. McKenna:

Pursuant to the provisions of the Communications Act of 1934 (47 U.S.C. §251 *et. seq.*), as amended, and the existing and future Federal Communications Commission (FCC) rules, regulations, and policies promulgated thereunder, and SDCL 49-31-79, Dakota Telecom, Inc., Dakota Telecommunications, Inc., Dakota Cooperative Telecommunications, Inc., and McLeodUSA, (hereinafter Dakota), request that Long Lines, Ltd., d/b/a Jefferson Communications, LLC, begin negotiations with Dakota to formulate an agreement including, but not limited to an **INTERCONNECTION AGREEMENT** as provided for in 47 U.S.C. §§251-252 and SDCL 49-31-79 between Long Lines, Ltd. d/b/a Jefferson Communications, LLC and Dakota in the following exchange:

Jefferson, South Dakota

Dakota makes this **BONA FIDE REQUEST** in good faith and pursuant to 47 U.S.C. 251 (f)(1)(A) to achieve those goals set forth by the Communications Act of 1934, as amended and specifically to negotiate an interconnection agreement as to those facilities Dakota plans to build in the Jefferson, South Dakota market area. Dakota desires to enter into an arrangement with Long Lines Ltd. d/b/a Jefferson Communications, LLC similar to the agreement that Dakota entered into with Fort Randall Telephone Company, which is pending approval before the South Dakota PUC. Consistent with the provisions of SDCL 49-31-79, DTI would seek to enter into an agreement on a voluntary basis, as was the case with Fort Randall.

William P. Heaston is designated by Dakota as the individual with the authority to make binding representations on behalf of Dakota. Dakota requests that Long Lines Ltd., d/b/a Jefferson Communications, LLC designate an individual with comparable authority for purposes of these negotiations.

Dakota looks forward to the commencement and finalization of these negotiations.

Sincerely,

/s/

William P. Heaston  
Associate General Counsel  
605-263-7212

cc South Dakota PUC

Ex 1

**INTERCONNECTION AGREEMENT**

**between**

**FORT RANDALL TELEPHONE COMPANY**

**and**

**DAKOTA TELECOM, INC.**

**and**

**DAKOTA TELECOMMUNICATIONS SYSTEMS, INC.**

**for**

**SOUTH DAKOTA**



## INTERCONNECTION AGREEMENT

This Interconnection Agreement, made as of the 8<sup>th</sup> day of September, 1998 is between Dakota Telecom, Inc. and Dakota Telecommunications Systems, Inc. (collectively "Dakota") and Fort Randall Telephone Company ("Fort Randall").

### I. RECITALS

Pursuant to this Interconnection Agreement ("Agreement"), Dakota and Fort Randall (collectively, "the Parties") will extend certain facility arrangements to one another within the Centerville and Viborg telephone exchange service areas and Dakota is granted the option of reselling Fort Randall's retail telecommunications services within any of the exchange areas served by Fort Randall in the state of South Dakota. This Agreement includes terms, conditions, and prices for resale and facilities-based network interconnection.

### II. SCOPE OF AGREEMENT

- A. This Agreement sets forth the terms, conditions and prices under which the parties agree to provide interconnection and reciprocal compensation for the exchange of local traffic between Fort Randall and Dakota for the purpose of offering telecommunications services in the Centerville and Viborg, South Dakota, exchanges. It also sets forth the terms, conditions and prices under which Dakota may purchase for resale the telecommunications services offered by Fort Randall to end use retail customers in any Fort Randall exchange. 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, such action shall not be reasonably delayed, withheld or conditioned.

### III. DEFINITIONS

- A. "Act" means the Communications Act of 1934 (47 U.S.C. § 151, et. seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted judicially and in the duly authorized rules and regulations of the FCC or the Commission within its state of jurisdiction.
- B. "Calling Party Number" or "CPN" is a Common Channel Signaling ("CCS") parameter which refers to the number transmitted through a network identifying the calling party. Reference Technical Pub. 77342.

- C. "Commission" means the South Dakota Public Utilities Commission.
- D. "Common Channel Signaling" or "CCS" means a method of digitally transmitting call set-up and network control data over a special signaling network fully separate from the public voice switched network elements that carry the actual call. The CCS used by the Parties shall be Signaling System 7.
- E. "Interconnection" is as described in the Act and refers to the connection of separate pieces of equipment, facilities, or platforms between or within networks for the purpose of transmission and routing of telecommunications traffic.
- F. "LIS" is defined as local interconnection services.
- G. "Local Traffic" means traffic that is originated by an end user of one Party in either the Centerville or Viborg exchange and terminates to an end user of the other Party in either the Centerville or Viborg exchange.
- H. "North American Numbering Plan" or "NANP" means the numbering plan used in the United States that also serves Canada, Bermuda, Puerto Rico and certain Caribbean Islands. The NANP format is a 10-digit number that consists of a 3-digit NPA code (commonly referred to as the area code), followed by a 3-digit NXX code and 4-digit line number.
- I. "NXX" means the fourth, fifth and sixth digits of a ten-digit telephone number.
- J. "Party" means either Fort Randall or Dakota and "Parties" means Fort Randall and Dakota.
- K. "Point of Interface" or "POI" is a mutually agreed upon point of demarcation where the exchange of traffic between Fort Randall and Dakota takes place.
- L. "Telecommunications Carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in Section 226 of the Act).
- M. "Transit Traffic" is traffic that, for purposes of this Agreement only, neither originates nor terminates with the party providing the transit service. Transit traffic does not include switched access traffic, which shall be provided pursuant to each party's access tariffs.
- N. Terms not otherwise defined here, but defined in the Act or in regulations implementing the Act, shall have the meaning defined there.



#### **IV. RECIPROCAL TRAFFIC EXCHANGE**

##### **A. Scope**

Reciprocal traffic exchange addresses the exchange of traffic between Dakota end users located in the Centerville or Viborg exchanges and Fort Randall end users located in the Centerville or Viborg exchanges.

##### **B. Types of Traffic**

1. The types of traffic to be exchanged under this Agreement are limited to local traffic as described above.
2. The traffic not covered by the interexchange provisions of this Agreement includes all other traffic, including, but not limited to, IntraLATA toll traffic, Switched Access traffic, InterLATA toll traffic, EAS traffic other than calls between customers located in Centerville and Viborg, Transit Traffic, and certain ancillary traffic such as:
  - a. Directory Assistance
  - b. Operator call termination (busy line interrupt and verify)
  - c. 800/888 database dip
  - d. LIDB
  - e. Information services requiring special billing
  - f. Wireless traffic terminating on either Party's network from a Commercial Mobile Radio Service provider.

Certain other EAS traffic not covered by this Agreement is being exchanged by the Parties. This Agreement is not intended to alter or change those arrangements.

##### **C. Rate Structure – Local Traffic**

In those instances where Dakota interconnects with an end office for the purpose of exchanging Local Traffic, reciprocal and symmetrical transportation and termination shall be on a bill and keep basis of compensation. Bill and keep shall mean that the originating party has no obligation to pay transportation or terminating charges to the terminating party, regardless of any charges the originating party may assess its end users. If Dakota elects to interconnect at a host switch, for the purpose of exchanging Local Traffic with a subtending end office it shall arrange for

facilities between its network and a POI in the host exchange. The host switch charge set forth in Appendix A shall apply for all minutes of use originated by Dakota that terminate to an end office that subtends the host switch.

**D. LIS Interface Code Availability and Optional Features**

**1. Interface Code Availability**

Supervisory Signaling specifications, and the applicable network channel interface codes for LIS trunks, are the same as those used for Feature Group D Switched Access Service, as described in the Parties' applicable switched access tariffs.

**2. Optional Features**

**a. Inband MF Signaling**

Inband MF signaling is available for LIS trunks. Provisioning of the LIS trunks equipped with MF signaling is the same as that used for Feature Group D Switched Access.

[The following paragraphs (b) and (c) are dependent on Fort Randall's SS-7 provider's willingness to do the necessary data dips. Fort Randall is investigating this issue.]

**b. SS7 Out-of-Band Signaling.**

SS7 Out-of-Band Signaling is available using an interconnection at the Centerville and Viborg remote switches and at the Host switch located at Wagner. If Dakota elects to receive SS7, that service shall be provided subject to the conditions imposed by U S WEST Communications. Fort Randall shall provide these services to Dakota at the cost charged by U S WEST Communications to Fort Randall. Common Channel Signaling Access Capability Service, as set forth in this Agreement, must be ordered by Dakota when SS7 Out-of-Band Signaling is requested on LIS trunks.

**c. Clear Channel Capability**

Clear Channel Capability permits 24 DS0-64 kbit/s services or 1.536 Mbit/s of information on the 1.544 Mbit/s line rate. Clear Channel Capability is available for LIS trunks equipped with SS7 Out-of-Band Signaling. Clear Channel



Capability is only available on trunks to Fort Randall's switch located in Wagner, South Dakota; (Clear Channel Capability is not available on trunks to Fort Randall's end offices at Centerville or Viborg). Clear Channel Capability must be requested on the order for the new LIS trunks. The provisioning of the LIS trunks equipped with Clear Channel Capability is the same as that used for Feature Group D Switched Access Service.

#### **E. Testing**

##### **1. Acceptance Testing**

At the time of installation of the interconnection facilities group, and at no additional charge, the Parties will cooperatively test the same parameters tested for terminating Feature Group D Switched Access Service.

##### **2. Testing Capabilities**

- a. Terminating LIS testing is provided where equipment is available, with the following test lines: seven-digit access to balance (100 type), milliwatt (102 type), nonsynchronous or synchronous, automatic transmission measuring (105 type), data transmission (107 type), loop-around, short circuit, open circuit, and non-inverting digital loopback (108 type).
- b. In addition to LIS acceptance testing, other tests are available (e.g., additional cooperative acceptance testing, automatic scheduled testing, cooperative scheduled testing, manual scheduled testing, and non-scheduled testing) at the switched access tariff rate.

#### **F. Ordering**

1. When ordering LIS, the ordering Party shall specify on the service order: 1) the number of two-way LIS trunks to be interconnected at the POI; 2) the peak busy hour CCS from the Dakota end office.
2. A joint planning meeting will precede Dakota and Fort Randall trunking orders.
3. Due dates for installation of facilities will be determined on an individual case basis.
4. The provisions of Section V.B. will apply.

## **V. INTERCONNECTION**

### **A. Definition**

"Interconnection" is the linking of the Fort Randall and Dakota networks for the mutual exchange of traffic. Interconnection does not include the transport and termination of traffic.

### **B. Point of Interface**

The Parties agree to use a Point of Interface, limited to the interconnection of facilities between one Party's switch and the other Party's switch. A separate Point of Interface shall be used for each exchange and shall be located at a mutually selected location within each exchange. Should Dakota elect to interconnect with a host exchange for the purpose of exchanging Local Traffic with an end office served by the host, the point of interconnection shall be mutually selected within the host exchange boundaries. If Fort Randall and Dakota are unable to reach an agreement, the matter shall be subject to resolution through Section XV, Paragraph R of this Agreement..

### **C. Quality of Interconnection**

Fort Randall will not, for the purpose of interconnection, provide to Dakota less favorable terms and conditions than Fort Randall provides itself or in a manner less efficient than it would impose on itself. The quality of interconnection will be at least equal to that of Fort Randall's.

Both Parties agree to manage their network switches in accordance with the Bellcore LSSGR. The acceptable service levels for LIS and the criteria for applying protective controls will be administered in the same manner as the network management for Switched Access Service.

### **D. Physical Point of Interface (POI)**

Each Party is responsible for providing its own facilities, including the cost of those facilities, up to the actual physical POI. The Parties will negotiate the facilities arrangement between their networks and the physical POI.

### **E. Trunking Requirements**

1. The Parties agree to provide designed interconnection facilities that meet the same technical criteria and service standards, such as probability of blocking in peak hours and transmission standards, in accordance with industry standards.



2. Two-way dedicated LIS trunk groups will be used.
3. LIS Trunk group connections will be made at a DS1 or multiple DS1 level for facilities between each Party's network and the POI.
4. The Parties will provide Common Channel Signaling (CCS) to one another upon request by Dakota on LIS interconnection facilities between Dakota and Fort Randall's Wagner, South Dakota exchange. All CCS signaling parameters will be provided, including calling party number (CPN). All privacy indicators will be honored.
5. Where CCS is not provided, in-band multi-frequency (MF) wink start signaling will be provided.
6. The Parties shall terminate local traffic exclusively on the LIS trunk interconnection facilities.

**F. Interconnection Forecasting**

1. The Parties agree to meet within thirty (30) days of the approval of the Agreement by the Commission and annually thereafter to determine the forecasted facility needs for the succeeding 12-month period and shall include:
  - a. The use of Common Language Location Identifier (CLLI-MSG), which are described in Bellcore documents BR 795-100-100 and BR 795-400-100;
  - b. A description of major network projects anticipated for the following six months that could affect the other Party. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the following forecasting period. This planning will include the issues of network capacity, forecasting and compensation calculation, where appropriate.
3. If a trunk group is under 75 percent of centum call seconds (ccs) capacity on a monthly average basis for each month of any three-month period, either Party may request to resize the trunk group, which resizing will not be unreasonably withheld. If a resizing occurs, the trunk group shall not be left with less than 25 percent excess capacity. In all cases, grade of service objectives identified below shall be maintained.

4. Each Party shall provide the name of the person to contact for planning, forecasting and trunk servicing purposes.

**G. Service Interruptions**

1. Standards and procedures for notification of trunk disconnects will be jointly developed by the Parties. Neither Party shall be expected to maintain active status for a trunk disconnected by the other Party for an extended or indefinite period of time. Collectively, the Parties will use their best good faith efforts to complete and agree on such plan. The first meeting to develop the plan shall occur within 30 days of the Commission approval of the Agreement.
2. The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not: 1) interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services; 2) cause damage to their plant; 3) violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities; or 4) create hazards to the employees of either Party or to the public. Each of these requirements is hereinafter referred to as an "Impairment of Service."
3. If either Party causes an Impairment of Service, as set forth in Section V.G.2., the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem. The Impaired Party shall advise the Impairing Party that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, the Impaired Party may temporarily discontinue use of the affected circuit, facility or equipment.
4. Each Party shall be solely responsible, and bear the expense, for the overall design of its services. Each Party shall also be responsible for any redesign or rearrangement of its services that may be required because of changes which occur for any reason in facilities, operations or procedures, minimum network protection



criteria, and operating or maintenance characteristics of the facilities.

5. To facilitate trouble reporting and to coordinate the repair of the service provided by each Party to the other under this Agreement, each Party shall designate a Trouble Reporting Control Office (TRCO) for such service. Each Party shall provide a method for receiving trouble reports on a 24 hour basis. A mechanized recording process that is reviewed during normal business hours shall satisfy this requirement.
6. Where new facilities, services and arrangements are installed, the TRCO shall ensure that continuity exists and take appropriate transmission measurements before advising the other Party that the new circuit is ready for service.
7. Each Party shall furnish a trouble reporting telephone number.
8. Before either Party reports a trouble condition, they shall use their best efforts to be sure that the trouble is not caused by its own facilities.
  - a. In cases where a trouble condition affects a significant portion of the other's service, the Parties shall assign the same priority provided to other interconnecting carriers.
  - b. The Parties shall cooperate in isolating trouble conditions.

## **VI. RESALE OF LOCAL SERVICES**

### **A. Telecommunications Services Provided for Resale**

1. Subject to the limitations of paragraph 4 of this Subsection, Dakota may resell the retail telecommunications services Fort Randall offers in a particular exchange to customers residing within that exchange.
2. Dakota shall give Fort Randall 90 days written notice before Fort Randall shall be obligated to offer retail services for resale. This notice is needed in order to permit Fort Randall to install the billing services described in paragraph H of this Section. Along with the notice, Dakota shall provide the first installment on of the nonrecurring charges listed in paragraph H of this Section.
3. Except as provided in paragraph 4 of this Subsection, all qualifying services shall be provided to Dakota at the retail rate less a discount of 8.8 percent.

4. Services that do not qualify for resale include: the provision of customer premises equipment, inside wire maintenance, voice mail, and internet services (other than local access to internet services). Services that qualify for resale, but only at their retail rate are: operator services, when purchased from another carrier; directory assistance, when purchased from another carrier; promotions of less than 90 days; and wholesale services, including switched and special access.
5. The following retail services shall be available for resale at the wholesale discount but may only be provided to the same class of customers that are qualified to receive the service from Fort Randall: Residential services; Centrex service; Optional Calling Plans; Volume or Term Discount Plans; promotional offerings of more than 90 days; and grandparented services.

**B. Support Services and Functions for Resold Services**

Fort Randall shall provide the following support services and functions for resold services: 911 and E911 service, including routing to the appropriate Public Safety Answering Point; routing to operator and directory assistance services; busy-line verification and emergency line interrupt; call blocking; access to Line Information Database. Fort Randall shall provide the information needed by the Public Safety Answering Point (PSAP) with respect to customers served by Dakota using resold services. Dakota shall be responsible for charging and recovering any special fees imposed for these services from the customers and forwarding those payments to the appropriate agency.

**C. Rates and Nonrecurring Charges**

Those retail services available at a wholesale discount shall be provided to Dakota at the retail rate charged to the end use customer less an 8.8 percent discount.

**D. Changes in Retail Service**

Fort Randall will notify Dakota of any changes in the terms and conditions under which it offers telecommunications services available for resale by Dakota, including the introduction or discontinuance of any features, functions, services or promotions prior to the effective date of such change. Fort Randall shall provide 20 days notice if the change involves the discontinuance of any feature, function, service or promotion of more than 90 days.



