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Public Utilities Commission of the State of South Dakota

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TC00-170

Lance J.M. Steinhart  
Attorney At Law  
6455 East Johns Crossing  
Suite 285  
Duluth, Georgia 30097

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OCT 10 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Telephone: (605) 212-9200  
Facsimile: (605) 212-9200

Also Admitted in New York  
and Maryland

October 9, 2000

VIA FEDERAL EXPRESS

Mr. William Bullard  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501-5070  
(605) 773-3201

Re: 360networks (USA) inc.


Dear Mr. Bullard:

Enclosed please find one original and ten (10) copies of 360networks (USA) inc.'s Application for Registration of a Telecommunications Company to Provide Resold and Facilities-Based Local Exchange Service.

I have also enclosed a check in the amount of \$250.00 payable to the "South Dakota Public Utilities Commission" for the filing fee and an extra copy of this cover letter to be date stamped and returned to me in the enclosed self-addressed prepaid envelope.

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

Respectfully submitted,



Lance J.M. Steinhart  
Attorney for 360networks (USA) inc.

Enclosures

cc: Julie Hawkins (w/enc)

**SOUTH CAROLINA PUBLIC  
UTILITY COMMISSION**

Applicant has no local office in South Dakota at this time.



All inquiries regarding customer complaints and other regulatory matters should be addressed to:

Terry Bate  
143 Union Boulevard, Suite 300  
Lakewood, Colorado 80228  
(303) 854-5000 (Phone)  
(303) 854-5100 (Fax)  
terri.bate@360.net(e-mail)

2. Registered Agent

The name and address of the Applicant's registered agent are:

CT Corporation System  
319 S. Coteau Street  
Pierre, South Dakota 57501

3. Description of the Applicant

Applicant is incorporated in the State of Nevada and is in good standing under the laws of that state. The Company was incorporated on June 12, 1998 as Worldwide Fiber Networks, Inc. A copy of the Company's Articles of Incorporation, as amended, is attached to this Application as Exhibit A. In addition, the Company is authorized to do business as a foreign corporation in the State of South Dakota. Attached as Exhibit B to this Application is a copy of the Company's certificate of qualification to transact business issued by the South Dakota Secretary of State. Applicant is a wholly-owned operating subsidiary of 360networks, Inc.

The Commission issued Applicant a Certificate of Authority To Conduct Business as A Telcommunications Company Within the State of South Dakota for Interexchange Services in Docket No. TC00-079 on August 22, 2000.

360networks (USA) inc. is authorized to provide local exchange service in Iowa, Kentucky, Montana, New York, Oregon, Rhode Island, Utah, Wisconsin, Wyoming and Washington D.C. and is authorized to provide interexchange service in Alabama, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Indiana, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming. 360networks is in the process of applying for authorization to provide resold and facilities-based interexchange and local exchange service throughout the United States. No such applications have been denied. Applicant is not currently providing service.

The senior management of 360networks has great depth in the telecommunications industry and offers extensive telecommunications business technical and managerial expertise to 360networks. Since 360networks will be providing resold and facilities-based service, 360networks will also rely upon the managerial and technical expertise of the incumbent local exchange carriers and facilities-based interexchange carriers which have been certified and deemed technically and managerially able to provide exchange service by the Commission. The relevant operational experience of Applicant's key management employees is set forth in Exhibit C which is attached hereto.

#### 4. Facilities

360networks, inc. is a leading independent, facilities-based provider of fiber optic communications network products and services. By the end of 2001 360networks, inc. expects its network to consist of approximately 56,300 route miles in North America, Europe and South America, including an undersea cable between North America and Europe and an undersea cable between South America and North America. 360networks, inc. recently agreed, subject to execution of definitive agreements, to acquire collocation facilities or site rights in ten cities in North America comprising approximately 2.9 million square feet. It intends to expand its network to provide connectivity on a global basis. The design of its network uses state-of-the-art optical technologies that it believes greatly reduces complexity and cost while allowing it to offer increased reliability and a wide range of products and services. In addition, it offer network services to meet its customers' demands and enable Internet services and intends to develop

products and services that capitalize on the convergence of telecommunications and high-bandwidth applications and services.

Its network, scheduled to be completed by the end of 2001, consists of fiber optic assets and capacity that 360networks, inc. has installed or acquired from other developers and carriers through swaps, purchases, leases, IRUs or other contractual rights along diverse POW. In North America, its network is expected to cover approximately 24,100 route miles, of which more than 12,200 route miles have been developed to date, encompassing both long-haul and intra-city route miles and providing connectivity among approximately 50 major population centers. In Europe, its network is expected to cover approximately 10,600 long-haul route miles (assuming, with respect to 1,300 route miles, the exercise of an option that it has), of which more than 4,900 route miles have been developed to date, providing connectivity among approximately 33 major population centers. Its 7,600 route mile fully protected undersea cable between North America and Europe will have the capacity to be a 1.92 terabits per second ("tbps"), self-healing ring that will connect landing sites in Boston, Halifax, Dublin and Liverpool and to major gateway cities in Europe and North America, including London and New York. Its planned 14,000 route mile fully protected undersea cable between South America and North America will have the capacity to be a 1.28 terabits per second, self-healing ring that will be able to offer city-to-city connectivity between 6 major population centers in Brazil, Venezuela, Bermuda and the United States. It intends to expand its planned network to more population centers through the addition of intercity and city ring capacity in North America, Europe and South America. 360networks, inc. is also reviewing opportunities to expand the geographic reach of its network, including transpacific connectivity to Asia. In addition, it intends to extend its network to Buenos Aires through undersea and/or

terrestrial routes.

When the company installs facilities, it will deploy the following or a similar configuration: Petitioner's network will consist of multiple HDPE SDR 11 conduit banks, complete with regeneration/amplification facilities approximately every forty (40) miles. Petitioner will have points of presence (POP) sites in the larger metropolitan areas. Petitioner's network will utilize state-of-the-art fiber optic strands, which allow for the high speed, high quality transmission of data, video and voice communications. Petitioner plans to install an average of 144 fiber optic strands on major builds throughout the network, and Petitioner may install as many as 264 fibers or more in high demand areas. The advanced technical operating characteristics of the network will enable Petitioner to provide technologically advanced dark fiber to customers at low cost by permitting higher capacity transmission over longer distances between regeneration and amplifier facilities. The network is currently compatible with the highest commercially available transmission capacity (OC-192) and can accommodate advanced capacity-intensive data applications such as Frame Relay, ATM, multimedia and Internet related applications. At the time of the filing of this application, none of this equipment has been installed in the State of South Dakota.

5. Stockholders

The names and address of the each stockholder of Applicant owning 10% or more of the interest in the business are as follows:

Name and Address	Shares Owned	Percentage of all Shares Issued and Outstanding and Voting Control
360networks inc. 143 Union Boulevard Suite 300 Lakewood, Colorado 80228	200	100%

6. Officers and Directors

The names and addresses of the officers and directors of 360networks (USA) inc. are

Officers:

Jerry Tharp	President
Ronald Stevenson	Executive Vice President & Secretary
Bruce Tinney	Vice President, Business Development
Patrick Summers	Vice President, General Counsel
David Love	Senior Vice President

Directors:

David Lede  
Clifford Lede  
Ronald Stevenson  
Jerry Tharp

All of the above-named individuals can be reached at:

360networks (USA) inc.  
143 Union Boulevard, Suite 300  
Lakewood, Colorado 80228

7. Corporate Ownership

The name and address of any corporation, association or similar organization holding a five percent (5%) or greater ownership in the Applicant is as follows:

360networks inc.                      100%  
143 Union Boulevard, Suite 300  
Lakewood, Colorado 80228

8. Subsidiaries owned or controlled by Applicant

None

9. Description of Services

360networks intends to provide throughout the State, all forms of intrastate local exchange telecommunications services. Initially, 360networks will provide non-switched dedicated and private line, high capacity fiber optic transmission capacity and access services, which will allow its customers to obtain fiber optic transmission capacity to develop their own networks. Petitioner plans to offer its fiber optic transmission services to carriers, such as incumbent local exchange carriers, competitive local exchange carriers, and Internet service providers.

However, 360networks seeks authority to provide all forms of local exchange telecommunications services throughout the State, as it eventually expects to offer a broad range of voice and data local exchange services to business and residential customers throughout the State through: (i) the use of its own network facilities; (ii) the resale of services and facilities provided by certificated carriers and (iii) some combination thereof.

360 networks may provide all forms of intrastate local exchange telecommunications services including:

- A. Local Exchange Services for business and residence customers that will enable customers to originate and terminate local calls in the local calling area served by other LECs.
- B. Switched local exchange services such as flat-rated and measure-rated local services; vertical services, Direct Inward and Outward Dialed trunks, carrier access, public and semi-public coin telephone services, and any other switched local services that currently exist or will exist in the future.
- C. Non-switched local services (e.g., private line) that currently exist or will exist in the future.
- D. Centrex and/or Centrex-like services that currently exist or will exist in the future.
- E. Digital subscriber line, ISDN, and other high capacity line services.



10. Financial Qualifications

Applicant is financially qualified to provide intrastate local exchange telecommunications services within South Dakota. In particular, Applicant has adequate access to the capital necessary to fulfill any obligations it may undertake with respect to the provision of intrastate local exchange telecommunications services in the State of South Dakota. See 360networks, Inc.'s audited Financial Statements for the years ended December 31, 1998 and December 31, 1999, which are attached hereto as Exhibit D. Applicant does not intend to collect prepayments, advance payments or deposits.

11. Service Area Map

360networks will concur in the exchange area boundaries established by the incumbent LECs.

12. Tariff

Attached hereto as Exhibit E is a copy of 360networks's local exchange tariff which is being filed for informational purposes only since Applicant intends to serve less than 50,000 local exchange subscribers in South Dakota.

13. Billing

Applicant will direct bill local exchange customers utilizing completed call detail information from its underlying carriers or its own equipment.

14. Solicitation of Customers

360networks will not submit a change order for local exchange or intrastate toll service until 360networks has obtained the customer's written authorization to submit the order which includes the following information from the customer: (1) The customer billing name, billing telephone number and billing address and each telephone number to be covered by the change order; 2) The decision to change; and (3) The customer's understanding of the change fee, if any.

15. Description of Marketing

Applicant initially intends to market its services to carriers, such as incumbent local exchange carriers, competitive local exchange carriers, and internal service providers. Applicant will market through direct sales by employees and agents. Applicant does not intend to engage in multilevel marketing. Applicant's marketing materials for South Dakota have not yet been developed and are not available at this time.

16. Cost Support:

Applicant intends to provide services at a price above its cost. Applicant intends to serve less than 50,000 local exchange subscribers in South Dakota, therefore, is not required to file cost support information.

17. Federal Tax Identification Number:

84-1496451

18. The Number and Nature of Complaints filed against the Applicant with any state or federal regulatory commission regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered:

None

19. Customer Service

360networks has established a toll free Customer Care number, 1-877-735-7366, to handle service complaints and/or billing questions once service commences. Mr. Terry Bate, Director of Client Services will oversee 360networks' Customer Care department and his staff will promptly respond to any customer complaints or concerns that may arise. Mr. Bate may be contacted through the Applicant's corporate offices at 143 Union Blvd., Suite 300, Lakewood, Colorado 80228, telephone (303) 854-5000. 360networks will also maintain a 24-hour Network Operation Center (NOC) to address operational issues. The NOC will be equipped with state-of-the-art monitoring equipment to allow for immediate response to any and all operational problems, which may arise. Mr. Gary Anderson, Vice President of Operations, 143 Union Blvd., Suite 300, Lakewood, Colorado 80228, telephone (303) 854-5000, will oversee all of the Applicant's operational departments.

When Applicant installs facilities in the State of South Dakota, facility and equipment maintenance will be performed by the company, either directly or through contract, in order to ensure compliance with any commission quality of service requirements.

20. Interconnection

Applicant initially intends to interconnect with US WEST. Negotiations for interconnection will start at an as yet determined time following certification. Interconnection service is likely to be initiated within 180 days of completion of interconnection negotiations. Applicant has not requested interconnection with any local exchange carrier in South Dakota at this time.

WHEREFORE, the undersigned Applicant requests that the South Dakota Public Utilities Commission enter an order granting this application for a Certificate of Authority authorizing Applicant to provide resold and facilities-based local exchange services.

DATED this 14 day of Apr, 2000.

360networks (USA) inc.

By: 

Lance J.M. Steinhart  
Its Attorney

State of Colorado

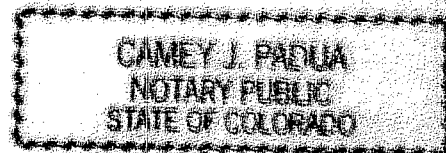
County of Jefferson

David Love, being first duly sworn, deposes and says that he/she is the Senior Vice President of 360networks (USA) Inc., the Applicant in the proceeding entitled above, that he/she has read the foregoing application and knows the contents thereof; that the same are true of his/her knowledge, except as to matters which are therein stated on information or belief, and to those matters he/she believes them to be true.

  
David Love  
Senior Vice President

Subscribed and sworn to before this 12<sup>th</sup> day of April, 2000.

  
Notary Public



My Commission expires: 05/11/01

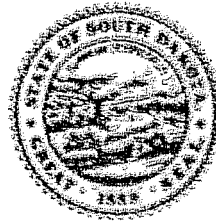
My Commission Expires 05/11/2001

## LIST OF EXHIBITS

- A - CERTIFICATE OF AUTHORITY
- B - ARTICLES OF INCORPORATION
- C - BIOGRAPHIES OF THE MANAGEMENT TEAM
- D - FINANCIAL STATEMENTS
- E - PROPOSED TARIFF

EXHIBIT A - CERTIFICATE OF AUTHORITY

# State of South Dakota



COPY

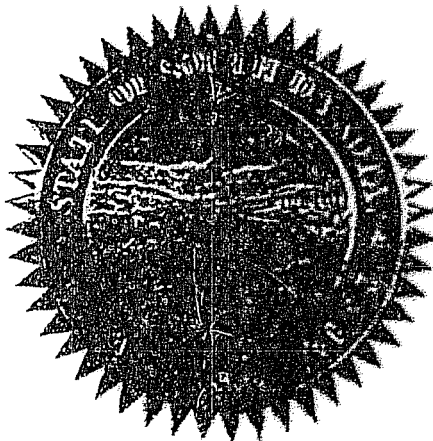
## OFFICE OF THE SECRETARY OF STATE

### 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 **WORLDWIDE FIBER NETWORKS, INC. (NV)** 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 May 23, 2000.



*Joyce Hazeltime*

Joyce Hazeltime  
Secretary of State



EXHIBIT B - ARTICLES OF INCORPORATION

CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF INCORPORATION  
OF  
WORLDWIDE FIBER NETWORKS, INC.

WORLDWIDE FIBER NETWORKS, INC., a corporation organized and existing under the laws of the State of Nevada, and its Articles of Incorporation originally filed with the Secretary of State for the State of Nevada on June 12, 1998, DOES HEREBY CERTIFY:

FIRST: That by written consent of the Board of Directors of Worldwide Fiber Networks Inc., the following resolutions were duly adopted:

RESOLVED, that Article I of the Articles of Incorporation be amended as follows:

I. NAME

The name of the corporation is 360networks (USA) inc.

SECOND: The total number of outstanding shares having voting power of the corporation is 200, and the total number of votes entitled to be cast by the holders of all of said outstanding shares is 200.

THIRD: The holders of all of the aforesaid total number of outstanding shares having voting power, to wit, shares, dispensed with the holding of a meeting of the stockholders and adopted the amendment herein certified by a consent in writing signed by all of them.

DATED this 25<sup>th</sup> day of May, 2000.

WORLDWIDE FIBER NETWORKS, INC.

By:   
Jerry Tharp, President

By:   
Ken Stevenson, Secretary

PROVINCE OF British Columbia )  
CITY OF Vancouver )



My Comm. Expires 1-2-2001

On this 45 day of May, 2000, personally appeared before me, a Notary Public, JERRY THARP, who acknowledged to me that he executed the foregoing CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION OF WORLDWIDE FIBER NETWORKS, INC.

Katherine L. Marshall  
NOTARY PUBLIC

PROVINCE OF British Columbia )  
CITY OF Vancouver )

On this 25<sup>th</sup> day of May, 2000, personally appeared before me, a Notary Public, RON STEVENSON, who acknowledged to me that he executed the foregoing CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION OF WORLDWIDE FIBER NETWORKS, INC.

Ron Stevenson  
NOTARY PUBLIC

CONSENT RESOLUTION  
OF  
BOARD OF DIRECTORS  
OF  
WORLDWIDE FIBER NETWORKS, INC.

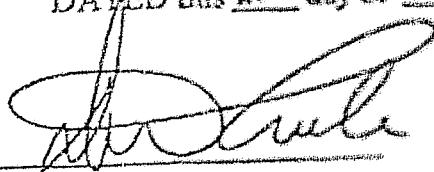
The undersigned being the members of the Board of Directors of Worldwide Fiber Networks, Inc., a Nevada corporation, pursuant to NRS 78.315(2), hereby consent to the adoption of the following resolutions:

RESOLVED, that the articles of incorporation be amended to reflect a change of the name of the corporation to:

"360networks (USA) Inc."

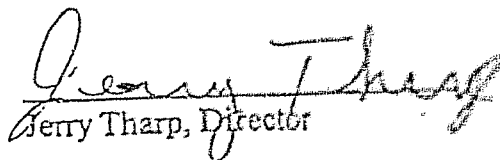
RESOLVED, that the President or Secretary of the corporation be, and they hereby are, authorized and empowered to execute any and all other instruments and certificates, and to do and perform all other acts and things necessary, or by them deemed desirable, to effectuate the purposes of the foregoing resolutions.

DATED this 25<sup>th</sup> day of May, 2000.



David Lede, Director

Clifford Lede, Director



Jerry Tharp, Director



Ronald Steinhilber, Director

**NEXT**

**DOCUMENT (S)**

**BEST IMAGE**

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FILED 15:18  
THE OFFICE OF THE  
SECRETARY OF STATE OF THE  
STATE OF NEVADA

APR 01 1999

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DEAN HELLER, SECRETARY OF STATE

## ARTICLES OF MERGER

These Articles of Merger are made this 23rd day of March, 1999, between Pacific Fiber Link Por-Sec, Inc., a Nevada corporation (sometimes referred to herein as the "Nevada Corporation" or the "Surviving Corporation") and Pacific Fiber Link, LLC, a Washington limited liability company (sometimes referred to herein as the "Washington LLC" or the "Merged Company").

### RECITALS

A. The Nevada Corporation is a corporation duly organized and existing under the laws of the State of Nevada, with its registered office located at 1475 Delacorte Lane, Ste. 224, Reno, Nevada 89502.

B. The Washington LLC is a limited liability company duly organized and existing under the laws of the State of Washington with its registered office located at 1415 Fifth Avenue, Ste. 3510, Seattle, Washington 98101-4011.

C. The Nevada Corporation and the Washington LLC deem it desirable and in their best interests that the Washington LLC be merged into the Nevada Corporation in accordance with the provisions of Chapter 92A of the Nevada Revised Statutes.

### I.

An agreement and plan of merger has been approved and adopted by the Nevada Corporation, through its board of directors, and submitted and approved by its stockholders pursuant to Chapter 92A of the Nevada Revised Statutes as set forth below:

Designation of Shares:	Consensus
Number of Votes Entitled to be Cast:	100
Number of Votes for Plan:	100
Number of Votes Against Plan:	0

The number of votes of the stockholders for the plan was sufficient for approval.

### II.

An agreement and plan of merger has been approved and adopted by the Washington LLC, through its managing member and management committee, and submitted and approved unanimously by its sole member possessing a 100% membership interest, pursuant to the laws of the State of Washington.

### III.

The Articles of Incorporation of the Surviving Corporation shall continue to be its Articles of Incorporation, except that according to the agreement and plan of merger Article I is amended to read:

#### I. NAME

The name of the corporation is WORLDWIDE FIBER NETWORKS, INC.

### IV.

The complete executed agreement and plan of merger is on file at the registered office of the Surviving Corporation, 1575 Delucchi Lane, Ste. 214, Reno, Nevada 89501.

### V.

On the effective date of the merger, the separate existence of the Merged Company shall cease, and the Surviving Corporation shall succeed to all the rights, privileges, immunities, and franchises, and all the property, real, personal, and mixed, of the Merged Company, without the necessity for any separate transfer. The Surviving Corporation shall thereafter be responsible and liable for all liabilities and obligations of the Merged Company, and neither the rights of creditors nor any liens on the property of the Merged Company shall be impaired by the merger.

### VI.

The merger takes effect upon the filing of these Articles of Merger.

PACIFIC FIBER LINK FOR SAC, INC.

By: 

Mary Thompson, President

By: 

Ron Stevenson, Secretary

STATE OF Colorado  
COUNTY OF Adams ) ss.

On this 26 day of March, 1999, personally appeared before me, a Notary Public, JERRY THARP, who acknowledged to me that he executed the foregoing ARTICLES OF MERGER.

[Signature]  
NOTARY PUBLIC

~~PAVLEE~~  
~~STATE OF Washington~~ ) ss.  
COUNTY OF Vancouver

On this 23rd day of March, 1999, personally appeared before me, a Notary Public, RON STEVENSON, who acknowledged to me that he executed the foregoing ARTICLES OF MERGER.

[Signature]  
NOTARY PUBLIC

DAVID TASTEN  
DAVID TASTEN  
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DAVID TASTEN



JUN 12 1990

NO. C13871-98  
Don Hill  
CLERK/CLERK, SECRETARY OF STATE

## ARTICLES OF INCORPORATION

OF

PACIFIC FIBER LINK POR-SAC, INC.

That I, the undersigned, have this day voluntarily acted for the purpose of forming a corporation under the laws of the State of Nevada, and to that end, I do hereby certify:

### I. NAME

The name of the corporation is PACIFIC FIBER LINK POR-SAC, INC.

### II. AGENT FOR SERVICE OF PROCESS

The name and address of the initial Resident Agent and location of the Registered Office in this state is Bookley, Stagleton, Jemison, Coburn & List, 1575 Dolucchi Lane, Suite 224, Reno, Nevada 89502.

### III. PURPOSE

The purpose of the corporation, and the nature of the business and objects proposed to be transacted and carried on by it are:

To engage in any lawful act or activity for which a corporation may be organized under the laws of the State of Nevada other than the banking business, the trust company business or the practice of a profession permitted to be incorporated under the laws of the State of Nevada.

