

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

IN THE MATTER OF THE IMPLEMENTATION)	ORDER ISSUING
OF THE FEDERAL COMMUNICATIONS)	PROTECTIVE ORDER;
COMMISSION'S TRIENNIAL REVIEW ORDER)	ORDER ISSUING
REGARDING UNBUNDLING OBLIGATIONS)	DISCOVERY REQUESTS
)	TC03-181

On August 21, 2003, the Federal Communications Commission (FCC) released its Triennial Review Order. Memorandum Opinion and Order, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98, 98-147. In its Triennial Review Order, the FCC directed the state commissions to make certain determinations regarding the unbundling obligations of incumbent local exchange carriers. The FCC required the state commissions to make these determinations within nine months from the effective date of the Order.

The Commission has jurisdiction over this matter pursuant to SDCL chapter 49-31, specifically 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.3, 49-31-7.4, 49-31-11, 49-31-15, 49-31-17, 49-31-38, 49-31-38.1, and 49-31-81.

In accordance with the FCC's order, the Public Utilities Commission (Commission) requested that any person or entity that intended to present evidence challenging the FCC's findings of impairment regarding access to loops, dedicated transport, or local circuit switching for mass market customers file a notice of such intent on or before October 10, 2003. In addition, the Commission requested written comments regarding recommendations on how the Commission should proceed.

The Commission received comments from Qwest Corporation (Qwest), AT&T Communications of the Midwest (AT&T), MCImetro Access Transmission Services LLC and MCI WorldCom Communications Inc. (collectively MCI), the South Dakota Telecommunications Association (SDTA), Midcontinent Communications (Midcontinent), and McLeodUSA Telecommunications Services, Inc. (McLeodUSA). None of these entities indicated an intent to present evidence challenging the FCC's findings of impairment regarding access to loops or dedicated transport. With respect to local circuit switching serving mass market customers, Qwest stated that it intends to challenge the FCC's finding of impairment for this network element. Qwest further stated that no proceedings were needed at this time regarding the impairment findings for dedicated transport and loops.

At its October 16, 2003, meeting, the Commission decided to conduct a granular fact-based analysis regarding local circuit switching serving mass market customers in areas served by Qwest. The Commission set an intervention deadline of October 31, 2003, and the hearing was set for April 26 through April 30 and May 3 through May 7, 2004. The Commission also requested comments on various issues.

The Commission received petitions to intervene and comments from Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. In addition to the petitions to intervene and

comments, the Commission received a Joint Motion for Adoption of Batch Hot Cut Forum filed by Qwest, AT&T, and MCI. The Joint Motion proposed "a multi-state forum with participation by both industry (ILECs and CLECs) as well as State Commission personnel and other interested persons." The first forum would be held in Denver, Colorado, with the option for participation via a conference bridge. Subsequent meetings would be held in Seattle, Washington and Phoenix, Arizona, if needed. All discussions would be transcribed and made part of the record in each state's triennial review proceeding. Impasse issues remaining at the conclusion of the forum process would be documented and then litigated before each state commission. Given the strict timelines set forth by the FCC for the development of a batch hot cut process, the following schedule was proposed:

November 5, 2003 - Commission notice to all CLECs within the state regarding a batch hot cut forum;

November 11, 2003 - Qwest submits a detailed batch hot cut proposal;

November 18, 2003 - CLECs submit comments/counter proposals to Qwest's batch hot cut proposal;

December 1-3, 2003 - Initial Forum held in Denver, Colorado;

December 4, 2003 through January 15, 2004 - Weekly conference calls if useful and meetings, if necessary, in Seattle, Washington and Phoenix, Arizona;

January 20, 2004 - Simultaneous filing of direct testimony on impasse issues regarding the batch hot cut process and filing of a stipulation among parties on areas of agreement/consensus items;

February 15, 2004 - Simultaneous filing of rebuttal testimony;

Hearings and Commission decision will be as determined in each state's procedural order.

In addition to the Joint Motion, some of the parties also submitted a proposed Protective Order.

At its November 4, 2003, meeting, the Commission considered a number of issues regarding this docket. The Commission voted to grant intervention to Qwest, AT&T, MCI, SDTA, Midcontinent, and McLeodUSA. After hearing no objection from any party, the Commission voted to grant the Joint Motion for Adoption of Batch Hot Cut Forum. The Commission also slightly modified the notice requirement by sending the order on November 6, 2003, to all telecommunications carriers in the state who have requested to receive notice of Commission proceedings.