**E. Customer Service Inquiries**

Dakota shall be the sole source of customer contact for all customers served by Dakota for all issues, including service outages of resold services. Fort Randall shall refer all questions or service inquiries, including complaints of service outages, from Dakota customers to Dakota. Dakota shall be given a contact person and telephone number for reporting service problems received from its customers to Fort Randall. Fort Randall shall give equal treatment in responding to customer service calls received from Dakota on behalf of a customer receiving resold services.

**F. Service Order Changes**

Upon receiving a written request for a change in service, including a change in a customer's presubscribed long-distance carrier, Fort Randall will implement the requested change, if consistent with the terms of this Agreement, within five business days of receiving the written notice. Such service order changes may be provided by facsimile. Fort Randall's change order charges, with the wholesale discount, shall apply to all service order changes.

**G. Security and Law Enforcement Cooperation**

Fort Randall and Dakota will work jointly with Dakota in security matters as they relate to Dakota's customers in a resale environment including, but not limited to, harassment and annoyance calls and working with law enforcement agency requirements including, but not limited to, taps, traces, and other court orders. Fort Randall and Dakota will also cooperate in the detection and prevention of customer service fraud.

**H. Recovery of Billing Costs**

1. At Dakota's option, Fort Randall will provide a monthly bill that lists all services provided by Fort Randall but not broken out by end-use customer, or a bill that lists the services provided to each end-use customer.
2. At the time Dakota first requests resale services, it shall designate the desired format for the bill and shall become obligated to pay Fort Randall an amount sufficient to reimburse Fort Randall for the cost of implementing the billing changes needed to support resale at wholesale rates. The reimbursement shall occur through monthly payments over a five (5) year period, along with a carrying charge calculated at nine (9) percent simple interest on the unrecovered balance. Based on the projected cost of \$50,000, that

would require Dakota to pay \$1,037.92 per month. The actual required payment will be adjusted to reflect the actual cost billed to Fort Randall. At Dakota's request, Fort Randall shall provide a copy of the invoice showing the costs incurred by Fort Randall to support resale at wholesale rates.

3. Should any other competing local exchange carrier request resale at wholesale while there is an outstanding balance, Fort Randall shall make a good faith effort to recover the remaining costs equally from all carriers benefiting from the billing services.
4. Should Dakota later change the type of billing detail requested, that request shall be implemented if Dakota agrees to pay all additional billing costs resulting from the change. Payment of the additional costs shall be made by Dakota in full within 30 days of receiving an invoice for the changes.
5. The obligation to make payments under this Paragraph shall not terminate if Dakota ceases offering Fort Randall's services for resale. Further, this Paragraph shall survive the termination of the underlying Agreement in which it is contained, and may only be revoked with the express written consent of Fort Randall.

## **VII. SELECTION OF LOCAL CARRIERS**

### **A. Evidence of Customer Decision to Change Local Exchange Carriers**

1. Dakota will not request Fort Randall to terminate local service to any customer unless it has first received a completed and signed Letter of Agency from the customer. The Letter of Agency must clearly state that the customer requests local telecommunications service from Dakota, and that Fort Randall is to terminate all local telecommunications services to the telephone numbers specified by the customer. If the customer wishes to continue receiving some local services from Fort Randall, those services that are to be retained shall be expressly listed in the Letter of Agency. Upon receiving a fully executed Letter of Agency, Dakota shall advise Fort Randall of the customer's name, billing address, and the telephone numbers that Fort Randall is to disconnect, and if some Fort Randall services are to continue, those services must also be identified. Fort Randall shall then terminate local service to the designated telephone numbers and shall implement call forwarding to the telephone number provided by Dakota.
2. Fort Randall will not request Dakota to terminate local service to any customer unless it has first received a completed and signed



Letter of Agency from the customer. The Letter of Agency must clearly state that the customer requests local telecommunications service from Fort Randall, and that Dakota is to terminate all local telecommunications services to the telephone numbers specified by the customer. If the customer wishes to continue receiving some local services from Dakota, those services that are to be retained shall be expressly listed in the Letter of Agency. Upon receiving a fully executed Letter of Agency, Fort Randall shall advise Dakota of the customer's name, billing address, and the telephone numbers that Dakota is to disconnect, and if some Dakota offered services are to continue, those services must also be identified. Dakota shall then terminate local service to the designated telephone numbers and shall implement call forwarding to the telephone number provided by Fort Randall.

3. If the customer disputes that it authorized Dakota to provide it with local service, but Dakota is able to provide a fully executed copy of the Letter of Agency, Dakota shall terminate local service to the customer and arrange for local service by Fort Randall. However, Dakota will not be responsible for any Fort Randall customer charges.
4. If the customer disputes that it authorized Fort Randall to provide it with local service, but Fort Randall is able to provide a fully executed copy of the Letter of Agency, Fort Randall shall terminate local service to the customer and arrange for local service by Dakota. However, Fort Randall will not be responsible for any Dakota customer charges.
5. If the customer disputes that it authorized Dakota to provide it with local service, and Dakota is not able to provide a fully executed copy of the Letter of Agency, Dakota shall arrange for local service to be provided by Fort Randall. Dakota will also pay Fort Randall the customer service charge Fort Randall imposes for initiating service. Dakota further agrees to indemnify and hold Fort Randall harmless from any action by the customer against Fort Randall related to the termination of service.
6. If the customer disputes that it authorized Fort Randall to provide it with local service, and Fort Randall is not able to provide a fully executed copy of the Letter of Agency, Fort Randall shall terminate local service to the customer and arrange for local service by Dakota. Fort Randall will also pay Dakota the customer service charge Dakota imposes for initiating service. Fort Randall further agrees to indemnify and hold Dakota harmless from any action by the customer against Dakota related to the termination of service.

## **B. Service Change Procedures**

1. If the customer will be provided resold services, Dakota shall provide a complete list of all Fort Randall services the customer is to receive. It shall not be adequate to request that all current services be continued.
2. Upon receiving notice of the change in local carriers, the carrier currently providing service (either Fort Randall or Dakota) shall, within 5 calendar days: a) terminate current service; b) if requested, provide call forwarding to a number designated by the carrier selected by the customer; c) if requested by the carrier selected by the customer, provide local number intercept service. The rates for call forward and local number intercept are contained in Appendix A. These rates shall be reciprocal and shall be charged by the carrier providing the call forward or local number intercept service. If call forwarding or local number intercept service is requested, it shall be provided for a period of 30 days for residential customers and business customers. Call forwarding or local number intercept shall be implemented, to the extent possible, simultaneous with the termination of Fort Randall's service.

## **VIII. ACCESS TO TELEPHONE NUMBERS**

### **A. Number Resources Arrangements**

1. Nothing in this Agreement shall be construed in any manner to limit or otherwise adversely impact either Party's right to the request and assignment of any NANP number resources including, but not limited to, central office (NXX) codes pursuant to the Central Office Code Assignment Guidelines (last published by the Industry Numbering Committee ("INC") as INC 95-0407-008, Revision 4/19/96, formerly ICCF 93-0729-010). NXXs, and the initial Points of Interface for interconnection between the Parties' networks, will be included in Addenda to this Agreement.
2. The Parties will comply with code administration requirements as prescribed by the Federal Communications Commission, the Commission, and accepted industry guidelines.
3. It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to the Local Exchange Routing Guide (LERG) guidelines to recognize and route traffic to the other Party's assigned NXX codes at all times. Neither Party shall impose any fees or charges whatsoever on the



other Party for such activities. Dakota agrees to obtain and use one or more NXXs that are exclusively assigned to the Centerville exchange service area and one or more NXXs that are exclusively assigned to the Viborg exchange service area. The Parties will cooperate to establish procedures to ensure the timely activation of NXX assignments in their respective networks.

4. Each Party shall be responsible for notifying its customers of any changes in numbering or dialing arrangements to include changes such as the introduction of new NPAs or new NXX codes.
5. Each Party is responsible for administering NXX codes assigned to it. Each Party is responsible for obtaining Local Exchange Routing Guide ("LERG") listings of CLLI codes assigned to its switches. Each party shall use the LERG published by Bellcore or its successor for obtaining routing information and shall provide all required information to Bellcore for maintaining the LERG in a timely manner.

#### **IX. DIALING PARITY**

The Parties shall provide Dialing Parity to each other as required under Section 251(b)(3) of the Act.

#### **X. DIRECTORY AND CUSTOMER LISTING ISSUES**

##### **A. For Customers Served By Dakota's Switch.**

Fort Randall and Dakota agree that directory issues, such as yellow page advertising, directory distribution, access to call guide pages, yellow page listings, will be the subject of negotiations between Dakota and directory publishers.

