

TC00-014

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DOCKET NO.

In the Matter of _____

IN THE MATTER OF THE
APPLICATION OF COMM SOUTH
COMPANIES, INC. FOR A
CERTIFICATE OF AUTHORITY TO
PROVIDE LOCAL EXCHANGE
SERVICES IN SOUTH DAKOTA

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
2/10/00	Filed and Docketed;
2/17/00	Weekly Filing;
3/30/00	Revised Tariff;
4/14/00	Revised Tariff Pages;
7/11/00	Petition for Declaratory Ruling;
7/11/00	Brief in Support of Petition for Declaratory Ruling;
8/1/00	Commission Staffs Response to Petition for Declaratory Ruling;
8/29/00	Comments of SOTC;
11/17/01	Surety Bond;
1/24/01	Order Granting COA;
1/24/01	Docket Closed.

TC00-014

LAW OFFICES

OLINGER, LOVALD, ROBBENNOLT, McCAHREN & REIMERS, P.C.

117 EAST CAPITOL

P.O. BOX 66

PIERRE, SOUTH DAKOTA 57501-0066

RONALD D. OLINGER
JOHN S. LOVALD
JAMES ROBBENNOLT
LEE C. "KIT" McCAHREN
WADE A. REIMERS

TELEPHONE 224-8831
AREA CODE 605
FAX 605-224-8289

February 10, 2000

RECEIVED

FEB 13 2000

South Dakota Public Utilities Commission
500 E Capitol
Pierre South Dakota 57501

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: Comm South Companies, Inc.

Dear Commission:

Enclosed please find for filing Application with the following Exhibits:

- 1) Comm South Articles of Incorporation and Certificate of Authority to Transact Business in South Dakota;
- 2) Comm South Dakota tariff;
- 3) Financial Statements for Comm South and its subsidiaries;
- 4) Financial Statements for Topp Telecom, Inc., Comm South's parent;
- 5) Comm South Resale Agreement with US West; and
- 6) a signed Verification.

Sincerely,

James Robbennolt

JAMES ROBBENNOLT
Attorney at Law

JR/lrd

enclosures

cc: Glenn S. Richards
Jaqualin Friend Peterson

original and 10 copies

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

FEB 11 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

In the matter of the Application of Comm
South Companies, Inc., for a Certificate of
Public Convenience and Necessity to Provide
Competitive Local Exchange Services

Application No. _____

APPLICATION

Comm South Companies, Inc. ("Applicant"), pursuant to Section 49-31-3 of the Codified Laws of South Dakota, hereby requests a Certificate of Public Convenience and Necessity to provide competitive local exchange services in the State of South Dakota.

In support of its Application, Applicant provides below the following information:

1. Applicant's name, address, and telephone and facsimile numbers are:

Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231
Telephone: (972) 690-9955
Facsimile: (972) 690-9959

Applicant is a corporation.

2. Applicant's officer is Chris A. Caffey, who serves as Senior Vice President and Chief Operating Officer. Mr. Caffey's business address is c/o Comm South Companies, Inc., 6830 Walling Lane, Dallas, Texas 75231. Attached hereto as Exhibit A is a brief description of Mr. Caffey's experience.

3. Applicant will not operate under an assumed name in South Dakota.

4. Corporate Information:

(a) Applicant will not have an office in South Dakota. Applicant's registered agent is CT Corporation System, 319 S. Coteau Street, Pierre, South Dakota 57501.

(b) Applicant's sole shareholder is Topp Telecom, Inc. ("Topp"). Topp is a Florida corporation with its principal business office at 8390 N.W. 25th Street, Miami, Florida 33122. Topp is a leading provider of prepaid wireless services in the United States. Topp was incorporated in 1996 and currently operates as a cellular reseller in all 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, providing local cellular numbers to customers at any location in the United States with cellular coverage. The service is available through more than 15,000 points of distribution nationwide. Topp does not have any pending or final judgements or decisions against it which involve customer service or rates from any state or federal agency. The shareholders of Topp and their relevant ownership percentages are as follows:

Inmobiliaria Aztlan, S.A. de CV (88.3%)
 David Topp Family (8.1%)
 F.J. Pollak (3.4%)
 Richard Anderson (0.2%)

(c) Applicant was incorporated in the state of Texas on March 17, 1995 as Onyx Distributing Company, Inc. Applicant subsequently changed its name to "Comm South Companies, Inc." A copy of Applicant's Certificate of Incorporation is attached hereto as Exhibit B.

(d) A copy of Applicant's Certificate of Authority to Transact Business in South Dakota from the Secretary of State is attached hereto as Exhibit B.

5. Description of Applicant's Experience Providing Telecommunications Services.

Since its incorporation, Applicant has provided resold basic local telecommunications services including local calling ("dialtone") and access to 911 emergency and 800 number

services, on a prepaid basis, to residential customers. Applicant is currently authorized to provide such service in 30 states as more fully discussed in paragraph 17 below.

6. Applicant's Affiliates, Subsidiaries, and Parent Organizations:

As indicated above, Applicant's parent is Topp. The address for Topp is 8390 N.W. 25th Street, Miami, Florida 33122. Further, Applicant has two wholly-owned subsidiaries, Georgia Comm South, Inc. and E-Z Tel, Inc., which provide local exchange service in Georgia and North Carolina and South Carolina, respectively, and another wholly-owned subsidiary, Comm South Companies of Virginia, Inc., which has an application pending to provide resold local service in Virginia. The address for all of these subsidiaries is 6830 Walling Lane, Dallas, Texas 75231.

7. Description of the Services Applicant Seeks to Offer:

Comm South seeks to provide resold basic local telecommunications services, including local calling ("dialtone") and access to 911 emergency and 800 number services, on a prepaid basis, to residential customers throughout South Dakota. Applicant's offerings include a full range of optional services such as Call Waiting, Call Return, Call Forwarding, Three-Way Calling, Caller ID and Non-Published Number Service, and Speed Dial.

Applicant will provide local exchange service in South Dakota once it has been certified to do so. Applicant's local exchange services will be available on a full-time basis, 24 hours a day, seven days a week. A more detailed description of the Applicant's services are in its proposed tariff attached hereto as Exhibit C.

The majority of Applicant's local customers are consumers who are unable to obtain local telecommunications services from other local exchange carriers due to credit problems or prior

disconnection. Applicant does not perform consumer credit checking or application screening. Applicant provides for a fixed fee unlimited local calling and access to 911 and 800 services. However, Applicant does not permit its customers of its local service to access usage-based services, such as direct-dial long-distance calls, collect calls, operator-assisted calls, and third-number-billed calls. Applicant's local service customers may obtain interexchange services by contracting with the toll carrier of their choice to obtain service, provided that the carrier will bill the customer directly. Applicant's toll-restricted local service offerings enhance universal service by allowing customers who otherwise would be denied service to obtain telecommunications services.

Applicant is a switchless, non-facilities based reseller of telecommunications services provided over the networks of its underlying carriers. Applicant does not nor does it plan to own, control, operate, or manage facilities used for transport of telecommunications in the State of South Dakota. In order to provide service to South Dakota, the Applicant will lease transmission facilities from existing carriers.

8. Proposed Geographic Service Area:

Applicant requests authority to provide telecommunications services throughout the State of South Dakota. Specifically, Applicant intends to provide local exchange telecommunications services in those areas currently served by U S West Communications and any other relevant incumbent facilities-based LEC¹ or other authorized local exchange carrier. Applicant does not

¹To the extent this includes areas in South Dakota which are serviced by incumbent rural LECs that have obtained an exemption from the requirements of §251 of the Federal Telecommunications Act, Applicant does not seek to provide service in these areas.

own or control any property in the State of South Dakota. The maps filed with the Commission by U S West Communications and other relevant LECs are incorporated herein by reference.

9. Managerial and Technical Qualifications:

(a) Applicant possesses the managerial and technical qualifications necessary to resell telecommunications services in South Dakota. Applicant's resale operations will be directed by a team of professional, technical, and operations personnel. Many of these individuals have significant experience providing telecommunications service. Though in business only a few years, Applicant has rapidly expanded Comm South's customer base across many states and is serving more than 130,000 customers and adding approximately 5,000 customers per week. In Exhibit A, attached hereto, Applicant provides brief biographies including the education and experience of the key management and technical personnel of Applicant and Topp, its sole shareholder.

(b) As a switchless reseller of local exchange services, Applicant will not own, control, operate, or manage facilities in South Dakota. Accordingly, Applicant is solely dependent on the technical capabilities of its underlying carriers to perform the facility and equipment maintenance necessary to ensure compliance with any commission quality of service requirements.

Applicant maintains a toll free telephone number and a toll free facsimile number to be used by customers for voicing complaints and inquiries. It is Applicant's policy to promptly and thoroughly investigate complaints concerning its charges, practices, facilities or services. Applicant will promptly respond to customer inquiries and notify customers of its determinations regarding any complaints.

10. Accessibility of Certain Services:

Applicant will contract with the underlying carrier for the provision of emergency services such as 911 or enhanced 911 and telecommunications relay services. As stated above, Applicant does not permit its customers of its local service to access usage-based services, such as direct-dial long-distance calls, collect calls, operator-assisted calls, directory assistance and third-number billed calls. Applicant's local service customers may obtain interexchange services by contracting with the toll carrier of their choice to obtain service, provided that the carrier will bill the customer directly.

11. Financial Qualifications:

Applicant is financially qualified to provide resold telecommunications services in South Dakota. Applicant has access to the financing and capital necessary to conduct its telecommunications operations as specified in this application. Attached hereto as Exhibit D are copies of Applicant's most recent audited financial statements, including balance sheets, income statements, and cash flow statements, which demonstrate Applicant's financial ability to provide the proposed services. Also attached are the financial statements of Topp, the sole owner of Applicant.

12. Interconnection:

Applicant will not own or control any facilities, but will only resell the services of existing LECs. Accordingly, it cannot provide interconnection to other certified carriers. However, if in the future, Applicant obtains or is in control of any facilities, it will provide reasonable interconnections for the joint provision of service to any certified carrier requesting such interconnection. Applicant notes that it has initiated negotiations with U S West

Communications to resale its local exchange services. Applicant will provide the Commission with a copy of the executed resale agreement when it is available.

13. Proposed Tariff:

A copy of Applicant's local telecommunications tariff is attached as Exhibit C.

14. Cost Support:

Applicant has no local exchange subscribers in South Dakota, and therefore, is not required to file cost support information. Notwithstanding, Applicant represents that the rates in its tariff are based on U S West's residential retail rates, less a 12% resale discount.

15. Description of Applicant's Marketing Plans:

Applicant markets its local exchange services using local television and radio advertisements, which direct potential customers to locations where they may sign up for Applicant's service and make monthly payments. These local businesses, which serve as agents for Applicant, receive a commission for their services.