With regard to the Protective Order, the Commission requested modifications and, subject to those modifications being made, voted to allow the issuance of a Protective Order. On the issue of discovery, the Commission noted that it was considering issuing discovery requests based on the discovery questions formulated by the Regional Oversight Committee (ROC) discovery group. Qwest stated that it would file a list of the entities that Qwest would like bench discovery requests issued to.

The issue of how to deal with confidential information submitted by non-parties pursuant to the bench discovery requests was also discussed. AT&T noted that in the Minnesota proceeding, discovery responses were assigned a number in order to conceal the name of the responding entity. The Commission voted to allow the issuance of bench discovery requests. The Commission then allowed additional comments on who the bench discovery requests should be sent to and how confidential information should be handled, especially with respect to any non-parties. These optional comments were required to be filed on or before November 12, 2003.

On November 12, 2003, the Commission received a list of CLECs that Qwest proposed discovery be served upon. On November 13, 2003, the Commission received an amended list of facilities-based CLECs from Qwest. On November 12, 2003, the Commission received comments from MCI. On November 19, 2003, the Commission received the amended Protective Order. Further revisions were made to the Protective Order.

The Commission finds that the amended Protective Order is needed to facilitate the disclosure of documents and information and to protect confidential information. Pursuant to its November 6, 2003, order, the Commission issues the Protective Order which is attached to this order.

Pursuant to its November 6, 2003, order authorizing the issuance of discovery requests, the Commission issues discovery requests based on the discovery questions formulated by the ROC discovery group. The discovery requests are attached to this order.

With respect to the issue of which entities the discovery should be served upon, the Commission allowed any party to file a proposed list of entities. Qwest, in its amended list, requested that the discovery requests be sent to the following companies: AT&T, Black Hills FiberCom, L.L.C., Dakota Telecom, ICG Telecom Group, Inc., McLeodUSA, Midcontinent Communications, Northern Valley Communications, Sprint, PrairieWave Communications, and Midstate Telecom, Inc. However, the Commission notes that Dakota Telecom no longer exists and the PrairieWave CLEC is PrairieWave Telecommunications, Inc., not PrairieWave Communications. Thus, the Commission will amend Qwest's list to exclude Dakota Telecom and change PrairieWave Communications to PrairieWave Telecommunications, Inc. The only other party submitting a list was MCI who requested that the discovery requests be sent to all certified LECs in South Dakota and to equipment manufacturers, where necessary. The Commission finds that, at this time, it will send its bench discovery requests to Qwest, all parties who have been granted intervention in this docket, and the companies specified by Qwest as amended by the Commission.

On the issue of confidentiality, MCI stated in its comments that with the issuance of the Protective Order, concealment of the identity of the responding entities is not necessary and could be "counterproductive to the necessary understanding of the status of the market required for the Commission and the parties to take positions and make decisions." MCI further noted that any attempt to conceal the responding entities may turn out to be unproductive because, if enough information is eventually provided, the identity of the responding entity will probably become apparent anyway. No other entity commented on this issue.

The Commission finds that it will not attempt to conceal the identity of the responding entities but will rely on the Protective Order to prevent the disclosure or dissemination of confidential information in a manner that would competitively disadvantage any responding entity. The Commission notes that the Protective Order includes provisions for submission of confidential and highly confidential information.

It is therefore

ORDERED, that the Protective Order, attached to this order, is issued for this docket; and it is

FURTHER ORDERED, that the discovery requests, attached to this order, are issued to the following entities: Qwest, MCI, AT&T, Black Hills FiberCom, ICG Telecom Group, Inc., McLeodUSA, Midcontinent Communications, Northern Valley Communications, Sprint, PrairieWave Telecommunications, Inc., and Midstate Telecom, Inc.; and it is

FURTHER ORDERED, that each of the above-listed entities shall answer the discovery requests on or before December 19, 2003, by filing them with the Commission.