##### **B. For Customers Served With Resold Fort Randall Services.**

1. Fort Randall will submit the names and telephone numbers of customers receiving resold services to the publisher of the local telephone directory, along with the names and telephone numbers of Fort Randall telephone customers. Any premium or privacy charges for special directory listings, such as cross-listings, shall be billed to Dakota at the rate charged by the Directory publisher to Fort Randall.
2. It shall be Dakota's responsibility to make arrangements with the publisher of the directory to include information about Dakota and its services.

2. It shall be Dakota's responsibility to make arrangements with the publisher of the directory to include information about Dakota and its services.
3. Any limitations on the use of the data by the Directory publisher shall be determined between Dakota and the publisher. Fort Randall shall provide customer list information that includes Dakota customers receiving resold services under the same conditions that it releases information concerning customers that receive services directly from Fort Randall.

#### **XI. NOTICE OF CHANGES**

If a Party makes a change in its network which it believes will materially affect the inter-operability of its network with the other Party, the Party making the change shall provide advance notice of such change to the other Party.

#### **XII. REFERRAL ANNOUNCEMENT AND CALL FORWARDING**

##### **A. When A New Number Is Assigned**

When an end user customer changes from Fort Randall to Dakota, or from Dakota to Fort Randall, and does not retain their original main/listed telephone number, the Party formerly providing service to the end user will, at the option of the other carrier provide either a transfer of service announcement on the abandoned telephone number or call forwarding. The announcement shall be provided for 60 days for both residential customers and business customers. Each Party will provide this referral service at the rates set forth in Appendix A. This announcement will provide details on the new number that must be dialed to reach this customer.

##### **B. Interim Number Portability**

When an end user customer changes from Fort Randall to Dakota, or from Dakota to Fort Randall, and retains their original main/listed telephone number, the Party formerly providing the service to the end user will provide local number portability. Local Number Portability shall be provided using call forwarding, at the rates set forth in Appendix A. A Party may request the implementation of permanent Local Number Portability in accordance with the FCC standards and timetable. Nothing in this Agreement shall be deemed a waiver of the right to seek a suspension or modification under the Act from complying with the requirements related to permanent Local Number Portability.



1. Customers of Dakota, including customers receiving service through resold Fort Randall services, shall be instructed to report all cases of trouble to Dakota, including customers receiving service through resold Fort Randall Services. Customers of Fort Randall shall be instructed to report all cases of trouble to Fort Randall.
2. In responding to repair calls, neither Party shall make disparaging remarks about the other Party, nor shall they use these repair calls as the basis for internal referrals or to solicit customers to market services. Either Party may respond with accurate information in answering customer questions.

#### **XIV. AUDIT PROCESS**

- A. "Audit" shall mean the comprehensive review of data relevant to provisioning and maintenance for services performed or facilities provided by either of the Parties for itself or others that are similar to the services performed or facilities provided under this Agreement for interconnection.
- B. The data referred to in subsection A., above, shall be relevant to any performance standards that are adopted in connection with this Agreement, through negotiation, arbitration or otherwise.

This Audit shall take place under the following conditions:

1. Either Party may request to perform an Audit.
2. The Audit shall occur upon 30 business days written notice by the requesting Party to the non-requesting Party.
3. The Audit shall occur during normal business hours.
4. There shall be no more than one Audit requested by each Party under this Agreement in any 12-month period.
5. The requesting Party may review the non-requesting Party's records, books and documents, as may reasonably contain information relevant to the operation of this Agreement.
6. The location of the Audit shall be the location where the requested records, books and documents are retained in the normal course of business.
7. All transactions under this Agreement which are over 24 months old will be considered accepted and no longer subject to Audit.

8. Each Party shall bear its own expenses occasioned by the Audit, provided that the expense of any special data collection shall be borne by the requesting Party.
  9. The Party requesting the Audit may request that an Audit be conducted by a mutually agreed-to independent auditor. Under this circumstance, the costs of the independent auditor shall be paid for by the Party requesting the Audit.
  10. In the event that the non-requesting Party requests that the Audit be performed by an independent auditor, the Parties shall mutually agree to the selection of the independent auditor. Under this circumstance, the costs of the independent auditor shall be shared equally by the Parties.
  11. The Parties agree that if an Audit discloses error(s), the Party responsible for the error(s) shall, in a timely manner, undertake corrective action for such error(s).
- C. All information received or reviewed by the requesting Party or the independent auditor in connection with the Audit is to be considered Proprietary Information as defined by this Agreement. The non-requesting Party reserves the right to require any non-employee who is involved directly or indirectly in any Audit or the resolution of its findings as described above to execute a nondisclosure agreement satisfactory to the non-requesting Party. To the extent an Audit involves access to information of other competitors, Dakota and Fort Randall will aggregate such competitors' data before release to the other Party, to insure the protection of the proprietary nature of information of other competitors. To the extent a competitor is an affiliate of the party being audited (including itself and its subsidiaries), the Parties shall be allowed to examine such affiliates' disaggregated data, as required by reasonable needs of the audit.

## **XV. MISCELLANEOUS TERMS**

### **A. General Provisions**

1. Each Party is individually responsible to provide facilities within its network which are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in the standard format compatible with the other Party's network and to terminate the traffic it receives in that standard format to the proper address on its network. Such facility shall be designed based upon the description and forecasts provided under this Agreement.



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2. Neither Party shall use any service related to or use any of the services provided in this Agreement in any manner that interferes with other persons in the use of their service, prevents other persons from using their service, or otherwise impairs the quality of service to other carriers or to either Party's customers, and each Party may discontinue or refuse service if the other Party violates this provision. Upon such violation, either Party shall provide the other Party notice of such violation, if practicable, at the earliest practicable time.
3. Each Party is solely responsible for the services it provides to its customers and to other Telecommunications Carriers.
4. The Parties shall work cooperatively to minimize fraud associated with third-number billed calls, calling card calls, and any other services related to this Agreement.

### **B. Term of Agreement**

This Agreement shall become effective with Commission approval pursuant to Sections 251 and 252 of the Act. This Agreement shall remain effective for a period of three years. After that date, the Agreement shall automatically renew for one-year terms unless written notice terminating the Agreement is provided no later than six months before the end of the then-current term. This Agreement shall remain in effect until replaced by another Agreement.

### **C. Most Favored Nation Terms and Treatment**

The Parties agree that the provisions of Section 252(i) of the Act shall not apply during the term of this Agreement.

(30) days of the receipt of such billing, identifying the amount and details of such dispute. As a limited exception to this requirement, a dispute concerning any of the first three invoices may be made within ninety (90) days. The disputing Party shall pay all amounts due. Both Dakota and Fort Randall agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. Should the dispute be found in Dakota's favor, Fort Randall will reimburse Dakota the resolved amount plus interest at the above-specified rate. Should the dispute be found in Fort Randall's favor, Dakota will reimburse Fort Randall the resolved amount plus interest from the date of payment at the above-specified rate.

**E. Disconnection**

Should either Party fail to make payment within ninety (90) days of receipt of a billing, the other Party may disconnect the interconnection facilities after providing ten (10) days written notice. Disconnection of service shall not occur without providing customer notice, and Fort Randall and Dakota shall cooperate in providing the notice.

**F. Taxes**

Each Party securing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such securing Party (or the providing Party when such providing Party is permitted to pass along to the securing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice.

**G. Force Majeure**

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). In the event of a labor dispute or strike, the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.



## **H. Limitation of Liability**

1. Each Party shall be liable to the other for direct damages for any loss, defect or equipment failure resulting from the causing Party's conduct or the conduct of its agents or contractors in performing the obligations contained in this Agreement.
2. Neither Party shall be liable to the other under this Agreement for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.
3. Nothing contained in this Section shall limit either Party's liability to the other for willful or intentional misconduct.
4. Nothing contained in this Section shall limit either Party's obligations of indemnification as specified in the Indemnity Section of this Agreement.

## **I. Indemnity**

1. With regard to third party claims, 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. Intellectual Property**

- 1. Each Party hereby grants to the other Party the limited, personal and nonexclusive right and license to use its patents, copyrights and trade secrets but only to the extent necessary to implement this Agreement or specifically required by the then applicable federal and state rules and regulations relating to interconnection and access to telecommunications facilities and services, and for no other purposes. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trademarks.
- 2. The rights and licenses under Section I.1. above are granted "AS IS" and the other Party's exercise of any such right and license shall be at the sole and exclusive risk of the other Party. 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 infringement, or misuse or misappropriation of any patent, copyright, trade secret, or any other proprietary or intellectual property right of any third party.
- 3. Neither Party shall, without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other Party or its affiliates, 2) it is part of a joint business association or any similar arrangement with the other Party or its affiliates, 3) it and its affiliates are in any way sponsoring, endorsing or certifying the other Party and its goods and services, or 4) with respect to advertising or promotional



activities or materials, that the goods and services are in any way associated with or originated from the other Party or any of its affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the network elements it uses to provide service to its customers.

4. 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, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Dakota may not use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property right of Fort Randall or its affiliates without execution of a separate agreement between the Parties. Fort Randall may not use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property right of Dakota or its affiliates without execution of a separate agreement between the Parties.
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 Interconnection 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 provide evidence of such permission.
6. Dakota acknowledges the value of the marks "Fort Randall" and "Fort Randall Telephone Company" (the "Marks") and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to Fort Randall (the "Owners"). Fort Randall acknowledges the value of the marks Dakota Telecom, Inc. ("DTI"), Dakota Telecommunications Systems, Inc. ("DTS") and Dakota Telecommunications Group ("DTG") (the "Dakota Marks") and the goodwill associated therewith and acknowledges that such goodwill is a property right belonging to Dakota (the "Owners"). Dakota recognizes that nothing contained in this Agreement is intended as an assignment or grant to Dakota 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. Fort Randall recognizes that nothing contained in this Agreement is intended as an assignment or grant to Fort Randall of any right, title or interest

in or to the Dakota Marks and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Dakota Marks and is not assignable. Dakota 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. Fort Randall will do nothing inconsistent with the Owner's ownership of the Dakota Marks, and all rights, if any, that may be acquired by use of the Dakota Marks shall inure to the benefit of the Owners. Dakota will not adopt, use (other than as authorized 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 ownership of any rights in or the validity of the Marks. Fort Randall will not adopt, use (other than as authorized herein), register or seek to register any mark anywhere in the world which is identical or confusingly similar to the Dakota 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 ownership of any rights in or the validity of the Marks.

**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**

Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party provided that each Party may assign this Agreement to a corporate affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.



**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 seek legal and/or regulatory relief. 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. Disclaimer of Agency**

Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

**O. Severability**

In the event that any one or more of the provisions contained herein shall for any reason be determined to be unenforceable or in conflict with state or federal law in any respect, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may seek regulatory intervention, including negotiations pursuant to Sections 251 and 252 of the Act.

**P. Nondisclosure**

1. All information, including but not limited to specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data (i) furnished by one Party to the other Party dealing with customer specific, facility specific, or usage specific information, other than customer information communicated for the purpose of publication of directory database inclusion, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "Proprietary" or (iii) communicated 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. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information.

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. Each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only in connection with this Agreement. 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 such Proprietary Information as:
  - 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; or
  - b. is or becomes publicly known through no wrongful act of the receiving Party; or
  - 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 an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or
  - e. is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or



- f. is approved for release by written authorization of the disclosing Party; or
  - g. is required to be made public by the receiving Party pursuant to applicable law or regulation 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.
- 5. **Effective Date Of This Section.** Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.

**Q. Survival**

The Parties' obligations under this Agreement, which by their nature are intended to continue beyond the termination or expiration of this Agreement, including the provisions of Section VI, (H), shall survive the termination or expiration of this Agreement.

**R. Dispute Resolution**

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 arbitration shall occur in Sioux Falls, South Dakota. Nothing in this Section shall be construed to waive or limit either Party's right to seek relief from the Commission or the Federal Communications Commission as provided by state or federal law.

No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

**S. Controlling Law**

This Agreement was negotiated by the Parties in accordance with the terms of the Act and the laws of South Dakota. It shall be interpreted solely in accordance with the terms of the Act and the applicable South Dakota law.

**T. Joint Work Product**

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

**U. Responsibility for Environmental Contamination**

Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any environmental hazard that either Party did not introduce to the affected work location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any environmental hazard that the indemnifying Party, its contractors or agents introduce to the work locations or (ii) the presence or release of any environmental hazard for which the indemnifying Party is responsible under applicable law.

**V. Notices**

Any notices required by or concerning this Agreement shall be sent to the Parties at the addresses shown below:

Bruce Hanson  
Fort Randall Telephone Company  
227 S Main Street  
Clara City, MN 56222

Dakota Telecom, Inc.  
Dakota Telecommunications Systems, Inc.  
Legal Department  
PO Box 66  
Irene, SD 57037

Each Party shall inform the other of any changes in the above addresses.



**W. 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 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.

**X. 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.

**Y. Referenced Documents**

All references to Sections and Appendixes shall be deemed to be references to Sections of, and Appendixes to, this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, Dakota practice, Fort Randall practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, Dakota practice, Fort Randall practice, or publication of industry standards (unless Dakota elects otherwise).

Should there be any inconsistency between or among publications or standards, Dakota shall elect which requirement shall apply.

**Z. Publicity and Advertising**

Neither Party shall publish or use any advertising, sales promotions or other publicity materials that use the other Party's logo, trademarks or Marks without the prior written approval of the other Party.

**AA. Amendment**

Dakota and Fort Randall may mutually agree to amend this Agreement in writing. Since it is possible that amendments to this Agreement may be needed to fully satisfy the purposes and objectives of this Agreement, the Parties agree to work cooperatively, promptly and in good faith to negotiate and implement any such additions, changes and corrections to this Agreement which are needed to provide resold services, Points of Interface and reciprocal compensation.

**BB. 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.

**CC. 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.

**DD. Cancellation Charges**

Except as provided pursuant to Section VI (H), or as otherwise provided in any applicable tariff or contract referenced herein, no cancellation charges shall apply. If Dakota ceases to use the facilities installed by Fort Randall used to interconnect with Dakota prior to the expiration of 36 months from the effective date of this Agreement, it shall reimburse Fort Randall its full cost for the interconnection facilities.

**EE. Regulatory Approval**

The Parties understand and agree that this Agreement will be filed with the Commission and may thereafter be filed with the FCC and shall, at all times, be subject to review by the Commission or the FCC. In the event any such review rejects any portion of this Agreement, renders it

inoperable or creates any ambiguity of requirement for further amendment, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification.

**FF. Compliance**

Each party shall comply with all applicable federal, state, and local laws, rules and regulations applicable to its performance under this Agreement.

**GG. Compliance with the Communications Law Enforcement Act of 1994 ("CALEA")**

Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with CALEA. Each party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

**HH. Entire Agreement**

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



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

**Dakota Telecom, Inc.**

**Fort Randall Telephone Company**

By T.W. Hertz  
Thomas W. Hertz  
Its President and CEO

By Bruce Hanson  
Bruce Hanson  
Its Treasurer

9-8-99  
Date

9/13/99  
Date

**Dakota Telecommunications  
Systems, Inc.**

By T.W. Hertz  
Thomas W. Hertz  
Its General Manager/CEO

9-8-99  
Date

135808/4

**Appendix A**  
**Rates and Charges**

Call Forwarding	Nonrecurring \$5 per customer Recurring \$3.50 for each 20 numbers
Local Referral Announcement	Nonrecurring \$5 per customer Recurring \$3.50 for each 20 numbers
Host switching	recurring of \$0.0165 per minute of use



FREE telephone installation (a \$25.00 value)  
if you sign up early in Elk Point.

---

*Compare our local telephone service price:*

**Save!!**

<b>DTG</b>	<b>★McLeodUSA</b>	-----	<b>\$11<sup>25</sup>/month</b>
	US West/Qwest	-----	<b>\$15<sup>05</sup>/month</b>

**\$37<sup>20</sup>** a year with DTG/McLeodUSA local phone service

*And, our service is provided to you on a brand new fiber optic system.*

---

**If you sign up for both our local phone service and cable TV service...**

- Your first month of local phone service is **FREE**. (We even pay all taxes and fees.)
- Your first month of cable TV service is **FREE**. (We even pay all taxes and fees.)
- And we will take an additional \$2 off your cable TV bill every month. It's like getting one month of basic cable TV every year, **FREE**.

## **Second Phone Line**

**\$11<sup>25</sup>/month** + tax & surcharges

**INSTALLATION IS FREE!** *During this promotion*

Your second phone line can be used for telephones, computers, & fax machines.

# **Calling Features**

- Take a **FREE** "test drive" of our calling features package for 3 months. Even the installation is **FREE**.

Number Only Caller ID  
Caller ID Call Waiting  
Call Forwarding  
Speed Calling  
3-Way Calling

*Entire Package is*  
**FREE**  
*for 3 months*

... After 3 **FREE** months, you have 3 options:

- A** Call us and say, "Cancel the package." You pay us absolutely nothing.
- B** Keep the entire package for only \$5.00 per month thereafter.
- C** Pick and choose which individual features you wish to keep:

Number Only Caller ID	\$3.50/month
Caller ID Call Waiting	\$5.00/month
Call Forwarding	\$3.00/month
Speed Calling	\$2.00/month
3-Way Calling	\$3.50/month



# **DTG Long Distance Service**



Elk Point, SD

We serve thousands of residential and business clients throughout the Midwest. Unlike most long distance companies, DTG offers flat rate service.

**10¢**

per minute on all IN-STATE LONG DISTANCE calls.

per minute on all OUT-OF-STATE LONG DISTANCE calls.