16. Rural Carrier Requirements:

Applicant is not seeking authority to provide local exchange service in the service area of a rural telephone company.

17. Jurisdictions Where Applicant is Authorized to Provide Telecommunications Services:

Applicant is authorized, on a certification, registration, or non-registration basis, to provide resold, prepaid local exchange service in the following states: Alabama, Arizona, Arkansas, California, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri,

Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin. Additionally, through its wholly-owned subsidiaries Georgia Comm South, Inc. and E-Z Tel, Inc., Applicant is providing local service in Georgia and North Carolina and South Carolina, respectively. Applicant has applications pending to provide resold local services in the District of Columbia, Pennsylvania, and Wyoming. Applicant's wholly-owned subsidiary, Comm South Companies of Virginia, Inc., has an application pending to provide resold local service in Virginia. In addition to South Dakota, Applicant will also seek authority to provide local exchange services in Delaware, Nebraska, North Dakota, and Puerto Rico. Applicant is in good standing with the appropriate regulatory authority in every state in which Applicant is registered or certified. Applicant has not been denied authority to provide telecommunications services in any state.

18. Customer Service:

Customers may inquire or complain about their bills or service by writing Applicant at Comm South Companies, Inc., 6830 Walling Lane, Dallas, Texas, 75231, or by calling (972) 690-9955 or (800) 936-5223 or faxing complaints via the Company's toll free facsimile number (800) 324-5223. Applicant's office hours are 8:00 a.m. to 11:00 p.m., Central Standard Time, Monday through Friday. Complaints concerning the charges, practices, facilities or services of Applicant shall be investigated promptly and thoroughly.

19. Billing:

Applicant bills its customers directly. Customers are billed on the same day each month for service that Comm South provides to that customer during the ensuing month. If Comm

South does not receive a payment by the due date printed on the bill, a late payment notice is sent by first class mail warning the customer that service will be disconnected if the company does not receive the customer's payment by the company by the due date on the notice. Applicant represents that it will comply with the billing, collection and disconnection procedures prescribed in the South Dakota Administrative Rules.

20. Solicitation of New Customers/Slamming and Cramming:

Applicant solicits new customers strictly through its television and radio advertising campaigns, word-of-mouth advertising, and printed materials provided at its agent locations. Applicant represents that it will comply with the verification procedures outlined in Sections 49-31-89 through 49-31-92 of the Codified Laws of South Dakota when responding to a customer's request to change its telecommunications company or the services or products to which it subscribes.

21. Complaints:

There have been no complaints filed against the applicant with any state or federal commission regarding the unauthorized switching of a customer's telecommunications provider or the act of charging customers for services that have not been ordered.

22. Waiver Request:

Applicant hereby requests that the Commission waive the requirements of Section 20-10-32-10 of the South Dakota Administrative Rules to the extent that this Section requires Applicant to offer its customers access to interexchange services, directory assistance, and operator services. As indicated above, Applicant provides resold local exchange services on a prepaid

basis only. The majority of Applicant's customers are consumers who are unable to obtain local telecommunications services from other local exchange carriers due to credit problems or prior disconnection. Applicant does not perform consumer credit checking or application screening. To control costs, Applicant charges customer a fixed price for local service. So that the customer's bill does not vary, Applicant blocks direct-dial long-distance calls, collect calls, operator-assisted calls, directory assistance and third-number billed calls. Customers may obtain interexchange services by contracting with a toll carrier of their choice to obtain service, provided that the carrier will bill the customer directly.

The grant of the aforementioned waivers, and this application, is in the public interest. As an initial matter, the terms and limitations of Applicant's services are fully disclosed to potential customers, who are required to complete a customer service agreement prior to receiving service. The agreement fully informs customers of Applicant's product offerings and payment terms. The agreement also establishes the monthly charges, which do not change from month-to-month, unless optional services are added or deleted by the customer. Furthermore, in granting these waivers, the Commission will be increasing the level of local exchange competition in the state. Competition enhances customer choice by providing a wider selection of products and services from which to choose. Applicant is poised to offer customers who may not have access to telecommunications services with a new alternative with outstanding reliability and excellent customer service. Finally, because Applicant is structuring its service to attract customers in households that do not currently have telephone service, the grant of the aforementioned waivers

and this application will provide an opportunity to improve penetration rates in South Dakota and advance the state's interests in maximizing universal service.

21. Applicant's taxpayer identification number is 75-2587984.

24. The contact person for correspondence or communications concerning this Application are Applicant's attorneys of record:

Glenn S. Richards, Esq.
Colette M. Capretz, Esq.
Counsel for Comm South Companies, Inc.
Fisher Wayland Cooper Leader & Zaragoza L.L.P.
2001 Pennsylvania Ave. N.W., Suite 400
Washington, D.C. 20006
Telephone: (202) 775-5678
Facsimile: (202) 296-6518

The contact person for questions concerning the ongoing operations of Applicant following certification is:

Chris A. Caffey
Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231
Telephone: (972) 690-9955
Facsimile: (972) 690-9959

CONCLUSION

As demonstrated in this application, Applicant is managerially, financially and technically qualified to provide local exchange services in South Dakota. In light of the foregoing, Comm South Companies, Inc. submits that the public interest would be served by the expeditious grant of a Certificate of Public Convenience and Necessity to provide such services.

Respectfully submitted,

Dated this 10th day of February, 2000.

OLINGER, LOVALD, ROBBENNOLT,
McCAHREN & REIMERS, P.C.
117 E. Capitol
PO Box 66
Pierre, SD 57502


BY: JAMES ROBBENNOLT

and

Glenn S. Richards, Esq.
Fisher Wayland Cooper Leader &
Zaragoza LLP
2001 Pennsylvania Ave. N.W.
Suite 400
Washington DC 20006-1851

EXHIBIT LIST

EXHIBIT A	Managerial Qualifications
EXHIBIT B	Articles of Incorporation and Certificate of Authority to Transact Business in the State
EXHIBIT C	Tariff
EXHIBIT D	Financial Statements
VERIFICATION	

EXHIBIT B
Managerial Qualifications

Key Manager for Applicant

Chris A. Caffey joined Comm South in March of 1998 and is currently serving as a Senior Vice President and the Chief Operating Officer of the company. From 1966-1998, Mr. Caffey served as principal of The Caffey Group, a telecommunications consulting firm in Arlington, Texas specializing in strategic planning. From 1993-1996, he was Vice President of USA Healthcare's consulting practice. Prior to that, Mr. Caffey served as a health care cost containment and operations management consultant for LBA Health care in Englewood, Colorado. Mr. Caffey earned a Bachelor of Arts In Economics from Austin College and Masters in International Business from American Graduate School of International Management, Thunderbird Campus.

Key Management Team for Topp (the 100% owner of Applicant)

Frederick J. Pollak has over 15 years of telecommunications experience including local, long distance and wireless communications. He currently serves as the Chairman and CEO of Topp. He served as Topp Telecom's President and Chief Executive Officer from May 1996 and February 1999. Between November 1994 and October 1995 he was President and Chief Executive Officer of PTC Cellular, Inc., a nationwide leading provider of cellular rentals and 90%-owned subsidiary of Peoples Telephone Company, a NASDAQ company. PTC Cellular was sold to Shared Technologies Cellular in October 1995 and he served as a consultant to Shared Technologies until May 1996. Between January 1984 and September 1991 he held various positions including Executive Vice President and full partner in Nationwide Vending Services, Inc. ("NVS"), a fast growth company that provided communication and vending management/consulting services to national retail, hospitality and transportation entities including Home Depot, Saks Fifth Avenue, Radisson Hotels and Amtrak. While at NVS he developed and managed their telecommunications business and worked with all major local exchange carriers and long distance providers. NVS was an Inc. 500 Fastest Growth Company in 1989 and 1990, before it was sold to its largest competitor, Weisman Enterprises, Inc. in September 1991. Following NVS' acquisition by Weisman, he served as the company's Executive Vice President until November 1993. He is also an investor and serves on the Board of Governor's of Aloe Care LLP, a niche sun care products company based in Minneapolis, MN.

John J. Wiesehan, Jr. has over 17 years of retail experience. He is currently President and COO of Topp and has held this position since February 1999. Between September 1998 and January 1999 he was Executive Vice President of Topp. Between 1995 and 1998 he was the managing partner for Topp Sales in Dallas, TX. Between 1992 and 1995 he was Vice President of Sales & Marketing for Woods Industries, a \$180 million consumer electronic company. Between 1982 and 1992 he held various executive positions with General Electric Companies including Worldwide Operations Manager for Home Theatre.

Rick Smallman joined the Company as Vice President - Controller in April 1999. Between 1995 and 1999 he was Controller of NCCI, an insurance industry information company. Between 1994 and 1995 he was acting Chief Financial Officer of Ciro, Inc., an international costume jewelry retailer. Between 1976 and 1993 he held various positions including Director of Internal Audit and Division Controller for Knight-Ridder, a multi-billion newspaper publishing company. Between 1974 and 1976 he was an auditor at KPMG Peat Marwick. He is a Florida Certified Accountant.

Paul R. Bush joined Topp as Vice President of Human Resources in April 1999. Between April 1997 and March 1999 he served as Director, Human Resources for SkyTel Communications, Inc. Between January 1986 and April 1997 he held various positions at DSI, Inc. including Vice President, Human Resources & Administration. Between 1984 and 1986 he served as a Human Resources consultant in Montevideo, Uruguay SA.

Rick Salzman joined Topp as Senior Vice President - General Counsel on July 12, 1999. He is currently Vice President-Legal Affairs, Secretary and General Counsel for Whitman Education Group, Inc. a NASDAQ company. Between 1995 and 1996 he was an attorney at Homer & Bonner, P.A. with a focus on complex commercial litigation. Between 1994 and 1995 he was an attorney and partner at Lash & Salzman a commercial litigation firm. Between 1987 and 1994 he was an attorney at Homer & Bonner, P.A. focusing on securities offerings, mergers and acquisitions and general corporate transactions. Between 1986 and 1987 he was an attorney at Shutts & Bowen, P.A. and served as an associate in the Corporate/Securities Department.

Richard Anderson joined Topp in June 1997 as Senior Vice President. Prior to joining Topp, he was Florida State Senator from 1976-82. He was President of Sea Coast Appliance Distributors, the Florida RCA Distributor from 1982 to 1988 and President of Cellular Trading, a chain of Florida cellular retail stores from 1968 to 1996. He played with the Miami Dolphins for 10 years; played in three Super Bowls; was All-Pro three times, and was the 1973 Defensive Player of the Year in the NFL. 1989 Super Bowl Host Committee Chairman; 1985 to 1993 Chairman of the Miami Project to Cure Paralysis.