Dated at Pierre, South Dakota, this 26th day of November, 2003.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Melaine Kolbo</u>
Date:	<u>11/26/03</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

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

IN THE MATTER OF THE IMPLEMENTATION)	PROTECTIVE ORDER
OF THE FEDERAL COMMUNICATIONS)	
COMMISSION'S TRIENNIAL REVIEW ORDER)	TC03-181
REGARDING UNBUNDLING OBLIGATIONS)	

To facilitate the disclosure of documents and information during the course of this proceeding and to protect confidential information, the Public Utilities Commission of the State of South Dakota ("Commission") now issues this Protective Order ("Order") pursuant to ARSD 20:10:01:43(3) to govern these proceedings.

1. (a) Confidential Information. All documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be confidential pursuant to ARSD 20:10:01:39 (herein referred to as "Confidential Information"), shall be so marked by the providing party by stamping the same with a "Confidential" designation. In addition, all notes or other materials that refer to, derive from, or otherwise contain parts of the Confidential Information will be marked by the receiving party as Confidential Information. Access to and review of Confidential Information shall be strictly controlled by the terms of this Order.

(b) Use of Confidential Information – Proceedings. All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of proceedings in the above-captioned docket or before the Federal Communications Commission ("FCC"), and all subsequent appeals ("TRO Proceedings"),

and shall keep the Confidential Information secure as confidential or proprietary information and in accordance with the purposes, intent and requirements of this Order.

(c) Persons Entitled to Review. Each party that receives Confidential Information pursuant to this Order must limit access to such Confidential Information to (1) attorneys employed or retained by the party in TRO Proceedings and the attorneys' staff; (2) experts, consultants and advisors who need access to the material to assist the party in TRO Proceedings; (3) only those employees of the party who are directly involved in these TRO Proceedings, provided that counsel for the party represents either (1) that no such employee is engaged in the sale or marketing of that party's products or services, or (2) that such person is employed by a Small Company. A Small Company is a company with fewer than 5,000 employees, including the employees of any of the Small Company's United States affiliates that operate as an ILEC, CLEC, or IXC within a common holding company. A Small Company may designate any employee or in-house expert to review Confidential Information and/or Highly Confidential Information if the producing party, upon request, gives prior written authorization for that person to review Confidential Information and/or Highly Confidential Information. If the producing party refuses to give such written authorization, the reviewing party may, for good cause shown, request an order from the Commission allowing a prohibited person(s) to review Confidential Information and/or Highly Confidential Information. The producing party shall be given the opportunity to respond to the Small Company's request before an order is issued.

In addition, access to Confidential Information may be provided to Commissioners and all Commission Hearing Officers, and Commission advisory staff members and

employees of the Commission to whom disclosure is necessary. Disclosure of both Confidential Information and Highly Confidential Information to Commission staff members and consultants employed by the staff shall be under the same terms and conditions as described herein for parties.

(d) Nondisclosure Agreement. Any party, person, or entity that receives Confidential Information pursuant to this Order shall not disclose such Confidential Information to any person, except persons who are described in section 1(c) above and who have signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A." Court reporters shall also be required to sign an Exhibit "A" and comply with the terms of this Order.

The nondisclosure agreement (Exhibit "A") shall require the person(s) to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory's full name, employer, job title and job description, business address and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the providing party before disclosure is made, and if no objection thereto is registered to the Commission within three (3) business days, then disclosure shall follow. An attorney who makes Confidential Information available to any person listed in subsection (c) above shall be responsible for having each such person execute an original of Exhibit "A" and a copy of all such signed Exhibit "A"s shall be circulated to all other counsel of record promptly after execution.

2. (a) Notes. Limited notes regarding Confidential Information may be taken by counsel and experts for the express purpose of preparing pleadings,

cross-examinations, briefs, motions and argument in connection with this proceeding, or in the case of persons designated in paragraph 1(c) of this Protective Order, to prepare for participation in this proceeding. Such notes shall then be treated as Confidential Information for purposes of this Order, and shall be destroyed after the final settlement or conclusion of the TRO Proceedings in accordance with subsection 2(b) below.

(b) Return. All notes, to the extent they contain Confidential Information and are protected by the attorney-client privilege or the work product doctrine, shall be destroyed after the final settlement or conclusion of the TRO Proceedings. The party destroying such Confidential Information shall advise the providing party of that fact within a reasonable time from the date of destruction.

