

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

IN THE MATTER OF THE FILING BY BLACK)	ORDER GRANTING
HILLS FIBERCOM, L.L.C. FOR APPROVAL OF)	PETITION FOR WAIVER AND
ITS INTRASTATE SWITCHED ACCESS TARIFF)	APPROVING STIPULATION
AND FOR AN EXEMPTION FROM)	AND AGREEMENT
DEVELOPING COMPANY SPECIFIC COST-)	
BASED SWITCHED ACCESS RATES)	TC00-190

On November 22, 2000, the Public Utilities Commission (Commission) received a filing from Black Hills FiberCom, L.L.C. (FiberCom) for approval of its intrastate switched access tariff and for an exemption from developing company specific cost-based switched access rates. The tariff filing is a concurrence in the rates, terms and conditions of the current LECA Tariff No. 1, with the exception of the switched access rates which are based on a statewide average. The company is also requesting that the Commission exempt it from the requirement to develop intrastate switched access rates based on company specific costs. The company is requesting an effective date of November 22, 2000.

On November 23, 2000, the Commission electronically transmitted notice of the filing and the intervention deadline of December 8, 2000, to interested individuals and entities. Qwest Corporation (Qwest) filed a Petition for Leave to Intervene on December 6, 2000. At its regularly scheduled meeting of December 12, 2000, the Commission granted intervention to Qwest. On January 16, 2001, the Commission received a Motion for Continuance and Affidavit of Counsel from FiberCom. On October 1, 2001, the Commission received a revised switched access tariff from FiberCom. On October 1, 2001, the Commission received a Stipulation and Agreement to Settle Docket No. TC00-190.

The Commission has jurisdiction in this matter pursuant to SDCL Chapters 49-31, specifically 49-31-18 and 49-31-19 and ARSD Chapters 20:10:27 through 20:10:29, inclusive.

On October 10, 2001, the Commission considered FiberCom's request for approval of its intrastate switched access tariff no. 1 and a waiver from establishing switched access rates based on company specific costs. The Commission also considered the Stipulation and Agreement. The Commission voted to grant the petition for exemption from developing company specific cost-based switched access rates pursuant to ARSD 20:10:27:11. The Commission also granted FiberCom's request to waive ARSD 20:10:27:12 pursuant to ARSD 20:10:27:02. The Commission approved FiberCom's intrastate switched access tariff no. 1 as set forth in the Stipulation and Agreement. The Commission also voted to approve the Stipulation and Agreement, effective October 10, 2001, attached hereto as Exhibit A. The Commission further ordered that FiberCom, within three years of the date of this Order, file a petition to continue the exemption granted in this proceeding or file cost-based rates. The Commission voted to grant the petition for exemption as conditioned herein and approve the tariff. It is therefore

ORDERED, that FiberCom's petition to be exempt from establishing company specific cost-based switched access rates is granted and its intrastate switched access tariff no. 1, as amended, is approved; and it is further

ORDERED, that FiberCom shall, within three years of the date of this Order, file a petition to continue the exemption granted in this proceeding or file cost-based intrastate switched access rates; and it is further

ORDERED, that the Stipulation and Agreement is approved, effective October 10, 2001.

Dated at Pierre, South Dakota, this 18th day of October, 2001.

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:

Delaine Kolbo

Date:

10/19/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

EXHIBIT A

STIPULATION AND AGREEMENT TO SETTLE DOCKET NO. TC00-190

This Stipulation and Agreement ("Agreement") is entered into by Qwest Corporation ("Qwest") and Black Hills FiberCom, L.L.C. ("FiberCom"). The parties hereby stipulate and agree as follows:

1. Currently pending before the South Dakota Public Utilities Commission ("Commission") is FiberCom's Request for Exemption from Development of Company-Specific Cost-Based Switched Access Rates, and application for approval of its Intrastate Switched Access Tariff No. 1 (Docket TC00-190).

2. It is FiberCom's position in Docket TC00-190 that pursuant to ARSD 20:10:27:11, FiberCom should be exempted from developing intrastate switched access rates based on company-specific costs, as required by the Commission's regulations for the following reasons: FiberCom is a start-up competitive local exchange carriers ("CLEC") that has started operations in Rapid City and some of the northern Black Hills communities. FiberCom currently does not have one year of usable historical test data, as required by ARSD 20:10:27:14, to establish company-specific cost-based switched access rates. Additionally, the process of determining company-specific cost-based rates would require FiberCom to predict future additional customers, traffic usage, and the allocated investment, expenses and revenue for an undetermined customer profile. This would be very difficult for FiberCom to do at this time. Furthermore, such estimates would be unlikely to produce accurate results or rates. Requiring cost-based rates of FiberCom would create excessive costs for FiberCom without any benefit to FiberCom's customers.

3. It is also FiberCom's position in Docket TC 00-190 that if granted an exemption pursuant to ARSD 20:10:27:11, FiberCom may concur in and adopt the rates, terms and conditions

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of Local Exchange Carrier Associations, Inc. Tariff No. 1 governing intrastate access service as filed by the Local Exchange Carrier Associations, Inc. in the State of South Dakota, with the exception that, pursuant to ARSD 20:10:27:12, originating and terminating switched access rates will be based on the costs of all the telecommunications companies in South Dakota with less than 100,000 access lines that determine switched access costs pursuant to ARSD Chapters 20:10:28 and 20:10:29, which current rates are reflected in FiberCom's proposed tariff filed in Docket TC00-190.

4. Qwest was granted leave by the Commission to intervene in Docket TC00-190 to protect its interests affected by the Commission's disposition of FiberCom's application for tariff approval.

5. It is Qwest's position in Docket TC00-190 that FiberCom is not entitled to set FiberCom's switched access rates by the methods prescribed by ARSD 20:10:27:12 for the reason that FiberCom is not similarly situated as the predominantly rural telephone cooperative companies which comprise the basis upon which switched access rates are calculated pursuant to that section; and therefore, FiberCom's proposed switched access rates are unreasonably inflated above FiberCom's true cost-based rates which, if approved, would cause Qwest to pay an inflated price for switched access services it purchases from FiberCom.

6. It is also Qwest's position in Docket TC00-190 to determine that FiberCom's switched access rates are determined in accordance with the facts and applicable law.

7. Both parties hereto recognize and agree that the cost of litigating this matter before the Commission and through any subsequent appeals would outweigh the benefit to either party and their customers of having FiberCom's switched access rates set through the litigation process.

8. In consideration of both parties' compromise of their respective positions in Docket TC00-190, both parties further agree as follows:

- (a) FiberCom shall amend its application for tariff approval in Docket TC00-190 to propose originating and terminating switched access rates which match the originating and terminating switched access rates charged by Qwest in Qwest's Access Services Tariff filed with and approved by the Commission. FiberCom's amended application shall be in the form of Appendix A attached hereto.
- (b) Qwest shall withdraw its intervention in Docket TC00-190 and shall take no position on FiberCom's Request for Exemption under ARSD 20:10:27:11 and shall take no position on FiberCom's application for tariff approval with amended proposed switched access rates.
- (c) If the Commission approves FiberCom's intrastate switched access tariff as agreed to herein, then FiberCom will, within three (3) years of the entry of the Order approving such tariff either file a petition to continue the exemption granted under ARSD 20:10:27:11 or file cost based rates.

9. The parties acknowledge and agree that this Agreement is a compromise of the positions which would be asserted if the matter is litigated. Accordingly, evidence of conduct or statements made in negotiations and discussions in connection with this Agreement shall not be admissible in any proceeding.

10. It is specifically understood and agreed by both parties that each party's rights and obligations under this Agreement are contingent upon the Commission's approval of all material provisions of FiberCom's amended application for approval of its Intrastate Switched Access Tariff, and that this Agreement shall not become effective and shall be of no force and effect until the Commission issues a final Order accepting and approving this Agreement.

11. The parties have entered into this Agreement as an integrated document and urge the Commission to adopt it in its entirety. Accordingly, in the event any part or all of this Agreement is modified or rejected by the Commission, each party reserves the right, upon written notice to the Commission and all other parties within five (5) days of the effective date of the final written Commission Order, to withdraw from this Agreement without being bound by its terms in this or any

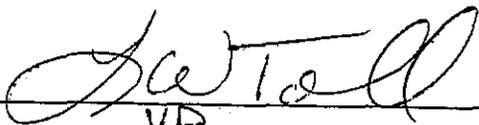
other proceeding. Any party that elects to withdraw shall be entitled to proceed with all its rights, claims and defenses and shall not otherwise be prejudiced by the terms of this Agreement.

12. The parties agree that this Agreement establishes no precedent.

13. The parties submit this Agreement and request that the Commission issue its decision accepting this Agreement without modification.

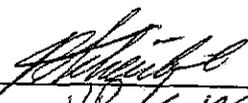
Dated this 24th day of SEPTEMBER 2001.

QWEST CORPORATION

By: 
Its: VP

Dated this 19 day of September, 2001.

BLACK HILLS FIBERCOM, L.L.C.

By: 
Its: VP/GM

BLACK HILLS FIBERCOM, LLC
RAPID CITY, SOUTH DAKOTA

TARIFF NO. 1
Original Title Page

SOUTH DAKOTA SWITCHED ACCESS SERVICES

A. CONCURRENCE IN RATES, TERMS AND CONDITIONS OF LOCAL EXCHANGE
CARRIER ASSOCIATION, INC. TARIFF NO. 1

1. Black Hills FiberCom, LLC concurs in the rates, terms and conditions, except as noted below, of Local Exchange Carrier Association, Inc. Tariff No. 1 governing Intrastate Access Service as filed by the Local Exchange Carrier Association, Inc. in the State of South Dakota. Black Hills FiberCom, LLC concurs in the current Local Exchange Carrier Association, Inc. Tariff No. 1 as of November 22, 2000 as shown by the attached TARIFF CHECKLIST pages. The only exceptions to this concurrence are the attached pages 17-1 and 17-4, which replace the current Local Exchange Carrier Association, Inc. Tariff No. 1 pages 17-1 and 17-4.
2. Black Hills FiberCom, LLC hereby expressly reserves the right to cancel or void this statement of concurrence at any time consistent with state law and the best interests of Black Hills FiberCom, LLC by filing a replacement tariff with the South Dakota Public Utilities Commission.

Issued: September 19, 2001

Effective: _____

By: Vice President of Corporate Affairs
PO Box 2115
Rapid City, SD 57709

TARIFF CHECKLIST
 All Pages Are Original Unless Otherwise Noted

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By: Dean Anderson
 President
 P.O. Box 920
 Clear Lake, SD 57226

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TARIFF CHECKLIST
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Effective: August 28, 2000

By: Dean Anderson
 President
 P.O. Box 920
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BLACK HILLS FIBERCOM, LLC
RAPID CITY, SOUTH DAKOTA

TARIFF NO. 1
Original Page 17-1

SOUTH DAKOTA SWITCHED ACCESS SERVICES

17. Rates and Charges

17.1 Common Line Access Service

17.1.1 Carrier Common Line Access Service

Rate

Regulations concerning Carrier Common Line Access
are set forth in Section 3. Preceding.

Per Access Minute

\$0.038905

17.1.2 Reserved for Future Use

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Effective: _____

By: Vice President of Corporate Affairs
PO Box 2115
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BLACK HILLS FIBERCOM, LLC
RAPID CITY, SOUTH DAKOTA

TARIFF NO. 1
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SOUTH DAKOTA SWITCHED ACCESS SERVICES

17. Rates and Charges (Cont'd)

17.2 Switched Access Service

17.2.1 Nonrecurring Charges

Rate

(A) Local Transport Element -
Installation Per Line or Trunk \$295.00

(B) Reserved for Future Use

(C) Interim NXX Translation Per Order \$181.00

Per LATA or Market Area

17.2.2 Traffic Sensitive

Local Switching (End Office)

Per Access Minute \$0.008610

Local Transport

Per Access Minute \$0.005341

Network Blocking Per Blocked Call

Applies to FGD only \$0.0271

8XX Data Base Query Service

Per Query

Basic \$0.0079

Vertical Feature \$0.0082

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