### IV. STOCK

The corporation is authorized to issue one class of shares, which shall be designated "common shares," having a total number of 25,000 shares. Each share

share, when issued, shall have one (1) vote.

## V. NUMBER OF DIRECTORS

The members of the governing board of the corporation shall be styled "Directors," and the Initial Board of Directors shall be one (1) in number.

The number of directors may, at any time or times, be increased or decreased by a duly adopted amendment to these Articles of Incorporation, or in such manner as shall be provided in the By-Laws of the corporation or by an amendment to the By-Laws of the corporation duly adopted by either the Board of Directors or the shareholders.

## VI. INITIAL DIRECTORS

The name and address of the First Board of Directors is as follows:

David Lodo  
#1000 - 1066 West Hastings Street  
Vancouver, British Columbia  
Canada V6E 3X1

## VII. INCORPORATOR

The name and post office address of the incorporator signing these Articles of Incorporation is as follows:

Lance P. Malss  
Beckley, Singelton, Jamison, Coburn & List  
1575 Dolucchi Lane, Suite 224  
Reno, Nevada 89502

## VIII. ASSESSABILITY OF SHARES

The capital stock of this corporation, after the amount of the subscription price has been paid, shall not be subject to assessment to pay the debts of the corporation and no stock issued as fully paid shall be assessable or assessed, nor shall the private property of the stockholders, directors or officers of this corporation be subject to the payment of any corporate debts to any extent whatsoever, and in this particular, the Articles of Incorporation shall not be subject to amendment.

## IX. INDEMNIFICATION AND LIMITATION ON LIABILITY

Every person who was or is a party, or is threatened to be made a party to or is involved in any action, suit or proceeding, whether civil, criminal, administrative or involuntary, by reason of the fact that he or she or a person of whom he or she is the legal representative, is or was a director or officer of the corporation or is or was serving at the request of the corporation as a director or officer of another corporation, or as its representative in a partnership, joint venture, trust or other enterprise, shall be indemnified and hold harmless to the fullest extent legally permitted by the laws of the State of Nevada, as amended, against all expenses, liability and loss (including attorneys' fees), judgments, fines and amounts paid in connection therewith. Such right of indemnification shall be a contract right which may be enforced in any manner desired by such person. Such right of indemnification shall not be exclusive of any other right which such directors, officers or representatives may have or hereafter acquire, and, without limiting the generality of such statement, they shall be entitled to their respective rights of indemnification under any bylaws agreement, vote

stockholders, provision of law, or otherwise, as well as their rights under this Article.

The personal liability of a director or officer of the corporation or its stockholders shall be limited to the fullest extent provided by Nevada law, as amended, for damages for breach of fiduciary duty as an officer or director. This provision shall not eliminate the liability of a director or officer for acts or omissions which involved intentional misconduct, fraud, a knowing violation of the law or the payment of dividends in violation of NRS 78.300.

Expenses of directors and officers incurred in defending a civil or criminal action, suit or proceeding, must be paid by the corporation as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of and undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he or she is not entitled to be indemnified by the corporation. This does not affect the right to advancement of expenses which corporate personnel, other than directors or officers, may be entitled to under any contract or otherwise by law.


Without limiting the application of the foregoing, the Board of Directors may adopt By-Laws from time to time with respect to indemnification, to provide at all times the fullest indemnification permitted by the laws of the State of Nevada, and may cause the corporation to purchase and maintain insurance on behalf of any person who is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, or as its representative in a partnership, joint venture, trust or other enterprise against any liability asserted

against such person and incurred in any such capacity or arising out of such status, whether or not the corporation would have the power to indemnify such person.

## X. RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS

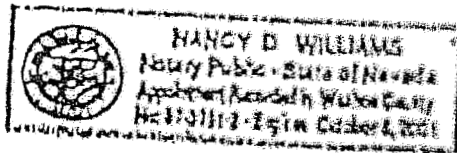
Unless otherwise determined by the Board of Directors, no holder of stock of the corporation shall be entitled as such, as a matter of right, to purchase or subscribe for any stock of any class which the corporation may issue or sell, whether or not exchangeable for any stock of the corporation or unissued shares authorized by the Articles of Incorporation of the corporation as originally filed or by any amendment thereof, or out of shares of stock of the corporation acquired by it after the issue thereof, and whether issued for cash, labor performed, personal property, real property, or income thereof, nor shall he be entitled to any right of subscription to any interest, nor, unless otherwise determined by the Board of Directors, shall any holder of any shares be entitled as such, as a matter of right, to purchase or subscribe for any obligation which the corporation may issue or sell that shall be convertible into or exchangeable for any shares of the stock of its capital stock of any class or classes.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of June, 1934, hereby declaring and certifying that the facts stated hereinabove are true.

  
\_\_\_\_\_  
LANCE P. MASS

State of Nevada )  
 )ss:  
County of Washoe )

On June 17<sup>th</sup>, 1998, personally appeared before me, a Notary Public  
Lance P. Malas, who acknowledged that he executed the above instrument.



*Lance P. Malas*  
NOTARY

## EXHIBIT C - BIOGRAPHIES OF THE MANAGEMENT TEAM

Ron Stevenson has served as our Vice Chairman since March 2001, a Director since our inception, was previously our President and is a Director of Leducor Inc. Before joining us, Mr. Stevenson spent 28 years with Leducor. From 1989 to 1998, Mr. Stevenson was Executive Vice President of Operations for Leducor Industries' telecommunications and civil divisions and was responsible for construction and project development.

David Love has served as our Senior Vice President, Network Operations since September 1999. Mr. Love's involvement in the telecommunications industry, both domestic and international, spans over 28 years. Prior to joining us, Mr. Love managed large network deployments and multi-state network operations at US West. He has international experience with MediaOne International directing the design and network operations for broadband services using hybrid fiber coax technology in Belgium.

Bruce Tinney has been our Senior Vice President, Infrastructure Sales since our inception. Before joining us, Mr. Tinney spent more than 22 years in the telecommunications industry in a variety of executive positions, including Director of Business Development for Qwest Communications from 1996 to 1998 and Vice President of Operations for Fanch Communications from 1991 to 1996. Before joining Fanch Communications, Mr. Tinney spent over 15 years with Time Warner Communications in a number of leadership positions.

Jerry Tharp has overseen our U.S. operations as President of 360-USA since our inception. Mr. Tharp's involvement in the telecommunications industry spans over 40 years. Before joining us, Mr. Tharp was the Director of Business Development for Mi-Tech from 1996 to 1997 and the Vice President, Construction and Engineering for Qwest Communications International Inc. from 1994 to 1996. From 1987 to 1994, Mr. Tharp held several positions with MCI WorldCom Inc. dealing with ROW, construction and engineering issues. His telecommunications career started with US West and its predecessor corporation, where he held numerous positions.

EXHIBIT D - FINANCIAL STATEMENTS



## AUDITORS' REPORT

To the Directors and Shareholders of  
360networks Inc. (formerly Worldwide Fiber Inc.)

We have audited the consolidated balance sheets of 360networks Inc. (formerly Worldwide Fiber Inc.) as at December 31, 1999 and 1998 and the consolidated income statements and statements of changes in shareholders' equity and cash flows for the year ended December 31, 1999 and for the period from February 5, 1998 (date of incorporation) to December 31, 1998. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards in the United States. Those standards require that we plan and perform an audit to obtain reasonable assurance 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.

In our opinion, these consolidated financial statements present fairly, in all material respects, the financial position of the Company as at December 31, 1999 and 1998 and the results of its operations and its cash flows for the year ended December 31, 1999 and for the period from February 5, 1998 (date of incorporation) to December 31, 1998 in accordance with generally accepted accounting principles in the United States.

On February 25, 2000 except for Note 16 which is as of March 20, 2000, we reported separately to the Directors of 360networks Inc. on consolidated financial statements for the year ended December 31, 1999 and period from February 5, 1998 (date of incorporation) to December 31, 1999 prepared in accordance with generally accepted accounting principles in Canada.

PricewaterhouseCoopers LLP

Vancouver, Canada  
February 25, 2000 except for Note 16 which is  
as of March 20, 2000

**350networks Inc.**  
(formerly Worldwide Fiber Inc.)

**Consolidated Balance Sheets**

As at December 31, 1999 and 1998

(tabular amounts expressed in thousands of U.S. dollars)

	1999	1998
<b>Assets</b>		
Current assets		
Cash and cash equivalents	\$ 67,392	\$ 128,100
Short term investments	27,492	27,492
Accounts receivable (note 4)	10,247	5,271
Unbilled revenue (note 4)	1,522	11,202
Inventory (note 4)	245,350	225,200
Due from parent-net (note 8)	—	12,470
Deferred tax asset (note 11)	8,818	—
Property and equipment-net (note 4)	228,300	218,900
Assets under construction	27,300	8,314
Deferred tax asset (note 11)	303,453	17,000
Deferred financing costs-net	22,140	4,000
	<u>\$ 1,112,385</u>	<u>\$ 615,086</u>
<b>Liabilities</b>		
Current liabilities		
Accounts payable and accrued liabilities (note 4 and 8)	\$ 145,170	\$ 80,000
Deferred revenue	19,807	15,000
Income taxes payable	31,341	1,200
Deferred tax liability (note 11)	1,071	41,000
Senior notes (note 7)	274,000	274,000
	<u>\$ 471,389</u>	<u>\$ 411,200</u>
Minority Interest	\$ 374	1,400
Redemable Convertible Preferred Stock		
Authorized:		
100,000,000,000 Series A Non-Voting Redeemable Convertible Preferred Shares		
100,000,000,000 Series B Subordinate Voting Redeemable Convertible Preferred Shares		
45,000,000 Series C Redeemable Preferred Shares, no par value		
Issued and outstanding:		
150,951,312 (1994-nr) Series A Non-Voting Redeemable Convertible Preferred Shares		
(including accretion of discount from redemption value of \$1,183,000 with net of discount costs of \$1,538,000; (note 8))	305,347	
Shareholders' Equity		
Capital stock (note 6)		
Authorized:		
Unlimited number of Class A Non-Voting, Class B Subordinate Voting and Class C Multiple Voting Shares, no par value		
Issued and outstanding:		
253,428,400 (1994-nr) Class A Non-Voting Shares	200,000	10,000
82,029,600 (1998-80,000,000) Class B Subordinate Voting Shares	10,000	—
81,840,000 (1998-nr) Class C Multiple Voting Shares	40,000	—
Other capital accounts	241,000	1,000
(Deficit) retained earnings	89,000	10,000
	<u>\$ 1,112,385</u>	<u>\$ 615,086</u>
Commitments (note 14)		
Subsequent events (note 15)		

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

**360networks Inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Consolidated Income Statements**

For the year ended December 31, 1999 and period from  
February 5, 1998 (date of incorporation) to December 31, 1998.  
The Company's operations commenced on June 1, 1998

(tabular amounts expressed in thousands of U.S. Dollars except per share amounts)

	1999	1998
Revenue .....	\$ 359,746	\$ 184,319
Costs .....	240,615	147,621
Gross profit .....	119,131	15,698
Expenses		
Selling, general and administrative .....	21,546	2,274
Stock-based compensation .....	7,115	—
Depreciation .....	2,586	484
	31,560	2,738
	77,174	13,560
Interest expense .....	51,808	492
Interest income .....	18,133	307
Income before equity income, income taxes and minority interest	61,389	13,735
Equity income (note 5) .....	—	578
Income before income taxes and minority interest .....	61,389	14,313
Provision for income taxes (note 11) .....		
Current .....	43,328	5,543
Deferred .....	(10,634)	—
	30,314	5,543
	31,074	9,856
Minority interest .....	7,431	—
Net income for the period .....	\$ 22,845	\$ 9,020
Basic and fully diluted (loss) earnings per share (note 2) .....	\$ (0.50)	\$ 0.43
Weighted average number of shares used to compute basic and fully diluted (loss) earnings per share .....	247,513,606	20,564,176

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

360networks Inc.

(formerly Worldwide Fiber Inc.)

Consolidated Statements of Changes in Shareholders' Equity

For the year ended December 31, 1999 and  
period from February 5, 1995 (date of incorporation) to December 31, 1995  
(tabular amounts expressed in thousands of U.S. dollars)

	Class A Non-Voting Shares		Class B Subordinate Voting Shares (Series A)		Class C Subordinate Voting Shares		Other Equity Accounts					Total
	Number of shares	Amount	Number of shares	Amount	Number of shares	Amount	Share premium	Accumulated deficit	Accumulated other comprehensive income	Income tax		
Balance, February 5, 1995	—	—	—	—	—	—	—	—	—	—	—	
Incorporation shares issued, February 5, 1995	—	—	1,000	—	—	—	—	—	—	—	—	
Issuance of shares for certain Leduc assets with deferred tax asset (note 5)	—	—	—	1,000	—	—	—	—	—	—	—	
Issuance of shares for investments (note 5)	—	—	—	2,000	—	—	—	—	—	—	—	
Excess of proceeds over cost on fiber optic strands to be reacquired from parent company (note 1)	—	—	—	21,000,000	—	—	—	—	—	—	21,000,000	
Comprehensive income	—	—	—	—	—	—	—	—	—	—	—	
Net earnings for the period	—	—	—	—	—	—	—	—	—	—	—	
Accumulated other comprehensive income—foreign currency translation	—	—	—	—	—	—	—	—	—	—	—	
Total comprehensive income	—	—	—	—	—	—	—	—	—	—	—	
Balance, December 31, 1995	—	—	1,001,000	2,000	—	—	—	—	—	—	2,000	
Issuance of shares for certain Leduc assets with deferred tax asset (note 1)	—	—	—	—	—	—	—	—	—	—	—	
Repurchase of Class B Subordinate Voting Shares in exchange for Class C Subordinate Voting Shares and Series C Redeemable Preferred Shares (note 5)	—	—	319,999,000	25,000	—	—	—	—	—	—	25,000	
Issuance of shares for cash (note 5)	—	—	—	—	—	—	—	—	—	—	—	
Redemption of Series C Redeemable Preferred Shares and stock dividend (note 5)	—	—	1,000,000,000	25,000	—	—	—	—	—	—	25,000	
Issuance of shares for certain Leduc assets with deferred tax asset (note 1)	—	—	—	—	—	—	—	—	—	—	—	
Issuance of shares (note 5)	52,122,400	206,240	—	—	—	—	—	—	—	—	206,240	
Conversion of Class C Subordinate Voting Shares to Class A Non-Voting Shares (note 5)	301,285,400	17,796	—	—	—	—	—	—	—	—	17,796	
Accretion of Preferred Stock to redemption value	—	—	—	—	—	—	—	—	—	—	—	
Purchase price adjustment to Preferred Shares	—	—	—	—	—	—	—	—	—	—	—	
Employee option grants	—	—	—	—	—	—	—	—	—	—	—	
Amortization of deferred compensation expense	—	—	—	—	—	—	—	—	—	—	—	
Comprehensive income	—	—	—	—	—	—	—	—	—	—	—	
Net income for the period	—	—	—	—	—	—	—	—	—	—	—	
Accumulated other comprehensive income—foreign currency translation	—	—	—	—	—	—	—	—	—	—	—	
Total comprehensive income	—	—	—	—	—	—	—	—	—	—	—	
Balance, December 31, 1999	353,407,800	1,204,036	—	—	—	—	—	—	—	—	1,204,036	

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

**360networks Inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Consolidated Statements of Cash Flows**  
For the year ended December 31, 1999 and period from February 3, 1998  
(date of incorporation) to December 31, 1998  
(tabular amounts expressed in thousands of U.S. dollars)

	1999	1998
<b>Cash flows used in operating activities</b>		
Net income for the year	\$ 23,640	\$ 9,550
Adjustments to reconcile net income to net cash used for operating activities		
Depreciation	2,908	454
Amortization of deferred financing costs	1,752	—
Equity income	—	(520)
Stock-based compensation	7,116	—
Changes in operating working capital items		
Accounts receivable	(31,567)	(1,145)
Unbilled revenue	(100,497)	(305)
Inventory	(184,713)	(5,617)
Due from parent	12,611	(15,250)
Accounts payable and accrued liabilities	(51,420)	2,504
Deferred revenue	(14,000)	13,706
Income taxes payable	24,400	6,451
Advances to WFI USA	—	(21,750)
Deferred income taxes	(16,624)	—
	<u>(97,977)</u>	<u>(13,059)</u>
<b>Cash flows (used in) from investing activities</b>		
Additions to assets under construction	(283,564)	—
Additions to property and equipment	(16,513)	(1,065)
Purchase of short-term investments	(21,157)	—
Cash acquired on acquisition of WFI USA	—	2,243
	<u>(321,234)</u>	<u>1,178</u>
<b>Cash flows from financing activities</b>		
Proceeds from issuance of capital stock	348,500	—
Proceeds from issuance of notes	500,000	175,000
Deferred financing costs	(17,241)	(2,500)
Redemption of Series C Redeemable Preferred Stock	(15,500)	—
	<u>715,759</u>	<u>172,500</u>
Effect of exchange rate changes on cash	(2,352)	(102)
Net increase in cash and cash equivalents	294,966	138,597
Cash and cash equivalents, beginning of period	158,244	—
Cash and cash equivalents, end of period	<u>\$ 453,210</u>	<u>\$ 138,597</u>

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

**360networks inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Notes to Consolidated Financial Statements**  
**December 31, 1999 and 1998**  
**(tabular amounts expressed in thousands of U.S. dollars)**

**1. The Company**

360networks inc. (formerly Worldwide Fiber Inc.) (the "Company") was incorporated on February 5, 1998 and is indirectly a subsidiary of Leducor Inc. On May 31, 1998 the Company began its operations after certain assets of the Telecommunications Division ("Division") of Leducor Industries Limited ("Leducor"), a Leducor Inc. subsidiary were transferred to the Company. Prior to May 31, 1998, the operations were carried out by the Division.

The Company's operations consist of designing, engineering, constructing and installing terrestrial and marine fiber optic systems for sale or lease to third parties or for its own use. For the period ended December 31, 1998, the Company's revenues related primarily to the Construction Services Agreements with Leducor (see note 1(b)). For the year ended December 31, 1999, the Company's revenue is derived primarily from the construction of fiber optic network assets for telecommunications companies in North America.

**Transactions with Leducor and its affiliates**

a) On May 31, 1999, the Company entered into undertaking agreements whereby certain fiber optic network assets, located in Canada and the U.S. would be transferred to the Company by Leducor in exchange for 319,995,260 Class A Non-Voting Shares. The Company constructed these assets for Leducor under the Construction Services Agreements noted below. Construction of the assets was substantially complete at December 31, 1999 and the Company completed the exchange on March 31, 1999. This transaction was accounted for using the carrying values reported in the accounts of Leducor as a transaction between a parent and a wholly owned subsidiary and accordingly, the fixed assets acquired by the Company are recorded at the carrying amount of the assets in the accounts of Leducor. The cost of property and equipment acquired at March 31, 1999 amounted to \$21,482,000. As a result of the transaction, the Company also received a deferred tax benefit of \$2,135,000 which is reflected as a deferred tax asset.

On May 28, 1999, the Company entered into an agreement with affiliates of Leducor, whereby the Company would acquire certain fiber optic network assets. Closing occurred on September 27, 1999. As consideration, the Company issued 72,000,000 Class C Multiple Voting Shares to affiliates of Leducor. In addition, the Company assumed certain rights and obligations under build agreements with a third party including obligations relating to the completion of those builds and certain support structure, maintenance, license and access, and underlying rights obligations. The cost of the property and equipment acquired amounted to \$25,289,000, the cost of the assets in the accounts of Leducor. The Company also received a deferred tax benefit of \$3,341,000, as a result of a higher tax cost versus accounting cost of fixed assets. The Company also recorded deferred revenue of \$25,000,000 relating to a build commitment assumed from Leducor.

b) Construction Services Agreements entered into May 31, 1998, to provide construction services to Leducor to complete various projects including completion of the fiber optic network assets to be transferred to the Company. As the Company is required to obtain the fiber optic

**360networks Inc.**

**(formerly Worldwide Fiber Inc.)**

**Notes to Consolidated Financial Statements (Continued)**

**December 31, 1998 and 1997**

**(tabular amounts expressed in thousands of U.S. dollars)**

network assets from Leducor, the revenues and costs associated with this portion of the agreement have not been reflected in the income statement for the period ended December 31, 1998. The costs to construct the network were reflected on completion of construction and the issuance of the shares. As at December 31, 1998, the Company had billed Leducor \$18,138,000 for the services related to construction of the fiber optic network assets which exceeds their costs by \$2,059,000. This excess, net of income taxes of \$945,000, had been excluded from the consolidated income statement and had been reported as additional paid in capital.

c) A Management Services Agreement was entered into May 31, 1998 whereby Leducor provides the Company with management staff, administrative and other support services. The Company reimburses Leducor for direct costs and pays Can. \$200,000 per month for the Company's share of corporate overheads.

d) Employee Services Agreements were entered into May 31, 1998 whereby the Company obtains the services of certain employees from Leducor on a cost reimbursement basis.

e) The Company has entered into an agreement with Leducor whereby personnel of Leducor who were involved in the designing and planning of the transatlantic Japaulink cable stations will oversee management and supervision of construction of these facilities for a fee to Leducor of approximately \$1,700,000.

**2. Summary of significant accounting policies**

**Basis of presentation**

These consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States and include the accounts of the Company, its wholly owned subsidiaries and its 75% interests in Worldwide Fiber (USA) Inc. ("WFI USA"), WFI-CN Fiber Inc. and Worldwide Fiber IC LLC. All significant intercompany transactions and balances have been eliminated on consolidation. For investments where the Company exercises significant influence, the investment is accounted for using the equity method.

On December 31, 1998, the Company increased its interest in WFI USA from 50% to 75% (note 5). The 1998 consolidated income statement and statement of cash flows accounted for the Company's initial 50% interest in WFI USA using the equity method for the period May 31, 1998 to December 31, 1998. The Company's consolidated balance sheets include WFI USA's assets and liabilities, and minority interest therein.

**Use of estimates**

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

360networks Inc.

(formerly Worldwide Fiber Inc.)

Notes to Consolidated Financial Statements (Continued)

December 31, 1999 and 1998

(tabular amounts expressed in thousands of U.S. dollars)

Cash and cash equivalents

Cash and cash equivalents consists of cash on deposit and highly liquid short-term interest bearing securities with maturity at the date of purchase of three months or less.

Short term investments

Short term investments consist of highly liquid short term interest bearing securities with maturities at the date of purchase greater than three months. Interest earned is recognized immediately in the income statement.

Property and equipment

Fiber optic network assets constructed for the Company's own use are recorded as property and equipment when the asset is fully constructed. Fiber optic network assets, construction equipment and other property and equipment are recorded at cost. Property and equipment are depreciated using the following rates and methods:

- (a) Fiber optic network assets—straight-line method over 25 years.
- (b) Equipment—hourly usage rates, estimated to depreciate the equipment over the estimated useful lives of the equipment.

Assets under construction

Assets under construction include fiber optic network assets constructed for the Company's own use and include direct expenditures of materials and labour, indirect costs allocated to the projects and interest.

Long-lived assets

The company reviews the carrying amount of long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. The determination of any impairment would include a comparison of estimated future operating cash flows anticipated to be generated during the remaining life of the asset to the net carrying value of the asset.

Inventory

Inventory consists of fiber optic network assets to be sold or leased under sales-type leases, construction supplies and small tools.

Fiber optic network assets are recorded at the lower of cost and market. Cost includes direct materials and subcontractor charges, labour, and interest (see "capitalization of interest") determined on an average cost basis.

Construction supplies and small tools inventory are recorded at the lower of cost and replacement value.



360networks Inc.

(formerly Worldwide Fiber Inc.)

Notes to Consolidated Financial Statements (Continued)

December 31, 1999 and 1998

(tabular amounts expressed in thousands of U.S. dollars)

#### Revenue recognition

Revenue for services provided to Ledor for construction projects is recognized in the period the construction services are performed based on the costs incurred.

Revenue and income from construction contracts to develop fiber optic network assets are determined on the percentage-of-completion basis using the cost-to-cost method. Provision is made for all anticipated losses as soon as they become evident. Claims for additional contract compensation are not recognized until received.

#### Unbilled revenue

Revenue recognized using the percentage-of-completion basis (see "Revenue recognition") less billings to date is recorded as unbilled revenue. Unbilled revenue classified as current represent billings expected to be collected within the following fiscal year. Billings are rendered on the achievement of certain construction milestones.

#### Capitalization of interest

Interest is capitalized as part of the cost of constructing fiber optic network assets. Interest capitalized during the construction period is computed by determining the average accumulated expenditures for each interim capitalization period and applying the interest rate related to the specific borrowings associated with each construction project. The total interest capitalized in the year ended December 31, 1999 was \$17,487,000 (December 31, 1998—\$963).

#### Deferred financing costs

Costs incurred in connection with obtaining the senior notes financing are deferred and amortized, using the effective interest method, to interest expenses over the term of the senior notes.

#### Deferred revenue

Cash received from customers pursuant to contracts where construction has not commenced is recorded as deferred revenue.

#### Foreign currency translation and transactions

The functional currency of the Company's operations located in countries other than the U.S. is generally the domestic currency. The consolidated financial statements are translated to U.S. dollars using the period-end exchange rate for assets and liabilities and weighted-average exchange rates for the period for revenues and expenses. Translation gains and losses are deferred and accumulated as a component of other comprehensive income in shareholders' equity. Net gains and losses resulting from foreign exchange transactions are included in the consolidated income statement.

**360networks Inc.**

(formerly Worldwide Fiber Inc.)

**Notes to Consolidated Financial Statements (Continued)**

**December 31, 1999 and 1998**

(tabular amounts expressed in thousands of U.S. dollars)

**Comprehensive Income**

Comprehensive income consists of currency translation adjustments and net income.

**Income taxes**

Income taxes are accounted for using an asset and liability approach, which requires the recognition of taxes payable or refundable for the current period and deferred tax liabilities and assets for future tax consequences of events that have been recognized in the Company's financial statements or tax returns. The measurement of current and deferred tax liabilities and assets is based on provisions of enacted tax laws; the effects of future changes in tax laws or rates are not anticipated. The measurement of deferred tax assets is reduced, if necessary, by a valuation allowance, where, based on available evidence, the probability of realization of the deferred tax asset does not meet a more likely than not criteria.

**Fair value of financial instruments**

The fair value of the Company's financial instruments, consisting of cash and cash equivalents, short-term investments, accounts receivable, unbilled revenue, due from parent, accounts payable and accrued liabilities, and income taxes payable approximate their carrying values due to their short-term nature. As at December 31, 1999, the fair value of the \$160,000,000 12% Senior Notes was \$515,000,000 and the fair value of the \$175,000,000 12.5% Senior Notes ("1998 Notes") was \$162,000,000. The fair value of the 1998 Notes at December 31, 1998 approximated its carrying value. Fair value is based on a quoted market price.

**Earnings per Share**

Basic earnings per share is computed by dividing net income available to common stockholders by the weighted average number of common shares (including Class A Non-voting Shares, Class B Subordinate Voting Shares and Class C Multiple Voting Shares) outstanding for the period. Diluted earnings per share reflects the potential dilution of securities by including other potential common stock, including stock options and redeemable convertible preferred shares, in the weighted average number of common shares outstanding for a period, if dilutive.

The following table sets forth the computation of (loss) earnings per share:

	1999 \$	1998 \$
Net Income .....	23,849	9,000
Loss:		
Stock dividend .....	5,000	---
Preferred stock accretion .....	6,415	---
Purchase price adjustment to preferred shares ..	22,079	---
Net (loss) income available to common stockholders .....	(9,645)	9,000

**360networks Inc.**

**(formerly Worldwide Fiber Inc.)**

**Notes to Consolidated Financial Statements (Continued)**

**December 31, 1999 and 1998**

**(tabular amounts expressed in thousands of U.S. dollars)**

The Redeemable Convertible Preferred Shares and stock options are not included in the computation of fully diluted earnings per share as their effect is anti-dilutive.

**Recent accounting pronouncements**

In June 1998, the Financial Accounting Standards Board issued SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." This statement established accounting and reporting standards for derivative instruments, including certain derivative instruments embedded in other contracts and for hedging activities. The Company does not expect the adoption of SFAS No. 133 to have a material impact on its consolidated financial statements.

In June 1999, the Financial Accounting Standards Board (FASB) issued Interpretation No. 43, "Real Estate Sales, an Interpretation of FASB Statement No. 86." The interpretation is effective for sales of real estate with property improvements or integral equipment entered into after June 30, 1999. Under this interpretation, title must transfer to a lessee in order for a lease transaction to be accounted for as a sales-type lease. The accounting for intangible rights of use of fiber optic network assets is evolving and currently being considered by accounting standard setters in the U.S. These changes may have a significant effect on the Company, however it is not possible to determine the consequences of such changes until further accounting guidance has been developed.

**Comparative financial information**

Certain prior year amounts have been reclassified to conform to the current year presentation.

**3. Supplemental cash flow information**

	1999	1998
Cash paid for income taxes .....	13,844	—
Cash paid for interest .....	21,531	—
Supplemental non-cash investing and financing activities:		
Issuance of common shares for:		
Certain Ledor assets .....	47,172	2,453
Deferred revenue .....	25,000	—
Additional 25% investment in WFI USA in exchange for		
surrender of note receivable .....	—	3,813
Series C Redeemable Preferred stock dividend .....	5,000	—
Accretion of Preferred Stock to redemption value .....	2,455	—

**350networks Inc.**  
**(formerly Worldwide Fiber Inc.)**  
**Notes to Consolidated Financial Statements (Continued)**  
**December 31, 1996 and 1995**  
**(tabular amounts expressed in thousands of U.S. dollars)**

**4. Balance Sheet components**

	1996	1995
	<u>3</u>	<u>5</u>
Accounts receivable		
Trade accounts receivable	51,736	5,157
Interest receivable and other	475	165
	<u>52,211</u>	<u>5,322</u>
Unbilled revenue		
Revenue earned on uncompleted contracts	233,115	25,236
Less: Billings to date	(119,455)	(11,551)
	<u>113,660</u>	<u>13,685</u>
Inventory		
Fiber optic network assets	155,513	25,090
Construction supplies and small tools	9,948	1,145
	<u>165,461</u>	<u>26,235</u>
Property and equipment		
Land	3,391	—
Fiber optic network assets	54,025	—
Equipment	15,557	4,429
	<u>73,073</u>	<u>4,429</u>
Less: Accumulated depreciation	(5,452)	—
Property and equipment—net	<u>67,621</u>	<u>4,429</u>
Accounts payable and accrued liabilities		
Subcontractor and supplier costs	150,451	12,452
Subcontractor holdbacks payable	21,575	4,543
Other accrued liabilities	25,474	1,452
Interest payable	25,587	452
	<u>223,127</u>	<u>18,901</u>

**5. Acquisitions**

**Telecommunications Division assets**

Effective May 31, 1996, the Company entered into a series of agreements whereby equipment, fiber optic network assets and other assets related to the business of the Telecommunications Division of Leducor were transferred to the Company. In addition, the Company was granted a license to use Leducor's patented rail piling technology. This license agreement was for an initial term

350networks Inc.  
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Notes to Consolidated Financial Statements (Continued)  
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of ten years, renewable annually upon completion of the initial term. As part of this transaction, Leducor retained all existing construction contracts related to the business. This transaction was between entities under common control and has been accounted for using the carrying amounts recorded in Leducor's accounts. The tax basis of substantially all the Canadian assets transferred to the Company was Leducor's carrying values whereas the tax basis of the U.S. assets transferred was their fair value. The deferred tax balances were adjusted for the change in the tax basis of the U.S. assets with the adjustment being reflected as additional paid in capital. As consideration for the transaction, the Company issued 3,200 Class A Common Shares to Leducor.

The assets transferred and consideration given, in connection with this transaction, were as follows:

<b>Assets</b>	
Construction equipment .....	2,530
Fiber optic network assets .....	4,424
Deferred income taxes .....	1,069
Other .....	146
	<u>8,169</u>
<b>Consideration given</b>	
Class A common Shares and additional paid in capital .....	<u>8,169</u>

**Leducor Holdings Ltd.**

On December 1, 1998 the Company acquired 50 Class A common Shares representing a 50% interest of Leducor Holdings Ltd. ("Leducor") from Worldwide Fiber Holdings Ltd. ("WFHL"), the Company's parent. As consideration, the Company issued 32,000,000 Class A Non-Voting Shares. Leducor holds the patent to Leducor's rail plow technology, and in conjunction with this acquisition Leducor has committed to grant to the Company a worldwide exclusive license for the use of the rail plow technology. The license will become non-exclusive six months after a change of control of the Company. This transaction was between entities under common control and has been accounted for using the carrying value of the investment recorded in WFHL's accounts which was \$nil.

**Investment in WFI USA**

On August 31, 1998, the Company purchased Leducor's 50% interest in, and a promissory note of \$3,915,000 from WFI USA, in exchange for 48,000,000 Class A Non-Voting Shares of the Company and the issuance of a promissory note by the Company. WFI USA was a joint venture with MI-Tech Communications LLC ("MI-Tech") which held the remaining 50% interest in WFI USA. WFI USA's operations consist primarily of developing fiber optic network assets in the United States.

As this transaction was between entities under common control, it was accounted for in a manner similar to a pooling of interests. These financial statements reflect the equity interest in the

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Income of WFI USA from May 31, 1998 to December 31, 1998 in the amount of \$522,000. Prior to May 31, 1998, the equity interest was reported as part of the Telecommunications Division of Leducor.

On December 31, 1998 the Company increased its interest in WFI USA to 75% by surrendering its note receivable from WFI USA of \$1,915,000 for 100 non-voting common shares and 100 Class A Voting Preferred Shares of WFI USA. The acquisition has been accounted for using the purchase method effective December 31, 1998. The purchase price of the additional 75% has been allocated to assets and liabilities based on their fair values. As a result, the net assets acquired were as follows:

	\$
Current assets .....	\$ 741
Inventory .....	\$ 915
Fiber optic network assets .....	1,725
Current liabilities .....	16,222

On December 31, 1998, the Company entered into a Shareholders' Agreement ("Agreement") with Leducor, Mi-Tech and Michels Pipeline Construction, Inc. ("Michels") (an affiliate of Mi-Tech). Pursuant to this agreement, Mi-Tech will have the option to convert all of its 25% interest in WFI USA into Shares of the Company should the Company complete a public offering of Shares with an aggregate value of at least \$20,000,000 or there is a change of control of WFI USA. In connection with the conversion, Mi-Tech will be granted certain registration rights in accordance with the Agreement. In addition, after the tenth anniversary of the agreement, Mi-Tech has the option to require WFI USA to purchase all of the Shares owned by Mi-Tech and its affiliates at fair market value. If Mi-Tech exercises this option, the Company can elect to sell all the Shares or assets of WFI USA in which case it will not be required to purchase Mi-Tech's Shares in WFI USA. In the event of a proposed sale of the Shares of WFI USA held by the Company, Mi-Tech will have certain tag-along rights.

Also as part of the Agreement the Company:

- a) Agreed not to participate in any projects or business nor provide advice or assistance to any business which undertakes projects within WFI USA's scope of business, as defined in the Agreement, for a period of four years from the date of the Agreement.
- b) Is restricted from selling, transferring, encumbering or otherwise disposing of ownership or control of WFI USA.
- c) WFI USA has an option to purchase from Mi-Tech 24 fiber optic strands along certain existing routes owned by Mi-Tech and its affiliates at fair market value.

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**6. Due from parent**

The amounts due to and from parent are non-interest bearing, have no stated terms of repayment and are due on demand. Contract amounts billed to parent and costs charged by parent exceed revenues and costs as reported in the income statement, for the period ended December 31, 1999, due to fiber optic network assets to be transferred to the Company as described in note 1(b). The balance as at December 31, 1999 of \$7,287,000, is included in accounts payable.

**7. Senior notes**

On July 28, 1999 the Company issued \$500,000,000 12% senior notes (the "Notes"). The Notes are unsecured obligations of the Company bearing interest at 12% payable semi-annually. The Notes are due August 1, 2009 and may be redeemed by the Company on or after August 1, 2004 at certain specified redemption prices ranging up to 108.00%. Up to 35% of the Notes may be redeemed by the Company prior to August 1, 2004 at a redemption price of 112% of the principal amount with the net proceeds from certain sales of the Company's common stock. If a change in control occurs, as defined in the Notes indenture, the holders of the Notes can require the Company to repurchase all or part of the Notes at 101% of the principal amount. Where excess proceeds from certain asset sales, as defined in the Notes indenture, exceeds \$10,000,000 the Company is required to make an offer to repurchase the maximum amount of Notes that can be repurchased with such excess proceeds at an offer price equal to 100% of the principal amount.

On December 23, 1998, the Company issued \$175,000,000 13.2% senior notes (the "1998 Notes"). The 1998 Notes are unsecured obligations of the Company bearing interest at 13.2% payable semi-annually. The 1998 Notes are due December 15, 2003 and may be redeemed by the Company on or after December 31, 2000 at certain specified redemption prices ranging up to 108.25% of the principal amount. Up to 35% of the 1998 Notes may be redeemed by the Company prior to December 15, 2001, at a redemption price of 112.5% of the principal amount with the net proceeds from certain sales of the company's common equity to the public. If a change of control occurs, as defined in the 1998 Notes indenture, the holders of the 1998 Notes can require the Company to repurchase all or part of the 1998 Notes at 101% of the principal amount. If at the end of December 31, 2000 and semi-annually thereafter, the Company's Accumulated Excess Cash Flow, as defined in the 1998 Notes indenture, exceeds \$10,000,000, the Company is required to make an offer to repurchase the maximum principal amounts of 1998 Notes that may be purchased by such Accumulated Excess Cash Flow Amount at an offer price equal to 110% of the principal amount of the 1998 Notes. Under this Excess Cash Flow provision, the Company is not required to repurchase more than 25% of the original principal amount of the 1998 Notes prior to December 31, 2003.

The Notes and 1998 Notes contain certain covenants that restrict the ability of the Company and its subsidiaries to incur additional indebtedness and issue certain preferred stock, pay dividends or make other distributions, repurchase equity interests or subordinated indebtedness, engage in sale and leaseback transactions, create certain liens, enter into certain transactions with



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affiliates, sell assets of the Company or its subsidiaries, issue or sell equity interests of the Company's subsidiaries or enter into certain mergers and consolidations.

**8. Redeemable Convertible Preferred Stock**

On September 9, 1999 the Company authorized various classes of preferred shares:

**Series A Non-Voting Convertible Preferred Shares**

On September 9, 1999, the Company issued 141,265,928 Series A Non-Voting Convertible Preferred Shares ("Series A Preferred Shares") for \$145,000,000. On December 22, 1999, the Company issued an additional 9,082,384 Series A Preferred Shares to the holders of such shares pursuant to the terms of their original purchase agreement dated September 7, 1999.

The Series A Preferred Shares are entitled to dividends on an equivalent basis to the Class A Non-Voting Shares into which the Series A Preferred Shares can be converted. The Series A Preferred Shares rank senior to all classes of capital stock upon liquidation, dissolution and wind-up and are junior in right of payment of all indebtedness of the Company and its subsidiaries.

The Series A Preferred Shares have a mandatory redemption on November 2, 2000 at a liquidation value consisting of the original purchase price of \$2.43 per share plus an adjustment equal to 6% per annum of the purchase price, plus declared and unpaid dividends and the excess of the market value of the Class A Non-Voting Shares over the liquidation value.

Upon a qualified underwritten public offering of at least \$150,000,000 with a share price of at least 300% of the purchase price of the Series A Preferred Shares, each Series A Preferred Share may, at the option of the Company, be converted into Class A Non-Voting Shares at a ratio equal to one plus 6% per annum. If a qualified underwritten public offering occurs by September 8, 2000 the conversion will be on a one for one basis.

The Series A Preferred Shares may be converted by the holder into Class A Non-Voting Shares, at any time, on the same basis as the Company's conversion right and may be converted into Series B Non-Voting Convertible Preferred Shares on a one for one basis. In addition, the holders of the Series A Preferred Shares have anti-dilution protection.

**Series B Subordinate Voting Convertible Preferred Shares**

The Series B Subordinate Voting Convertible Preferred Shares ("Series B Preferred Shares") are entitled to dividends on an equivalent basis to any dividends declared or paid on Class B Subordinate Voting Shares into which the Series B Preferred Shares can be converted. The Series B Preferred Shares rank senior to all classes of capital stock upon liquidation, dissolution and wind-up and are junior in right of payment of all indebtedness of the Company and its subsidiaries. The Series B Preferred Shares are entitled to one vote per share.

The Series B Preferred Shares are mandatorily redeemable on November 2, 2000 at a liquidation value of \$2.43 per share plus an adjustment equal to 6% per annum of the purchase



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price, plus declared and unpaid dividends and the excess of the market value of the Class B Subordinate Voting Shares over the liquidation value.

Upon a qualified underwritten public offering of at least \$150,000,000 with a share price of at least 300% of the purchase price of the Series B Preferred Shares, each Series B Preferred Share may at the option of the Company, be converted into Class B Subordinate Voting Shares at a ratio equal to one plus 6% per annum. If a qualified underwritten public offering occurs by September 9, 2000 the conversion will be on a one for one basis.

The Series B Preferred Shares may be converted into Class B Subordinate Voting Shares, at any time on the same basis as the Company's conversion right and may be converted into Series A Preferred Shares on a one for one basis. In addition, the holders of the Series B Preferred Shares have anti-dilution protection.

**Series C Redeemable Preferred Shares**

On September 9, 1999, 80,000,000 Series C Redeemable Preferred Shares ("Series C Preferred Shares") were issued pursuant to a stock dividend and 640,000,000 Series C Preferred Shares were issued pursuant to a share re-organization. Subsequently, the Company repurchased the 720,000,000 issued Series C Preferred Shares for \$45,000,000 (note 9). The holders of Series C Preferred Shares are not entitled to dividends or voting rights and may redeem the Series C Preferred Shares at \$1 per share after November 2, 2000.

**9. Capital stock**

On September 9, 1999 the Company authorized various classes of capital stock (see "Share capital transactions").

The holders of the Class A Non-Voting Shares, Class B Subordinate Voting Shares, and Class C Multiple Voting Shares participate equally in dividends declared subject to any preference priority on other classes of shares.

The holders of the Class A Non-Voting Shares are not entitled to voting rights. The holders of Class B Subordinate Voting Shares are entitled to one vote per share, and the holders of Class C Multiple Voting Shares are entitled to 20 votes per share.

In the event of liquidation, dissolution, or wind-up of the Company, any payment or distribution of assets will be paid or distributed equally share for share to the holders of the three classes of capital stock.

The holders of Class A Non-Voting Shares are entitled to convert their Shares to Class B Subordinate Voting Shares on a one for one basis. The holders of Class B Subordinate Voting Shares are entitled to convert their Shares to Class A Non-Voting Shares on a one for one basis at any time prior to September 9, 2000 and into Series A Preferred Shares on a one for one basis. The holders of Class C Multiple Voting Shares are entitled to convert their Shares into Class A Non-Voting Shares or Class B Subordinate Voting Shares on a one for one basis.

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Share capital transactions

On September 9, 1999, the Company amended its share capital by re-designating 400,000,000 Class A Voting Shares to Class B Subordinate Voting Shares, cancelling the remaining classes of Shares and creating Class A Non-Voting Shares, Class C Multiple Voting Shares, Series A and B Convertible Preferred Shares and Series C Redeemable Preferred Shares. Subsequently, the Company declared a stock dividend of 80,000,000 Series C Redeemable Preferred Shares for \$5,000,000. Concurrently, the Company repurchased the 400,000,000 outstanding Class B Subordinate Voting Shares from its parent in exchange for the issuances of 361,435,000 Class B Subordinate Voting Shares and 640,000,000 Series C Redeemable Preferred Shares. The Company then redeemed the 720,000,000 outstanding Series C Redeemable Preferred Shares. The Company \$45,000,000 cash resulting in a charge to retained earnings of \$40,000,000.

On August 31, 1999 the Company issued 2,400,000 Class B Subordinate Voting Shares for \$3,000,000.

On November 24, 1999, a shareholder converted 301,266,400 Class B Subordinate Voting Shares into 301,266,400 Class A Non-Voting Shares. On December 22, 1999, the Company issued 52,160,000 Class A Non-Voting Shares and 9,840,000 Class C Multiple Voting Shares under an employment agreement to an executive officer for \$77,500,000. The Company also received a promissory note of \$77,500,000 from the executive officer.

On November 24, 1999, the Board of Directors approved an eight-for-one share split of all classes of the Company's stock. All share amounts in 1999 and 1998 have been presented on a post stock split basis.

10. Stock Based Compensation  
Stock Option Plan

The Company has a Long Term Incentive and Share Award Plan that provides the grant of non-qualified stock options, incentive stock options, share appreciation rights, restricted shares, restricted share units, performance shares, performance units, dividend equivalents and other share-based awards to employees and directors. A maximum of 7,125,000 Class A Non-Voting shares may be subject to awards under the plan, which generally have a vesting period of four years. The stock options have terms expiring on or before November 15, 2003.

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Stock option transactions during 1999 were as follows:

	Number of options	Weighted average exercise price \$
Balance—December 31, 1998 .....	—	—
Options granted .....	43,412,480	0.77
Options cancelled .....	—	—
Options exercised .....	—	—
Balance—December 31, 1999 .....	43,412,480	0.77

The weighted average fair value of options granted in 1999 was \$1.29.

The following table summarizes information about stock options outstanding at December 31, 1999:

Exercise price\$	Number outstanding at December 31, 1999	Weighted average remaining contractual life (years)	Options exercisable at December 31, 1999
0.63	39,766,880	9.0	8,029,080
1.25	8,525,800	9.5	—
0.63-1.25	43,412,480	9.2	8,029,080

The Company accounts for stock option grants in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") as permitted by SFAS No. 123 "Accounting for Stock Based Compensation" ("SFAS 123"), and accordingly recognizes compensation expense for stock option grants to the extent that the estimated fair value of the stock exceeds the exercise price of the option at the measurement date. The compensation expense is charged against operations ratably over the vesting period of the options and was \$4,284,000 in 1999 (1998—\$nil). Under the method prescribed by SFAS 123, the weighted average fair value of the stock options granted in 1999 is \$28,083,000 (to be amortized over the employee service period) and the Company's 1999 net income and loss per share under this method would have been as follows:

Net Income for the year .....	\$23,940
Additional compensation expense .....	(7,428)
Pro forma net income for the year .....	\$16,512
Pro forma basic and fully diluted loss per share .....	\$ .04

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The pro forma compensation expense is estimated using the Black-Scholes option pricing model assuming no dividend yield and the following weighted average assumptions for options granted during the year ended December 31, 1999:

Expected volatility (private company) .....	0.2%
Risk free interest rate .....	6.2%
Expected life (in years) .....	4.0

**Restricted stock and other stock issuances:**

During the year, the Company issued stock to certain directors and officers of the Company. To the extent that these stock issuances are considered to be below fair value, stock based compensation is recognized and amortized over the appropriate periods. The Company recognized \$176,164,000 of deferred stock-based compensation related to stock issued to these officers and directors in 1999 of which \$2,832,000 was expensed in the year.

The shares issued to the executive officer are subject to a repurchase by the Company at the lesser of fair market value of the shares and the original purchase price of the shares plus interest. The restriction lapsed with respect to 15,500,000 shares immediately on commencement of employment and lapses for 12,400,000 shares in 2000, 13,525,866 shares in 2001 and 2002 and the remainder in 2003. Under certain conditions, the executive officer may put back a certain number of shares to the Company, or at the option of the Company its Worldwide Fiber Holdings Ltd., at fair market value to repay the promissory note. Deferred compensation related to these shares will be amortized over the periods covered by the repurchase restriction.

**11. Income taxes**

**Income before equity income, income taxes and minority interest.**

The components of income before equity income, income taxes and minority interest are as follows:

	1999	1998
	\$	\$
Canadian .....	46,611	5,683
U.S. ....	14,321	8,063
	<u>\$61,384</u>	<u>\$13,746</u>

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Current income taxes

The provision for current income taxes consists of the following:

	1999	1998
	\$	\$
Canadian .....	23,740	2,595
U.S. federal .....	11,773	2,503
U.S. state and local .....	2,821	491
	<u>40,334</u>	<u>5,589</u>

The provision for income taxes differs from the amount computed by applying the statutory income tax rate to net income before taxes as follows:

	1999	1998
	\$	\$
Canadian statutory rate .....	43.8	46.8
Foreign tax at other than Canadian statutory rate .....	(5.9)	(4.5)
Stock based compensation .....	5.8	—
Investment income .....	1.8	—
Other .....	1.3	—
	<u>40.5</u>	<u>42.3</u>

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**Deferred income taxes**

Significant components of the Company's deferred tax asset and liability are as follows:

	<u>1999</u> <u>\$</u>	<u>1998</u> <u>\$</u>
<b>Deferred tax asset</b>		
Expenses not deductible in current period .....	0,530	—
Tax loss carryforwards .....	4,250	—
Property and equipment .....	7,500	1,000
Other .....	130	185
	<u>20,870</u>	<u>1,275</u>
Valuation allowance .....	—	—
<b>Net deferred tax asset</b> .....	<u>20,870</u>	<u>1,275</u>
<b>Deferred tax liability</b>		
Property and equipment .....	1,760	—
Financing costs .....	1,311	—
	<u>3,071</u>	<u>—</u>

Management believes that, based on a number of factors, it is more likely than not that the deferred tax asset will be fully utilized, such that no valuation allowance has been recorded.

**12. Concentration of credit risk**

Financial instruments that potentially subject the Company to a significant concentration of credit risk consist primarily of cash and cash equivalents, short-term investments, accounts receivable, unbilled revenue and due from parent which are not collateralized. The Company limits its exposure to credit loss by placing its cash and cash equivalents and short-term investments with high credit quality financial institutions. Concentrations of credit risk with respect to accounts receivable and unbilled revenue are considered to be limited due to the credit quality of the customers comprising the Company's customer base.

The Company performs ongoing credit evaluations of its customers' financial condition to determine the need for an allowance for doubtful accounts. The Company has not experienced significant credit losses to date. Accounts receivable was comprised of 22 customers at December 31, 1999 and 12 customers at December 31, 1998.

The concentration of credit risk relating to the amount due from the parent is considered limited due to the credit quality of the Company's parent. The Company's three largest customers represented 22%, 15% and 10% of the Company's total revenues for 1999. As described in Note 1, substantially all of the Company's revenues during the period ended December 31, 1999 were earned from construction services provided to Laclede.

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**13. Segmented Information**

The Company operates within a single operating segment being the construction and installation of fiber optic network assets. These fiber optic network assets are being constructed in Canada, the U.S. and Europe including a transatlantic link. A significant portion of the transatlantic link will be owned by a subsidiary in Barbados. Revenues, property and equipment, assets under construction, and deferred financing costs are located as follows:

	Revenues		Property and equipment—net		Assets under construction		Deferred financing costs—net	
	1999	1998	1999	1998	1999	1998	1999	1998
	\$	\$	\$	\$	\$	\$	\$	\$
Canada .....	170,705	84,524	38,208	3,794	46,683	4,424	25,189	6,650
U.S. ....	189,041	79,785	35,869	220	59,221	7,037	—	—
Barbados .....	—	—	—	—	189,548	—	—	—
Europe .....	—	—	5,124	—	30,361	—	—	—
	<u>359,746</u>	<u>164,319</u>	<u>77,009</u>	<u>4,014</u>	<u>300,403</u>	<u>11,461</u>	<u>25,189</u>	<u>6,650</u>

The revenues are based on the location of the construction activities.

**14. Commitments**

**Network developments**

The Company has, in the normal course of business, entered into agreements to provide construction services and fiber optic network assets to third parties in Canada and the United States.

**Right of way access agreements**

The Company has, in the normal course of business, entered into various agreements to secure the rights of ways along its network routes. In general, most agreements have an option renewal clause stating that grantors cannot unjustly withhold their acceptance of a renewal. Future minimum payments on significant rights of ways are as follows:

2000 .....	\$25,051
2001 .....	\$17,051
2002 .....	\$17,051

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Operating leases

The Company leases certain facilities and equipment used in its operations under operating leases. Future minimum lease payments under these lease agreements at December 31, 1999 are as follows:

2000 .....	\$7,468
2001 .....	22,244
2002 .....	21,340
2003 .....	\$1,153
2004 .....	\$ 571

The Company pays Leduc approximately \$825,000 per year in connection with its lease of the Toronto facilities. The lease expires in 2009.

Supply Agreements

On June 18, 1999, a subsidiary of the Company entered into a supply agreement with Tyco Submarine Systems Ltd. ("Tyco") whereby Tyco will serve as the primary contractor for the Company's trans-Atlantic cable project called "360cable". The total contract price is approximately \$607 million. The Company paid \$214 million in the year ended December 31, 1999 on this contract. (1999—\$Nil)

The Company has placed purchase orders of \$27 million with suppliers of backhaul equipment.

CN/IC Agreements

On May 28, 1999, the Company entered into agreements with Canadian National Railway Company ("CN") and Illinois Central Railroad Company ("IC") to license rights of way along certain of their respective rail transportation systems (the "Routes"). In connection with these license agreements, the Company formed subsidiary companies with CN (CN/IC CN Fibre Inc.) and IC (Worldwide Fiber LLC) (the Company having a 75% interest and CN or IC having the remaining 25% interest) for the purpose of licensing the rights of way from CN and IC and developing the projects along the Routes.

15. Subsequent events

Share Capital Reorganization

Concurrent with the closing of a public offering, the Company will reorganize the share capital as follows: the holders of existing Class B Subordinate Voting Shares will convert or exchange their shares into Class A Non-Voting Shares and all authorized but unissued Class B Subordinate Voting Shares will be cancelled; the Series A Non-Voting Preferred Shares will be converted or exchanged into our Class A Non-Voting Shares and all of the authorized but unissued Series A Preferred Shares, Series B Preferred Shares and Series C Preferred Shares will be cancelled; the existing



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Class A Non-Voting Shares will be redesignated as Subordinate Voting Shares and the terms shall be amended to provide the holders with one vote per share; the existing Class C Multiple Voting Shares will be amended to provide the holders with 10 votes per share and the Class C Multiple Voting Shares will be redesignated as Multiple Voting Shares; and a class of unlimited Preferred Shares, issuable in series will be created.

**GlobeNet Acquisition**

The Company has entered into a definitive agreement to acquire 100% of the outstanding shares of GlobeNet Communications Group Limited in exchange for approximately \$840 million worth of newly created Subordinate Voting Shares. The number of Subordinate Voting Shares to be issued by the Company will be based on an initial public offering price.

**Acquisition of remaining 25% of WFI-USA**

The Company has entered into a commitment with M-Tech to acquire its 25% interest in WFI-USA in exchange for \$312 million worth of Class A Non-Voting Shares of the Company. The number of shares to be issued by the Company will be determined based on an initial public offering price.

**CN/IC**

On March 8, 2000, the Company entered into an agreement with CN and IC to acquire their respective 25% interests in WFI-CN Fibre Inc. and Worldwide Fiber IC LLC in exchange for \$160 million worth of Class A Non-Voting Shares of the Company. The number of Class A Non-Voting Shares to be issued by the Company will be based on an initial public offering price. Pursuant to this agreement, payment terms for right-of-way fees were amended requiring the right-of-way fees to be paid over a three year term.

**Canadian telecommunications arrangement**

The Company has entered into an arrangement to transfer certain Canadian telecommunications equipment and related facilities to a subsidiary of Leducor which will be held 66⅔% by Leducor and 33⅓% by the Company in exchange for 51% of the non-voting participating shares of the subsidiary.

**Acquisition of colocation facilities**

The Company has agreed, subject to execution of definitive agreements to acquire colocation facilities in a number of North American cities. The aggregate purchase price for these acquisitions is \$158 million payable in a combination of cash and newly created Subordinate Voting Shares.

**360networks credit facility**

The Company has entered into a credit agreement with certain lenders pursuant to which the lenders have provided a credit facility totaling U.S. \$500,000,000.

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**360atlantic credit facility**

The Company has entered into a credit agreement with certain lenders pursuant to which the lenders have provided a credit facility totaling U.S. \$500,000,000.

**Share split**

On March 20, 2000, the Board of Directors approved a two-for-one share split of all classes of the Company's stock. All share amounts in 1998 and 1999 have been presented on a post-split basis.

**Share Issuances**

Subsequent to December 31, 1999, the Company issued 411,214 Class A Non-Voting Shares to a consultant of the Company. In addition, the Company will issue additional Series A Preferred Shares in connection with the purchase price adjustment provisions of a subscription agreement.

**Name change**

On March 14, 2000, the Company changed its name from Worldwide Fiber Inc. to 360networks Inc.

# EXHIBIT E - PROPOSED TARIFF

360NETWORKS (USA) INC.  
143 Union Boulevard, Suite 300  
Lakewood, Colorado 80228

South Dakota Tariff Number 2  
Original Page 1

**RULES, REGULATIONS, AND  
SCHEDULE OF RATES AND CHARGES  
APPLICABLE TO END USERS**

**LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES**

**FURNISHED BY  
360NETWORKS (USA) INC.  
WITHIN THE STATE OF SOUTH DAKOTA**

Issued:  
Issued by:

David Love, Senior Vice President  
360networks (USA) inc.  
143 Union Boulevard, Suite 300  
Lakewood, Colorado 80228

Effective:

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### CHECK SHEET

The Title Page and pages listed below are inclusive and effective as of the date shown. Original and revised pages as named below contain all changes from the original tariff that are in effect on the date shown on each page.

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### EXPLANATION OF SYMBOLS

The following symbols shall be used in this tariff for the purpose indicated below:

- (C) To signify changed regulation.
- (D) To signify discontinued rate and regulation.
- (I) To signify increased rate.
- (M) To signify a move in the location of text.
- (N) To signify new rate or regulation.
- (R) To signify reduced rate.
- (S) To signify reissued matter.
- (T) To signify a change in text but no change in rate or regulation.

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#### APPLICATION OF TARIFF

This tariff sets forth the service offerings, rates, terms and conditions applicable to the local exchange telecommunications services provided by 360networks (USA) inc. to customers within the state of South Dakota.

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### SECTION 1.0 - DEFINITIONS

For the purpose of this tariff, the following definitions will apply:

**Access Line** - An arrangement which connects the Customer's location to a switching center or point of presence.

**Account Codes** - Optional, Customer-defined digits that allow the Customer to identify the individual user, department or client associated with a call. Account Codes appear on the Customer bill.

**Advance Payment** - Part or all of a payment required before the start of service.

**Authorized User** - A person, firm, corporation, or any other entity authorized by the Customer to communicate utilizing the Company's service.

**Business** - A class of service provided to individuals engaged in business, firms, partnerships, corporations, agencies, shops, works, tenants of office buildings, and individuals practicing a profession or operating a business who have no offices other than their residences and where the use of the service is primarily or substantially of a business, professional or occupational nature.

**Commission** - South Dakota Public Utilities Commission.

**Company or Carrier** - 360networks (USA) inc., unless otherwise clearly indicated by the context.

**Customer** - The person, firm, corporation or other entity which orders, accepts, amends or uses service and is responsible for payment of charges and compliance with the Company's tariff.

**Deposit** - Refers to a cash or equivalent of cash security held as a guarantee for payment of the charges.

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**DID Trunk** - A form of local switched access that provides the ability for an outside party to call an internal extension directly without the intervention of the Company operator.

**Dial Pulse (or "DP")** - The pulse type employed by rotary dial station sets.

**Dual Tone Multi-Frequency (or "DTMF")** - The pulse type employed by tone dial station sets.

**End User** - Any person, firm, corporation, partnership or other entity which uses the services of the Company under the provisions and regulations of this tariff. The End User is responsible for payment unless the charges for the services utilized are accepted and paid for by another Customer.

**End Office** - With respect to each NPA-NXX code prefix assigned to the Company, the location of the Company's "end office" for purposes of this tariff shall be the point of interconnection associated with that NPA-NXX code in the Local Exchange Routing Guide ("LERG"), issued by Bellcore.

**Hearing Impaired** - Those persons with communication impairments, including those hearing impaired, deaf, deaf/blind, and speech impaired persons who have an impairment that prevents them from communicating over the telephone without the aid of a telecommunications device for the deaf.

**Hunting** - Routes a call to an idle station line in a prearranged group when the called station line is busy.

**In-Only** - A service attribute that restricts outward dial access and routes incoming calls to a designated answer point.

**IXC or Interexchange Carrier** - A long distance telecommunications services provider.

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LATA - A Local Access and Transport Area established pursuant to the Modification of Final Judgment entered by the United States District Court for the District of Columbia in Civil Action No. 87-0122, or any other geographic area designated as a LATA in the National Exchange Carrier Association, Inc. Tariff No. 4.

LEC - Local Exchange Company

Minimum Point of Presence ("MPOP") - The main telephone closet in the Customer's building.

Monthly Recurring Charges - The monthly charges to the Customer for services, facilities and equipment which continue for the agreed upon duration of the service.

Multi-Frequency or ("MF") - An inter-machine pulse type used for signaling between telephone switches or between telephone switches and PBX/key systems.

Non-Recurring Charge ("NRC") - The initial charge, usually assessed on a one-time basis, to initiate and establish service.

Other Telephone Company - An Exchange Telephone Company, other than the Company.

PBX - Private Branch Exchange

Premises - A building or buildings on contiguous property.

Recurring Charges - The monthly charges to the Customer for services, facilities and equipment which continue for the agreed upon duration of the service.

Residence or Residential - A class of service furnished to a Customer at a place of dwelling where the actual or obvious use is for domestic purposes.

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**Service commencement Date** - The first day following the date on which the Company notifies the Customer that the requested service is available for use, unless extended by the Customer's refusal to accept service which does not conform to standards set forth in the Service Order of this tariff, in which case the Service Commencement Date is the date of the Customer's acceptance. The Company and Customer may mutually agree on a substitute Service Commencement Date.

**Service Order** - The written request for services executed by the Customer and the Company in the format devised by the Company. The signing of a Order by the Customer and acceptance by the Company initiates the respective obligations of the parties as set forth therein and pursuant to this tariff, but the duration of the service is calculated from the Service Commencement Date.

**Telephone Company** - Used throughout this tariff to mean 360networks (USA) inc. unless clearly indicated otherwise by the text.

**TBD** - To Be Determined.

**Two Way** - A service attribute that includes outward dial capabilities for outbound calls and can also be used to carry inbound calls to a central point for further processing.

**Usage Based Charges** - Charges for minutes or messages traversing over local exchange facilities.

**User or End User** - A Customer, Joint User, or any other person authorized by a Customer to use services provider under this tariff.

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## SECTION 2.0 - RULES AND REGULATIONS

### 2.1 Undertaking of the Company

#### 2.1.1 Scope

The Company undertakes to furnish communications service pursuant to the terms of this tariff in connection with one-way and/or two-way information transmission originating from points within the State of South Dakota, and terminating within a local calling area as defined herein.

The Company is responsible under this tariff only for the services and facilities provided hereunder, and it assumes no responsibility for any service provided by any other entity that purchases access to the Company network in order to originate or terminate its own services, or to communicate with its own Customers.

#### 2.1.2 Shortage of Equipment or Facilities

- (A) The Company reserves the right to limit or to allocate the use of existing facilities, or of additional facilities offered by the Company, when necessary because of lack of facilities, or due to some other cause beyond the Company's control.
- (B) The furnishing of service under this tariff is subject to the availability on a continuing basis of all the necessary facilities and is limited to the capacity of the Company's facilities as well as facilities the Company may obtain from other carriers to furnish service from time to time as required at the sole discretion of the Company.

SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.1 Undertaking of the Company, (Cont'd.)

2.1.3 Terms and Conditions

- (A) Service is provided on the basis of a minimum period of at least six months, 24 hours per day. For the purpose of computing charges in this tariff, a month is considered to have thirty (30) days.
- (B) Customers may be required to enter into written service orders which shall contain or reference a specific description of the service ordered, the rates to be charged, the duration of the services, and the terms and conditions in this tariff. Customers will also be required to execute any other documents as may be reasonably requested by the Company.
- (C) Except as otherwise stated in the tariff, at the expiration of the initial term specified in each Service Order, or in any extension thereof, service shall continue on a month to month basis at the then current rates unless terminated by either party upon thirty (30) days written notice. Any termination shall not relieve the Customer of its obligation to pay any charges incurred under the service order and this tariff prior to termination. The rights and obligations which by their nature extend beyond the termination of the term of the service order shall survive such termination.
- (D) Service may be terminated upon written notice to the Customer if:
  - (1) the Customer is using the service in violation of this tariff; or
  - (2) the Customer is using the service in violation of the law.
- (E) This tariff shall be interpreted and governed by the laws of the State of South Dakota without regard for its choice of laws provision.

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.1 Undertaking of the Company, (Cont'd.)

2.1.3 Terms and Conditions, (cont'd.)

- (F) Any Other Telephone Company may not interfere with the right of any person or entity to obtain service directly from the Company. No person or entity shall be required to make any payment, incur any penalty, monetary or otherwise, or purchase any services in order to have the right to obtain service directly from the Company.
- (G) To the extent that either the Company or any Other Telephone Company exercises control over available cable pairs, conduit, duct space, raceways or other facilities needed by the other to reach a person or entity, the party exercising such control shall make them available to the other terms equivalent to those under which the Company makes similar facilities under its control available to its customers. At the reasonable request of either party, the Company and the Other Telephone Company shall jointly attempt to obtain from the owner of the property access for the other party to serve a person or entity.
- (H) The Company hereby reserves its rights to establish service packages specific to a particular Customer. These contracts may or may not be associated with volume and/or term discounts.

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.1 Undertaking of the Company, (Cont'd.)

2.1.4 Limitations on Liability

- (A) Except as otherwise stated in this section, the liability of Carrier for damage arising out of the furnishing of its services, including but not limited to mistakes, omissions, interruptions, delays, or errors, or other defects, representations, or use of these services shall be determined by South Dakota Statute Sections 49-13-1 and 49-13-1.1.
- (B) Except for the extension of allowances to the Customer for interruptions in service in Section 2.7, Carrier shall not be liable to a Customer or third party for any direct, indirect, special, incidental, reliance, consequential, exemplary or punitive damages, including, but not limited to, loss of revenue or profits, including but not limited to, any act or omission, failure to perform, delay, interruption, failure to provide any service or any failure in or breakdown of facilities associated with the service except as determined pursuant to SDCL 49-13-1 and 49-13-1.1.
- (C) The liability of Carrier for errors in billing that result in overpayment by the customer shall be limited to a credit equal to the dollar amount erroneously billed, or in the event that payment has been made and service has been discontinued, to a refund of the amount erroneously billed.

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SECTION 2.0 - RULES AND REGULATIONS (CONTD)

2.1 Undertaking of the Company, (Cont'd.)

2.1.4 Limitations on Liability (Cont'd.)

- (D) The Company shall be indemnified and saved harmless by the Customer from and against all loss, liability, damage and expense, including reasonable counsel fees due to:
- (1) Any act or omission of: (a) the Customer; (b) any other entity furnishing service, equipment or facilities for use in conjunction with services or facilities provided by the Company; or (c) common carriers or warehousemen, except as contracted by the Company;
  - (2) Any delay or failure of performance or equipment due to causes beyond the Company's control, including but not limited to, acts of God, fires, floods, earthquakes, hurricanes, or other catastrophes, national emergencies, insurrections, riots, wars or other civil commotions, strikes, lockouts, work stoppages or other labor difficulties, criminal actions taken against the Company, unavailability, failure or malfunction of equipment or facilities provided by the Customer or third parties, and any law, order, regulation or other action of any governing authority or agency thereof;
  - (3) Any unlawful or unauthorized use of the Company's facilities and services;
  - (4) Libel, slander, invasion of privacy or infringement of patents, trade secrets or copyrights arising from or in connection with the material transmitted by means of Company-provided facilities or services; or by means of the combination of company-provided facilities or services;
  - (5) Breach in the privacy or security of communications transmitted over the Company's facilities;

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.1 Undertaking of the Company, (Cont'd.)

2.1.4 Limitations on Liability (Cont'd.)

(D) (cont'd)

- (6) Changes in any of the facilities, operations or procedures of the Company that render any equipment, facilities or services provided by the Customer obsolete, or require modification or alteration of such equipment, facilities or services, or otherwise affect their use or performance, except where reasonable notice is required by the Company and is not provided to the Customer, in which event the Company's liability is limited as set forth in paragraph (A) of this Subsection 2.1.4.
- (7) Defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or the installation or removal thereof;
- (8) Injury to property or injury or death to persons, including claims for payments made under Workers' Compensation law or under any plan for employee disability or death benefits, arising out of, or caused by, any act or omission of the Customer, or the construction, installation, maintenance, presence, use or removal of the Customer's facilities or equipment connected, or to be connected to Carrier's facilities;
- (9) Any noncompletion of calls due to network busy conditions;
- (10) Any calls not actually attempted to be completed during any period that service is unavailable;
- (11) Breach in the privacy or security of communications transmitted over Carrier's facilities;

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D.)

2.1 Undertaking of the Company. (Cont'd.)

2.1.4 Limitations on Liability (Cont'd.)

- (E) The Company does not guarantee nor make any warranty with respect to installations provided by its for use in an explosive atmosphere.
- (F) Failure by the Company to assert its rights pursuant to one provision of this tariff does not preclude the Company from asserting its rights under other provisions.
- (G) CARRIER MAKES NO WARRANTIES OF REPRESENTATIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

2.1.5 Notification of Service-Affecting Activities

The Company will provide the Customer reasonable notification of service-affecting activities that may occur in normal operation of its business. Such activities may include but are not limited to, equipment or facilities additions, removals or rearrangements and routine preventative maintenance. Generally, such activities are not specific to an individual Customer but affect many Customers' services. No specific advance notification period is applicable to all service activities. The Company will work cooperatively with the Customer to determine the reasonable notification requirements. With some emergency or unplanned service-affecting conditions, such as an outage resulting from cable damage, notification to the Customer may not be possible.

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.1 Undertaking of the Company, (Cont'd.)

2.1.6 Provision of Equipment and Facilities

- (A) The Company shall use reasonable efforts to maintain only the facilities and equipment that it furnishes to the Customer. The Customer may not permit the Customer permit others to rearrange, disconnect, remove, attempt to repair, or otherwise interfere with any of the facilities or equipment installed by the Company, except upon the written consent of the Company.
- (B) The Company may substitute, change or rearrange any equipment or facility at any time and from time to time, but shall not thereby alter the technical parameters of the service provided by the Customer.
- (C) Equipment the Company provides or installs at the Customer Premises for use in connection with the services the Company offers shall not be used for any purpose other than that for which the equipment is provided.
- (D) Except as otherwise indicated, Customer provided station equipment at the Customer's premises for use in connection with the service shall be so constructed, maintained and operated as to work satisfactorily with the facilities of the Company.
- (E) The Company shall not be responsible for the installation, operation, or maintenance of any Customer provided communications equipment. Where such equipment is connected to the facilities furnished pursuant to this tariff, the responsibility of the Company shall be limited to the furnishing of facilities offered under this tariff and to the maintenance and operation of such facilities. Pursuant to this responsibility, the Company shall not be responsible for:
  - (1) the through transmission of signals by Customer provided equipment or for the quality of, or defects in, such transmission; or
  - (2) the reception of signals by Customer-provided equipment; or
  - (3) network control signaling where such signaling is performed by Customer-provided network control signaling equipment.

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.1 Undertaking of the Company, (Cont'd.)

2.1.7 Non-Routine Installation

At the Customer's request, installation and/or maintenance may be performed outside 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 to the Company will apply. If installation 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.

2.1.8 Special Construction

Subject to the agreement of the Company and to all of the regulations contained in this tariff, special construction or facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is construction undertaken:

- (A) where facilities are not presently available, and there is no other requirement for the facilities so constructed;
- (B) of a type other than that which the Company would normally utilize in the furnishing of its services;
- (C) over a route other than that which the Company would normally utilize in the furnishing of its services;
- (D) in a quantity greater than that which the company would normally construct;
- (E) on an expedited basis;
- (F) on a temporary basis until permanent facilities are available;
- (G) involving abnormal costs; or
- (H) in advance of its normal construction.

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.1 Undertaking of the Company, (Conf'd.)

2.1.9 Ownership of Facilities

Title to all facilities provided in accordance with this tariff remains in the Company, its partners, agents, contractors or suppliers.

2.2 Prohibited Uses

2.2.1 The services the Company offers shall not be used for any unlawful purpose or for any use as to which the Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits.

2.2.2 The Company may require applicants for service who intend to use the Company's offerings for resale and/or for shared use to file a letter with the Company confirming that their use of the Company's offerings complies with relevant laws and the South Dakota Public Utilities Commission's regulations, policies, orders, and decrees.

2.2.3 The Company may block any signals being transmitted over its Network by Customers which cause interference to the Company or other users. Customer shall be relieved of all obligations to make payments for charges relating to any blocked service and shall indemnify the Company for any claim, judgement or liability resulting from such blockage.

2.2.4 A Customer, joint user, or authorized user may not assign, or transfer in any manner, the service or any rights associated with the service without the written consent of the Company. The Company will permit a Customer to transfer its existing service to another entity if the existing Customer has paid all charges owed to the Company for regulated communications services. Such a transfer will be treated as a disconnection of existing service and installation of new service, and non-recurring installation charges as stated in this tariff will apply.

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.3 Obligations of the Customer

2.3.1 General

The Customer shall be responsible for:

- (A) the payment of all applicable charges pursuant to this tariff;
- (B) damage to or loss of the Company's facilities or equipment caused by the acts or omissions of the Customer; or the noncompliance by the Customer with these regulations; or by fire or theft or other casualty on the Customer Premises, unless caused by the negligence or willful misconduct of the employees or agents of the Company;
- (C) providing at no charge, as specified from time to time by the Company, any needed equipment, space and power to operate Company facilities and equipment installed on the premises of the Customer, and the level of heating and air conditioning necessary to maintain the proper operating environment on such premises;
- (D) obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduit necessary for installation of fiber optic cable and associated equipment used to provide Communications Services to the Customer from the cable building entrance or property line to the location of the equipment space described in Section 2.3.1(C). Any and all costs associated with the obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of the Company provided facilities, shall be borne entirely by, or may be charged by the Company, to the Customer. The Company may require the Customer to demonstrate its compliance with this section prior to accepting an order for service.

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D.)

2.3 Obligations of the Customer

2.3.1 General (cont'd.)

- (E) providing a safe place to work and complying with all laws and regulations regarding the working conditions on the premises at which Company employees and agents shall be installing or maintaining the Company's facilities and equipment. The Customer may be required to install and maintain Company facilities and equipment within a hazardous area if, in the Company's opinion, injury or damage to the Company employees or property might result from installation or maintenance by the Company. The Customer shall be responsible for identifying, monitoring, removing and disposing of any hazardous material (e.g., friable asbestos) prior to any construction or installation work;
- (F) complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as may be required with respect to, the location of Company facilities and equipment in an Customer premises or the rights-of-way for which Customer is responsible under Section 2.3.1(D); and granting or obtaining permission for Company agents or employees to enter the premises of the Customer at any time for the purpose of installing, inspecting, maintaining, repairing, or upon termination of service as stated herein, removing the facilities or equipment of the Company;
- (G) not creating or allowing to be placed any liens or other encumbrances on the Company's equipment or facilities; and
- (H) making Company facilities and equipment available periodically for maintenance purposes at a time agreeable to both the Company and the Customer. No allowance will be made for the period during which service is interrupted for such purposes.



SECTION 2.0 - RULES AND REGULATIONS (CONTD)

2.3 Obligations of the Customer (Cont'd.)

2.3.2 Liability of the Customer

- (A) Carrier shall be indemnified, defended and held harmless by the Customer or end user from and against any and all claims, loss, demands, suits, expense, or other action or any liability whatsoever, including attorney fees, whether suffered, made, instituted, or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage, or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any Carrier or Customer equipment or facilities or service provided by Carrier.
- (B) Carrier does not guarantee nor make any warranty with respect to installations provided by it for use in an explosive atmosphere. Carrier shall be indemnified, defended and held harmless by the Customer from and against any and all claims, loss, demands, suits, or other action, or any liability whatsoever, including attorney fees, whether suffered, made, instituted or asserted by the Customer or by any other party, for any personal injury to or death of any person or persons, and for any loss, damage, or destruction of any property, including environmental contamination, whether owned by the Customer or by any other party, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, presence, condition, location, use or removal of any equipment or facilities or the service.
- (C) Notwithstanding any other provision of this tariff and pursuant to S.D. Codified Laws SS 49-13-1 and 49-13-1.1, any person claiming to be damaged by Carrier may either make complaint to the Commission or may bring suit on his own behalf for the recovery of damages in any court of competent jurisdiction in South Dakota, but no person may pursue both remedies at the same time.

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SECTION 2.0 - RULES AND REGULATIONS (COSTED)

2.4 Customer Equipment and Channels

2.4.1 General

A user may transmit or receive information or signals via the facilities of the Company. The Company's services are designated primarily for the transmission of voice-grade telephonic signals, except as otherwise stated in this tariff. A user may transmit any form of signal that is compatible with the Company's equipment, but the Company does not guarantee that its services will be suitable for purposes other than voice-grade telephonic communication except as specifically stated in this tariff.

2.4.2 Station Equipment

- (A) Terminal equipment of the user's premises and the electric power consumed by such equipment shall be provided by and maintained at the expense of the user. The user is responsible for the provision of wiring or cable to connect its terminal equipment to the Company MPOP.
- (B) The Customer is responsible for ensuring that Customer-provided equipment connected to Company equipment and facilities is compatible with such equipment and facilities. The magnitude and character of the voltages and currents impressed on Company-provided equipment and wiring by connection, operation, or maintenance of such equipment and wiring shall be such as not to cause damage to the Company-provided equipment and wiring or injury to the Company's employees or to other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense, subject to prior Customer approval of the equipment expense.

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SECTION 2.0 - RULES AND REGULATIONS (CONTD.)

2.4 Customer Equipment and Channels (Cont'd.)

2.4.3 Interconnection of Facilities

- (A) Local Traffic Exchange provides the ability for another local exchange provider to terminate local traffic on the Company's network. In order to qualify for Local Traffic Exchange the call must: (a) be originated by an end user of a company that is authorized by the South Dakota Public Utilities Commission to provide local exchange service; (b) originate and terminate within a local calling area of the Company.
- (B) Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Communications Services and the channels, facilities, or equipment of others shall be provided at the Customer's expense.
- (C) Communications Services may be connected to the services or facilities of other communications carriers only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections.
- (D) Facilities furnished under this tariff may be connected to Customer provided terminal equipment in accordance with the provisions of this tariff. All such terminal equipment shall be registered by the Federal Communications Commission pursuant to Part 18 of Title 47, Code of Federal Regulations; and all user-provided wiring shall be installed and maintained in compliance with those regulations.

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.4 Customer Equipment and Channels (Cont'd.)

2.4.4 Inspections

- (A) Upon suitable notification to the Customer, and at a reasonable time, the Company may make such tests and inspections as may be necessary to determine that the Customer is complying with the requirements set forth in Section 2.4.2(B) for the installation, operation, and maintenance of Customer-provided facilities, equipment, and wiring in the connection of Customer-provided facilities and equipment to Company-owned facilities and equipment.
- (B) If the protective requirements for Customer-provided equipment are not being complied with, the Company may take such action as it deems necessary to protect its facilities, equipment, and personnel. The Company will notify the Customer promptly if there is any need for further corrective action. Within ten days of receiving this notice, the Customer must take this corrective action and notify the Company of the action taken. If the Customer fails to do this, the Company may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm.
- (C) If harm to the Company's network, personnel or services is imminent, the Company reserves the right to shut down Customer's service immediately, with no prior notice required.

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.5 Customer Deposits and Advance Payments

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.5 Reserved for Future Use

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.6 Payment Arrangements

2.6.1 Payment for Services

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer.

The Customer is responsible for the payment of federal excise taxes, state and local sales and use taxes and similar taxes imposed by governmental jurisdictions, all of which shall be separately designated on the Company's invoices. The Company will not separately charge for the South Dakota gross receipts tax on the Company's invoice for local services. Any taxes imposed by a local jurisdiction (e.g., county and municipal) will only be recovered from those Customers residing in the affected jurisdictions.

Certain telecommunications services, as defined in the South Dakota Revised Code, are subject to state sales tax at the prevailing tax rates, if the services originate, or terminate in South Dakota, or both, and are charged to a subscriber's telephone number or account in South Dakota.

2.6.2 Billing and Collection of Charges

The Customer is responsible for payment of all charges incurred by the Customer or other users for services and facilities furnished to the Customer by the Company.

- (A) Non-recurring charges are due and payable within thirty (30) days after the date the invoice is mailed to the Customer by the Company.
- (B) The Company shall present invoices for recurring charges monthly to the Customer, in advance of the month in which service is provided, and recurring charges shall be due and payable within thirty (30) days after the date the invoice is mailed to the Customer by the Company. When billing is based upon Customer usage, usage charges will be billed monthly for the preceding billing period.
- (C) When service does not begin on the first day of the month, or end of the last day of the month, the charge for the fraction of the month in which service was furnished will be calculated on a pro rata basis. For this purpose, every month is considered to have thirty (30) days.

SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.6 Payment Arrangements (Cont'd.)

2.6.2 Billing and Collection of Charges (Cont'd.)

- (D) Billing of the Customer by the Company will begin on the Service Commencement Date, which is the day on which the Company notifies the Customer that the service or facility is available for use, except that the Service Commencement Date may be postponed by mutual agreement of the parties, or if the service or facility does not conform to standards set forth in this tariff or the Service Order. Billing accrues through and includes the day that the service, circuit, arrangement or component is discontinued.
- (E) If any portion of the payment is not received by the Company within 30 days of receipt of this bill, or if any portion of the payment is received by the Company in funds which are not immediately available upon presentment, then a late payment charge of 1.5% per month shall be due to the Company. A late payment charge is not applicable to subsequent rebilling of any amount to which a late payment charge has already been applied. Late payment charges are to be applied without discrimination.
- (F) the Customer should notify the Company of any disputed items on an invoice within one hundred eighty (180) days of receipt of the invoice. If the Customer and the Company are unable to resolve the dispute to their mutual satisfaction, the Customer may file a complaint with the South Dakota Public Utilities Commission in accordance with the Commission's rules and procedure. The address of the Company and the Commission is as follows:

360networks (USA) Inc.	South Dakota PUC
143 Union Boulevard, Suite 300	State Capital Building
Lakewood, Colorado 80228	500 East Capitol Ave.
(877) 735-7366	Pierre, South Dakota 57501
	800.332.1782

- (G) If service is disconnected by the Company (in accordance with Section 2.6.1 following) and later re-installed, re-installation of service will be subject to all applicable installation charges. If service is suspended by the Company (in accordance with Section 2.6.3 following) and later restored, restoration of service will be subject to the rates in Section 3.6.2.

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SECTION 2.0 - RULES AND REGULATIONS (CONT'D)

2.6 Payment Arrangements (Cont'd.)

2.6.3 Discontinuance of Service for Cause

The Company may discontinue service for the following reasons provided in this Section 2.6.3. Customers will be provided five (5) days written notice prior to discontinuance unless otherwise indicated.

Upon the Company's discontinuance of service to the Customer under Section 2.6.3(A) or 2.6.3(B), the Company, in addition to all other remedies that may be available to the Company at law or in equity or under any other provision of this tariff, may declare all future monthly and other charges which would have been payable by the Customer during the remainder of the term for which such services would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).

- (A) Upon nonpayment of any amounts owing to the Company, the Company may discontinue or suspend service without incurring any liability. No basic residential service shall be disconnected for nonpayment until at least 29 days from the date of the bill and only following proper written notification.
- (B) Upon violation of any of the other material terms or conditions for furnishing service the Company may, discontinue or suspend service without incurring any liability if such violation continues during that period.
- (C) Upon condemnation of any material portion of the facilities used by the Company to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair, the Company, by notice to the Customer, may discontinue or suspend service without incurring any liability.
- (D) Upon the Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, or failing to discharge an involuntary petition within the time permitted by law, the Company may immediately discontinue or suspend service without incurring any liability.
- (E) Upon any governmental prohibition or governmental required alteration of the services to be provided or any violation of an applicable law or regulation, the Company may immediately discontinue service without incurring any liability.

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SECTION 2.0 - RULES AND REGULATIONS (CONTINUED)

2.6 Payment Arrangements, (Continued)

2.6.3 Discontinuance of Service for Cause

- (F) Without notice in the event of fraudulent use of the Company's network. The Customer will be liable for all related costs. The Customer will also be responsible for payment of any reconnection charges.
- (G) Without notice in the event of Customer use of equipment or services in such a manner as to adversely affect the Company's service to others.
- (H) Without notice in the event of tampering with the equipment or services furnished by the Company.

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SECTION 2.0 - RULES AND REGULATIONS (CONTINUED)

2.6 Payment Arrangements, (Continued)

2.6.4 Notice to Company for Cancellation of Service

Customers desiring to terminate service shall provide the Company thirty (30) days notice of desire to terminate service. If special construction is involved, the required notice shall be written.

2.6.5 Cancellation of Application for Service

- (A) Where the Company permits the Customer to cancel an application for service prior to the start of service or prior to any special construction, no charges will be imposed except for those specified below.
- (B) Where, prior to cancellation by the Customer, the Company incurs any expenses in installing the service or in preparing to install the service that it otherwise would not have incurred, a charge equal to the costs the Company incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services ordered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service begun.
- (C) Where the Company incurs any expense in connection with special construction, or where special arrangements of facilities or equipment have begun, before the Company receives a cancellation notice, a charge equal to the costs incurred, less net salvage, may apply. In such cases, the charge will be based on such elements as the cost of the equipment, facilities, and material, the cost of installation, engineering, labor, and supervision, general and administrative expense, other disbursements, depreciation, maintenance, taxes, provision for return on investment, and any other costs associated with the special construction or arrangements.
- (D) The special charges described in 2.6.5(A) through 2.6.5(C) will be calculated and applied on a case-by-case basis.

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SECTION 2.0 - RULES AND REGULATIONS (CONTINUED)

2.6 Payment Arrangements, (Continued)

2.6.6 Changes in Services Requested

If the Customer makes or requests material changes in circuit engineering, equipment specifications, service parameters, premises locations, or otherwise materially modifies any provision of the application for service, the Customer's installation fee shall be adjusted accordingly.

2.6.7 Bad Check Charge

A service charge of \$20.00 will be assessed in accordance with South Dakota law for all checks returned by a bank or other financial institution for insufficient or uncollected funds, closed account, apparent tampering, missing signature or endorsement, or any other insufficiency or discrepancy necessitating return of the instrument at the discretion of the drawee bank or other financial institution.

2.7 Allowances for Interruptions in Service

2.7.1 General

- (A) A credit allowance will be given when service is interrupted, except as specified in Section 2.7.2 following. A service is interrupted when it becomes inoperative to the Customer, e.g., the Customer is unable to transmit or receive, because of a failure of a component furnished by the Company under this tariff.
- (B) An interruption period begins when the Customer reports a service, facility or circuit to be inoperative and, if necessary, releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative.

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SECTION 2.0 - RULES AND REGULATIONS (CONTINUED)

2.7 Allowances for Interruptions in Service, (Continued)

2.7.1 General (Continued)

- (C) If the Customer reports a service, facility or circuit to be interrupted but declines to release it for testing and repair, or refuses access to its premises for test and repair by the Company, the service, facility or circuit is considered to be impaired but not interrupted. No credit allowances will be made for a service, facility or circuit considered by the Company to be impaired.
- (D) The Customer shall be responsible for the payment of service charges as set forth herein for visits by the Company's agents or employees to the premises of the Customer when the service difficulty or trouble report results from the use of equipment or facilities provided by any party other than the Company, including but not limited to the Customer.

2.7.2 Limitations of Allowances

No credit allowance will be made for any interruption in service:

- (A) Due to the negligence of or noncompliance with the provisions of this tariff by any person or entity other than the Company, including but not limited to the Customer;
- (B) Due to the failure of power, equipment, systems, connections or services not provided by the Company;
- (C) Due to circumstances or causes beyond the reasonable control of the Company;
- (D) During any period in which the Company is not given full and free access to its facilities and equipment for the purposes of investigating and correcting interruptions;

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SECTION 2.0 - RULES AND REGULATIONS (CONTINUED)

2.7 Allowances for Interruptions in Service, (Continued)

2.7.2 Limitations of Allowances

- (E) A service will not be deemed to be interrupted if a Customer continues voluntarily make use of the service. If the service is interrupted, the Customer can get a service credit, use another means of communications provided by the Company (pursuant to Section 2.7.3), or utilize another service provider.
- (F) During any period when the Customer has refused service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- (G) That occurs or continues due to the Customer's failure to authorize replacement of any element of special construction.

2.7.3 Use of Another Means of Communications

If the Customer elects to use another means of communications during the period of interruption, the Customer must pay the charges for the alternative service used.

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SECTION 2.0 - RULES AND REGULATIONS (CONTINUED)

2.7 Allowances for Interruption in Service, (Continued)

2.7.4 Application of Credits for Interruptions in Service

- (A) Credits for interruptions in service that is provided and billed on a flat rate basis for a minimum period of at least one month, beginning on the date that billing becomes effective, shall in no event exceed an amount equivalent to the proportionate charge to the Customer for the period of service during which the event that gave rise to the claim for a credit occurred. A credit allowance is applied on a pro rata basis against the rates specified hereunder and is dependent upon the length of the interruption. Only those facilities on the interrupted portion of the circuit will receive a credit.
- (B) For calculating credit allowances, every month is considered to have thirty (30) days.
- (C) A credit allowance will be given for interruption of thirty (30) minutes or more. Two or more interruptions of fifteen (15) minutes or more during any one 24-hour period shall be combined into one cumulative interruption.

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SECTION 2.0 - RULES AND REGULATIONS (CONTINUED)

2.7 Allowances for Interruption in Service, (Continued)

2.7.4 Application of Credits for Interruptions in Service, (Continued)

(D) Interruptions of 24 Hours or Less

Length of Interruption	Amount of Service to be Credited
Less than 30 minutes	None
30 minutes up to but not including 3 hours	1/10 Day
3 hours up to but not including 6 hours	1/5 Day
6 hours up to but not including 9 hours	2/5 Day
9 hours up to but not including 12 hours	3/5 Day
12 hours up to but not including 15 hours	4/5 Day
15 hours up to but not including 24 hours	One Day

(E) Interruptions Over 24 Hours and Less Than 72 Hours

Interruptions over 24 hours and less than 72 hours will be credited 1/5 day for each 3-hour period or fraction thereof. No more than one full day's credit will be allowed for any period of 24 hours.

(F) Interruptions Over 72 Hours

Interruptions over 72 hours will be credited 2 days for each full 24-hour period. No more than thirty (30) days credit will be allowed for any one-month period.

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**SECTION 2.0 - RULES AND REGULATIONS (CONTINUED)**

**2.7 Allowances for Interruption in Service, (Continued)**

**2.7.5 Limitations on Allowances**

No credit allowance will be made for:

- (A) interruptions due to the negligence of or noncompliance with the provisions of this tariff by the Customer, authorized user or joint user;
- (B) interruptions due to the negligence of any person other than the Company, including but not limited to the Customer;
- (C) interruptions of service during any period in which the Company is not given full access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- (D) interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- (E) interruptions of service during any period when the Customer has released service to the Company for maintenance purposes or for implementation of a Customer order for a change in service arrangements;
- (F) interruption of service due to circumstances or causes beyond the reasonable control of Company; and
- (G) that occur or continue due to the Customer's failure to authorize replacement of any element of special construction.

**2.7.6 Cancellation For Service Interruption**

Cancellation or termination for service interruption is permitted only if any circuit experiences a single continuous outage of eight (8) hours or more or cumulative service credits equaling sixteen (16) hours in a continuous twelve (12) month period. The right to cancel service under this provision applies only to the single circuit which has been subject to the outage or cumulative service credits.

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**SECTION 2.0 - RULES AND REGULATIONS (CONTINUED)**

**2.8 Cancellation of Service/Termination Liability**

If a Customer cancels a service order or terminates services before the completion of the term for any reason other than a service interruption (as defined in Section 2.7.1) or where the Company breaches the terms in the service contract, Customer may be requested by the Company to pay to Company termination liability charges, which are defined below. These charges shall become due and owing as of the effective date of the cancellation or termination and be payable within the period set forth in Section 2.6.2.

**2.8.1 Termination Liability**

Customer's termination liability for cancellation of service shall be equal to:

- (A) all unpaid non-recurring charges reasonably expended by Company to establish service to Customer, plus;
- (B) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Company on behalf of Customer, plus;
- (C) all recurring charges specified in the applicable Service Order for the balance of the then current term discounted at the prime rate announced in the Wall Street Journal on the third business day following the date of cancellation;
- (D) minus a reasonable allowance for costs avoided by the Company as a direct result of Customer's cancellation.

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SECTION 2.0 - RULES AND REGULATIONS (CONTINUED)

2.9 Reserved for Future Use

2.10 Use of Customer's Service by Others

2.10.1 Resale and Sharing

There are no prohibitions or limitations on the resale of services. Prices for services appear in the price sheet attached to this tariff. Any service provided under this tariff may be resold to or shared with other persons at the option of Customer, subject to compliance with any applicable laws of the South Dakota Public Utilities Commission regulating such resale or sharing. The Customer remains solely responsible for all use of services ordered by it or billed to its telephone number(s) pursuant to this tariff, for determining who is authorized to use its services, and for notifying the Company of any unauthorized use.

2.10.2 Joint Use Arrangements

Joint use arrangements will be permitted for all services provided under this tariff. From each joint use arrangement, one member will be designated as the Customer responsible for the manner in which the joint use of the service will be allocated. The Company will accept orders to start, rearrange, relocate, or discontinue service only from the Customer. Without affecting the Customer's ultimate responsibility for payment of all charges for the service, each joint user shall be responsible for the payment of the charges billed to it.

2.11 Transfers and Assignments

Neither the Company nor the Customer may assign or transfer its rights or duties in connection with the services and facilities provided by the Company without the written consent of the other party, except that the Company may assign its rights and duties to: a) any subsidiary, parent company or affiliate of the Company; b) pursuant to any sale or transfer of substantially all the assets of the Company; or c) pursuant to any financing, merger or reorganization of the Company.

## SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS

### 5.1 General

#### 5.1.1 Services Offered

The following Network Services are available to residence/business Customers and for resale by other carriers certificated by the South Dakota Public Utilities Commission:

Standard Residence Line Service  
Standard Business Line Service  
PBX Trunk Service  
Direct Inward Dial (DID) Service  
Optional Calling Features

The following services are available to residence/business Customers and are not offered on a resale basis as of the effective date of this page:

Listing Services (including Non Published and Non Listed Services)  
Directory Assistance  
Miscellaneous Services (including Vanity Numbers and Number Portability)

#### 5.1.2 Application of Rates and Charges

All services offered in this tariff are subject to service order and change charges where the Customer requests new services or changes in existing services, as well as indicated Non-Recurring and Monthly Recurring Charges. Charges for local calling services may be assessed on a measured rate basis and are additional to monthly recurring charges shown for Business or Residence lines, PBX Trunks, DID Trunks and Digital/ISL service.

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SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONT'D)

5.1 General (Continued)

5.1.3 Emergency Services Calling Plan

Access (at no additional charge) to the local operator or emergency services bureau by dialing 0- or 9-1-1 is offered at no charge to the Customer.

Message toll telephone calls, to governmental emergency service agencies as set forth in (A) following, having primary or principal responsibility with respect to the provision of emergency services to persons and property in the area from which the call is made meeting the definition and criteria of an emergency call as set forth in (B) following are offered at no charge to Customers:

Governmental fire fighting, South Dakota State Highway Patrol, police, and emergency squad service (as designated by the appropriate governmental agency) qualify as governmental emergency service agencies provided they answer emergency service calls on a personally attended (live) twenty-four (24) hour basis, three hundred sixty-five (365) days a year, including holidays.

An emergency is an occurrence or set of circumstances in which conditions pose immediate threat to human life, property, or both and necessitate that prompt action be taken. An emergency call is an originated call of short duration to a governmental emergency services agency in order to seek assistance for such an emergency.

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SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)

5.2 Call Timing for Usage Sensitive Services

Where charges for a service are specified based on the duration of use, such as the duration of a telephone call, the following rules apply:

- 5.2.1 Calls are measured in durational increments identified for each service. All calls, which are fractions of a measurement increment, are rounded-up to the next whole unit.
- 5.2.2 Timing on completed calls begins when the call is answered by the called party. Answering is determined by hardware answer supervision in all cases where this signaling is provided by the terminating local carrier and any intermediate carrier(s).
- 5.2.3 Timing terminates on all calls when the calling party hangs up or the Company's network receives an off-hook signal from the terminating carrier.
- 5.2.4 Calls originating in one time period and terminating in another will be billed in proportion to the rates in effect during different segments of the call.
- 5.2.5 All times refer to local time.

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SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)

5.3 Distance Calculations

Where charges for a service are specified based upon distance, the following rules apply:

5.3.1 Distance between two points is measured as airline distance between the rate centers of the originating and terminating telephone lines. The rate center is a set of geographic coordinates, as referenced in Local Exchange Routing Guide issued by Bellcore, associated with each NPA-NXX combination (where NPA is the area code and NXX is the first three digits of a seven-digit telephone number). Where there is not telephone number associated with an access line on the Company's network (such as a dedicated 800 or WATS access line), the Company will apply the rate center of the Customer's main billing telephone number.

5.3.2 The airline distance between any two rate centers is determined as follows:

- Step 1: Obtain the "V" (vertical) and "H" (horizontal) coordinates for each Rate Center from the above-referenced Bellcore document.
- Step 2: Computer the difference between the "V" coordinate of the two rate centers, and the difference between the two "H" coordinates.
- Step 3: Square each difference obtained in step (b) above.
- Step 4: Add the square of the "V" difference and the square of the "H" difference obtained in step C) above.
- Step 5: Divide the sum of the squares by 10. Round to the next higher whole number if any fraction is obtained.
- Step 6: Obtain the square root of the whole number result obtained above. Round to the next higher whole number if any fraction is obtained. This is the airline mileage.

5.3.3 The formula for distance calculations is:

$$(V_1 - V_2)^2 + (H_1 - H_2)^2$$

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**SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)**

**5.4 Rate Periods for Time of Day Sensitive Services**

5.4.1 For time of day, usage sensitive services, the following rate periods apply unless otherwise specified in this tariff.

	MON	TUES	WED	THUR	FRI	SAT	SUN
8:00 AM TO							
5:00 PM*							
5:00 PM							
TO							
11:00 PM*							
11:00 PM TO							
8:00 AM*							

DAYTIME RATE PERIOD

EVENING RATE PERIOD

NIGHT/WEEKEND RATE PERIOD

\*Up to but not including.

5.4.2 Calls are billed based on the rate in effect for the actual time period(s) during which the call occurs. Calls that cross rate period boundaries are billed the rates in effect in that boundary for each portion of the call, based on the time of day at the Customer location.

5.4.3 For services subject to holiday discounts, the following are Company recognized national holidays, determined at the location of the calling station. The evening rate is used on national holidays, unless a lower rate normally would apply.

New Year's Day	January 1
Memorial Day	As Federally Observed
Independence Day	July 4
Thanksgiving Day	As Federally Observed
Christmas Day	December 25

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## SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)

### 5.5 Standard Residence Line

A Standard Residence Line provides the Customer with a single, analog, voice-grade telephonic communications channel, which can be used to place or receive one call at a time. Standard Residence Lines are provided for the connection of Customer-provided wiring and single station sets or facsimile machines. An optional per line Hunting feature is available for multi-line Customers which routes a call to an idle station line in a prearranged group when the called station line is busy.

### 5.6 Standard Business Line

The Standard Business Line provides a Customer with a single, analog, voice-grade telephonic communications channel, which can be used to place or receive one call at a time. Standard Business Lines are provided for the connection of Customer-provided wiring and single station sets or facsimile machines. An optional per line Hunting feature is available for multi-line Customers which routes a call to an idle station line in a prearranged group when the called station line is busy.

### 5.7 PBX Trunk Service

Basic PBX Trunk Service provides a Customer with a single, voice-grade telephonic communications channel, which can be used to place or receive one call at a time. Basic Trunks are provided for connection of Customer-provided private branch exchanges (PBX) to the public switched telecommunications network. Each Basic PBX Trunk is provided with touch tone signaling and may be configured into a hunt group at no additional charge with other Company-provided Basic PBX Trunks. The signal is an analog signal at the DSO level.

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SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)

5.8 Reserved for Future Use

5.9 Direct Inward Dialing (DID) Service

Direct Inward Dialing ("DID") permits calls incoming to a PBX system or other Customer Premises Equipment to be routed to a specific station without the assistance of an attendant. DID calls are routed directly to the station associated with the called number. DID service as offered by the Company provides the necessary trunks, telephone numbers, and out-pulsing of digits to enable DID service at a Customer's location. DID service requires special PBX software and hardware not provided by the Company. Such hardware and software is the responsibility of the Customer.

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SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)

5.10 Reserved for Future Use

5.11 Optional Calling Features

The features listed in Section 5.11.1 are offered by the Company to Residential and Business Customers. Refer to Price Lists in Sections 6 and 7 of this tariff for specific features offered with each type of local exchange service.

5.11.1 Features Descriptions

- (A) Flexible Call Forwarding: Provides end-user control for call forwarding capabilities via dial-accessed voice prompt menus. Customers may forward calls to a primary local or long distance. The end-user may specify a secondary location for routing of go unanswered at the forward-to location or reach a busy signal. This secondary location may be another telephone number, pager or voice messaging service. Other capabilities included with this feature include:

Speed Forwarding;  
Priority Screening;  
Ring Control; and  
Timed Forwarding.

It is the responsibility of the Customer to subscribe to the telephone number, pager or voice messaging service used as the secondary location.

- (B) Flexible Call Forwarding with Audio Calling Name: Provides all of the functionality of Enhanced Call Forwarding. Also permits the end-user to receive the Directory Name of the party's whose call was forwarded to primary number. In some situations, the end-user may hear the calling party's city and state or telephone number, depending on available call data.
- (C) Flexible Call Forwarding Plus: Provides all of the functionality of Enhanced Call Forwarding. Also includes an additional telephone number with directory listing and distinctive ringing for calls placed to the additional number. Enhanced Call Forwarding Plus allows parties to reach the end-user's location when FCF is active and all calls to the end-user's main telephone number would normally forward. Calls to the additional number do not forward even when Enhanced Call Forwarding is active.

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**SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)**

**5.11 Optional Calling Features, (continued)**

**5.11.1 Feature Descriptions, (continued)**

- (D) **Flexible Call Forwarding Plus with Audio Calling Name:** Provides all of the functionality of Enhanced Call Forwarding Plus including the additional telephone number with listing and distinctive ringing. Also permits the end-user to receive the Directory Name of the party's whose call was forwarded to primary number. In some situations, the end-user may hear the calling party's city and state or telephone number, depending on available call data.
- (E) **Call Forwarding Variable:** Permits the end-user to automatically forward (transfer) all incoming calls to another telephone number, and to restore it to normal operation at their discretion. The end-user must dial an activation code from his/her exchange line along with the forward-to number in order to turn the feature on. A separate code is dialed by the end-user to deactivate the feature.
- (F) **Call Forwarding Variable, Remote Access:** Permits the end-user to automatically forward (transfer) all incoming calls to another telephone number, and to restore it to normal operation at their discretion. The end-user must dial an activation code along with the forward-to number in order to turn the feature on. A separate code is dialed by the end-user to deactivate the feature. Feature activation may be performed from the end-user's exchange line or remotely from some other line. Remote access requires the end-user to (1) dial a special access number 2) enter their seven-digit telephone number and 3) enter a personal identification number prior to forwarding their calls.
- (G) **Call Forwarding Don't Answer, Basic:** Permits the forwarding of incoming calls when the end-user's line remains unanswered after a pre-designated ringing interval. The ringing interval before forwarding and the forward-to number are fixed by the service order.
- (H) **Call Forwarding Don't Answer w/Ring Control:** Permits the forwarding of incoming calls when the end-user's line remains unanswered after a pre-designated ringing interval. The forward-to number is fixed by the service order. However, the end-user has the ability to change the time interval before forwarding occurs at his/her discretion.

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**SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)**

**5.11 Optional Calling Features, (continued)**

**5.11.1 Feature Descriptions, (continued)**

- (I) **Call Forwarding Don't Answer w/Customer Control:** Permits the forwarding of incoming calls when the end-user's line remains unanswered after a pre-designated ringing interval. The ringing interval before forwarding and the forward-to number are fixed by the service order. However, the end-user has the ability to turn the feature on or off at his/her discretion.
- (J) **Call Forwarding Busy Line, Basic:** Permits the forwarding of incoming calls when the end-user's line is busy. The forwarded number is fixed by the end-user service order.
- (K) **Call Forwarding Busy Line w/Customer Control:** Permits the forwarding of incoming calls when the end-user's line is busy. The forwarded number is fixed by the end-user service order. However, the end-user has the ability to turn the feature on or off at his/her discretion.
- (L) **Call Waiting - Basic:** 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 permits the Customer to place the first call on hold, answer the second call and then alternate between both callers. Cancel Call Waiting is provided with the feature and allows a Call Waiting end-user to disable the Call Waiting feature for the duration of a single outgoing telephone call. Cancel Call Waiting is activated by dialing a special code prior to placing a call, and is automatically deactivated when the Customer disconnects from the call.

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**SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)**

**5.11 Optional Calling Features, (continued)**

**5.11.1 Feature Descriptions, (continued)**

- (M) **Call Waiting - Deluxe:** Allows the end-user to control the treatment applied to incoming calls while the Customer is off-hook on an existing call. This feature includes the capabilities of Call Waiting Basic plus additional call treatment options. Treatment options offered with Call Waiting Deluxe include:

Answer the waiting call and placing the first party on hold;

Answer the waiting call and disconnecting from the first party;

Direct the waiting caller to hold via a recording;

Forward the waiting caller to another location (e.g., voice mailbox or telephone answering service)

Full utilization of Call Waiting Deluxe requires specialized CPE not provided by the Company. It is the responsibility of the Customer to provide the necessary CPE. The end-user must have Caller ID Basic or Deluxe for display of calling party identification information for waiting calls. The end-user must have a Call Forwarding don't Answer feature active in order to forward a waiting call to another location.

- (N) **Call Waiting - Deluxe with Conferencing:** Provides all of the functionality of Call Waiting Deluxe. Also permits the end-user to conference a waiting call with an existing call (first party) and, if desired, subsequently drop either leg of the conferenced call.

- (O) **Caller ID - Basic:** Permits the end-user to view a Directory Number of the calling party on incoming telephone calls. Information is displayed on a specialized CPE not provided by the Company. The feature also provides the date and time of each incoming call. It is the responsibility of the Customer to provide the necessary CPE.

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SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)

5.11 Optional Calling Features, (continued)

5.11.1 Feature Descriptions, (continued)

- (P) **Caller ID - Deluxe:** Permits the end-user to view a Directory Name and Directory Number of the calling party on incoming telephone calls. Information is displayed on a specialized CPE not provided by the Company. The feature also provides the date and time of each incoming call. It is the responsibility of the Customer to provide the necessary CPE. In some situations, the calling party's city and state may be displayed rather than a Directory Name, depending on available call data.
- (Q) **Anonymous Call Rejection:** Permits the end-user to automatically reject incoming calls when the call originates from a telephone number which has blocked delivery of its calling number (see Calling Number Delivery Blocking). When active, calls from private numbers will be routed to a special announcement then terminated. The feature may be turned on or off by the end-user by dialing the appropriate feature control code. Anonymous Call Rejection is offered as a stand-alone feature or as an add-on to Caller ID Deluxe.
- (R) **Call Block:** Allows the end-user to automatically block incoming calls from up to six end-user pre-selected telephone numbers programmed into the feature's screening list. Callers whose numbers have been blocked will hear a recorded message stating that their call has been blocked. The end-user controls when the feature is active, and can add or remove calling numbers from the feature's screening list.
- (S) **Call Return:** Allows the Customer to return a call to the last incoming call whether answered or not. Upon activation, it will redial the number automatically and continue to check the number every 45 seconds for up to 30 minutes if the number is busy. The Customer is alerted with a distinctive ringing pattern when the busy number is free. When the Customer answers the ring, the call is then completed. The calling party's number will not be delivered or announced to the call recipient under any circumstances.

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SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)

5.11 Optional Calling Features, (continued)

5.11.1 Feature Descriptions, (continued)

- (T) Call Selector: Allows a Customer to assign a maximum of 15 telephone numbers to a special list. The Customer will hear a distinctive ring when calls are received from telephone numbers on that list.
- (U) Call Tracing: Allows the tracing of nuisance calls to a specified telephone number suspected of originating from a given local office. The tracing is activated upon entering the specified dial code. The originating telephone number, outgoing trunk number or terminating number, and the time and date are generated for every call to the specified telephone number can then be identified.
- (V) Calling Number Delivery Blocking: Prevents the delivery, display and announcement of the end-user's Directory Number and Directory Name on all calls dialed from an exchange service equipped with this option. When active, the end-user's telephone name and number will not appear on the called party's Caller ID CPE or be disclosed in another way. The feature is available on a per call or per line basis. With per call Calling Number Delivery Blocking, it is necessary for the end-user to dial an activation code prior to placing the call. With the per line version of the feature, all calls are placed with the end-user's number blocked. Per line end-users must dial an activation code prior to utilization.
- (W) Message Waiting Indication: Provides the end-user with an audible (stutter dial tone) or visual (lamp or other CPE display) indication that messages are waiting to be retrieved. Message Waiting Indication can only be activated/deactivated by a voice mailbox or other voice messaging service provided by the Company or third party. It is the responsibility of the Customer to subscribe to a compatible voice messaging service. Visual Message Waiting Indication requires specialized CPE not provided by the Company. It is the responsibility of the Customer to provide the necessary CPE.

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SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)

5.11 Optional Calling Features, (continued)

5.11.1 Feature Descriptions, (continued)

- (X) **Multiple Directory Number Distinctive Ringing:** This feature allows an end user to determine the source of an incoming call from a distinctive ring. The end user may have up to two additional numbers assigned to a single line (i.e. Distinctive Ringing - First Number and Distinctive Ringing - Second Number). The designated primary number will receive a normal ringing pattern; other numbers will receive distinctive ringing patterns. The pattern is based on the telephone number that the calling party dials.
- (Y) **Preferred Call Forwarding:** Permits the end-user to automatically forward to another number calls received from up to six end-user pre-selected telephone numbers programmed into the features screening list. The end-user controls when the feature is active, the forward-to-number and can add or remove calling numbers from the feature's screening list.
- (Z) **Repeat Dialing:** Permits the end-user to have calls automatically redialed when the first attempt reaches a busy number. The line is checked every 45 seconds for up to 30 minutes and alerts the Customer with a distinctive ringing pattern when the busy number and the Customer's line are free. The Customer can continue to make and receive calls while the feature is activated. The following types of calls cannot be reached using Repeat Dialing:

- 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

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SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)

5.11 Optional Calling Features, (continued)

5.11.1 Feature Descriptions, (continued)

- (AA) Speed Calling: Permits the Customer to place calls to other telephone numbers by dialing a one or two digit code rather than the complete telephone number. The feature is available as either an eight (8) code list or a thirty (30) code list. Code lists may include local and/or toll telephone numbers. The Customer has the ability to add or remove telephone numbers and codes to/from the speed calling list without assistance from the Company.
- (AB) Three Way Calling: Permits the end-user to add a third party to an established connection. When the third party answers, a two-way conversation can be held before adding the original party for a three-way conference. The end-user initiating the conference controls the call and may disconnect the third party to reestablish the original connection or establish a connection to a different third party. The feature may be used on both outgoing and incoming.

**SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)**

**5.12 Listing Services**

For each Customer of Company-provided Exchange Service(s), the Company shall arrange for the listing of the Customer's main billing telephone number in the directory(ies) published by the dominant Local Exchange Carrier in the area at no additional charge. At a Customer's option, the Company will arrange for additional listings for an additional charge.

**5.12.1 Non-Published Service**

This optional service provides for suppression of printed and recorded directory listings. A Customer's name and number do not appear in printed directories or Directory Assistance Bureau records.

**5.12.2 Non-Listed Service**

This optional service provides for suppression of printed directory listings only. Parties may still obtain the Customer's number by calling the Directory Assistance Bureau.

**5.13 Directory Assistance**

Provides for identification of telephone directory numbers, via an operator or automated platform. Customers are provided with a maximum of 2 listings per each call to Directory Assistance.

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SECTION 5.0 - NETWORK SERVICES DESCRIPTIONS (CONTINUED)

5.14 Reserved for Future Use

5.15 Reserved for Future Use

5.16 Miscellaneous Services

5.16.1 Main Number Retention

Main Number Retention is an optional feature by which a Customer, who was formerly a customer of another certified local exchange carrier at the same premises location, may retain its main telephone numbers and main fax numbers for use with the Company provided Exchange Services. Main Number Retention service is only available in areas where the Company maintains some form of number retention arrangement with the Customer's former local exchange carrier.

5.16.2 Pay Per Call Blocking/Unblocking

This service provides the option of blocking, or subsequent unblocking, all 900 and 976 calls on a per line basis. The Company will provide for per-line blocking where the Company's switching facilities permit.

5.16.3 Vanity Number Service

This service provides for the reservation of special or unique telephone number and fax number for use with the Company-provided exchange services.

5.16.4 Presubscription Services

This service provides for the Presubscription of local exchange lines provided by the Company to the intraLATA and interLATA long distance carrier(s) selected by the Customer.

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST

7.1 General

Services provided in this tariff section are available on a Resale Service basis. Local Resale Services are provided through the use of resold switching and transport facilities obtained from Other Telephone Companies.

The rates, terms and conditions set forth in the section are applicable where the Company provides specified local exchange services to Customers through resale of local exchange services.

All rates set forth in this Section are subject to change and may be changed by the Company pursuant to notice requirements established by the South Dakota Public Utilities Commission. The rates, terms and conditions set forth in this Section are applicable as of the effective date hereof and will not apply to any Customer whose services may have been provisioned through resale of local exchange services, in whole or in part, prior to the effective date hereof.

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**SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)**

**7.2 Standard Residence Local Exchange Service**

Standard Residence Local Exchange Service provides the Customer with a single, unsegregated, voice-grade telephonic communications channel, which can be used to place or receive one call at a time. Standard Residence Local Exchange Service lines are provided for the connection of Customer-provided wiring, telephones, facsimile machines or other station equipment. An optional per line Hunting feature is available for multi-line Customers, which routes a call to the next idle line in a prearranged group when the called line is busy.

Local exchange service lines and trunks are provided on a single party (individual) basis only. No multi-party lines are provided. Service is available on a flat rate, measured rate or message rate basis depending on the service plan selected by the Customer. Not all service plans will be available in all areas.

Recurring charges for Standard Residence Local Exchange Service are billed monthly in advance. Usage charges if applicable are billed in arrears. Usage charges may apply for calls placed from the Customer's line. No usage charges will apply to calls received by the Customer. Non-recurring charges for installation or rearrangement of service are billed on the next month's bill immediately following work performed by the Company.

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.2 Standard Residence Local Exchange Service (Continued)

7.2.1 Monthly Recurring Charges

The following charges apply to Standard Residence Local Exchange Service lines per month. Rates and charges include Touch-tone Service for each line. The rates and charges below apply to service provided on a month-to-month basis.

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.2 Standard Residence Local Exchange Service (Continued)

7.2.2 Other Monthly Recurring Charges

(A) End-User Common Line (EUCL) Recovery Charge

The following charge applies to recovery of End User Common Lines charges billed to the Company by the Incumbent LEC.

Single Line Customer, Per Line	TBD
Multi-line Customer, Per Line	TBD

(B) Hunting (a.k.a. Rotary or Grouping)

The following charges apply to Standard Residence Local Exchange lines equipped with Hunting. Rates vary based on Rate Group.

To Be Determined

7.2.3 Usage Sensitive Charges and Allowances

(A) Flat Rate Service

No measured or message charges apply to calls placed or received from Flat Rate service lines. Customers receive unlimited calling within their local calling area.

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.2 Standard Residence Local Exchange Service, (Continued)

7.2.3 Usage Sensitive Charges and Allowances, (Continued)

(B) Message Service

Customers subscribing to Message Service will receive a monthly usage allowance of 30 outgoing calls. This allowance is applied to local calls placed from the Customer's line. Local usage in excess of the allowance will be billed in arrears. Local usage is billed on a per call basis.

Per Local Call

TBD

(1) Calls to Expanded Service Areas

The following per minute rates apply to calls to points in the Expanded Service Areas as defined in the General Subscriber Service Tariff, Section A3, presently on file with the SD PUC.

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.2 Standard Residence Local Exchange Service, (Continued)

7.2.4 Non-Recurring Charges

Non-recurring charges apply to each line installed for the Customer. Non-recurring charges are in addition to applicable service order charges contained in Section 4 of this tariff. All such charges will appear on the next bill following installation of the service.

A separate non-recurring per line charge will apply where the Customer currently has service from the Incumbent LEC and requests an "As-Is" changeover of all current service(s) and features from the Incumbent LEC to the Company without any changes in such service or features. This Change Over Charge applies in lieu of the non-recurring charges listed in the table below.

Non-recurring charges for installation of Residential lines are:

First Line	TBD
Each Additional Line(1)	TBD
"As-Is" Change Over, Per Line	TBD

NOTES:

- (1) Additional Line installation charges apply only when 2 or more lines are installed at the same time and at the same Customer Premises.

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.3 Standard Business Local Exchange Service

Standard Business Local Exchange Service provides the Customer with a single, analog, voice-grade telephonic communications channel, which can be used to place or receive one call at a time. Standard Business Local Exchange Service lines are provided for the connection of Customer-provided wiring, telephones, facsimile machines or other station equipment. An optional per line Hunting feature is available for multi-line Customers which routes a call to the next idle line in a prearranged group when the called line is busy.

Local exchange service lines and trunks are provided on a single party (individual) basis only. No multi-party lines are provided. Service is available on a flat rate, measured rate or message rate basis depending on the service plan selected by the Customer. Not all service plans will be available in all areas.

Recurring charges for Standard Business Local Exchange Service are billed monthly in advance. Usage charges, if applicable are billed in arrears. Usage charges may apply for calls placed from the Customer's line. No usage charges will apply to calls received by the Customer. Non-recurring charges for installation or rearrangement of service are billed on the next month's bill immediately following work performed by the Company.

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.3 Standard Business Local Exchange Service, (Continued)

7.3.1 Monthly Recurring Charges

The following charges apply to Standard Business Local Exchange Service lines per month. Rates and charges include Touchtone Service for each line. The rates and charges below apply to service provided on a month-to-month basis.

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.3 Standard Business Local Exchange Service, (Continued)

7.3.2 Other Monthly Recurring Charges

(A) End-User Common Line (EUCL) Recovery Charge

The following charge applies to recovery of End User Common Line charges billed to the Company by the Incumbent LEC.

Single Line Customer, Per Line	TBD
Multiline Customer, Per Line	TBD

(B) Hunting (a/k/a Rotary or Grouping)

The following charges apply to Standard Business Local Exchange lines equipped with Hunting. Rates vary based on Rate Group.

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.3 Standard Business Local Exchange Service, (Continued)

7.3.3 Usage Sensitive Charges and Allowances

(A) Flat Rate Service

No measured or message charges apply to calls placed or received from Flat Rate service lines. Customers receive unlimited calling within their local calling area.

(B) Message Service

Customers subscribing to Message Service will receive a monthly usage allowance of 75 outgoing calls. This allowance is applied to local calls placed from the Customer's line. Local usage in excess of the allowance will be billed in arrears. Local usage is billed on a per call basis.

Per Local Call

TBD

(1) Calls to Expanded Service Areas

The following per minute rates apply to calls to points in the Expanded Service Areas as defined in the U S WEST's General Subscriber Service Tariff presently on file with the SD PUC.

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.3 Standard Business Local Exchange Service, (Continued)

7.3.4 Non-Recurring Charges

Non-recurring charges apply to each line installed for the Customer. Non-recurring charges are in addition to applicable service order charges contained in Section 4 of this tariff. All such charges will appear on the next bill following installation of the service.

A separate non-recurring per line charge will apply where the Customer currently has service from the Incumbent LEC and requests an "As-Is" changeover of all current service(s) and features from the Incumbent LEC to the Company without any changes in such service or features. This Change Over Charge applies in lieu of the non-recurring charges listed in the table below.

Non-recurring charges for installation of Residential lines are:

First Line	TBD
Each Additional Line(1)	TBD
"As-Is" Change Over, Per Line	TBD

NOTES:

- (1) Additional Line installation charges apply only when 2 or more lines are installed at the same time and at the same Customer Premises.

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.5 Residence and Business PBX Trunk Service

PBX Trunk service provides a Customer with a single, voice-grade telephonic communications channel which can be used to place one call at a time. Trunks are provided for connection of Customer-provided private branch exchanges (PBX) or other station equipment to the public switched telecommunications network.

PBX Trunks are available to Business and Residence Customers as Inward, Outward or Two-Way combination trunks where services and facilities permit.

Each PBX Trunk is provided with Touchtone signaling at no additional charge. An optional per trunk Hunting feature is available for Customers which routes a call to the next idle trunk in a prearranged group (see Sections 7.2 and 7.3).

PBX Trunks may also be equipped with Direct Inward Dialing (DID) capability and DID number blocks for additional charges (see Section 7.6).

7.5.1 Flat Rate Service

To Be Determined

7.5.2 Message Rate Service

To Be Determined

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.6 Direct Inward Dialing (DID) Service

Direct Inward Dialing ("DID") permits calls incoming to a PBX system or other Customer Premises Equipment to be routed to a specific station without the assistance of an attendant. DID calls are route directly to the station associated with the called number. DID service as offered by the Company provides the necessary trunks, telephone numbers, and out-pulsing of digits to enable DID service at a Customer's location. DID service requires special PBX software and hardware not provided by the Company. Such hardware and software is the responsibility of the Customer.

The following charges apply to Customers subscribing to DID service provided by the Company. These charges are in addition to recurring and non-recurring charges for PBX Trunks as shown in Section 7.5 of this tariff. The Customer will be charged for the number of DID numbers utilized out of the available 20 numbers.

	Installation Charge	Monthly Recurring
Establish Trunk Group and Provide 1 <sup>st</sup> Block of 20 DID Numbers	TBD	TBD
Each Additional Block of 20 DID Numbers	TBD	TBD
DID Trunk Termination:	TBD	TBD
Per Inward Only Trunk	TBD	TBD
Per Combination Trunk with Call Transfer		
Dual Tone Multifrequency Pulsing Option, Per Trunk	N/A	TBD
Automatic Intercept Service, Per Number Referred	TBD	N/A

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.7 Reserved For Future Use

7.8 Optional Calling Features

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. Certain features may not be available with all classes of service. Transmission levels for calls forwarded or calls placed or received using optional calling features may not be acceptable for all some uses in some cases.

7.8.1 Features Offered on a Usage Sensitive Basis

The following features are available to all local exchange Business and Residence line Customers where facilities and services permit. Customers may utilize each feature by dialing the appropriate access code. The Customer will be billed the Per Feature Activation Charge shown in the following table each time a feature is used by the Customer. Customers may subscribe to these features on a monthly basis at their option to obtain unlimited use of these features for a fixed monthly charge.

Optional Calling Features	Residence	Business
Three-Way Calling	TBD	TBD
Call Return	TBD	TBD
Repeat Dialing	TBD	TBD
Calling Number Delivery Blocking, Per Call	TBD	TBD

Denial of per call activation for Three-Way Calling, Call Return and Repeat Dialing from any line or trunk is available to Customers upon request at no additional charge.

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.8 Optional Calling Features, (Continued)

7.8.2 Features Offered on a Monthly Basis

The following optional calling features are offered to Customers on a monthly basis. Customers are allowed unlimited use of each feature. No usage sensitive charges apply. Multiline Customers must order the appropriate number of features based on the number of lines which will have access to the feature.

Optional Calling Feature	Residence	Business
Flexible Call Forwarding		
Flexible Call Forwarding with Audio Calling Name		
Flexible Call Forwarding Plus		
Flexible Call Forwarding Plus with Audio Calling Name		
Call Forwarding Variable		
Call Forwarding Variable with Remote Access		
Call Forwarding Don't Answer - Basic		
Call Forwarding Don't Answer w/Ring Control		
Call Forwarding Don't Answer w/Customer Control		
Call Forwarding Busy Line - Basic		
Call Forwarding Busy Line w/Customer Control		
Call Waiting - Basic		
Call Waiting - Deluxe		
Call Waiting - Deluxe with Conferencing		

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SECTION 7.0 - LOCAL RESALE SERVICES PRICE LIST (CONTINUED)

7.8 Optional Calling Features, (Continued)

7.8.2 Features Offered on a Monthly Basis

Optional Calling Feature (cont'd)	Residence	Business
Caller ID - Basic		
Caller ID - Deluxe		
Caller ID - Deluxe W/Anonymous Call Rejection		
Anonymous Call Rejection		
Call Block		
Call Return		
Call Selector		
Call Tracing		
Calling Number Delivery Blocking (per line equipped)		
Message Waiting Indication - Audible		
Message Waiting Indication - Audible and Visual		
Multiple Directory Number Distinctive Ringing - First DN		
Multiple Directory Number Distinctive Ringing - Second DN		
Preferred Call Forwarding		
Repeat Dialing		
Speed Calling (30 codes)		
Speed Calling (8 codes)		
Three Way Calling		

SECTION 8.0 - DIRECTORY ASSISTANCE AND LISTING SERVICES

8.1 Directory Listings

8.1.1 General

The following rules apply to standard listings in light face type in the white pages (alphabetical section) of the telephone directory and to the Directory Assistance records of the Company.

Only information necessary to identify the Customer is included in these listings. The Company use abbreviations in listings. The Company may reject a residence listing which is judged to be advertising. It may also reject a listing it judges to be objectionable. A name made up by adding a term such as Company, Shop, Agency, Works, etc. to the name of a commodity or service willing to be accepted as a listing unless the subscriber is legally doing business under that name.

A name may be repeated in the white pages only when a different address or telephone number is used.

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SECTION 8.0 - DIRECTORY ASSISTANCE AND LISTING SERVICES

8.1 Directory Listings, (Continued)

8.1.2 Composition of Listings

(A) Names

The following names may be included in business service listings:

- (1) The name of subscriber or joint user.
- (2) The name of each business enterprise which the subscriber or joint user conducts.
- (3) The name by which the business of a subscriber or joint user is known to the public. Only one such name representing the same general line of business will be accepted.
- (4) The name of any person associated with the subscriber or joint user in the same business.
- (5) The name of any person, firm or organization which subscriber or joint user is authorized to represent, or the name of an authorized representative of the subscriber or joint user.
- (6) Alternative spelling of an individual name or alternative arrangement of a business name, provided the listing in the judgment of the Company is not for advertising purposes. The name of a publication issued periodically by the subscriber or joint user.
- (7) The name of an inactive business organization in a cross-reference listing when authorized by such business or organization.
- (8) The name of a member of subscriber's domestic establishment when business service is furnished in the subscriber's residence.
- (9) The name of a corporation which is the parent or a subsidiary of the subscriber.
- (10) The name of a resident of a hotel, apartment house, boarding house or club which is furnished PBX service, may be included in a residence type listing with the telephone number of the PBX service.
- (11) The name of the subscriber to a sharing arrangement.

SECTION 8.0 - DIRECTORY ASSISTANCE AND LISTING SERVICES

8.1 Directory Listings, (Continued)

8.1.2 Composition of Listings, (Continued)

(B) Designation

The purpose of a business designation is to identify the listed party and not to advertise the business. No designation of the nature of the business is included if this is sufficiently indicated by the name. Where a listed party is engaged in more than one general line of business, one additional business designation may be included in the listing when necessary to identify the listed party. When a listed party has two or more listed telephone number or two or more business addresses, designations indicating the branches of the organization may be included where necessary to assist the public in calling.

A designation may include a title to indicate a listed party's official position, but not the name of the firm or corporation with which the individual is connected. Individual names or titles are not shown following the name of a firm or corporation. A term such as "renting agent" may be included in a listing indented under the name of a building, provided the agent maintains a renting office in such a building.

A designation is not ordinarily provided in a residence type listing except for residential service as permitted under the terms of this tariff. A professional designation is permitted on residence service in the case of a physician, surgeon, dentist, osteopath, chiropodist, podiatrist, optometrist, chiropractor, physiotherapist, Christian Science practitioner, veterinary surgeon, registered nurse or licensed practical nurse, provided that the same name and designation is also listed on business service of that subscriber or another subscriber in the same or different directory.

The listing of service in the residence of a clergyman may include the designation "parsonage," "rectory," "parish house," or "manse," and any such listing may be indented under a listing in the name of the church. Where residence service is furnished in a church study, the listing may include the designation "study."

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SECTION 8.0 - DIRECTORY ASSISTANCE AND LISTING SERVICES

8.1 Directory Listings, (Continued)

8.1.2 Composition of Listings, (Continued)

(C) Address

Each residence or non-profit listing may, but does not have to, include the house number and street name of the residence where the telephone service is provided. Other information, such as a building name or a locality designation, may be included to help identify the Customer.

(D) Telephone Number

Each listing may include only one telephone number, except in an alternate telephone number listing where each number listed is considered a line for rate purposes.

A listing may include only the telephone number of the first line of a PBX system or incoming service group, except that a trunk not included in the incoming service group of a PBX system, or the first trunk of a separate incoming service group of a PBX system may be listed to meet special conditions where a corporation and its subsidiaries use the same PBX system.

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SECTION 8.0 - DIRECTORY ASSISTANCE AND LISTING SERVICES

8.1 Directory Listings, (Continued)

8.1.3 Types of Listings

(A) Standard Listing

A standard listing includes a name, designation, address and telephone number of the Customer. It appears in the White Pages of the telephone directory and in the Company's Directory Assistance records. The designation in the listing will be provided according to the rules in paragraph 5.13.1.2 above.

(B) Indented Listing

An indented listing appears under a standard listing and may include only a designation, address and telephone number. An indented listing is allowed only when a Customer is entitled to two or more listings of the same name with different addresses or different telephone numbers. For example:

Smith, John MD  
Office 125 Portland 555-4180  
Residence 9 Glenway 555-8345

Such listing may be furnished as an indented listing or as a sub-caption. The telephone number in such a listing may be that of another service furnished the same subscriber or one of the subscriber's FDX trunks not included in the incoming service group, or the service furnished a different subscriber.

SECTION 8.0 - DIRECTORY ASSISTANCE AND LISTING SERVICES

8.1 Directory Listings, (Continued)

8.1.3 Types of Listings, (Continued)

(C) Alternate Telephone Number Listing and Night Listing

Any listed party who has made the necessary arrangements for receiving telephone calls during his or her absence may have an alternate telephone number listing or a night listing, such as the following.

If no answer call (telephone number)  
Night calls (telephone number)  
Night calls after \_\_\_\_ PM (telephone number)  
Nights, Sundays and holidays (telephone number)  
5PM to 9AM weekdays, Saturday until 9AM, Monday and holidays  
(telephone number)

Such listing may be furnished as an indented listing or as a sub-caption. The telephone number in such a listing may be that of another service furnished the same subscriber or one of the subscriber's PAX trunks not included in the exchange service group, or the service furnished a different subscriber.

(D) Duplicate Listing

Any listing may be duplicated in a different directory or under a separate geographical heading in the same directory. Such listing may be duplicated in indented form.

(E) Reference Listing

A subscriber having exchange services listed under different geographical headings may have an indented listing in reference form in lieu of a duplicate listing.

(F) Cross Reference Listing

A cross reference listing may be furnished in the same alphabetical group with the related listing when required for identification of the listed party and not designated for advertising purposes.

**SECTION 8.0 - DIRECTORY ASSISTANCE AND LISTING SERVICES**

**8.1 Directory Listings, (Cont'd.)**

**8.1.4 Free Listings**

The following listings are provided at no additional charge to the Customer: one listing for each individual line service, auxiliary line or PBX system.

**8.1.5 Rates for Additional Listings - Business Customers**

The following rates and charges apply to additional listings requested by the Customer over and above those free listings provided for in Section 8.1.4.

Type of Listing	Residential Charge	Business Charge
Reference/Cross Reference:		
- Each Listing	TBD	TBD
Alternate Telephone Number/Night Listing:		
- Night, Sundays & Holidays	TBD	TBD
- First Line	TBD	TBD
Additional Listing	TBD	TBD
Foreign Listing	TBD	TBD
Dual Name Listing - Non Recurring	TBD	TBD

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## SECTION 8.0 - DIRECTORY ASSISTANCE AND LISTING SERVICES

### 8.2 Non-Published Service

#### 8.2.1 General

Non-published service means that the Customer's telephone number is not listed in the directory, not does it appear in the Company's Directory Assistance Records.

#### 8.2.2 Regulations

This service is subject to the rules and regulations for E911 service, where applicable.

The Company will complete calls to a non-published number only when the caller dials direct or gives the operator number. No exceptions will be made, even if the caller says it is an emergency.

When the Company agrees to keep a number unlisted, it does so without any obligation. Except for cases of gross negligence or willful misconduct, the Company is not liable for any damages that might arise from publishing a non-published number in the directory or disclosing it to some. If, in error, the telephone number is published in the directory, the Company's only obligation is to credit or refund any monthly charges the Customer paid for non-published service.

The subscriber indemnifies (i.e., promises to reimburse the Company for any amount the Company must pay as a result of) and save the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by the publication of a non-published service or the disclosing of said number to any person.

#### 8.2.3 Rates and Charges

There is a monthly charge for each non-published service. This charge does not apply if the Customer has other listed service at the same location; if the Customer lives in a hotel, boarding house or club with listed service; or if the service is installed for a temporary period.

Non-published service charge, per month

TBD

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## SECTION 8.0 - DIRECTORY ASSISTANCE AND LISTING SERVICES

### 8.3 Non-Listed Service

#### 8.3.1 General

Non-listed service means that the Customer's telephone number is not listed in the directory, but does it appear in the Company's Directory Assistance Records.

#### 8.3.2 Regulations

This service is subject to the rules and regulations for F911 service, where applicable.

The Company will complete calls to a non-listed number.

When the Company agrees to keep a number unlisted, it does so without any obligation. Except for cases of gross negligence or willful misconduct, the Company is not liable for any damages that might arise from publishing a non-listed number in the directory or disclosing it to some. If, in error, the telephone number is listed in the directory, the Company's only obligation is to credit or refund any monthly charges the Customer paid for non-listed service.

The subscriber indemnifies (i.e., promises to reimburse the Company for any amount the Company must pay as a result of) and save the Company harmless against any and all claims for damages caused or claimed to have been caused, directly or indirectly, by the publication of a non-listed service or the disclosing of said number to any person.

#### 8.3.3 Rates and Charges

There is a monthly charge for each non-listed service. This charge applies if the Customer has other listed service at the same location; if the Customer lives in a hotel, boarding house or club with listed service; or in the service is installed for a temporary period.

Non-listed service charge, per month:

180¢

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SECTION 8.0 - DIRECTORY ASSISTANCE AND LISTING SERVICES

8.4 Directory Assistance Services

8.4.1 Directory Assistance

A Directory Assistance charge applies per local directory assistance call. The Customer may make two (2) requests for a telephone number per call. The Directory Assistance Charge applies regardless of whether the Directory Assistance operator is able to supply the requested number. No charge applies for the first call per month per residence line.

Each Local Directory Assistance Call

TBD

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South Dakota Tariff Number 2  
Original Page 96

SECTION 9.0 - RESERVED FOR FUTURE USE

9.1 Reserved For Future Use

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SECTION 10.0 - RESERVED FOR FUTURE USE

10.1 Reserved For Future Use

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## SECTION 11.0 - MISCELLANEOUS SERVICES

### 11.1 Carrier Presubscription

#### 11.1.1 General

Carrier Presubscription is a procedure whereby a Customer designates to the Company the carrier which the Customer wishes to be the carrier of choice for intraLATA and interLATA toll calls. Such calls are automatically directed to the designated carrier without the need to use carrier access codes or additional dialing to direct the call to the designated carrier. Presubscription does not prevent a Customer who has presubscribed to an intraLATA or interLATA toll carrier from using carrier access codes or additional dialing to direct calls to an alternative long distance carrier on a per call basis.

#### 11.1.2 Presubscription Options - Customers may select the same carrier or separate carriers for intraLATA and interLATA long distance. The following options for long distance Presubscription are available:

- Option A: Customer select the Company as the presubscribed carrier for IntraLATA and InterLATA toll calls subject to presubscription.
- Option B: Customer may select the Company as the presubscribed carrier for IntraLATA calls subject to presubscription and some other carrier as the presubscribed carrier for interLATA toll calls subject to presubscription.
- Option C: Customer may select a carrier other than the Company for intraLATA toll calls subject to presubscription and the Company for interLATA toll calls subject to presubscription.
- Option D: Customer may select the carrier other than the Company for both intraLATA and interLATA toll calls subject to presubscription.
- Option E: Customer may select two different carriers, neither being the Company for intraLATA and interLATA toll calls. One carrier to be the Customer's primary intraLATA interexchange carrier. The other carrier to be the Customer's primary interLATA interexchange carrier.
- Option F: Customer may select a carrier other than the Company for no presubscribed carrier for intraLATA toll calls subject to presubscription which will require the Customer to dial a carrier access code to route all intraLATA toll calls to the carrier of choice for each call.

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SECTION 11.0 - MISCELLANEOUS SERVICES (CONTINUED)

11.1 Carrier Presubscription, (Continued)

11.1.3 Rules and Regulations

Customers of record will retain their primary interexchange carrier(s) until they request that their dialing arrangements be changed.

Customers of record or new Customers may select either Options A, B, C, D, E or F for intraLATA Presubscription.

Customers may change their selected Option and/or presubscribed toll carrier at any time subject to charges specified in 11.4.5 below:

11.1.4 Presubscription Procedures

A new Customer will be asked to select intraLATA and interLATA toll carriers at the time the Customer places an order to establish local exchange service with the Company. The Company will process the Customer's order for service. All new Customers initial requests for intraLATA toll service presubscription shall be provided free of charge.

If a new Customer is unable to make selection at the time the new Customer places an order to establish local exchange service, the Company will read a random listing of all available intraLATA and interLATA carriers to aid the Customer in selection. If selection is still not possible, the Company will inform the Customer that he/she will be given 90 calendar days in which to inform the Company of his/her choice for primary toll carrier(s) free of charge. Until the Customer informs the Company of his/her choice of primary toll carrier, the Customer will not have access to long distance services on a presubscribed basis, but rather will be required to dial a carrier access code to route all toll calls to the carrier(s) of choice. Customers who inform the Company of a choice for toll carrier presubscription within the 90-day period will not be assessed a service charge for the initial Customer request.

Customers of record may initiate an intraLATA or interLATA presubscription change at any time, subject to the charges specified in 11.4.5 below. If a Customer of record inquires of the Company of the carriers available for toll presubscription, the Company will read a random listing of all available intraLATA carriers to aid the Customer in selection.

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SECTION 11.0 - MISCELLANEOUS SERVICES (CONTINUED)

11.1 Carrier Presubscription, (Continued)

11.1.5 Presubscription Charges

(A) Application of Charges

After a Customer's initial selection for a presubscribed toll carrier and as detailed in Paragraph 11.4.4 above, for any change thereafter, a Presubscription Change Charge, as set forth below will apply. Customers who request a change in intraLATA and interLATA carriers with the same order will be assessed a single charge per line.

(B) Nonrecurring Charges

Per business or residence line, trunk, or port

Initial Line, or Trunk or Port	TBD
Additional Line, Trunk or Port	TBD

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~~SECTION 12.0 - RESERVED FOR FUTURE USE~~

12.1 [Reserved for Future Use]

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SECTION 13.0 - RESERVED FOR FUTURE USE

13.1 [Reserved for Future Use]

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SECTION 14.0 - RESERVED FOR FUTURE USE

14.1 [Reserved for Future Use]

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## SECTION 15.0 - PROMOTIONAL OFFERINGS

### 15.1 Special Promotions

The Company may from time to time engage in special promotional trial service offerings of limited duration (not to exceed ninety days on a per Customer basis for non-optional, recurring charges) designed to attract new subscribers or to increase subscriber awareness of a particular tariff offering.

Requests for promotional offerings will be presented to the Commission for its review in accordance with rules and regulations established by the Commission, and will be included in the Carrier's tariff as an addendum to the Carrier's price lists.

### 15.2 Discounts

The Company may, from time to time as reflected in the price list, offer discounts based on monthly volume (or, when appropriate, "monthly revenue commitment" and/or "time of day" may also be included).

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TC00-170

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OCT 11 2000

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

October 10, 2000



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

RE: Worldwide Fiber Networks, Inc.'s pro forma name change to  
360networks (USA) inc.  
Docket No. ~~TC00-079~~

Dear Mr. Bullard

Worldwide Fiber Networks, Inc. hereby presents an original and ten (10) copies of its Amended Certificate of Authority using the new name of 360networks (USA) inc., to be filed with its notification of name change filed in the Commission's office on October 11, 2000.

An extra copy of this filing is included to be date stamped and returned to us in the self-addressed, postage-paid envelope included.

If you have any questions regarding this filing, please contact the undersigned.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Julie R. Hawkins".

Julie R. Hawkins  
Assistant General Counsel



# State of South Dakota



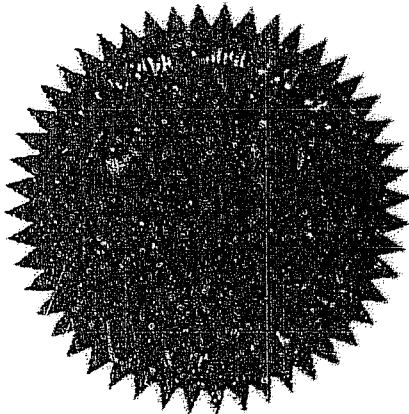
## OFFICE OF THE SECRETARY OF STATE

### Amended Certificate of Authority

I, JOYCE HAZELTINE, Secretary of State of the State of South Dakota, hereby certify that duplicate of the Application for an Amended Certificate of Authority of **WORLDWIDE FIBER NETWORKS, INC.** changing its name to **360NETWORKS (USA) INC. (NV)** 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 Amended 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 August 10, 2000.



A handwritten signature in cursive script, reading "Joyce Hazeltine".

Joyce Hazeltine  
Secretary of State

APPENDIX TO SOUTH DAKOTA  
FOREIGN CORPORATION CERTIFICATE

OFFICERS OF

360networks (USA) inc.

1. Jerry Tharp, President  
143 Union Blvd., Suite 300  
Lakewood, CO 80228
2. Ronald Stevenson, Executive Vice President/Secretary  
143 Union Blvd., Suite 300  
Lakewood, CO 80228
3. Bruce Tinney, Vice President, Business Development  
143 Union Blvd., Suite 300  
Lakewood, CO 80228
4. Patrick Summers, General Counsel  
143 Union Blvd., Suite 300  
Lakewood, CO 80228
5. David Love, Senior Vice President  
143 Union Blvd., Suite 300  
Lakewood, CO 80228

APPENDIX TO SOUTH DAKOTA  
FOREIGN CORPORATION CERTIFICATE

DIRECTORS OF

360networks (USA) inc.

1. Jerry Tharp  
143 Union Blvd., Suite 300  
Lakewood, CO 80228
2. Ronald Stevenson  
143 Union Blvd., Suite 300  
Lakewood, CO 80228
3. David Lede  
143 Union Blvd., Suite 300  
Lakewood, CO 80228
4. Clifford Lede  
143 Union Blvd., Suite 300  
Lakewood, CO 80228

**South Dakota Public Utilities Commission**

**WEEKLY FILINGS**

**For the Period of October 5, 2000 through October 11, 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

**ELECTRIC**

- EL00-029 In the Matter of the Application of Xcel Energy, Inc. for Approval to Extend Expected Merger Benefits to its South Dakota Service Territory and Customers.**

An application by Xcel Energy, Inc. for approval of a memorandum of understanding which would provide benefits to its customers and service territory was filed with the Commission. Xcel Energy, Inc. proposes to provide an additional contribution to its annual economic development investment within its service territory for a limited time and also agrees to a conditional rate moratorium until May 1, 2004. The agreement is being offered to provide rate payers expected benefits of the recent merger between Northern States Power Company and New Century Energies Company.

Staff Analyst: Dave Jacobson

Staff Attorney: Karen Cremer

Date Docketed: 10/10/00

Intervention Deadline: NA

**TELECOMMUNICATIONS**

- TC00-146 In the Matter of ACC National Long Distance Corporation d/b/a Vista International Communications' Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC00-147 In the Matter of Accutel Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC00-148 In the Matter of ACOMM, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC00-149 In the Matter of Atlantic Telephone Company, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC00-150 In the Matter of ClearPoint Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC00-151 In the Matter of Columbia Telecommunications, Inc. d/b/a aXessa's Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC00-152 In the Matter of ConnectAmerica, Inc. d/b/a Connect US' Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC00-153 In the Matter of ConQuest Operator Services Corp.'s Failure to Submit a Report and Pay the Gross Receipts Tax.**

- TC00-154 In the Matter of Federal TransTel, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-155 In the Matter of Home Owners Long Distance, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-156 In the Matter of IdealDial Corporation's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-157 In the Matter of Inacom Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-158 In the Matter of Inmark, Inc. d/b/a Preferred Billing's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-159 In the Matter of International Telecommunications Corp. d/b/a Discount Direct Dialing's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-160 In the Matter of Legends Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-161 In the Matter of Long Distance America, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-162 In the Matter of NeTel, Inc. d/b/a TEL3's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-163 In the Matter of Nor Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-164 In the Matter of Qcc Incorporated's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-165 In the Matter of Quest Telecommunications, Inc. d/b/a QTI's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-166 In the Matter of SBR, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC00-167 In the Matter of USBG, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

The above companies shall appear on November 1, 2000, at 9:00 a.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Deputy Executive Director: Sue Cichos  
 Staff Attorney: Karen Cremer  
 Date Docketed: 10/05/00  
 Hearing Date: 11/01/00

- TC00-168 In the Matter of the Application of IDT America, Corp. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

IDT America, Corp. is seeking a Certificate of Authority to provide interexchange telecommunication services in South Dakota. The applicant is a reseller that intends to offer MTS, 101XXXX, prepaid calling card, toll free, and rechargeable calling card services to and from all points within South Dakota.

Staff Analyst: Keith Senger  
Date Docketed: 10/05/00  
Intervention Deadline: 10/27/00

**TC00-169 In the Matter of the Filing for Approval of a Resale Agreement between Qwest Corporation and Flatel, Inc.**

A Resale Interconnection Agreement between Qwest Corporation (Qwest) and Flatel, Inc. was filed with the Commission for approval. The agreement is a negotiated agreement which sets forth the terms, conditions and prices under which Qwest will provide the Unbundled Network Element Platform and/or services for resale to Flatel for the provision of local exchange services. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than October 26, 2000. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Karen Cremer  
Date Docketed: 10/06/00  
Initial Comments Due: 10/26/00

**TC00-170 In the Matter of the Application of 360Networks (USA) Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.**

360networks (USA) inc. is seeking a Certificate of Authority to provide resold and facilities-based local exchange service in South Dakota. Initially, the applicant will provide non-switched dedicated and private line, high capacity fiber optic transmission capacity and access services and will eventually expect to offer a broad range of voice and data local exchange services to business and residential customers throughout the state.

Staff Analyst: Heather Forney  
Date Docketed: 10/10/00  
Intervention Deadline: 10/27/00

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SAFECO

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NOV 13 2000

SAFECO SURETY

Millennium Corporate Park  
18400 NE Union Hill Rd Bldg C  
Redmond, WA 98052-3332

SOUTH DAKOTA PUBLIC  
UTILITY COMMISSION  
IDEMNITY BOND  
TO THE  
PEOPLE OF THE STATE OF  
SOUTH DAKOTA

Phone (605) 774-6775  
Fax (605) 774-6775

Mailing Address  
PO Box 14320  
Sioux Falls, SD 57101-4320

Bond No. 6087003/VM0003001715

We, 360networks (USA) inc., the principal and applicant for a CERTIFICATE OF AUTHORITY to resell/facilities-based local exchange and long distance telecommunications services within the State of South Dakota, and GENERAL INSURANCE COMPANY OF AMERICA, as an admitted surety insurer, bind ourselves unto the Public Utilities Commission of the State of South Dakota and the consumers of South Dakota as Obligor, in the sum of \$25,000.00.

The conditions of the obligation are such that the principal, having been granted such CERTIFICATE OF AUTHORITY subject to the provision that said principal purchase this Indemnity Bond, and if said principal shall in all respects fully and faithfully comply with all applicable provisions of South Dakota State Law, and reimburse customers of 360networks (USA) inc. for any prepayment or deposits they have made which may be unable or unwilling to return to said customers as a result of insolvency or other business failure, then this obligation shall be void, discharged and forever exonerated, otherwise to remain in full force and effect.

This bond shall take effect as of the date hereon and shall remain in force and effect until the surety is released from liability by the written order of the Public Utilities Commission, provided that the surety may cancel this Bond and be relieved of further liability hereunder by delivering thirty (30) days written notice to the Public Utilities Commission. Such cancellation shall not affect any liability incurred or accrued hereunder prior to the termination of said thirty (30) day period.

Dated this 31st day of October, 2000.

To be effective this 31st day of October, 2000.

*Original bond is  
in Delaine's bottom  
desk drawer.*

360networks (USA) inc.

*[Signature]*

Countersigned this 2<sup>nd</sup> day of  
November, 2000.

Countersigned for South Dakota

GENERAL INSURANCE COMPANY OF AMERICA

By *[Signature]*  
Resident Agent

Don Reggin

*[Signature]*  
Attorney in Fact

NO. 10215

**KNOW ALL BY THESE PRESENTS:**

 That **SAFECO INSURANCE COMPANY OF AMERICA** and **GENERAL INSURANCE COMPANY OF AMERICA**, each a Washington corporation, do hereby appoint

 ..... **PINA CAMERIN, DON REGGIN**, Vancouver, British Columbia, Canada .....


its true and lawful attorney(s)-in-fact, with full authority to execute on its behalf fidelity and surety bonds and other documents of a similar character issued in the course of its business, and to bind the respective company thereby.

 IN WITNESS WHEREOF, **SAFECO INSURANCE COMPANY OF AMERICA** and **GENERAL INSURANCE COMPANY OF AMERICA** have hereunto attested these presents

 this 27th

 day of April

1975


**R.A. PIERSON, SECRETARY**

**W. RANDALL STODDARD, PRESIDENT**
**CERTIFICATE**

 Extract from the By-Laws of **SAFECO INSURANCE COMPANY OF AMERICA**  
and of **GENERAL INSURANCE COMPANY OF AMERICA**:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary and any Assistant Vice President authorized for purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business. On instrument making or evidencing such appointment, the signatures may be attested by facsimile. On any instrument conferring such authority or on any other undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced, provided, however, that the seal shall be necessary to the validity of any such instrument or undertaking."

 Extract from a Resolution of the Board of Directors of **SAFECO INSURANCE COMPANY OF AMERICA**  
and of **GENERAL INSURANCE COMPANY OF AMERICA** adopted July 28, 1975:

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,

- (i) The provisions of Article V, Section 13 of the By-Laws, and
- (ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
- (iii) Certifying that said power-of-attorney appointment is in full force and effect,

the signature of the certifying officer may be by facsimile, and the seal of the Company may be a facsimile thereof."

 I, **R.A. Pierson**, Secretary of **SAFECO INSURANCE COMPANY OF AMERICA** and of **GENERAL INSURANCE COMPANY OF AMERICA**, do hereby certify that the foregoing extracts of the By-Laws and of a Resolution of the Board of Directors of these corporations, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation.

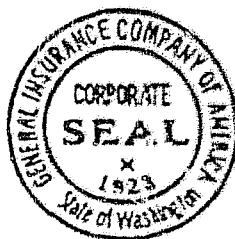
this

21st

day of

October

1975


  
**R.A. PIERSON, SECRETARY**



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

IN THE MATTER OF THE APPLICATION OF )	ORDER GRANTING
360NETWORKS (USA) INC. FOR A )	CERTIFICATE OF
CERTIFICATE OF AUTHORITY TO PROVIDE )	AUTHORITY
LOCAL EXCHANGE SERVICES IN SOUTH )	
DAKOTA )	TC00-170

On October 10, 2000, the Public Utilities Commission (Commission) received an application for a certificate of authority from 360networks (USA) inc. (360networks).

360networks proposes to offer non-switched dedicated and private line, high capacity fiber optic transmission capacity and access services and will eventually offer a broad range of voice and data local exchange services to business and residential customers throughout the state. A proposed tariff was filed by 360networks.

On October 12, 2000, the Commission electronically transmitted notice of the filing and the intervention deadline of October 27, 2000, to interested individuals and entities. No petitions to intervene or comments were filed and at its regularly scheduled November 30, 2000, meeting, the Commission considered 360networks' request for a certificate of authority. Commission Staff recommended granting a certificate of authority, subject to rural safeguards, and subject to a continuous \$25,000 surety bond. Commission Staff further recommended a waiver of ARSD 20:10:32-03(11).

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-69 and ARSD 20:10:32-03. The Commission finds that 360networks has met the legal requirements established for the granting of a certificate of authority. 360networks has, in accordance with SDCL 49-31-71, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. Further, the Commission finds that there is good cause to waive subparagraph (11) of ARSD 20:10:32-03.

The Commission approves 360networks' application for a certificate of authority, subject to rural safeguards, and subject to a continuous \$25,000 surety bond. The certificate of authority for 360networks shall authorize it to offer local exchange services in South Dakota, except in those areas served by a rural telephone company. In the future, should 360networks choose to provide local exchange services statewide, with respect to rural telephone companies, 360networks will have to come before the Commission in another proceeding before being able to provide local service in that rural service area pursuant to 47 U.S.C. § 253(f) which allows the Commission to require a company that seeks to provide service in a rural service area to meet the requirements in 47 U.S.C. § 214(e)(1) for designation as an eligible telecommunications carrier. In addition, the granting of statewide certification will not affect the exemptions, suspensions, and modifications for rural telephone companies found in 47 U.S.C. § 251(f). It is therefore

ORDERED, that 360networks' application for a certificate of authority to provide local exchange services is granted, effective December 10, 2000, subject to a continuous \$25,000 surety bond; and it is

FURTHER ORDERED, that 360networks shall file informational copies of tariff changes with the Commission as the changes occur, and it is

FURTHER ORDERED, that the Commission shall authorize 360networks to offer its local exchange services in South Dakota, except in those areas served by a rural telephone company; and it is

FURTHER ORDERED, that the Commission finds good cause to waive subparagraph (11) of ARSD 20:10:32.03.

Dated at Pierre, South Dakota, this 7th day of December, 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: Helsine Kelso

Date: 12/8/00

(OFFICIAL SEAL)

**BY ORDER OF THE COMMISSION**

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

Laska Schoenfelder  
LASKA SCHOENFELDER, Commissioner

# SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

## CERTIFICATE OF AUTHORITY

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

Authority was Granted November 30, 2000, effective December 10, 2000  
Docket No. TC00-170

*This is to certify that*

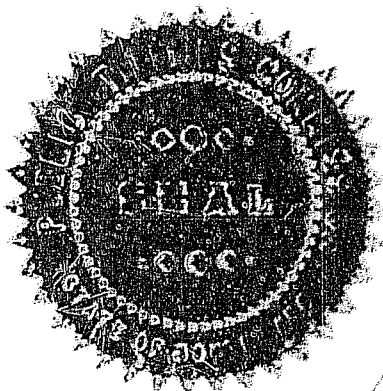
**360NETWORKS (USA) INC.**

is authorized to provide local exchange services in nonrural areas in  
South Dakota.

This certificate is issued in accordance with SDCL 49-31-69 and ARSD  
20:10:32:03, and is subject to all of the conditions and limitations contained in  
the rules and statutes governing its conduct of offering telecommunications  
services.

Dated at Pierre, South Dakota, this 2<sup>nd</sup> day of December, 2000.

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION:



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

*Pam Nelson*  
PAM NELSON, Commissioner

*Laska Schoenfelder*  
LASKA SCHOENFELDER, Commissioner