

TCDD-064

TC00-0031

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

IN THE MATTER OF THE  
APPLICATION OF ESSENTIAL.COM,  
INC. FOR A CERTIFICATE OF  
AUTHORITY TO PROVIDE  
TELECOMMUNICATIONS SERVICES,  
INCLUDING LOCAL EXCHANGE  
SERVICES, IN SOUTH DAKOTA

## Public Utilities Commission of the State of South Dakota

DATE

MEMORANDA

4/5/00 Filed and Docketed;  
4/7/00 Public Utility  
4/27/00 Reused Tariff Pages;  
5/2/00 Reused Tariff Pages;  
5/1/00 Letter Requesting Withdrawal of Application;  
5/19/00 Order permitting withdrawal of application and Closing Docket;  
5/19/00 Docket Closed.

## RICH, MAY, BILODEAU &amp; FLAHERTY, P.C.

176 FEDERAL STREET

BOSTON, MASSACHUSETTS 02110-2223

TELEPHONE (617) 482-1360

FAX (617) 556-3889

Eric J. Krathwohl, Esq.  
Direct Line- (617) 556-3857  
Email- [ekrathwohl@richmaylaw.com](mailto:ekrathwohl@richmaylaw.com)

RECEIVED

APR 05 2000

April 4, 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**BY FEDERAL EXPRESS**

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

Re: Application for Certificate of Authority to Provide Local Exchange and Interexchange Telecommunications Services in the State of South Dakota for essential.com, inc.

Dear Mr. Bullard:

We respectfully file herewith on behalf of essential.com, inc. ("Essential"), an original and ten (10) copies of the above-referenced Application, along with a \$250 filing fee. Essential intends to operate as a reseller of local and interexchange telecommunications services in the State of South Dakota. Essential intends to provide local resale service in the exchanges of USWest and does not intend to provide service, at this time, in any rural telephone exchanges. Essential intends to rely on the Public Service Commission's fax filing as its means of serving notice of its Application on other local exchange carriers in the USWest service area.

Please acknowledge receipt of this filing by returning the duplicate copy of this letter in the enclosed self-addressed envelope.

If any questions arise or further information is needed, please do not hesitate to contact me or Ted Madden of my office at (617) 556-3838. Thank you.

Sincerely,



Eric J. Krathwohl

Enclosures

cc: Basil Pallone, Treasurer, Director of Finance and Controller (w/o enclosures)  
Peter Mills, Manager of Regulatory Affairs (w/ enclosures)

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

**RECEIVED**

APR 05 2000

Application of essential.com, inc., )  
 For a Certificate of Authority To )  
 Provide Local Exchange and Interexchange )  
 Telecommunications Service )

Docket No. **SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

Pursuant to the Rules and Regulations of the State of South Dakota Public Service Commission (the "Commission"), including §§20:10:32:02 et seq. and 20:10:24:02 et seq., essential.com, inc. ("Essential" or "Applicant"), by its undersigned counsel hereby requests resale authority to provide local and interexchange exchange telecommunications services to residential and business customers in the State of South Dakota.

Essential requests authority to operate as a local resale provider in the exchanges currently served by USWest and to operate as a reseller of interexchange ("IXC") toll and related services throughout the entire State of South Dakota. Essential specifically requests resale authority only. In support of this Application, Essential submits the following information:

1. Name of the Applicant Corporation [§20:10:32:03(1)] [20:10:24:02(1)]

essential.com, inc.  
 Three Burlington Woods Drive, 4<sup>th</sup> Floor  
 Burlington, Massachusetts 01803  
 Telephone (781) 229-9599  
 Toll free number 1-888-746-4983  
 Fax (781) 229-9499  
 Email address: [www.essential@essential.com](http://www.essential@essential.com)

2. Agent for Service of Process & Principal Office in South Dakota  
 [§20:10:32:03(4)(a)] [20:10:24:02(3)(b)]

Applicant's agent for service of process in South Dakota is:

CT Corporation Systems  
 319 South Coteau St.  
 Pierre, SD 57501  
 Telephone: (605) 224-5826

As a non-facilities based reseller, Applicant will have no offices, equipment or employees in the State of South Dakota.



3. Stockholders Owning More Than 20% of the Company [§20:10:32:03(4)(b)]  
[20:10:24:02(3)(c)]

<u>Name &amp; Address</u>	<u>Percent</u>	<u>Class of Shares</u>
EnerTech Capital Partners, L.P. 435 Devon Park Drive 700 Building Wayne, PA 19087	24%	Series A&B preferred

4. Structure of the Business Organization [§20:10:32:03(4)(c) and 20:10:32:03(6)]  
[20:10:24:02(3)(a), (d)]

Applicant is a Delaware corporation. Applicant has no affiliates, subsidiaries or parents.<sup>1</sup> Applicant was incorporated on October 30, 1998.<sup>2</sup> See Exhibit A for a copy of the Applicant's Certificate of Incorporation.

5. Authorization to do Business in South Dakota [§20:10:32:03(4)(d)]  
[20:10:24:02(3)(a)]

See Exhibit B for a copy of the Applicant's Certificate of Authority to Transact Business in the State of South Dakota.

6. Description of Applicant's Experience in South Dakota and Other Jurisdictions  
[§20:10:32:03(5)]

Applicant has no prior experience providing telecommunications service in South Dakota. Applicant has been providing resold local and TXC telecommunications services in the Commonwealth of Massachusetts since April, 1998 and in the State of New York since January, 2000.

7. Description of Services to be Offered [§20:10:32:03(7)] [20:10:24:02(5-7)]

Applicant intends to offer, within South Dakota, telecommunications services to both residential and business customers. Applicant will utilize its website, www.essential.com, to offer customers a convenient, consolidated, on-line bill, the ability for customers to review and analyze their usage of telecommunications services in a

<sup>1</sup> Pursuant to the laws of the Commonwealth of Virginia, Applicant intends to incorporate a subsidiary in the Commonwealth of Virginia, for the purpose of providing local resold telecommunications services in the Commonwealth of Virginia.

<sup>2</sup> Applicant was incorporated on October 30, 1998 as etility.com, inc., but subsequently changed its name to essential.com, inc. on March 29, 1999.

variety of ways selectable by the customer, and the option to pay for telecommunications services on line by way of a debit card or credit card. Consistent with legal requirements and market conditions, Applicant plans to offer such services throughout the United States.

Essential will purchase local exchange services from USWest and resell such services to its customers. Therefore, Applicant's customers in South Dakota will utilize all of the equipment and facilities of USWest. Applicant intends to operate as a reseller of IXC toll and related services to customers throughout the entire state of South Dakota, utilizing the facilities and equipment of MCI WorldCom and Qwest. As a non-facilities based reseller, Applicant will have no equipment or facilities in the State of South Dakota. Essential intends to begin providing telecommunications service in South Dakota by fourth quarter of 2000, pending Commission certification.

8. Maps [§20:10:32:03(8)]

Essential requests a waiver of Rule 20:10:32:03(8) requiring the applicant to provide a service area map indicating the proposed service area of the applicant, because Essential's local service area is identical to the boundaries of USWest's service territory in South Dakota, which is well known to the Commission and readily identifiable to the general public.

8. Technical Ability [§20:10:32:03(9)]

Essential is guided by a sophisticated and highly capable management team that includes individuals who have distinguished themselves in executive positions at some of the top technology and communications firms in America. The senior management team has extensive business, technical, operational and regulatory experience. See Exhibit C for a more detailed description of the experience of Essential's principal officers and key management.

Essential has signed a contract with Bell South Telecommunications covering the nine state southeastern region served by Bell South. Essential presently has in place negotiated agreements to resell long distance telephone service with three national carriers: MCI/WorldCom, Qwest Communications and Cable & Wireless. In addition, the Applicant has contracts with Bell Atlantic Company or are operating under published tariffs permitting us to resell local telephone service throughout Washington D.C., Maryland, Delaware, Virginia, Rhode Island, West Virginia, Vermont, New Hampshire, New York, Pennsylvania, Connecticut, Maine and Massachusetts. Essential has signed an interconnection agreement with Ameritech to cover certain states in the mid-West. Additionally, Essential has entered into a contract with Southwestern Bell Company relating to the resale of telephone service in Texas. All of the above-mentioned interconnection agreements have provisions which guarantee that the underlying incumbent local exchange carrier will provide all maintenance necessary to ensure quality service.

Essential has an exceptional team of customer service staff dedicated to responding promptly to customer service. The head of Essential's customer service

operations is David Wheeler.

9. Other Services [§20:10:32:03(10)]

Applicant will provide access to the following services through its interconnection agreement with USWest: 911 and E911 services, telecommunications relay services, directory assistance and operator services.

10. Documentation Demonstrating Financial Ability [§20:10:32:03(11)]  
[20:10:24:02(8)]

Essential has proven its ability to obtain and maintain significant bank and vendor lines of credit as well as strategic alliances with other parties.

More specifically, the following demonstrates the financial viability of Essential. Essential has respectively obtained: (a) a \$4,000,000 line of credit (subordinated debt funding) from Comdisco Ventures in 1999, a division of Comdisco, Inc. that has committed over \$1.5 billion in capital to more than 600 venture backed start-up companies; (b) approximately \$15,000,000 of equity funding from Brand Equity Ventures, Bessemer Venture Partners, EnerTech Capital Partners and others, also in 1999; and approximately \$75,000,000 of equity funding (Series C Preferred Stock offering, February, 2000) from several financial institutions including those already mentioned and, among others, Amerindo Investment Advisors ("Amerindo"). Brand Equity Ventures is a venture capital fund that focuses exclusively on financing high-growth consumer businesses, having backed successful companies that include Cyberian Outpost, Gymboree, and OfficeMax. Bessemer Venture Partners is one of North America's oldest venture capital firms and an early investor in the Internet with such investments as eToys, VeriSign, BabyCenter, and MindSpring, among others. EnerTech Capital Partners is a private equity partnership providing financing and strategic value to service and technology companies in the deregulating utility and telecommunications marketplace. Amerindo is a leading technology investor. These significant financial establishments are also major shareholders in Essential.

While Essential, as an entrepreneurial start-up is not a subsidiary of an existing public company, these facts set forth herein show that Essential has the requisite financial strength and resources to operate as a telecommunications services provider in the State of South Dakota. Essential's financial statements are set forth in Exhibit D.

11. Underlying Incumbent Local Exchange Carriers [§20:10:32:03(12)]

Essential has signed an interconnection agreement with USWest. Attached as Exhibit E is a cover letter from USWest to the Commission, dated March 24, 2000, indicating that an executed interconnection agreement between Essential and USWest has been filed with the Commission.

12. Illustrative Tariff [§20:10:32:03(13)]

See Exhibit F.

13. Cost Support for rates shown in the Tariff [§20:10:32:03(14)]

The requested services are fully competitive and therefore a cost support is not required.

14. Description of Marketing [§20:10:32:03(15)] [20:10:24:02(11)]

Applicant will solicit persons and/or businesses through a variety of efforts, including traditional advertising and promotions in print and other media. The Applicant intends to focus the majority of its advertising efforts on the Internet and attracting customers to its website. The applicant may use contests and other promotions, in keeping with state and federal law, to engage customers. Applicant does not plan to use telemarketing. Ronan Winter heads Essential's marketing operations. See Exhibit C for more details on Mr. Winter's qualifications.

15. Rural Telephone Exchanges [§20:10:32:03(16)]

Essential will be providing local service exclusively in the USWest service territory and therefore will operate solely in a non-rural exchange area.

16. Certification Status in Other Jurisdictions [§20:10:32:03(17)] [20:10:24:02(10)]

Essential is certified to provide local and/or IXC telecommunications services in the District of Columbia and fifteen states: Massachusetts, Rhode Island, New Hampshire, New York, Pennsylvania, Colorado, New Jersey, Delaware, Maryland, Ohio, Wisconsin, Texas, Washington, California, and Florida. Essential has never been denied an application for certification in any state. Essential, to its knowledge, is in good standing in every state where it has been certified to transact business.

17. Contact Persons [§20:10:32:03(18)] [20:10:24:02(9)]

Correspondence or communications regarding this Application, regulatory and legal matters should be directed to:

Eric Krathwohl, Esq.  
Rich, May, Bilodeau & Flaherty, P.C.  
176 Federal Street  
Boston, MA 02110  
Tel: (617) 482-1360



Fax: (617) 556-3890  
ekrathwohl@richmaylaw.com

With a copy to:

Peter Mills, Manager of Regulatory Affairs  
essential.com, inc.  
Three Burlington Woods Drive, 4<sup>th</sup> Floor  
Burlington, MA 01803  
Telephone Number: (781) 229-9599  
Facsimile Number: (781) 229-9499  
[pmills@essential.com](mailto:pmills@essential.com)

The Applicant's representative for all customer service related matters is:

David Wheeler, Vice-President, Operations  
essential.com, inc.  
Three Burlington Woods Drive, 4<sup>th</sup> Floor  
Burlington, MA 01803  
Telephone Number: (781) 229-9599  
Facsimile Number: (781) 229-9499  
[dwheeler@essential.com](mailto:dwheeler@essential.com)

18. Billing Process [§20:10:32:03(19)]

Applicant will utilize its website, [www.essential.com](http://www.essential.com), to offer South Dakota customers a convenient, consolidated, on-line bill, the ability for customers to review and analyze their usage of telecommunications services in a variety of ways selectable by the customer, and the option to pay for telecommunications services on line by way of a debit card or credit card. The bills will be prepared consistent with the Commission's rules and regulations in South Dakota.

19. Slamming [§20:10:32:03(20) and (21)]

The Applicant intends to obtain third party verification for any customer who chooses to take services from Essential. Further, the Applicant intends to comply with all applicable regulations with regards to slamming. Essential is not aware of any complaints, which have been filed with any state or federal regulatory commission regarding slamming.

20. Waivers [§20:10:32:03(22)]

Essential requests a waiver of Rule 20:10:32:03(8) requiring an applicant to provide a service area map indicating the proposed service area of the applicant, because Essential's local service area is identical to the boundaries of USWest's service territory.



in South Dakota, which is well known to the Commission and readily identifiable to the general public.

21. Federal Tax ID Number [§20:10:32:03(23)]

04-343866

Wherefore, Essential respectfully requests that the Commission enter an Order granting this Application, thereby conferring on Essential authority to provide local exchange and IXC toll and related services to residential and business customers in the state of South Dakota.

Respectfully submitted,



Eric J. Krathwohl

Edward E. Madden, Jr.

Rich, May, Bilodeau & Flaherty, P.C.

176 Federal Street, 6<sup>th</sup> Floor

Boston, MA 02110

v. (617) 482-1360

f. (617) 556-3890

Counsel for essential.com, inc.

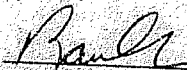
Dated: April 4, 2000

## VERIFICATION

I am an officer of essential.com, inc., the Applicant in the above-entitled matter, and am authorized to make this Verification on its behalf. The statements in the foregoing document are true of my own knowledge, except as to matters which are stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 30, 2000, at Burlington, Massachusetts.

  
Basil Pallone, Treasurer, Director  
Of Finance/Controller

**EXHIBIT A**

**Certificate of Incorporation from the State of Delaware**

**Certificate of Good Standing from the State of Delaware**



State of Delaware  
Office of the Secretary of State

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PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "ETILITY.COM, INC.", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF OCTOBER, A.D. 1998, AT 12:30 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



2954480 8100

981419716

*Edward J. Freel*  
Edward J. Freel, Secretary of State

AUTHENTICATION:

9381753

DATE:

10-30-98

CERTIFICATE OF INCORPORATION  
OF

etility.com, inc.

\*\*\*\*\*

**FIRST.** The name of the corporation is etility.com, inc. (the "Corporation").

**SECOND.** The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

**THIRD.** The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

**FOURTH.** The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 7,000,000 shares, consisting of 5,000,000 shares of Common Stock with a par value of One Cent (\$.01) per share (the "Common Stock") and 2,000,000 shares of Preferred Stock with a par value of One Cent (\$.01) per share (the "Preferred Stock").

A description of the respective classes of stock and a statement of the designations, preferences, voting powers (or no voting powers), relative, participating, optional or other special rights and privileges and the qualifications, limitations and restrictions of the Preferred Stock and Common Stock are as follows:

**A. PREFERRED STOCK**

The Preferred Stock may be issued in one or more series at such time or times and for such consideration of considerations as the Corporation's Board of Directors may determine. Each series of Preferred Stock shall be so designated as to distinguish the shares thereof from the



shares of all other series and classes. Except as otherwise provided in this Certificate of Incorporation, different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes.

The Board of Directors is expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more series, each with such designations, preferences, voting powers (or no voting powers), relative, participating, optional or other special rights and privileges and such qualifications, limitations or restrictions thereof as shall be stated in the resolution or resolutions adopted by the Board of Directors to create such series, and a certificate of said resolution or resolutions shall be filed in accordance with the General Corporation Law of the State of Delaware. The authority of the Board of Directors with respect to each such series shall include, without limitation of the foregoing, the right to provide that the shares of each such series may: (i) have such distinctive designation and consist of such number of shares; (ii) be subject to redemption at such time or times and at such price or prices; (iii) be entitled to the benefit of a retirement or sinking fund for the redemption of such series on such terms and in such amounts; (iv) be entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series of stock; (v) be entitled to such rights upon the voluntary or involuntary liquidation, dissolution or winding up of the affairs, or upon any distribution of the assets of the Corporation in preference to, or in such relation to, any other class or classes or any other series of stock; (vi) be convertible into, or exchangeable for, shares of any other class or classes or any other series of stock at such price or prices or at such rates of exchange and with such adjustments, if any; (vii) be entitled to the benefit of such conditions, limitations or restrictions, if any, on the creation of indebtedness, the issuance of additional shares of such series or shares of any other series of Preferred Stock, the amendment of this Certification of Incorporation or the Corporation's By-Laws, the payment of dividends or the making of other distributions on, or the purchase, redemption or other acquisition by the Corporation of, any other class or classes or series of stock, or any other

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corporate action; or (viii) be entitled to such other preferences, powers, qualifications, rights and privileges, all as the Board of Directors may deem advisable and as are not inconsistent with law and the provisions of this Certificate of Incorporation.

## B. COMMON STOCK

1. Relative Rights of Preferred Stock and Common Stock. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions of the Common Stock are expressly made subject and subordinate to those that may be fixed with respect to any shares of the Preferred Stock.
2. Voting Rights. Except as otherwise required by law or this Certificate of Incorporation, each holder of Common Stock shall have one vote in respect of each share of stock held by him of record on the books of the Corporation for the election of directors and on all matters submitted to a vote of stockholders of the Corporation.
3. Dividends. Subject to the preferential rights of the Preferred Stock, if any, the holders of shares of Common Stock shall be entitled to receive, when and if declared by the Board of Directors, out of the assets of the Corporation which are by law available therefor, dividends payable either in cash, in property or in shares of capital stock.
4. Dissolution, Liquidation or Winding Up. In the event of any dissolution, liquidation or winding up of the affairs of the Corporation, after distribution in full of the preferential amounts, if any, to be distributed to the holders of shares of the Preferred Stock, holders of Common Stock shall be entitled, unless otherwise provided by law or this Certificate of Incorporation, to receive all of the remaining assets of the Corporation of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of Common Stock held by them respectively.

FIFTH. The Corporation is to have perpetual existence.

- 4 -

**SIXTH.** In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

A. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the By-Laws of the Corporation.

