

TC00-197

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DOCKET NO. \_\_\_\_\_

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

IN THE MATTER OF THE FILING FOR  
APPROVAL OF AN OPT-IN  
INTERCONNECTION AGREEMENT  
BETWEEN QWEST CORPORATION  
AND MAXCESS, INC.

Public Utilities Commission of the State of South Dakota

DATE

MEMORANDA

11/30/00 Filed and Docketed;  
12/7/00 Public Filing;  
3/9/01 Order Approving Agreement;  
3/9/01 Docket Closed.

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

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David J. Murphy  
John S. McDowell  
Lisa Hansen-Marso  
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John R. McDowell

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

November 28, 2000

**VIA UPS OVERNIGHT DELIVERY**

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

Re: Filing of Resale Interconnection Agreement between Qwest Corporation f/k/a U S WEST  
Communications, Inc. and Maxcess, Inc.  
Our File No. 2104-078

Dear Mr. Bullard:

Pursuant to ARSD 20-10-32-21 enclosed for filing are an original and ten (10) copies of the Wireless Opt-in Interconnection Agreement between Qwest Corporation f/k/a U S WEST Communications, Inc. ("Qwest") and Maxcess, Inc. ("Maxcess") for approval by the Commission. The Agreement is a negotiated agreement which sets forth the terms, conditions and prices under which Qwest will provide services for resale to Maxcess for the provision of local exchange services.

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

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

**RECEIVED**

NOV 30 2000

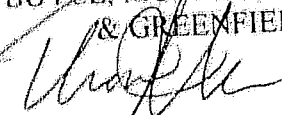
**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

William Holland, Executive Director  
November 14, 1990  
Page 2 of 2

Maxcess has authorized Quest to submit this Agreement on Maxcess' behalf.

Sincerely yours,

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



Thomas J. Welk

cc: [redacted]  
Enclosure

cc: Daniel H. Webb, Chief Technical Officer for Maxcess  
Mr. Callen Sebold  
Mr. Dale Hart (w/o enclosure)

September 1, 2000

RECEIVED

NOV 30 2000

QWEST, Inc.  
100 First Avenue South  
Suite 400  
Colorado, FL 32001

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Qwest

South Dakota

We have received your request that, under Section 252(i) of the Telecommunications Act of 1996, QWEST, Inc. ("CLEC") wishes to "Pick and Choose" in its entirety, the terms of the Interconnection Agreement and any associated amendments, if applicable, ("Agreement") between Covad Communications Co. and Qwest Corporation for U S WEST Communications, Inc. ("Qwest") that was approved by the Commission as an effective agreement in the State of South Dakota. We understand you have a copy of the Agreement.

With respect to the aforementioned Agreement, Qwest and CLEC ("the Parties") understand and agree:

1. The Parties shall request the Commission to expedite its review and approval of this Agreement. This Agreement shall become effective upon such approval.

2. Notwithstanding the mutual commitments set forth herein, the Parties are entering into this Agreement without prejudice to any positions they have taken previously, or may take in the future, in any legislative, regulatory, or other public forum addressing any matters, including those relating to the types of arrangements contained in this Agreement. During the proceeding in which the Commission is to review and approve the Agreement, Qwest may point out that it has objected, and continues to object, to the inclusion of the terms and conditions to which it objected in the proceedings involving the approval of the Underlying Agreement.

3. This Agreement contains provisions based upon the decisions and orders of the FCC and the Commission under and with respect to the Act. Currently, court and regulatory proceedings affecting the subject matter of this Agreement are in various stages, including the proceedings where certain of the rules and regulations of the FCC are being challenged. In addition, there is uncertainty in the aftermath of the Supreme Court's decision in AT&T Corp. et al. v. Iowa Utilities Board. Based on that uncertainty, and the regulatory and judicial proceedings which will occur as a result of that decision, the Parties acknowledge that this Agreement may need to be changed to reflect any changes in law. The Agreement has not been amended to reflect the requirements, claims or outcomes of any of the proceedings. Accordingly, when a final decision or decisions are made in the proceedings that automatically change and modify the Underlying Agreement, then like changes and modifications will similarly be made to this Agreement. In addition, to the extent rules or laws are based on regulatory or judicial proceedings as a result of the recent Supreme Court decision, this Agreement will be amended to incorporate such changes. In the event of a Commission ruling in a generic cost docket that results in changes to the rates contained in this Agreement, the Agreement shall be automatically modified to reflect such change in rates.

4. Subsequent to the execution of this Agreement, the FCC or the Commission may issue decisions or orders that change or modify the rules and regulations governing implementing of the Act. If such changes or modifications alter the state of the law upon which the Underlying Agreement was negotiated and agreed, and it reasonably appears that the parties to the Underlying Agreement would have negotiated and agreed to different term(s), condition(s) or covenant(s) than as contained in the Underlying Agreement.

QWEST, Inc.  
100 First Avenue South  
Suite 400  
Colorado, FL 32001

U S A  
Proud Sponsor

had such change or modification been in existence before execution of the Underlying Agreement, then this Agreement shall be amended to reflect such different term(s), condition(s), or covenant(s). Where the Parties fail to agree upon such an amendment, it shall be resolved in accordance with the Dispute Resolution provision of the Underlying Agreement which is being adopted pursuant to Section 252(i).

6. This Agreement shall continue in force and effect through the term of the Underlying Agreement. Thereafter, this Agreement can be terminated by either Party on thirty (30) days written notice, if another interconnection Agreement will not replace the current Agreement. If there is a replacement interconnection Agreement, one Party can notify the other Party that it is requesting Section 251/252 negotiations under the Federal Telecommunications Act of 1996 ("Act"). That notification will trigger the timeframes and procedures contained in Section 252 of the Act, or pursuant to the timeframes set forth by the appropriate state commission. In the event of such notice, the arrangements between our companies shall continue and be governed by the terms of the expired agreement until the new agreement is approved by the appropriate state commission.

8. This Agreement shall be interpreted in accordance with GTE Service Corp. v. Federal Communications Commission, No. 99-1176 (D.C. Cir. March 17, 2000). The Parties shall not be bound by any language in the Underlying Agreement, or any prior interpretation or performance under such language, that are inconsistent with the Court's decision in GTE Service Corp. v. Federal Communications Commission. The Parties also recognize that certain provisions of the terms and conditions may be void or unenforceable as a result of the July 18, 1997 and October 14, 1997, decisions of the United States Eighth Circuit Court of Appeals. Additionally, this Agreement shall be interpreted in accordance with all other relevant judicial or regulatory decisions.

7. The Parties agree that Qwest's position has been, and continues to be, that Interconnection Agreements entered into pursuant to Sections 251 and 252 of the Act, including the reciprocal compensation provisions of those Agreements, apply only to local traffic. Local traffic is that traffic that originates and terminates in the same local calling area. Each company bears the burden of proof that the traffic being exchanged is in fact local in nature.

8. CLEC adopts the terms and conditions of the Covad Communications Company Agreement for interconnection with Qwest and in applying the terms and conditions, agrees that MAXCESS, Inc. be substituted in place of "Covad Communications Company" throughout the Agreement wherever the latter appears.

9. Qwest requests that notice to Qwest Corporation as may be required under the Agreement shall be provided as follows:

To: Qwest Corporation  
Director Interconnection Compliance  
1801 California Street, Room 2410  
Denver, CO 80202

With copy to:  
Qwest Corporation Law Department  
Attention: General Counsel, Interconnection  
1801 California Street, 51st Floor  
Denver, CO 80202

CLEC requests that notice to CLEC as may be required under the Agreement shall be provided as follows:

To: MAXCESS, Inc.

MAXCESS, Inc.

Don Webb / Chief Technology Officer

Doris Franklin

100 West Lucerne Circle, Suite 500

315 South Calhoun, Suite 314

Orlando, FL 32801

Tallahassee, FL 32301

Phone: 407-513-7700

Phone: 770-569-2105

Fax: 407-513-7701

Re: CLEC represents and warrants that it is a certified provider of local dialtone service in the State of South Dakota and that this Agreement will cover services in that state only.

Please sign all three original copies of this letter, retain one copy, and overnight two copies to Debi Hartl at 7800 East Quorum Street, Suite 250, Englewood, CO 80111 by November 1, 2000. After November 1, 2000 Qwest may rescind its willingness to consider the Agreement's terms and conditions, and will consider that you have withdrawn from good faith negotiations.

Please note that Qwest will file this letter with the appropriate state commission for approval; however, some state commissions will not approve the letter until the CLEC is certified by the state commission. You may want to contact the appropriate state commission to determine the requisite filing guidelines.

  
Deborah J. Hartl  
President

Deborah J. Hartl

Director - International

1801 California, Room 2410

Denver, CO 80202

303.766.6014

I agree to all terms and conditions contained in this letter as indicated by my signature below:

MAXCESS, Inc.

Don Webb

Chief Technology Officer



Don Webb

Chief Technology Officer



Doris Franklin

Chief Technology Officer



Doris Franklin

South Dakota Public Utilities Commission

**WEEKLY FILINGS**

For the Period of November 30, 2000 through December 6, 2000

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

**CONSUMER COMPLAINTS**

**CT00-111** In the Matter of the Complaint filed by Terry Hoffmann, Flandreau, South Dakota, against MCI WorldCom and Ionex Communications North, Inc. Regarding Unauthorized Switching of Services.

The Complainant alleges that his long distance service was switched without authorization. He seeks "civil penalty according to South Dakota Codified laws."

Staff Analyst: Lori Healy  
Staff Attorney: Kelly Frazier  
Date Docketed: 12/06/00  
Intervention Deadline: N/A

**CT00-112** In the Matter of the Complaint filed by Mike Mattern, Aberdeen, South Dakota, against McLeodUSA Telecommunications Services, Inc. Regarding Poor Service.

The complainant alleges McLeodUSA was contacted on November 13, 2000 to report a phone outage and the phone line was not repaired until November 17, 2000. The complainant alleges the severity and urgency of his request for repairs went unheeded. He reports that being without phone service for almost five days had impacted his business revenue. The complainant is seeking monetary and punitive damages for the amount of \$4890.00 for the period of time without phone service.

Staff Analyst: Charlene Lund  
Staff Attorney: Kelly Frazier  
Date Docketed: 12/06/00  
Intervention Deadline: N/A

**ELECTRIC**

**EL00-034** In the Matter of the Filing by NorthWestern Public Service Company for Approval of a Bill Crediting Mechanism for Yankton Sioux Tribe Members.

An application by NorthWestern Public Service was filed with the Commission for approval of a Bill Crediting Program which would reflect an adjustment to normal NorthWestern Public Service Rates for preference power committed to the Yankton Sioux Tribe by Western Area Power Administration. As a result of reallocations of Western Area Power Administration preference power, low cost power is being made available to several Indian Tribes. The proposed credit adjustment mechanism would allow members of the Yankton Sioux Tribe to realize the savings of this low cost power.

Staff Analyst: Dave Jacobson  
Staff Attorney: Kelly Frazier  
Date Docketed: 12/6/00  
Intervention Deadline: 12/22/00

## TELECOMMUNICATIONS

**TC00-197** In the Matter of the Filing for Approval of an Opt-In Interconnection Agreement between Qwest Corporation and Maxcess, Inc.

An Opt-In Interconnection Agreement between Qwest Corporation (Qwest) and Maxcess, Inc. (Maxcess) 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 services for resale to Maxcess 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 December 20, 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: Kelly Frazier  
Date Docketed: 11/30/00  
Initial Comments Due: 12/20/00

**TC00-198** In the Matter of the Application of ALLTEL Communications, Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota.

ALLTEL Communications, Inc. (ALLTEL) has filed a request for a Certificate of Authority to provide resold telecommunications services throughout South Dakota. ALLTEL intends to offer resold intrastate, interstate and international long distance service, including calling cards.

Staff Analyst: Heather Forney  
Staff Attorney: Kelly Frazier  
Date Docketed: 12/04/00  
Intervention Deadline: 12/22/00

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

IN THE MATTER OF THE FILING FOR )	ORDER APPROVING
APPROVAL OF AN OPT-IN )	AGREEMENT
INTERCONNECTION AGREEMENT BETWEEN )	
QWEST CORPORATION AND MAXCESS, INC. )	TC00-197

On November 30, 2000, Qwest Corporation (Qwest) filed for approval by the South Dakota Public Utilities Commission (Commission) an opt-in interconnection agreement between Maxcess, Inc. (Maxcess) and Qwest.

On December 7, 2000, the Commission electronically transmitted notice of this filing to interested individuals and entities. The notice stated that any person wishing to comment on the parties' request for approval had until December 20, 2000, to do so. No comments were filed.

At its duly noticed March 6, 2001, meeting, the Commission considered whether to approve the agreement between Qwest and Maxcess. Commission Staff recommended its approval.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-31, and the Federal Telecommunications Act of 1996. In accordance with 47 U.S.C. § 252(e)(2), the Commission found that the agreement does not discriminate against a telecommunications carrier that is not a party to the agreement and the agreement is consistent with the public interest, convenience, and necessity. The Commission unanimously voted to approve the agreement. It is therefore

ORDERED, that the Commission approves the agreement.

Dated at Pierre, South Dakota, this 9th day of March, 2001.

<b>CERTIFICATE OF SERVICE</b>	
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	<u>Heldine Kalbo</u>
Date	<u>3/13/01</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner