

16U4-U65

RW

TC04-065

DOCKET NO.

In the Matter of          IN THE MATTER OF THE FILING FOR  
         APPROVAL OF AN AMENDMENT TO  
         AN INTERCONNECTION AGREEMENT  
         BETWEEN QWEST CORPORATION  
         AND EXCEL TELECOMMUNICATIONS,  
         INC.

### Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
3/26 04	Filed & Docketed
4/1 04	Weekly Filing;
5/13 04	Order Approving Amendment to Agreement;
5/13 04	Docket Closed.

BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.

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March 25, 2004

RECEIVED

MAR 26 2004

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

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

Re: Filing of Amendment for Qwest DSL™ (with discount) provided with UNE-P to the Interconnection Agreement between Qwest Corporation and Excel Telecommunications, Inc.  
Our File No. 2104.078

Dear Ms. Bonrud:

Pursuant to ARSD 20:10:32:21 enclosed for filing are an original and ten (10) copies of the Qwest DSL™ (with discount) provided with UNE-P Amendment between Excel Telecommunications, Inc. ("Excel") and Qwest Corporation ("Qwest") for approval by the Commission. This is an amendment to the agreement between Excel and Qwest which was approved by the Commission on September 18, 2002 in Docket No. TC02-093.

The amendment is made in order to add terms, conditions and rates for Qwest DSL™ (with discount) provided with UNE-P as set forth in Attachment 1 and Exhibit A to the amendment.

Excel has authorized Qwest to submit this amendment on Excel's behalf.

Sincerely yours,

BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.

*Thomas J. Welk*

Thomas J. Welk

TJW/cij  
Enclosures

cc: J. Travis Gault - Excel (w/o enc)  
Ms. Colleen Sevold (w/o enc)  
Ms. Luba Hromyk (w/o enc)

**Qwest DSL™ (with discount) provided with UNE-P Amendment  
to the Interconnection Agreement between  
Qwest Corporation and  
Excel Telecommunications, Inc.  
for the State of South Dakota**

RECEIVED

MAR 26 2004

SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

This is an Amendment ("Amendment") to the Interconnection Agreement, for Qwest DSL™ (with discount) provided with UNE-P, between Qwest Corporation ("Qwest") (fka U S WEST Communications, Inc.), a Colorado corporation, and Excel Telecommunications, Inc. ("CLEC"). CLEC and Qwest shall be known jointly as the ("Parties").

**RECITALS**

WHEREAS, the Parties entered into an Interconnection Agreement, for service in the State of South Dakota, that was approved by the South Dakota Public Utilities Commission ("Commission") on September 18, 2002, as referenced in TC02-093 ("Agreement"); and

WHEREAS, the Parties wish to amend the Agreement further under the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**Amendment Terms**

The Agreement is hereby amended by adding terms, conditions and rates for Qwest DSL™ (with discount) provided with UNE-P as set forth in Attachment 1 and Exhibit A, to this Amendment, attached hereto and incorporated herein by this reference.

**Effective Date**

This Amendment shall be deemed effective upon approval by the Commission; however, the Parties may agree to implement the provisions of this Amendment upon execution. To accommodate this need, CLEC must generate, if necessary, an updated Customer Questionnaire. In addition to the Questionnaire, all system updates will need to be completed by Qwest. CLEC will be notified when all system changes have been made. Actual order processing may begin once these requirements have been met.

**Term**

The discount provided under this Amendment shall terminate on December 31, 2005.

## Further Amendments

Except as modified herein, the provisions of the Agreement shall remain in full force and effect. The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

## Change of Law

A. The provisions in this Amendment are intended to be in compliance with and based on the existing state of the law, rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws, as of April 1, 2003 (the Existing Rules). Nothing in this Amendment shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Existing Rules or an admission by Qwest or CLEC that the Existing Rules should not be changed, vacated, dismissed, stayed or modified. Nothing in this Amendment shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, vacated, dismissed, stayed or modified. To the extent that the Existing Rules are vacated, dismissed, stayed or materially changed or modified, then this Amendment shall be amended to reflect such legally binding modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment within sixty (60) Days after notification from a Party seeking amendment due to a modification or change of the Existing Rules or if any time during such sixty (60) Day period the Parties shall have ceased to negotiate such new terms for a continuous period of fifteen (15) Days, it shall be resolved in accordance with the Dispute Resolution provision of the Agreement. It is expressly understood that this Amendment will be corrected, or if requested by CLEC, amended as set forth herein, to reflect the outcome of generic proceedings by the Commission for pricing, service standards, or other matters covered by this Amendment. Any amendment shall be deemed effective on the effective date of the legally binding change or modification of the Existing Rules for rates, and to the extent practicable for other terms and conditions, unless otherwise ordered. During the pendency of any negotiation for an amendment pursuant to this Section the Parties shall continue to perform their obligations in accordance with the terms and conditions of this Amendment, for up to sixty (60) Days. If the Parties fail to agree on an amendment during the sixty (60) Day negotiation period, the Parties agree that the first matter to be resolved during Dispute Resolution will be the implementation of an interim operating agreement between the Parties regarding the disputed issues, to be effective during the pendency of Dispute Resolution. The Parties agree that the interim operating agreement shall be determined and implemented within the first fifteen (15) Days of Dispute Resolution and the Parties will continue to perform their obligations in accordance with the terms and conditions of this Amendment, until the interim operating agreement is implemented. For purposes of this section, "legally binding" means that the legal ruling has not been stayed, no request for a stay is pending, and any deadline for requesting a stay designated by statute or regulation, has passed.

B. In addition, but without limiting Section A above, nothing in this Amendment shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the FCC's decision and rules adopted in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of*

the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 01-338, 96-98 and 98-147, Report and Order on Remand, FCC 03-36, nor rules, regulations and interpretations thereof, including but not limited to state rules, regulations, and laws as they may be issued or promulgated regarding the same ("Decision(s)"). Nothing in this Amendment shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of the Decision or concerning whether the Decision should be changed, vacated, dismissed, stayed or modified.

**Entire Agreement**

The Agreement as amended (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of the Agreement as amended and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of the Agreement as amended.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

**Excel Telecommunications, Inc.**

Connie F. Mitchell

Signature

Connie F. Mitchell

Name Printed/Typed

Vice President / Director

Title

3/11/04

Date

**Qwest Corporation**

L. T. Christensen

Signature

L. T. Christensen

Name Printed/Typed

Director - Interconnection Agreements

Title

3/17/04

Date

**ATTACHMENT 1**

CLEC may order new or retain existing Qwest DSL™ service on behalf of End User Customers when utilizing UNE-P-POTS, UNE-P-Centrex, and UNE-P-PBX (analog, non-DID trunks only) combinations, where Technically Feasible. The price for Qwest DSL™ provided with UNE-P combinations is included in Exhibit A to this Agreement. Qwest DSL™ service provided to Internet service providers and not provided directly to Qwest or CLEC's End User Customers is not available with UNE-P combinations. Retail promotions may not be combined with this offering. Non-recurring charges associated with Qwest DSL™ are not subject to discount. In the event that CLEC migrates the voice service to Unbundled Loop, Qwest DSL™ service will be disconnected.

**Exhibit A**

		<b>Recurring</b>	<b>Non-Recurring</b>
<b>Qwest Miscellaneous Services Available With UNE-P</b>			
	Discounted Qwest DSL™ provided with UNE-P	See Applicable Qwest retail Tariff, catalog or price list – <b>less the applicable Wholesale ACS discount as reflected in the underlying Interconnection Agreement.</b>	See Applicable Qwest retail Tariff, catalog or price list.

**South Dakota Public Utilities Commission**  
**WEEKLY FILINGS**  
**For the Period of March 25, 2004 through March 31, 2004**

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 report. Phone: 605-773-3201

**TELECOMMUNICATIONS**

**TC04-064 In the Matter of the Filing by MCImetro Access Transmission Services, LLC d/b/a MCI for Approval of its Intrastate Switched Access Tariff.**

On March 26, 2004, MCImetro Access Transmission Services, LLC d/b/a MCI filed an Intrastate Switched Access Tariff.

Staff Analyst: Keith Senger

Staff Attorney: Karen Cremer

Date Filed: 03/26/04

Intervention Deadline: 04/16/04

**TC04-065 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and Excel Telecommunications, Inc.**

On March 26, 2004, the Commission received a Filing for Approval of a Qwest DSL (with discount) provided with UNE-P Amendment to the Interconnection Agreement between Qwest Corporation and Excel Telecommunications. According to the parties, the Amendment adds terms, conditions and rates for Qwest DSL (with discount) provided with UNE-P. Any party wishing to comment on the Amendment may do so by filing written comments with the Commission and the parties to the Amendment no later than April 15, 2004. Parties to the Amendment may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Rolayne Ailts Wiest

Date Filed: 03/26/04

Initial Comments Due: 04/15/04

**TC04-066 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and DIECA Communications, Inc. d/b/a Covad Communications Company.**

On March 26, 2004, the Commission received a Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and DIECA Communications, Inc. d/b/a Covad Communications Company. According to the



parties, the Amendment adds terms and conditions for CLEC Maintenance of Common Area Splitter Collocation. Any party wishing to comment on the Amendment may do so by filing written comments with the Commission and the parties to the Amendment no later than April 15, 2004. Parties to the Amendment may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Rolayne Ailts Wiest

Date Filed: 03/26/04

Initial Comments Due: 04/15/04

**TC04-067 In the Matter of the Application of ACN Communication Services, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.**

ACN Communication Services, Inc. is seeking a Certificate of Authority to provide local exchange telecommunications services in Qwest's service territory. The applicant intends to provide a full range of services and will offer those services through utilizing Qwest UNE-P facilities.

Staff Analyst: Keith Senger

Staff Attorney: Karen Cremer

Date Filed: 03/29/04

Intervention Deadline: 04/16/04

**TC04-068 In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License LLC and James Valley Cooperative Telephone Company.**

On March 29, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between James Valley Cooperative Telephone Company and WWC License LLC. According to the parties, the "Agreement sets forth the terms, conditions and prices under which (a) the Parties agree to directly interconnect the networks of the CMRS Provider and the Telephone Company for the purposes of the exchange of telecommunications traffic between the Parties' networks or (b) the Parties will transport and terminate the telecommunications traffic originated by the other Party and delivered via the network of a Third Party Provider." 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 19, 2004. 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: Rolayne Ailts Wiest

Date Filed: 03/29/04

Initial Comments Due: 04/19/04

**TC04-069 In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License LLC and West River Cooperative Telephone Company.**

On March 29, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between West River Cooperative Telephone Company and WWC License LLC. According to the parties, the "Agreement sets forth the terms, conditions and prices under which (a) the Parties agree to directly interconnect the networks of the CMRS Provider and the Telephone Company for the purposes of the exchange of telecommunications traffic between the Parties' networks or (b) the Parties will transport and terminate the telecommunications traffic originated by the other Party and delivered via the network of a Third Party Provider." 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 19, 2004. 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: Rolayne Ailts Wiest  
Date Filed: 03/29/04  
Initial Comments Due: 04/19/04

**TC04-070 In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License LLC and Vivian Telephone Company.**

On March 29, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between Vivian Telephone Company and WWC License LLC. According to the parties, the "Agreement sets forth the terms, conditions and prices under which (a) the Parties agree to directly interconnect the networks of the CMRS Provider and the Telephone Company for the purposes of the exchange of telecommunications traffic between the Parties' networks or (b) the Parties will transport and terminate the telecommunications traffic originated by the other Party and delivered via the network of a Third Party Provider." 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 19, 2004. 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: Rolayne Ailts Wiest  
Date Filed: 03/29/04  
Initial Comments Due: 04/19/04

**TC04-071 In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License LLC and Brookings Municipal Utilities d/b/a Swiftel Communications.**

On March 29, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between Brookings Municipal Utilities d/b/a Swiftel Communications and WWC License LLC. According to the parties, the "Agreement sets forth the terms, conditions and prices under which (a) the Parties agree to directly interconnect the networks of the CMRS Provider and the Telephone Company for the purposes of the exchange of telecommunications traffic between the Parties' networks or (b) the Parties will transport and terminate the telecommunications traffic originated by the other Party and delivered via the network of a Third Party Provider." 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 19, 2004. 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: Rolayne Ailts Wiest  
Date Filed: 03/29/04  
Initial Comments Due: 04/19/04

**TC04-072 In the Matter of the Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between WWC License LLC and Interstate Telecommunications Cooperative, Inc.**

On March 29, 2004, the Commission received a Filing for Approval of a Reciprocal Interconnection, Transport and Termination Agreement between Interstate Telecommunications Cooperative, Inc. and WWC License LLC. According to the parties, the "Agreement sets forth the terms, conditions and prices under which (a) the Parties agree to directly interconnect the networks of the CMRS Provider and the Telephone Company for the purposes of the exchange of telecommunications traffic between the Parties' networks or (b) the Parties will transport and terminate the telecommunications traffic originated by the other Party and delivered via the network of a Third Party Provider." 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 19, 2004. 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: Rolayne Ailts Wiest  
Date Filed: 03/29/04  
Initial Comments Due: 04/19/04

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

<b>IN THE MATTER OF THE FILING FOR )</b>	<b>ORDER APPROVING</b>
<b>APPROVAL OF AN AMENDMENT TO AN )</b>	<b>AMENDMENT TO</b>
<b>INTERCONNECTION AGREEMENT BETWEEN )</b>	<b>AGREEMENT</b>
<b>QWEST CORPORATION AND EXCEL )</b>	
<b>TELECOMMUNICATIONS, INC. )</b>	<b>TC04-065</b>

On March 26, 2004, Qwest Corporation (Qwest) filed for approval by the South Dakota Public Utilities Commission (Commission) an amendment to an interconnection agreement between Excel Telecommunications, Inc. (Excel) and Qwest. The amendment is made in order to add terms, conditions and rates for Qwest DSL (with discount) provided with UNE-P as set forth in Attachment 1 and Exhibit A to the amendment.

On April 1, 2004, the Commission electronically transmitted notice of the filing of the amendment to interested individuals and entities. The notice stated that any person wishing to comment on the parties' request for approval had until April 15, 2004, to do so. No comments were filed.

At its duly noticed May 11, 2004, meeting, the Commission considered whether to approve the negotiated amendment to the agreement between Qwest and Excel. Commission Staff recommended its approval.

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

ORDERED, that the Commission approves the negotiated amendment to the agreement as described herein.

Dated at Pierre, South Dakota, this 13<sup>th</sup> day of May, 2004.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.
By: <u>Melaine Kalbo</u>
Date: <u>5/18/04</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr  
ROBERT K. SAHR, Chairman

Gary Hanson  
GARY HANSON, Commissioner

James A. Burg  
JAMES A. BURG, Commissioner