B. Elections of directors need not be by written ballot unless the By-Laws of the Corporation shall so provide.

C. The books of the Corporation may be kept at such place within or without the State of Delaware as the By-Laws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

**SEVENTH.** The Corporation eliminates the personal liability of each member of its Board of Directors to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however, that, to the extent provided by applicable law, the foregoing shall not eliminate the liability of a director (i) for any breach of such director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of Title 8 of the Delaware Code, or (iv) for any transaction from which such director derived an improper personal benefit.

If the Delaware General Corporation Law is amended in the future to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended from time to time.

Any repeal or modification of this Article SEVENTH shall not increase the personal liability of any director of this Corporation for any act or occurrence taking place prior to such repeal or modification, or otherwise adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

FAX 10/28/81

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**EIGHTH.** The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon a stockholder herein are granted subject to this reservation.

**NINTH.** The name and mailing address of the sole incorporator is as follows:

<u>Name</u>	<u>Mailing Address</u>
John R. Pitfield, Esq.	Testa, Hurwitz & Thibault, LLP High Street Tower 125 High Street Boston, MA 02110

**TENTH.** Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this Corporation, as the case may be, and also on this Corporation.

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I, THE UNDERSIGNED, being the sole incorporator hereinabove named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, do make this certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this 30th day of October, 1998.

  
\_\_\_\_\_  
John R. Pitfield  
Sole Incorporator

FAX 14751 4481781

AUG 10 '99 10:00

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State of Delaware  
Office of the Secretary of State

---

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "ESSENTIAL.COM, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE FOURTH DAY OF JANUARY, A.D. 2000.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.

2054480 8300

001003855



  
Edward J. Freel, Secretary of State 178183

AUTHENTICATION:

01-04-00

DATE:

**EXHIBIT B**

**Certificate of Authority to do Business in South Dakota**

# State of South Dakota



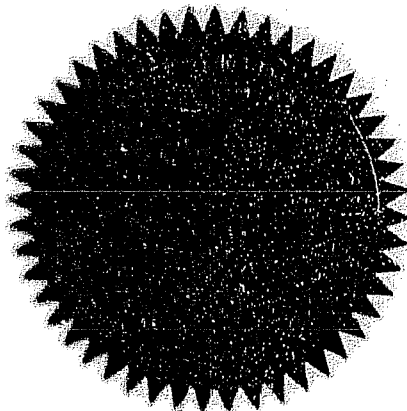
## OFFICE OF THE SECRETARY OF STATE

### Certificate of Authority

**I, JOYCE HAZELTINE**, Secretary of State of the State of South Dakota, hereby certify that the Application for a Certificate of Authority of **ESSENTIAL.COM, INC. (DE)** to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Corporation Acts, have been received in this office and are found to conform to law.

**ACCORDINGLY** and by virtue of the authority vested in me by law, I hereby issue this Certificate of Authority and attach hereto a duplicate of the application to transact business in this state.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed the Great Seal of the State of South Dakota, at Pierre, the Capital, this October 4, 1999.



**Joyce Hazeltine**  
Secretary of State

SECRETARY OF STATE  
STATE CAPITOL  
205 E. CAPITOL  
PIERRE, S.D. 57501-5077  
605-773-4845  
FAX (605) 773-4550

RECEIVED  
FILE NO.  
RECEIPT NO. OCT 04 1999

# APPLICATION FOR CERTIFICATE OF AUTHORITY

S.D. SEC. OF STATE

Pursuant to the provisions of SDCL 47-8-7, the undersigned corporation hereby applies for a Certificate of Authority to transact business in the State of South Dakota and for that purpose submits the following statement:

Name of the corporation is Essential.com, Inc.

(Exact corporate name)

(2) If the name of the corporation does not contain the word "corporation", "company", "incorporated" or "limited" or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state is

(3) State where incorporated Delaware Federal Taxpayer ID#

(4) The date of its incorporation is October 30, 1998 and the period of its duration, which may be perpetual, is Perpetual

(5) The address of its principal office in the state or country under the laws of which it is incorporated is

1324 Orange Street, Wilmington, Delaware Zip Code 09801

mailing address if different from above is: Same

Zip Code

(6) The street address, or a statement that there is no street address, of its proposed registered office in the State of South Dakota is c/o C T Corporation System, 319 S. Coteau Zip 57501  
and the name of its proposed registered agent in the State of South Dakota at that address is

C T Corporation System

(7) The purposes which it proposes to pursue in the transaction of business in the State of South Dakota are (state specific purpose) To sell local and long distance telecommunications services,

energy home services and other services all in accordance with state and federal

law

(8) The names and respective addresses of its directors and officers are:

Name	Officer Title	Street Address	City	State	Zip
See attached list of directors and					

(9) The aggregate number of shares which it has authority to issue, itemized by classes, par value of shares without par value, and series, if any, within a class is:

Number of shares	Class	Series	Par value per share or statement that shares are without par value
See attachment			



(10) The aggregate number of its issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, is:

Number of shares	Class	Series	Par value per share or statement that shares are without par value
<u>1,882,802</u>	<u>Common</u>	<u>(No series)</u>	<u>\$0.01</u>
<u>2,830,736</u>	<u>Preferred</u>	<u>A</u>	<u>\$0.01</u>
<u>1,752,177</u>	<u>Preferred</u>	<u>B</u>	<u>\$0.01</u>

(11) The amount of its stated capital is \$120,757.05

Shares issued times par value equals stated capital. In the case of no par value stock, stated capital is the consideration received for the issued shares.

(12) This application is accompanied by a CERTIFICATE OF FACT or a CERTIFICATE OF GOOD STANDING duly acknowledged by the secretary of state or other officer having custody of corporate records in the state or country under whose laws it is incorporated.

(13) That such corporation shall not directly or indirectly combine or make any contract with any incorporated company, foreign or domestic, through their stockholders or the trustees or assigns of such stockholders, or with any copartnership or association of persons, or in any manner whatever to fix the prices, limit the production or regulate the transportation of any product or commodity so as to prevent competition in such prices, production or transportation or to establish excessive prices therefor.

(14) That such corporation, as a consideration of its being permitted to begin or continue doing business within the State of South Dakota, will comply with all the laws of the said State with regard to foreign corporations.

The application must be signed, in the presence of a notary public, by the chairman of the board of directors, or by the president or by another officer.

I DECLARE AND AFFIRM UNDER THE PENALTY OF PERJURY THAT THIS APPLICATION IS IN ALL THINGS TRUE AND CORRECT.

Dated 9/17/99 19 99

(Signature) Akhil Garland

President  
(Title)

State of Massachusetts

County of Suffolk

On this 17<sup>th</sup> day of September, 19 99, before me Eric Krathwohl personally appeared Akhil Garland known to me, or proved to me, to be the President of the corporation that is described in and that executed the within instrument and acknowledged to me that such corporation executed same.

My Commission Expires: 4/20/03

(Notary Public)

Notarial Seal

\*\*\*\*\*

The Consent of Appointment below must be signed by the registered agent listed in number six.

### CONSENT OF APPOINTMENT BY THE REGISTERED AGENT

I, C T Corporation System, hereby give my consent to serve as the  
(name of registered agent)

registered agent for Essential.com, Inc.  
(corporate name)

Dated Sept 27 19 99

LAUREN H. KREATZ  
By SECRETARY  
(signature of registered agent)



Appendix to South Dakota  
Application for Certificate of Authority

**Directors and Officers of  
Essential.com, Inc.**

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1. Akhil Garland, President and Director  
3 Burlington Woods Drive  
Burlington, Massachusetts 01803
2. Patrick J. Moran, Vice President, Treasurer & Assistant Secretary  
and Director  
3 Burlington Woods Drive  
Burlington, Massachusetts 01803
3. Linda DeRenzo, Secretary  
Testa, Hurwitz, & Thibeault, LLP 125 High Street  
Boston, Massachusetts 02110
4. Scott Ungerer, Director  
EnterTech Capital, 435 Devon Park Drive, 700 Building  
Wayne, Pennsylvania 19087
5. Rob Soni, Director  
Bessemer Venture Partners, 83 Walnut Street  
Wellesley Hills, Massachusetts 02481
6. Christopher Kirchen, Director  
Brand Equity Ventures, Three Pickwick Plaza  
Greenwich, Connecticut 06830

PAR VALUE FOR ALL SHARES : \$ 0.01

## Capital Structure of Essential.com, Inc.

1.	Class: Series: Authorized: Issued: Outstanding:	Common (No series) 19,166,451 4,482,802 4,482,802
2.	Class: Series: Authorized: Issued: Outstanding:	Preferred A 2,830,726 2,830,726 2,830,726
3.	Class: Series: Authorized: Issued: Outstanding:	Preferred B 6,606,867 4,762,177 4,762,177

## EXHIBIT C

### **Biographies of Management**

#### **Mr. Akhil Garland, Chairman and CEO**

Mr. Garland has managed MIS departments for the State of Massachusetts and an international health care company. He is an entrepreneur, having founded and sold a multimedia company. Mr. Garland brings to Essential a long-range vision as well as a capacity to manage growth through innovative and leading edge information systems. He earned a B.A. in Computer Science and Mathematics from Connecticut College.

#### **Mr. John Duffy, Senior Vice President, Business Development**

Mr. Duffy comes to Essential from Metromedia International Telecommunications where he served as Vice President of Paging Operations. In that capacity, he managed 13 paging joint ventures located in Eastern Europe, Russia, and Central Asia. Mr. Duffy was directly involved in strategic relationships between Metromedia and vendors, including Motorola, NEC, and Philips. Previously, he was with Metrocall, Inc. for five years in several senior management positions, including Director of Carrier Relations, where he oversaw the ongoing relationship between large carriers and resellers throughout the country. Mr. Duffy holds a B.A. in Economics from LaSalle University.

#### **Ms. Libby Curtis, Director of Web Development**

Prior to joining Essential, Libby Curtis was Director, Web Development for Cendant Corporation, where she managed a sixteen-person web development group. Ms. Curtis managed the development of several complex sites including Ramada, Days Inn, and Century 21. Prior to Cendant, Ms. Curtis was Human Factors Designer for The NetMarket Company where she designed and integrated user interfaces for several web projects including NetMarket, an on-line shopping service. Ms. Curtis received her BS in Marketing from Plymouth State College.

#### **Mr. Ivar Wold, Senior Vice President and Chief Technology Officer**

Mr. Wold brings over 30 years of experience in engineering, and is one of the Web's leading innovators in eCommerce technology. Prior to joining Essential, Mr. Wold was a Senior Vice President at Fidelity Investments Retail Electronic Commerce where he was responsible for the Architecture and Development of Fidelity's Retail Online products. Fidelity's retail Website is one of the busiest in the financial services industry, with more than 2.5 million on-line accounts. Earlier in his career, Mr. Wold worked at leading corporations, such as Inprise (previously Borland International), Lotus Development and Microsoft. He also held senior positions at Analog Devices. Mr. Wold received a B.Sc (Eng) in Aeronautics and Astronautics from Southampton University in England where he graduated with First Class Honors. He is the holder of multiple patents, and his inventions have been manufactured and sold commercially around the world.

#### **Mr. Basil Pallone, Director of Finance and Controller, Treasurer**

Mr. Pallone has 19 years of financial experience in a diverse group of energy related companies, including start up ventures and publicly held electric utilities. Before joining Essential, Mr. Pallone was CFO of Energy Vision, a start up retail marketer of energy and energy services which was acquired by Williams Energy. Prior to Energy Vision, he served as Executive Vice President for EUA Cogenex Corporation, a \$75 million revenue energy management company. Mr. Pallone also spent three years as Assistant Treasurer at Eastern Utilities Associates where he was in charge of preparing annual and quarterly reports to shareholders and SEC filings. Mr. Pallone spent the first ten years of his career in various financial positions at Boston Edison Company.

**Mr. Patrick Moran, Vice President, Secretary**

Mr. Moran earned a B.S. in Mass Communications from Emerson College, where he focussed on media communications and computer technologies. He has been involved in entrepreneurial activities since graduating from Emerson and is currently responsible for back office administration at Essential.

**Mr. Ronan Winter, Vice President, Strategic Marketing Alliances**

Mr. Winter was formerly Director of Business Development for Lycos, Inc., where he was responsible for the creation for many e-commerce partnerships. During his tenure from 1997 through 1999, Mr. Winter negotiated sixteen strategic alliances approved at a CEO and Board level, resulting in significant recurring annual revenue. Prior to joining Lycos, Mr. Winter served as Manager, Business Development with iChat from 1996 to 1997, providing communication software to the Internet community. Mr. Winter holds an impressive 10-year track record in business development and sales and marketing with previous employers such as IBM, 1989-91 and Stream International, 1991-96. A graduate of Trinity College, Dublin, Ireland, Mr. Winter was professionally trained in sales and marketing management by The Chartered Institute of Marketing, London.

**Mr. David Wheeler, Vice President, Operations**

Mr. Wheeler serves as Essential's Vice President of Operations. Mr. Wheeler has over 20 years of experience in managing large customer fulfillment and customer service functions. Prior to joining Essential, Mr. Wheeler served as the general manager for Sky Subscriber Services, Ltd., a division of Sky Television, the leading satellite television broadcaster in the U.K. from 1989 to 1998. In this role, he was responsible for the management of over 3.5 million subscribers, collection of revenues exceeding \$1.5 billion, and over 2,500 employees. From 1975 to 1989, Mr. Wheeler was with Book Club Associates in U.K. where he was responsible for the design and implementation of their customer management computer systems and eventually had general management responsibility for all matters relating to customer service.

**Mr. Rajan Kulkarni, Chief Architect**

Mr. Kulkarni brings 18 years experience in engineering, and is one of the web's leading architects. Prior to joining Essential, Mr. Kulkarni was Principal Technical Architect at Fidelity Investments. Mr. Kulkarni helped build Fidelity.com into one of the most heavily trafficked sites on the Internet. During his tenure with Fidelity.com, the site generated millions of web transactions and web hits each day. Mr. Kulkarni received his



Engineering Degree from Bombay University, India and his postgraduate certificate in software technology from National Center for Software Development, India.

**Mr. Christopher Kallaher – Vice President and General Counsel**

Christopher Kallaher joined Essential as our Vice President and General Counsel in February, 2000. Mr. Kallaher comes to Essential from Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. where, from 1999 to 2000, he was an associate working on regulatory and corporate matters for various clients in the utility sector. Prior to joining Mintz, Levin, Mr. Kallaher served as senior counsel at the Massachusetts Department of Telecommunications and Energy (DTE) where he presided over major cases in electric utility and telecommunications restructuring. Before the DTE, Mr. Kallaher was an attorney practicing utility law in Wisconsin where he represented a number of investor owned utilities over a nine-year period. Mr. Kallaher holds a J.D. from the University of Wisconsin at Madison and a B.S. in Civil Engineering from Stanford University.

**EXHIBIT D**

**Financial Statements**

essential.com

Financial Statements

September 1999

Essential.com  
Financial Statements  
December 31, 1998

(Audited)

and

September 1999

(Unaudited – For Management Purposes Only)

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## REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To the Board of Directors and Stockholders of  
essential.com, Inc.:

We have audited the accompanying balance sheet of essential.com, inc. (a Delaware corporation) as of December 31, 1998, and the related statements of operations, changes in redeemable convertible preferred stock and stockholders' deficit, and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of essential.com, Inc. as of December 31, 1998, and the results of its operations and its cash flows for the year then ended, in conformity with generally accepted accounting principles.

Arthur Andersen LLP

Boston, Massachusetts  
August 3, 1999

**ESSENTIAL.COM, INC.**

**BALANCE SHEETS**

	December 31, 1998	September 30, 1999 (Unaudited)
<b>ASSETS</b>		
<b>Current assets:</b>		
Cash and cash equivalents .....	\$ 14,119	\$ 9,821,656
Accounts receivable, net of reserves of approximately \$26,000 and \$11,000 in 1998 and 1999, respectively .....	21,117	64,498
Prepaid expenses and other current assets .....	<u>1,543</u>	<u>7,263</u>
Total current assets .....	36,779	9,893,417
<b>Property and equipment, at cost:</b>		
Computer and office equipment .....	115,060	679,964
Furniture, fixtures and automobiles .....	<u>19,237</u>	<u>15,541</u>
Total property and equipment .....	134,297	695,505
Less: accumulated depreciation .....	<u>37,828</u>	<u>169,564</u>
Total net property and equipment .....	96,469	525,941
Intangible assets, net of accumulated amortization of \$3,900 in 1999 .....	—	336,651
Other Assets .....	9,580	51,325
Deferred financing costs .....	<u>—</u>	<u>375,065</u>
Total assets .....	\$ <u>142,828</u>	\$ <u>11,182,399</u>
<b>LIABILITIES, REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT</b>		
<b>Current liabilities:</b>		
Notes payable to related party .....	\$ 248,560	\$ —
Advances on convertible notes payable .....	20,000	—
Current portion of deferred payments .....	33,702	360,153
Accounts payable .....	207,679	695,481
Accrued payroll and related costs .....	129,356	223,359
Accrued other expenses .....	<u>32,211</u>	<u>451,991</u>
Total current liabilities .....	671,508	1,730,984
Deferred payments, net of current portion .....	<u>40,154</u>	<u>—</u>
Commitments (Note L)		
<b>Redeemable Convertible Preferred Stock:</b>		
Series A redeemable convertible preferred stock, \$.01 par value		
Authorized—2,830,726 shares in 1999, issued and outstanding—2,830,726 shares in 1999 stated at redemption value, net of unaccreted expenses .....	—	2,839,142
Series B redeemable convertible preferred stock, \$.01 par value		
Authorized—6,606,367 shares in 1999, issued and outstanding—6,332,125 shares in	—	12,193,622
<b>Stockholders' deficit:</b>		
Common stock, \$.01 par value—authorized—19,166,451 shares, issued and outstanding—5,233,897 and 4,482,802 shares in 1998 and 1999, respectively .....	52,339	44,828
Additional paid-in capital .....	16,408	489,975
Warrants .....	—	327,065
Deferred compensation .....	—	(451,907)
Accumulated deficit .....	<u>(637,581)</u>	<u>(5,991,310)</u>
Total stockholders' deficit .....	(568,834)	(5,581,349)
Total liabilities, redeemable convertible, preferred stock and stockholders' deficit .....	\$ <u>142,828</u>	\$ <u>11,182,399</u>

*The accompanying notes are an integral part of these financial statements.*

**ESSENTIAL.COM, INC.**  
**STATEMENTS OF OPERATIONS**

	Year Ended December 31, 1998	Nine Months Ended September 30, 1999 (Unaudited)	Three Months Ended September 30, 1999 (Unaudited)
Revenue .....	\$ 141,549	\$ 165,210	\$ 79,212
Cost of revenue .....	<u>165,691</u>	<u>184,208</u>	<u>86,692</u>
Gross loss .....	(24,142)	(18,998)	(7,480)
Operating expenses:			
Research and development .....	71,459	1,023,908	492,454
General and administrative .....	338,299	1,805,525	1,129,842
Selling and marketing .....	133,045	1,696,024	1,302,603
Customer service .....	<u>—</u>	<u>526,045</u>	<u>313,197</u>
Total operating expenses .....	<u>542,803</u>	<u>5,051,502</u>	<u>3,238,096</u>
Loss from operations .....	(566,945)	(5,070,500)	(3,245,576)
Interest and other income .....	—	122,087	79,080
Interest expense .....	<u>17,336</u>	<u>147,549</u>	<u>9,926</u>
Net loss .....	(584,281)	(5,095,962)	(3,176,422)
Preferred stock dividends and accretion .....	<u>—</u>	<u>257,767</u>	<u>240,565</u>
Net loss attributable to common stockholders .....	<u>\$ (584,281)</u>	<u>\$ (5,353,729)</u>	<u>\$ (3,380,987)</u>

*The accompanying notes are an integral part of these financial statements.*

ESSENTIAL.COM, INC.