- You get one flat rate for all long distance calls:  
**24 hours a day, 7 days a week — *guaranteed!***  
Why wait till a weekend or the middle of the night to make a call?
- You get *6-second billing*. Why pay for time that you don't use?
- **NO** hidden program fees.
- **NO** sneaky minimum usage charges.
- **NO** secret monthly surcharges.
- **Why pay for anything but the actual calls you make?**



# "On-Net" Calling Plan.....

"On-Net" is a special calling plan tailored for people who choose DTG for both their local phone service and their in-state long distance service.

With the "On-Net" calling plan, you can call all other DTG customers in 20 other communities all over southeastern South Dakota. That includes not only residential customers, but also businesses, schools, and government offices.

When those calls would normally be billed as long distance, they are only 5 cents a minute with the On-Net calling plan. That's a flat nickel a minute, any time, any day.

To make an On-Net call, simply dial the seven-digit telephone number. For example, if you live in

Elk Point, and you want to call a friend in Lennox, just dial 647-xxxx.

As DTG builds new networks in more towns in this region, you will then be able to call even more people at an unrestricted flat rate, which is less than what any other phone company charges.



Irene, South Dakota

## US West/Qwest

Local Call  
Long Distance

Elk Point  
Jefferson

Local Call  
Local Call

Long Distance	Alsen (253)	5¢ a minute
Long Distance	Rural Beresford (957)	5¢ a minute
Long Distance	Canton (764)	5¢ a minute
Long Distance	Centerville (552)	5¢ a minute
Long Distance	Chancellor (647)	5¢ a minute
Long Distance	Davis (238)	5¢ a minute
Long Distance	Flyger (327)	5¢ a minute
Long Distance	Gayville (267)	5¢ a minute
Long Distance	Harrisburg (767)	5¢ a minute
Long Distance	Hurley (238)	5¢ a minute
Long Distance	Irene (263)	5¢ a minute
Long Distance	Lennox (647)	5¢ a minute
Long Distance	Monroe (297)	5¢ a minute
Long Distance	North Sioux City (232)	5¢ a minute
Long Distance	Parker (297)	5¢ a minute
Long Distance	Tea (498)	5¢ a minute
Long Distance	Viborg (766)	5¢ a minute
Long Distance	Volin (267)	5¢ a minute
Long Distance	Wakonda (267)	5¢ a minute
Long Distance	Worthing (372)	5¢ a minute
Long Distance	Yankton (260, 664, 665, 668, 655, 470)	5¢ a minute

Autumn 2000

Long Distance	Colman	5¢ a minute
Long Distance	Egan	5¢ a minute
Long Distance	Flandreau	5¢ a minute
Long Distance	Huron	5¢ a minute
Long Distance	Madison	5¢ a minute
Long Distance	Mitchell	5¢ a minute
Long Distance	Vermillion	5¢ a minute
Long Distance	Watertown	5¢ a minute

**Only 5¢**  
*a minute to all*  
**DTG/McLeodUSA**  
*customers*  
**in all these towns!**

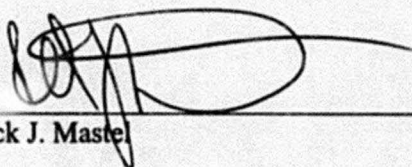
If you place a long distance call block on your phone, you will not be able to use the On-Net calling plan.

**AFFIDAVIT OF SERVICE**

I, Patrick J. Mastel, on the 2<sup>nd</sup> day of December, 1999, served the attached NOTICE OF INTENT AND REQUEST TO AMEND CERTIFICATE by U.S. Mail to all persons at the addresses indicated below:

Jefferson Telephone Company  
Attn: Paul Bergman  
311 Main Street  
Jefferson, SD 57038

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

A handwritten signature in black ink, appearing to read 'Patrick J. Mastel', is written over a horizontal line.

Patrick J. Mastel



**South Dakota Public Utilities Commission**

**WEEKLY FILINGS**

**For the Period of December 2, 1999 through December 8, 1999**

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

**CONSUMER COMPLAINTS**

**CT99-067 In the Matter of the Complaint filed by Robert J. Ries and Treva Jean M. Ries, Watertown, South Dakota, against OLS, Inc. Regarding Switching Telecommunications Services Through Deceptive Tactics.**

The Complainants claim that they were contacted by telephone to consolidate their billing. As a result of the call, their long distance service was switched to OLS, Inc. The Complainants want telephone companies to "have everything in writing before anything could change."

Staff Analyst: Leni Healy  
Staff Attorney: Karen Cremer  
Date Filed: 12/02/99  
Intervention Deadline: NA

**CT99-068 In the Matter of the Complaint filed by Mrs. Robert Binfet, Aberdeen, South Dakota, against OLS, Inc. Regarding Switching Telecommunications Services Through Deceptive Tactics.**

The Complainant claims that she received a call from a telemarketer representing her local phone company. As a result of this call, the Complainant's long distance service was switched. The Complainant is seeking to have the charges removed and a fine assessed.

Staff Analyst: Leni Healy  
Staff Attorney: Karen Cremer  
Date Filed: 12/08/99  
Intervention Date: NA

**CT99-069 In the Matter of the Complaint filed by Sandy Curran, Sisseton, South Dakota, against OLS, Inc. Regarding Switching Telecommunications Services Through Deceptive Tactics.**



The Complainant indicates that as a result of a sales call, she switched her long distance service. The rates and fees which appeared on her billing were not the rates and fees promised.

Staff Analyst: Leni Healy  
Staff Attorney: Karen Cremer  
Date Filed: 12/08/99  
Intervention Date: NA

## TELECOMMUNICATIONS

**TC99-112 In the Matter of the Joint Application of U S WEST Communications, Inc. and Sully Buttes Telephone Cooperative, Inc. and Venture Communications, Inc. Regarding the Sale by U S WEST of its Sisseton Telephone Exchange to Sully Buttes Telephone Cooperative, Inc. and Venture Communications, Inc.**

On July 23, 1999, U S WEST Communications, Inc. (U S WEST) and Venture Communications, Inc. (VCI) a wholly-owned subsidiary of Sully Buttes Telephone Cooperative, Inc. (SBTC) entered into an Agreement for the sale and purchase of the Sisseton Exchange. On December 2, 1999, the Commission received a joint application from U S West and VIC/SBTC for approval of the sale.

Staff Analyst: Keith Senger  
Staff Attorney: Karen Cremer  
Dated Filed: 12/02/99  
Intervention Deadline: 12/23/99

**TC99-113 In the Matter of the Petition of McLeodUSA Telecommunications Services, Inc. for a Declaratory Ruling on Whether the Discontinuance of the Retail Sale of Voice Messaging Service by U S WEST Communications, Inc. to McLeodUSA Violates SDCL 49-31-11.**

The petition by McLeodUSA as summarized states: U S WEST Communications (U S WEST) offers Voice Messaging Service (VMS) pursuant to its South Dakota Exchange and Network Services Catalog. There is nothing in the catalog that restricts the selling of VMS to residential or business customers either to individual customers, in bulk or in large numbers, or for any customer to then resell to others. McLeodUSA, as a service to its customers, buys VMS from U S WEST under the terms and conditions of U S WEST's catalog and at the retail prices published by U S WEST in the catalog. McLeodUSA then resells the VMS to its customers at the same rate, and under the same terms and conditions, as in the catalog. The purchase and resale of VMS is not done pursuant to a resale agreement or pursuant to any wholesale discount required by the Telecommunications Act of 1996. On September 22, 1999, McLeodUSA

became aware for the first time that the sale of VMS by U S WEST in South Dakota to McLeodUSA would be discontinued. The only reason stated for this action by U S WEST is that it is not required to sell VMS for resale by companies. Despite attempts to have the decision concerning the retail provisioning of VMS to McLeodUSA changed, U S WEST is now prepared to disconnect over 400 VMS customers in South Dakota because they are also customers of a competitor, McLeodUSA. McLeodUSA may be successful in keeping these customers on a VMS platform provided by McLeodUSA or another vendor, but at a cost for local transport, much of which is controlled by and must be purchased from U S WEST. There is no good or justifiable business reason to single out the purchase at retail of VMS by a competitor, who then resells the service, as a target for making the service not available as described in the catalog. This is just another attempt by U S WEST to inhibit competition in its South Dakota local exchange market in violation of explicit state law prohibiting such discriminatory conduct. The discontinuance of the retail sale of VMS by U S WEST to McLeodUSA for purposes of resale is an unjust and unreasonably discriminatory action by U S WEST in violation of SDCL 49-31-11.

Staff Analyst: Harlan Best  
Staff Attorney: Camron Hoseck  
Date Filed: 12/02/99  
Intervention Deadline:

**TC99-114 In the Matter of the Petition of Dakota Telecom, Inc. to Amend its Certificate of Authority to Allow Dakota Telecom, Inc. to Provide Service to the Jefferson, South Dakota Exchange.**

On October 22, 1996, Dakota Telecom, Inc. (DTI) was granted a Certificate of Authority to provide telecommunications services, including local exchange services, throughout the State of South Dakota. This grant was subject to the Commission's restriction with respect to rural telephone companies. DTI is requesting that the Commission amend its previous Order granting DTI its certificate and grant DTI the authority to provide service to the entire exchange of Jefferson, South Dakota, an exchange currently served by Long Lines, Inc. d/b/a Jefferson Telephone company, a rural telephone company as that term is defined in Federal and State law.

Staff Analyst: Heather Forney  
Staff Attorney: Camron Hoseck  
Dated Filed: 12/06/99  
Intervention Deadline: 12/24/99

**TC99-115 In the Matter of the Application of One Tel Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.**

One Tel Inc. seeks a Certificate of Authority to provide resold interexchange dial around telecommunication services. One Tel intends to provide services through South Dakota to business and residential end-users.

Staff Analyst: Keith Senger  
Staff Attorney: Camron Hoseck  
Date Filed: 12/08/99  
Intervention Date: 12/23/99

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You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc/>



LAW OFFICES  
**MOSS & BARNETT**  
A PROFESSIONAL ASSOCIATION

4800 NORWEST CENTER  
90 SOUTH SEVENTH STREET  
MINNEAPOLIS, MINNESOTA 55402-4129

TELEPHONE (612) 347-0300  
FACSIMILE (612) 339-6686

WRITER'S DIRECT DIAL NUMBER  
(612) 347-0337

WRITER'S E-MAIL ADDRESS  
BradleyM@moss-barnett.com

December 22, 1999

HERMAN J. BAYLIS  
PAUL VAN VALKENBURG  
THOMAS A. KELLER III  
W. SCOTT HENSON  
JAMES E. O'BRIEN  
PAUL G. NEWMAN  
EDWARD L. WINTER  
WILLIAM H. KOSTER  
WILLIAM A. HAUG  
CHARLES A. PARSONS, JR.  
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THOMAS R. SHELAM  
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RONALD A. KESSEBERG  
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BRIAN T. GREGGIAN  
J. MICHAEL COLLOTON  
ERIC J. OLSEN  
VINCENT J. FAJNBLANDER  
JAN M. WAGNER  
PHILIP J. YOUNG  
MICHAEL R. WEX  
BEN M. HENSCHEL  
LISA M. VOELKER

MICHELLE R. LOOTGA  
MATTHEW M. MEYER  
PAUL J. TICHOUT  
KELLY M. MADDENREY  
ANN E. PHILLIPS  
JEROME M. HAYES  
TIMOTHY L. GUSTIN  
DENNIS E. WERRENS

RETURNED  
VERONE W. MOSS  
JAMES H. HENSHIREY  
STANLEY R. STABEL  
PATRICK F. FLAHERTY  
WAYNE A. HENGOFF  
MICHAEL L. FLANAGAN

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

Re: In the Matter of the Petition of Dakota Telecom, Inc. to Amend its Certificate of Authority to Allow Dakota Telecom, Inc. to Provide Service to the Jefferson, South Dakota Exchange  
Docket No. TC99-114

Dear Mr. Bullard:

On behalf of Jefferson Telephone Company, enclosed please find the original and eleven copies of the Petition to Intervene, Reply to Claim of Bona Fide Request in the above-entitled Docket. Also enclosed is a Certificate of Service.

Very truly yours,

MOSS & BARNETT  
A Professional Association

*Michael Bradley*  
Michael J. Bradley

MEB/lkw  
Enclosures

cc: All parties on the Certificate of Service  
302501/1

RECEIVED  
DEC 23 1999  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION



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

RECEIVED  
DEC 23 1999  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF )  
DAKOTA TELECOM, INC. TO AMEND ITS )  
CERTIFICATE OF AUTHORITY TO ALLOW )  
DAKOTA TELECOM, INC. TO PROVIDE )  
SERVICE TO THE JEFFERSON, )  
SOUTH DAKOTA EXCHANGE )

TC99-114

**PETITION TO INTERVENE  
REPLY TO CLAIM OF BONA FIDE REQUEST**

Jefferson Telephone Company ("Jefferson") files this Petition to Intervene pursuant to the provisions of SDCL 1-26-17.1 and ARSD §§ 20:10:01:15.02, 20:10:01:15.03 and 20:10:01:15.05. In support of this Petition, Jefferson states as follows:

1. Jefferson is authorized to operate as an independent local exchange carrier in South Dakota with a Certificate of Authority granted on June 24, 1992.
2. Dakota Telecom, Inc. ("DTI") has authority to provide telecommunications services statewide in non-rural exchanges, granted in the Final Order and Decision Granting a Certificate of Authority; Notice of Entry of Judgment, Docket TC95-087, dated October 22, 1996.
3. DTI has applied for authority to provide competing local exchange service in the Jefferson exchange.
4. Jefferson is a rural telephone company under the Telecommunications Act of 1996 ("Act") and need only meet the interconnection obligations under Section 251(b).
5. DTI asserts that interconnection with Jefferson would not be unduly economically burdensome to Jefferson, and consequently the protections provided to rural telephone companies under 47 U.S. C. § 251(f)(1)(B) and SDCL § 49-31-79 should not apply. This issue is not ripe for determination because DTI has not made a bona fide request for interconnection services

under 47 U.S.C. § 251(c). At this time, DTI has only requested a reciprocal compensation agreement (see paragraph IX of the Notice of Intent and Request to Amend Certificate).

Reciprocal compensation agreements are required between all local exchange carriers (including rural telephone companies and competitive local exchange carriers) pursuant to 47 U.S.C. § 251(b)(5).

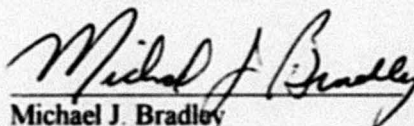
6. If DTI intends to make a bona fide request for interconnection services covered by Section 251(c), it must provide Jefferson and the South Dakota Public Utilities Commission ("Commission") the information required by ARSD § 20:10:32:38. DTI has provided none of the required information. Consequently, Jefferson cannot comment on whether it should, pursuant to Section 251(f)(1), be exempt from providing interconnection services otherwise available pursuant to Section 251(c).

7. Based on the foregoing, Jefferson requests that it be granted intervention in this Docket in order prevent its rights from being adversely affected, to assure that any authorization to DTI be subject to the requirements of the Act and state law, and to determine whether DTI has made a bona fide request for interconnection services.

Dated: December 22, 1999

Respectfully submitted,

MOSS & BARNETT  
A Professional Association



Michael J. Bradley  
4800 Norwest Center  
90 S Seventh Street  
Minneapolis, Minnesota 55402  
Telephone: 612-347-0337

Attorneys on behalf of Jefferson Telephone Company





By Facsimile and First Class Mail

**RECEIVED**

JAN 05 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

January 4, 2000

William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
Capitol Building, 1<sup>st</sup> Floor  
500 East Capitol Avenue  
Pierre, SD 57501-5070

FAX Received JAN 04 2000

RE: DTI Response to Jefferson Petition to Intervene - Docket No. TC99-114

Dear Mr. Bullard,

Enclosed is the original and ten (10) copies of DTI's response to the petition by Jefferson Telephone Co., to intervene in this docket. A copy has been served on counsel for Jefferson Telephone Co.

Sincerely,

Barbara E. Berkenpas  
Regional Counsel  
P.O. Box 66  
Irene, SD 57037  
(605) 263-7213

cc: Service List

FAX Received JAN 04 2000

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

**IN THE MATTER OF THE PETITION OF  
DAKOTA TELECOM, INC. TO AMEND ITS  
CERTIFICATE OF AUTHORITY TO ALLOW  
DAKOTA TELECOM, INC. TO PROVIDE  
SERVICE TO THE JEFFERSON, SOUTH  
DAKOTA EXCHANGE.**

DTI does not object to Jefferson's Petition for Intervention but does resist Jefferson's challenges to DTI's BFR because Jefferson did not respond to, nor challenge any of the requested actions in the BFR until well after the 10 day response time required by ARSD §20:10:32:38 had expired. The BFR was sent on October 13, 1999. Jefferson's response was dated October 29, 1999, a full 16 days later. Jefferson's Motion for

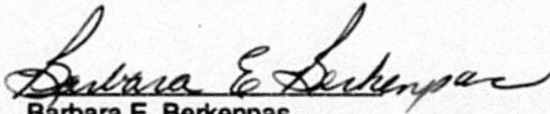


Intervention and Reply To Claim of Bona Fide Request was not served until December 22, 1999, a full 70 days after the date and service of the BFR.

III.

Based on the previously served BFR, the Notice of Intent and Request to Amend Certificate, and this Response, DTI requests that the Commission grant the requested relief and amend DTI's Certificate of Authority.

Respectfully submitted this 4th day of January, 2000.