3. Highly Confidential Information: Any person, whether a party or non-party, may designate certain competitively sensitive Confidential Information as "Highly Confidential Information" if it determines in good faith that it would be competitively disadvantaged by the disclosure of such information to its competitors. Highly Confidential Information includes, but is not limited to, documents, pleadings, briefs and appropriate portions of deposition transcripts, which contain information regarding the market share of, number of access lines served by, or number of customers receiving a specified type of service from a particular provider or other information that relates to a particular provider's network facility location detail, revenues, costs, and marketing, business planning or business strategies.

Parties must scrutinize carefully responsive documents and information and limit their designations as Highly Confidential Information to information that truly might impose

a serious business risk if disseminated without the heightened protections provided in this section. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

**"HIGHLY CONFIDENTIAL-USE RESTRICTED PER PROTECTIVE ORDER
IN DOCKET NO. TC03-181."**

Placing a "Highly Confidential" stamp on the first page of a document indicates only that one or more pages contain Highly Confidential Information and will not serve to protect the entire contents of a multi-page document. Each page that contains Highly Confidential Information must be marked separately to indicate Highly Confidential Information, even where that information has been redacted. The unredacted versions of each page containing Highly Confidential Information, and provided under seal, should be submitted on paper distinct in color from non-confidential information and "Confidential Information" described in section 1 of this Protective Order.

Parties seeking disclosure of Highly Confidential Information must designate the person(s) to whom they would like the Highly Confidential Information disclosed in advance of disclosure by the providing party. Such designation may occur through the submission of "Exhibit B" attached. Parties seeking disclosure of Highly Confidential Information shall not designate more than (1) a reasonable number of in-house attorneys who have direct responsibility for matters relating to Highly Confidential Information; (2) two in-house experts; and (3) a reasonable number of outside counsel and outside experts to review materials marked as "Highly Confidential." Disclosure of Highly Confidential Information to Commissioners, Hearing Officers and Commission Advisory Staff members

and Commission Staff shall be limited to persons to whom disclosure is necessary. The Exhibit "B" also shall describe in detail the job duties or responsibilities of the person being designated to see Highly Confidential Information and the person's role in the proceeding. Highly Confidential Information may not be disclosed to persons engaged in the development, planning, marketing or selling of retail or wholesale services for the purposes of any party competing with or against any other party, strategic or business decision making, non-regulatory strategic or business planning or procurement on behalf of the receiving party, unless such person is employed by a Small Company, as defined in section 1(c). If the person is employed by a Small Company, then the conditions in section 1(c) apply.

Any party providing either Confidential Information or Highly Confidential Information may object to the designation of any individual as a person who may review Confidential Information and/or Highly Confidential Information. Such objection shall be made in writing to counsel submitting the challenged individual's Exhibit "A" or "B" within three (3) business days after receiving the challenged individual's signed Exhibit "A" or "B." Any such objection must demonstrate good cause to exclude the challenged individual from the review of the Confidential Information or Highly Confidential Information. Written response to any objection shall be made within three (3) business days after receipt of an objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of either Confidential Information or Highly Confidential Information to the challenged individual, the Commission shall determine whether Confidential Information or Highly Confidential Information must be disclosed to the challenged individual.

Copies of Highly Confidential Information may be provided to the in-house attorneys, outside counsel and outside experts who have signed Exhibit "B." The in-house experts who have signed Exhibit "B" may inspect, review and make notes from the in-house attorney's copies of Highly Confidential Information.

Persons authorized to review the Highly Confidential Information will maintain the documents and any notes reflecting their contents in a secure location to which only designated counsel and experts have access. No additional copies will be made, except for use during hearings and then such disclosure and copies shall be subject to the provisions of Section 6. Any testimony or exhibits prepared that reflect Highly Confidential Information must be maintained in the secure location until removed to the hearing room for production under seal. Unless specifically addressed in this section, all other sections of this Protective Order applicable to Confidential Information also apply to Highly Confidential Information.

4. Objections to Admissibility. The furnishing of any document, data, study or other materials pursuant to this Protective Order shall in no way limit the right of the providing party to object to its relevance or admissibility in proceedings before this Commission.

5. Challenge to Confidentiality. This Order establishes a procedure for the expeditious handling of information that a party claims is Confidential or Highly Confidential. It shall not be construed as an agreement or ruling on the confidentiality of any document. Any party may challenge the characterization of any information, document, data or study claimed by the providing party to be confidential in the following manner:

(a) A party seeking to challenge the confidentiality of any materials pursuant to this Order shall first contact counsel for the providing party and attempt to resolve any differences by stipulation;

(b) In the event that the parties cannot agree as to the character of the information challenged, any party challenging the confidentiality shall do so by appropriate pleading. This pleading shall:

(1) Designate the document, transcript or other material challenged in a manner that will specifically isolate the challenged material from other material claimed as confidential; and

(2) State with specificity the grounds upon which the documents, transcript or other material are deemed to be non-confidential by the challenging party.

(c) A ruling on the confidentiality of the challenged information, document, data or study shall be made by the Commission after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential materials shall be present. This hearing shall commence no earlier than five (5) business days after service on the providing party of the pleading required by subsection 5(b) above.

(d) The record of said in camera hearing shall be marked "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. TC03-181." Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or Order of the Commission and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.

(e) In the event that the Commission should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be confidential.

6. (a) Receipt into Evidence. Provision is hereby made for receipt into evidence in this proceeding materials claimed to be confidential in the following manner:

(1) Prior to the use of or substantive reference to any Confidential Information, the parties intending to use such Information shall make that intention known to the providing party.

(2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so the Information can be used in a manner which will not reveal its confidential or proprietary nature.

(3) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.

(4) Only one (1) copy of the documents designated by the providing party to be placed in a sealed record shall be made.

(5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this Order.

(b) Seal. While in the custody of the Commission, materials containing Confidential Information shall be marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. TC03-181" and Highly Confidential Information shall be marked "HIGHLY CONFIDENTIAL-USE RESTRICTED PER PROTECTIVE ORDER IN DOCKET NO. TC03-181" and shall not be examined by any person except under the conditions set forth in this Order and the notice required by ARSD 20:10:01:40 shall also be posted at the locked facilities, where the information is located.

(c) In Camera Hearing. Any Confidential Information or Highly Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the information under this Order. Similarly, any

cross-examination on or substantive reference to Confidential Information or Highly Confidential Information (or that portion of the record containing Confidential Information or Highly Confidential Information or references thereto) shall be received in an in camera hearing, and shall be marked and treated as provided herein.

(d) Access to Record. Access to sealed testimony, records and information shall be limited to the Commission and persons who are entitled to review Confidential Information or Highly Confidential Information pursuant to subsection 1(c) above and have signed an Exhibit "A" or "B," unless such information is released from the restrictions of this Order either through agreement of the parties or after notice to the parties and hearing, pursuant to the Commission, the order of the Commission and/or final order of a court having final jurisdiction.

(e) Appeal/Subsequent Proceedings. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal or to the FCC, but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.

(f) Return. Unless otherwise ordered, Confidential Information and Highly Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall, at the providing party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party, within thirty

(30) days after final settlement or conclusion of the TRO Proceedings. If the providing party elects to have Confidential Information or Highly Confidential Information destroyed rather than returned, counsel for the receiving party shall verify in writing that the material has in fact been destroyed.

7. Use in Pleadings. Where references to Confidential Information or Highly Confidential Information in the sealed record or with the providing party is required in pleadings, briefs, arguments or motions (except as provided in section 5), it shall be by citation of title or exhibit number or some other description that will not disclose the substantive Confidential Information or Highly Confidential Information contained therein. Any use of or substantive references to Confidential Information or Highly Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Officer or the Commission under seal. This sealed section shall be served only on counsel of record and parties of record who have signed the nondisclosure agreement set forth in Exhibit "A" or "B." All of the restrictions afforded by this Order apply to materials prepared and distributed under this section.

8. Summary of Record. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the Order to be placed on the public record.

9. The provisions of this Order are specifically intended to apply to all data, documents, studies, and other material designated as Confidential or Highly Confidential by any party to Docket No. TC03-181.

10. This Protective Order shall continue in force and effect after this Docket is closed.

Dated at Pierre, South Dakota, this 26th day of November, 2003.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Melaine Kolbo

Date: 11/26/03

(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

EXHIBIT "A"
CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated November 26, 2003, in Docket No. TC03-181 and agree to be bound by the terms and conditions of this Order.

Name

Employer

Job Title and Job Description

Business Address

Party

Signature

Date

EXHIBIT "B"
HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated November 26, 2003, in Docket No. TC03-181 and agree to be bound by the terms and conditions of this Order.

Name

Employer

Job Title and Job Description

Business Address

Party

Signature

Date

**DISCOVERY REQUESTS ISSUED BY THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

REQUESTS FOR INFORMATION REGARDING SWITCHING

A. Questions for CLECs

1. Provide a list of all switches that you currently use to provide a qualifying service (as defined in 47 C.F.R. § 51.5, as that section will be amended by the Final Rules issued by the FCC pursuant to the Triennial Review Order) anywhere in the state, regardless of whether the switch itself is located in the state. Do not include ILEC switches utilized by you on an unbundled basis in the ILEC's service territory or through the resale of the incumbent's services at wholesale rates.
2. Identify each ILEC wire center district (i.e., the territory served by a wire center of the ILEC) in which you provide qualifying service to any end user customers utilizing any of the switches identified in your response to Question 1. Wire centers should be identified by providing their name, address, and CLLI code.
3. For each ILEC wire center identified in response to Question 2, identify the total number of voice-grade equivalent lines¹ you are providing to customers in that wire center from your switch(es) identified in response to Question 1. For purposes of this question, "voice-grade equivalent lines" should be defined consistent with the FCC's use of the term.
4. For each switch identified in response to Question 1, identify the approximate capacity of the switch - that is, the maximum number of voice-grade equivalent lines it is capable of serving - based on that switch's existing configuration and component parts.
5. With respect to the voice-grade equivalent lines identified in response to Question 3, separately indicate the number

¹Voice-grade equivalent lines would include DSO lines and, by the definition in FCC Form 477, *Instructions for the Local Competition and Broadband Reporting Form*, include traditional analog POTS lines, Centrex-CO extensions, and Centrex-CE trunks. Line counts are based on how they are charged to the customer rather than how they are physically provisioned (e.g. 2-wire copper, VoIP fiber).

being provided to (a) residential customers; (b) business customers to whom you provide only voice-grade or DS0 lines.

6. For each of the switches identified in your response to Question 1, state whether the switch is owned by you, or whether you have leased the switching capacity or otherwise obtained the right to use the switch on some non-ownership basis. If the facility is not owned by you, identify the entity owning the switch and (if different) the entity with which you entered into the lease or other arrangement, identify the nature of the arrangement, and state whether such entity or entities are affiliates of yours, in the sense defined in ¶ 408, footnote 1263 of the Triennial Review Order.
7. For each Qwest wire center in South Dakota in which you provide retail switched local exchange service, please report the number of switched voice-grade equivalent lines in service per customer location that you serve. Please provide this information in the following format:

WIRE CENTER: _____

Quantity of VGE	Customer Location	
	Residence	Business
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
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8. For each switch you own, operate, control, maintain, or from which you lease dial tone or trunking functionality/capacity within South Dakota, please state whether the local switching capacity of the switch can be expanded through modular software and hardware additions. If you assert any obstacles to expansion, please identify and explain all such obstacles.
9. Do you believe that there are costs associated with converting or otherwise using a switch currently serving only enterprise customers to also serve mass market customers? If you believe that there are such switching costs, please identify all such costs and explain why it would be necessary to incur them to begin serving mass market customers. Produce any documents or data that support your response.
10. Please provide, a) on a statewide basis, and b) on a central office-specific basis, monthly data for the past two years on customer "churn" (i.e., percentage of your customers lost to another carrier) on all of the following bases:
 - (a) number of customers by customer type (e.g., residential, business with one to three lines; business with more than three lines);
 - (b) percentage of churn by customer type (e.g., residential, business with one to three lines, business with more than three lines);
 - (c) number of customers by service type (i.e., local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance, and DSL services); and
 - (d) percentage of churn by service type (i.e., local exchange voice service only, long distance voice service only, bundled local exchange and long distance voice services, and bundled local exchange, long distance, and DSL services). For customers that purchase up to 24 voice-grade equivalent lines, please

identify the types or categories of customer acquisition costs CLEC incurred in the state in 2001 and 2002 to attract new customers, set up their accounts, and establish service to them. In addition, please provide the per line costs CLEC incurred in 2001 and 2002 for both business and residential customers for each of the types or categories of customer acquisition costs.

B. Questions for Qwest

1. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that you directly serve.
2. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through resale.
3. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through UNE-P.
4. For each wire center in your territory in the state, please provide the number of business voice-grade equivalent lines that CLECs are serving through the CLECs' own facilities.
5. For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that you directly serve.
6. For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that CLECs are serving through resale.
7. For each wire center in your territory in the state, please provide the number of residential voice-grade equivalent lines that CLECs are serving through UNE-P.
8. For each wire center in your territory in the state, please provide the estimated number of residential lines that CLECs are serving through their own facilities (complete bypass).
9. For each wire center in your territory in the state, please provide the number of in-service collocation arrangements

that you have, and for each collocation arrangement, please indicate the type of collocation that you are providing.

10. For each wire center in your territory in the state, please provide the number of provisioned collocation arrangements that you have in place that have yet to be activated, and for each collocation arrangement, please indicate the type of collocation.
11. For each wire center in your territory in the state, please provide the number of pending collocation arrangements that you have, and for each collocation arrangement, please indicate the type of collocation.
12. For each wire center in your territory in the state, please provide a list of restrictions on equipment, cross-connects between CLEC collocation cages, or other restrictions or limitations that you place on a CLEC's use of collocation space.
13. For each wire center in your territory in the state, please identify whether or not collocation space is currently available to CLECs. For each wire center where collocation space is currently not available to CLECs, please include an explanation of why space is not available in those wire centers.

C. Questions for CLECs and Qwest

1. With respect to the voice-grade equivalent lines being provided to (a) residential customers; (b) business customers to whom you provide between 1-3 voice-grade equivalent lines at one location; (c) business customers to whom you provide between 4-24 voice-grade equivalent lines at one location; and (d) business customers to whom you provide 24 or more voice-grade equivalent lines (in one location), state the current average total monthly revenues earned per line served in the state by LATA and by MSA and specify the source of those revenues by service type.
2. For each switch (e.g. circuit, packet, soft switch, etc.) currently used, or those that have been used, or that could be used to provide local service in the state (this would include switches located in other states that provide or have the ability to provide local exchange service in the state), state the initial cost of that switch, including

installation and engineering costs, and the number of initial equipped lines.

3. Describe in detail any instances in which your company is using, through a wholesale, lease, or resale arrangement, the switch of any entity other than, and unaffiliated with, an ILEC (e.g., another competitive local exchange carrier) to provide local exchange service to end users in the state. Include in your response the rates, terms, and conditions under which you are obtaining switching on a wholesale, lease, or resale basis.

4. State whether your company is providing, or plans to provide, through a wholesale, lease or resale arrangement, capacity on any switches you own or operate in the state, or that you own or operate in another state and that you use to provide local service in the state, to an unaffiliated entity. For any such instances, identify the rates, terms, and conditions under which you are making that switch capacity available. For each switch on which you are currently leasing or selling capacity to an unaffiliated entity, identify:
 - (a) the make, model, age, and current software upgrades of each switch;
 - (b) the geographic location of the switch;
 - (c) the footprint or geographic area served by the switch, including a list of each exchange served by the switch; the features and functions (including software upgrades) available in the switch; and
 - (d) provide the capacity of each switch, including:
 - (i) percentage of switch capacity in use;
 - (ii) percentage of switch capacity reserved for your company's own use and future use; and
 - (iii) percentage of current and future capacity of each switch that will be made available for CLEC use.
 - (e) For each switch identified, please state in detail:
 - (i) the anticipated service life of the switch; and

- (ii) whether your company intends to utilize the identified switch for the full anticipated service life.

**REQUESTS FOR INFORMATION REGARDING THE DEVELOPMENT
OF AN EFFICIENT LOOP MIGRATION PROCESS**

A. Questions for CLECs

1. Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.
2. List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data, i.e. time/motion studies, SME analysis, etc.
3. Describe a batch hot cut process that you would implement to meet the FCC's requirement to establish a batch hot cut process. Include an estimate of the maximum number of lines per batch.
4. List each task that is part of the batch hot cut process described in the answer to the preceding question. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate.
5. If UNE-P is no longer available, what monthly volumes of hot cuts would be required:
 - (a) to migrate existing UNE-P customers to another form of service and
 - (b) to connect new customers in the ordinary course of business.

Provide supporting documentation for these volume estimates.

B. Questions for Qwest

1. Provide, in an electronic format, on a monthly basis, the number of UNE-P lines at the beginning of the month, added during the month, disconnected during the month, and at the end of the month. Provide this information for the period

of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

2. Provide, in an electronic format, on a monthly basis for every wire center, the number of UNE-L lines at the beginning of the month, added during the month, disconnected during the month, and at the end of the month. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
3. Describe the hot cut process currently used to transfer lines from the ILEC switch to the CLEC facilities.
4. List each task that is part of the current process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the sources of the data, i.e., time/motion studies, SME analysis, etc.
5. Describe a batch hot cut process that Qwest would implement to meet the FCC's requirement to establish a batch hot cut process. Include an estimate of number of lines per batch.
6. List each task that is part of the batch hot cut process described in the answer to the above question regarding a batch process. Provide the average time it takes to complete the task, the typical occurrence of the task during the process, the labor rate for the task, and the common overhead loading associated with the labor rate. Indicate the source of the data, i.e., time/motion studies, SME analysis, etc.
7. List each task that is part of the batch hot cut process that is not included in the current hot cut process.
8. List each task that is part of the current hot cut process that is not included in the batch hot cut process.
9. On a monthly basis, provide the total number of residential lines served and the number of residential lines served using integrated digital line carriers. Provide separately for every wire center the number of Qwest retail residential lines, UNE served residential lines, and

wholesale served residential lines. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

10. For each wire center, on a monthly basis, provide the total number of business mass-market lines served and the number of business mass-market lines served using integrated digital line carriers. Provide separately for every wire center the number of Qwest retail business mass-market lines, UNE served business mass-market lines, and wholesale served business mass-market lines. Explain how Qwest determined which business lines are mass-market lines and which are enterprise lines. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
11. If the tasks related to the hot cut process for lines served using integrated digital line carriers differ from the process used for other lines, discuss how the process is different and list the tasks that must be added specifically for the lines served using integrated digital line carriers. Include the time required to accomplish those tasks.
12. On a monthly basis, provide the average time a customer's service was disconnected due to the hot cut process. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
13. On a monthly basis, provide the number of technicians during each month who have transferred a line from an ILEC switch to the CLEC facility as part of the hot cut process. Count only those employees who perform the manual process. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
14. On a monthly basis, provide the number of technicians trained and capable of transferring a line from an ILEC switch to the CLEC facility as part of the hot cut process.

Count only those employees who can perform the manual process. Do not include management of supervisory personnel who can perform these tasks but do not do so as part of their regular work effort. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.

15. On a monthly basis for every wire center, provide, in an electronic format, the number of hot cuts performed. Provide this information for the period of time since the FCC approved Qwest's application for 271 authority in the state. Provide the information on a region-wide basis in addition to the state specific data.
16. Provide a list of all carriers with which Qwest has an interconnection agreement for the provision of local service in the state.
17. Provide a list of all carriers to which Qwest has sold collocation services in the state. For each carrier, list the wire centers where the carrier is collocated.
18. Provide a list of Qwest wire centers with indicators that identify whether the office is unstaffed, has a technician on duty but the technician can not perform hot cuts, or has a technician on duty and the technician can perform hot cuts. For unstaffed offices and offices where the technician can not perform hot cuts, specify the number of miles that the technician must drive and driving time to reach that office from the closest office where a technician who can perform hot cuts is normally on duty.
19. If a batch cut process is developed, does that make it more or less likely that an electronic loop provisioning process will be implemented?
20. For each technician identified as trained in the hot cut process, when did that training occur?
21. For each technician identified as trained in the hot cut process, is that training documented or posted? If so, where is that training documented or posted?

22. For each technician identified as trained in the hot cut process, how often does that technician get trained in the hot cut process?
23. For each technician identified as trained in the hot cut process, is there a refresher course for that technician? If so, how often is the refresher course offered?
24. For each technician identified as trained in the hot cut process, is the technician required to take the refresher course if one is offered?