STATEMENTS OF CHANGES IN REDEEMABLE CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT  
FOR THE YEAR ENDED DECEMBER 31, 1998 AND  
THE NINE-MONTH PERIOD ENDED SEPTEMBER 30, 1999

	Series A Redeemable Convertible Preferred Stock		Series B Redeemable Convertible Preferred Stock		Common Stock		Additional Paid-in Capital	Warrants	Deferred Compensation	Accumulated Deficit	Total Stockholders' Deficit
	Number of Shares	Amount	Number of Shares	Amount	Number of Shares	\$.01 Par Value					
		\$		\$	4,194,287	\$41,943	\$(4,977)	\$	\$	\$(53,300)	\$(16,334)
Issuance of common stock .....		-		-	1,039,610	10,396	21,385	-	-	(584,281)	(584,281)
Net loss .....		-		-		-	-	-	-	(637,581)	(568,834)
Balance at December 31, 1998 .....		-		-	5,233,897	52,339	16,408	-	-	-	878
Exercise of common stock options .....		-		-	28,612	286	592	-	-	-	(23,836)
Repurchase of common stock .....		-		-	(779,707)	(7,797)	(16,039)	-	-	-	-
Deferred compensation on options granted to consultants ..		-		-		-	489,014	-	(489,014)	-	-
Amortization of deferred compensation .....		-		-		-	-	-	37,107	-	37,107
Issuance of Series A redeemable convertible preferred stock, net of issuance costs of \$98,697 .....	2,096,410	1,997,713	-	-	-	-	-	-	-	-	-
Conversion of notes to Series A preferred stock .....	734,316	734,316	-	-	-	-	-	-	-	-	-
Issuance of Series B redeemable convertible preferred stock, net of issuance costs of \$57,032 .....	-	-	6,332,125	12,042,968	-	-	-	-	-	-	-
Accretion of redeemable convertible preferred stock to liquidation value .....	-	107,113	-	150,654	-	-	-	-	-	(257,767)	(257,767)
Warrants granted in connection with subordinated loan .....	-	-	-	-	-	-	-	327,065	-	(5,095,962)	(5,095,962)
Net loss .....	-	-	-	-	-	-	-	-	-	-	327,065
Balance at September 30, 1999 (unaudited) .....	2,830,726	\$2,839,142	6,332,125	\$12,193,622	4,482,802	\$44,828	\$489,973	\$327,065	\$(451,907)	\$(5,998,110)	\$(5,581,349)

This management's report should be read in conjunction with the financial statements and notes thereto.



**ESSENTIAL.COM, INC.**  
**STATEMENTS OF CASH FLOWS**

	Year Ended December 31, 1998	Nine Months Ended September 30, 1999 (Unaudited)
<b>Cash flows from operating activities:</b>		
Net loss.....	\$ (584,281)	\$ (5,095,962)
Adjustments to reconcile net loss to net cash used in operating activities:		
Interest expense convertible notes.....	—	119,316
Depreciation and amortization.....	31,807	164,202
Amortization of deferred compensation.....	—	37,107
(Gain) loss from disposal of assets.....	(651)	9,787
Changes in assets and liabilities:		
Accounts receivable.....	(21,117)	(43,381)
Prepaid expenses and other current assets.....	(493)	(5,720)
Accounts payable.....	169,607	487,802
Accrued expenses.....	153,004	513,783
Net cash used in operating activities.....	<u>(252,124)</u>	<u>(3,813,066)</u>
<b>Cash flows from investing activities:</b>		
Purchases of property and equipment.....	(84,609)	(599,561)
Proceeds from sale of equipment.....	8,184	—
Increase in other assets.....	(4,155)	(41,745)
Net cash used in investing activities.....	<u>(80,580)</u>	<u>(641,306)</u>
<b>Cash flows from financing activities:</b>		
Proceeds from (payments on) notes payable to related party.....	224,760	(248,560)
Repurchase of common stock.....	—	(23,836)
Proceeds from advances on and issuance of convertible notes payable.....	20,000	690,000
Deferred financing costs.....	—	(48,000)
Proceeds from (payments on) deferred payments.....	64,715	(54,254)
Net proceeds from issuance of redeemable convertible preferred stock.....	—	14,040,681
Repayment of convertible notes payable.....	—	(95,000)
Proceeds from issuance of common stock.....	31,781	878
Net cash provided by financing activities.....	<u>341,256</u>	<u>14,261,909</u>
Net increase in cash and cash equivalents.....	8,552	9,807,537
Cash and cash equivalents beginning of period.....	5,567	14,119
Cash and cash equivalents end of period.....	<u>\$ 14,119</u>	<u>\$ 9,821,656</u>
<b>Supplemental disclosure of cash flow information:</b>		
Cash paid for interest.....	<u>\$ 289</u>	<u>\$ —</u>
<b>Supplemental disclosure of noncash information:</b>		
Accretion of preferred stock dividends.....	<u>\$ —</u>	<u>\$ 257,767</u>
Conversion of notes payable and accrued interest to preferred stock.....	<u>\$ —</u>	<u>\$ 734,516</u>
Acquisition of customers.....	<u>\$ —</u>	<u>\$ 340,560</u>

*The accompanying notes are an integral part of these financial statements.*

statements.

#### *Use of Estimates in the Preparation of Financial Statements*

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

#### *Interim Financial Statements*

The accompanying balance sheet as of September 30, 1999, the statements of operations for the three- and nine-month periods ended September 30, 1999 and the statements of cash flows and changes in redeemable convertible preferred stock and stockholders' deficit for the nine months ended September 30, 1999 are unaudited, but, in the opinion of management, include all adjustments, consisting of normal recurring adjustments, necessary for a fair presentation of results for these interim periods. Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been omitted, although the Company believes that the disclosures included are adequate to make the information presented not misleading. The results of operations for the nine months ended September 30, 1999 are not necessarily indicative of the results to be expected for the entire fiscal year.

**ESSENTIAL.COM, INC.**  
**NOTES TO FINANCIAL STATEMENTS**

**A. Organization**

essential.com, inc. (essential or the Company) is a web-based reseller of various services including electricity, Internet access and phone services to small businesses and residential customers in the northeastern U.S.

The Company is devoting substantially all of its efforts towards the acquisition of new customers, development of its web site and identification of new services to be offered. The Company is subject to a number of risks similar to those of other early stage enterprises. Principal risks to the Company include the need to obtain adequate financing to fund future operations, dependence on key individuals, requirement to obtain regulatory approval, and reliance on successful marketing of services to provide profitable operations.

**B. Summary of Significant Accounting Policies**

The accompanying financial statements reflect the application of certain significant

**ESSENTIAL.COM, INC.**  
**NOTES TO FINANCIAL STATEMENTS - (Continued)**

**B. Summary of Significant Accounting Policies (continued)**

*Comprehensive Loss*

Comprehensive loss includes net loss as well as other changes in the equity of a business enterprise during a period from transactions and other events and circumstances from nonowner sources. The Company's comprehensive loss is equal to net loss for the periods presented.

*Long Lived Assets*

The Company's long lived assets consist of property and equipment and intangibles assets. The Company has assessed the realizability of these assets and believes that there is no material impairment of these assets to date.

*Deferred Financing Costs*

Deferred financing costs represents the expenses incurred obtaining the subordinated loan discussed in Note H. These costs are being amortized over the life of the related loan commitment.

**C. Income Taxes**

The Company accounts for income taxes in accordance with SFAS No. 109, Accounting for Income Taxes. Under the liability method specified by SFAS No. 109, a deferred tax asset or liability is determined based on the difference between the financial statement and tax bases of assets and liabilities, as measured by currently enacted tax rates.

There are no significant differences between financial statement and tax bases of assets and liabilities as of December 31, 1998. As of December 31, 1998, the Company had net operating loss carryforwards available to offset future taxable income, if any, of approximately \$600,000. The Company has established a valuation allowance of approximately \$250,000 to offset its deferred tax asset as its future realizability is uncertain. The Internal Revenue Code contains provisions that limit the use of loss and tax credit carryforwards in the event of certain changes in the ownership, as defined. These carryforwards expire through 2018 and are subject to review and possible adjustment by the Internal Revenue Service.

**D. Intangible Assets**

In August and September 1999, the Company acquired the performance obligations related to two customer lists for \$223,554 and \$117,006, respectively. Under the terms of the agreements, the Company is required to pay for the customer lists in three installments through January 2000. At September 30, 1999, there was \$258,541 still payable under these agreements, which is included in deferred payments. The Company has recorded the value of these customer lists as an intangible asset and is amortizing them over 24 months, the estimated useful life of the asset.

**E. Deferred Payments**

During 1998 and 1999, the Company acquired certain equipment under an arrangement for deferred payments arrangement. These are payable in monthly installments of \$13,390 through May 2000. At December 31, 1998, and September 30, 1999, the outstanding principal balances



**ESSENTIAL.COM, INC.**  
**NOTES TO FINANCIAL STATEMENTS - (Continued)**

**E. Deferred Payments (continued)**

were \$73,856 and \$101,612, respectively. As of September 30, 1999, this balance, in addition to the amount discussed in Note D, was included in deferred payments in the accompanying balance sheet.

**F. Notes Payable to a Related Party**

At December 31, 1998, the Company had a demand note payable to a related party totaling \$248,560, of which \$224,760 and \$23,800 were borrowed in 1998 and 1997, respectively. Interest accrues at 10% and totaled \$17,297 and \$16,992 during the year ended December 31, 1998 and the nine months ended September 30, 1999, respectively, and is included in interest expense in the accompanying statement of operations and as an accrued expense in the balance sheet at December 31, 1998. Borrowings were secured by substantially all assets of the Company. This demand note payable was repaid in August 1999.

**G. Convertible Promissory Notes**

In January 1999, the Company issued an aggregate of \$710,000 of Convertible Promissory Notes (the Notes) that accrued interest at a rate of 5% per annum. The Notes were convertible at the option of the noteholder, upon the Company receiving additional financing of at least \$3,000,000 on or before June 30, 1999. The conversion price of the Notes was equal to 85% of the per share price of the subsequent financing. In May and June 1999, the Company converted \$615,000 of these Notes plus accrued interest into 734,316 shares of Series A convertible preferred stock. The remaining \$95,000 plus accrued interest was repaid. In December 1998, the Company had received an advance of \$20,000 towards the purchase of the Notes. In connection with the conversion of the Notes, the Company recorded \$110,150 of interest expense in 1999 as a result of the discounted conversion rate.

**H. Subordinated Loan**

On September 24, 1999, the Company entered into an agreement with a financing Company that provides for a \$4 million subordinated loan and a \$1 million equipment lease line. The subordinated loan bears interest at 10% and is secured by substantially all of the assets of the Company. The subordinated loan provides for borrowings in \$250,000 increments over a 12-month period. The loan requires interest for the first six months followed by 30 equal installments of principal and interest. As of September 30, 1999, there were no borrowings outstanding under this arrangement.

In connection with this financing, the Company issued warrants for the purchase of 274,741 shares of Series B redeemable convertible preferred stock at an exercise price of \$1.91 per share, subject to certain defined adjustments. The warrants expire in seven years or three years from the effective date of the Company's initial public offering, whichever is earlier. The Company has valued these warrants, using the Black-Scholes option pricing model, at \$327,065 and has recorded the value of the warrants as a deferred financing cost, which will be amortized as interest expense over the life of the commitment.

**ESSENTIAL.COM, INC.**  
**NOTES TO FINANCIAL STATEMENTS - (Continued)**

**I. Stockholders' Deficit**

*Common Stock*

The Company is authorized to issue 19,166,451 shares of common stock. During 1997, the Company issued 4,194,287 shares of common stock to the Company's founders. During 1998, the Company issued 1,039,610 shares of restricted stock to an officer of the Company at \$.03 per share through the issuance of a promissory note for \$31,781. This promissory note was repaid in November 1998. On March 17, 1999, the Company repurchased and returned to authorized status 779,707 shares of this restricted common stock for \$23,836.

*Stock Splits and Dividends*

In October 1998, the Company was reorganized as a Delaware corporation. In connection with this reorganization, the Company exchanged 10,000 shares of common stock for every share outstanding. In March 1999, the Company issued a stock dividend of .79 share for every one share of common stock that was issued and outstanding at that date. Additionally, in July 1999, the Company effected a stock split of 2 shares for every one share of the Company's outstanding common stock. The above transactions have been reflected retroactively for all periods presented in the accompanying financial statements.

**II. Redeemable convertible Preferred Stock**

During 1999, the Company issued 2,830,726 shares of Series A redeemable convertible preferred stock (Series A Preferred Stock), \$0.01 par value resulting in gross proceeds of approximately \$2,096,000 and the conversion of \$615,000 notes payable (see Note 7).

During the third quarter of 1999, the Company sold 6,332,125 shares of Series B redeemable convertible preferred stock (Series B Preferred Stock), \$0.01 par value per share, resulting in gross proceeds to the Company of approximately \$12,100,000.

The rights and preferences of the Series A and B Preferred Stock are as follows:

**Voting**

Each share of Series A and B Preferred Stock is entitled to voting rights equivalent to the number of shares of common stock into which each share can be converted into.

**Conversion**

Series A and B Preferred stock is convertible at the option of the stockholder into two and one shares, respectively, of common stock, subject to certain antidilutive adjustments. Conversion is automatic upon the closing of a public offering of the Company's common stock at a price per share of not less than \$1.25 per share, for Series A Preferred Stock, (adjusted for any stock dividend or stock splits) and aggregate gross proceeds of not less than \$15,000,000. Series B Preferred Stock is automatically converted upon (i) the closing of a public offering of the common stock with gross proceeds of at least \$20,000,000 and a pre-money valuation of not less than \$100 million or (ii) the election of the holders of 60% of the then-outstanding shares of Series B preferred stock.

**ESSENTIAL.COM, INC.**  
**NOTES TO FINANCIAL STATEMENTS - (Continued)**

**J. Redeemable convertible Preferred Stock (continued)**

**Liquidation**

In the event of a liquidation, dissolution or winding up of the Company, the holders of the Series A and B Preferred Stock are entitled to \$1.00 and \$1.91 per share, respectively, plus all accrued but unpaid dividends. In addition, after payment of the liquidation preference described in the preceding sentence, the Series A Preferred Stock is entitled to participate on an as-converted basis with the Common Stock in the remaining assets of the Company, provided that in no event shall a holder of Series A Preferred Stock be entitled to receive more than three times the liquidation preference for each share of Series A Preferred Stock.

**Dividend**

The Series A and B Preferred Stock each earn cumulative dividends of 8% annually. Dividends are payable in the event of a liquidation of the Company, as defined, or at the discretion of the Board of Directors. Additionally, the preferred stockholders are entitled to receive dividends at the same rate as paid to the common stockholders.

**Redemption**

The holders of at least a majority of the series A Preferred Stock and the Series B Preferred Stock can demand that the Company redeem its shares for the original purchase price plus any accrued and unpaid dividends thereon. Redemption may be demanded after December 31, 2003 by the holders of the Series A Preferred Stock for the Series A Preferred Stock and after July 31, 2004 by the holders of the Series B Preferred Stock for the Series B Preferred Stock. The Series A preferred stock is redeemable in three equal annual installments. The Series B preferred stock is redeemable in one lump-sum payment.

**K. Stock Option Plan**

In December 1998, the Company established the 1998 Stock Option and Incentive Plan (the 1998 Plan), which provides for the grant of incentive stock options and nonqualified stock options to purchase up to 2,443,942 shares of the Company's common stock. The Board of Directors has the authority to select the employees and nonemployees to whom options are granted and determine the terms of each option, including (i) the number of shares of common stock subject to the option; (ii) the date on which the option becomes exercisable; and (iii) the option exercise price. Options granted under the 1998 Plan generally vest over four years.

The following is a summary of the stock option activity for the year ended December 31, 1998 and for the nine months ended September 30, 1999:

**ESSENTIAL.COM, INC.**  
**NOTES TO FINANCIAL STATEMENTS - (Continued)**

**K. Stock Option Plan (continued)**

	Number of Shares	Exercise Price per Share	Weighted Average Exercise Price
Granted	523,390	\$ .03	\$ .03
Outstanding, December 31, 1998	523,390	.03	.03
Granted	848,675	.03-.20	.09
Exercised	(28,612)	(.03)	(.03)
Terminated	(694,418)	(.03-.05)	(.04)
Outstanding, September 30, 1999	649,035	\$ .03-.20	\$ .11
Exercisable, September 30, 1999	12,260	\$ .03	\$ .03

As of September 30, 1999, options to purchase 1,766,295 shares of common stock are available for future grant under the 1998 Plan. At September 30, 1999, there were 392,124 shares outstanding at an exercise price of \$0.03 to \$0.05 per share and 256,911 shares outstanding at an exercise price of \$0.19 to \$0.20 per share.

SFAS No. 123, *Accounting for Stock-Based Compensation*, requires the measurement of the fair value of stock options or warrants to be included in the statement of operations or disclosed in the notes to financial statements. The Company has determined that it will account for stock-based compensation for employees under Accounting Principles Board Opinion No. 25 and elect the disclosure-only alternative under SFAS No. 123.

The Company has computed the pro forma disclosures required under SFAS No. 123 for stock options granted during 1998 and 1999 using the Black-Scholes option pricing model prescribed by SFAS No. 123. The assumptions used for 1998 were as follows: (i) risk-free interest rates of 4.65%; (ii) expected life of seven years; (iii) no dividend yield and (iv) no volatility. The assumptions used for 1999 were as follows: (i) risk free interest rates of 4.99% to 6.11%; (ii) expected life of seven years; (iii) no dividend yield and (iv) no volatility. The weighted average remaining contractual life for outstanding options granted during 1998 and 1999 is 9.2 and 9.7 years, respectively. The weighted average fair value at the date of grant for options granted during 1998 and 1999 is \$0.01 and \$0.02 per option, respectively. The total charge to operations under SFAS No. 123 for options vesting during the year ended December 31, 1998 and the nine months ended September 30, 1999 would have been approximately \$215 and \$2,117, respectively.

The effect of applying SFAS No. 123 would have been as follows:

	December 31, 1998	September 30, 1999 (Unaudited)
Net loss—		
As reported	\$ (584,281)	\$ (5,095,962)
Pro forma	(584,496)	(5,098,079)

During 1999, the Company granted 257,511 options to consultants at a weighted average exercise price of \$.15 per share. These options have been valued using the Black-Scholes option



**ESSENTIAL.COM, INC.**  
**NOTES TO FINANCIAL STATEMENTS - (Continued)**

**K. Stock Option Plan (continued)**

pricing model and the Company has recorded deferred compensation of \$489,014. The deferred compensation is being amortized over the vesting periods of the options. During the nine months ended September 30, 1999, the Company recorded \$37,107 of compensation expense.

**L. COMMITMENTS**

The Company has lease agreements for its facilities and certain equipment, which expire at various dates through 2003. The future minimum lease payments under these leases at December 31, 1998 are as follows:

1999	\$ 171,590
2000	159,395
2001	28,632
2002	28,632
2003	<u>4,772</u>

Total future minimum payments    \$ 393,021

Rent expense for the year ended December 31, 1998 and for the nine months ended September 30, 1999 was approximately \$27,500 and \$101,000, respectively.

**EXHIBIT E**

**Proof of Interconnection Agreement**

U S WEST, Inc.  
1801 California Street, Suite 5100  
Denver, Colorado 80202  
Phone 303 672-5871  
Facsimile 303 295-7009

Alex M. Duarte  
Senior Attorney



VIA OVERNIGHT DELIVERY

March 24, 2000

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

Re: Filing of Resale Agreement between essential.com and U S WEST Communications, Inc.

Pursuant to 20:10:32:21 of the Admin. Rules of South Dakota enclosed for filing is an original and ten (10) copies of the Resale Interconnection Agreement between U S WEST Communications, Inc. ("U S WEST") and essential.com ("essential.com") for approval by the Commission. Pursuant to this negotiated Resale Agreement ("Agreement"), essential.com and U S WEST will extend certain arrangements to one another within the geographical areas where U S WEST is the incumbent Local Exchange Carrier within the state of South Dakota for purposes of providing the resale of local Telecommunications Services.

The Agreement does not discriminate against other telecommunications carriers, and the Agreement is consistent with the FCC's guidelines for negotiation and performance. Additionally, other telecommunications carriers have the option to adopt any negotiated or arbitrated agreement approved by the Commission.

The Agreement is consistent with the public interest as identified in the state statutes of South Dakota, the Commission's rules, the federal Telecommunications Act of 1996, and rules of the Federal Communications Commission. Expedient approval of this Agreement will enable essential.com to enter the local exchange market and provide customers with increased choices among local exchange services.

Essential.com has authorized U S WEST to submit this Agreement on essential.com's behalf.

Very truly yours,

Alex Duarte



**EXHIBIT F**

**Illustrative Tariff**

K:\utl\oth\essential.com.tclecom\sdcleapplication



**TARIFF SCHEDULE APPLICABLE TO  
LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES  
AND INTRALATA TOLL SERVICES WITHIN THE STATE OF SOUTH DAKOTA**

by

**essential.com, inc.**

This tariff contains the descriptions, regulations and rates applicable to the furnishing of telecommunications services provided by essential.com, inc. ("Essential.com") within the State of South Dakota. This tariff is on file with the South Dakota Public Utilities Commission ("Commission"). Copies may be inspected during normal business hours at the Company's principal place of business: 3 Burlington Woods Drive, 4<sup>th</sup> floor, Burlington MA 01803.

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Issued:

Issued By:

Effective Date:

**Basil Pallone**  
Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803

**CHECK SHEET**

The Title Sheet and Sheets 1 through 66 inclusive of this tariff are effective as of the date shown at the bottom of the respective sheet(s).

<u>SHEET</u>	<u>REVISION</u>	<u>SHEET</u>	<u>REVISION</u>
Title	Original	28	Original
1	Original	29	Original
2	Original	30	Original
3	Original	31	Original
4	Original	32	Original
5	Original	33	Original
6	Original	34	Original
7	Original	35	Original
8	Original	36	Original
9	Original	37	Original
10	Original	38	Original
11	Original	39	Original
12	Original	40	Original
13	Original	41	Original
14	Original	42	Original
15	Original	43	Original
16	Original	44	Original
17	Original	45	Original
18	Original	46	Original
19	Original	47	Original
20	Original	48	Original
21	Original	49	Original
22	Original	50	Original
23	Original	51	Original
24	Original	52	Original
25	Original	53	Original
26	Original	54	Original
27	Original	55	Original

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**CHECK SHEET, Continued**

**SHEET**

**REVISION**

56	Original
57	Original
58	Original
59	Original
60	Original
61	Original
62	Original
63	Original
64	Original
65	Original
66	Original

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**CONCURRING CARRIERS**

None

**CONNECTING CARRIERS**

None

**OTHER PARTICIPATING CARRIERS**

None

**EXPLANATION OF SYMBOLS**

- (C) To signify **changed** condition or regulation
- (D) To signify **deleted or discontinued** rate, regulation or condition
- (I) To signify a change resulting in an **increase** to a Customer's bill
- (M) To signify that material has been **moved from** another tariff location
- (N) To signify a **new** rate, regulation condition or sheet
- (R) To signify a change resulting in a **reduction** to a Customer's bill
- (T) To signify a change in **text** but no change to rate or charge

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## TARIFF FORMAT

- A. **Sheet Numbering** - Sheet numbers appear in the upper right corner of the sheet. Sheets are numbered sequentially. However, occasionally, when a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be 14.1.
- B. **Sheet Revision Numbers** - Revision numbers also appear in the upper right corner of each sheet. These numbers are used to determine the most current sheet version on file with the Commission. For example, the 4th revised Sheet 14 cancels the 3rd Revised Sheet 14. Because of various suspension periods, deferrals, etc. the Commission follows in their tariff approval process, the most current sheet number on file with the Commission is not always the sheet in effect. Consult the Check Sheet for the sheet currently in effect.
- C. **Paragraph Numbering Sequence** - There are nine levels of paragraph coding. Each level of code is subservient to its next higher level:
- 2.
  - 2.1.
  - 2.1.1.
  - 2.1.1.A.
  - 2.1.1.A.1.
  - 2.1.1.A.1.(a).
  - 2.1.1.A.1.(a).I.
  - 2.1.1.A.1.(a).I.(i).
  - 2.1.1.A.1.(a).I.(i).(1).
- D. **Check Sheets** - When a tariff filing is made with the Commission, an updated Check Sheet accompanies the tariff filing. The Check Sheet lists the sheets contained in the tariff with a cross reference to the current revision number. When new sheets are added, the Check Sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this sheet if these are the only changes made to it (i.e., the format, etc., remains the same, just revised revision levels on some sheets). The tariff user should refer to the latest Check Sheet to find if a particular sheet is the most current on file with the Commission.

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## APPLICATION OF TARIFF

This tariff contains the rates applicable to the provision of intrastate communications services by virtue of one-way and/or two-way information transmission between points within the State of South Dakota.

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## SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS

### Agency

For 911 or E911 service, the government agency(s) designated as having responsibility for the control and staffing of the emergency report center.

### Alternate Routing ("AR")

Allows E911 calls to be routed to a designated alternate location if: (1) all E911 exchange lines to the primary PSAP (See definition of PSAP below.) are busy; or (2) the primary PSAP closes down for a period (night service).

### Authorized User

A person, corporation or other entity who is authorized by the Company's Customer to utilize service provided by the Company to the Customer. The Customer is responsible for all charges incurred by an Authorized User.

### Automatic Location Identification ("ALI")

The name and address associated with the calling party's telephone number (identified by ANI as defined below) is forwarded to the PSAP for display. Additional telephones with the same number as the calling party's (secondary locations, off premises, etc.) will be identified with the address of the telephone number at the main location.

### Automatic Number Identification ("ANI")

A system whereby the calling party's telephone number is identified and sent forward with the call record for routing and billing purposes. E911 Service makes use of this system.

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## SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, Continued

### Called Station

The terminating point of a call (i.e., the called number).

### Calling Card

A card issued by Company containing such account numbers assigned to its Customer which enables the charges for calls made to be properly billed on a pre-arranged basis.

### Central Office

An operating office of the Company where connections are made between telephone exchange lines.

### Channel

A point-to-point bi-directional path for digital transmission. A channel may be furnished in such a manner as the Company may elect, whether by wire, fiber optics, radio or a combination thereof and whether or not by means of single physical facility or route. One 1.544 Mbps Service is equivalent to 24 channels.

### Channel Conversion

The termination of 1.544 Mbps Service at a Customer's location with conversion of the digital signal to 24 analog voice grade circuits. Channel Conversion can be furnished by the Customer.

### Channel Service Unit ("CSU")

The equipment located at the Customer's premises which terminates each 1.544 Mbps Digital Loop and performs such functions as proper termination of facilities, regeneration of signals, recognition and correction of signal format errors and provides remote loop-back capability.

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, Continued**

**Commission**

South Dakota Public Service Commission

**Communications Systems**

Channels and other facilities which are capable of two-way communications between subscriber-provided terminal equipment or telephone company stations, even when not connected to exchange and message toll communications service.

**Company**

essential.com, inc. ("Essential.com")

**Credit Card**

A valid bank or financial organization card, representing and account to which the costs of products and services purchased by the card holder may be charged for future payment. Such cards include those issued by VISA or MasterCard.

**Customer**

The person, firm, corporation or other entity which orders or uses service and is responsible for payment of charges and compliance with tariff regulation.

**Customer Premises Equipment ("CPE")**

Equipment provided by the Customer for use with the Company's services. CPE can include a station set, facsimile machine, key system, or other communication system.

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## SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, Continued

### Debit Card

A valid bank or financial organization card, representing both an account from which the costs of products and services purchased by the card holder may be charged.

### Dedicated Access

Non-switched access between a Customer's premises and the point of presence of the Company's underlying carrier.

### Default Routing ("DR")

When an incoming E911 call cannot be selectively routed due to an ANI failure, garbled digits or other causes, such incoming calls are routed from the E911 Control Office to a default PSAP. Each incoming E911 facility group to the Control Office is assigned to a designated default PSAP.

### Demarcation Point

The physical dividing point between the Company's network and the Customer.

### Digital

A method of storing, processing and transmitting information through the use of distinct electronic or optical pulses that represent the binary digits (bits) 0 and 1. Digital transmission/switching technologies employ a sequence of discrete, individually distinct pulses to represent information, as opposed to the continuously variable signal of analog technologies.

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, Continued**

**Direct Inward Dial ("DID")**

A service attribute that routes incoming calls directly to stations, by-passing a central answer point.

**Direct Outward Dial ("DOD")**

A service attribute that allows individual station users to access and dial outside numbers directly.

**Disconnect or Disconnection**

The termination of a circuit connection between the originating station and the called station or the Company's operator.

**Dual Tone Multi-Frequency ("DTMF")**

The pulse type employed by tone dial station sets (touch tone).

**Emergency Service Number ("ESN")**

A unique code, assigned by the Company, used to define specific combinations of police, fire and/or ambulance jurisdictions, or any other authorized agency, which are designated by the Customer.

**E911 Customer**

A governmental agency that is the customer of record and is responsible for all negotiations, operations and payment of bills in connection with the provision of E911 service.

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## SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, Continued

### E911 Service Area

The geographic area in which the government agency will respond to all E911 calls and dispatch appropriate emergency assistance.

### Error

A discrepancy or unintentional deviation by the Company from what is correct or true. An "error" can also be an omission in records.

### Exchange

An area, consisting of one or more central office districts, within which a call between any two points is a local call.

### Exchange Access Line

A central office line furnished for direct or indirect access to the exchange system.

### Exchange Service

The provision to the subscriber of access to the exchange system for the purpose of sending and receiving calls. This access is achieved through the provision of a central office line (exchange access line) between the central office and the subscriber's premises.

### Final Account

A Customer whose service has been disconnected who has outstanding charges still owed to the Company.

### Flat Rate Service

The type of exchange service provided at a monthly rate with an unlimited number of calls within a specified primary calling area.

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**SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, Continued**

**Interface**

That point on the premises of the subscriber at which provision is made for connection of facilities provided by someone other than the Company to facilities provided by the Company.

**Interoffice Mileage**

The segment of a line which extends between the central offices serving the originating and terminating points.

**Interruption**

The inability to complete calls, either incoming or outgoing or both, due to Company facilities malfunction or human errors.

**LATA**

Local Access and Transport Area. The area within which the Company provides local and long distance ("intraLATA") service. For call to numbers outside this area ("interLATA") service is provided by long distance companies.

**Link**

The physical facility from the network interface on an end-user's or carrier's premises to the point of interconnection on the main distribution frame of the Company's central office.

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## SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, Continued

### Leased Channel

A non-switched electrical path used for connection of equipment furnished by the subscriber to equipment furnished by the subscriber or the Company for a specific purpose.

### Local Call

A call which, if placed by a Customer over the facilities of the Company, is not rated as a toll call.

### Local Calling Area

The area, consisting of one or more central office districts, within which a subscriber for exchange service may make telephone calls without a toll charge.

### Local Service

Telephone exchange service within a local calling area.

### Message Rate Service

A type of exchange service provided at a monthly rate with an additional charge for local calling based on the usage of the local network. One completed call is equal to one message.

### Move

The disconnection of existing equipment at one location and reconnection of the same equipment at a new location in the same building or in a different building on the same premises.

### Multi-Frequency ("MF")

An inter-machine pulse-type used for signaling between telephone company switches.

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## SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, Continued

### Multiline Hunt

A method of call signaling by which a call placed to one number is subsequently routed to one or more alternative numbers when the called number is busy.

### Network Control Signaling

The transmission of signals used in the telecommunications system which perform functions such as supervision (control, status and charging signals), address signaling (e.g. dialing), calling and called number identification, audible tone signals (call progress signals indicating re-order or busy conditions, alerting) to control the operation of switching machines in the telecommunications system.

### Network Control Signaling Unit

The terminal equipment furnished, installed and maintained by the Telephone Company for the provision of network control signaling.

### Node

The location to which digital channels are routed and where access is provided to such lines and associated equipment for testing.

### Port

A connection to the switching network with one or more voice grade communications channels, each with a unique network address (telephone number) dedicated to the Customer. A port connects a link to the public switched network.

### Premises

The space occupied by a Customer or authorized user in a building or buildings or contiguous property not separated by a public right of way.

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## SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, Continued

### Public Safety Answering Point ("PSAP")

An answering location for E911 calls originating in a given area. A PSAP may be designated as primary or secondary, which refers to the order in which calls are directed for answering. Primary PSAPs respond first; secondary PSAPs receive calls on a transfer basis only and generally serve as a centralized answering location for a particular type of emergency call.

### Rate Center

A geographic reference point with specific coordinates on a map used for determining mileage when calculating charges.

### Referral Periods

The time frame during which calls to a number which has been changed will be sent to a recording which will inform the caller of the new number.

### Resale of Service

The subscription to communications service and facilities by one entity and the reoffering of communications service to others (with or without "adding value") for profit.

### Same Premises

All space in the same building in which one subscriber has the right of occupancy, and all space in different buildings on contiguous property when occupied solely by the same subscriber. Foyers, hallways and other space for the common use of all occupants of a building are considered the premises of the operator of the building.

### Selective Routing ("SR")

A feature that routes an E911 call from a Central Office to the designated primary PSAP based upon the identified number of the calling party.

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## SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS, Continued

### Serving Central Office

The central office from which local service is furnished.

### Sharing

An arrangement in which several users collectively use communications service and facilities provided by a carrier, with each user paying a pro-rata share of the communication related costs.

### Station

Each telephone on a line and where no telephone associated with the line is provided on the same premises and in the same building, the first termination in station key equipment or a jack for use with a portable telephone.

### Subscriber:

See "Customer" definition.

### Suspension

Suspension of service for nonpayment is interruption of outgoing service only.  
Suspension of service at the subscriber's request is interruption of both incoming and outgoing service.

### Toll Call

Any call extending beyond the local exchange of the originating caller which is rated on a toll schedule by the Company.

### Two Way

A service attribute that includes DOD for outbound calls and can also be used to carry inbound calls to a central point for processing.

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## SECTION 2 - RULES AND REGULATIONS

### 2.1. UNDERTAKING OF THE COMPANY

- 2.1.1. Company's services are furnished for telecommunications originating and/or terminating in any area within the State of South Dakota.
- 2.1.2. Company offers resold, non-facilities-based telecommunications services to Customers for the direct transmission and reception of voice, data, and other types of communications.
- 2.1.3. The Company's services are provided on a monthly basis and are available twenty-four (24) hours per day, seven (7) days per week.
- 2.1.4. Request for service under this tariff will authorize the Company to conduct a credit search on the Customer. The Company reserves the right to refuse service on the basis of credit history, and to refuse further service due to late payment or nonpayment by the Customer.

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**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.2. LIMITATIONS**

- 2.2.1. Service is offered subject to availability of the necessary facilities and/or equipment and subject to the provisions of this tariff.
- 2.2.2. The Company does not undertake to transmit messages, but offers the use of its facilities when available, and will not be liable for errors in transmission or for failure to establish connections.
- 2.2.3. The Customer obtains no property right or interest in the use of any specific type of facility, service, equipment, telephone number, process or code. All rights, titles and interests remain, at all times, solely with the Company.
- 2.2.4. Prior written permission from the Company is required before any assignment or transfer. All regulations and conditions contained in this tariff shall apply to all such permitted assignees or transferees, as well as all conditions of service.
- 2.2.5. The Company may, upon reasonable notice, make such tests and inspections as may be necessary to determine whether the terms and conditions of this tariff are being complied with in the installation, operation or maintenance of the Customer's or the Company's facilities or equipment.
- 2.2.6. The Company reserves the right to refuse an application for service made by a present or former Customer who is indebted to the Company for service previously rendered pursuant to this tariff until the indebtedness is satisfied.

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**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.3. USE**

- 2.3.1. Service may be used for the transmission of communications by the Customer for any lawful purpose for which the service is technically suited.
- 2.3.2. Service may not be used for any unlawful purpose or for any purpose for which any payment or other compensation is received by the Customer, except when the Customer is a duly authorized and regulated common carrier. This provision does not prohibit an arrangement between the Customer, authorized user or joint user to share the cost of service.
- 2.3.3. The name(s) of the Customer(s) desiring to use the service must be set forth in the application for service.
- 2.3.4. The Company strictly prohibits use of the Company's services without payment or an avoidance of payment by the Customer by fraudulent means or devices including providing falsified calling card numbers or invalid calling card numbers to the Company, providing falsified or invalid credit card numbers to the Company or in any way misrepresenting the identity of the Customer.
- 2.3.5. Recording of telephone conversations of service provided by the Company under this tariff is prohibited except as authorized by applicable federal, state and local laws.
- 2.3.6. Service will not be used to call another person so frequently or at such times of day or in any manner so as to annoy, abuse, threaten or harass the called party.
- 2.3.7. Service will not be used in any manner which 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 Customers.
- 2.3.8. The Company reserves the right to refuse an application for service made by a present or former Customer who is indebted to the Company for service previously rendered pursuant to this tariff until the indebtedness is satisfied.

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**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.4. LIABILITIES OF THE COMPANY**

- 2.4.1. The liability of the Company for damages arising out of mistakes, omissions, interruptions, delays, errors or defects in transmission occurring in the course of furnishing service or other facilities and not caused by the negligence of the Customer, commences upon activation of service and in no event exceeds an amount equivalent to the proportionate charge to the Customer for the period of service during which such mistakes, omissions, interruptions, delays, errors, or defects in transmission occur. For the purpose of computing such amount, a month is considered to have thirty (30) days. In no event will the Company be responsible for consequential damages for lost profits suffered by a Customer or end user as the result of interrupted or unsatisfactory service.
- 2.4.2. Company is not liable for any act or omission of any other company or companies furnishing a portion of the service.
- 2.4.3. Company shall be indemnified and held harmless by the Customer against:
- A. Claims for libel, slander, infringement of copyright or unauthorized use of any trademark, trade name or service mark arising out of the material, data, information or other content transmitted over Company's facilities; and
  - B. Claims for patent infringement arising from combining or connecting Company's facilities with apparatus and systems of the Customer; and
  - C. All other claims arising out of any act or omission of the Customer in connection with any service provided by Company.
- 2.4.4. The Company is not liable for any defacement of, or damage to, the equipment or premises of a Customer resulting from the furnishing of services when such defacement or damage is not the result of the result of the Company's negligence.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.4. LIABILITIES OF THE COMPANY, Continued**

- 2.4.5. Company shall not be liable for, and the Customer indemnifies and holds harmless from, any and all loss claims, demands, suits, or other action or liability whatsoever, whether suffered, made instituted or asserted by the Customer or by any other party or person, for any personal injury to, death of any person or persons, and for any loss, damage, defacement or destruction of the premises of the Customer or any other property, whether owned by the Customer or by others, caused or claimed to have been caused directly or indirectly by the installation, delayed installation, operation, failure to operate, maintenance, removal, presence, condition, location or use of equipment or wiring provided by Company where such installation, operation, failure to operate, maintenance, condition, location or use is not the direct result of Company's negligence.
- 2.4.6. No agents or employees of connecting, concurring or other participating carriers or companies shall be deemed to be agents or employees of the Company without written authorization.
- 2.4.7. The Company is not liable for any failure of performance hereunder due to causes beyond its control, including, but not limited to, unavoidable interruption in the working of its circuits or those of another common carrier; acts of nature, storms, fire, floods, or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or any other governmental entity having jurisdiction over the Company or of any department, agency, commission, bureau, corporation, or other instrumentality or any one or more of such instrumentalities or any one of more of such governmental entities, or of any civil or military authority; national emergencies, insurrections, riots, rebellions, wars, strikes, lockouts, work stoppages, or other labor difficulties; or notwithstanding anything in this tariff to the contrary, the unlawful acts of the Company's agents and employees, if committed beyond the scope of their employment.
- 2.4.8. The Company shall not be liable for damages or adjustments, refunds, or cancellation of charges unless the Customer has notified the Company, in writing, of any dispute concerning charges, or the basis of any claim for damages, after the invoice is rendered by the Company for the call giving rise to such dispute or claim, unless ordered by the Commission pursuant to South Dakota law. Any such notice must set forth sufficient facts to provide the Company with a reasonable basis upon which to evaluate the Customer's claim or demands.

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## SECTION 2 - RULES AND REGULATIONS, Continued

### 2.4. LIABILITIES OF THE COMPANY, Continued

- 2.4.9. The Company shall not be liable for any damages, including usage charges, that the Customer may incur as a result of the unauthorized use of its communications equipment. The unauthorized use of the Customer's communications equipment includes, but is not limited to, the placement of calls from the Customer's premises and the placement of calls through Customer-controlled or Customer-provisioned equipment that are transmitted or carried over the Company's network services without the authorization of the Customer. The Customer shall be fully liable for all such charges.
- 2.4.10. In the absence of gross negligence or willful misconduct, and except for the allowances stated below, no liability for damages arising from errors or mistakes in or omissions of directory listings, or errors or mistakes in or omissions of listings obtainable from the directory assistance operator, including errors in the reporting thereof, shall attach to the Company.
- 2.4.11. With respect to Emergency Number 911 Service:
- A. This service is offered solely as an aid in handling assistance calls in connection with fire, police and other emergencies. The Company is not responsible for any losses, claims, demands, suits or any liability whatsoever, whether suffered, made, instituted or asserted by the Customer, or by any other party or person, for any personal injury to or death of any person or persons, and for any loss, damage or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused by: (1) mistakes, omissions, interruptions, delays, errors or other defects in the provision of this service; or (2) installation, operation, failure to operate, maintenance, removal, presence, condition, location or use of any equipment and facilities furnishing this service.

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**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.4. LIABILITIES OF THE COMPANY, Continued**

**2.4.11., Continued**

- B. Neither is the Company responsible for any infringement or invasion of the right of privacy of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, occasion or use of Emergency 911 Service features and the equipment associated therewith, or by any services furnished by the Company, including, but not limited to, the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing Emergency 911 Service, and which arises out of the negligence or other wrongful act of the Company, the Customer, its users, agencies or municipalities, or the employees or agents of any one of them.

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## **SECTION 2 - RULES AND REGULATIONS, Continued**

### **2.5. EQUIPMENT AND FACILITIES**

2.5.1. The Company will not be responsible for the installation, operation or maintenance of any Customer-provided communications equipment. Where Customer-provisioned equipment is connected to the facilities furnished under this tariff, the responsibility of the Company will be limited to the furnishing of facilities offered pursuant to this tariff. Beyond this responsibility, the Company will not be responsible for:

- A. the transmission of signals to Customer-provided equipment or for the quality of, or defects in, such transmission; or
- B. the reception of signals by Customer-provided equipment; or
- C. network control signaling when performed by Customer-provided network control signaling equipment.

2.5.2. At the request of the Customer, installation or maintenance may be performed outside of the Company's regular business hours or in hazardous locations. In such cases, charges based on cost of the actual labor, material or other costs incurred by or charged by the Company will apply. If installation or maintenance is started during regular business hours, but, at the Customer's request, extends beyond regular business hours into time periods including, but not limited to, weekends, holidays and/or night hours, additional charges may apply.

### **2.6. CUSTOMER RESPONSIBILITIES**

2.6.1. The Customer is responsible for the payment of all charges for services furnished to the Customer and for all additional charges for calls the Customer elects to continue making.

2.6.2. The Customer is responsible for compliance with applicable regulations set forth in this tariff.

2.6.3. The Customer is responsible for establishing its identity as often as necessary during the course of the call or when seeking credits from the Company.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.7. INTERRUPTION OF SERVICE**

2.7.1. Credit for Interruptions: When the use of service or facilities furnished by the Company is interrupted due to any cause other than the negligence or willful act of the Customer, or the operation or failure of the facilities or equipment provided by the Customer, a pro rata adjustment of the monthly Recurring Charges subject to interruption will be allowed for the service and facilities rendered useless and inoperative by reason of the interruption whenever said interruption continues for a period of 24 hours or more from the time the interruption is reported to or known to exist by the Company, except as otherwise specified in the Company's tariffs. If the Customer reports a service, facility or circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but not interrupted. Credit allowance for interruptions of service which are not due to Company's testing or adjusting, to the negligence of the Customer, or to the failure of channels, equipment and/or communications equipment provided by the Customer, are subject to the general liability provisions set forth in Section 2.4., herein. It shall be the obligation of the Customer to notify Company of any interruptions of service. Before giving such notice, the Customer shall ascertain that the trouble is not being caused by any action or omission of the Customer, not within the Customer's control.

2.7.2. For purposes of credit computation for leased facilities, every month shall be considered to have 720 hours. No credit shall be allowed for an interruption of a continuous duration of less than two hours.

2.7.3. The Customer shall be credited for an interruption of two hours or more at the rate of 1/720th of the monthly charge for the facilities affected for each hour or major fraction thereof that the interruption continues.

Credit formula:  $\text{Credit} = (A/720) \times B$

A - outage time in hours

B - total monthly charge for affected utility

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**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.8. RESTORATION OF SERVICE**

- 2.8.1. The use and restoration of service in emergencies shall be in accordance with Part 64, Subpart D of the Federal Communications Commission's Rules and Regulations, which specifies the priority system for such activities.
- 2.8.2. When a Customer's service has been disconnected in accordance with this tariff and the service has been terminated through the completion of a Company service order, service will be restored only upon the basis of application for new service.

**2.9. MINIMUM SERVICE PERIOD**

- 2.9.1. The minimum service period is one month (30 days). The Customer must pay the regular tariffed rate for the service they subscribe to for the minimum period of service. If a Customer disconnects service before the end of the minimum service period, that Customer is responsible for paying the regular rates for the remainder of the minimum service period. When the service is moved within the same building, to another building on the same premises, or to a different premises entirely, the period of service at each location is accumulated to calculate if the Customer has met the minimum period of service obligation.
- 2.9.2. If service is terminated before the end of the minimum period of service as a result of condemnation of property, damage to property requiring the premises to be abandoned, or by the death of the Customer, the Customer is not obligated to pay for service for the remainder of the minimum period.
- 2.9.3. If service is switched over to a new Customer at the same premises after the first month's service, the minimum period of service requirements are assigned to the new Customer if the new Customer agrees in writing to accept them. For facilities not taken over by the new Customer, the original Customer is responsible for the remaining payment for the minimum service period in accordance with the terms under which the service was originally furnished.

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**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.10. INSTALLATION SERVICE**

The Company will comply with Commission regulations for installation of service.

**2.11. ACCESS TO CUSTOMER'S PREMISES**

The Customer shall be responsible for making arrangements or obtaining permission for safe and reasonable access for Company employees or agents of the Company to enter the premises of the Customer or any joint user or Customer of the Customer at any reasonable hour for the purpose of inspecting, repairing, testing or removing any part of the Company's facilities.

**2.12. PAYMENTS AND BILLING**

2.12.1. Charges for service are applied on a recurring basis. Service is provided and billed on a monthly (30 day) basis. The billing date is dependent on the billing cycle assigned to the Customer. Service continues to be provided until cancelled by the Customer on not less than thirty (30) days' notice.

2.12.2. The Customer is responsible for the payment of all charges for services furnished to the Customer. Charges are based on actual usage, and are billed monthly in arrears. Customer will be billed and is responsible for payment of applicable local, state and federal taxes assessed in connection with the services used. It is contemplated that payment be done electronically, with payment made by means of the Customer's credit card, debit card, or other similar mechanism approved by the Company. In the sole discretion of the Company, payments may be made by check.

2.12.3. When a check which has been presented to the Company by a Customer in payment for charges is returned by the bank, the Customer shall be responsible for the payment of a returned check charge of \$10.00.

2.12.4. Billing is payable upon receipt and past due twenty (20) days after issuance and posting of invoice. Bills not paid within twenty-one (21) days after the date of posting are subject to a 1.5 percent late payment charge for the unpaid balance, or the maximum allowable under state law. The late payment charge will be applied to all amounts previously billed under this tariff, excluding one (1) month's local service charge, but including arrears and unpaid late payment charges.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.12. PAYMENTS AND BILLING, Continued****2.12.4. Continued**

A. Late payment charges do not apply to those portions (and only those portions) of unpaid balances that are associated with disputed amounts. Undisputed amounts on the same bill are subject to late payment charges if unpaid and carried forward to the next bill.

B. Late payment charges do not apply to final accounts.

2.12.5. The Company will provide interest on Customer overpayments that are not refunded within thirty (30) days of the date the Company receives the overpayment. An overpayment is considered to have occurred when payment in excess of the correct charges for service is made because of erroneous Company billing. The Customer will be issued reimbursement for the overpayment, plus interest, or, if agreed to by the Customer, credit for the amount will be provided on the next regular Company bill. The rate of interest shall be the greater of the Customer deposit interest rate or the Company's applicable late payment charge.

2.12.6. Interest shall be paid from the date when overpayment was made, adjusted for any changes in the deposit rate or late payment rate, and compounded monthly, until the date when the overpayment is refunded. The date when overpayment is considered to have been made will be the date on which the Customer's overpayment was originally recorded to the Customer's account by the Company.

2.12.7. If objection is not received by the Company within three (3) months after the bill is rendered, the items and charges appearing thereon shall be determined to be correct and binding upon the Customer. A bill will not be deemed correct and binding upon the Customer if the Company has records on the basis of which an objection may be considered, or if the Customer has in his or her possession such Company records. If objection results in a refund to the customer, such refund will be with interest at the greater of the unadjusted Customer deposit rate or the applicable late payment rate, if any, for the service classification under which the Customer was billed. Interest will be paid from the date when the Customer overpayment was made, adjusted for any changes in the deposit rate or late payment rate, compounded monthly, until the overpayment is refunded. Notwithstanding the foregoing, no interest will be paid by the Company on Customer overpayments that are refunded within thirty (30) days after the overpayment is received by the Company.

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to resolve billing disputes through the Company's website, or by email to the address indicated on the Customer's most recent bill. Additionally, inquiries may be addressed to Company's customer service representative by mail at Three Burlington Woods Drive, Burlington, MA 01803-4543, or by telephone 888.746.4983. Customer service representatives are available to address such inquiries and any inquiries outside of normal business hours will be answered on the next business day, except in the event of an emergency which threatens Customer service, in which case the Company will respond as promptly as possible.

2.12.10. In the case of a dispute between the Customer and the Company for service furnished to the Customer, which cannot be settled with mutual satisfaction, the Customer can take the following course of action:

- A. First, the Customer may request, and the Company will perform, an in-depth review of the disputed amount. The undisputed portion and subsequent bills must be paid on a timely basis or the service may be subject to disconnection.
- B. Second, if there is still disagreement over the disputed amount after the investigation and review by a manager of the Company, the Customer may appeal to the South Dakota Public Service Commission for its investigation and decision.

The address and telephone number of the Commission are:

South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

Telephone: (800) 332-1782  
TTY (800) 877-1113

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...involves a superseded se  
...shall be deemed to be  
...is not received by the company

2.12.9. Customers should first send  
www.essential.com  
invoice. Address  
organization  
by



**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.12. PAYMENTS AND BILLING, Continued**

2.12.3. Where an objection to a  
appealed to the

**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.13. CANCELLATION BY CUSTOMER**

- 2.13.1. Customer may cancel service by providing written notice to Company thirty (30) days prior to cancellation.
- 2.13.2. Customer is responsible for usage charges while still connected to the Company's service and the payment of associated local exchange company charges, if any, for service charges.
- 2.13.3. Any cost of Company expenditures shall be borne by the Customer if:
- A. The Customer orders service requiring special facilities dedicated to the Customer's use and then cancels the order before such service begins, before completion of the minimum period or before completion of some the period mutually agreed with the Customer; or
  - B. Liabilities are incurred expressly on behalf of the Customer by Company and not fully reimbursed by installation and monthly charges; and
  - C. If based on an order for service and construction has either begun or has been completed, but no service provided.

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## SECTION 2 - RULES AND REGULATIONS, Continued

### 2.14. CANCELLATION BY COMPANY

2.14.1. Company reserves the right to immediately discontinue furnishing the service to customers without incurring liability, in accordance with South Dakota Public Service Commission Rules.

- A. In the event of a condition determined to be hazardous to the customer, to other customers of the utility, to the utilities equipment, to the public or to employees of the utility; or
- B. By reason of any order or decision of a court or any other governmental authority which prohibits the Company from furnishing such service; or
- C. If the Company deems such refusal necessary to protect itself or third parties against fraud or to otherwise protect its personnel, agents, facilities or services without notice; or
- D. For unlawful use of the service or use of the service for unlawful purposes; or
- E. If the Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past, current or planned use of Company's services.

2.14.2. Company may discontinue service according to the following conditions, in accordance with the South Dakota Public Service Commission.

- A. For violation of Company's filed tariff.
- B. For the non-payment of any proper charge as provided by Company's tariff.
- C. For Customer's breach of the contract for service between the utility and customer.
- D. When necessary for the Company to comply with any order or request of any governmental authority having jurisdiction.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.14. CANCELLATION BY COMPANY, Continued**

- 2.14.3. The discontinuance of Service(s) by the Company pursuant to this section does not relieve the Customer of any obligations to pay the Company for charges due and owing for Service(s) furnished up to the time of discontinuance. The remedies set forth herein shall not be exclusive and the company shall at all times be entitled to all the rights available to it under law or equity.
- 2.14.4. The Company may refuse to permit collect calling, calling card, third number billing which it determines to be fraudulent and/or may limit the use of these billing options or services.

**2.15. AUTOMATIC NUMBER IDENTIFICATION TERMS AND CONDITIONS**

The Company may provide Automatic Number Identification (ANI) associated with an intrastate service, by tariff, to any entity (ANI recipient), only under the following terms and conditions:

- 2.15.1. The ANI recipient or its designated billing agent may use or transmit ANI information to third parties for billing and collection, routing, screening, ensuring network performance and completion of a telephone subscriber's original call or transaction.
- 2.15.2. The ANI recipient may offer to any telephone subscriber with whom the ANI recipient has an established customer relationship a product or service that is directly related to products or services previously purchased by the telephone subscriber from the ANI recipient.
- 2.15.3. The ANI recipient or its designated billing agent is prohibited from utilizing ANI information to establish marketing lists or conduct outgoing marketing calls, except as permitted by the preceding paragraph, unless the ANI recipient obtains the prior written consent of the telephone subscriber permitting the use of ANI information for such purposes. The foregoing provisions notwithstanding, no ANI recipient or its designated billing agent may utilize ANI information if prohibited elsewhere by law.
- 2.15.4. The ANI recipient or its designated billing agent is prohibited from reselling, or otherwise disclosing ANI information to any other third party for any use other than those listed in Section 2.15.1., unless the ANI recipient obtains the prior written consent of the subscriber permitting such resale or disclosure.

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**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.15. AUTOMATIC NUMBER IDENTIFICATION TERMS AND CONDITIONS, Continued**

- 2.15.5. The Company will make reasonable efforts to adopt and apply procedures designed to provide reasonable safeguards against the aforementioned abuses of ANI.
- 2.15.6. Violations of any of the foregoing terms and conditions by any ANI recipient, other than a telephone corporation, shall result, after a determination through the Commission's complaint process, in suspension of the transmission of ANI by the telephone corporation until such time as the Commission receives written confirmation from the ANI recipient that the violations have ceased or have been corrected. If the Commission determined that there have been three (3) or more separate violations in a twenty-four (24) month period, delivery of ANI to the offending party shall be terminated under terms and conditions determined by the Commission.

**2.16. INTERCONNECTION**

- 2.16.1. The Customer shall secure all licenses, permits, rights-of-way and other arrangements necessary for interconnection with the Company. In addition, the Customer shall ensure that its equipment and/or system or that of its agent is properly interfaced with the Company's service and the signals emitted into the Company's network are of the proper mode, band-width, power, data speed and signal level for the intended use of the Customer. If the Customer or its agent fails to properly maintain and operate its equipment and/or system of that of its agent, the Company may, upon written request, require the use of protective equipment at the Customer's expense.
- 2.16.2. Service furnished by Company may be interconnected with services or facilities of other authorized communications common carriers and with private systems, subject to the technical limitations established by Company. Any special interface of equipment or facilities necessary to achieve compatibility between the facilities of Company and other participating carriers shall be provided at the Customer's expense.
- 2.16.3. Interconnection between the facilities or services of other carriers shall be under the applicable terms and conditions of the other carriers' tariffs. The Customer is responsible for taking all necessary legal steps for interconnecting Customer-provided terminal equipment or communications equipment with Company's facilities. The Customer shall secure all licenses, permits, rights-of-way, and other such arrangements necessary for interconnection.

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## SECTION 2 - RULES AND REGULATIONS, Continued

### 2.17. ADVANCE PAYMENTS AND DEPOSITS

- 2.17.1. The Company does not require an advanced payment or deposit from the Customer, but reserves the right to collect advanced payments and deposits, as necessary. The Company reserves the right to examine the credit record of all service applicants and require a service deposit when determined to be necessary to assure future payment. Security Deposits required will be equal to not more than 2 months estimated usage as computed by the Company and will in all respects be consistent with Commission regulations.

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**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.18. ADDITIONAL PROVISIONS APPLICABLE TO BUSINESS CUSTOMERS**

**2.18.1 Application of Rates**

**A. Business rates as described in Section 3 apply to service furnished:**

1. In office buildings, stores, factories and all other places of a business nature; or
2. In hotels, apartment houses, clubs and boarding and rooming houses except when service is within the Customer's domestic establishment and no business listings are provided; colleges, hospitals and other institutions; and in churches except when service is provided to an individual of the clergy for personal use only and business service is already established for the church at the same location; or
3. At any location when the listing or public advertising indicates a business or a profession; or
4. At any location where the service includes an extension which is at a location where business rates apply unless the extension is restricted to incoming calls; or
5. At any location where the Customer resells or shares exchange service.

**B. The use of business facilities and service is restricted to the Customer, Customers, agents and representatives of the Customer, and joint users.**

**2.18.2 Telephone Number Changes**

- A. When a business Customer requests a telephone number change, the referral period for the disconnected number is one-hundred-eighty (180) days.**

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**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.18. ADDITIONAL PROVISIONS APPLICABLE TO BUSINESS CUSTOMERS,  
Continued**

**2.18.2., Continued**

- B. The Company reserves all rights to the telephone numbers assigned to any Customer. The Customer may order a Customized Number where facilities permit for an additional charge.
- C. When service in an existing location is continued for a new Customer, the existing telephone number may be retained by the new Customer only if the former Customer consents in writing, and if all charges against the account are paid or assumed by the new Customer.
- D. Deposits will be returned to a business Customer upon cancellation of service or after one (1) year, whichever event occurs first, unless the Customer is delinquent in payment, in which case the Company will continue to retain the deposit until the delinquency is satisfied. If a service is involuntarily discontinued, the deposit is applied against the final bill, and any balance is returned to the Customer.

**2.18.3. Dishonored Checks**

If a business Customer who has received a notice of discontinuance pays the bill with a check that is subsequently dishonored, the account remains unpaid and the Company is not required to issue any additional notice before disconnecting service.

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**SECTION 2 - RULES AND REGULATIONS, Continued****2.19. ADDITIONAL PROVISIONS APPLICABLE TO RESIDENTIAL CUSTOMERS****2.19.1. Back-billing for Residential Customers**

The Company shall not charge a residential Customer for previously unbilled service or adjust upward a bill previously rendered when the period for the unbilled service or billing adjustment is more than six (6) months prior to the mailing of the bill or the upward adjustment unless the conduct of the Customer caused or contributed to the failure of the Company to render timely accurate billing. Unless the Customer causes the late billing, the Company shall explain the reason for the late billing and shall advise the Customer that suspension/termination of service is not permitted for charges billed in excess of six (6) months after the service was provided. The Customer will be given the opportunity to pay the charges under an installment plan on a schedule equal in time to the length of the back-billing period.

**2.20. TAXES**

The Customer is responsible for payment of all federal, state and local taxes, franchise, excise and other fees applicable to the Services, including, but not limited to: sales, use, excise, franchise, access, universal service, 911 services and handicapped services.

**2.21. TIME OF DAY RATE PERIODS****2.21.1. Peak and Off-Peak rate periods.**

- A. Peak rates apply Monday - Friday, 9:00 AM - 8:59 PM
- B. Off-Peak rates apply at all other times, including the six recognized holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas

**2.21.2. Time of Day Rate Periods**

DAY:	From 8:00 AM to 4:59 PM Monday – Friday
EVENING	From 5:00 PM to 10:59 PM Monday – Friday and Sunday
NIGHT/WEEKEND	From 11:00 PM to 7:59 AM Everyday From 8:00 AM to 10:59 PM Saturday From 8:00 AM to 4:59 PM Sunday

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### SECTION 3 - DESCRIPTION OF SERVICE

#### 3.1. DISCOUNTS

For purposes of packaging services, the Company may offer discounts from the rates set forth in this tariff on an individual case basis. The amount, type and duration of any discounts may vary by Customer. In no event are rates charged to any Customer higher than the rates set forth in this tariff.

#### 3.2. CONNECTION CHARGE

##### 3.2.1. General

The Connection Charge is a nonrecurring charge which applies to the following:

- A. The installation of a new service;
- B. The transfer of an existing service to a different location;
- C. A change from one class of service to another at the same or a different location; or
- D. Restoral of service after suspension or termination for nonpayment. Connection Charges are listed with each service to which they apply.

##### 3.2.2. Exceptions to the Charge

- A. No charge applies for a change to a service for which a lower monthly rate applies, made within ninety (90) days after any general rate increase, if a lower grade of service is offered in the Customer's exchange.
- B. No charge applies for one (1) change in the class of residence service, provided that the change is ordered within ninety (90) days of the initial connection of the Customer's exchange service.
- C. The Company may, from time to time, waive or reduce the charge as part of a promotion.

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**SECTION 3 - DESCRIPTION OF SERVICE, Continued****3.3. PRIMARY INTEREXCHANGE CARRIER CHANGE CHARGE**

The Customer will incur a charge each time there is a change in the long distance carrier associated with the Customer's line after the initial installation of service.

**3.4. SUPPLEMENTAL SERVICES****3.4.1. Custom Calling Services****A. General**

The features in this section are made available on an individual basis or as part of multiple feature packages. All features are provided subject to availability; features may not be available with all classes of service. Transmission levels may not be sufficient in all cases.

**B. Description of Features****1. Three Way Calling**

The Three Way Calling feature allows a Customer to add a third party to an existing two-way call and form a 3-way call. The call must have been originated from outside the station group and terminate to a station within the station group.

**2. Call Forwarding**

Call Forwarding, when activated, redirects attempted terminating calls to another Customer-specific line. The Customer may have to activate and deactivate the forwarding function and specify the desired terminating telephone number during each activation procedure. Call originating ability is not affected by Call Forwarding.

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### SECTION 3 - DESCRIPTION OF SERVICE, Continued

#### 3.4. SUPPLEMENTAL SERVICES, Continued

##### 3.4.1. Custom Calling Service, Continued

The calling party is billed for the call to the called number. If the forwarded leg of the call is chargeable, the Customer with the Call Forwarding is billed for the forwarded leg of the call.

Call Forwarding - Busy automatically reroutes an incoming call to a Customer predesignated number when the called number is busy.

Call Forwarding - Don't Answer automatically reroutes an incoming call to a Customer predesignated number when the called number does not answer within the number of rings programmed by the Company.

Call Forwarding - Variable allows the Customer to choose to reroute incoming calls to another specified telephone number. The Customer must activate and deactivate this feature.

#### 3. Call Waiting

Call Waiting provides a tone signal to indicate to a Customer already engaged in a telephone call that a second caller is attempting to dial in. It will also permit the Customer to place the first call on hold, answer the second call and then alternate between both callers.

#### 4. Distinctive Alert

This feature enables a user to determine the source of an incoming call from a distinctive ring. The user is provided with up to two (2) additional telephone numbers.

#### 5. Regular Multi-line Hunting

This feature is a line hunting arrangement that provides sequential search of available numbers within a multi-line group.

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**SECTION 3 – DESCRIPTION OF SERVICE, Continued****3.4. SUPPLEMENTAL SERVICES, Continued****3.4.1. Custom Calling Service, Continued****6. Speed Calling**

This feature allows a user to dial selected numbers using one or two (2) digits. Up to eight (8) numbers (single digit, or thirty (30) numbers with two (2) digits) can be selected.

**7. Caller ID**

The Call ID feature allows a Customer to see a caller's name and/or number previewed on a display screen before the call is answered allowing a Customer to prioritize and or screen incoming calls. Call ID records the name, number, date and time of each incoming call - including calls that are not answered by the customer. Call ID service requires the use of specialized CPE not provided by the company. It is the responsibility of the Customer to provide the necessary CPE.

**8. Continuous Redial**

The Continuous Redial feature allows a customer to automatically redial the last number dialed. This is accomplished by the Customer activating a code. The network periodically tests the busy/free status of the called line for up to thirty (30) minutes until both lines are found free and then redials the call for the Customer.

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**SECTION 3 – DESCRIPTION OF SERVICE, Continued****3.4. SUPPLEMENTAL SERVICES, Continued****3.4.1. Custom Calling Service, Continued****8. Continuous Redial, Continued**

The Continuous Redial feature also allows Customers, having reached a busy number, to dial a code before hanging up. The Continuous Redial feature then continues to try the busy number for up to thirty (30) minutes until it becomes free. Once the busy line is free the call is automatically redialed and the Customer is notified of the connected call via a distinctive ring.

The following types of calls cannot be Continuously Redialed:

- Calls to 800 Service numbers
- Calls to 900 Service numbers
- Calls preceded by an interexchange carrier access code
- International Direct Distance Dialed calls
- Calls to Directory Assistance
- Calls to 911

**9. Last Call Return**

The Automatic Recall stores the number of the most recent incoming call (including unanswered incoming calls) to a Customer's number. This allows a Customer to dial back any missed or unanswered telephone calls.

**10. Call Trace**

Call Trace allows customers to key in a code that alerts the network to trace the last call received. The traced telephone number is automatically sent to the company for storage for a limited amount of time and is retrievable by legally constituted authorities upon proper request by them. By contacting the company the Customer can use this application to combat nuisance calls.

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## SECTION 3 – DESCRIPTION OF SERVICE, Continued

## 3.4. SUPPLEMENTAL SERVICES, Continued

## 3.4.2. Packaged Services

A. CUSTOMCHOICE

*CUSTOMCHOICE* is a package of features available to residential and business customers in conjunction with the additional or individual flat rate access line. The features included are dependent on the type of service.

<u>Service/Feature</u>	<u>Business</u>	<u>Residential</u>
-Speed Calling		
8 Number List	X	X
30 Number List	X	X
-Three Way Calling	X	X
-Call Forwarding – Variable	X	X
-Call Forwarding – Busy Line Expanded	X	
-Call Forwarding – Busy Line External	X	
-Call Forwarding – Busy Line Overflow	X	X
-Call Forwarding – Busy Line Programmable	X	X
-Call Forwarding – Don't Answer	X	X
-Call Forwarding – Don't Answer Expanded	X	X
-Call Forwarding – Don't Answer Programmable	X	X
-Call Forwarding – Busy Line External/DA	X	
-Call Rejection		X
-Call Waiting	X	X
-Call Waiting ID	X	X
-Caller ID (Name and Number)	X	X
-Call Transfer	X	
-Continuous Redial	X	X
-Custom Ringing	X	X
-Last Call Return	X	X
-Hunting	X	
-Message Waiting Indication	X	X
-Priority Call	X	X
-Selective Call Forwarding	X	X

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**SECTION 3 – DESCRIPTION OF SERVICE, Continued****3.4. SUPPLEMENTAL SERVICES, Continued****3.4.2. Packaged Services, continued****B. VALUECHOICE**

*VALUECHOICE* is a package of features available to residential customers in conjunction with the additional or individual flat rate access line. Residential customers subscribing to the package are entitled to unlimited use of the services/features specified below:

**Service/Feature**

- Anonymous Call Rejection
- Call Forwarding-Variable
- Continuous Redial
- Last Call Return
- Priority Call
- Three Way Calling

**C. SMARTSET**

*SMARTSET* is a package of features available to business customers. *SMARTSET* Feature Packages offer the customer a choice of subscribing to either the *SMARTSET* or *SMARTSET PLUS* Package as described below.

**Service/Feature****(1) *SMARTSET* Package**

- Call Waiting (includes Call Waiting ID)
- Caller ID Name and Number
- Call Forwarding Variable

**(2) *SMARTSET PLUS* Package**

- Call Waiting (includes Call Waiting ID)
- Caller ID Name and Number
- Call Forwarding Busy Line/Don't Answer Expanded

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**SECTION 3 – DESCRIPTION OF SERVICE, Continued****3.4. SUPPLEMENTAL SERVICES, Continued****3.4.3. Directory Assistance Service****A. General**

A Customer may obtain assistance, for a charge, in determining a telephone number by dialing Directory Assistance Service. A Customer can also receive assistance by writing the Company with a list of names and addresses for which telephone numbers are desired.

**B. Regulations**

A Directory Assistance Charge applies for each telephone number, area code, and/or general information requested from the Directory Assistance operator except as follows:

1. Calls from coin telephones, including COCOTS.
2. Requests for telephone numbers of non-published service.
3. Requests in which the Directory Assistance operator provides an incorrect number. The Customer must inform the Company of the error in order to receive credit.

**3.4.4. Local Operator Service**

Local calls may be completed or billed with the live or mechanical assistance by the Company's operator center. Calls may be billed collect to the called party, to an authorized third party number, to the originating line or to a valid authorized calling card. Local calls may be placed on a station to station basis or to a specified party (see Person to Person) or designated alternate. Usage charges for local operator assisted calls are those usage charges that would normally apply to the calling party's service. Where no local charge applies (flat rate service), the usage charge is \$0.01. In addition to usage charges, an operator assistance charge applies to each call:

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**SECTION 3 – DESCRIPTION OF SERVICE, Continued****3.5. BUSINESS NETWORK SWITCHED SERVICES****3.5.1. General**

Business Network Switched Service enables the Customer to:

- A. receive calls from other stations on the public switched telephone network;
- B. access the Company's local calling service;
- C. access the Company's operators and business office for service related assistance; access toll-free telecommunications service such as 800 NPA; and access 911 service for emergency calling; and
- D. access the service of providers of interexchange service. A Customer may presubscribe to such provider's service to originate calls on a direct dialed basis or to receive 800 service from such provider, or may access a provider on an ad hoc basis by dialing the provider's Carrier Identification Code (10XXX).

Business Network Switched Service is provided via one or more channels terminated at the Customer's premises. Each Business Network Switched Service channel corresponds to one or more analog, voice-grade telephonic communications channels that can be used to place or receive one call at a time.

**3.5.2. Service Descriptions**

The following Business Access Service Option is offered:

**Basic Business Line Service**

Basic Business Line Service is offered with flat rate or measured rate local service, at the option of the Customer.

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**SECTION 3 – DESCRIPTION OF SERVICE, Continued****3.5. BUSINESS NETWORK SWITCHED SERVICES****3.5.2. Service Descriptions, Continued**

Business Network Switched Service may be connected to Customer-provided terminal equipment such as station sets, key systems, or facsimile machines. Service may be arranged for two-way calling, inward calling only or outward calling only. Optional Voice Mail Service is available.

**A. Basic Business Line Service****1. General**

Basic Business Line Service provides a Customer with a one or more analog, voice-grade telephonic communications channels that can be used to place or receive one call at a time. Local calling service is available at a flat rate included in the line price, or on a message usage basis. Basic Business Lines are provided for connection of Customer-provided single-line terminal equipment such as station sets or facsimile machines.

An optional feature, Stand-By Line, allows customers to place and receive overflow calls while their regular lines/trunks are occupied. A monthly fee applies for each arrangement, as well as a fixed charge for each minute of incoming and/or outgoing usage diverted to the Stand-By Line.

Each Basic Business Line has the following characteristics:

Terminal Interface:	2-wire
Signaling Type:	Loop start
Pulse Types:	Dual Tone Multifrequency (DTMF)
Directionality:	Two-Way, In-Only, or Out-Only, at the option of the Customer

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**SECTION 3 – DESCRIPTION OF SERVICE, Continued**

**3.5. BUSINESS NETWORK SWITCHED SERVICES**

**3.5.2. Service Descriptions, Continued**

**A. Basic Business Line Service, Continued**

**2. Flat Rate Basic Business Line Service**

**a. Description**

Service to points within the local calling area is included in the charge for Flat Rate Service.

**3. Value Pac (Measured Rate) Basic Business Line Service**

**a. Description**

Value Pac (measured service). The latter includes a monthly usage allowance of \$5.00 per line/trunk. This plan also features an incremental discount of 30 percent on usage charges that exceed \$20.00 per line/trunk. Value Pac is subject to Peak and Off-Peak rate periods. The Peak rates apply Monday - Friday, 9:00 AM - 8:59 PM; the Off-Peak rates apply at all other times, including the six recognized holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.

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**SECTION 3 – DESCRIPTION OF SERVICE, Continued****3.6. RESIDENTIAL NETWORK SWITCHED SERVICES****3.6.1. Residential Network Switched Service enables a residential Customer to:**

- A. receive calls from other stations on the public switched telephone network;
- B. access the Company's local calling service;
- C. access the Company's operators and business office for service related assistance; access toll-free telecommunications service such as 800 NPA; and access 911 service for emergency calling; and
- D. access the service of providers of interexchange service. A Customer may presubscribe to such provider's service to originate calls on a direct dialed basis or to receive 800 service from such provider, or may access a provider on an ad hoc basis by dialing the provider's Carrier Identification Code (10XXX).

Residential Network Switched Service is provided via one or more channels terminated at the Customer's premises. Each Residential Network Switched Service channel corresponds to one or more analog, voice-grade telephonic communications channels that can be used to place or receive one call at a time.

**3.6.2. Service Descriptions and Rates**

The following Residential Access Service Options are offered:

Residential Flat Rate Service  
Residential Measured Rate Service

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**SECTION 3 - DESCRIPTION OF SERVICE, Continued****3.6. RESIDENTIAL NETWORK SWITCHED SERVICES, Continued****3.6.2., Continued**

All Residential Network Switched Services may be connected to Customer-provided terminal equipment such as station sets, key systems, or facsimile machines. Service may be arranged for two-way calling, inward calling only or outward calling only. Optional Voice Mail Service is available.

**A. Residential Flat Rate Service****I. General**

Flat Rate Service provides a Customer with a single analog, voice-grade telephonic communications channels that can be used to place or receive one call at a time. Service to points within the local calling area is included in the charge for Flat Rate Service. Flat Rate Service lines are provided for connection to a single, Customer-provided station set or facsimile machine.

Each Flat Rate Service Line has the following characteristics:

Terminal Interface:	2-wire
Signaling Type:	Loop start
Pulse Types:	Dual Tone Multifrequency (DTMF)
Directionality:	Two-Way, In-Only, or Out-Only, at the option of the Customer

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**SECTION 3 – DESCRIPTION OF SERVICE, Continued****3.6. RESIDENTIAL NETWORK SWITCHED SERVICES, Continued****3.6.2., Continued****B. Measured Rate Service****1. General**

Residential Message Rate Service provides a Customer with a single analog, voice-grade telephonic communications channels that can be used to place or receive one call at a time. Calls to points within the local exchange area are charged on a per minute of usage basis. Measured Rate Service lines are provided for connection to a single, Customer-provided station set or facsimile machine. Customers may choose from four different usage packages: Budget Pac, which includes a monthly usage allowance of \$2.50 per line; or a package of three (Measured 3 Hour), six (Measured 6 Hour) or nine hours (Measured 9 Hour).

The Budget Pac option includes an incremental discount of 30 percent on usage charges that exceed \$20.00 per line. In addition, the Budget Pac option is subject to Peak and Off-Peak rate periods. The Peak rates apply Monday - Friday, 9:00 AM - 8:59 PM; the Off-Peak rates apply at all other times, including the six recognized holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas. In contrast, the hourly usage packages have a uniform rate, regardless of distance or time-of-day, for calls that exceed the usage allowance.

Each Measured Rate Port has the following characteristics:

Terminal Interface:	2-wire
Signaling Type:	Loop start
Pulse Types:	Dual Tone Multifrequency (DTMF)
Directionality:	Two-Way, In-Only, or Out-Only, at the option of the Customer

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**SECTION 3 – DESCRIPTION OF SERVICE, Continued**

**3.7. UNIVERSAL EMERGENCY TELEPHONE NUMBER SERVICE**

Universal Emergency Telephone Number Service (911 Service) is an arrangement of central office and trunking facilities whereby any telephone user who dials the number 911 will reach the emergency report center for the telephone from which the number is dialed or will be routed to an operator if all lines to an emergency report center are busy.

If no emergency report center Customer exists for a central office entity, a telephone user who dials the number 911 will be routed to an operator. The telephone user who dials the 911 number will not be charged for the call.

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**SECTION 4 - RATES****4.1. CONNECTION CHARGES****4.1.1. Record Order Charge**

Business	\$10.00
Residence	\$5.00

**4.1.2. Additional Line Charge**

Business	\$47.00
Residence	\$0.00

**4.2. PRIMARY INTEREXCHANGE CARRIER CHANGE CHARGE**

Per change \$5.00

The Customer will incur a charge each time there is a change in the long distance carrier associated with the Customer's line after the initial installation of service.