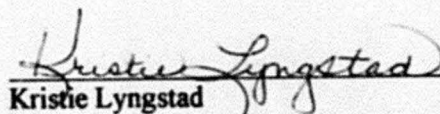
Barbara E. Berkenpas  
William P. Heaston  
Patrick J. Mastel  
Dakota Telecom, Inc.  
29705 453<sup>rd</sup> Ave.  
Irene, SD 57037-0066  
605.263.7213  
Its Attorneys



## CERTIFICATE OF SERVICE

I, Kristie Lyngstad, do hereby certify that on the 4<sup>th</sup> of January, 2000, a true and correct copy of the foregoing Response to Petition to Intervene, Docket TC99-114, of Dakota Telecom, Inc., was served by first class United States mail, upon the following:

Michael J. Bradley  
Moss & Barnett  
4800 Norwest Center  
90 S. 7<sup>th</sup> Street  
Minneapolis, MN 55402-4129

  
Kristie Lyngstad

STATE OF SOUTH DAKOTA )  
COUNTY OF HUGHES )

IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

RECEIVED

JAN 06 2000

IN THE MATTER OF THE PETITION OF  
DAKOTA TELECOM, INC. TO AMEND ITS  
CERTIFICATE OF AUTHORITY TO  
ALLOW DAKOTA TELECOM, INC. TO  
PROVIDE SERVICE TO THE JEFFERSON,  
SOUTH DAKOTA EXCHANGE.

*Order*

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

~~MOTION FOR ADMISSION~~  
BY RESIDENT  
PRACTICING ATTORNEY

TC99-114

It is hereby

**ORDERED** that the Motion for Admission for Patrick J. Mastel, a non-resident attorney, to appear on behalf of Dakota Telecom, Inc., before the Public Utilities Commission and this Court relating to this matter is granted.

Dated: 1-5, 2000.

BY THE COURT:

*[Signature]*  
Honorable Steven L. Zinter  
Circuit Court Judge  
Sixth Judicial Circuit

STATE OF SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.

FILED

JAN 05 2000

ATTEST:

Mary L. Erickson  
Clerk of Courts

BY: *[Signature]* State of South Dakota } ss  
County of Hughes }  
Deputy

(SEAL)

I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.

Dated this 5<sup>th</sup> day of Jan, 2000  
MARY L. ERICKSON, Clerk of Courts  
By: *[Signature]*  
Clerk of Courts / Deputy

*Mary L. Erickson* CLERK  
By: *[Signature]* Deputy



STATE OF SOUTH DAKOTA )  
COUNTY OF HUGHES )

IN CIRCUIT COURT  
SIXTH JUDICIAL CIRCUIT

RECEIVED

JAN 06 2000

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

IN THE MATTER OF THE PETITION OF  
DAKOTA TELECOM, INC. TO AMEND ITS  
CERTIFICATE OF AUTHORITY TO  
ALLOW DAKOTA TELECOM, INC. TO  
PROVIDE SERVICE TO THE JEFFERSON,  
SOUTH DAKOTA EXCHANGE.

*Order*  
~~MOTION~~ FOR ADMISSION  
BY RESIDENT  
PRACTICING ATTORNEY

TC99-114

It is hereby

**ORDERED** that the Motion for Admission for William P. Heaston, a non-resident attorney, to appear on behalf of Dakota Telecom, Inc., before the Public Utilities Commission and this Court relating to this matter is granted.

Dated: 1-5, 2000.

BY THE COURT:

*[Signature]*  
Honorable Steven L. Zinter  
Circuit Court Judge  
Sixth Judicial Circuit

SOUTH DAKOTA  
CIRCUIT COURT, HUGHES CO.  
**FILED**

JAN 05 2000

ATTEST:

Mary L. Erickson  
Clerk of Courts

*Mary L. Erickson* CLERK  
By *[Signature]* Deputy

BY: *[Signature]*

Deputy

State of South Dakota } ss  
County of Hughes }

I hereby certify that the foregoing instrument is a true and correct copy of the original on file in my office.

Dated this 5 day of Jan 2000  
MARY L. ERICKSON, Clerk of Courts

By *[Signature]*  
Clerk of Courts / Deputy

(SEAL)



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

IN THE MATTER OF THE PETITION OF )  
DAKOTA TELECOM, INC. TO AMEND ITS )  
CERTIFICATE OF AUTHORITY TO ALLOW )  
DAKOTA TELECOM, INC. TO PROVIDE )  
SERVICE TO THE JEFFERSON, SOUTH )  
DAKOTA EXCHANGE )

ORDER GRANTING  
INTERVENTION

TC99-114

On December 6, 1999, the Public Utilities Commission (Commission) received a Notice of Intent and Request to Amend Certificate from Dakota Telecom, Inc. (DTI).

On December 9, 1999, the Commission electronically transmitted notice of the filing and the intervention deadline of December 24, 1999, to interested individuals and entities. Jefferson Telephone Company (Jefferson) filed a Petition to Intervene on December 23, 1999.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31.

At a regularly scheduled meeting of January 6, 2000, the Commission found that the Petition to Intervene was timely filed and demonstrated good cause to grant intervention. It is therefore

ORDERED, that the Petition to Intervene of Jefferson Telephone Company is hereby granted.

Dated at Pierre, South Dakota, this 12<sup>th</sup> day of January, 2000.

**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: *Nelsine Kaelbo*

Date: 1/13/00

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

*James A. Burg*  
JAMES A. BURG, Chairman

*Pam Nelson*  
PAM NELSON, Commissioner

*Laska Schoenfelder*  
LASKA SCHOENFELDER, Commissioner

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

IN THE MATTER OF THE CERTIFICATE OF )  
AUTHORITY TO PROVIDE COMPETITIVE )  
LOCAL EXCHANGE SERVICE IN )  
JEFFERSON, SOUTH DAKOTA )

REQUEST TO DISMISS  
NOTICE OF INTENT AND  
REQUEST TO AMEND  
CERTIFICATE  
TC99-114

The Petitioner, Dakota Telecom, Inc. hereby WITHDRAWS its previous *Notice Of Intent and Request to Amend Certificate*, filed on December 2, 1999. The parties to this request have determined that at the present time, service will not be offered by the Petitioner to the City of Jefferson, SD

Respectfully submitted this 28<sup>th</sup> day of December, 2000.

*Barbara E. Berkenpas*

Barbara E. Berkenpas  
Patrick J. Mastel  
William P. Heaston  
Dakota Telecom, Inc.  
29705 453<sup>rd</sup> Ave.  
Irene, SD 57037-0066  
605.263.3301  
Its Attorneys

**RECEIVED**  
JAN 02 2001  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION



**CERTIFICATE OF SERVICE**

I, Dawn Haase, on the 28<sup>th</sup> of December, 2000, served the attached filing by U. S. mail to all persons at the addresses indicated below.

Mr. William Bullard  
South Dakota Public Utilities Commission  
State Capitol, 500 East Capitol  
Pierre, SD 57501-5070

Mr. Tom Connors  
Jefferson Telephone Company  
311 Main Street  
Jefferson, SD 570381

Dawn Haase  
Dawn Haase



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

IN THE MATTER OF THE PETITION OF ) DAKOTA TELECOM, INC. TO AMEND ITS ) CERTIFICATE OF AUTHORITY TO ALLOW ) DAKOTA TELECOM, INC. TO PROVIDE ) SERVICE TO THE JEFFERSON, SOUTH ) DAKOTA EXCHANGE )	ORDER DISMISSING AND CLOSING DOCKET  TC99-114
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On December 6, 1999, the Public Utilities Commission received an application from Dakota Telecom, Inc. to Amend its Certificate of Authority to allow Dakota Telecom, Inc. to provide service to the Jefferson, South Dakota Exchange. On October 22, 1996, Dakota Telecom, Inc. (DTI) was granted a Certificate of Authority to provide telecommunications services, including local exchange services, throughout the state of South Dakota. This grant was subject to the Commission's restriction with respect to rural telephone companies. DTI is requesting that the Commission amend its previous Order granting DTI its certificate and grant DTI the authority to provide service to the entire exchange of Jefferson, South Dakota, an exchange currently served by Long Lines, Inc. d/b/a Jefferson Telephone company, a rural telephone company as that term is defined in federal and state law. On January 2, 2001, the Commission received a Request to Dismiss from Dakota Telecom, Inc.

On December 9, 1999, the Commission electronically transmitted notice of the filing and the intervention deadline of December 24, 1999, to interested individuals and entities. Jefferson Telephone Company filed to intervene on December 23, 1999. On January 6, 2000, Jefferson Telephone Company was granted intervention.

At its regularly scheduled meeting of January 17, 2001, Commission Staff recommended dismissal based on the letter filed by DTI. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31. The Commission unanimously voted to dismiss and close the docket. It is therefore

ORDERED, that the docket shall be dismissed and closed.

Dated at Pierre, South Dakota, this 24<sup>th</sup> day of January, 2001.

**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: Hildrie Kalbs

Date: 1/24/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner