

TC01-035

KL/H7

TC01-035

DOCKET NO. _____

In the Matter of _____

IN THE MATTER OF THE
APPLICATION OF NEW ACCESS
COMMUNICATIONS LLC FOR A
CERTIFICATE OF AUTHORITY TO
PROVIDE INTEREXCHANGE
TELECOMMUNICATIONS SERVICES
AND LOCAL EXCHANGE SERVICES IN
SOUTH DAKOTA

Public Utilities Commission of the State of South Dakota

DATE

MEMORANDA

4/9/01 Filed and Docketed;
4/15/01 Weekly Filing;
4/19/01 Tariff No. 2;
4/19/01 Rejected Tariff Pages;
4/20/01 Order Granting COA;
4/20/01 Docket Closed.

TC01-035

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

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RECEIVED

APR 02 2001

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

OF COUNSEL

VINCENT E. EARLY
THOMAS R. BARNETT
JOHN E. PETER, JR.

JOSEPH A. WOOD
DANIEL L. WOOD

March 30, 2001

William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Re: New Access Communications LLC

Dear Mr. Bullard:

Enclosed for filing with the Commission please find an original and ten (10) copies of the above captioned corporation's APPLICATION FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE RESALE SERVICES WITHIN THE STATE OF SOUTH DAKOTA, along with a check in the amount of \$250.00 to cover filing fees relating to same.

Also enclosed is an exact duplicate of this filing. Please date-stamp the duplicate and return same to me in the enclosed postage pre-paid, addressed envelope.

Should you have any questions concerning this filing, please contact me.

Very truly yours,

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

Patrick D. Crocker
PDC/pas

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

APR 01 2001

In the of the Application of)

New Access Communications LLC)

For a Certificate of Authority to Provide)
Resold Local Exchange Services)

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Docket No.

APPLICATION FOR AUTHORITY TO PROVIDE
LOCAL EXCHANGE RESALE SERVICES

I. INTRODUCTION

Pursuant to S.D.C.L. § 49-31.3 and the Federal Telecommunications Act of 1996 ("Federal Act" or "Act"), Pub.L. No. 104-104, 100 Stat. 56 (1996) New Access Communications LLC ("Applicant") respectfully seeks a Certificate of Public Convenience and Necessity to permit it to provide resold local exchange services in the State of South Dakota.

The recently enacted Telecommunication Act of 1996 presents this Commission with the unique opportunity to expand upon existing pro-competitive telecommunications policies to ensure that all consumers--residential and business--will have access to high quality, low-cost, and innovative telecommunications services. The Federal Act was adopted to promote competition and reduce regulation in order to secure lower prices and higher quality telecommunications services for the American populace.

In accordance with these goals, Congress included provisions in the Federal Act designed to facilitate increased competition in all aspects of the local exchange market. Section 253 of the Act prohibits states from imposing any requirements that would constitute any barriers to entry into the local exchange market. The Federal Act also imposes several requirements on the incumbent local exchange carriers ("LECs") to assist new entrants in the market. Specifically, the Federal Act

prohibits all LECs from imposing unreasonable or discriminatory conditions or limitations on the resale of telecommunications services. 47 U.S.C. § 251(b)(1). Incumbent LECs also must enter reciprocal compensation arrangements for the origination and termination of telecommunications services. 47 U.S.C. §§ 251, 252. Finally, incumbent LECs are required to offer for resale at wholesale rates (based on retail prices minus avoided costs), any telecommunications services that the carrier provides to subscribers who are not telecommunications carriers. *Id.* Applicant seeks authority from the Commission to provide local exchange services as soon as these rates are available.

The Federal Act's prohibition against barriers to entry clearly contemplates that the State will not impose any requirement that are more burdensome than necessary. In light of Applicant's extensive experience in providing telecommunications services in the State and its intent to provide non-facilities-based services only, Applicant requests that a Certificate be granted without hearing or any other formal proceeding that would delay its expansion into the local resale market.

The approval of this Application will further the purposes of the Federal Telecommunications Act of 1996 as well as S.D.C.L. § 49-31.3. Accordingly, Applicant requests that the Commission amend its Certificate of Authority to provide resold local exchange services.

In support thereof, Applicant provides the following information:

II. QUALIFICATIONS

1. Applicant's legal name is New Access Communications LLC Applicant maintains its principal place of business at:

New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402
Telephone 612-321-9717
Facsimile 612-321-9207
Toll Free 877-330-4937

2. Correspondence or communications pertaining to this application should be directed to Applicant's attorney:

Patrick D. Crocker
Early, Lennon, Crocker & Bartosiewicz, P.L.C.
900 Comerica Building
Kalamazoo, MI 49007
Telephone 616-381-8844
Facsimile 616-349-8525

3. Questions concerning the ongoing operations of Applicant following certification should be directed to:

Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

4. Applicant is a Minnesota limited liability company. Applicant is qualified to do business in the State of South Dakota. Applicant is seeking authority to provide resold long distance services within the State. A copy of Applicant's Articles of Organization and Certificate of Authority to Transact Business within the State are attached hereto as Exhibit A.

5. Applicant's registered agent in South Dakota is:

6. Applicant intends to provide local exchange service on a resale basis. The specific manner in which Applicant will provide local exchange service depends upon the result of negotiations with the incumbent local exchange carriers currently operating within the State.

7. Applicant is financially qualified to provide resold telecommunications services in the State. In particular, Applicant has access to the financing and capital necessary to conduct its telecommunications operations as specified in this Application. In support of Applicant's financial

ability to provide the proposed service, Applicant attaches most recent statements as Exhibit B.

8. All complaints and billing inquiries should be made to Applicant's headquarters in Minneapolis, Minnesota. Applicant's customer service organization is available 24 hours per day, seven days per week to receive questions and billing inquiries. Customers may contact a Customer Service Representative ("CSR") by calling Applicant's toll-free customer service number or by writing to Applicant. When an inquiry is received, a CSR will research the questions and obtain pertinent information about the customer's account. If needed, CSR will make adjustments to a customer's bill at the time of inquiry. In the event of a billing dispute, each CSR has the authority to make adjustments to a customer's bill up to a specified dollar amount. Any adjustments which exceed this amount are handled by a department supervisor. When an adjustment is made, the customer will see the credit on the subsequent invoice. The contact person responsible for customer complaints is Pam Rieck. Ms. Rieck may be reached at (612) 321-9717. Applicant's toll-free number for customer complaints and inquiries is 1-877-330-4937.

9. Applicant is technically qualified to provide resold telecommunications services within the State. Applicant is authorized by registration or certification to provide resold long distance service and local exchange service in Colorado, Iowa, Kentucky, Montana, North Dakota, Oregon, and Washington. Applicant currently provides primarily residential customers with high quality cost effective telecommunications services. Descriptions of Applicant's key personnel are attached hereto as Exhibit C.

III. PROPOSED SERVICES

1. Applicant proposes to provide resold local exchange service to subscribers from all points within the State of South Dakota and, therefore, seeks statewide authorization. Specifically, Applicant seeks authority to resell local exchange service in the existing service areas of US West and any other relevant carriers. Applicant intends to provide all forms of intrastate telecommunications services including: (1) Basic Residential Exchange Services (Local Exchange Full Rate, Measured Rate Services, operator access, etc.); (2) Residential Custom and Class Features (call waiting, caller ID, call forwarding, etc.); (3) Adjunct Provided Features (voice messaging, etc.); and (4) Residential Ancillary Services (911, directory listing, directory assistance, etc.)

2. The Federal Act establishes the framework for incumbent LECs to provide resellers of local exchange service with unbundled service at wholesale rates. 47 U.S.C. §§ 251, 252. These rates must be based on current retail rates minus the avoided costs as prescribed by the Federal Act until such time as commercially viable wholesale rates are available from the incumbent LECs. Applicant is unable to file a proposed tariff. As soon as such rates are available, and prior to the commencement of service, Applicant shall file a proposed tariff (containing its rates, terms and conditions of service) with the Commission for its review.

IV. CONCLUSION

The telecommunications industry is growing and changing at an impressive pace. The entry of Applicant into the local exchange resale market will enhance competition in the provision of telecommunications services within the State of South Dakota as prescribed by the South Dakota Codified Laws and the Federal Act. Applicant will bring significant benefits to South Dakota State telecommunications users. Applicant's expertise in the telecommunications sector will permit it to select the most economic and efficient services, thereby providing customers with a better

anticipates its proposed service will provide subscribers with better quality services and will increase consumer choice of innovative, diversified, and reliable service offerings.

Wherefore, New Access Communications LLC requests that the South Dakota Public Utilities Commission approve the requested authority for a certificate of public convenience and necessity to include resold local exchange services in South Dakota.

Respectfully Submitted,

New Access Communications LLC

Dated: 3-30-0

By: 

Patrick D. Crocker
Early, Lennon, Crocker & Bartosiewicz, P.L.C.
900 Comerica Building
Kalamazoo, MI 49007-4752
Its: Attorneys

VERIFICATION

Steven C. Clay, President of New Access Communications LLC, first being duly sworn on oath, deposes and says that he has read the foregoing Application and verifies that the statements made therein are true and correct to the best of his knowledge, information, and belief.

New Access Communications LLC

By: _____

Steven C. Clay

The foregoing instrument was acknowledged before me this 24 day of March, 2001

by Steven C. Clay.

Gregory L. Wilmes
Notary Public
For the County of Hennepin
My Commission Expires 1-31-03

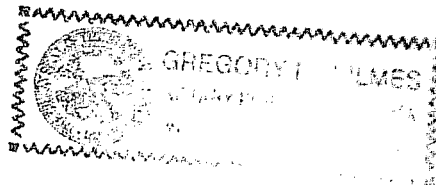


EXHIBIT A

Articles of Organization

Certificate of Authority to Transact Business

State of Minnesota

SECRETARY OF STATE

Certificate of Good Standing

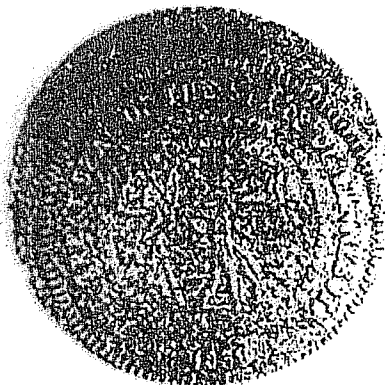
I, Mary Kiffmeyer, Secretary of State of Minnesota, do certify that: The limited liability company listed below is a limited liability company formed or registered to do business under the laws of Minnesota; the limited liability company was formed by the filing of articles of organization or registered to do business by filing an application for a certificate of authority with the Office of the Secretary of State on the date listed below; the limited liability company is governed by Chapter 322A of Minnesota Statutes; and this limited liability company is authorized to do business as a limited liability company at the time this certificate is issued.

Name: New Access Communications LLC

Date Formed or Registered: May 25, 2000

State of Organization: Minnesota

This certificate has been issued on March 13, 2001.



Mary Kiffmeyer
Secretary of State

State of Minnesota

SECRETARY OF STATE

Certificate of Organization

I, Mary Kiffmeyer, Secretary of State of Minnesota, do certify that: Articles of Organization, duly signed, have been filed on this date in the Office of the Secretary of State, for the organization of the following limited liability company, under and in accordance with the provisions of the chapter of Minnesota Statutes listed below.

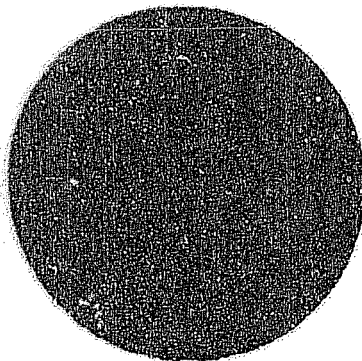
This limited liability company is now legally organized under the laws of Minnesota.

Name: IMS Direct LLC

Charter Number: 16766-LLC

Chapter Formed Under: 322B

This certificate has been issued on 05/25/2000.



Mary Kiffmeyer
Secretary of State

16766-LLC

**ARTICLES OF ORGANIZATION
OF
IMS DIRECT LLC**

The undersigned, being of full age and for the purpose of forming a limited liability company for general business purposes under Chapter 322B of the Minnesota Statutes, does hereby adopt the following Articles of Organization:

**Article 1
Name**

The name of this limited liability company is IMS Direct LLC.

**Article 2
Registered Office**

The address of the registered office of this limited liability company is 510 Marquette Avenue South, Suite 206, Minneapolis, Minnesota 55402.

**Article 3
Period of Existence**

Unless dissolved earlier in accordance with law, this limited liability company will have perpetual existence.

**Article 4
Organizer**

The name and address of the sole organizer of this limited liability company is Alice E. Campbell, 3400 City Center, 33 South Sixth Street, Minneapolis, Minnesota 55402.

**Article 5
Preemptive Rights Prohibition**

The members of this limited liability company shall have no preemptive rights as described in Minnesota Statutes Section 322B.33 or any successor thereto.

**Article 6
Cumulative Voting**

The members of this limited liability company shall have no rights of cumulative voting as described in Minnesota Statutes Section 322B.63 or any successor thereto.

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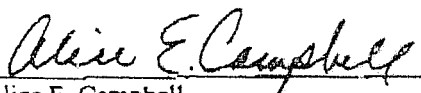
Article 7
Limitation of Liability of Governors

A governor of this limited liability company shall not be personally liable to this limited liability company or its members for monetary damages for breach of fiduciary duty as a governor, except for liability (i) based on a breach of the governor's duty of loyalty to this limited liability company or its members; (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; (iii) under Section 322B.56 or Section 80A.23 of the Minnesota Statutes; or (iv) for any transaction from which such governor derived an improper personal benefit. If Chapter 322B of the Minnesota Statutes is hereafter amended to authorize the further elimination or limitation of the liability of governors, then the liability of a governor of this limited liability company, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by Chapter 322B of the Minnesota Statutes, as amended. Any repeal or modification of this Article by the members of this limited liability company shall be prospective only and shall not adversely affect any limitation on the personal liability of a governor of this limited liability company existing at the time of such repeal or modification.

Article 8
Actions by Written Consent

Any action which is required or permitted to be taken by the governors of this limited liability company at a meeting and which does not require the approval of the members may be taken by written action signed by the number of governors that would be required to take the same action at a meeting at which all governors were present. However, if the action is one which must be approved by the members, such action may be taken only by written action signed by all of the governors then in office. Any action required or permitted to be taken at a meeting of the members may be taken by written action signed by members who possess the voting power that would be required to take the same action at a meeting of the members at which all members were present.


IN WITNESS WHEREOF, the undersigned has set her hand this 25th day of May, 2000.

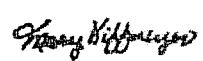


Alice E. Campbell
Organizer

SEP 20 10 11 AM '01

STATE OF MINNESOTA
FILED

MAY 25 2000 



Secretary of State

FROM CLAY PLANT MOOTY & BENNETT
FIRM : LAW OFFICES

(WED) 6. 28' 00 15:28/ST. 15:27/NO. 4261724926 P 2
PHONE NO. : 321 9287
JUN 28 2000 01:32PM P2

ARTICLES OF AMENDMENT
OF
ARTICLES OF ORGANIZATION
OF
DMS DIRECT LLC

16766-LLC

I, the undersigned President of DMS Direct LLC, a Minnesota limited liability company, do hereby certify that an Amendment to the Articles of Organization to change the name of the company was approved by written action of all the Members pursuant to Minnesota Statutes Section 322B.16 and and Section 322B.33, as follows:

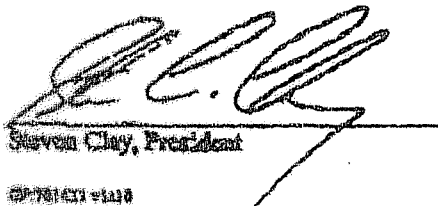
RESOLVED, That the Articles of Organization of this LLC be amended as follows:

Article 1
Name

The name of this limited liability company is New Avenue Communications LLC.

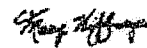
FURTHER RESOLVED, That Steven Clay, the President of this limited liability company, he, and hereby is, authorized and directed to make and execute Articles of Amendment embracing the foregoing resolution and to cause such Articles of Amendment to be filed with the office of the Secretary of State of the State of Minnesota.

Executed as of June 28, 2000.


Steven Clay, President
DP781437-11118

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUN 28 2000


Secretary of State

058318

10766-LLC

CONSENT TO USE OF NAME

Office of the Secretary of State
Business Services Division
180 State Office Building
St. Paul MN 55115

1. Desired Name: New Access Communications Inc.
2. Conflicting Name: New Access Communications LLC
Address 510 Marquette Avenue South, Suite 206, Minneapolis, Minnesota 55402

Please have this portion completed by the holder of the conflicting name:

I hereby consent to the use of the desired name by:

Name: New Access Communications Inc.

Address: 510 Marquette Ave.S., Suite 206, Minneapolis, Minnesota 55402

☒


unconditionally

☐

with the following conditions (which I acknowledge must be privately enforced)

I, the undersigned, certify that I am authorized to sign this consent, and further certify that I understand that by signing this consent I am subject to the penalties of perjury as set forth in section 609.48 as if I had signed this consent under oath.

Signed:


Signature of Steven C. Clay
President of New Access Communications LLC

FOR USE BY SECRETARY OF STATE

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 11 2001

079805


Secretary of State

16766-I.LC

State of Minnesota

SECRETARY OF STATE**CERTIFICATE OF MERGER**

I, Mary Kiffmeyer, Secretary of State of Minnesota, certify that: the documents required to effectuate a merger between the entities listed below and designating the surviving entity have been filed in this office on the date noted on this certificate, and the qualification of the individual merging entities to do business in Minnesota is terminated on the effective date of this merger.

Merger Filed Pursuant to Minnesota Statutes, Chapter: 322B

State of Formation and Names of Merging Entities:

MN: NEWTEL EUROPE MERGER COMPANY LLC
MN: NEW ACCESS COMMUNICATIONS LLC

State of Formation and Name of Surviving Entity:

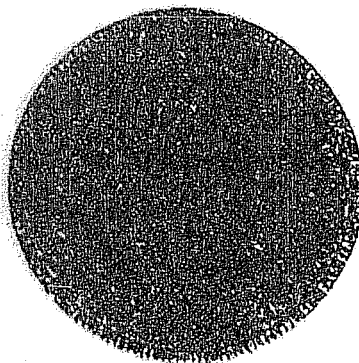
MN: NEW ACCESS COMMUNICATIONS LLC

Effective Date of Merger: January 31, 2001

Name of Surviving Entity After Effective Date of Merger:

NEW ACCESS COMMUNICATIONS LLC

This certificate has been issued on January 31, 2001



Mary Kiffmeyer
Secretary of State

16766-LL

ARTICLES OF MERGER
OF
NEWTEL EUROPE MERGER COMPANY LLC
WITH AND INTO
NEW ACCESS COMMUNICATIONS LLC

THESE ARTICLES OF MERGER are made pursuant to Minnesota Statutes, Section 322B.73, and incorporate the Agreement and Plan of Merger attached as Exhibit A (the "Plan of Merger"). New Access Communications LLC, a Minnesota limited liability company (the "Surviving Company"), and NewTel Europe Merger Company LLC, a Minnesota limited liability company (the "Merged Company"), hereby certify as follows:

Article I
Board Approval

1.1) Approval by the Board of the Surviving Company. The Plan of Merger was approved on January 31, 2001 by the Board of Governors of the Surviving Company pursuant to Minnesota Statutes, Section 322B.72, Subd. 1.

1.2) Approval by the Board of the Merged Company. The Plan of Merger was approved on January 31, 2001 by the Board of Governors of the Merged Company pursuant to Minnesota Statutes, Section 322B.72, Subd. 1.

Article II
Member Approval

2.1) Approval by the Members of the Surviving Company. The Plan of Merger was approved on January 31, 2001 by the members of the Surviving Company pursuant to Minnesota Statutes, Section 322B.72, Subd. 2.

2.2) Approval by the Sole Member of the Merged Company. The Plan of Merger was approved on January 31, 2001 by the sole member of the Merged Company pursuant to Minnesota Statutes, Section 322B.72, Subd. 2.

NEWTEL EUROPE MERGER COMPANY LLC

Dated: January 31, 2001

By: 

Its: Pres.

NEW ACCESS COMMUNICATIONS LLC

Dated: January 31, 2001

By: 

Its: CIO

GP 160578 v3

082137

**AGREEMENT
AND
PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") is effective as of January 31, 2001 (the "Effective Date"), by and among NewTel Europe LLC, a Minnesota limited liability company ("NewTel"), NewTel Europe Merger Company LLC, a Minnesota limited liability company and a wholly-owned subsidiary of NewTel ("NTEM"), and New Access Communications LLC, a Minnesota limited liability company ("New Access").

Background

The Board of Governors of NewTel, NTEM and New Access deem it advisable for the mutual benefit of NewTel, NTEM and New Access and their respective members that New Access acquire NTEM by the Merger of NTEM with and into New Access under the terms and conditions hereinafter set forth (the "Merger").

Agreement

In consideration of the premises and the agreements herein contained, the parties agree as follows:

**Article I
The Merger**

NTEM shall be merged into New Access, and the existence of NTEM as a limited liability company shall cease and New Access shall continue as the surviving limited liability company (the "Surviving Company"). The Surviving Company shall become the owner, without other transfer, of all the rights and properties of NTEM, and the Surviving Company shall become subject to all the debts and liabilities of NTEM in the same manner as if the Surviving Company had itself incurred them.

**Article II
Effective Time of the Merger**

The Merger shall be effective upon the later of: (a) filing of Articles of Merger with the Secretary of State of Minnesota or January 31, 2001 (the "Effective Time"). In each state where the approval of such state's Public Utility Commission or other similar regulatory authority is required as a result of the Merger but has not been obtained by the Effective Time, the Surviving Company shall not do business in such state until such required approval has been obtained.

Article III Articles of Organization

The Articles of Organization of the Surviving Company as of the Effective Time shall be the Articles of Organization of the Surviving Company after the Merger.

Article IV Bylaws; Registered Office

The Bylaws of the Surviving Company as of the Effective Time shall be the Bylaws of the Surviving Company after the Merger. The registered office of the Surviving Company after the Merger shall be at 510 Marquette Avenue South, Suite 206, Minneapolis, Minnesota 55402.

Article V Governors and Officers

The Board of Governors of the Surviving Company in office as of the Effective Time shall remain the Board of Governors of the Surviving Company after the Merger until their respective successors shall have been duly elected and qualified. Subject to the authority of the Board of Governors as provided by law and the Bylaws of the Surviving Company, the executive officers of the Surviving Company as of the Effective Time shall remain the executive officers of the Surviving Company after the Merger. The Board of Governors of NTEM and the executive officers of NTEM holding office as of the Effective Time shall be deemed to have resigned effective as of the Effective Time.

Article VI Conversion of Membership Interests and Warrants

At the Effective Time, without any further action on the part of NTEM, the Surviving Company or their members:

6.1) NTEM Membership Interests. Each membership interest of NTEM, issued and outstanding immediately prior to the Effective Time, shall cease to be outstanding and shall be converted into one membership interest of the Surviving Company.

6.2) Surviving Company's Membership Interests. Each membership interest of the Surviving Company, issued and outstanding immediately prior to the Effective Time, shall be converted and exchanged for one membership interest of NewTel multiplied by the Exchange Rate (as that term is defined in Section 6.4). No fractional membership interests of NewTel shall be issued as a result of the Merger. In lieu of such fractional membership interests, the number of membership interests of NewTel issued in connection with the Merger shall be rounded up to the next whole number. Such NewTel membership interests in all respects be subject to, and the owners thereof shall in all respects be bound by, the Articles of

Organization, Bylaws and Member Control Agreement of NewTel, as the same exists on the date of exchange and as they may be amended from time to time

6.3) Surviving Company's Warrants. Each unexpired and unexercised warrant to purchase membership interests of the Surviving Company (a "New Access Warrant") shall be automatically converted into a warrant to purchase a number of membership interests of NewTel (a "NewTel Warrant") equal to the number of membership interests of the Surviving Company that could have been purchased (assuming full vesting) under such New Access Warrant multiplied by the Exchange Rate (rounded to the nearest whole number of membership interests of NewTel) at an exercise price per NewTel membership interest equal to the exercise price per the Surviving Company membership interest contained in the New Access Warrant divided by the Exchange Rate (rounded to the nearest whole cent). Such NewTel Warrants shall otherwise be subject to the same terms and conditions as the New Access Warrants.

6.4) Exchange Rate. Each Unit of membership interest of the Surviving Company issued and outstanding immediately prior to the Effective Time shall be converted and exchanged for 22.69348 NewTel Units of membership interests (the "Exchange Rate").

Article VII Conditions Precedent to Merger

The respective obligations of each party to effect the Merger shall be subject to the fulfillment, at or prior to the Effective Time, that this Agreement has been duly approved by the requisite vote of the members of New Access and NTEM in accordance with the Minnesota Limited Liability Act as well as the applicable Articles of Organization and Bylaws, as amended, of each such company.

Article VIII Termination of Merger

This Agreement may be terminated at any time prior to the Effective Time, whether before or after any approval of the matters presented in connection with the Merger by the members of New Access or NTEM, by mutual written consent of the parties hereto.

Article IX General Provisions

This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement shall not be assigned without the prior written consent of the other parties. For the convenience of the parties and to facilitate the execution of this Agreement, any number of counterparts hereof may be executed and each such executed counterpart shall be deemed to be an original instrument. The headings of Articles hereunder are for convenience and reference only, and shall not be deemed a part of this Agreement. No delay or failure on the part of any party hereto to exercise any right.

power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder. This Agreement sets forth the parties' final and entire agreement with respect to its subject matter and supersedes any and all prior understandings and agreements. This Agreement shall not be modified or amended in any fashion except by an instrument in writing signed by the parties. All representations, warranties, covenants and agreements of the parties contained in this Agreement, or in any instrument, certificate, exhibit or other writing provided for in it, shall survive the execution of this Agreement and the consummation of the transactions contemplated herein. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota (without regard to principles of conflicts of law) applicable to contracts made and to be performed within such state.

The parties hereto have caused this Agreement to be duly executed as of the Effective Date.

NewTel Europe LLC

By: 

Its:

New Access Communications LLC

By: 

Its:

NewTel Europe Merger Company LLC

By: 

Its:

GP 760428 v6

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

Jan 31 2001

Mary Hoffmann
Secretary of State

STATE OF MINNESOTA

DEPARTMENT OF STATE

I hereby certify that this is a
true and complete copy of the
document as filed for record in
this office.

DATED 03-13-01

Mary Hoffmeyer

Secretary of State



By

Sharon Nelson

State of South Dakota



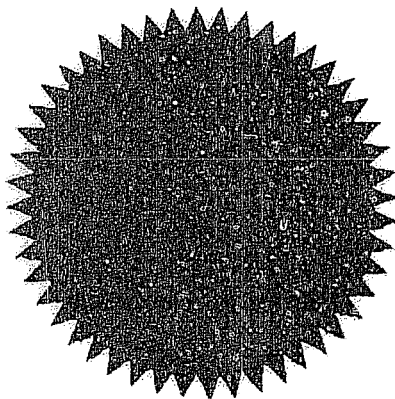
OFFICE OF THE SECRETARY OF STATE

Certificate of Authority Limited Liability Company

I, **JOYCE HAZELTINE**, Secretary of State of the State of South Dakota, hereby certify that duplicate of the Application for a Certificate of Authority of **NEW ACCESS COMMUNICATIONS LLC (MN)** to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Limited Liability Company Act, 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 for certificate of authority.

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 1, 2000.



Joyce Hazeltine
Secretary of State

EXHIBIT B

Financial Statements

New Access Financial Statements

BALANCE SHEET	June	July	August	September	October
ASSETS					
Cash	167,990	143,442	235,089	262,082	169,183
Accounts Receivable	-	-	3,169	24,089	55,941
Unearned liability			18,952	2,166	-
Allowance for Bad Debt	-	-	-	(854)	(2,288)
Total Current Assets	167,990	143,442	257,209	287,483	222,836
Property and Equipment	9,388	12,514	18,204	22,885	35,956
Accumulated Depreciation	(196)	(456)	(836)	(1,312)	(2,047)
Net Fixed Assets	9,192	12,057	17,369	21,572	33,909
Deposits	-	-	-	10,000	27,600
TOTAL ASSETS	177,182	155,500	274,578	319,056	284,345
LIABILITIES					
Accounts Payable	9,590	31,129	63,298	159,908	295,972
Due to IFS	1,160	4,760	10,600	18,477	23,489
Due to Access Anywhere	-	16,053	22,689	7,060	-
Due to ChoiceTel Inc.	-	-	45	726	(6,659)
Due to NewTel Europe	-	4,375	8,750	13,125	17,500
New Access Federal Taxes	-	-	-	433	1,713
New Access State Taxes	-	-	-	1,256	4,955
New Access Local Taxes	-	-	-	-	62
Accrued Expenses	-	-	-	1,700	19,314
Short Term Debt	90,000	90,000	90,000	90,000	90,000
Total Current Liabilities	100,750	146,317	195,382	292,684	446,346
EQUITY					
Member's Contribution	76,000	76,000	294,262	423,132	502,114
Net Income/ (Loss)	(1,567)	(58,618)	(216,045)	(390,760)	(664,115)
Total Capital	74,433	17,382	78,217	32,372	(162,001)
TOTAL LIABILITIES & EQUITY	177,182	155,500	274,578	319,056	284,345

New Access Financial Statements

INCOME STATEMENT	June	July	August	September	October	TOTAL
Local-MN	-	-	3,713	22,525	32,577	59,215
Local-MT	-	-	-	69	15,154	15,222
LD-MN	-	-	36	2,130	7,032	9,198
LD-MT	-	-	-	-	1,549	1,549
TOTAL REVENUE	-	-	3,749	24,724	56,712	85,185
Local Wholesale-MN	-	-	5,008	21,342	31,726	58,077
Local Wholesale-MT	-	-	-	17	15,922	15,940
LD Wholesale-MN	-	-	28	1,421	4,622	6,071
LD Wholesale-MT	-	-	-	-	1,034	1,034
TOTAL COST OF SALES	-	-	5,036	22,781	53,305	81,122
GROSS MARGIN	-	-	(1,288)	1,944	3,407	4,063
			-34%	8%	6%	5%
Switching charges-MN	-	-	4,366	3,321	3,045	10,732
Switching charges-MT	-	-	-	885	21,591	22,477
Fee for MN CLEC usage	-	-	45	681	(6,305)	(5,579)
Marketing expense	-	10,714	62,727	86,907	140,596	300,944
Bad debt expense	-	-	-	854	1,434	2,288
Salary expense	1,160	24,173	51,985	49,112	55,539	181,969
Verification/internal mktg expense	-	1,423	3,028	10,868	10,252	25,570
Office expense	204	6,374	8,759	17,302	19,459	52,098
Rent expense	-	-	-	4,077	4,084	8,161
Telephone expense	8	1,676	2,468	3,037	6,908	14,097
Travel / M & E	-	205	4,340	785	3,733	9,064
Licensing fees	-	4,825	1,410	655	6,050	12,940
Depreciation expense	196	261	379	477	735	2,047
Legal and Professional expense	-	15,425	3,299	2,482	1,466	22,671
OPERATING EXPENSES	1,567	65,075	142,805	181,443	268,587	659,478
Other (Income)/Expense	-	2,175	2,175	2,175	2,175	8,700
Interest expense	-	-	-	-	-	-
NET INCOME / (LOSS)	(1,567)	(67,250)	(140,630)	(181,268)	(267,355)	(654,115)
YTD NET INCOME / (LOSS)	(1,567)	(67,250)	(140,630)	(181,268)	(267,355)	(654,115)

EXHIBIT C

Key Personnel

MANAGEMENT TEAM

NEW ACCESS COMMUNICATIONS LLC has assembled a strong senior management team with experience in the telecommunications market. Each individual brings a successful background, an entrepreneurial drive and a unique perspective based on experience in a variety of industries. Following are summaries of the backgrounds of key individuals.

Steven Clay, Carrier Services President

Mr. Clay spent the previous five years as founder and chief executive of a specialized law practice providing legal services primarily to the telecommunications industry. His law practice focused on certification and tariff issues at the state and local level, regulatory and tax issues, and consumer protection issues. Mr. Clay's client list included privately-held and public companies including long distance resellers, CLECs, Internet Service Providers, debit card providers and other telecommunications entities. Prior to attending law school, Mr. Clay worked in the marketing department of a software company which provided sophisticated accounting, billing and time management software to the legal industry. He is experienced in regulatory compliance issues, intellectual property issues, contracts and other areas of transactional law. Mr. Clay received a B.A. in Organizational Management from Gustavus Adolphus College and a J.D. *cum laude* from the University of Minnesota Law School, where he was an Associate Managing Editor of the Minnesota Law Review. His law review Note, Struck: The Overextension of Celebrity Publicity Rights in State and Federal Courts, was published in Volume 79 of the Minnesota Law Review (79 Minn. L. Rev. 485 (1994)). Mr. Clay co-founded New Access in June, 2000.

David Buss, Vice President

Mr. Buss spent the previous twelve years with Sencore Electronics, a large electronics firm based in Sioux Falls. He has great experience in technical sales, and has proven success in managing, training and motivating large sales forces for consistently profitable results. Mr. Buss received a B.S. Degree in Business Administration from National American University in Sioux Falls. Mr. Buss co-founded New Access in June, 2000.

Gregory Wilmes, Chief Operating Officer

Mr. Wilmes served as the general manager of NewTel Comunicaciones España, S.L., a long distance reseller based in Madrid, Spain, from January 1999 through May 2000. He was engaged in the private practice of law at his own firm in the Twin Cities, practicing primarily in the securities arbitration and appellate advocacy areas, from 1996 to 1998. Mr. Wilmes was a founding partner in the law firm of Briol & Wilmes, and practiced primarily in the commercial litigation and securities arbitration areas from 1988 to 1996. Mr. Wilmes received a B.S. degree from Mankato State University in Political Science (1977, *summa cum laude*), and a Juris Doctorate from the William Mitchell College of Law (1981, *magna cum laude*). Mr. Wilmes co-founded New Access in June, 2000.

Wayne Barthel, Chief Financial Officer

Mr. Barthel is a graduate of St. John's University in Collegeville, Minnesota, where he majored in accounting. Upon graduation, Mr. Barthel spent nine years with Ernst & Young in the audit and consulting staff. He spent approximately 40% of his time working with clients in the banking industry and served on the Minneapolis Banking Industry Committee. Mr. Barthel's responsibilities included reviewing the adequacy of loan loss reserves and compliance with various regulatory requirements. Mr. Barthel has served as Chief Financial Officer for businesses

in the health care and telecommunications industries, and also managed his own consulting firm specializing in financing and restructuring services to businesses in a variety of industries. Mr. Barthel is licensed as a certified public accountant in the state of Minnesota and is a member of the American Institute of Certified Public Accountants and the Minnesota Society of Certified Public Accountants. Mr. Barthel has spent the previous year as Chief Financial Officer and Vice President of Finance for Internet Financial Services LLC.

Technical Competence

As a non-facilities based reseller, New Access relies upon its underlying carriers for all technical matters relating to the transmission of telecommunications messages. Underlying carriers, primarily the Regional Bell Operating Companies, provide all network elements utilized by New Access in the provision of service. The RBOCs also handle all elements in the provision of emergency and 911 service.

New Access maintains its own in-house billing system and customer service department. New Access has assembled an impressive and highly qualified team of managers and staff level personnel serving in its customer service and information technology departments. Kristi Hicks, Customer Service Director, spent the previous three years as customer service director for a long distance service provider. Rick Gittins, IT Director, is an experienced computer programmer whose previous employment was as a computer consultant. Both Ms. Hicks and Mr. Gittins have been with New Access nearly since the Company's inception. New Access employs several customer service representatives who previously worked for Qwest or other local exchange or long distance carriers. New Access's IT Department also contains several software engineers who are experienced in designing and implementing complicated databases for telecommunications carriers.

Officers, Board of Governors

Steven C. Clay
President, Governor
120 South 6th Street, Suite 950
Minneapolis, MN 55402

David Buss
Vice President, Governor
120 South 6th Street, Suite 950
Minneapolis, MN 55402

Gregory Wilmes
Chief Operating Officer, Governor
120 South 6th Street, Suite 950
Minneapolis, MN 55402

Elam Baer
Chairman of the Board of Governors
120 South 6th Street, Suite 950
Minneapolis, MN 55402

Gordon Cohen
Governor
1120 Avenue of the Americas
4th Floor
New York, NY 10036

Wayne Barthel
Chief Financial Officer
120 South 6th Street, Suite 950
Minneapolis, MN 55402

Shareholders

NewTel Europe LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

Merchants Capital Partners, L.P.
1120 Avenue of the Americas
4th Floor
New York, NY 10036

NEW ACCESS COMMUNICATION, LLC
120 SOUTH SIXTH ST.
SUITE 950
MINNEAPOLIS, MN 55402

WELLS FARGO BANK
MINNEAPOLIS, MN
17-1810

1088

1088
CHECK NO.

Mar 16, 2001
DATE

*****250.00
AMOUNT

Two Hundred Fifty and 00/100 Dollars

PAY
TO THE
ORDER
OF
South Dakota Pblc Utilities Co



SECURITY FEATURES INCLUDED. DETAILS ON BACK

⑈001088⑈ ⑆091000019⑆0687330662⑆

NEW ACCESS COMMUNICATION, LLC

1088

INVOICE NO.	DESCRIPTION	INVOICE DATE	INVOICE AMOUNT	ORIGINAL DATE	AMOUNT PAID
03/16/01		3/16/01	250.00		250.00

TC01-035

CHECK DATE	CHECK NO.	PAYEE	DISCOUNT	DATE PAID
3/16/01	1088	South Dakota Pblc Utilities Co		

TC01-035

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

ATTORNEYS AT LAW
900 COMERICA BUILDING
KALAMAZOO, MICHIGAN 49007-4752
TELEPHONE (616) 351-8844
FAX (616) 349-8525

RECEIVED

APR 02 2001

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

GEORGE H. LENNON
DAVID G. CROCKER
MICHAEL D. O'CONNOR
HAROLD E. FISCHER, JR.
LAWRENCE M. BRENTON
GORDON C. MILLER
GARY P. BARTOSIEWICZ
BLAKE D. CROCKER

ROBERT M. TAYLOR
RON W. KIMBREL
PATRICK D. CROCKER
ANDREW J. VORBRICH
TYREN R. CUDNEY
WILLIAM B. JOHNSON
STEVEN M. BROWN
KRISTEN L. BURSON

OF COUNSEL
MICHAEL H. EARLY
THOMAS J. HARRIS
JOHN L. HARRIS, JR.
JEROME J. HARRIS
JOHN L. HARRIS, JR.

March 28, 2001

Executive Director
South Dakota Public Utilities Commission
State Capitol
Pierre, South Dakota 57501-5070

Re: New Access Communications LLC
SDPUC Docket No. _____

Dear Sir:

Enclosed for filing with the Commission please find an original and ten (10) copies of the above captioned corporation's Application for a Certificate of Authority to transact the business of a reseller of interexchange telecommunications services within South Dakota, along with a check in the amount of \$250.00 to cover filing fees relating to same.

Also enclosed is an exact duplicate of this letter. Please date-stamp the duplicate and return same to me in the enclosed postage pre-paid, addressed envelope.

Should you have any questions concerning this filing, please contact me.

Very truly yours,

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.


Patrick D. Crocker
PDC/res

BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

APR 02 2001

IN THE MATTER OF:

THE APPLICATION OF
New Access Communications LLC
FOR A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO TRANSACT THE BUSINESS
OF A RESELLER OF INTEREXCHANGE
TELECOMMUNICATIONS SERVICES AND
FOR APPROVAL OF ITS INITIAL TARIFF

) SOUTH DAKOTA PUBLIC
) UTILITIES COMMISSION
)
) DOCKET NO. _____
)
)
)

APPLICATION FOR AUTHORIZATION

New Access Communications LLC (hereinafter "Applicant") respectfully requests that the Public Utilities Commission of the State of South Dakota (hereinafter referred to as "Commission") grant Applicant authority pursuant to SDCL 49-31-3 and in accordance with ARSD 20:10:24-02 to provide intrastate telecommunications services to the public within South Dakota through the resale of similar services offered by other interexchange carriers ("IXCs") in the State. Applicant further requests that the Commission approve its initial proposed tariff. Applicant, for purposes of verification, and in evidence of its fitness to operate and the public need for its services, offers the following information in support of this Application:

Identification of the Applicant

1. Applicant maintains its headquarters at 120 South 6th Street, Suite 950, Minneapolis, MN 55402.
2. Applicant is organized under the laws of the State of Minnesota. A copy of the Company's Articles of Organization is attached hereto as **Exhibit A**. Applicant has the authority to transact business within the State of South Dakota as a foreign limited liability company. A copy of the qualifying document is set forth in **Exhibit B** hereto.

3. Correspondence regarding this Application should be directed to:

Patrick D. Crocker
EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.
900 Comerica Building
Kalamazoo, MI 49007-4752
(616) 381-8844

4. The name of Applicant's Registered Agent, and the address of the registered office of the corporation in South Dakota is:

Ronald D. Olinger
17 E. Capitol
Pierre, SD 57501

Description of Authority Requested

5. Applicant seeks authority to operate as a reseller of intrastate telecommunications services to the public on a statewide basis. Applicant seeks authority to offer a full range of "1-800" interexchange telecommunications services on a resale basis. Specifically, Applicant seeks authority to provide MTS, in-WATS, out-WATS, and Calling Card services.

6. Applicant does not intend to provide operator services, 900 or 700 services.

7. Applicant owns no transmission facilities. Applicant will offer service to its subscribers using facilities of the communications networks of Sprint, or other facilities-based CLECs and the local exchange telephone companies ("LECs").

8. Applicant has no plans at this time to construct any telecommunications transmission facilities of its own and seeks no construction authority by means of this Application. Applicant will operate exclusively as a reseller.

9. Applicant will abide by all rules governing telecommunications resellers which the Commission has promulgated or may promulgate in the future, unless application of such rules is specifically waived by the Commission.

Proposed Services

10. Applicant intends to offer MTS, in-WATS, out-WATS, and Calling Card services to subscribers within South Dakota. Applicant combines high quality transmission services with very competitive rates, flexible end user billing, professional customer service and excellent reporting to create a unique blend which meets the individualized needs of such business customers.
11. Applicant's services are designed to be especially attractive to residential customers.
12. Applicant's intends to engage in "switchless" resale. Applicant will arrange for the traffic of underlying subscribers to be routed directly over the networks of Applicant's network providers.
13. Applicant is committed to the use of ethical sales practices. All distributors of its products must commit in writing to market Applicant's services in a professional manner, and to fairly and accurately portray Applicant's services and the charges for them.

Description and Fitness of Applicant

14. Applicant's officers have extensive managerial, financial and technical experience with which to execute the business plan described herein. Applicant's management personnel represent a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience. In support of Applicant's managerial and technical ability to provide the services for which authority is sought herein, Applicant submits a description of the background and experience of its current management team as Exhibit C. In support of Applicant's financial ability to provide the proposed services, Applicant attaches a recent Income Statement and Balance Sheet as Exhibit D.

Public Interest Considerations

15. Applicant's entry into the South Dakota marketplace is in the public interest because Applicant intends to make a uniquely attractive blend of service quality, network management and reporting, and low rates available.

16. In addition to the direct benefits delivered to the public by its services, Applicant's entry into the South Dakota marketplace will benefit the public indirectly by increasing the competitive pressure felt by existing IXCs, spurring them to lower costs and improve service response.

Requested Regulatory Treatment

17. Applicant is a non-dominant reseller of interexchange telecommunications services. Applicant requests to be regulated by the Commission in the same relaxed fashion extended to other, similarly situated resellers.

Initial Proposed Tariff

18. Applicant proposes to offer service pursuant to the rules, regulations, rates and other terms and conditions included in Applicant's initial proposed tariff which is attached hereto as **Exhibit E**. Billing, payment, credit, deposit and collection terms are set forth in Applicant's proposed tariff.

Compliance with ARSD 20:10:24:02

19. In accordance with ARSD 20:10:24:02, Applicant provides the following information:

- (1). The name, address and telephone number of Applicant:

New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

- (2). Applicant shall provide services under the name:

New Access Communications LLC

- (3). (a) See paragraph 2 of this Application.

- (b) Applicant has no principal office in South Dakota. Applicant's registered agent is set forth in paragraph 4 hereinabove.

- (c) A copy of Applicant's Articles of Organization is attached as Exhibit A.

- (d) A list of the names and addresses of Applicant's current Officers and

Board of Directors:

Steven C. Clay	President/ Governor
120 South 6 th Street	
Suite 950	
Minneapolis, MN 55402	

David Buss	Vice President/ Governor
120 South 6 th Street	
Suite 950	
Minneapolis, MN 55402	

Gregory Wilmes	Chief Operating Officer/ Governor
120 South 6 th Street	
Suite 950	
Minneapolis, MN 55402	

Elam Baer	Chairman of the Board of Governors
120 South 6 th Street	
Suite 950	
Minneapolis, MN 55402	

Gordon Cohen
120 South 6th Street
Suite 950
Minneapolis, MN 55402

Governor

Wayne Barthel
120 South 6th Street
Suite 950
Minneapolis, MN 55402

Chief Financial Officer

- (e) The names of Applicant's shareholders and numbers of shares held by each:

<u>Shareholders</u>	<u>Percentage</u>
NewTel Europe LLC	74%
Merchants Capital Partners, L.P.	26%

- (f) No corporation, association, or partnership owns any interest in Applicant.
- (g) Applicant owns or controls no subsidiaries.

- (4). Applicant is a limited liability company organized under the laws of Minnesota.
- (5). See paragraph 5 of the Application.
- (6). See paragraph 6 of the Application.
- (7). Applicant shall offer services on all equal access areas within the State of South Dakota. Accordingly, Applicant does not attach a map describing service boundaries.
- (8). See Exhibits D and E attached hereto.
- (9). All complaints and regulatory matters should be directed to Applicant as set forth in paragraph 1 of this Application.

Applicant's Cost for Underlying Transport Services

20. Applicant proposes to resell services within South Dakota in excess of Applicant's cost of purchasing services from Applicant's underlying carrier Sprint. Applicant purchases intrastate services from Sprint for approximately \$.162 per minute and resells to the public for approximately \$.27 a minute.

Conclusion

21. A decision by the Commission to grant Applicant a Certificate of Public Convenience and Necessity is plainly in the public interest. Applicant will introduce important new products and services at very competitive rates as well as enhance the competitiveness of the overall long distance market in South Dakota.

WHEREFORE, New Access Communications LLC respectfully requests that this Commission grant it authority to transact the business of a reseller of interexchange telecommunications services within the State of South Dakota, that the Commission regulate it in a streamlined fashion, and that the Commission approve Applicant's initial proposed tariff effective on the date of the Order granting authority.

Respectfully submitted,

New Access Communications LLC

Dated: 2-30-01

By: _____

Patrick D. Crocker

EARLY, LENNON, CROCKER & BARTOSIEWICZ
P.L.C.

900 Comerica Building

Kalamazoo, MI 49007-4752

Its: Attorneys

VERIFICATION

Steven C. Clay, President for New Access Communications LLC first being duly sworn on oath, deposes and says that he has read the foregoing Application and verifies that the statements made therein are true and correct to the best of his knowledge, information, and belief.

New Access Communications LLC

By: _____

Steven C. Clay, President

The foregoing instrument was acknowledged before me this 16th day of March, 2001 by Steven C. Clay.

Gregory L. Wilmes
Notary Public

For the County of Kenosha - St of MA

My Commission Expires: 1-31-05

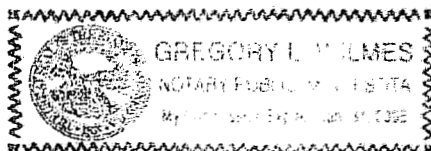


EXHIBIT A

Articles of Organization

State of Minnesota

SECRETARY OF STATE

Certificate of Good Standing

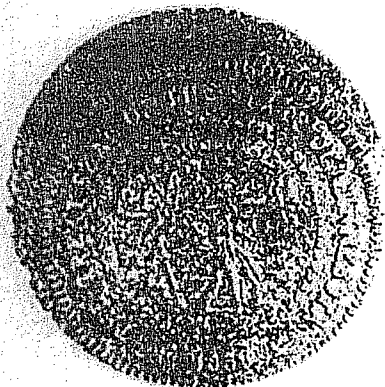
I, Mary Kiffmeyer, Secretary of State of Minnesota, do certify that: The limited liability company listed below is a limited liability company formed or registered to do business under the laws of Minnesota; the limited liability company was formed by the filing of articles of organization or registered to do business by filing an application for a certificate of authority with the Office of the Secretary of State on the date listed below; the limited liability company is governed by Chapter 322B of Minnesota Statutes; and this limited liability company is authorized to do business as a limited liability company at the time this certificate is issued.

Name: New Access Communications LLC

Date Formed or Registered: May 25, 2000

State of Organization: Minnesota

This certificate has been issued on March 13, 2001.



Mary Kiffmeyer
Secretary of State

State of Minnesota

SECRETARY OF STATE

Certificate of Organization

I, Mary Kiffmeyer, Secretary of State of Minnesota, do certify that: Articles of Organization, duly signed, have been filed on this date in the Office of the Secretary of State, for the organization of the following limited liability company, under and in accordance with the provisions of the chapter of Minnesota Statutes listed below.

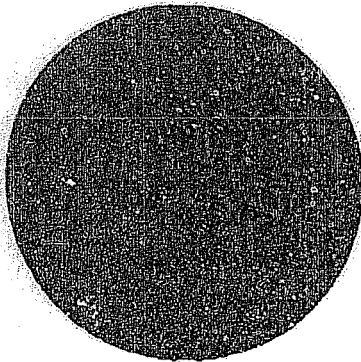
This limited liability company is now legally organized under the laws of Minnesota.

Name: IMS Direct LLC

Charter Number: 16766-LLC

Chapter Formed Under: 322B

This certificate has been issued on 05/25/2000.



Mary Kiffmeyer
Secretary of State

16766-LLC

**ARTICLES OF ORGANIZATION
OF
IMS DIRECT LLC**

The undersigned, being of full age and for the purpose of forming a limited liability company for general business purposes under Chapter 322B of the Minnesota Statutes, does hereby adopt the following Articles of Organization:

**Article 1
Name**

The name of this limited liability company is IMS Direct LLC.

**Article 2
Registered Office**

The address of the registered office of this limited liability company is 510 Marquette Avenue South, Suite 206, Minneapolis, Minnesota 55402.

**Article 3
Period of Existence**

Unless dissolved earlier in accordance with law, this limited liability company will have perpetual existence.

**Article 4
Organizer**

The name and address of the sole organizer of this limited liability company is Alice E. Campbell, 3400 City Center, 33 South Sixth Street, Minneapolis, Minnesota 55402.

**Article 5
Preemptive Rights Prohibition**

The members of this limited liability company shall have no preemptive rights as described in Minnesota Statutes Section 322B.33 or any successor thereto.

**Article 6
Cumulative Voting**

The members of this limited liability company shall have no rights of cumulative voting as described in Minnesota Statutes Section 322B.63 or any successor thereto.

054598

Article 7
Limitation of Liability of Governors

A governor of this limited liability company shall not be personally liable to this limited liability company or its members for monetary damages for breach of fiduciary duty as a governor, except for liability (i) based on a breach of the governor's duty of loyalty to this limited liability company or its members; (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law; (iii) under Section 322B.56 or Section 80A.23 of the Minnesota Statutes; or (iv) for any transaction from which such governor derived an improper personal benefit. If Chapter 322B of the Minnesota Statutes is hereafter amended to authorize the further elimination or limitation of the liability of governors, then the liability of a governor of this limited liability company, in addition to the limitation on personal liability provided herein, shall be limited to the fullest extent permitted by Chapter 322B of the Minnesota Statutes, as amended. Any repeal or modification of this Article by the members of this limited liability company shall be prospective only and shall not adversely affect any limitation on the personal liability of a governor of this limited liability company existing at the time of such repeal or modification.

Article 8
Actions by Written Consent

Any action which is required or permitted to be taken by the governors of this limited liability company at a meeting and which does not require the approval of the members may be taken by written action signed by the number of governors that would be required to take the same action at a meeting at which all governors were present. However, if the action is one which must be approved by the members, such action may be taken only by written action signed by all of the governors then in office. Any action required or permitted to be taken at a meeting of the members may be taken by written action signed by members who possess the voting power that would be required to take the same action at a meeting of the members at which all members were present.

IN WITNESS WHEREOF, the undersigned has set her hand this 25th day of May, 2000.




Alice E. Campbell
Organizer

GP:701433 v151

STATE OF MINNESOTA
FILED

MAY 25 2000 


Secretary of State

FROM GRAY PLANT MOOTY & BENNETT

(WED) 6.28'00 15:28/ST. 15-27/NO. 4261724926 P 2

FROM : LAW OFFICES

POE NO. : 321 3237

JUN. 28 2000 01:23PM P2

ARTICLES OF AMENDMENT
OF
ARTICLES OF ORGANIZATION
OF
DAS DIRECT LLC

16766-LLC

I, the undersigned President of DAS Direct LLC, a Minnesota Limited liability company, do hereby certify that an Amendment to the Articles of Organization to change the name of the company was approved by written action of all the Members pursuant to Minnesota Statutes Sections 322B.16 and and Section 322B.15, as follows:

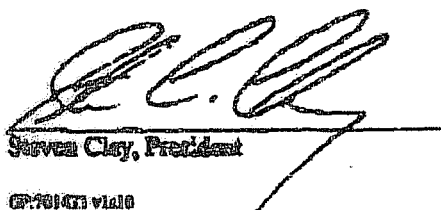
RESOLVED, That the Articles of Organization of this LLC be amended as follows:

Article 1
Name

The name of this Limited liability company is New Avenue Communications LLC.


FURTHER RESOLVED, That Steven Clay, the President of this Limited liability company, do, and hereby is, authorized and directed to make and execute Articles of Amendment embodying the foregoing resolution and to cause such Articles of Amendment to be filed with the office of the Secretary of State of the State of Minnesota.

Executed as of June 28, 2000.


Steven Clay, President
CP:70143 v1410

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUN 28 2000 JC


Secretary of State

058318

10766-LLC

CONSENT TO USE OF NAME

Office of the Secretary of State
Business Services Division
180 State Office Building
St. Paul MN 55115

1. Desired Name: New Access Communications Inc.
2. Conflicting Name: New Access Communications LLC
Address 510 Marquette Avenue South, Suite 206, Minneapolis, Minnesota 55407

Please have this portion completed by the holder of the conflicting name:

I hereby consent to the use of the desired name by:

Name: New Access Communications Inc.

Address: 510 Marquette Ave S., Suite 206, Minneapolis, Minnesota 55407

☒

unconditionally

☐

with the following conditions (which I acknowledge must be privately enforced)

I, the undersigned, certify that I am authorized to sign this consent, and further certify that I understand that by signing this consent I am subject to the penalties of perjury as set forth in section 609.48 as if I had signed this consent under oath.

Signed: 

Signature of Steven C. Clay

President of New Access Communications LLC

FOR USE BY SECRETARY OF STATE

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 11 2001

079809


Secretary of State

16766-I.LC

State of Minnesota

SECRETARY OF STATE

CERTIFICATE OF MERGER

I, Mary Kiffmeyer, Secretary of State of Minnesota, certify that: the documents required to effectuate a merger between the entities listed below and designating the surviving entity have been filed in this office on the date noted on this certificate, and the qualification of the individual merging entities to do business in Minnesota is terminated on the effective date of this merger.

Merger Filed Pursuant to Minnesota Statutes, Chapter: 322B

State of Formation and Names of Merging Entities:

MN: NEWTEL EUROPE MERGER COMPANY LLC
MN: NEW ACCESS COMMUNICATIONS LLC

State of Formation and Name of Surviving Entity:

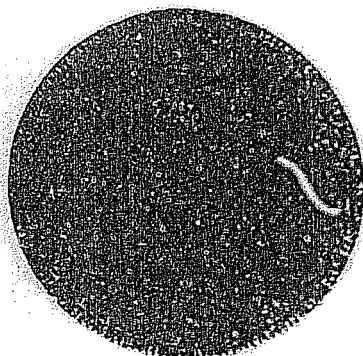
MN: NEW ACCESS COMMUNICATIONS LLC

Effective Date of Merger: January 31, 2001

Name of Surviving Entity After Effective Date of Merger:

NEW ACCESS COMMUNICATIONS LLC

This certificate has been issued on January 31, 2001



Mary Kiffmeyer
Secretary of State

16766-LLC

ARTICLES OF MERGER
OF
NEWTEL EUROPE MERGER COMPANY LLC
WITH AND INTO
NEW ACCESS COMMUNICATIONS LLC

THESE ARTICLES OF MERGER are made pursuant to Minnesota Statutes, Section 322B.73, and incorporate the Agreement and Plan of Merger attached as Exhibit A (the "Plan of Merger"). New Access Communications LLC, a Minnesota limited liability company (the "Surviving Company"), and NewTel Europe Merger Company LLC, a Minnesota limited liability company (the "Merged Company"), hereby certify as follows:

Article I
Board Approval

1.1) Approval by the Board of the Surviving Company. The Plan of Merger was approved on January 31, 2001 by the Board of Governors of the Surviving Company pursuant to Minnesota Statutes, Section 322B.72, Subd. 1.

1.2) Approval by the Board of the Merged Company. The Plan of Merger was approved on January 31, 2001 by the Board of Governors of the Merged Company pursuant to Minnesota Statutes, Section 322B.72, Subd. 1.

Article II
Member Approval

2.1) Approval by the Members of the Surviving Company. The Plan of Merger was approved on January 31, 2001 by the members of the Surviving Company pursuant to Minnesota Statutes, Section 322B.72, Subd. 2.

2.2) Approval by the Sole Member of the Merged Company. The Plan of Merger was approved on January 31, 2001 by the sole member of the Merged Company pursuant to Minnesota Statutes, Section 322B.72, Subd. 2.

NEWTEL EUROPE MERGER COMPANY LLC

Dated: January 31, 2001

By: 

Its Pres.

NEW ACCESS COMMUNICATIONS LLC

Dated: January 31, 2001

By: 

its CEO

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement") is effective as of January 31, 2001 (the "Effective Date"), by and among NewTel Europe LLC, a Minnesota limited liability company ("NewTel"), NewTel Europe Merger Company LLC, a Minnesota limited liability company and a wholly-owned subsidiary of NewTel ("NTEM"), and New Access Communications LLC, a Minnesota limited liability company ("New Access").

Background

The Board of Governors of NewTel, NTEM and New Access deem it advisable for the mutual benefit of NewTel, NTEM and New Access and their respective members that New Access acquire NTEM by the Merger of NTEM with and into New Access under the terms and conditions hereinafter set forth (the "Merger").

Agreement

In consideration of the premises and the agreements herein contained, the parties agree as follows:

Article I The Merger

NTEM shall be merged into New Access, and the existence of NTEM as a limited liability company shall cease and New Access shall continue as the surviving limited liability company (the "Surviving Company"). The Surviving Company shall become the owner, without other transfer, of all the rights and properties of NTEM, and the Surviving Company shall become subject to all the debts and liabilities of NTEM in the same manner as if the Surviving Company had itself incurred them.

Article II Effective Time of the Merger

The Merger shall be effective upon the later of: (a) filing of Articles of Merger with the Secretary of State of Minnesota or January 31, 2001 (the "Effective Time"). In each state where the approval of such state's Public Utility Commission or other similar regulatory authority is required as a result of the Merger but has not been obtained by the Effective Time, the Surviving Company shall not do business in such state until such required approval has been obtained.

Article III Articles of Organization

The Articles of Organization of the Surviving Company as of the Effective Time shall be the Articles of Organization of the Surviving Company after the Merger.

Article IV Bylaws; Registered Office

The Bylaws of the Surviving Company as of the Effective Time shall be the Bylaws of the Surviving Company after the Merger. The registered office of the Surviving Company after the Merger shall be at 510 Marquette Avenue South, Suite 200, Minneapolis, Minnesota 55402.

Article V Governors and Officers

The Board of Governors of the Surviving Company in office as of the Effective Time shall remain the Board of Governors of the Surviving Company after the Merger until their respective successors shall have been duly elected and qualified. Subject to the authority of the Board of Governors as provided by law and the Bylaws of the Surviving Company, the executive officers of the Surviving Company as of the Effective Time shall remain the executive officers of the Surviving Company after the Merger. The Board of Governors of NTEM and the executive officers of NTEM holding office as of the Effective Time shall be deemed to have resigned effective as of the Effective Time.

Article VI Conversion of Membership Interests and Warrants

At the Effective Time, without any further action on the part of NTEM, the Surviving Company or their members:

6.1) NTEM Membership Interests. Each membership interest of NTEM, issued and outstanding immediately prior to the Effective Time, shall cease to be outstanding and shall be converted into one membership interest of the Surviving Company.

6.2) Surviving Company's Membership Interests. Each membership interest of the Surviving Company, issued and outstanding immediately prior to the Effective Time, shall be converted and exchanged for one membership interest of NewTel multiplied by the Exchange Rate (as that term is defined in Section 6.4). No fractional membership interests of NewTel shall be issued as a result of the Merger. In lieu of such fractional membership interests, the number of membership interests of NewTel issued in connection with the Merger shall be rounded up to the next whole number. Such NewTel membership interests in all respects be subject to, and the owners thereof shall in all respects be bound by, the Articles of

Organization, Bylaws and Member Control Agreement of NewTel, as the same exists on the date of exchange and as they may be amended from time to time

6.3) Surviving Company's Warrants. Each unexpired and unexercised warrant to purchase membership interests of the Surviving Company (a "New Access Warrant") shall be automatically converted into a warrant to purchase a number of membership interests of NewTel (a "NewTel Warrant") equal to the number of membership interests of the Surviving Company that could have been purchased (assuming full vesting) under such New Access Warrant multiplied by the Exchange Rate (rounded to the nearest whole number of membership interests of NewTel) at an exercise price per NewTel membership interest equal to the exercise price per the Surviving Company membership interest contained in the New Access Warrant divided by the Exchange Rate (rounded to the nearest whole cent). Such NewTel Warrants shall otherwise be subject to the same terms and conditions as the New Access Warrants.

6.4) Exchange Rate. Each Unit of membership interest of the Surviving Company issued and outstanding immediately prior to the Effective Time shall be converted and exchanged for 22.69348 NewTel Units of membership interests (the "Exchange Rate").

Article VII Conditions Precedent to Merger

The respective obligations of each party to effect the Merger shall be subject to the fulfillment, at or prior to the Effective Time, that this Agreement has been duly approved by the requisite vote of the members of New Access and NTEM in accordance with the Minnesota Limited Liability Act as well as the applicable Articles of Organization and Bylaws, as amended, of each such company.

Article VIII Termination of Merger

This Agreement may be terminated at any time prior to the Effective Time, whether before or after any approval of the matters presented in connection with the Merger by the members of New Access or NTEM, by mutual written consent of the parties hereto.

Article IX General Provisions

This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement shall not be assigned without the prior written consent of the other parties. For the convenience of the parties and to facilitate the execution of this Agreement, any number of counterparts hereto may be executed and each such executed counterpart shall be deemed to be an original instrument. The headings of Articles hereunder are for convenience and reference only, and shall not be deemed a part of this Agreement. No delay or failure on the part of any party hereto to exercise any right.

power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder. This Agreement sets forth the parties' final and entire agreement with respect to its subject matter and supercedes any and all prior understandings and agreements. This Agreement shall not be modified or amended in any fashion except by an instrument in writing signed by the parties. All representations, warranties, covenants and agreements of the parties contained in this Agreement, or in any instrument, certificate, exhibit or other writing provided for in it, shall survive the execution of this Agreement and the consummation of the transactions contemplated herein. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota (without regard to principles of conflicts of laws) applicable to contracts made and to be performed within such state.

The parties hereto have caused this Agreement to be duly executed as of the Effective Date.

NewTel Europe LLC

By: 

Its:

New Access Communications LLC

By: 

Its: 

NewTel Europe Merger Company LLC


By: 

Its:

GP-760428 v6

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

Jan 31 2001


Secretary of State



STATE OF MINNESOTA

DEPARTMENT OF STATE

I hereby certify that this is a
true and complete copy of the
document as filed for record in
this office.

DATED 03-13-01

Mary Kiffmeyer

Secretary of State



By

Sharon Nelson

EXHIBIT B

Evidence of Authority to Transact Business Within the State of South Dakota

State of South Dakota



OFFICE OF THE SECRETARY OF STATE

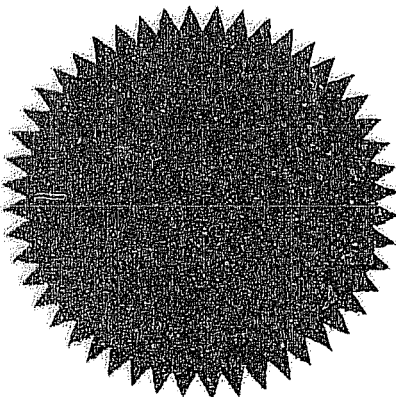
Certificate of Authority

Limited Liability Company

I, **JOYCE HAZELTINE**, Secretary of State of the State of South Dakota, hereby certify that duplicate of the Application for a Certificate of Authority of **NEW ACCESS COMMUNICATIONS LLC (MN)** to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Limited Liability Company Act, 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 for certificate of authority.

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 1, 2000.



A handwritten signature of Joyce Hazeltine in cursive script.

Joyce Hazeltine
Secretary of State

EXHIBIT C

Resumes

MANAGEMENT TEAM

NEW ACCESS COMMUNICATIONS LLC has assembled a strong senior management team with experience in the telecommunications market. Each individual brings a successful background, an entrepreneurial drive and a unique perspective based on experience in a variety of industries. Following are summaries of the backgrounds of key individuals.

Steven Clay, Carrier Services President

Mr. Clay spent the previous five years as founder and chief executive of a specialized law practice providing legal services primarily to the telecommunications industry. His law practice focused on certification and tariff issues at the state and local level, regulatory and tax issues, and consumer protection issues. Mr. Clay's client list included privately-held and public companies including long distance resellers, CLECs, Internet Service Providers, debit card providers and other telecommunications entities. Prior to attending law school, Mr. Clay worked in the marketing department of a software company which provided sophisticated accounting, billing and time management software to the legal industry. He is experienced in regulatory compliance issues, intellectual property issues, contracts and other areas of transactional law. Mr. Clay received a B.A. in Organizational Management from Gustavus Adolphus College and a J.D. *cum laude* from the University of Minnesota Law School, where he was an Associate Managing Editor of the Minnesota Law Review. His law review Note, Starstruck: The Overextension of Celebrity Publicity Rights in State and Federal Courts, was published in Volume 79 of the Minnesota Law Review (79 Minn. L. Rev. 485 (1994)). Mr. Clay co-founded New Access in June, 2000.

David Buss, Vice President

Mr. Buss spent the previous twelve years with Sencore Electronics, a large electronics firm based in Sioux Falls. He has great experience in technical sales, and has proven success in managing, training and motivating large sales forces for consistently profitable results. Mr. Buss received a B.S. Degree in Business Administration from National American University in Sioux Falls. Mr. Buss co-founded New Access in June, 2000.

Gregory Wilmes, Chief Operating Officer

Mr. Wilmes served as the general manager of NewTel Comunicaciones España, S.L., a long distance reseller based in Madrid, Spain, from January 1999 through May 2000. He was engaged in the private practice of law at his own firm in the Twin Cities, practicing primarily in the securities arbitration and appellate advocacy areas, from 1996 to 1998. Mr. Wilmes was a founding partner in the law firm of Briol & Wilmes, and practiced primarily in the commercial litigation and securities arbitration areas from 1988 to 1996. Mr. Wilmes received a B.S. degree from Mankato State University in Political Science (1977, *summa cum laude*), and a Juris Doctorate from the William Mitchell College of Law (1981, *magna cum laude*). Mr. Wilmes co-founded New Access in June, 2000.

Wayne Barthel, Chief Financial Officer

Mr. Barthel is a graduate of St. John's University in Collegeville, Minnesota, where he majored in accounting. Upon graduation, Mr. Barthel spent nine years with Ernst & Young in the audit and consulting staff. He spent approximately 40% of his time working with clients in the banking industry and served on the Minneapolis Banking Industry Committee. Mr. Barthel's responsibilities included reviewing the adequacy of loan loss reserves and compliance with various regulatory requirements. Mr. Barthel has served as Chief Financial Officer for businesses

in the health care and telecommunications industries, and also managed his own consulting firm specializing in financing and restructuring services to businesses in a variety of industries. Mr. Barthel is licensed as a certified public accountant in the state of Minnesota and is a member of the American Institute of Certified Public Accountants and the Minnesota Society of Certified Public Accountants. Mr. Barthel has spent the previous year as Chief Financial Officer and Vice President of Finance for Internet Financial Services LLC.

Technical Competence

As a non-facilities based reseller, New Access relies upon its underlying carriers for all technical matters relating to the transmission of telecommunications messages. Underlying carriers, primarily the Regional Bell Operating Companies, provide all network elements utilized by New Access in the provision of service. The RBOCs also handle all elements in the provision of emergency and 911 service.

New Access maintains its own in-house billing system and customer service department. New Access has assembled an impressive and highly qualified team of managers and staff level personnel serving in its customer service and information technology departments. Kristi Hicks, Customer Service Director, spent the previous three years as customer service director for a long distance service provider. Rick Gittins, IT Director, is an experienced computer programmer whose previous employment was as a computer consultant. Both Ms. Hicks and Mr. Gittins have been with New Access nearly since the Company's inception. New Access employs several customer service representatives who previously worked for Qwest or other local exchange or long distance carriers. New Access's IT Department also contains several software engineers who are experienced in designing and implementing complicated databases for telecommunications carriers.

EXHIBIT D

Recent Income Statement and Balance Sheet

New Access Financial Statements

BALANCE SHEET	June	July	August	September	October
ASSETS					
Cash	167,990	143,442	235,089	262,082	169,183
Accounts Receivable	-	-	3,169	24,089	55,941
Unearned liability	-	-	18,952	2,166	-
Allowance for Bad Debt	-	-	-	(854)	(2,288)
Total Current Assets	167,990	143,442	257,209	287,483	222,836
Property and Equipment	9,388	12,514	18,204	22,885	35,956
Accumulated Depreciation	(196)	(456)	(836)	(1,312)	(2,047)
Net Fixed Assets	9,192	12,057	17,369	21,572	33,909
Deposits	-	-	-	10,000	27,600
TOTAL ASSETS	177,182	155,500	274,578	319,056	284,345
LIABILITIES					
Accounts Payable	9,590	31,129	63,298	159,908	295,972
Due to IFS	1,160	4,760	10,600	18,477	23,489
Due to Access Anywhere	-	16,053	22,689	7,060	-
Due to ChoiceTel Inc.	-	-	45	726	(6,659)
Due to NewTel Europe	-	4,375	8,750	13,125	17,500
New Access Federal Taxes	-	-	-	433	1,713
New Access State Taxes	-	-	-	1,256	4,955
New Access Local Taxes	-	-	-	-	62
Accrued Expenses	-	-	-	1,700	19,314
Short Term Debt	90,000	90,000	90,000	90,000	90,000
Total Current Liabilities	100,750	146,317	195,382	292,684	446,346
EQUITY					
Member's Contribution	78,000	78,000	294,282	423,132	502,114
Net Income (Loss)	(1,567)	(68,819)	(215,085)	(195,750)	(624,115)
Total Capital	76,433	9,181	79,197	227,382	(122,001)
TOTAL LIABILITIES & EQUITY	177,182	155,500	274,578	319,056	284,345

New Access Financial Statements

INCOME STATEMENT	June	July	August	September	October	TOTAL
Local-MN	-	-	3,713	22,525	32,977	59,216
Local-MT	-	-	-	69	15,154	15,222
LD-MN	-	-	36	2,130	7,032	9,198
LD-MT	-	-	-	-	1,549	1,549
TOTAL REVENUE	-	-	3,749	24,724	56,712	85,185
Local Wholesale-MN	-	-	5,008	21,342	31,720	58,077
Local Wholesale-MT	-	-	-	17	15,922	15,940
LD Wholesale-MN	-	-	28	1,421	4,622	6,071
LD Wholesale-MT	-	-	-	-	1,034	1,034
TOTAL COST OF SALES	-	-	5,036	22,781	53,305	81,122
GROSS MARGIN	-	-	(1,288)	1,944	3,407	4,063
			-34%	8%	6%	5%
Switching charges-MN	-	-	4,366	3,321	3,045	10,732
Switching charges-MT	-	-	-	885	21,591	22,477
Fee for MN CLEC usage	-	-	45	681	(6,305)	(5,579)
Marketing expense	-	10,714	62,727	86,907	140,596	300,944
Bad debt expense	-	-	-	854	1,434	2,288
Salary expense	1,160	24,173	51,985	49,112	55,539	181,969
Verification/internal mrktg expense	-	1,423	3,028	10,868	10,252	25,570
Office expense	204	6,374	8,759	17,302	19,459	52,098
Rent expense	-	-	-	4,077	4,084	8,161
Telephone expense	8	1,676	2,468	3,037	6,908	14,097
Travel / M & E	-	205	4,340	785	3,733	9,064
Licensing fees	-	4,825	1,410	655	6,050	12,940
Depreciation expense	196	261	379	477	735	2,047
Legal and Professional expense	-	15,425	3,200	2,482	1,466	22,671
OPERATING EXPENSES	1,567	66,075	142,805	181,443	268,587	659,478
Other (Income) Expense:						
Interest expense	-	2,175	2,175	2,175	2,175	8,700

NET INCOME / LOSS

WISNET INCOME / LOSS

1,567	66,075	142,805	181,443	268,587	659,478
1,567	66,075	142,805	181,443	268,587	659,478

Footnote to Financial Statements On January 1, 2001, the company received a 21 percent equity investment from Merchants Capital Partners, L.P., a New York-based venture capital firm.

EXHIBIT E

Proposed Tariff

SOUTH DAKOTA TELECOMMUNICATIONS TARIFF

This Tariff contains the descriptions, regulations, and rates applicable to the furnishing of service and facilities for telecommunications services within the State of South Dakota by New Access Communications LLC ("Company"). This Tariff is on file with the South Dakota Public Utilities Commission, and copies may also be inspected, during normal business hours, at the following location: 120 South 6th Street, Suite 950, Minneapolis, MN 55402.

Issued:

Effective:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

CHECK SHEET

The title page and pages 1-40 inclusive of this Tariff are effective as of the date shown. Original and revised sheets, as named below, comprise all changes from the original Tariff in effect on the date indicated.

<u>SHEET</u>	<u>REVISION</u>	<u>SHEET</u>	<u>REVISION</u>
1	Original	22	Original
2	Original	23	Original
3	Original	24	Original
4	Original	25	Original
5	Original	26	Original
6	Original	27	Original
7	Original	28	Original
8	Original	29	Original
9	Original	30	Original
10	Original	31	Original
11	Original	32	Original
12	Original	33	Original
13	Original	34	Original
14	Original	35	Original
15	Original	36	Original
16	Original	37	Original
17	Original	38	Original
18	Original	39	Original
19	Original		
20	Original		
21	Original		

* New or Revised Sheets

Issued:

Effective:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950

CONCURRING, CONNECTING AND OTHER PARTICIPATING CARRIERS

CONCURRING CARRIERS:

No Concurring Carriers

CONNECTING CARRIERS:

No Connecting Carriers

OTHER PARTICIPATING CARRIERS:

No Participating Carriers

Issued:

Effective:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

TARIFF FORMAT

Sheet Numbering - Sheet numbers appear in the upper right hand corner of the page. Sheets are numbered sequentially and from time to time new pages may be added to the Tariff. When a new page is added between existing pages, a decimal is added to the preceding page number. For example, a new page added between Sheets 3 and 4 would be numbered 3.1.

Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

1.
2.1.
3.1.1.
3.1.1.A.
3.1.1.A.1.
3.1.1.A.1.(a).
3.1.1.A.1.(a).1.
3.1.1.A.1.(a).1.(i).
3.1.1.A.1.(a).1.(i).(1).

Check Sheets - When a Tariff filing is made with the Commission, an updated check sheet accompanies the Tariff filing. The check sheet lists the pages contained in the Tariff, with a cross reference to the current revision number. When new pages are added, the check sheet is changed to reflect the revision, all revisions made in a given filing are designated by an asterisk (*). There will be no other symbols used on this page if these are the only changes made to it. The Tariff user should refer to the latest check sheet to find out if a particular page is the most current on file with the Commission.

Issued:

Effective:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

APPLICABILITY

This Tariff contains the Service offerings, rates, terms and conditions applicable to the furnishing of ~~intrastate~~ interexchange telecommunications services within the State of South Dakota by New Access Communications LLC ("Company").

Issued:

Effective:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

EXPLANATION OF SYMBOLS

- (D) To signify discontinued material
- (I) To signify a rate or charge increase
- (M) To signify material relocated without change in text or rate
- (N) To signify new material
- (R) To signify a reduction
- (T) To signify a change in text but no change in rate or regulation

Issued:

Effective:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

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Issued:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950

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Issued:

Effective:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

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Issued:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

I. TECHNICAL TERMS AND ABBREVIATIONS

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

Access Coordination

Provides for the design, ordering, installation, coordination, pre-service testing, service turn-up and maintenance on a Company or Customer provided Local Access Channel.

Administrative Change

A change in Customer billing address or contact name.

Alternate Access

Alternate Access is a form of Local Access except that the provider of the Service is an entity, other than the Local Exchange Carrier, authorized or permitted to provide such Service. The charges for Alternate Access may be subject to private agreement rather than published or special tariff if permitted by applicable governmental rules.

Application for Service

A standard Company order form which includes all pertinent billing, technical and other descriptive information which will enable the Company to provide a communication Service as required.

ASR

ASR (Access Service Request) means an order placed with a Local Access Provider for Local Access.

Authorized User

A person, firm, corporation or other entity that either is authorized by the Customer to receive or send communications or is placed in a position by the Customer, either through acts or omissions, to send or receive communications.

Bandwidth

The total frequency band, in hertz, allocated for a channel.

Issued:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

Effective:

Bill Date

The date on which billing information is compiled and sent to the Customer.

Call

A completed connection between the Calling and Called Stations.

Called Station

The telephone number called.

Calling Station

The telephone number from which a Call originates.

Cancellation of Order

A Customer initiated request to discontinue processing a Service order, either in part or in its entirety, prior to its completion. Cancellation charges will be assessed for each Circuit-end or Dedicated Access line canceled from an order prior to its completion by the Company, under the following circumstances: (1) if the LEC has confirmed in writing to the Company that the Circuit-end or Dedicated Access line will be installed; or (2) if the Company has already submitted facilities orders to an interconnecting telephone company.

Channel or Circuit

A dedicated communications path between two or more points having a Bandwidth or Transmission Speed specified in this Tariff and selected by a Customer.

Commission

South Dakota Public Utilities Commission

Company

New Access Communications LLC

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Company Recognized National Holidays

The following are Company Recognized National Holidays determined at the location of the originator of the Call: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day.

The evening rate is used unless a lower rate would normally apply. When a Call begins in one rate period and ends in another, the rate in effect in each rate period applies to the portion of the Call occurring within that rate period. In the event that a minute is split between two rate periods, the rate in effect at the start of that minute applies.

Customer

The person, firm, corporation or governmental unit which orders Service and which is responsible for the payment of charges and for compliance with the Company's Tariff regulations. A Customer is considered to be an account for billing purposes. The term Customer also includes an entity that remains presubscribed to the Company Service after its account(s) are removed from the Company's billing system, subsequently continues to use Company's network, and is billed by a local exchange carrier for such use, or otherwise uses Service for which no other Customer is obligated to compensate Company.

Customer Premises/Customer's Premises

Locations designated by a Customer where Service is originated/terminated whether for its own communications needs or for the use of its resale customers.

DCS

DCS means Digital Cross-Connect System.

Dedicated Access/Special Access

Dedicated Local Access between the Customer's Premises or serving wire center and the Company's Point-of-Presence for origination or termination of Calls.

DS-0

DS-0 means Digital Signal Level 0 Service and is a 64 Kbps signal.

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DS-1

DS-1 means Digital Signal Level 1 Service and is a 1.544 Mbps signal.

DS-0 with VF Access

DS-0 Service with VF Local Access facilities provides for the transmission of ~~analog voice and/or~~ data within 300 Hz to 3000 Hz frequency range.

DS-0 with DDS Access

DS-0 Service with DDS Access facilities provides for the transmission of digital data at speeds ~~2.4~~ 4.8, 9.6 or 56 Kbps.

Due Date

The Due Date is the date on which payment is due.

Expedite

A Service order initiated at the request of the Customer that is processed in a time period shorter than the Company's standard Service interval.

FCC

Federal Communications Commission

Individual Case Basis (ICB)

Individual Case Basis (ICB) determinations involve situations where complex Customer-specific Company arrangements are required to satisfactorily serve the Customer. The nature of such Service requirements makes it difficult or impossible to establish general tariff provisions for such circumstances. When it becomes possible to determine specific terms and conditions for such offerings, they will be offered pursuant to such terms and conditions.

Installation

The connection of a Circuit, Dedicated Access line, or port for new, changed or an ~~addressed~~ Service.

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Interexchange Service

Interexchange Service means that portion of a communications channel between a Company-designated Point-of-Presence in one exchange and a Point-of-Presence in another exchange.

Interruption

Interruption shall mean a condition whereby the Service or a portion thereof is interrupted, beginning at the time of notice by the Customer to Company that such Service is interrupted and ending at the time of restoration.

Kbps

Kilobits per second.

LATA (Local Access Transport Area)

A geographical area established for the provision and administration of communications Service of a local exchange company.

Local Access

Local Access means the Service between a Customer Premises and a Company-designated Point-of-Presence.

Local Access Provider

Local Access Provider means an entity providing Local Access.

Local Exchange Carrier (LEC)

The local telephone utility that provides telephone exchange services.

Mbps

Megabits per second.

Multiplexing

Multiplexing is the sequential combining of lower bit rate Private Line Services onto a higher bit rate Private Line Service for more efficient facility capacity usage or vice versa.

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N/A

Not available.

Nonrecurring Charges

Nonrecurring Charges are one-time charges.

Payment Method

The manner which the Customer designates as the means of billing charges for Calls using the Company's Service.

Physical Change

The modification of an existing Circuit, Dedicated Access line or port, at the request of the Customer, requiring some Physical Change or retermination.

Point-of-Presence (POP)

A Company-designated location where a facility is maintained for the purpose of providing access to its Service.

Primary Route

The route which, in the absence of Customer-designated routing or temporary re-routing, would be used by the Company in the provision of Service.

Private Line

A dedicated transmission channel furnished to a customer without intermediate switching arrangements for full-time customer use.

Private Line Service

A dedicated full-time transmission Service utilizing dedicated access arrangements.

Rate Center

A specified geographical location used for determining mileage measurements.

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Requested Service Date

The Requested Service Date is the date requested by the Customer for commencement of Service and agreed to by the Company.

Restore

To make Service operative following an interruption by repair, reassignment, re-routing, substitution of component parts, or otherwise, as determined by the carrier(s) involved.

Route Diversity

Two channels which are furnished partially or entirely over two physically separate routes.

Service

Service means any or all Service(s) provided pursuant to this Tariff.

Service Commitment Period

The term elected by the Customer and stated on the Service order during which the Company will provide the Services subscribed to by the Customer. The term can be monthly or in the case of Private Line Services for a period of up to 5 years.

Special Promotional Offerings

Special trial offerings, discounts, or modifications of its regular Service offerings which the Company may, from time to time, offer to its Customers for a particular Service. Such offerings may be limited to certain dates, times, and locations.

Start of Service Date

The Requested Service Date or the date Service first is made available by the Company whichever is later.

Tariff

The current Intrastate Services Tariff and effective revisions thereto filed by the Company with the Commission.

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Transmission Speed

Data transmission speed or rate, in bits per seconds (bps).

Two-Way Conversation

A Two-Way Conversation is a telephone conversation between or among two or more parties.

VF

VF is voice frequency or voice-grade Service designed for private-line Service. Normal transmission is in the 300 hertz to 3000 hertz frequency band.

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2. RULES AND REGULATIONS

2.1 Description and Limitations of Services

2.1.1. ~~Instate~~ Telecommunications Service ("Service") is the furnishing of Company communication Services contained herein between specified locations under the terms of this Tariff.

2.1.2. Any member of the general public (including any natural person or legally organized entity such as a corporation, partnership, or governmental body) is entitled to obtain Service under this Tariff, provided that the Company reserves the right to deny Service: (A) to any Customer that, in the Company's reasonable opinion, presents an undue risk of nonpayment, (B) in circumstances in which the Company has reason to believe that the use of the Service would violate the provisions of this Tariff or any applicable law or if any applicable law restricts or prohibits provision of the Service, or (C) if insufficient facilities are available to provide the Service (in such cases Company shall make best efforts to accommodate the needs of all potential Customers by means of facility improvements or purchases, of capacity, if such efforts will, in the Company's opinion, provide the Company with a reasonable return on its expenditures), but only for so long as such unavailability exists.

2.1.3. Company, when acting at the Customer's request and as its authorized agent, will make reasonable efforts to arrange for Service requirements, such as special routing, Diversity, Alternate Access, or circuit conditioning.

2.1.4. Service is offered in equal access exchanges subject to the availability of facilities and the provisions of this Tariff. Company reserves the right to refuse to provide Service to or from any location where the necessary facilities and/or equipment are not available.

2.1.5. Service may be discontinued after five business days written notice to the Customer if:

2.1.5.A. the Customer is using the Service in violation of this Tariff; or

2.1.5.B. the Customer is using the Service in violation of the law or Commission regulation.

2.1.6. Service begins on the date that billing becomes effective and is provided on the basis of a minimum period of at least one month, 24 hours per day. For the purposes of computing charges in this Tariff, a month is considered to have 30 days.

2.1.7. Service will be provided until canceled, by the Customer on not less than thirty (30) days' written notice from the date of postmark on the letter giving notice of cancellation.

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2.1.8 Nothing herein, or in any other provision of this Tariff, or in any marketing materials issued by the Company shall give any person any ownership, interest, or proprietary right in any code or ESN number issued by the Company to its Customers.

2.1.9 The Company reserves the right to discontinue furnishing Services or billing options, upon written notice, when necessitated by conditions beyond its control. Conditions beyond the Company's control include, but are not limited to, a Customer's having Call volume or a calling pattern that results, or may result, in network blockage or other Service degradation which adversely affects Service to the calling party, the Customer, or other Customers of the Company.

2.1.10 Except as otherwise provided in this Tariff or as specified in writing by the party entitled to receive Service, notice may be given orally or in writing to the persons whose names and business addresses appear on the executed Service order and the effective date of any notice shall be the date of delivery of such notice, not the date of mailing. By written notice, Company or Customer may change the party to receive notice and/or the address to which such notice is to be delivered. In the event no Customer or Company address is provided on the executed Service order, notice shall be given to the last known business address of Customer or, as appropriate.

2.2 Other Terms and Conditions

2.2.1 The name(s) of the Customer(s) desiring to use the Service must be stipulated in the Application for Service.

2.2.2 The Customer agrees to operate the Company provided equipment in accordance with instructions of the Company or the Company's agent. Failure to do so will void the Company liability for interruption of Service and may make Customer responsible for damage to equipment pursuant to Section 2.2.3 below.

2.2.3 Customer agrees to return to the Company all Company-provided equipment delivered to Customer within five (5) days of termination of the Service in connection with which the equipment was used. Said equipment shall be in the same condition as when delivered to Customer, normal wear and tear only excepted. Customer shall reimburse the Company, upon demand, for any costs incurred by the Company due to Customer's failure to comply with this provision.

2.2.4 A Customer shall not use any service-mark or trademark of the Company or refer to the Company in connection with any product, equipment, promotion, or publication of the Customer without prior written approval of the Company.

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- 2.2.9 In the event suit is brought or any attorney is retained by the Company to enforce the terms of this Tariff, the Company shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith.
- 2.2.10 The provision of Service will not create a partnership or joint venture between the Company and the Customer nor result in joint Service offerings to their respective Customers.
- 2.2.11 The rate or volume discount level applicable to a Customer for a particular Service or Services shall be the rate or volume discount level in effect at the beginning of the monthly billing period applicable to the Customer for the particular Service or Services. When a Service is subject to a minimum monthly charge, account charge, port charge or other recurring charge or Nonrecurring Charge for both intrastate and interstate Service, only one such charge shall apply per account and that charge shall be the interstate charge.
- 2.2.12 Service requested by Customer and to be provided pursuant to this Tariff shall be requested on Company Service Order forms in effect from time to time or Customer's forms accepted in writing by an authorized headquarters representative of the Company (collectively referred to as "Service Orders").
- 2.2.13 If an entity other than the company (e.g., another carrier or a supplier) imposes charges on the Company in connection with a Service that entity's charges will be passed through to the Customer also.
- 2.2.14 The Service Commitment Period for any Service shall be established by the Service Order relevant thereto and commence on the Start of Service Date. Upon expiration, each Service Commitment Period for such Service shall automatically be extended subject to written notice of termination by either Company or Customer as of a date not less than thirty (30) days after delivery of said notice to the other. The charges for Interexchange Service during any such extension shall not exceed the then current Company month-to-month charges applicable to such Service.
- 2.3 Liability
- 2.3.1 Except as provided otherwise in this Tariff, the Company shall not be liable to Customer or any other person, firm or entity for any failure of performance hereunder if such failure is due to any cause or causes beyond the reasonable control of the Company. Such causes shall include, without limitation, acts of God, fire, explosion, vandalism, cable cut, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States government or of any other government or of any civil or military authority, national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, supplier failures, shortages, breaches or delays, or preemption of existing Services to restore service in compliance with Part 64, Subpart D, Appendix A, of the FCC's Rules and Regulations.

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- 211 The Company is not liable for any act or omission of any other company or companies (including any Company affiliate that is a participating or concurring carrier) furnishing a portion of the Service or facilities, equipment, or Services associated with such Service.
- 212 The Customer is responsible for taking all necessary legal steps for interconnecting the Customer provided terminal equipment with the Company facilities. The Customer shall ensure that the signals emitted into the Company's network do not damage Company equipment, injure personnel or degrade Service to other Customers. The Customer is responsible for securing all licenses, permits, rights-of-way, and other arrangements necessary for such interconnection. In addition, the customer shall comply with applicable LLC signal power limitations.
- 214 The Company may rely on Local Exchange Carriers or other third parties for the performance of other Services such as Local Access. Upon Customer request and execution and delivery of appropriate authorizing documents, the Company may act as agent for Customer in obtaining such other Services. Customer's liability for charges hereunder shall not be reduced by untimely Installation or non-operation of Customer provided facilities and equipment.
- 215 The failure to give notice of default, to enforce or insist upon compliance with any of the terms or conditions herein, the waiver of any term or conditions herein, or the granting of an extension of time for performance by the Company or the Customer shall not constitute the permanent waiver of any term or condition herein. Each of the provisions shall remain at all time in full force and effect until modified in writing.
- 216 In the event parties other than Customer (e.g., Customer's customers) shall have use of the Service directly or indirectly through Customer, then Customer agrees to forever indemnify and hold Company and any affiliated or unaffiliated third-party, third-party provider or operator of facilities employed in provision of the Service harmless from and against any and all claims, demands, suits, actions, losses, damages, assessments or payments which may be asserted by said parties arising out of or relating to any Defects.
- 217 In the event that Company is required to perform a Circuit redesign due to inaccurate information provided by the Customer; or, circumstances in which such costs and expenses are caused by the Customer or reasonably incurred by the Company for the benefit of the Customer, the Customer is responsible for the payment of all such charges.

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2.4. Cancellation of Service by a Customer

- 2.4.1. If a Customer cancels a Service Order before the Service begins, before completion of the Minimum Period, or before completion of some other period mutually agreed upon by the Customer and the Company, a charge will be levied upon the Customer for the nonrecoverable portions of expenditures or liabilities incurred expressly on behalf of the Customer by the Company and not fully reimbursed by Installation and monthly charges. If, based on a Service order by a Customer, any construction has either begun or been completed, but no Services provided, the nonrecoverable costs of such construction shall be borne by the Customer.
- 2.4.2. Upon thirty (30) days' prior written notice, either Customer or Company shall have the right, without cancellation charge or other liability, to cancel the affected portion of the Service, if the Company is prohibited by governmental authority from furnishing said portion, or if any material rate or term contained herein and relevant to the affected Service is substantially changed by order of the highest court of competent jurisdiction to which the matter is appeal, the Federal Communications Commission, or other local, state or federal government authority.

2.5. Cancellation for Cause by the Company

- 2.5.1. Upon nonpayment of any sum owing to the Company, or upon a violation of any of the provisions governing the furnishing of Service under this Tariff, the Company may, upon five business days written notification to the Customer, except in extreme cases, without incurring any liability, immediately discontinue the furnishing of such Service. The written notice may be separate and apart from the regular monthly bill for service. Customer shall be deemed to have canceled Service as of the date of such disconnection and shall be liable for any cancellation charges set forth in this Tariff.
- 2.5.2. Without incurring any liability, the Company may discontinue the furnishing of Service(s) to a Customer upon five business days written notice if the Company deems that such action is necessary to prevent or to protect against fraud or to otherwise protect its personnel, agents, facilities or Services under the following circumstances, except under extreme cases where the customer may be disconnected immediately and without notice:
- 2.5.2.A. if the Customer refuses to furnish information to the Company regarding the Customer's credit-worthiness, its past or current use of common carrier communications Services or its planned use of Service(s);
- 2.5.2.B. if the Customer provides false information to the Company regarding the Customer's identity, address, credit-worthiness, past or current use of Customer communications Services, or its planned use of the Company Service(s);

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- 2.5.2.C. if the Customer states that it will not comply with a request of the Company for reasonable security for the payment for Service(s);
- 2.5.2.D. if the Customer has been given five business days written notice in a separate mailing by the Company of any past due amount (which remains unpaid in whole or in part) for any of the Company's communications Services to which the Customer either subscribes or had subscribed or used;
- 2.5.2.E. in the event of unauthorized use.
- 2.5.2.F. Following the disconnection of service for any of these reasons, the Company or the local exchange utility acting as Company agent, will notify the telephone user/customer that service was disconnected and why. The notice will include all reasons for the disconnection and will include a toll-free number where an end user/customer can obtain additional information. Notice shall be deemed given upon deposit, postage prepaid, in the U.S. Mail to the end user's/customer's last known address and in compliance with the Commission's rules.
- 2.5.3. The discontinuance of Service(s) by the Company pursuant to this Section does not relieve the Customer of any obligations to pay the Company for charges due and owing for Service(s) furnished up to the time of discontinuance. The remedies set forth herein shall not be exclusive and the Company shall at all times be entitled to all rights available to it under either law or equity.
- 2.6. Credit Allowance
- 2.6.1. Credit allowance for the interruption of Service is subject to the general liability provisions set forth in this Tariff. Customers shall receive no credit allowance for the interruption of service which is due to the Company's testing or adjusting, negligence of the Customer, or to the failure of channels or equipment provided by the Customer. The Customer should notify the Company when the Customer is aware of any interruption in Service for which a credit allowance is desired. Before giving such notice, the Customer shall ascertain that the trouble is not being caused by any action or omission within Customer's control, or is not in wiring or equipment, if any, furnished by the Customer in connection with the Company's Services.
- 2.6.2. No credit is allowed in the event service must be interrupted in order to provide routine service quality or related investigations.

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2.6.3. No credit shall be allowed:

2.6.3.A. For failure of services or facilities of Customer; or

2.6.3.B. For failure of services or equipment caused by the negligence or willful acts of Customer.

2.6.4. Credit for an interruption shall commence after Customer notifies Company of the interruption and ceases when services have been restored.

2.6.5. Credits are applicable only to that portion of Service interrupted.

2.6.6. For purposes of credit computation, every month shall be considered to have 720 hours.

2.6.7. No credit shall be allowed for an interruption of a continuous duration of less than two hours.

2.6.8. The Customer shall be credited for an interruption of two hours or more at a rate of 1/720th of the monthly recurring charge for the service affected for each hour or major fraction thereof that the interruption continues. Calculations of the credit shall be made in accordance with the following formula.

Credit Formula:

$$\text{Credit} = \frac{A}{720} \times B$$

"A" = outage time in hours

"B" = total monthly charge for affected facility

2.7. Use of Service

2.7.1 The Services offered herein may be used for any lawful purpose, including residential, business, governmental, or other use. There are no restrictions on sharing or resale of Services. However, the Customer remains liable for all obligations under this Tariff notwithstanding such sharing or resale and regardless of the Company's knowledge of same. The Company shall have no liability to any person or entity other than the Customer and only as set forth in Section 2.3. The Customer shall not use nor permit others to use the Service in a manner that could interfere with Services provided to others or that could harm the facilities of the Company or others.

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173 Service furnished by the Company may be arranged for joint use or authorized use. The joint user or Authorized User shall be permitted to use such Service in the same manner as the Customer, but subject to the following:

173.A. One joint user or Authorized User must be designated as the Customer.

173.B. All charges for the Service will be computed as if the Service were to be billed to one Customer. The joint user or Authorized User which has been designated as the Customer will be billed for all components of the Service and will be responsible for all payments to the Company. In the event that the designated Customer fails to pay the Company, each joint user or Authorized User shall be liable to the Company for all charges incurred as a result of its use of the Company's Service.

174 In addition to the other provisions in this Tariff, Customers reselling Company Services shall be responsible for all interaction and interface with their own subscribers or customers. The provision of the Service will not create a partnership or joint venture between Company and Customer nor result in a joint communications Service offering to the Customers of either the Company or the Customer.

175 Service furnished by the Company shall not be used for any unlawful or fraudulent purposes.

176 The Customer will be billed directly by the LEC for certain Dedicated Access arrangements selected by the Customer for the provisioning of direct access arrangements. In those instances where the Company at the Customer's request may act as agent in the ordering of such arrangements, the Company will bill the Customer Local Access charges.

18 Payment Arrangements

18.1 The Customer is responsible for payment of all charges for Services furnished to the Customer or its joint or Authorized Users. This responsibility is not changed due to any use, misuse, or abuse of the Customer's Service or Customer provided equipment by third parties, the Customer's employees, or the public.

18.2 The Company's bills are due upon receipt. Amounts not paid within 30 days from the Bill Date of the invoice will be considered past due. Customers will be assessed a late fee on past due amounts in the amount not to exceed the maximum lawful rate under applicable state law. If a Customer presents an undue risk of nonpayment at any time, the Company may require that Customer to pay its bills within a specified number of days and to make such payments in cash or the equivalent of cash.

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- 18.1 In determining whether a Customer presents an undue risk of nonpayment, the Company shall consider the following factors: (A) the Customer's payment history (if any) with the Company and its affiliates, (B) Customer's ability to demonstrate adequate ability to pay for the Service, (C) credit and related information provided by Customer, lawfully obtained from third parties or publicly available, and (D) information relating to Customer's management, owners and affiliates (if any).
- 18.2 Disputes with respect to charges must be presented to the Company in writing within 180 days from the date the invoice is rendered or such invoice will be deemed to be correct and binding on the Customer.
- 18.3 If a LEC has established or establishes a Special Access surcharge, the Company will bill the surcharge beginning on the effective date of such surcharge for Special Access arrangements presently in Service. The Company will cease billing the Special Access surcharge upon receipt of an Exemption Certificate or if the surcharge is removed by the LEC.
- 18.4 In the event the Company incurs fees or expenses, including attorney's fees, in collecting, or attempting to collect, any charges owed the Company, the Customer will be liable to the Company for the payment of all such fees and expenses reasonably incurred.
- 18.7 Company will not require deposits or advance payments by Customers for Services.
19. Assignment
- 19.1 The obligations set forth in this Tariff shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns, provided, however, the Customer shall not assign or transfer its rights or obligations without the prior written consent of the Company.
20. Tax and Fee Adjustments
- 20.1 All state and local taxes (i.e., gross receipts tax, sales tax, municipal utilities tax) are listed as separate line items and are not included in the quoted rates.
- 20.2 If at any future time a municipality acquires the legal right to impose an occupation tax, license tax, permit fee, franchise fee or other similar charge upon the Carrier, and imposes the same by ordinance or otherwise, such taxes, fees or charges shall be billed to the end users receiving service within the territorial limits of such municipality. Such billing shall allocate the tax, fee or charge among end users uniformly on the basis of each end user's monthly charges for the types of service made subject to such tax, fee or charge.

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§ 10.3 If at any future time a county or other local taxing authority acquires the legal right to impose an occupation tax, license tax, permit fee, franchise fee or other similar charge upon the Carrier, and imposes the same by ordinance or otherwise, such taxes, fees or charges shall be billed to the end users receiving service within the territorial limits of such county or other taxing authority. Such billing shall allocate the tax, fee or charge among end users uniformly on the basis of each end user's monthly charges for the types of service made subject to such tax, fee or charge.

§ 10.4 When utility or telecommunications assessments, franchise fees, or privilege, license, occupational, excise, or other similar taxes or fees, based on interstate or intrastate receipts are imposed by certain taxing jurisdictions upon the Company or upon local exchange companies and passed on to the Company through or with interstate or intrastate access charges, the amounts of such taxes or fees will be billed to Customers in such a taxing jurisdiction on a prorated basis. The amount of charge that is prorated to each Customer's bill is determined by the interstate or intrastate telecommunications service provided to and billed to an end user/customer service location in such a taxing jurisdiction with the aggregate of such charges equal to the amount of the tax or fee imposed upon or passed on to the Company.

§ 10.5 When any municipality, or other political subdivision, local agency of government, or department of public utilities imposes upon and collects from the Company a gross receipts tax, occupation tax, license tax, permit fee, franchise fee or regulatory fee, such taxes and fees shall, insofar as practicable, be billed pro rata to the Company's Customers receiving service within the territorial limits of such municipality, other political subdivision, local agency of government, or public utility commission.

§ 10.6 The Company may adjust its rates and charges or impose additional rates and charges on its Customers in order to recover amount it is required by governmental or quasi-government authorities to collect from or pay to others in support of statutory or regulatory programs. Examples of such programs include, but are not limited to, the Universal Service Fund, the Primary Interexchange Carrier Charge, and compensation to payphone service providers for use of their payphones to access the Company's services.

§ 11 Method for Calculation of Airline Mileage

§ 11.1 The airline mileage between two cities can be calculated using the Vertical (V) and Horizontal (H) coordinates of the serving wire centers associated with the Company's POP locations. The method for calculating the airline mileage is obtained by reference to AT&T's Tariff F.C.C. No. 10 in accordance with the following formula:

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the square root of:
$$\frac{(V1-V2)^2 + (H1-H2)^2}{10}$$

where V1 and H1 correspond to the V&H coordinates of City 1 and V2 and H2 correspond to the V&H coordinates of City 2.

Example:

	<u>V</u>	<u>H</u>
City 1	5004	1406
City 2	5987	3424

the square root of:
$$\frac{(5004-5987)^2 + (1406-3424)^2}{10}$$

The result is 709.83 miles. Any fractional miles are rounded to the next higher whole number; therefore, the airline mileage for this example is 710 miles.

212 Time of Day Rate Periods

212.1 Time of Day Rate Periods are determined by the time of day at the location of the Calling Station.

The rates shown in Section 4 apply as follows:

DAY: From 8:01 AM to 5:00 PM Monday - Friday

EVENING: From 5:01 PM to 11:00 PM Monday - Friday and Sunday

NIGHT:

WEEKEND: From 11:01 PM to 8:00 AM Everyday
From 8:01 AM to 11:00 PM Saturday
From 8:01 AM to 5:00 PM Sunday

213 Special Customer Arrangements

213.1 In cases where a Customer requests a special or unique arrangement which may include engineering, conditioning, installation, construction, facilities, assembly, purchase or lease of facilities and/or other special Services not offered under this Tariff, the Company, at this option, may provide the requested Services. Appropriate recurring charges and/or Nonrecurring Charges and other terms and conditions will be developed for the Customer for the provisioning of such arrangements.

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Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

2.14. Inspection

- 2.14.1 The Company may, upon notice, make such tests and inspections as may be necessary to determine that the requirements of this Tariff are being complied with in the Installation, operation or maintenance of Customer or the Company equipment. The Company may interrupt the Service at any time, without penalty to the Company, should Customer violate any provision herein.

2.15. Customer Inquires and Complaints

- 2.15.1. Customers may direct inquiries and complaints to the Company or the Commission by using the address and toll free number set forth below:

New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402
(877) 330-4937

South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501
(800) 332-1782

Issued:

Effective:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

DESCRIPTION OF SERVICES

1.1 Wide Area ("WATS") and Message ("MTS") Toll Services

1.1.1 The Company offers WATS and MTS intrastate interexchange long distance service utilizing switched or dedicated access arrangements between the Customers Premises and the Company's facilities for call origination. Call termination is completed through a combination of Company facilities and LEC switched access arrangements.

1.2 Switched Inbound Service

1.2.1 Switched inbound service permits inward calling (via 800 codes) to a specific location utilizing premium switched, Feature Group D access on both ends.

1.3 Switched Outbound Service

1.3.1 Switched outbound services permits outward calling utilizing premium switched Feature Group D access on both the originating and terminating ends.

1.4 Dedicated Inbound Service

1.4.1 Dedicated inbound service permits inward calling (via 800 codes) to a specific location featuring the use of a dedicated, special access type connection on the terminating end. The Customer shall be responsible for all LEC charges in addition to the Recurring, Non-recurring and Usage charges set forth hereinafter.

1.5 Dedicated Outbound Service

1.5.1 Dedicated outbound service permits outward calling to stations in diverse service areas. Dedicated outbound service is distinguished from other services by the existence of a dedicated, special access connection on one end. The Customer shall be responsible for all LEC charges in addition to the Recurring, Non-recurring and Usage charges set forth hereinafter.

1.6 Calling Card Service

1.6.1 The Company's Calling Card Service permits Customers to place long distance calls utilizing Company issued Calling Cards for billing purposes.

~~Revised~~

Effective:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

17 Timing of Calls

17.1. Long distance usage charges are based on the actual usage of the Company network. Chargeable time begins when a connection is established between the Calling Station and the Called Station. Chargeable time ends when either party "hangs up" thereby releasing the network connection.

17.2. Unless otherwise specified in this Tariff, the minimum call duration for billing purposes is sixty (60) seconds. In addition, unless otherwise specified in this Tariff, usage is measured thereafter in sixty (60) second increments and rounded to the next higher sixty (60) second period.

18 Minimum Call Completion Rate

18.1. A Customer can expect a call completion rate of not less than 90% during peak use periods for all services.

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Effective:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

4. RATES AND CHARGES

4.1 Usage Rates

- 4.1.1. The following are the per minute usage charges which apply to all calls. These charges are in addition to the Non-recurring Charges and Recurring Charges referred to herein.

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New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

4.2 Switched Inbound Usage RatesBUSINESS DAY
EVENING/NIGHT/WEEKEND

Mileage	Initial 60 Seconds	Additional 60 Seconds
ALL	0.25	0.25

Issued:

Effective:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

4.3. Switched Outbound Usage RatesBUSINESS DAY
EVENING/NIGHT/WEEKEND

Mileage	Initial 60 Seconds	Additional 60 Seconds
All	0.25	0.25

Issued:

Effective:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

4.4. Dedicated Inbound Usage RatesBUSINESS DAY
EVENING/NIGHT/WEEKEND

Mileage	Initial 60 Seconds	Additional 60 Seconds
All	0.25	0.25

Issued:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

4.5. Dedicated Outbound Usage RatesBUSINESS DAY
EVENING/NIGHT/WEEKEND

Mileage	Initial 60 Seconds	Additional 60 Seconds
ALL	0.25	0.24

Issued:

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New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

4.6. Calling Card Usage RatesBUSINESS DAY
EVENING/NIGHT/WEEKEND

Mileage	Initial 60 Seconds	Additional 60 Seconds
ALL	0.25	0.25

Issued:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

4.7. Recurring Charges

4.7.1. Reserved for future use.

4.8. Non-recurring Charges

4.8.1. Reserved for future use.

4.9. Special Promotional Offering

4.9.1. The Company may from time to time engage in Special Promotional Offerings or Trial Service Offerings limited to certain dates, times or locations designed to attract new customers. The Company will not discriminate in its Special Promotional Offerings or Trial Service Offerings on the basis of race, gender, age, or ethnicity.

4.11. Payphone Use Service Charge

- 4.11.1. A Payphone Use Service Charge applies to each completed interLATA and intraLATA non-sent paid message made over a pay phone owned by a utility or Customer Owned Pay Telephone (COPT) Service. This includes calling card service, collect calls, calls billed to a third number, completed calls to Directory Assistance and Prepaid Card Service calls. This charge is collected on behalf of the pay phone owner. All Customers will pay the Company a per call service charge of \$0.45.

4.12. Universal Connectivity Charge

- 4.12.1. Services provided pursuant to this tariff are subject to an undiscountable monthly Universal Connectivity Charge. This monthly service charge is equal to 5.0% of the Customer's total net intrastate, interstate and international charges, after application of all applicable discounts and credits.

4.12.1.A. The Company will waive the Universal Connectivity Charge with respect to specifically identified Company charges to the extent that the Customer demonstrates to the Company's reasonable satisfaction that:

1. the Customer has filed a Universal Service Worksheet with the Universal Service Administrator covering the twelfth month prior to the month for which the Customer seeks the waiver;
2. the charges with respect to which the waiver is sought are for services purchased by Customer for resale; and
3. the Customer will file a Universal Service Worksheet with the Universal Service Administrator in which the reported billed revenues will include all billed revenues associated with the Customer's resale of services purchased from the Company.

4.12.1.B. The Universal Connectivity Charge will not be waived with respect to:

1. charges for services purchased by the Customer for its own use as an end user; or
2. charges for which the bill date is on, prior to, or within fifteen days after, the date on which the Customer applies for a waiver with respect to those charges.

Issued:

Effective:

Issued by: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, MN 55402

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of March 29, 2001 through April 04, 2001

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

NATURAL GAS

GE01-002 In the Matter of the Filing by MidAmerican Energy Company for Approval of Tariff Revisions.

MidAmerican Energy Company has filed to revise its South Dakota Gas and Electric Tariff Sample Bill Form. These changes to the bill format eliminate the gas transport charge line item and update the company contact information.

Staff Analyst: Keith Senger
Staff Attorney: Kelly Frazier
Date Docketed: 03/30/01
Intervention Deadline: 04/13/01

TELECOMMUNICATIONS

TC01-032 In the Matter of the Filing for Approval of a First Amendment to an Interconnection Agreement between Qwest Corporation and TW Wireless, L.L.C.

On March 29, 2001 a First Amendment to an Interconnection Agreement between Qwest Corporation (Qwest) and TW Wireless, L.L.C. (TW) was filed with the Commission for approval. The Agreement is a negotiated agreement between the parties and was originally approved by the Commission effective February 11, 2000 in docket TC99-123. According to the parties the Amendment is made to include the addition of a Single Point of Presence (SPOP) in the LATA language set forth in Attachment 1 to the Amendment. 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 April 18, 2001. 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 D. Frazier
Date Docketed: 03/29/01
Initial Comments Due: 04/18/01

TC01-033 In the Matter of the Application of Quick Tel, Inc. for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota.

Quick Tel, Inc. has filed an application for a Certificate of Authority to provide interexchange telecommunications services in South Dakota. Quick Tel is a reseller and intends to offer 1* and 101XXXX outbound dialing, 800/888 toll-free inbound dialing, directory assistance, data services, travel card service, and prepaid calling card service throughout South Dakota.

Staff Analyst: Michele Farris
Staff Attorney: Karen Cremer
Date Docketed: 03/30/01
Intervention Deadline: 04/20/01

TC01-034 In the Matter of the Filing for Approval of a Second Amendment to an Interconnection Agreement between Qwest Corporation and NewPath Holdings, Inc.

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

ATTORNEYS AT LAW

900 COMERICA BUILDING
KALAMAZOO, MICHIGAN 49007-4752
TELEPHONE (616) 381-8844
FAX (616) 349-8525

GEORGE H. LENNON	ROBERT M. TAYLOR
DAVID G. CROCKER	RON W. KIMBREL
MICHAEL G. O'CONNOR	PATRICK D. CROCKER
HAROLD E. FISCHER, JR.	ANDREW J. VORBRICH
LAWRENCE M. BRENTON	TYREN R. CUDNEY
GORDON C. MILLER	WILLIAM B. JOHNSON
GARY P. BARTOSIEWICZ	STEVEN M. BROWN
BLAKE D. CROCKER	KRISTEN L. BURSON

OF COUNSEL

STACIE T. BERRY
TIMOTHY J. BERRY
JOHN C. FISH, JR.

JOSEPH J. BERRY
TERRY L. BERRY

June 12, 2001

William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Re: New Access Communications LLC
TC01-035

Dear Mr. Bullard:

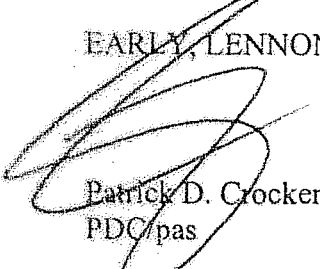
In accordance with the request of staff member, Heather K. Forney, enclosed for filing with the Commission please find an original and ten (10) copies of the above captioned corporation's responses attached as Attachment 1.

Also enclosed is an exact duplicate of this filing. Please date-stamp the duplicate and return same to me in the enclosed postage pre-paid, addressed envelope.

Should you have any questions concerning this filing, please contact me.

Very truly yours,

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.


Patrick D. Crocker
PDC/pas

cc: Heather K. Forney

RECEIVED

JUN 13 2001

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

ATTACHMENT 1

1. Please provide an E-mail address for the applicant.

Company E-mail address is sclay@newaccs.cc.

2. The address of each corporation, association, partnership, cooperative, or individual holding a 20% or greater ownership or management interest in the Applicant corporation must be provided.

<u>Name</u>	<u>Address</u>	<u>% Shares</u>
NewTel Europe LLC	120 South 6 th Street, Suite 950 Minneapolis, MN 55402	74%
Merchants Capital Partners, L.P.	1120 Avenue of the Americas 4 th Floor New York, NY 10036	26%

3. A description of the applicant's experience providing any telecommunications services in South Dakota or other jurisdiction, including the types of services provided, and the dates and nature of state or federal authorization to provide the services was not provided.

Applicant has not provided services of any kind in South Dakota. Applicant has provided local and long distance telephone service in the following jurisdictions, as of the authorization dates given:

Montana	July 1, 2000
North Dakota	August 30, 2000
Washington	September 13, 2000
Oregon	October 2, 2000
Colorado	October 20, 2000
Kentucky	October 23, 2000
Iowa	January 31, 2001
Wisconsin	April 13, 2001
Florida	April 17, 2001
Pennsylvania	April 19, 2001
Texas	April 24, 2001
Indiana	April 30, 2001
Ohio	May 14, 2001

4. Information indicating the extent to and time frame by which Applicant will provide service through the use of its own facilities, the purchase of unbundled network elements, or resale must be provided.

Applicant will not provide service through the use of its own facilities. Applicant will initially offer service as a pure reseller, and thereafter will provide service by purchasing unbundled network elements.

5. The Applicant states that it intends to provide local exchange service "in the existing service areas of US West and any other relevant carriers". Is it the Applicant's intention to provide local exchange service in the service area of the rural telephone companies?

Applicant will not provide local exchange service in the service area of the rural telephone companies at this time.

6. Information explaining how the Applicant will provide customers with access to emergency services such as 911 or enhanced 911, operator service, interexchange service, directory assistance, and telecommunications relay services must be provided.

Applicant will provide customers with access to emergency services such as 911 or enhanced 911, operator service, interexchange service, directory assistance, and telecommunication relay service through agreement with the underlying carrier.

7. Financial statements for the most recent 12-month period, consisting of balance sheets, income statements, and a cash flow statements must be provided. If the Applicant is unable to furnish said statements, a written request for a waiver must be submitted.

Applicant attaches as Attachment 1-A audited financial statements from inception to year end 2000. Additionally, Applicant attaches month-end financial statements from February, 2001

8. SDCL 49:31:03 states, "A telecommunications company has the burden to prove in its application that it has sufficient technical, financial and managerial capabilities to offer the telecommunications services described in its application before the commission may grant a certificate of authority." Based upon the financial information provided, the Applicant does not appear to have demonstrated the necessary "financial capability". Commission staff would request that the Applicant post a \$25,000 bond naming the South Dakota Public Utilities Commission and South Dakota Consumers as beneficiaries. Bond requirement language will be placed in the Commission Order granting authority. The applicant is free to apply to the Commission for removal of the bond requirement at a later ate, once financial capability can be established.

Should the Commission require a bond in the Commission Order granting authority, the Company will obtain and provide the Commission with a bond.

9. Information detailing the identity of all local exchange carriers with which the Applicant plans to interconnect; the likely timing of initiation of interconnection service and a statement as to when negotiations for interconnection started or when negotiations are likely to start; and a copy of any request for interconnection made by the Applicant to any local exchange carrier must be provided.

Applicant has already negotiated and executed an interconnection agreement with Qwest Communications International Inc. ("Qwest"). Applicant and Qwest have jointly filed this agreement with the Commission. This agreement is awaiting Commission action pending the Commission's grant of operating authority to Applicant.

10. A local exchange tariff indicating the terms and conditions of each contemplated local service offering must be provided. If the Applicant is unable to indicate prices at which the services will be provided, simply indicate "TBD" in the tariff.

An illustrative tariff indicating the terms and conditions is attached as Attachment 1-B.

11. Please provide a description of how the Applicant intends to market its services, its target market, whether the Applicant engaged in multilevel marketing, and copies of any company brochures that will be used to assist in the sale of services.

Applicant markets its services through independent telemarketing firms. Applicant currently serves residential customers only. Applicant does not engage in multilevel marketing.

12. If it is the Applicant's intention to provide local exchange service in the area of a rural telephone company, the date by which the Applicant expects to meet the service obligations imposed pursuant to Section 20:10:32:15 and the Applicant's plans for meeting the service obligations must be provided.

Applicant will not provide local exchange service in the area of a rural telephone company at this time.

13. Please indicate whether the Applicant has ever been denied registration or certification in any state and the reasons for any such denial, a statement as to whether or not the Applicant is in good standing with the appropriate regulatory agency in the states where it is registered or certified, and a detailed explanation of why the Applicant is not in good standing in a given state, if applicable.

Applicant has never been denied registration or certification in any state. Applicant remains in good standing with all the appropriate regulatory agencies in the states having registered or certified.

14. Please provide the name, telephone number, fax number, E-mail address, and toll free number of the individual to whom all inquiries must be made regarding complaints and regulatory matters.

Inquiries regarding complaints and regulatory matters are to be directed to:

Pam Rieck, Director, Regulatory Affairs

Telephone: (612) 321-9717

Facsimile: (612) 321-9207

E-mail: prieck@newaccess.cc

Toll Free: (877) 330-4937

15. Please provide information concerning how the Applicant plans to bill and collect charges from customers who subscribe to its proposed local exchange services.

Applicant will bill customers monthly using a proprietary bill system.

16. Information concerning the Applicant's policies relating to solicitation of new customers and a description of the efforts the Applicant shall use to prevent the unauthorized switching of local service customers by the Applicant, its employees, or agents must be provided.

Applicant maintains written contract with the firms marketing its services. These contracts contain strict penalties for misrepresentation of the Applicant's services. Applicant submits every new order for its services to an independent, third party verifier for verification in confirmation with state and federal rules. Additionally, Applicant maintains an additional third party to conduct remote silent monitoring of telemarketing calls. This company submits written results of its monitoring to Applicant and the telemarketer on a daily basis. Finally, Applicant mails each new customer a welcome and information packet after the sale. This packet welcomes the customer to Applicant's services and provides details regarding the Company's services.

17. The number and nature of complaints filed against the Applicant with any state or federal commission regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered was not provided. Please do so.

Applicant has had no complaints filed against it by any state or federal commission.

18. Please provide the Federal tax identification number of the Applicant.

Applicant's Federal tax identification number is 41-1974247.

ATTACHMENT 1-A

Financial Statements

NEW ACCESS COMMUNICATIONS LLC
FINANCIAL STATEMENTS
FOR THE PERIOD FROM MAY 25, 2000 (INCEPTION)
THROUGH DECEMBER 31, 2000

NEW ACCESS COMMUNICATIONS LLC

Table of Contents

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11000 Private Lakes Drive • Suite 410 • Eden Prairie, Minnesota 55344-3800 • 952.944.6166 • Fax 952.944.8496
 Office in Arizona, Iowa, Minnesota, Montana, North Dakota and South Dakota - Equal Opportunity Employer

Eden Prairie, Minnesota
 March 14, 2001

Eden Prairie, LLC

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of New Access Communications LLC as of December 31, 2000, and the results of their operations and cash flows for the period from May 25, 2000 (inception) to December 31, 2000, in conformity with accounting principles generally accepted in the United States of America.

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

We have audited the accompanying balance sheet of New Access Communications LLC, as of December 31, 2000 and the related statements of operations, changes in members' equity (deficiency in assets) and cash flows for the period from May 25, 2000 (inception) to December 31, 2000. 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 audit.

Board of Directors
 New Access Communications LLC
 Minneapolis, Minnesota

INDEPENDENT AUDITOR'S REPORT

Consultants • Certified Public Accountants

EdenBailly^{LLP}

NEW ACCESS COMMUNICATIONS LLC

BALANCE SHEET

DECEMBER 31, 2000

ASSETS

CURRENT ASSETS

Cash and cash equivalents	\$ 32,728
Restricted cash	29,483
Total cash and cash equivalents	<u>62,211</u>
Accounts receivable, less allowance for doubtful accounts of \$17,704	319,790
Other receivables	321
Prepaid expenses	4,559
Member unit subscription receivable	5,650
Total current assets	<u>392,531</u>

PROPERTY AND EQUIPMENT

Equipment	46,172
Accumulated depreciation	(3,754)
Net property and equipment	<u>42,418</u>

OTHER ASSETS

Software, net of accumulated amortization of \$1,430	24,314
Deferred financing costs, net of accumulated amortization of \$4,530	66,676
Deposits	32,600
Total other assets	<u>123,590</u>

\$ 558,539

LIABILITIES AND DEFICIENCY IN ASSETS

CURRENT LIABILITIES

Accounts payable	\$ 471,100
Accrued marketing commissions	235,378
Accrued expenses	125,412
Due to taxing authorities	44,493
Due to related parties	62,146
Advances from related party	97,252
Working capital line	270,792
Total current liabilities	<u>1,306,573</u>

LONG-TERM LIABILITIES

Subordinated note payable, related party	90,000
Accrued success fee on subordinated note payable, related party	45,000
Total long-term liabilities	<u>135,000</u>

DEFICIENCY IN ASSETS

(883,034)

\$ 558,539

See Notes to Financial Statements

NEW ACCESS COMMUNICATIONS LLC

STATEMENT OF OPERATIONS

PERIOD FROM MAY 13, 2000 (INCEPTION) TO DECEMBER 31, 2000

REVENUES

Local residential service	\$ 365,596
Long distance	122,850
Total revenues	<u>488,446</u>

COST OF GOODS SOLD

Local wholesale costs	359,901
Long distance costs	78,278
Home repair	1,619
Total cost of goods sold	<u>439,798</u>

GROSS PROFIT

48,648

SELLING, GENERAL AND ADMINISTRATIVE EXPENSES

Advertising expense	4,800
External marketing	650,115
Switching charges	184,759
Verification	61,811
Wages and related taxes	261,914
Bad debt expense	17,704
Bank charges	1,519
Commissions and fees	1,405
Depreciation and amortization	5,184
Insurance	18,534
Legal professional and consulting	78,546
License fees	9,152
Meals and entertainment	1,144
Office and supplies expense	36,194
Postage	7,774
Rent	16,357
Repairs and maintenance	7,511
Telephone and utilities	20,800
Travel	10,349
Other	5,191
Total selling, general and administrative expenses	<u>1,400,763</u>

OPERATING LOSS

(1,352,115)

OTHER INCOME AND EXPENSES

Other income	10,377
Interest expense	(65,573)
Total other income and expenses	<u>(55,196)</u>

NET LOSS

\$ (1,407,311)

See Notes to Financial Statements

NEW ACCESS COMMUNICATIONS LLC
STATEMENT OF CHANGES IN MEMBERS' EQUITY (DEFICIENCY IN ASSETS)
PERIOD FROM MAY 23, 2000 (INCEPTION) TO DECEMBER 31, 2000

	<u>Member Units</u>	<u>Capital Contributions</u>	<u>Accumulated Deficit</u>	<u>Deficiency in Assets</u>
BALANCE, MAY 23, 2000 (INCEPTION)	-	\$ -	\$ -	\$ -
Capital contributions - net of broker fees of \$54,311	7,215	514,277	-	514,277
Member units provided for personal guarantees of debt	1,800	10,000	-	10,000
Net loss	-	-	(1,407,311)	(1,407,311)
BALANCE, DECEMBER 31, 2000	<u>9,015</u>	<u>\$ 524,277</u>	<u>\$ (1,407,311)</u>	<u>\$ (883,034)</u>

NEW ACCESS COMMUNICATIONS LLC
STATEMENT OF CASH FLOWS
PERIOD FROM MAY 25, 2000 (INCEPTION) TO DECEMBER 31, 2000

OPERATING ACTIVITIES

Net loss	\$ (1,482,311)
Adjustment to reconcile net loss to net cash used for operating activities	
Depreciation	3,724
Amortization of software	2,628
Amortization of deferred financing costs (included in interest expense)	4,233
Payments of accrued marketing commissions by related party	27,253
(Increase) decrease in operating assets	
Accounts receivable	(113,724)
Other receivables	(3,873)
Prepaid expenses	2,100
Deposits	(22,000)
Increase (decrease) in operating liabilities	
Accounts payable	67,240
Accrued marketing commissions	224,273
Accrued expenses	123,413
Due to taxing authorities	82,393
Due to related parties	22,534
Accrued success fee on subordinated note payable, related party	27,200

NET CASH USED FOR OPERATING ACTIVITIES

INVESTING ACTIVITIES

Purchase of property and equipment	(46,170)
Purchase of software	(22,140)

NET CASH USED FOR INVESTING ACTIVITIES

FINANCING ACTIVITIES

Proceeds from revolving working capital line net of financing costs paid or accrued of \$61,206	241,134
Payments on working capital facility	(24,000)
Proceeds from issuance of subordinated note payable, related party	21,200
Proceeds from issuance of member units, net of issuance costs paid of \$64,313	114,000

NET CASH FROM FINANCING ACTIVITIES

NET INCREASE IN CASH AND CASH EQUIVALENTS

CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD

CASH AND CASH EQUIVALENTS AT END OF PERIOD

(continued on next page)

STATEMENT OF CASH FLOWS -- page 2

SUPPLEMENTAL SCHEDULE OF NON-CASH INVESTING
AND FINANCING ACTIVITIES:

Equity units issued for debt guarantee	\$	12,000
Equity units receivable at December 31, 2000	\$	5,000
Payments made by related party for funding accrued marketing commitments	\$	10,000

SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION

Income taxes paid	\$	-
Interest paid	\$	10,000

NEW ACCESS COMMUNICATIONS LLC
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 2000

NOTE 1 - PRINCIPLE ACTIVITY AND SIGNIFICANT ACCOUNTING POLICIES

Business Activity

New Access Communications LLC (New Access or the Company) is a Competitive Local Exchange Carrier (CLEC) which provides switchless or non-facilities-based local and long distance residential telephone service resale in four states in the upper Midwest and Northwest United States. The Company extends credit to customers located in these trade areas. The Company purchases local and long distance telephone services from independent carriers at bulk wholesale rates and markets the services through the use of outside marketing agencies.

Property and Equipment

Property and equipment is stated at cost. Depreciation and amortization are computed using the straight-line method over the estimated useful lives of four years.

Expenditures for repairs, maintenance and minor renewals, which neither materially add to the value of the asset nor appreciably prolong its life, are charged to expense as incurred. When equipment is retired or otherwise disposed of, the related cost and accumulated depreciation are removed from the respective accounts and any gain or loss on disposition is included in operations.

Intangibles

Software is stated at cost and includes amounts allocated for internally developed software. Amortization is computed using the straight-line method over the estimated useful life of three years.

Deferred financing costs are being amortized over the life of the related notes on a straight-line basis.

Accrued Marketing Commissions

Accrued marketing commissions represent the commissions owed to the outsourced marketing agencies. The Company has contracts with its two marketing agencies to pay a flat commission for each customer referred to the Company. Commissions are payable on a rolling seven-week basis, after sales are verified from an independent third party.

Within the contracts, the Company has the ability to assess a fee and be fully reimbursed for any commissions paid if any customer alleges slamming or misrepresentation by the marketer. Slamming is defined within these contracts as changing a customer's telecommunications service provider without agreement of the agent or procuring a change through deceptive or misleading practice.

Income Taxes

New Access Communications LLC is treated as a partnership for federal income tax purposes. Consequently, federal income taxes are not payable, or provided for, by the Company. Members are taxed individually on their proportionate shares of the Company's earnings. The net income or loss is allocated among the members in accordance with the Member Control Agreement.

NOTES TO FINANCIAL STATEMENTS

Member Unit Warrants

The Company has issued member unit warrants as part of obtaining financing. A discount on the debt received in these warrants is recognized for the fair value of the warrants at the time of issuance.

Cash Equivalents

The Company considers all highly liquid investments with original maturities of three months or less to be cash equivalents.

Risks and Uncertainties

The Company uses only one wholesale local service and long distance supplier. The Company believes that if the long distance supplier becomes unable to provide the services that are stipulated in the contract, there are other carriers available that the Company can use without creating a significant disruption. If the local service supplier becomes unable to provide the services stipulated in the contract, there are no other carriers available that the Company can use without creating a significant disruption.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, the actual amounts could differ from those estimates.

NOTE 2 - RESTRICTED CASH

The Company deposits a majority of its customers' receipts in a lock box account. The lender for the Company, its main source of financing, has put withdrawal restrictions on this account.

NOTE 3 - ADVANCES FROM RELATED PARTY

The Company has received short-term financing from Internet Financial Services, a related party through common management and member unit ownership. Advances on this note are for organizational costs of outsourced marketers for each account these marketers obtained in which the Company was unable to find on the rolling seven-week lag.

Under the terms of the revolving note, the Company can borrow up to \$300,000 at the discretion of the lender. The outstanding balance at December 31, 2000 is \$97,242 and is due on demand with the entire principal due repayable on March 1, 2001. In lieu of interest, the Company shall pay a transaction fee of \$0.017 per day that a funded account is outstanding. This results in an effective interest rate of 1.97% per year. This note is secured by the same security agreement and limited personal guarantors as described in Note 1.

Interest expense associated with this advance totaled \$1,000 for the period ended December 31, 2000.

(continued on next page)

NOTES TO FINANCIAL STATEMENTS

NOTE 4 - WORKING CAPITAL LINE

The Company has a \$2,500,000 revolving working capital line with RFC Capital Corporation. The maximum borrowing available to the Company under this line is determined based on a multiple of the Company's average monthly cash collections. The note is due December 4, 2002, and bears interest at 6% over the prime rate (11.5% at December 31, 2000), no less than \$5,000 per month, which is payable weekly. The interest rate is to be reduced by .50% for each \$500,000 in equity invested after December 1, 2000; however, in no event shall the interest rate be less than prime plus 4%.

Essentially all assets owned by the Company secure the line. The line is also secured by limited personal guarantees of certain company officers and select investors. As part of this guarantee, certain guarantors will be paid 6% interest for their allocated portion of guarantee at risk. The amount guaranteed by these investors totaled \$500,000 at December 31, 2000. This resulted in an additional \$970 of interest associated with this loan for the period ended December 31, 2000.

This note is subject to an annual facility fee equal to 1.5% of the maximum loan amount and termination fees in case of early termination. The agreement places certain restrictions on the Company including minimum financial restrictions and ratio requirements. As of December 31, 2000, the Company was not in compliance with some of these restrictions; as such, the note has been classified as current. Under the remedies after an event of default, RFC Capital Corporation has the ability to cease making additional loans, accelerate the loan payment or collect, repossess, or dispose of any collateral. RFC also has the ability to increase the interest rate to a fixed 13% or the highest amount legally permitted. The balance due on this note was \$270,792 at December 31, 2000.

NOTE 5 - SUBORDINATED NOTE PAYABLE, RELATED PARTY

The Company borrowed \$90,000 from Internet Financial Services LLC (IFS), a member of New Access Communications LLC. The note is due June 28, 2002 and bears interest at 29%. Interest is payable monthly for the first year with payments of interest and principal (on a fully amortized basis) commencing July 2001 through the due date.

The note is secured by assets of the Company and limited guarantees of most of the officers. The security agreement for this note has been subordinated to the RFC working capital facility. The note is also subject to a fee (success fee) in an amount equal to 100% of the average principle balance outstanding on the loan during the first 12 months of the loan. At December 31, 2000, \$45,000 was accrued for this success fee.

Interest and success fee expenses related to this note totaled \$58,050 for the initial period ended December 31, 2000.

The annual requirements for principal payments on the working capital line and note are as follows:

December 31,	Amount
2001	\$ 270,792
2002	90,000
	<u>\$ 360,792</u>

(continued on next page)

NOTES TO FINANCIAL STATEMENTS

NOTE 6 - RELATED PARTY TRANSACTIONS

During the initial period ended December 31, 2000, the Company was allocating expenses from parties related through common ownership and common officers. The net balances owed to these related parties for such allocations totaled \$62,146 at December 31, 2000.

NOTE 7 - OPERATING LEASE

The Company leases its office space under a month to month sublease agreement with Internet Financial Services, LLC, a related party. The monthly rental commitment equals the Company's portion of the total rent paid by IFS which is allocated based on the number of company personnel occupying the space as a percentage of the total number of personnel at the end of the month.

Rent expense under the lease totaled \$12,000 for the initial period ended December 31, 2000.

NOTE 8 - MEMBER UNIT WARRANTS

As part of obtaining the working capital line, the Company issued 782 warrants to purchase membership units at an exercise price of \$226 per unit expiring December 2010. These warrants were vested upon issuance and are subject to an anti-dilution clause whereby if the Company issues additional units as unit dividends or subdivides the outstanding units, the warrants subject to this agreement shall be proportionately increased and the exercise price shall be proportionately decreased to accommodate the change in outstanding units. Utilizing the Black Scholes pricing model, the Company determined there to be no value associated with these warrants on the date of grant.

Information with respect to warrants outstanding as of December 31, 2000 is summarized as follows:

	Warrants	Weighted-Average Exercise Price
Issued as part of the working capital line	782	\$ 226.00
Outstanding at end of period	782	\$ 226.00
Exercise price of warrants outstanding at December 31	\$226	
Warrants exercisable at period end	782	\$ 226.00
Weighted average remaining life	9.9 years	

NOTES TO FINANCIAL STATEMENTS

These warrants are also subject to a put option whereby the holder of the warrants shall have the right to cause the Company to purchase the warrants, or any portion thereof, at any time commencing upon the occurrence of the earliest of any of the following events:

- * public offering by the Company
- * uncured event of default on the working capital line
- * termination of the loan agreement

The put price, as described within the warrant agreement, is based on the greater of the fair market value of the shares on an appraised basis, less the exercise price, or a value determined by a formula mutually agreeable to the Company and the warrant holder. At December 31, 2000, the put options had no value, as such, no liability has been reported.

NOTE 3 - SUBSEQUENT EVENTS

Effective January 31, 2001, 100% of the outstanding member units of the Company were acquired by a new entity, New Access Holdings, Inc., a corporation wholly owned by NewTel Europe LLC, a related party through common management. Accordingly, the Company became a wholly owned subsidiary of New Access Holdings, Inc. NewTel Europe LLC provides switchless or non-facilities based long distance resale in Spain, Switzerland and Ireland.

As part of the business combination plan, New Access Holdings, Inc. authorized the sale of 26.7% of the authorized shares to a third party for \$1,000,000. These funds were subsequently invested in New Access Communications LLC to assist with operations.

The acquisition will be accounted for in a manner similar to the pooling of interest method and there will be no changes in accounting methods for the consolidated entity.

Effective January 1, 2001, the Company has restructured its marketing contracts with its outsourced marketing agencies. The flat fee commission per customer has been reduced and a commission of a percentage of all future revenues from the customer has been added.

Also subsequent to December 31, 2000, the Company has fully paid the subordinated note payable, related party and related success fee.

ASSETS

ASSETS

Cash
Accounts Receivable
Unearned liability
Allowance for Bad Debt
Prepaid expenses/Deferred financing costs
Total Current Assets

Property and Equipment
Accumulated Depreciation
Net Fixed Assets

Deposits

TOTAL ASSETS

LIABILITIES

Accounts Payable
Due to IFS
Due to Access Anywhere
Due to ChoiceTel Inc.
Due to NewTel Europa
RFC Loan
New Access Federal Taxes
New Access State Taxes
New Access Local Taxes
Accrued Expenses
Short Term Debt
Total Current Liabilities

EQUITY

Member's Contribution
Net Income/ (Loss)
Total Capital

TOTAL LIABILITIES & EQUITY

August September October November December

215,089 202,132 159,113 46,113 93,212
3,169 74,069 144,267 337,815
16,832 2,150 0.00
(654) (2,268) (14,484) (17,704)
49,315 76,885
257,209 287,483 220,562 235,905 459,200

16,204 22,885 35,956 41,906 71,916
(636) (1,312) (2,047) (2,807) (5,184)
17,369 21,572 33,909 39,109 66,732

- 10,000 27,600 31,600 32,600

274,578 319,056 282,071 306,694 \$ 558,640

63,298 159,908 278,200 549,703 803,729
10,600 18,477 23,489 80,066 77,643
22,689 7,060 15,537 16,739 24,380
45 726 (5,579) (12,877) (22,419)
8,750 13,125 17,500 21,875 27,542
- - - 270,792
- 433 1,713 4,980 13,222
- 1,256 4,955 11,793 27,414
- 62 124 3,858
- 1,700 18,596 88,428 125,412
90,000 90,000 90,000 90,000 90,000
195,382 292,684 444,472 650,830 1,441,572

294,282 423,132 502,114 508,627 524,277
(215,085) (397,841) (564,515) (1,052,764) (1,407,309)
79,197 25,291 (162,401) (544,137) (883,031)

274,578 317,976 282,071 306,694 \$ 558,641

2001

January February

132,970 375,844
486,720 871,985
(34,009) (59,500)
110,210 112,188
699,701 1,100,696

160,037 237,759
(8,683) (14,327)
151,353 223,432

42,280 49,080

\$ 893,334 \$ 1,373,210

1,042,585 937,534
72,955 150,803
32,333 35,254
(39,014) (51,458)
33,750 33,750
698,900 690,100
16,582 30,335
33,997 58,547
9,303 20,085
83,140 79,084
90,000 -
2,074,532 1,984,014

524,277 1,391,732
(1,705,474) (2,002,526)
(1,181,197) (610,804)

\$ 893,334 \$ 1,373,210

INCOME STATEMENT

	August	September	October	November	December	2000 TOTAL	January	February
Local MN	3,713	27,525	37,977	31,605	31,982	\$ 122,801	\$ 31,768	\$ 30,156
Local MT	-	69	15,154	61,897	85,176	162,296	121,031	135,542
Local WA	-	-	-	4,721	47,076	51,796	90,453	140,736
Local ND	-	-	-	508	27,903	28,411	68,296	94,717
Local OR	-	-	-	-	-	-	-	181
LD-MN	38	2,130	7,032	8,325	9,573	27,097	6,514	5,990
LD-MT	-	-	1,549	21,520	36,928	59,997	37,521	41,290
LD-WA	-	-	-	2,352	21,845	24,197	36,269	48,705
LD-ND	-	-	-	381	10,836	11,217	23,483	27,223
TOTAL REVENUE	3,749	24,724	56,712	131,710	271,319	488,213	415,322	524,520
Local Wholesale-MN	5,008	21,342	31,375	28,179	30,562	116,467	29,308	29,400
Local Wholesale-MT	-	17	15,848	62,756	87,149	165,771	97,777	107,279
Local Wholesale-WA	-	-	-	4,741	44,218	48,959	73,092	110,749
Local Wholesale-ND	-	-	-	896	27,808	28,704	68,299	74,101
Local Wholesale-OR	-	-	-	-	-	-	-	128
LD Wholesale-MN	28	1,421	4,660	5,029	5,807	16,945	4,140	3,594
LD Wholesale-MT	-	-	1,034	13,839	24,225	39,098	24,456	28,903
LD Wholesale-WA	-	-	-	1,386	13,271	14,657	20,609	17,423
LD Wholesale-ND	-	-	-	220	7,329	7,549	14,037	31,171
TOTAL COST OF SALES	5,036	22,781	52,917	117,047	240,370	438,151	331,776	402,748
GROSS MARGIN	(1,286)	1,944	3,796	14,663	30,948	\$ 50,063	\$ 83,545	\$ 121,772
	-34%	8%	7%	11%	11%	10%	20%	23%
In Home Customer Repairs	-	-	-	-	1,283	1,283	375	71
Switching charges-MN	4,368	3,321	3,007	439	307	11,440	169	-
Switching charges-MT	-	885	21,337	37,091	9,999	69,312	20,285	10,657
Switching charges-WA	-	-	-	19,931	34,639	54,570	30,324	18,176
Switching charges-ND	-	-	-	7,018	42,418	49,436	8,876	41,172
Switching charges-OR	-	-	-	-	-	-	-	2,500
Fee for MN CLEC usage	45	681	(6,305)	(2,389)	(2,409)	(10,377)	(2,409)	(695)
Marketing expense	62,727	86,907	140,598	211,411	137,761	650,115	129,607	90,850
Bad debt expense	-	854	1,434	2,196	13,220	17,704	16,395	25,201
Salary expense	51,985	50,192	55,539	69,418	56,194	308,659	93,363	116,493
Verification/internal mktg expense	3,028	10,868	10,252	16,340	17,900	61,811	16,296	20,742
Office expense	8,759	17,302	23,320	14,771	(2,960)	67,770	9,551	15,736
Rent expense	-	4,077	4,084	4,089	4,107	16,357	8,077	8,000
Telephone expense	2,468	3,037	6,008	1,001	5,701	20,800	9,484	11,796
Travel / M & E	4,340	785	3,733	297	530	9,691	911	2,445
Operating loss	1,410	655	2,189	43	31	9,152	10	889
Depreciation expense	379	471	735	760	2,377	5,184	3,499	5,644
Legal and Professional expense	3,799	2,482	1,486	3,158	22,821	48,690	23,541	35,700
Other Expenses	-	-	-	-	-	-	4,118	3,414
OPERATING EXPENSES	142,805	182,524	266,295	387,512	343,923	1,391,793	372,474	408,853
Interest expense	2,175	2,175	2,175	15,200	41,573	65,573	9,237	9,988
NET INCOME / (LOSS)	(146,268)	(182,755)	(264,514)	(159,749)	(104,543)	\$ (1,407,927)	\$ (129,166)	\$ (129,062)
YTD NET INCOME / (LOSS)	(715,055)	(691,811)	(662,515)	(1,052,751)	(1,807,309)		(129,166)	(568,213)

ATTACHMENT 1-B

Illustrative Tariff

TERMS AND CONDITIONS OF BASIC SERVICE
APPLYING TO END-USER
COMMUNICATION SERVICES WITHIN
THE STATE OF SOUTH DAKOTA

Issued:

Issued By: Steven C. Clay, President
New Access Communications LLC
120 South 6th Street, Suite 950
Minneapolis, Minnesota 55402

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EXPLANATION OF SYMBOLS, REFERENCE
MARKS, AND ABBREVIATIONS OF TECHNICAL
TERMS USED IN THIS TARIFF

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

- | | |
|---|---|
| C | To signify changed regulation. |
| D | To signify discontinued rate or 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 furnishing of intrastate end-user communications services by New Access Communications LLC, hereinafter referred to as the Company, to customers within the State of South Dakota.

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DEFINITIONS

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DEFINITIONS

Certain terms used generally throughout this tariff are defined below.

Account Codes: Permits Centrex Stations and attendants to dial an account code number of up to eight digits. For when placing calls over facilities arranged for Automatic Message Accounting (AMA) recording. The account or project number must be input prior to dialing the called number.

Advance Payment: Part or all of payment required before the start of service.

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.

Automatic Number Identification (ANI): Allows the automatic transmission of a caller's billing account telephone number to a local exchange company, interexchange carrier or a third party subscriber. The primary purpose of ANI is to allow for billing of toll calls.

Bit: The smallest unit of information in the binary system of notation.

Call Back/Camp on: Permits a station line encountering an all-trunk-busy condition the option of being notified when a trunk becomes idle.

Call Forwarding:

Call Forwarding Station: Allows calls directed to a station line to be routed to a user defined line inside or outside the customer's telephone system.

Call Forwarding System: Permits calls attempting to terminate to a busy station line to be re-directed to a predetermined line inside or outside the customer's telephone system.

Call Forwarding Remote: This optional feature allows a user to activate/deactivate the Call Forwarding - All calls feature or change the forwarded to telephone number from a remote location.

Call Forwarding Busy: Allows incoming calls to a busy station to be routed to a predetermined station line or attendant within the same system or outside the system. Intersystem calls can be arranged to be forwarded to a number different from DID calls.

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DEFINITIONS

Call Forwarding Don't Answer: Allows incoming calls to be automatically routed to a preselected station line or attendant in the same system or outside the system, when the called station is not answered after a preset number of rings. Intercom calls can be arranged to be forwarded to a number different from DID calls.

Call Forwarding Variable Limited: When this feature is activated by a station line user or the attendant, incoming calls to the activated station line or attendant position will be automatically routed to any other selected station line, within the same Centrex system, or to the attendant position. The attendant may also activate this feature for a station line user.

Call Forwarding Variable Unlimited: The same as Call Forwarding Variable Limited except that incoming calls may be automatically routed to a telephone number outside the Centrex system or to station lines within the same Centrex system. The attendant may not activate this feature to a telephone number outside the Centrex system for a station line user. Calls forwarded outside the Centrex system are subject to the appropriate charges for local and toll messages.

Call Hold: Allows the user to hold one call for any length of time provided that neither party goes on-hook.

Call Park: Allows a station line to park a call against its own line number. The parked call can be retrieved from any station line by dialing a feature code and the line number against which the call is parked.

Call Pickup: Allows a station line to answer incoming calls to another station line within a defined call pickup group. Call pickup is provided on individual station lines within a customer group.

Call Transfer: Allows a station line user to transfer any established call to another station line inside or outside the customer group without the assistance of the attendant.

Call Waiting: Permits a line in the talking state to be alerted by a tone when another call is attempting to complete the line. Audible ringing is returned to the originating line. The Service also provides a hold feature that is activated by a switchhook flash.

Communication Services: The Company's intrastate toll and local exchange switched telephone services offered for both intraLATA and interLATA use.

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DEFINITIONS

Company or New Access: New Access Communications LLC, the issuer of this tariff.

Customer or Subscriber: The person, firm or corporation that orders service and is responsible for the payment of charges and compliance with the Company's regulations.

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

Direct Inward Dial (or "DID"): A service attribute that routes incoming calls directly to stations, bypassing a central answering point.

Direct Outward Dial (or "DOD"): A service attribute that allows individual station users to access and dial outside numbers directly.

Do Not Disturb: Permits the attendant to cut off a single station line and selected groups of station lines from receiving incoming and station-to-station calls.

DSX-1 Panel: Distribution equipment used to terminate and administer DSI (1.544 Mbps) circuits.

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

Duplex Service: Service that provides for simultaneous transmission in both directions.

Fiber Optic Cable: A thin filament of glass with a protective outer coating through which a light beam carrying communications signals may be transmitted by means of multiple internal reflections to a receiver, which translates the message.

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.

Joint User: A person, firm or corporation that is designated by the Customer as a user of services furnished to the Customer by the Company and to whom a portion of the charges for the service will be billed under a joint user arrangement as specified herein.

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DEFINITIONS

Kbps: Kilobits per second, denotes thousands of bits per second.

Last Number Redial: Enables a station line user to redial the last called number by use of an access code rather than dialing the entire number.

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. 82-0192; or any other geographic area designated as a LATA in the National Exchange Carrier Association, Inc. Tariff F.C.C. No. 4.

Local Exchange Carrier or ("LEC"): Denotes any individual, partnership, association, joint-stock company, trust or corporation engaged in providing switched communication within an exchange.

Mbps: Megabits, denotes millions of bits per second.

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

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

Service Commencement Date: The first day following the date on which the Company notifies the Customer that the requested service or facility is available for use, unless extended by the Customer's refusal to accept service that does not conform to standards set forth in the Service Order or 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 Network Services executed by the Customer and the Company in the format devised by the Company. The signing of a Service 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.

Shared: A facility or equipment system or subsystem that can be used simultaneously by several Customers.

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DEFINITIONS

Speed Calling: Permits a station line user to dial selected numbers by using fewer digits than normally required. This is accomplished through the assignment of abbreviated codes to frequently called numbers. The speed calling list is customer-changeable.

System: Allows shared use of speed calling list. A control station will add, change or delete telephone numbers from the list for the group.

Station: Allows a station line user to add, change or delete telephone numbers from a speed calling list. The list is dedicated to the individual station line user.

Three-Way Calling: Allows a station line user to add a third party to an existing conversation.

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.

User or End User: A customer, Joint User, or any other person authorized by a Customer to use service provided under this tariff.

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REGULATIONS

Issued:

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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 between points within the State of South Dakota.

Customers and users may use services and facilities provided under this tariff to obtain access to services offered by other service providers. 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.

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REGULATIONS

2.1 Undertaking of the Company (Con't)

2.1.2 Shortage of Equipment or Facilities

- (A) The Company reserves the right to limit or 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.

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REGULATIONS2.1 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 one month, 24-hours per day. For the purpose of computing charges in this tariff, a month is considered to have 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) 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 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) In any action between the parties to enforce any provision of this tariff, the prevailing party shall be entitled to recover its legal fees and court costs from the non-prevailing party in addition to other relief a court may award.

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REGULATIONS2.1 Undertaking of the Company (Cont'd)2.1.3 Terms and Conditions (Cont'd)

- (E) 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.
- (F) This tariff shall be interpreted and governed by the laws of the State of South Dakota regardless of its choice of laws provision.
- (G) Reserved for future use.
- (H) 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 on 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 join the attempt to obtain from the owner of the property access for the other party to serve a person or entity.

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REGULATIONS2.1 Undertaking of the Company (Cont'd)2.1.4 Liability of the Company

- (A) The liability of the Company for damages 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 or arising out of the failure to furnish the service, whether caused by acts or omission, shall be limited to the extension of such allowances for interruption as set forth in 2.6. The extension of such allowances for interruption shall be the sole remedy of the Customer and the sole liability of the Company. The Company will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Company service, equipment or facilities, or the acts or omissions or negligence of the Company's employees or agents.
- (B) The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

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REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.4 Liability of the Company (Cont'd)

- (C) The Company shall not be liable for any act or omission of any entity furnishing to the Company or to the Company's Customers facilities or equipment used for or with the services the Company offers.
- (D) The Company shall not be liable for any damages or losses due to the fault or negligence of the Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- (E) The Company does not guarantee nor make any warranty with respect to installations it provides for use in an explosive atmosphere. The Customer indemnifies and holds the Company harmless from any and all loss, claims, demands, suits, or other action, or any liability whatsoever, whether suffered, made, instituted, or asserted by any other party or person(s), and for any loss, damage, or destruction of any property, whether owned by the Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, presence, condition, location, or use of any installation so provided. The Company reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this section 2.1.4(E) as a condition precedent to such installations.

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REGULATIONS2.1 Undertaking of the Company (Cont'd)2.1.4 Liability of the Company (Cont'd)

- (F) The Company is not liable for any defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- (G) The Company shall be indemnified, defended and held harmless by the Customer against any claim, loss or damage arising from Customer's use of services, involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Customer's own communications.
- (H) The entire liability for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid the Company by the Customer for specific services giving rise to the claim. No action or proceeding against the Company shall be commenced more than one year after the service is rendered.
- (L) **THE COMPANY MAKES NO WARRANTIES OR 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.**

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REGULATIONS2.1 Undertaking of the Company (Cont'd)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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REGULATIONS

2.1 Undertaking of the Company (Cont'd)

2.1.6 Provisions of Equipment and Facilities

- (A) The Company shall use reasonable efforts to make available services to a Customer on or before a particular date, subject to the provisions of and compliance by the Customer with, the regulations contained in this tariff. The Company does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.
- (B) The Company shall use reasonable efforts to maintain only the facilities and equipment that it furnishes to the Customer. The Customer may not, nor may 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.
- (C) 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 the Customer.
- (D) 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 for that which it was provided by the Company.

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REGULATIONS2.1 Undertaking of the Company (Cont'd)2.1.6 Provisions Of Equipment and Facilities (Cont'd)

- (E) 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 other party than the Company, including but not limited to the Customer.
- (F) 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. Subject to this responsibility, the Company shall not be responsible for:
- 1) the 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.

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REGULATIONS2.1 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.

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REGULATIONS2.1 Undertaking of the Company (Cont'd)2.1.8 Special Construction

Subject to the agreement of the Company and to all of the regulations contained in this tariff, special construction of facilities may be undertaken on a reasonable efforts basis at the request of the Customer. Special construction is that 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 service;
- (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 which the Company would normally construct;
- (E) on an expedited basis;
- (F) on a temporary basis until permanent facilities are available;
- (G) in advance of its normal construction.

2.1.9 Ownership of Facilities

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

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REGULATIONS2.2 Prohibited Uses

- (A) 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.
- (B) 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 South Dakota Public Utilities Commission regulations, policies, orders, and decisions.
- (C) The Company may require a Customer to immediately shut down transmission of signals if said transmission is causing interference to others.
- (D) A customer, joint user, or authorized user may not assign 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 will apply.

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REGULATIONS2.3 Obligations of the Customer2.3.1 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 personnel, 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;

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REGULATIONS2.3 Obligations of the Customer (Cont'd)2.3.1 General (Cont'd)

- (D) obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduits necessary for installation of fiber optic cable and associated equipment used to provide Communication Services to the Customer from the cable building entrance or property line to the location of the equipment space described in 2.3.1(C). Any and all costs associated with 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 born 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;
- (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's 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;

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REGULATIONS

2.3 Obligation of the Customer (Cont'd)

2.3.1 General (Cont'd)

- (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 any Customer premises or 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 in which service is interrupted for such purposes.

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REGULATIONS2.3 Obligation2.3.2 Claim

With respect to any service or facility provided by the Company, Customers shall indemnify, defend and hold harmless the Company from and against all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees for:

- (A) Any loss, destruction or damage to the property of the Company or any third party, or death or injury to persons, including, but not limited to, employees invitees of either party, to the extent caused by or resulting from negligent or intentional act or omission of the Customer, its employees, agents, representatives or invitees; or
- (B) any claim, loss, damage, expense or liability for infringement of any copyright, patent, trade secret, or any proprietary or intellectual property right of any third party, arising from the act or omission by the Customer, including, without limitation, use of the Company's services and facilities in a manner not contemplated by the agreement between the Customer and the Company.

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REGULATIONS2.4 Customer Equipment and Channels2.4.1 General

A User may transmit or receive information or signals via the facilities of the Company. The Company's services are designed 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 on 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 Point of Connection.
- (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 the 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 other persons. Any additional protective equipment required to prevent such damage or injury shall be provided by the Company at the Customer's expense.

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REGULATIONS

2.4 Customer Equipment and Channels (Cont'd)

2.4.3 Interconnection of Facilities

- (A) Any special interface equipment necessary to achieve compatibility between the facilities and equipment of the Company used for furnishing Communication Services and the Channels, facilities, or equipment of others shall be provided at the Customer's expense.
- (B) Communication 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 that are applicable to such connections.
- (C) 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 68 of Title 47, Code of Federal Regulations, and all User-provided wiring shall be installed and maintained in compliance with those regulations.
- (D) Users may interconnect communications facilities that are used in whole or in part for interstate communication to services provided under this tariff only to the extent that the user is an "End User" as defined in Section 67.214, Title 47, Code of Federal Regulations (1992 edition).

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REGULATIONS2.4 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 requirements set forth in Section 2.4.2(B) for the installation, operation, 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 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.

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REGULATIONS2.5 Payment Arrangements2.5.1 Payment for Service

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Users authorized by the Customer, regardless of whether those services are used by the Customer itself or are resold to or shared with other persons.

(A) Taxes

The Customer is responsible for payment of all sales, use, gross receipts, excise, access or local, state and federal taxes, charges or surcharges (however designated) (excluding taxes on Company's net income) imposed on or based upon the provision, sale or use of Network Services.

2.5.2 Billing and Collection of Charges

- (A) Non-recurring charges are due and payable from the customer within 30 days after the invoice date, unless otherwise agreed to in advance.
- (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 30 days after the invoice date. When billing is based on customer usage, charges will be billed monthly for the preceding billing periods.
- (C) When service does not begin on the first day of the month, or end on 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 30 days.

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REGULATIONS2.5 Payment Arrangements2.5.1 Payment for Service

The Customer is responsible for the payment of all charges for facilities and services furnished by the Company to the Customer and to all Users authorized by the Customer, regardless of whether those services are used by the Customer itself or are resold to or shared with other persons.

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The Customer is responsible for payment of all sales, use, gross receipts, excise, access or local, state and federal taxes, charges or surcharges (however designated) (excluding taxes on Company's net income) imposed on or based upon the provision, sale or use of Network Services.

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- (A) Non-recurring charges are due and payable from the customer within 30 days after the invoice date, unless otherwise agreed to in advance.
- (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 30 days after the invoice date. When billing is based on customer usage, charges will be billed monthly for the preceding billing periods.
- (C) When service does not begin on the first day of the month, or end on 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 30 days.

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REGULATIONS2.5 Payment Arrangements (Cont'd)2.5.2 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 first day following the date 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 begins through and includes the day that the service, circuit, arrangement or component is discontinued.
- (E) If any portion of the payment is received by the Company after the due date, or if any portion of the payment is received by the Company in funds that are not immediately available, then a late payment penalty shall be due to the Company. The late payment penalty shall be the portion of the payment not received by the due date, multiplied by the lesser of the highest percentage allowable by the South Dakota Public Utilities Commission or a late factor of 1.5% per month.
- (F) The Customer will be assessed a charge of twenty-five dollars (\$25.00) for each check submitted by the Customer to the Company that a financial institution refused to honor.
- (G) Customers have up to 90 days (commencing 5 days after termination of the bill) to initiate a dispute over charges or to receive credit.
- (H) If service is disconnected by the Company in accordance with section 2.5.5 following and later restored, restoration of service will be subject to all applicable installation charges.

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REGULATIONS2.5 Payment Arrangements (Cont'd)2.5.3 Advance Payment

To safeguard its interests, the Company may require a Customer to make an advance payment before services and facilities are furnished. The advance payment will not exceed an amount equal to the non-recurring charges and one month's charges for the service or facility. In addition, where special construction is involved, the advance payment may also include an amount equal to the estimated non-recurring charges for the special construction and recurring charges (if any) for a period to be set between the Company and the Customer. The advance payment will be credited to the Customer's initial bill. An advance payment may be required in addition to a deposit.

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CONTINUATION

4

REGULATIONS2.5 Payment Arrangements (Cont'd)2.5.4 Deposits

- (A) To safeguard its interests, the Company may require a Customer to make a deposit to be held as a guarantee for the payment of charges. A deposit does not relieve the Customer of the responsibility for the prompt payment of bills on presentation. The deposit will not exceed an amount equal to:
- 1) two month's charges for a service or facility that has a minimum payment period of one month; or
 - 2) the charges that would apply for the minimum payment period for a service or facility that has a minimum payment period of more than one month; except that the deposit may include an additional amount in the event that a termination charge is applicable.
- (B) A deposit may be required in addition to an advance payment.
- (C) When service or facility is discontinued, the amount of a deposit, if any, will be applied to the Customer's account and any credit balance remaining will be refunded. Before the service or facility is discontinued, the Company may, at its option, return the deposit or credit it to the Customer's account.
- (D) Deposits held will accrue interest at a rate determined by the Company without deductions for any taxes on such deposits. Interest will not accrue on any deposit after the date on which reasonable effort has been made to return it to the Customer.

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REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service

- (A) Upon nonpayment of any amounts owing to the Company, the Company may, by giving 24 hours prior written notice to the Customer, discontinue or suspend service without liability.
- (B) Upon violation of any of the other material terms or conditions for furnishing service, the Company may, by giving 30 days' prior notice in writing to the Customer, discontinue or suspend service without incurring 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.

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REGULATIONS

2.5 Payment Arrangements (Cont'd)

2.5.5 Discontinuance of Service

- (A) Upon nonpayment of any amounts owing to the Company, the Company may, by giving 24 hours prior written notice to the Customer, discontinue or suspend service without liability.
- (B) Upon violation of any of the other material terms or conditions for providing service, the Company may, by giving 30 days' prior notice in writing to the Customer, discontinue or suspend service without incurring 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.

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REGULATIONS2.5 Payment Arrangements (Cont'd)2.5.5 Discontinuance of Service (Cont'd)

- (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 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.
- (F) In the event of fraudulent use of the Company's network, the Company will discontinue service without notice and/or seek legal recourse to recover all costs involved in enforcement of this provision.
- (G) Upon the Company's discontinuance of service to the Customer under Section 2.5.5(A) or 2.5.5(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 that would have been payable by the Customer during the remainder of the term for which such service would have otherwise been provided to the Customer to be immediately due and payable (discounted to present value at six percent).

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REGULATIONS2.5 Payment Arrangements (Cont'd)2.5.6 Cancellation of Application for Service

- (A) Applications for service cannot be canceled without the Company's agreement. Where the Company permits a 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 incurred by the Company, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of services entered, including installation charges, and all charges others levy against the Company that would have been chargeable to the Customer had service commenced (all discounted to present value at six percent).
- (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 by the Company, less net salvage, applies. In each case, 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.

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REGULATIONS2.5 Payment Arrangements (Cont'd)2.5.6 Cancellation of Application for Service (Cont'd)

- (D) The special charges described in 2.5.6(A) through 2.5.6(C) will be calculated and applied on a case-by-case basis.

2.5.7 Changes in Service 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 Allowance for Interruption in Service

Interruption in service that is not due to the negligence of, or noncompliance with the provisions of this tariff by, the Customer, will be credited to the Customer as set forth in 2.6.1 for the part of the service that the interruption affects.

2.6.1 Credit for Interruptions

- (A) A credit allowance will be made when an interruption occurs because of a failure of any component furnished by the Company under this tariff. An interruption period begins when the Customer reports a service, facility or circuit to be interrupted and releases it for testing and repair. An interruption period ends when the service, facility or circuit is operative. If the Customer reports a service, facility or circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but not interrupted.

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REGULATIONS2.6 Allowances for Interruption of Service (Cont'd)2.6.1 Credit for Interruptions (Cont'd)

- (B) For calculating credit allowances, every month is considered to have 30 days. A credit allowance for fixed recurring fees only 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 credit.
- (C) A credit allowance will be given for interruption of 30 minutes or more. Credit allowances shall be calculated as follows:

Interruptions of 24 Hours or Less

<u>Length of Interruption</u>	<u>Interruption Period To Be Credited</u>
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

Two or more interruptions of 15 minutes or more during any one 24-hour period shall be considered as one interruption.

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REGULATIONS

2.6 Allowance for Interruption in Service (Cont'd)

2.6.1 Credit for Interruptions (Cont'd)

C) (Cont'd)

Two or more interruptions of 15 minutes or more during any one 24-hour period shall be considered as one interruption.

Over 24 Hours 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.

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

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REGULATIONS2.0 Allowance for Interruption in Service (Cont'd)2.0.1 Limitation on Allowances

No credit will be made for:

- (A) interruption due to the negligence of, or noncompliance with the provisions of this tariff by, the Customer, authorized user, joint user, or other common carrier providing service connected to the service of the Company;
- (B) interruption due to the negligence of any person other than the Company, including but not limited to the Customer or other common carriers connected to the Company's facilities;
- (C) interruptions due to the failure or malfunction of non-Company equipment;
- (D) interruptions of service during any period in which the Company is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;
- (E) interruptions of service during a period in which the Customer continues to use the service on an impaired basis;
- (F) 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; and
- (G) interruption of service due to circumstances or causes beyond the control of the Company.

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REGULATIONS2.0 Assurances for Interruptions in Service (Cont'd)2.0.1 Cancellation For Service Interruption

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

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REGULATIONS2.1 Use of Customer's Service by Others2.1.1 Resale and Sharing

Any service provided under this tariff may be resold to or shared with other persons at the option of the Customer, subject to compliance with any applicable laws or South Dakota Public Utilities Commission regulations governing such resale or sharing. The Customer remains solely responsible for all use of service 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.

2.1.2 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 designated 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.

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REGULATIONS2.5 Cancellation of Service

If a Customer cancels a Service Order or terminates service before the completion of the term for any reason whatsoever other than a service interruption (as defined in Section 2.6.1 above), the Customer agrees to pay to the Company termination liability charges, as 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 2.5.2.

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

- (A) all unpaid Non-recurring charges reasonably expended by the Company to establish service to the Customer; plus
- (B) any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by the Company on behalf of the Customer; plus
- (C) all Recurring Charges specified in the applicable Service Order Tariff 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 cancellations; minus
- (D) a reasonable allowance for costs avoided by the Company as a direct result of the Customer's cancellation.

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REGULATIONS2.9 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:

- (A) to any subsidiary, parent company or affiliate of the Company; or
- (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.

2.10 Notices and Communications

- (A) The Customer shall designate on the Service Order an address to which the Company shall mail or deliver all notices and other communications, except that the Customer may also designate a separate address to which the Company's bills for service shall be mailed.
- (B) The Company shall designate on the Service Order an address to which the Customer shall mail or deliver all notices and other communications, except that Company may designate a separate address on each bill for service to which the Customer shall mail payment on that bill.
- (C) All notices or other communications required to be given pursuant to this tariff will be in writing. Notices and other Communications of either party, and all bills mailed by the Company, shall be presumed to have been delivered to the other party on the third business day following placement of the notice, communication or bill with the U.S. Mail or a private delivery service, prepaid and properly addressed, or when actually received or refused by the addressee, whichever occurs first.

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REGULATIONS2.10 Notices and Communications (Cont'd)

- (D) The Company or the Customer shall advise the other party of any changes to the addresses designated for notices, other communications or billing, by the following procedures for giving notice set forth herein.

2.11 Operator Services Rules

- (A) The Company will enforce the following operator service rules.

A provider of intrastate operator assisted communications services must:

- 1) identify itself at the time the end-user accesses its services;
- 2) upon request, quote all rates and charges for its services to the end-user accessing its system;
- 3) arrange to have posted in plain view at each telephone location which automatically accesses the operator service provider's network and where its services are made available to the public or transient end-users:
 - (a) the operator service provider's name and address;
 - (b) bill and service dispute calling information including the operator service provider's dispute resolution phone number;
 - (c) clear and specific instructions informing the end-user how to access a local exchange telephone company operator as an alternative available to the end-user; and
 - (d) notice concerning any and all amounts to be billed by the operator services provider on behalf of any host location or third party that will appear on the operator service provider's bill for services rendered.

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REGULATIONS2.11 Operator Services Rules (Cont'd)(A) (Cont'd)

- 4) in instances when the provider is unable to complete the call and it requires transfer to another telephone corporation that may affect the rates and charges applicable to the telephone bill, inform the caller of the transfer and the possible effect on the applicable rates and charges, before any charges are incurred; and
- 5) in the case of such transfer, the telephone corporation or provider to which the call is transferred shall identify itself and inform the caller of the transfer's effect on the applicable rates and charges, before any charges are incurred.

(B) The Company will comply with the following provisions:

- 1) Providers of intrastate operator assisted communications services shall not take any action or enter into any arrangement that restricts end-user selection among competing interexchange telephone corporations or end-users access to competing providers of intrastate operator assisted communications services, or pay any commissions or other compensation to any entity engaged in such action or arrangement.

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NEW ACCESS COMMUNICATIONS LLC

SD P.U.C. Tariff No. 2
Section 3 - Original Page

APPLICATION OF RATES

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APPLICATION OF RATES3.1 Introduction

The regulations set forth in this section govern the application of rates for services contained in other sections of this tariff.

3.2 Charges Based on Duration of Use

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:

- (A) Calls are measured in durational increments identified for each service. All calls that are fractions of a measurement increment are rounded-up next to the whole unit.
- (B) 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). Timing for operator service person-to-person calls start with completion of the connection to the person called or an acceptable substitute, or to the PAX station called.
- (C) 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.
- (D) 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.
- (E) All times refer to local time.

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APPLICATION OF RATES3.2 Rates Based Upon Distance

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

- (A) 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 the 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 no 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.

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APPLICATION OF RATES3.3 Rates Based Upon Distance (Cont'd)

(B) The airline distance between any two rate centers is determined as follows:

- 1) Obtain the "V" (vertical) and "H" (horizontal) coordinates for each rate center from the Bellcore Local Exchange Routing guide referenced in Section 3.3(A).
- 2) Compute the difference between the "V" coordinates of the two rate centers, and the difference between the two "H" coordinates.
- 3) Square each difference obtained in step (2) above.
- 4) Add the square of the "V" difference and the square of the "H" difference obtained in the step (3) above.
- 5) Divide the sum of the squares by 10. Round to the next higher whole number if any fraction is obtained.
- 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.

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SERVICE AREAS

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SERVICE AREAS

4.1 Exchange Access Service Areas

Exchange Access Service Areas (EASA) are provided (pursuant to Section 3.1) in limited geographic areas. Exchange Access Services bearing the following NPA-NXX designations are provided in the following areas:

NPA-NXX

Geographic Areas in Which
Full Service is Available

Exchange Access NPA-NXXs and Boundaries Are To Be Determined

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SERVICE AREAS

4.2 Calling Areas

Geographically-defined Local Calling Areas¹ are associated with each Exchange Access Service provided pursuant to Section 5.1 Exchange Access Services bearing the following NPA-NXX designations shall have the following Local and IntraLATA Calling Areas:

NPA-NXX

Local Calling Area Or IntraLATA Calling Area

Local Calling Areas and IntraLATA Calling Areas Are To Be Determined.

¹ Rates and rate plans for Local and IntraLATA Calling Areas shall be determined by the Company pursuant to Exchange Access Services are set forth in Section 8.

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EXCHANGE ACCESS SERVICE

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EXCHANGE ACCESS SERVICE5.1 General

Exchange Access Service provides a Customer with a telephonic connection to, and a unique telephone number address on the public switched telecommunications network. Each Exchange Access Service enables users to:

- (A) receive calls from other stations on the public switched telecommunications network;
- (B) access other services offered by the Company as set forth in this tariff;
- (C) access certain interstate and international calling services provided by the Company;
- (D) access (at no additional charge) the Company's operators and business office for service related assistance;
- (E) access (at no additional charge) emergency services by dialing 0- or 9-1-1; and
- (F) access services provided by other common carriers that purchase the Company's Switched Access services as provided under the Company's Federal and State tariffs, or that maintain other types of traffic exchange arrangements with the Company.

Each Exchange Access Service is available on a "full" service basis, whereby service is delivered to a demarcation/connection block at the customer's premises.

The following Exchange Access Services are offered:

Basic Line Service

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EXCHANGE ACCESS SERVICE§ 2 Basic Line Service

Basic Line Service provides a Customer with a single, voice-grade telephonic communications channel that can be used to place or receive one call at a time. Basic Lines are provided for connection of Customer-provided single station sets or facsimile machines to the public switched telecommunications network. Each Basic Line may be configured into a hunt group with other Company-provided Basic Lines. Each Basic Line is provided with the following standard features which can be deleted at the Customer's option:

Call Forwarding
Call Waiting
Three-Way Conference Calling
Touch Tone

Non-recurring and monthly recurring rates per Basic Line apply as follows:

	<u>Non-Recurring</u>	<u>Monthly Recurring</u>
Basic Local Exchange Service -Each Line	\$X.XX	\$X.XX
Expanded Local Exchange Service -Each Line	\$X.XX	\$X.XX

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EXCHANGE ACCESS SERVICE

5.1 Key Line Service

Reserved for future use.

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EXCHANGE ACCESS SERVICE

§4 Basic Trunk Service

Reserved for future use

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EXCHANGE ACCESS SERVICE

5.5 DID Trunk Service

Reserved for future use.

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EXCHANGE ACCESS SERVICE

5.6 Digital Trunk Service

Reserved for future use.

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EXCHANGE ACCESS SERVICE

5.7 Centrex Service

Reserved for future use.

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EXCHANGE ACCESS SERVICE

5.7 Centrex Service (Cont'd)

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EXCHANGE ACCESS SERVICE

5.7 Centrex Service (Cont'd)

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EXCHANGE ACCESS SERVICE

5.7 Centrex Service (Cont'd)

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EXCHANGE ACCESS OPTIONAL FEATURES

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Each Additional Listing:

N/A

² For Customers with multiple premises served by the Company, the Company will require the listing of the main billing telephone number at each premise.

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EXCHANGE ACCESS OPTIONAL FEATURES6.1 Directory Listings

For each Customer of Company-provided Exchange Access Service(s), the Company shall arrange for the listing of the Customer's main billing telephone number in the directories 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 at the following rates:

Non-RecurringMonthly Recurring

5X.XX

EXCHANGE ACCESS OPTIONAL FEATURES6.2 Direct Inward Dial (DID) Service

DID service is an option feature which can be purchased in conjunction with Company-provided Basic Trunks or Digital Trunks. DID service transmits the dialed digits for all incoming calls allowing the Customer's PBX to route incoming calls directly to individual stations corresponding to each individual DID number. Charges for DID capability and DID number blocks apply in addition to charges specified for Basic Trunks or Digital Trunks in Sections 5.2, .5.4 and 5.6, respectively.

One DID Additive charge applies for each DID-equipped Basic Trunk or DID-equipped channel on a Digital Trunk. The Customer is required to purchase at least one DID number block for each DID-equipped trunk or trunk group, or DID-equipped channel or channel group.³

	<u>Non-Recurring</u>	<u>Monthly Recurring</u>
DID Additive	\$X.XX	\$X.XX
Block of 20 DID numbers	\$X.XX	\$X.XX

³ A "group" is a set of Basic Trunks or Digital Trunk channels which have been configured into a group.

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EXCHANGE ACCESS OPTIONAL FEATURES6.3 Main Number Retention6.3.1 Description

Main Number Retention is an optional feature by which a new Customer, who was formally 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 Access 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.

Monthly recurring and non-recurring charges apply per retained number. Rates for retained numbers may vary from area to area.

6.3.2 Rates

	<u>Non-Recurring</u>	<u>Monthly Recurring</u>
Per retained number	\$X.XX	\$X.XX
Per retained vanity number	\$X.XX	\$X.XX

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EXCHANGE ACCESS OPTIONAL FEATURES6.4 Accounting Codes

Accounting Codes provide customers with a means of restricting calls or itemizing calls, according to specific digits that must be dialed at the end of a long distance telephone number. The length of Accounting Codes may vary from 2 to 6 digits, however, the length must be consistent for each customer location.

Offered are packages of codes that are verified against a specific list of valid numbers, for call restriction, or unverified packages of 2-6 digits in length for cataloging by code the calls made.

<u>Charge Per</u> <u>Customer Location</u>	<u>Monthly</u> <u>Recurring</u>	<u>Non-</u> <u>Recurring</u>
Verified Packages	SXX.XX	SXX.XX
Unverified Packages	SX.XX	SXX.XX

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EXCHANGE ACCESS OPTIONAL FEATURES6.5 Authorization Codes

This option restricts calls from being made unless the correct accounting code is entered. Only customer specified codes will be accepted. The customer then may use these codes to track calling for cost analysis and bill-back purposes.

Non-Recurring
\$X.XX

Monthly Recurring
\$X.XX

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EXCHANGE ACCESS OPTIONAL FEATURES6.6 Vanity Number Service6.6.1 Description

Vanity Number Service is an optional feature by which a new Customer may request a specific or unique telephone and fax number for use with the Company provided Exchange Access Services. This service provides for the assignment of a customer requested telephone number other than the next available number from the assignment control list.

Vanity Number Service is furnished subject to the availability of facilities and the requirements of Exchange Access Service as defined by the Company. The Company reserves all rights to the Vanity Numbers assigned to the Customers and may, therefore, change them if required.

Monthly recurring charges apply per Vanity number.

6.6.2 Rates

	<u>Non-Recurring</u>	<u>Monthly Recurring</u>
Per Vanity Number	\$X.XX	\$X.XX

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RESOLD LOCAL EXCHANGE SERVICE

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RESOLD LOCAL EXCHANGE SERVICE7.1 Description

Resold Local Exchange Service is composed of the resale of exchange access lines and local calling provided by other certified Local Exchange Carriers, in combination with Company-provided usage services, miscellaneous services or interstate/international services.

7.2 Rates

The following rates apply for Resold Local Exchange Services:

	<u>Non-Recurring</u>	<u>Monthly Recurring</u>
Resold Basic Lines	\$X.XX	\$X.XX
Resold Basic Trunks	\$X.XX	\$X.XX
Resold Local Usage		
first 3 minutes	\$X.XX	\$X.XX
ea. add'l min.	\$X.XX	\$X.XX
Retained Numbers	\$X.XX	\$X.XX

Resold features associated with resold local exchange service will be priced according to the rates established for such features in the underlying carrier's effective intrastate tariffs.

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LOCAL CALLING SERVICE

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LOCAL CALLING SERVICE8.1 Description

Local Calling Service provides a Customer with the ability to originate calls from a Company-provided access line to all other stations on the public switched telephone network⁴ bearing the designation of any central office exchanges, areas, and zones included in the Customer's local calling area.

8.1.1. Basic Local Exchange Service- This calling service allows the Customer unlimited access to all other stations on the public switched telephone network within the customer's Basic Local Calling Area but within the same state and LATA will be charged the IntraLATA rates as specified in Section 9.3 following.

8.1.2. Expanded Local Exchange Service- This calling service allows the Customer limited access to all other stations on the public switched telephone network within the Customer's Basic Local Calling Area. Additional calls to the Basic Local Calling Area will be charged as specified in Section 8.2.1(A) following. All calls to the Expanded Local Calling Area⁵ will be charged a per call setup and per minute access charge as specified in Section 8.2.1(B) following. All Calls to destinations outside the Expanded Local Calling Area but within the same state and LATA will be charged the IntraLATA rates as specified in Section 9.3 following.

⁴ Except calls to other telephone companies' caller paid information services (e.g. NPA 900, NXX 975, etc.). Calls to those numbers and other numbers used for caller-paid information services will be blocked by the Company's centralized switching facility.

⁵ As specified in Southern Bell Telephone and Telegraph Company-Georgia, General Subscriber Service Tariff, Section A3.6.1-Local Calling Area Exchanges, in effect and as amended from time-to-time.

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LOCAL CALLING SERVICE8.2 Rates

The rates set forth in this section apply to all direct dialed local calls. For operator-assisted local calls, the operator charges listed in Section 12.1.2 apply in addition to the charges listed below.

8.2.1. Usage Charges - Per minute charges apply for each call. Timing is in whole minute increments, with a minimum charge of one minute per call.

(A) Monthly Message Allowance

<u>Type of Service</u>	<u>Basic Calling Area</u>	<u>Extended Calling Area</u>
Basic Local Exchange Service	TBD	TBD ⁶
Expanded Local Exchange Service	TBD	TBD

*Additional message charge of \$0.12 for each message over monthly allowance.

(B) Expanded Calling Area - The following usage charges apply to points in the Customer's Expanded Calling Area.

<u>MILEAGE</u>	<u>SETUP PER CALL</u>	<u>PEAK</u>	<u>OFF-PEAK</u>
0 - 10	\$X.XX	\$X.XX	\$X.XX
11 - 22	\$X.XX	\$X.XX	\$X.XX
23 - 40	\$X.XX	\$X.XX	\$X.XX
41 +	\$X.XX	\$X.XX	\$X.XX

* Customers of Basic Local Exchange Service are billed IntraLATA rates for calls to destinations within the state and LATA but outside the Basic Local Calling Area.

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MISCELLANEOUS SERVICES

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MISCELLANEOUS SERVICES9.1 Operator Services9.1.1 Description

Operator Handled Calling Services are provided to Customers and Users of Company-provided Exchange Access Services, and to Customers and Users of exchange access lines.

9.1.2 Definitions

Person-to-Person: Calls completed with the assistance of a Company operator to a particular person, station, department, or PBX extension specified by the calling party. Charges may be billed to the Customer's commercial credit card and/or LEC calling card, calling station, called station, or a designated third-party station. Calls may be dialed with or without the assistance of a Company operator.

Station-to-Station: Refers to calls other than person-to-person calls billed to either the end user's commercial credit card and/or nonproprietary calling card. Calls may be dialed with or without the assistance of a Company operator. Collect calls to coin telephones and transfers of charges to third telephones which are coin telephones will not be accepted.

Operator Dialed Charge: The end user places the call without dialing the destination number, although the capability to do it himself exists. The end user will dial "V" for local calls and "00" for long distance calls and then request the operator to dial the called station.

Billed to Non-proprietary Calling Card: Refers to calls that are dialed by the customer in accordance with standard dialing instructions and billed to a non-proprietary calling card issued by another carrier.

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MISCELLANEOUS SERVICES9.1 Operator Services (Cont'd)9.1.3 Rates

Local exchange and IntraLATA calls may be placed on an Operator Assisted basis. Usage charges for Operator Assisted Calls are the same as those set forth in Section 8 and 9, preceding. For Operator Assisted calls to Busy Line Verification and Interrupt, or Directory Assistance, the surcharges specified in Section 11.2.3 and Section 11.1.3 will apply in addition to any applicable Operator charges.

In addition to the usage charges identified above, the following operator-assisted charges will apply:

<u>Per Call Charges</u>	<u>IntraLATA</u>	<u>InterLATA</u>
Person-to-Person (Customer Dialed)	\$X.XX	\$X.XX
Station-to-Station (Customer Dialed)	\$X.XX	\$X.XX
Operator Dialed Charge (applies in addition to other operator charges)	\$X.XX	\$X.XX
Billed to Non-Proprietary Calling Card (additional surcharge)	\$X.XX	\$X.XX
Directory Assistance	\$X.XX	\$X.XX

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MISCELLANEOUS SERVICES9.2 Busy Line Verify and Line Interrupt Service9.2.1 Description

Upon request of a calling party the Company will verify a busy condition on a called line.

- (A) The operator will determine if the line is clear or in use and report to the calling party.
- (B) The operator will interrupt the call on the called line only if the calling party indicates an emergency and requests interruption.

9.2.2 Regulations

(A) A charge will apply when:

- 1) The operator verifies that the line is busy with a call in progress.
- 2) The operator verifies that the line is available for incoming calls.
- 3) The operator verifies that the called number is busy with a call in progress and the customer requests interruption. The operator will then interrupt the call, advising the called party the name of the calling party. One charge will apply for both verification and interruption.

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MISCELLANEOUS SERVICES9.2 Busy Line and Line Verification Interrupt Service (Cont'd)9.2.2 Regulations (Cont'd)

(B) No charge will apply:

- 1) When the calling party advises that the call is to or from an official public emergency agency.
- 2) Under conditions other than those specified in 11.2.1.A as preceding.

(C) Busy Line Verification and Interrupt Service is furnished where and to the extent that facilities permit.

(D) The Customer shall identify and hold the Company harmless against all claims that may arise from either party to the interrupted call or person.

9.2.3 Rates

Busy Line Verify Service (each request)	\$1.00
Busy Line Verify and Busy Line Interrupt Service (each request)	\$1.00

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MISCELLANEOUS SERVICES9.3 Service Implementation9.3.1 Description

Absent a promotional offering, service implementation charges will apply to new service orders or to orders to change existing service.

9.3.2 RatesNon-Recurring

per service order

XX.XX

9.4 Restoration of Service9.4.1 Description

A restoration charge applies to the re-establishment of service and facilities suspended because of non-payment of bills and is payable at the time that the re-establishment of the service and facilities suspended is arranged for. The restoration charge does not apply when, after disconnection of service, service is later re-established.

9.4.2 RatesNon-Recurring

per occasion

XX.XX

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SPECIAL ARRANGEMENTS

Issued:

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SPECIAL ARRANGEMENTS10.1 Special Construction10.1.1 Basis For Charges

Where the Company furnishes a facility or service for which a rate or charge is not specified in the Company's tariffs, charges will be based on the costs incurred by the Company.

10.1.2 Termination Liability

To the extent that there is no other requirement for use by the Company, a termination liability may apply for facilities specially constructed at the request of the customer.

- (A) The termination liability period is the estimated service life of the facilities provided.
- (B) The amount of the maximum termination liability is equal to the estimated amounts for:
 - 1) Cost installed of the facilities provided including estimated costs for rearrangements of existing facilities and/or construction of new facilities as appropriate, less net salvage. Cost installed includes the cost of:
 - (a) equipment and materials provided or used,
 - (b) engineering, labor and supervision,
 - (c) transportation, and
 - (d) rights-of-way;
 - 2) license preparation, processing, and related fees;

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SPECIAL ARRANGEMENTS

10.1 Special Construction (Cont'd)

10.1.2 Termination Liability (Cont'd)

(B) (Cont'd)

- 3) tariff preparation, processing, and related fees;
- 4) cost of removal and restoration, where appropriate; and
- 5) any other identifiable costs related to the specially constructed or rearranged facilities.

- (C) The applicable termination liability method for calculating the unpaid balance of a term obligation. The amount of such charge is obtained by multiplying the sum of the amounts determined as set forth in Section 10.1.2(B) preceding by a factor related to the unexpired period of liability and the discount rate for return and contingencies. The amount determined in section 10.1.2(B) preceding shall be adjusted to reflect the redetermined estimate net salvage, including any reuse of the facilities provided. This product is adjusted to reflect applicable taxes.

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SPECIAL ARRANGEMENTS10.2 Individual Case Basis (ICB) Arrangements

Arrangements will be developed on a case-by-case basis in response to a bona fide request from a Customer or prospective Customer to develop a competitive bid for a service offered under this tariff. Rates quoted in response to such competitive requests may be different than those specified for such services in this tariff. ICB rates will be offered to the Customer in writing and on a nondiscriminatory basis.

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SPECIAL ARRANGEMENTS

10.3 Temporary Promotional Programs

The Company may establish temporary promotional programs wherein it may waive or reduce non-recurring or recurring charges, to introduce present or potential Customers to a service not previously received by the Customers.

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EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

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KRISTEN L. BURSON

OF COUNSEL
VINCENT J. KANE
THOMAS BENNETT
JOHN E. PETER, JR.
JOSEPH J. BURTON
JULIA L. BURTON

July 2, 2001

William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Re: New Access Communications LLC
TC01-035

Dear Mr. Bullard:

In accordance with the request of staff member, Heather K. Forney, enclosed for filing with the Commission please find an original and ten (10) copies of the above captioned corporation's revised tariff pages; Section 2, Original pages 5 and 7.

The Company is in the process of obtaining a bond.

Also enclosed is an exact duplicate of this filing. Please date-stamp the duplicate and return same to me in the enclosed postage pre-paid, addressed envelope.

Should you have any questions concerning this filing, please contact me.

Very truly yours,

EARLY, LENNON, CROCKER & BARTOSIEWICZ, P.L.C.

Patrick D. Crocker / PDC

Patrick D. Crocker
PDC/pas

cc: Heather K. Forney

RECEIVED

JUL 13 2001

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

REGULATIONS2.1 Undertaking of the Company (Cont'd)2.1.4 Liability of the Company

- (A) The liability of the Company for damages 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 or arising out of the failure to furnish the service, whether caused by acts or omission, shall be determined pursuant to SDCL 49-13-1 and 49-13-1.1.
- (B) The Company shall not be liable for any delay or failure of performance or equipment due to causes beyond its control, including but not limited to: acts of God, fire, flood, explosion or other catastrophes; any law, order, regulation, direction, action, or request of the United States Government, or of any other government, including state and local governments having or claiming jurisdiction over the Company, or of any department, agency, commission, bureau, corporation, or other instrumentality of any one or more of these federal, state, or local governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials; or strikes, lock-outs, work stoppages, or other labor difficulties.

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REGULATIONS2.1 Undertaking of the Company (Cont'd)2.1.4 Liability of the Company (Cont'd)

- (F) The Company is not liable for any defacement of or damage to Customer premises resulting from the furnishing of services or equipment on such premises or installation or removal thereof, unless such defacement or damage is caused by negligence or willful misconduct of the Company's agents or employees.
- (G) The Company shall be indemnified, defended and held harmless by the Customer against any claim, loss or damage arising from Customer's use of services, involving claims for libel, slander, invasion of privacy, or infringement of copyright arising from the Customer's own communications.
- (H) **THE COMPANY MAKES NO WARRANTIES OR 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.**

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Issued By: Steven C. Clay, President
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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF)	ORDER GRANTING
NEW ACCESS COMMUNICATIONS LLC FOR)	CERTIFICATE OF
A CERTIFICATE OF AUTHORITY TO PROVIDE)	AUTHORITY
INTEREXCHANGE TELECOMMUNICATIONS)	
SERVICES AND LOCAL EXCHANGE)	TC01-035
SERVICES IN SOUTH DAKOTA)	

On April 2, 2001, the Public Utilities Commission (Commission) received an application for a certificate of authority from New Access Communications LLC (New Access).

New Access proposes to offer local exchange and interexchange telecommunications throughout South Dakota on a resold basis. A proposed tariff was filed by New Access.

On April 5, 2001, the Commission electronically transmitted notice of the filing and the intervention deadline of April 20, 2001, to interested individuals and entities. No petitions to intervene or comments were filed and at its regularly scheduled August 16, 2001, meeting, the Commission considered New Access' request for a certificate of authority. Commission Staff recommended granting a certificate of authority, subject to rural safeguards, and subject to the condition that New Access not offer a prepaid calling card or require deposits or advance payments without prior approval of the Commission.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-3 and 49-31-69 and ARSD 20:10:24:02, 20:10:24:03 and 20:10:32:03. The Commission finds that New Access has met the legal requirements established for the granting of a certificate of authority. New Access has, in accordance with SDCL 49-31-3 and 49-31-71, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota.

The Commission approves New Access' application for a certificate of authority, subject to rural safeguards, and subject to the condition that New Access not offer a prepaid calling card or require deposits or advance payments without prior approval of the Commission. The certificate of authority for New Access 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 New Access choose to provide local exchange services statewide, with respect to rural telephone companies, New Access 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 New Access' application for a certificate of authority to provide interexchange telecommunications services and local exchange services is granted, subject to the condition that New Access not offer a prepaid calling card or require deposits or advance payments without prior approval of the Commission; and it is

FURTHER ORDERED, that New Access shall file informational copies of tariff changes with the Commission as the changes occur; and it is

FURTHER ORDERED, that the Commission shall authorize New Access to offer its local exchange services in South Dakota, except in those areas served by a rural telephone company.

Dated at Pierre, South Dakota, this 22nd day of August, 2001.

<p>CERTIFICATE OF SERVICE</p> <p>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.</p> <p><u>Melvin Kalbo</u></p> <p><u>8/29/01</u></p> <p>(OFFICIAL SEAL)</p>
--

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, 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 as of the date of the
Order Granting Certificate of Authority
Docket No. TC01-035

This is to certify that

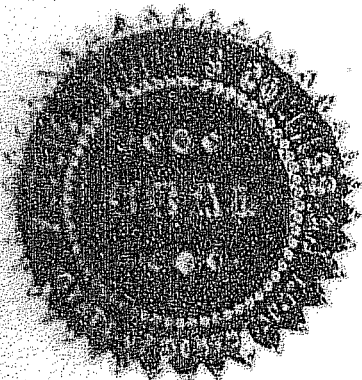
NEW ACCESS COMMUNICATIONS LLC

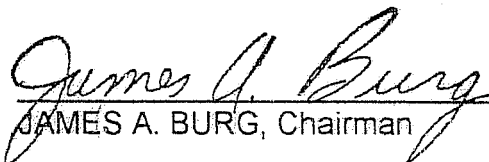
is authorized to provide interexchange telecommunications services,
including local exchange services in nonrural areas in South Dakota,
subject to the condition that it not offer a prepaid calling card or require
deposits or advance payments without prior approval of the
Commission.

This certificate is issued in accordance with SDCL 49-31-3 and 49-31-69
and ARSD 20:10:24:02 and 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 22nd day of August, 2001.

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION:**




JAMES A. BURG, Chairman


PAM NELSON, Commissioner