**4.3. SUPPLEMENTAL CHARGES****4.3.1. Custom Calling Features (per line, per month)**

	<u>Business</u>	<u>Residential</u>
-Speed Calling		
8 Number List	\$4.00	\$2.00
30 Number List	\$9.10	\$3.00
-Three Way Calling	\$4.00	\$3.50
-Call Forwarding - Variable	\$5.00	\$3.00
-Call Forwarding - Busy Line Expanded	\$3.00	\$0.25
-Call Forwarding - Busy Line External	\$3.00	N/A
-Call Forwarding - Busy Line Overflow	\$8.95	\$0.25
-Call Forwarding - Busy Line Programmable	\$8.95	\$1.85
-Call Forwarding - Don't Answer	\$4.00	\$0.65
-Call Forwarding - Don't Answer Expanded	\$4.00	\$0.65
-Call Forwarding - Don't Answer Programmable	\$4.50	\$2.60
-Call Forwarding - Don't Answer Overflow	\$10.45	N/A
-Call Forwarding - Busy Line/Don't Answer	\$5.50	\$0.80
-Call Forwarding - Busy Line External/DA	\$5.50	\$0.80

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## SECTION 4 – RATES, Continued

## 4.3. SUPPLEMENTAL CHARGES, Continued

## 4.3.1. Custom Calling Features (per line, per month), Continued

	<u>Business</u>	<u>Residential</u>
-Call Manager Connection w/Call Waiting	\$19.95	N/A
-Call Manager Connection w/Call Waiting ID	\$19.95	N/A
-Call Rejection	\$4.50	\$4.50
-Call Waiting	\$5.00	\$5.00
-Abbreviated Access One Digit	\$20.00	N/A
Each Line Arranged	\$0.50	\$0.50
-Abbreviated Access Two Digits	\$30.00	N/A
Each Line Arranged	\$0.50	\$0.50
-Caller ID (Name and Number)	\$7.95	\$6.95
-Caller ID (Number Only)	\$7.50	\$6.95
-Call Transfer	\$6.00	\$6.00
-Continuous Redial	\$3.50	\$3.50
-Hot Line	\$2.00	\$2.00
-Last Call Return	\$3.00	\$2.95
-Priority Call	\$3.50	\$3.50
-Remote Access Forwarding	\$7.95	\$5.00
-Dial Lock	\$3.95	\$3.95
-Selective Forwarding	\$3.50	\$3.50
-Scheduled Call Forwarding	N/A	\$6.00
-Dial Call Waiting	\$2.15	\$2.15
-Nonrecurring Charge (Applies to all of the above listed features)	\$11.00	\$6.00

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## SECTION 4 – RATES, Continued

## 4.3. SUPPLEMENTAL CHARGES, Continued

## 4.3.2. Feature Packages (per line, per month)

	<u>Business</u>	<u>Residential</u>
<u>CUSTOMCHOICE</u>		
-Regular Package		
<i>First Line</i>		
Rate Group A	\$22.70	\$14.90
Rate Group B	\$26.35	\$17.95
Rate Group C	\$20.30	\$14.20
Rate Group D	\$23.95	\$17.25
Rate Group E	\$17.50	\$13.40
Rate Group G	\$13.55	\$12.20
Rate Group I	\$11.55	\$11.70
<i>Additional Line</i>		
Rate Group A	N/A	\$11.90
Rate Group B	N/A	\$14.95
Rate Group C	N/A	\$11.20
Rate Group D	N/A	\$14.25
Rate Group E	N/A	\$10.40
Rate Group G	N/A	\$9.20
Rate Group I	N/A	\$8.70
<i>Add-Ons</i>		
Caller ID with Privacy +	N/A	\$2.95
Remote Access Forwarding	\$6.95	\$2.50
Scheduled Forwarding	\$7.95	\$3.00
Selective Forwarding	N/A	\$1.75
Three-Way Calling	N/A	\$1.75

Issued:

Effective Date:

Issued By:

Basil Pallone  
Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803

## SECTION 4 – RATES, Continued

## 4.3. SUPPLEMENTAL CHARGES, Continued

## 4.3.2. Feature Packages (per line, per month)

VALUECHOICE

Rate Group A	N/A	\$8.90
Rate Group B	N/A	\$11.95
Rate Group C	N/A	\$8.20
Rate Group D	N/A	\$11.25
Rate Group E	N/A	\$7.40
Rate Group G	N/A	\$6.20
Rate Group I	N/A	\$5.70

SMARTSET

\$11.95	N/A
---------	-----

SMARTSET PLUS

\$11.95	N/A
---------	-----

-Nonrecurring Charge (Applies to all of the above listed features)

\$11.00	\$6.00
---------	--------

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3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803



## SECTION 4 - RATES, Continued

## 4.3. SUPPLEMENTAL CHARGES, Continued

## 4.3.3. Per Use Features

	<u>Business</u>	<u>Residential</u>
Call Trace	\$1.55	\$1.55
Continuous Redial	\$0.75	\$0.75
Last Call Return	\$0.75	\$0.75
Three-Way Calling	\$0.75	\$0.75

## 4.3.4. Voice Messaging Service

	<u>Business</u>	<u>Residential</u>
Mailbox, per month	\$12.75	\$6.95
Nonrecurring Charge	\$10.00	\$6.00
Call Routing Mailbox, per month	\$3.00	N/A
Nonrecurring Charge	\$10.00	N/A
Call Routing to Number Mailbox, per month	\$12.00	N/A
Nonrecurring Charge	\$10.00	N/A
Extension Mailbox, per month	\$5.00	\$2.00
Nonrecurring Charge	\$10.00	N/A
50 Additional Message Capacity, per month	\$3.00	\$3.00
Nonrecurring Charge	\$10.00	N/A
100 Additional Message Capacity, per month	\$6.00	\$6.00
Nonrecurring Charge	\$10.00	N/A
Call Router Traffic Study, per month	\$5.00	N/A
Nonrecurring Charge	\$39.00	N/A
Message Notification, per month	\$3.00	\$3.00
Nonrecurring Charge	\$10.00	N/A
Scheduled Greetings, per month	\$3.00	N/A
Nonrecurring Charge	\$10.00	N/A

Issued:

Issued By:

Effective Date:

Basil Pallone  
Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803

## SECTION 4 – RATES, Continued

## 4.3. SUPPLEMENTAL CHARGES, Continued

## 4.3.5. Custom Ringing Service

	<u>Business</u>	<u>Residential</u>
First Additional Number, per month	\$7.45	\$5.00
Second Additional Number, per month	\$5.25	\$2.50
Third Additional Number, per month	\$5.25	\$2.50
Nonrecurring Charge	\$11.00	\$6.00

## 4.3.6. Directory Assistance Service

	<u>Business</u>	<u>Residential</u>
Directory Assistance After 1 <sup>st</sup> call, per query	\$0.40	\$0.40

## 4.3.7. Local Operator Services, per call charges

	<u>Business</u>	<u>Residential</u>
Fully-Automated Calling Card	\$1.05	\$1.05
Semi-Automated Calling Card	\$2.10	\$2.10
Operator-Assisted	\$2.10	\$2.10
Person-to-Person	\$4.50	\$4.50
Coin Sent-Paid	\$1.30	\$1.30
PayPhone Charge	\$0.30	\$0.30

## 4.3.8. End User Common Line Charge

Individual Line	\$3.50	N/A
Multiline Key/PBX Trunk	\$7.81	N/A
Primary Line	N/A	\$3.50
Additional Line	N/A	\$6.07

## 4.3.9. Hunting, Per Line/Trunk

Nonrecurring Charge	\$8.95	N/A
---------------------	--------	-----

## 4.3.9. Premises Work Charge

First 30 Minutes	\$60.00	\$60.00
Additional 30 Minutes	\$25.00	\$25.00
Premises Visit Charge	\$25.00	\$25.00

Issued:

Effective Date:

Issued By:

Basil Pallone  
Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803

**SECTION 4 – RATES, Continued****4.4. BASIC BUSINESS LINE SERVICE****4.4.1. Flat Rate Business Service****A. Individual & Multiline Key, Monthly**

Rate Group A	\$27.25
Rate Group B	\$25.60
Rate Group C	\$29.65
Rate Group D	\$28.00
Rate Group E	\$32.45
Rate Group F	\$30.80
Rate Group G	\$36.60
Rate Group I	\$38.40

Nonrecurring charge \$47.00

**B. PBX Trunk**

Rate Group A	\$36.25
Rate Group B	\$34.60
Rate Group C	\$38.65
Rate Group D	\$37.00
Rate Group E	\$41.45
Rate Group F	\$39.80
Rate Group G	\$45.60
Rate Group I	\$47.40

Nonrecurring charge \$47.00

Issued:

Effective Date:

Issued By:

Basil Pallone  
Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803

**SECTION 4 – RATES, Continued****4.4. BASIC BUSINESS LINE SERVICE, Continued****4.4.2. Value Pac (Measured Rate) Business Service****A. Individual & Multiline Key, Monthly**

Rate Group A	\$28.65
Rate Group B	\$27.00
Rate Group C	\$28.65
Rate Group D	\$27.00
Rate Group E	\$28.65
Rate Group F	\$27.00
Rate Group G	\$28.65
Rate Group I	\$28.65
Nonrecurring charge	\$47.00

**B. PBX Trunk**

Rate Group A	\$27.75
Rate Group B	\$27.00
Rate Group C	\$27.75
Rate Group D	\$27.00
Rate Group E	\$27.75
Rate Group F	\$27.00
Rate Group G	\$27.75
Rate Group I	\$27.75
Nonrecurring charge	\$47.00

**4.4.3 Measured Usage Charges**

	<b>PEAK</b>		<b>OFF-PEAK</b>	
	First Min	Add'l Min	First Min	Add'l Min
Area A (Intra-Exchange)	\$0.0500	\$0.0100	\$0.0250	\$0.0050
Area B (0-22 Miles)	\$0.0700	\$0.0200	\$0.0350	\$0.0100
Area C (23-30 Miles)	\$0.0900	\$0.0250	\$0.0450	\$0.0125
Area D (31-40 Miles)	\$0.1100	\$0.0300	\$0.0550	\$0.0150
Area E (41-55 Miles)	\$0.1300	\$0.0350	\$0.0650	\$0.0175

**4.4.4 Usage Allowance****\$5.00**

Issued:

Effective Date:

Issued By:

Basil Pallone  
Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803



## SECTION 4 – RATES, Continued

## 4.4. BASIC BUSINESS LINE SERVICE, Continued

## 4.4.5 Direct Inward Dialing (DID)

	Monthly Recurring Charge	Nonrecurring Charge
<i>DID Station Numbers</i>		
20 DID Numbers	\$3.00	\$20.00
Individual DID Number	\$0.15	\$1.00
<i>DID Trunk Termination</i>	\$35.00	\$50.00

## 4.4.6 4-Wire Service Arrangement

With Installation of Trunk	\$12.50	N/A
Nonrecurring Charge	\$55.00	N/A
After installation of Trunk	\$12.50	N/A
Nonrecurring Charge	\$80.00	N/A

## 4.4.7 Stand-By Line

*Per Arrangement*

Rate Group A	\$13.80	\$47.00
Rate Group B	\$13.80	\$47.00
Rate Group C	\$15.00	\$47.00
Rate Group D	\$15.00	\$47.00
Rate Group E	\$16.40	\$47.00
Rate Group F	\$16.40	\$47.00
Rate Group G	\$18.45	\$47.00
Rate Group I	\$19.35	\$47.00
<i>Per Minute if Usage</i>	\$0.05	

Issued:

Issued By:

Effective Date:

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Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803

## SECTION 4 - RATES, Continued

## 4.5. BASIC RESIDENTIAL LINE SERVICE

## 4.5.1. Flat Rate Residential Service

Monthly	
Rate Group A	\$15.05
Rate Group B	\$13.50
Rate Group C	\$15.75
Rate Group D	\$14.20
Rate Group E	\$16.55
Rate Group F	\$15.00
Rate Group G	\$17.75
Rate Group I	\$18.25
Nonrecurring charge	\$25.00

## 4.5.2. Measured Rate Residential Service

## 4.5.2.1 Budget Pac Monthly

Rate Group A	\$11.05
Rate Group B	\$ 9.50
Rate Group C	\$11.05
Rate Group D	\$ 9.50
Rate Group E	\$11.05
Rate Group F	\$ 9.50
Rate Group G	\$11.07
Rate Group I	\$11.05
Nonrecurring charge	\$25.00

## 4.5.2.2 Measured Usage Charges:

	PEAK		OFF-PEAK	
	First Min	Add'l Min	First Min	Add'l Min
Area A (Intra-Exchange)	\$0.0500	\$0.0100	\$0.0250	\$0.0050
Area B (0-22 Miles)	\$0.0700	\$0.0200	\$0.0350	\$0.0100
Area C (23-30 Miles)	\$0.0900	\$0.0250	\$0.0450	\$0.0125
Area D (31-40 Miles)	\$0.1100	\$0.0300	\$0.0550	\$0.0150
Area E (41-55 Miles)	\$0.1300	\$0.0350	\$0.0650	\$0.0175
4.2.2.3 Usage Allowance			\$2.50	

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Burlington Massachusetts 01803

## SECTION 4 – RATES, Continued

## 4.5. BASIC RESIDENTIAL LINE SERVICE

## 4.5.1. Flat Rate Residential Service, continued

## 4.5.3 Usage Rate Service

## Monthly

Rate Group A	\$10.45
Rate Group B	\$09.50
Rate Group C	\$10.45
Rate Group D	\$09.50
Rate Group E	\$10.45
Rate Group F	\$09.50
Rate Group G	\$10.45
Rate Group I	\$10.45
Nonrecurring charge	\$25.00

## 4.5.4 Usage Packages

Measured 3 (3 Hour)	\$11.05
Measured 6 (6 Hour)	\$13.15
Measured 9 (9 Hour)	\$15.25

## 4.5.5 Usage Allowance

Measured 3 (3 Hour)	\$03.60
Measured 6 (6 Hour)	\$07.20
Measured 9 (9 Hour)	\$10.80

## 4.5.6 Usage Charge (Per Minute)

\$00.02

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3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803

## SECTION 4 - RATES, Continued

**4.6 INTRASTATE INTRALATA MESSAGE TELECOMMUNICATIONS SERVICE (MTS)****4.6.1 Business and Residential MTS Rates**

	DAY		EVENING		NIGHT	
Mileage	First Min.	Add'l Min.	First Min.	Add'l Min.	First Min.	Add'l Min.
0-10	\$0.2100	\$0.0150	\$0.1575	\$0.0113	\$0.1260	\$0.0090
11-16	\$0.2600	\$0.0160	\$0.1950	\$0.0120	\$0.1560	\$0.0096
17-22	\$0.3000	\$0.0180	\$0.2250	\$0.0135	\$0.1800	\$0.0108
23-30	\$0.3400	\$0.0210	\$0.2550	\$0.0158	\$0.2040	\$0.0126
31-40	\$0.3600	\$0.0240	\$0.2700	\$0.0180	\$0.2160	\$0.0144
41-55	\$0.3900	\$0.0250	\$0.2925	\$0.0188	\$0.2340	\$0.0150
56-85	\$0.4000	\$0.0260	\$0.3000	\$0.0195	\$0.2400	\$0.0156
86-124	\$0.4100	\$0.0270	\$0.3075	\$0.0203	\$0.2460	\$0.0162
125-244	\$0.4300	\$0.0290	\$0.3225	\$0.0218	\$0.2580	\$0.0174
244+	\$0.4400	\$0.0300	\$0.3300	\$0.0225	\$0.2640	\$0.0180

**4.6.2 Surcharges**

Directory Assistance	\$0.40
Travel Card	
Fully-Automated	\$1.05
Semi-Automated	\$2.10
Operator-Assisted	\$2.10
Person-to-Person	\$4.50
Operator-Dialed	\$1.00
Calls initiated from Pay telephone	\$0.30

Issued:

Effective Date:

Issued By:

Basil Pallone  
Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803



## SECTION 5- LOCAL CALLING AREAS

## 5.1. LOCAL EXCHANGES

- 5.1.1. Exchange access services are provided in limited geographic areas. Exchange access services are available only in local calling areas.

The following services are offered at rates specified in this tariff.

BusinessResidential

Value Pac (Measured Rate)  
Flat Rate

Budget Pac (Measured Rate)  
Flat Rate

## 5.1.2. Local Calling Area

EXCHANGE	RC	EXCHANGE	RC	EXCHANGE	RC	EXCHANGE	RC
Aberdeen	E	Alcester	D	Arlington	C	Belle Fouché	B
Canton-Fairview	C	Cavour	E	Centerville	D	Chamberlain	C
Clearfield	D	Colman	C	Deadwood	E	DeSmet	C
Elk Point	A	Flandreau	C	Gregory	D	Harrisburg	I
Hill City	G	Hudson	D	Huron	E	Iroquois	E
Lake Preston	C	Lead	E	Lesterville	F	Madison	E
McIntosh	D	Milbank	C	Miller	C	Mitchell	E
Morristown	D	Pierre-Ft. Pierre	E	Rapid City	G	Redfield	C
Sioux Falls	I	Sisseton	C	Spearfish	E	Sturgis	C
Tabor	F	Tea	I	Timber Lake	B	Vermillion	C
Viborg	D	Volga - Bruce	C	Watertown	E	Whitewood	E
Witten	D	Yankton	E				

The Company's local calling area description above in no way compels the Company to provide any service in an area where extenuating factors limit the Company's ability to provide such services.

Issued:

Issued By:

Effective Date:

Basil Pallone

Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803

1743

South Dakota Public Service

REMITTANCE ADVICE

RICH, MAY, BILODEAU & FLAHERTY, P.C.  
CHECK NO. 49764

DATE	INVOICE NUMBER	DESCRIPTION	MATTER #	AMOUNT
04-04-00	04/04/2000		027046-0001	250.00
TOTAL:				250.00

TC00-064

FOR SECURITY PURPOSES, THE FACE OF THIS DOCUMENT CONTAINS A COLORED BACKGROUND AND MICROPRINTING IN THE BORDER.

RICH, MAY, BILODEAU & FLAHERTY, P.C.

176 FEDERAL STREET  
BOSTON, MA 02110

PAY TWO HUNDRED FIFTY AND 00/100 DOLLARS

South Dakota Public Service

TO THE ORDER OF

49764

CITIZENS BANK  
MASSACHUSETTS

DATE 04/04/00

NET AMOUNT \$ 250.00

VOID AFTER 6 MONTHS  
RICH, MAY, BILODEAU & FLAHERTY, P.C.

BY

*Kathleen L. Landry*

49764 1210701751 110402828

FOR SECURITY PURPOSES, THE FACE OF THIS DOCUMENT CONTAINS A COLORED BACKGROUND AND MICROPRINTING IN THE BORDER.

**WEEKLY FILINGS**

For the Period of March 30, 2000 through April 5, 2000

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**

**CT00-057 In the Matter of Complaint filed by Larry Mann, Rapid City, South Dakota, against MCI WorldCom, Sprint Communications Company L.P., USBI, Business Options, Inc., HOLD Billing Services and CEO Telecommunications, Inc. Regarding Unauthorized Switching of Services.**

The complainant alleges that he received his February 2000 phone bill and it was hundreds of dollars higher than it has ever been. He discovered that his calling card calls had been billed at casual rates because he was no longer with AT&T. His long distance services had been switched to MCI without his knowledge in 1997 and switched again on December 1, 1999, to Sprint and Business Options without his knowledge. The complainant states that he or his wife have never authorized anyone to switch his long distance provider to AT&T. The complainant alleges unauthorized charges from CEO Telecom/LD Services in June and July, 1999. The complainant requests that his rates be adjusted to the date his service was changed without his consent.

Staff Analyst: Charlene Lund

Staff Attorney: Karen Cremer

Date Docketed: 03/30/00

Intervention Deadline: NA

**CT00-058 In the Matter of the Complaint filed by Brian Lerohl, Fairview, South Dakota, against Business Options, Inc. and HOLD Billing Services Regarding Unauthorized Switching of Services.**

Complainant reports that for the billing period ending February 13, 2000, his U S WEST bill contained charges of \$76.48 from HOLD Billing Services and Business Options. He reports that he never agreed to those services, either verbally or in writing. He alleges that the switching of his long distance services constitutes fraud and the claim made by William Brzycki from Business Options that his services were verified on March 13, 1996 is false. The complainant requests compensation for his time to resolve the issue at \$1152.00, plus travel time and expenses to come to Pierre at \$300.00, for a total compensation of \$1452.

Staff Analyst: Charlene Lund

Staff Attorney: Camron Hoseck

Date Docketed: 04/03/00

Intervention Deadline: NA

**CT00-059** In the Matter of the Complaint filed by Terrell W. Reetz, Custer, South Dakota, against Crusade Communications Regarding Unauthorized Switching of Services.

On April 4, 2000, the Complainant filed a complaint against Crusade Communications for switching his long distance service without authorization. He is seeking reimbursement for charges incurred and \$1000 as identified in SDCL 49-31-93.

Staff Analyst: Leni Healy  
Staff Attorney: Karen Cremer  
Date Docketed: 04/05/00  
Intervention Deadline: NA

## **NATURAL GAS**

**NG00-004** In the Matter of the Application of Associated Milk Producers, Inc. Pipeline, Inc. to Continue Intrastate Natural Gas Transportation Rate and Eliminate Refund Condition.

Application by Associated Milk Producers to continue the currently effective gas transportation rate which was initially approved in June of 1998 in Docket No. NG97-015. The June 2, 1998 Order required Associated Milk Producers to submit an application for a change in the intrastate natural gas transportation rate by March 1, 2000. Associated Milk Producers subsequently requested and the Commission granted an extension of the March 1, 2000 date to April 1, 2000.

Staff Analyst: Dave Jacobson/Keith Senger  
Staff Attorney: Karen Cremer  
Date Docketed: 04/3/00  
Intervention Deadline: 04/28/00

## **TELECOMMUNICATIONS**

**TC00-062** In the Matter of the Application of Concentric Carrier Services, Inc. for a Certificate of Authority to Provide Telecommunications Services, Including Local Exchange Services, in South Dakota.

Concentric Carrier Services, Inc. submitted an application to provide facilities-based and resold local exchange and interexchange telecommunications services in South Dakota. The applicant seeks authority to provide all forms of telecommunications service to business and residential customers.

Staff Analyst: Keith Senger  
Staff Attorney: Camron Hoseck  
Date Docketed: 04/04/00  
Intervention Deadline: 04/21/00



**TC00-063 In the Matter of the Application of CRG International, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.**

CRG International, Inc. submitted an application to provide resold interexchange telecommunications services in South Dakota. The applicant proposes to offer switched inbound/outbound, dedicated inbound/outbound, travel card, directory assistance and operator services.

Staff Analyst: Keith Senger  
Staff Attorney: Karen Cremer  
Date Docketed: 04/05/00  
Intervention Deadline: 04/21/00

**TC00-064 In the Matter of the Application of essential.com, inc. for a Certificate of Authority to Provide Telecommunications Services, Including Local Exchange Services, in South Dakota.**

essential.com, inc. submitted an application to provide local exchange and interexchange telecommunications services in South Dakota. essential.com, inc. intends to provide local resale service in the exchanges of U S WEST and does not intend to provide service, at this time, in any rural telephone exchanges.

Staff Analyst: Heather Forney  
Staff Attorney: Camron Hoseck  
Date Docketed: 04/05/00  
Intervention Deadline: 04/21/00

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TC00-064

RICH, MAY, BILODEAU & FLAHERTY, P.C.

176 FEDERAL STREET  
BOSTON, MASSACHUSETTS 02110-2223  
TELEPHONE (617) 482-1360  
FAX (617) 556-3889

Eric J. Krathwohl  
Direct: (617) 556-3857  
Email: ekrathwohl@richmaylaw.com

April 24, 2000

RECEIVED

APR 27 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

BY FAX, EMAIL AND REGULAR MAIL  
Heather K. Forney, Utility Analyst  
South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

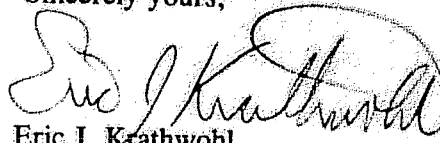
Re: Application for Certificate of Authority in South Dakota for essential.com, inc.

Dear Ms. Forney:

On behalf of essential.com, inc. ("Essential"), I enclose herewith Essential's responses to the requests contained in your letter to me, dated April 12, 2000. Should you have any questions, or require any clarification or additional information, please do not hesitate to call me.

Thank you for your attention to this matter. We look forward to working with the Commission in every way possible to ensure that the people of South Dakota receive quality telephone service in compliance with all federal and state laws. If you have any questions, please do not hesitate to call me.

Sincerely yours,

  
Eric J. Krathwohl

Encl.

cc: Camron Hoseck, Staff Attorney  
Christopher Kallaher, Esq.  
Peter Mills

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**STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION**

**Responses of essential.com, inc. to  
Information Requests dated April 12, 2000**

1. Please verify that the Applicant intends to provide services under the name of essential.com, inc.

**Response:** Yes, the Applicant intends to provide services under the name of essential.com, inc.

**STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION**

**Responses of essential.com, inc. to  
Information Requests dated April 12, 2000**

2. Names and addresses of applicant's affiliates, subsidiaries, and parent organizations, if any must be provided in accordance with ARSD 20:10:32:03(6).

**Response:** Applicant has one wholly-owned subsidiary, essential.com of Virginia, inc., incorporated on April 5, 2000 for the purpose of providing local exchange telecommunications services in Virginia. The corporation is authorized to issue 1000 shares of capital stock. One thousand (1000) shares of capital stock have been issued by essential.com of Virginia, inc. to essential.com, inc.



**STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION**

**Responses of essential.com, inc. to  
Information Requests dated April 12, 2000**

3. Please indicate whether the applicant engages in multilevel marketing in accordance with ARSD 20:10:32:03(15) and ARSD 20:10:24:02(14)

**Response:** No. Essential's marketing efforts generally are by means of print, radio or internet media and/or direct mail.

**STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION**

**Responses of esssentia.com, inc. to  
Information Requests dated April 12, 2000**

4. The number and nature of complaints filed against the Applicant with any state or federal regulatory commission regarding the act of charging customers for services that have not been ordered has not been provided as required by ARSD 20:10:32:03(21) and ARSD 20:10:24:02(14).

**Response:** Applicant is unaware of any complaints filed against it at any state or federal agency having jurisdiction, regarding the act of charging customers for services that have not been ordered.

STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION

Responses of esssentia.com, inc. to  
Information Requests dated April 12, 2000

5. SDCL 49-31-03 states, "A telecommunications company has the burden to prove in its application that it has sufficient technical, financial and managerial capabilities to offer the telecommunications services described in its application before the Commission may grant a certificate of authority. Based upon the information submitted, Commission staff would request that the Applicant post a \$25,000 bond naming the South Dakota Public Utilities Commission and South Dakota consumers as beneficiaries. Bond requirement language will be placed in the Commission Order granting authority. The Applicant is free to apply to the Commission for removal of the bond requirement at a later date. Should you wish to discuss this further, please contact me at the Commission.

**Response:** The Company requested a Form of Bond from SD Commission Staff and has recently received that Form. The Company is making arrangements to obtain such a Bond and will provide it to the Commission upon its receipt.

**STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION**

**Responses of essential.com, inc. to  
Information Requests dated April 12, 2000**

6. Section 2.12.7 of the tariff indicates that objections to charges not received by in 3 months after the bill is rendered is determined to be correct and binding. Section 2.12.8 states those objections involving superseded service orders must be received by the Company within 2 months after the bill is rendered. The Commission would request that the timing of both of those sections be changed to 180 days.

**Response:** See attached replacement tariff pages.



**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.12. PAYMENTS AND BILLING, Continued**

**2.12.4. Continued**

A. Late payment charges do not apply to those portions (and only those portions) of unpaid balances that are associated with disputed amounts. Undisputed amounts on the same bill are subject to late payment charges if unpaid and carried forward to the next bill.

B. Late payment charges do not apply to final accounts.

2.12.5. The Company will provide interest on Customer overpayments that are not refunded within thirty (30) days of the date the Company receives the overpayment. An overpayment is considered to have occurred when payment in excess of the correct charges for service is made because of erroneous Company billing. The Customer will be issued reimbursement for the overpayment, plus interest, or, if agreed to by the Customer, credit for the amount will be provided on the next regular Company bill. The rate of interest shall be the greater of the Customer deposit interest rate or the Company's applicable late payment charge.

2.12.6. Interest shall be paid from the date when overpayment was made, adjusted for any changes in the deposit rate or late payment rate, and compounded monthly, until the date when the overpayment is refunded. The date when overpayment is considered to have been made will be the date on which the Customer's overpayment was originally recorded to the Customer's account by the Company.

2.12.7. If objection is not received by the Company within 180 days after the bill is rendered, the items and charges appearing thereon shall be determined to be correct and binding upon the Customer. A bill will not be deemed correct and binding upon the Customer if the Company has records on the basis of which an objection may be considered, or if the Customer has in his or her possession such Company records. If objection results in a refund to the customer, such refund will be with interest at the greater of the unadjusted Customer deposit rate or the applicable late payment rate, if any, for the service classification under which the Customer was billed. Interest will be paid from the date when the Customer overpayment was made, adjusted for any changes in the deposit rate or late payment rate, compounded monthly, until the overpayment is refunded. Notwithstanding the foregoing, no interest will be paid by the Company on Customer overpayments that are refunded within thirty (30) days after the overpayment is received by the Company.

Issued:

Effective Date:

Issued By:

Basil Pallone

Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803

**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.12. PAYMENTS AND BILLING, Continued**

2.12.8. Where an objection to the bill involves a superseded service order, the items and charges appearing on the bill shall be deemed to be correct and binding upon the Customer if objection is not received by the Company within 180 days after the bill is rendered.

2.12.9. Customers should first seek to resolve billing disputes through the Company's website, [www.essential.com](http://www.essential.com), or by email to the address indicated on the Customer's most recent invoice. Additionally, inquiries may be addressed to Company's customer service organization by mail at Three Burlington Woods Drive, Burlington, MA 01803-4543, or by telephone 888.746.4983. Customer service representatives are available to address such inquiries and any inquiries outside of normal business hours will be answered on the next business day, except in the event of an emergency which threatens Customer service, in which case the Company will respond as promptly as possible.

2.12.10. In the case of a dispute between the Customer and the Company for service furnished to the Customer, which cannot be settled with mutual satisfaction, the Customer can take the following course of action:

- A. First, the Customer may request, and the Company will perform, an in-depth review of the disputed amount. The undisputed portion and subsequent bills must be paid on a timely basis or the service may be subject to disconnection.
- B. Second, if there is still disagreement over the disputed amount after the investigation and review by a manager of the Company, the Customer may appeal to the South Dakota Public Service Commission for its investigation and decision.

The address and telephone number of the Commission are:

South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

Telephone: (800) 332-1782  
TTY (800) 877-1113

Issued:

Issued By:

Effective Date:

Basil Pallone  
Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803

STATE OF SOUTH DAKOTA  
PUBLIC UTILITIES COMMISSION

Responses of essential.com, inc. to  
Information Requests dated April 12, 2000

7.

Essential's tariff attempts to limit the liability of the company. Under South Dakota law found at 49-13-1 and 49-13-1.1, a person has the right to claim damages from a telecommunications company by coming before the Commission or a court of competent jurisdiction. Please remove sections 2.4.1, 2.4.5, 2.4.8, 2.4.10, and 2.4.11 from the tariff. If you have any questions or concerns regarding this issue, please contact Camron Hoseck, staff attorney.

**Response:** Essential proposes that it address the referenced statutory consumer protection by adding to each of the specified tariff sections the following:

"Nothing herein shall be construed to limit any rights to damages the Customer may have under applicable law."

Essential believes this proposal complies with applicable law because it explicitly refrains from restricting customers' rights under the referenced statute. The referenced tariff provisions seek to address circumstances beyond limiting the customers to obtaining direct damages, which is subject to the referenced statute. Additionally, Essential notes that such tariff provisions are quite standard for it and other carriers across the country to the extent that telecommunications companies are subject to greater risk and liability their charges will, of necessity, increase.

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TE00-064

**RICH, MAY, BILODEAU & FLAHERTY, P.C.**

176 FEDERAL STREET

BOSTON, MASSACHUSETTS 02110-2223

Eric J. Krathwohl

Direct: (617) 556-3857

Email: [ekrathwohl@richmaylaw.com](mailto:ekrathwohl@richmaylaw.com)

TELEPHONE (617) 482-1360

FAX (617) 556-3889

May 25, 2000

**BY FAX AND REGULAR MAIL**

Camron Hoseck, Staff Attorney

South Dakota Public Utilities Commission

State Capitol Building

500 East Capitol Avenue

Pierre, South Dakota 57501-5070

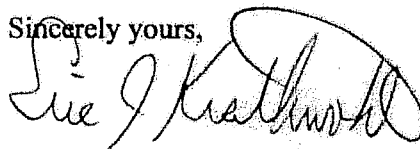
Re: Application for Certificate of Authority in South Dakota for essential.com, inc.

Dear Mr. Hoseck,

On behalf of essential.com, inc. ("Essential"), I enclose revised tariff pages in response to your letter to me, dated May 9, 2000. We have deleted the language from the tariffs consistent with your request to facilitate the approval of Essential's application.

If you have any questions, please do not hesitate to call me.

Sincerely yours,



Eric J. Krathwohl

Encl.

Cc: Christopher Kallaher, Esq.

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**RECEIVED**

MAY 30 2000

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**



**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.4. LIABILITIES OF THE COMPANY, Continued**

**2.4.5. RESERVED**

**2.4.6.** No agents or employees of connecting, concurring or other participating carriers or companies shall be deemed to be agents or employees of the Company without written authorization.

**2.4.7.** The Company is not liable for any failure of performance hereunder due to causes beyond its control, including, but not limited to, unavoidable interruption in the working of its circuits or those of another common carrier; acts of nature, storms, fire, floods, or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or any other governmental entity having jurisdiction over the Company or of any department, agency, commission, bureau, corporation, or other instrumentality or any one or more of such instrumentalities or any one of more of such governmental entities, or of any civil or military authority; national emergencies, insurrections, riots, rebellions, wars, strikes, lockouts, work stoppages, or other labor difficulties; or notwithstanding anything in this tariff to the contrary, the unlawful acts of the Company's agents and employees, if committed beyond the scope of their employment.

**2.4.8. RESERVED**

Issued:

Issued By:

Effective Date:

Basil Pallone  
Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803

**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.4. LIABILITIES OF THE COMPANY**

**2.4.1. RESERVED**

2.4.2. Company is not liable for any act or omission of any other company or companies furnishing a portion of the service.

2.4.3. Company shall be indemnified and held harmless by the Customer against:

- A. Claims for libel, slander, infringement of copyright or unauthorized use of any trademark, trade name or service mark arising out of the material, data, information or other content transmitted over Company's facilities; and
- B. Claims for patent infringement arising from combining or connecting Company's facilities with apparatus and systems of the Customer; and
- C. All other claims arising out of any act or omission of the Customer in connection with any service provided by Company.

2.4.4. The Company is not liable for any defacement of, or damage to, the equipment or premises of a Customer resulting from the furnishing of services when such defacement or damage is not the result of the result of the Company's negligence.

Issued:

Effective Date:

Issued By:

Basil Pallone  
Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803

**SECTION 2 - RULES AND REGULATIONS, Continued**

**2.4. LIABILITIES OF THE COMPANY, Continued**

2.4.9. The Company shall not be liable for any damages, including usage charges, that the Customer may incur as a result of the unauthorized use of its communications equipment. The unauthorized use of the Customer's communications equipment includes, but is not limited to, the placement of calls from the Customer's premises and the placement of calls through Customer-controlled or Customer-provisioned equipment that are transmitted or carried over the Company's network services without the authorization of the Customer. The Customer shall be fully liable for all such charges.

2.4.10. RESERVED

2.4.11. RESERVED

Issued:

Issued By:

Effective Date:

Basil Pallone  
Treasurer, Director of Finance/Controller  
3 Burlington Woods Drive, 4<sup>th</sup> floor  
Burlington Massachusetts 01803

**RICH, MAY, BILODEAU & FLAHERTY, P.C.**

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Eric J. Krathwohl  
Direct: (617) 556-3857  
Email: ekrathwohl@richmaylaw.com

September 1, 2000

**BY FAX, EMAIL AND REGULAR MAIL**

Heather K. Forney, Utility Analyst  
South Dakota Public Utilities Commission  
State Capitol Building  
500 East Capitol Avenue  
Pierre, South Dakota 57501-5070

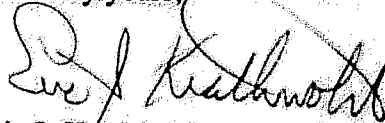
Re: Application for Certificate of Authority in South Dakota for essential.com, inc.

Dear Ms. Forney:

In response to your letter dated August 16, 2000, this letter is to effect the withdrawal of the request of essential.com, inc. ("Essential") to be authorized to provide telecommunications services in the State of South Dakota.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to call me.

Sincerely yours,



Eric J. Krathwohl

cc: William Bullard, Executive Director  
Camron Hoseck, Staff Attorney  
Christopher Kallaher, Esq.  
Peter Mills

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FAX Received SEP 01 2000

RECEIVED

SEP 05 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION



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

IN THE MATTER OF THE APPLICATION OF ) ESSENTIAL.COM, INC. FOR A CERTIFICATE ) OF AUTHORITY TO PROVIDE ) TELECOMMUNICATIONS SERVICES, ) INCLUDING LOCAL EXCHANGE SERVICES, IN ) SOUTH DAKOTA )	ORDER PERMITTING WITHDRAWAL OF APPLICATION AND CLOSING DOCKET  TC00-064
--	--

On April 5, 2000, essential.com, inc. (essential) filed an application with the Public Utilities Commission (Commission) for a certificate of authority to operate as a telecommunications company within the state of South Dakota.

On September 1, 2000, essential requested that its application for a certificate of authority be withdrawn.

At its regularly scheduled September 13, 2000, meeting, the Commission considered this matter. The Commission has jurisdiction over this matter pursuant to SDCL 49-31-3 and ARSD Chapter 20:10:24. The Commission found that essential's request to withdraw its request for a certificate of authority is reasonable and closed the docket. It is therefore

ORDERED, that essential shall be permitted to withdraw its request for a certificate of authority, and it is further

ORDERED, that this docket is closed.

Dated at Pierre, South Dakota, this 19th day of September, 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: *Alain Kello*

Date: 9/20/00

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

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

*Pam Nelson*  
PAM NELSON, Commissioner

*Laska Schoenfelder*  
LASKA SCHOENFELDER, Commissioner