Comm South Companies, Inc.

EXHIBIT B

**Articles of Incorporation and
Certificate of Authority to Transact Business in the State**

Comm South Companies, Inc.

EXHIBIT C
Tariff

Comm South Companies, Inc.

EXHIBIT D
Financial Statements

VERIFICATION

I, Chris A. Caffey, being duly sworn according to law, depose and say that I am a Senior Vice President and the Chief Operating Officer of Comm South Companies, Inc.; that I am authorized to and do make this verification for it; and that the facts set forth in the above Application are true and correct to the best of my knowledge, information and belief and that I expect Comm South Companies, Inc., to be able to prove the same at any hearing hereof.

Chris A. Caffey

STATE OF

)

) SS.

CITY AND COUNTY OF

)

SUBSCRIBED AND SWORN to me this ____ day of _____, 1999.

Witness my hand and official seal.

Notary Public



The State of Texas

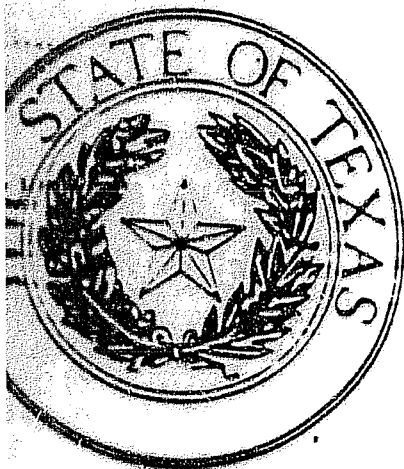
SECRETARY OF STATE

IT IS HEREBY CERTIFIED that the attached is/are true and correct copies of the following described document(s) on file in this office:

COMM SOUTH COMPANIES, INC.
CHARTER NO. 1348942

ARTICLES OF INCORPORATION
ARTICLES OF AMENDMENT

MARCH 17, 1995
DECEMBER 9, 1996

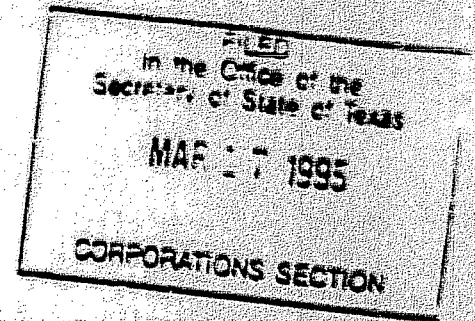


IN TESTIMONY WHEREOF, I have hereunto
signed my name officially and caused to be
impressed hereon the Seal of State at my office in
the City of Austin, on July 10, 1997.

Antonio O. Garza, Jr.
Secretary of State

RAM

ARTICLES OF INCORPORATION
OF
ONYX DISTRIBUTING COMPANY, INC.
(A Close Corporation)



ARTICLE ONE

The name of the Corporation is ONYX DISTRIBUTING COMPANY, INC.

ARTICLE TWO

The period of its duration is perpetual.

ARTICLE THREE

The purpose for which the Corporation is organized is the transaction of any and all lawful business for which a corporation may be incorporated under the Texas Business Corporation Act.

ARTICLE FOUR

The aggregate number of shares which the Corporation shall have authority to issue is One Thousand (1,000). The shares shall have a par value of One Dollar (\$1.00).

ARTICLE FIVE

The Corporation will not commence business until it has received for the issuance of its shares consideration of the value of \$1,000.00, consisting of money, labor done or property actually received.

ARTICLE SIX

The street address of its initial Registered Office, and the name of its initial Registered Agent at this address, is as follows:

Toby Wilson
101 East Randol Mill, Suite 108
Arlington, Texas 76011

ARTICLE SEVEN

The number of initial Directors is one. The name and address of the initial director is:

Toby Wilson
101 East Randol Mill, Suite 108
Arlington, Texas 76011

ARTICLE EIGHT

This Corporation is a close corporation.

ARTICLE NINE

The name and address of the Incorporator is:

Marilyn S. Hershman
408 W. 17th Street, Suite 101
Austin, Texas 78701-1207
(512) 474-2002

IN WITNESS WHEREOF: I have hereunto set my hand this 16th day of March, 1995.

Marilyn S. Hershman

Marilyn S. Hershman, Incorporator

ARTICLES OF AMENDMENT TO ARTICLES OF INCORPORATION OF ONYX
DISTRIBUTING COMPANY, INC.

Pursuant to the provisions of the Texas Business Corporation Act, the undersigned directors adopt the following Articles of Amendment to the Articles of Incorporation of Onyx Distributing Company, Inc.:

Sec. 1

DEC 10 1996

ARTICLE ONE

The name of the corporation is Onyx Distributing Company, Inc.

ARTICLE TWO

The following amendment to the Articles of Incorporation was adopted by the Shareholders of the corporation on December 3, 1996.

The amendment alters Article One of the Articles of Incorporation to read as follows:

"The name of the Corporation is COMM SOUTH COMPANIES, INC."

ARTICLE THREE

The number of shares of the corporation outstanding at the time of the adoption was 1,000; and the number of shares entitled to vote on the amendment was 1,000.

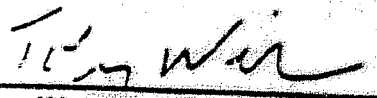
ARTICLE FOUR

The number of shares that voted for the amendment was 1,000; and the number of the shares that voted against the amendment was 0.

Dated: December 3, 1996

Onyx Distributing Company, Inc.

By:



W. Toby Wilson

Its: President

MINUTES OF THE MEETING OF THE SHAREHOLDERS OF ONYX
DISTRIBUTING COMPANY, INC.

A meeting of the Shareholders of the Corporation was held on December 3, 1996. The meeting's business was to consider and adopt a resolution amending the Articles of Incorporation of the Corporation. The meeting was duly called to order by Toby Wilson, President of the Corporation. Toby Wilson also acted as Secretary of the meeting and recorded the minutes. The meeting was held in accordance with the terms of the bylaws of the corporation and the President declared that the meeting was validly convened.

The following Shareholders were present: Toby Wilson and Steve Haryanek.

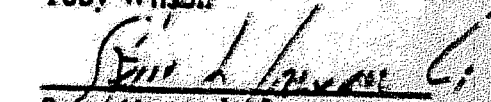
A motion was duly made, seconded and adopted by the Shareholders to change the name of the Corporation from "Onyx Distributing Company, Inc." to "Comm South Companies, Inc." by amending the Articles of Incorporation of the Corporation as follows:

RESOLVED, that the corporation change its name from "Onyx Distributing Company, Inc." to "Comm South Companies, Inc.", that the attached Articles of Amendment to Articles of Incorporation authorizing such change is hereby adopted and approved and the officers of the Corporation are hereby authorized and instructed to file such Articles of Amendment with the Secretary of State's office and to take such other and further action as may be necessary to bring about and effectuate the change of name of the Corporation.

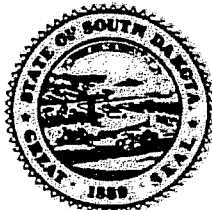
The number of shares that voted for the amendment was 1,000 and the number of the shares that voted against the amendment was 0.

No further action was taken at the meeting.


Toby Wilson


Steve Haryanek

State of South Dakota

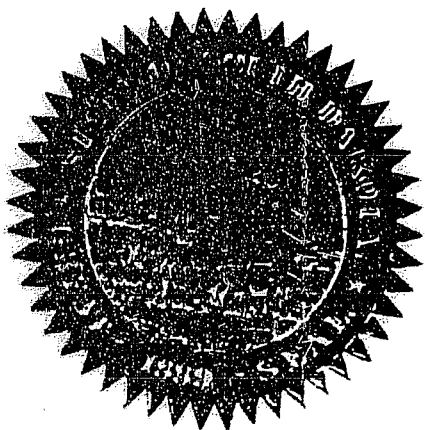


OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF AUTHORITY

I, JOYCE HAZELTINE, Secretary of State of the State of South Dakota, hereby certify that the Application for a Certificate of Authority of COMM SOUTH COMPANIES, INC. (TX) to transact business in this state duly signed and verified pursuant to the provisions of the South Dakota Corporation Acts, 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 to transact business in this state under the name of COMM SOUTH COMPANIES, INC.



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 February 19, 1998.

JOYCE HAZELTINE
Secretary of State

TELECOMMUNICATIONS SERVICES

Rates, Rules, and Regulations
Governing Telecommunications Services

Offered by

COMM SOUTH COMPANIES, INC.

Applicable
Throughout the State of South Dakota

This Tariff sets forth the services offerings, rates, terms and conditions applicable to the furnishing of intrastate telecommunications services by Comm South Companies, Inc. (hereinafter, "Carrier" or the "Company") with principal offices at 6830 Walling Lane, Dallas, Texas 75231.

This Tariff applies to services furnished in the State of South Dakota.

This Tariff is on file with the South Dakota Public Utilities Commission (the "Commission"), and copies can be inspected, during normal business hours, at the Company's principal place of business.

Issued:

By:

Effective:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES

CHECK SHEET

Sheets of this Tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets, as named below, comprise all changes from the original Tariff that are currently in effect as of the date on the bottom of this sheet.

<u>SHEET</u>	<u>NUMBER OF REVISION</u> <u>(except as indicated)</u>	<u>EFFECTIVE</u> <u>DATE</u>
1	Original	
2	Original	
3	Original	
4	Original	
5	Original	
6	Original	
7	Original	
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Dallas, Texas 75231

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
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6830 Walling Lane
Dallas, Texas 75231

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EXPLANATION OF SYMBOLS AND ABBREVIATIONS

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.

The following is an abbreviation used in this Tariff.

LATA - Local Access and Transport Area

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
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TARIFF FORMAT

- A. Sheet Numbering - Sheet numbers appear in the upper-right corner of the sheet. Sheets are numbered sequentially. However, new sheets are occasionally added to the Tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between Sheets 14 and 15 would be 14.1.
- B. Sheet Revision Numbers - Revision numbers also appear in the upper-right corner of the sheet. These numbers are used to determine the most current sheet version on file with the Commission. For example, the 4th revised Sheet 14 cancels the third revised Sheet 14. Because of various suspension periods, deferrals, etc., the Commission follows in their Tariff approval process, the most current sheet number on file with the Commission is not always the Tariff page in effect. Consult the Check Sheet for the sheet currently in effect.
- C. Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level of coding.
- 2.
 - 2.1
 - 2.1.1
 - 2.1.1.1
 - 2.1.1.1. A
 - 2.1.1.1.A.1
 - 2.1.1.1.A.1.(a)
 - 2.1.1.1.A.1.(a).1
 - 2.1.1.1.A.1.(a).1.(i)
 - 2.1.1.1.A.1.(a).1.(i)(1)
- D. Check Sheets - When a Tariff filing is made with the Commission, an updated check sheet accompanies the Tariff filing. The check sheet lists the sheets contained in the Tariff, with a cross reference to the current revision number. When new sheets 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 sheet if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some sheets). The Tariff user should refer to the latest check sheet to find out if a particular sheet is the most current sheet on file with the Commission.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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APPLICATION OF TARIFF

This Tariff contains the descriptions, regulations, and rates applicable to the furnishing of service and facilities for local telecommunications services provided by Comm South Companies, Inc. (hereinafter "Carrier") with principal offices at 6830 Walling Lane, Dallas, Texas 75231. This Tariff applies to services furnished within the State of South Dakota. This Tariff is on file with the South Dakota Public Utilities Commission ("SD P.U.C.") and copies may be inspected, during normal business hours, at Carrier's principal place of business.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
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Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES

SECTION 1 - DEFINITIONS

Account Number - Customer's telephone number is his/her account number

Application for Service - A standard order form which includes all pertinent billing, technical, and other descriptive information which will enable the Carrier to provide telecommunication service as required

Authorized User - A person that either is authorized by Customer to use local exchange telephone service at Customer's residence or other location, or is placed in a position by Customer, either through acts or omissions, to use local exchange telephone service.

Carrier - Comm South Companies, Inc., unless the context indicates otherwise.

Commission - South Dakota Public Utilities Commission ("S.D. P.U.C."), unless the context indicates otherwise.

Customer - The person, firm, corporation, or other entity which orders or uses service and is responsible for the payment of rates and charges and compliance with Tariff regulations.

Disconnection - The disconnection of a circuit, dedicated access line, or port connection being used for existing service.

Exchange Carrier - Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in the provision of local exchange telephone service.

Holiday - Carrier's recognized Holidays are New Year's Day (January 1), Independence Day (July 4), Labor Day, Memorial Day, Thanksgiving Day, Christmas Day (December 25), Martin Luther King Day, and President's Day.

Incumbent Local Exchange Carrier (ILEC) - Local exchange carriers that are providing telephone exchange service in an area on the date of the enactment of the Telecommunications Act of 1996 and that are deemed to be members of the exchange carrier association.

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 for the provision and administration of communications services.

Local Calling - A completed call or telephone communication between a calling Station and any other Station within the local service area of the calling Station.

Local Exchange Carrier - A company which furnishes exchange telephone service.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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SECTION 1 - DEFINITIONS (Cont'd)

Non-Recurring Charges - The one-time initial charges for services or facilities, including but not limited to charges for processing and installation, for which Customer becomes liable at the time the Service Order is executed.

Premises - The space designated by a customer as its place or places of business for termination of service (whether for its own communications needs or for its resale customers). In the case of a non-profit sharing group, this term includes space at each sharer's place or places of business, as well as space at Customer's place of business.

Rates - Includes every compensation, tariff, charge, fare, fee, deposit, toll, rental and classification, or any of them demanded, observed, charged or collected, whether directly or indirectly by any public utility for any service, product, or commodity defined in the Public Utilities Act of 1974, and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, fee, toll, rental or classification.

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

Service Commencement Date - The first day following the date on which Carrier notifies Customer that the requested service or facility is available for use, unless extended by Customer's refusal to accept service which 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 Customer's acceptance of service. The parties may mutually agree on a substitute Service Commencement Date.

Services - The services covered by this Tariff shall include only the State of South Dakota.

Station - Telephone equipment from or to which calls are placed.

Telecommunications Utility - Any person, firm, partnership or corporation engaged in the business of furnishing telecommunications services to the public by the authority of and under the jurisdiction of the SD P.U.C. This includes both local exchange and intrastate long distance carriers.

Terminal Equipment - Telecommunications devices, apparatus, and their associated wiring, such as teleprinters, telephone, and data sets.

Trunk - A communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

User - A Customer or any other person authorized by Customer to use Services provided under this Tariff.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
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SECTION 2 - REGULATIONS2.1 UNDERTAKING OF CARRIER2.1.1 Scope

Carrier is a resale common carrier providing prepaid local exchange and interexchange services to Customers for their direct transmission and reception of voice, data, and other types of telecommunications. Service is available on a full-time basis, 24 hours a day, seven days a week, throughout the State of South Dakota.

2.1.2 Terms and Conditions

2.1.2.1 Service may not be used for any unlawful purpose or for any purpose as to which Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits. Service may not be used for any purpose for which any payment or other compensation is received by Customer except when Customer is a duly authorized regulated common carrier. This provision does not prohibit an arrangement between Customer, Authorized User, or joint user to share the cost of the service as long as the arrangement generates no profit for any participant in the arrangement.

2.1.2.2 Except as otherwise provided herein, the minimum period of service is one month. Unless otherwise specified herein, for the purpose of computing charges in this Tariff, a month is considered to have thirty (30) days. All calculations of dates set forth in this Tariff shall be based on calendar days. Should the applicable date fall on a Sunday or Federal holiday, Customer will be permitted to make payment on the next regular business day.

2.1.2.3 Any termination shall not relieve Customer of its obligation to pay any charges incurred under the Agreement and this Tariff prior to termination.

2.1.2.4 This Tariff shall be interpreted and governed by the laws of the State of South Dakota.

2.1.2.5 Another telephone company must not interfere with the right of any person or entity to obtain service directly from Carrier.

2.1.2.6 Customer has no property right to the telephone number or any other call number designation associated with services furnished by Carrier. Carrier reserves the right to change such numbers, or the central office designation associated with such numbers, or both, assigned to Customer, whenever Carrier deems it necessary to do so in the conduct of its business.

2.1.2.7 Carrier may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.

2.1 UNDERTAKING OF CARRIER (Cont'd)

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Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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2.1.3 Limitations of Service

- 2.1.3.1 Except as otherwise provided herein, service is prepaid and provided on the basis of a minimum period of at least one month, and shall continue to be provided until Customer fails to prepay for the subsequent month pursuant to Carrier's monthly service Reminder Notice. Customers interested in Carrier's services shall file a service application with Carrier which fully identifies the Customer and identifies the services required.
- 2.1.3.1 Carrier reserves the right to limit or allocate the use of existing facilities, or of additional facilities offered by Carrier when necessary because of lack of facilities or due to some other cause beyond Carrier's control. Service is offered subject to the availability on a continuing basis of all necessary facilities and/or equipment and subject to the provisions of this Tariff. Carrier reserves the right not to provide service to or from a location where the necessary facilities or equipment are not available.
- 2.1.3.2 Carrier reserves the right to discontinue furnishing service, upon a written notice, when necessitated by conditions beyond its control, or when Customer is using the service in violation of any provision in this Tariff, the rules and regulations of the South Dakota Public Utilities Commission, or in violation of the law.
- 2.1.3.3 Customer has no property right to the telephone number or any other call number designation associated with services furnished by Carrier. Carrier reserves the right to change such numbers, or the central office designation associated with such numbers, or both, assigned to Customer, whenever Carrier deems it necessary to do so in the conduct of its business.

2.1.4 Notification of Service-Affecting Activities

Carrier will provide 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 routing preventive 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. Carrier will work cooperatively with Customer to determine the reasonable notifications requirements. With some emergency or unplanned service-affecting conditions, such as outage resulting from cable damage, notification to Customer may not be possible.

- 2.1.4.1 Carrier 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 Customer with the regulations contained in this Tariff. Carrier does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.

2.1 UNDERTAKING OF CARRIER (Cont'd)2.1.4 Notification of Service-Affecting Activities (Cont'd)

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Comm South Companies, Inc.
6830 Walling Lane
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2.1.4.2 Carrier shall use reasonable efforts to maintain facilities that it furnishes to Customer. Customer may not, nor may Customer permit others except the Incumbent Local Exchange Carrier to, rearrange, disconnect, remove, attempt to repair or otherwise interfere with any of the facilities installed by Carrier, except upon written consent of Carrier.

2.1.5 Provision of Equipment and Facilities

2.1.5.1 Carrier 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 Carrier shall be limited to the furnishing of facilities offered under this Tariff and to the maintenance and operation of such facilities. Beyond this responsibility, Carrier shall not be responsible for:

- A. the transmission of signals by Customer provided equipment or for the quality of, or defects in, such transmission;
- B. the reception of signals by Customer provided equipment; or
- C. network control signaling where such signaling is performed by Customer-provided network control signaling equipment.

2.1.6 Non-routing Installation

At Customer's request, installation and/or maintenance may be performed outside Carrier's regular business hours or in hazardous locations. In such cases, charges based on the cost of the actual labor, material, or other costs incurred by or charged to Carrier will apply. If installation is started during regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

2.1.7 Ownership of Facilities

Title to all facilities provided in accordance with this Tariff remains in Carrier, its agents or contractors, or the Incumbent Local Exchange Carrier.

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Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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2.2 LIABILITY OF CARRIER

- 2.2.1 The liability of Carrier for damages arising out of the furnishing of its services, including but not limited to mistakes, omissions, interruptions, delays, or errors, other defects, or representations by Carrier, or use of these services or damages arising out of the failure to furnish the service whether caused by acts or omission, shall be limited to the extension of allowances for interruptions as set forth in Section 2.7.1 below. The extension of such allowances for interruption shall be the sole remedy of Customer and the sole liability of Carrier. Carrier will not be liable for any direct, indirect, incidental, special, consequential, exemplary or punitive damages to Customer as a result of any Carrier service, equipment or facilities, or the acts or omissions or negligence of Carrier's employees or agents.
- 2.2.2 Carrier's liability for willful misconduct, if established as a result of judicial or administrative proceedings, is not limited by this Tariff. With respect to any other claim or suit, by a Customer or by others, for damages associated with the ordering (including the reservation of any specific number for use with a service), installation (including delays thereof), provision, termination, maintenance, repair, interruption or restoration of any service or facilities offered under this Tariff, and subject to the provisions of Section 2.7.1, Carrier's liability, if any, shall be limited as provided herein.
- 2.2.3 Carrier 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; and 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 Carrier, or of any department, agency, commission, bureau, corporation or other instrumentality of any one or more these federal, state, or local governments, or of any military authority; preemption of existing service in compliance with national emergencies; insurrections; riots; wars; unavailability of rights-of-way or materials, or strikes, lockouts, work stoppages, or other labor difficulties.
- 2.2.4 Carrier shall not be liable for: (a) any act or omission of any entity furnishing Carrier or Carrier's Customers facilities or equipment used for or with the services Carrier offers; or (b) the acts or omissions of other common carriers or warehousemen.
- 2.2.5 Carrier shall not be liable for any damages or losses due to the fault or negligence of, or any omission by, Customer or due to the failure or malfunction of Customer-provided equipment or facilities.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES

2.2 LIABILITY OF CARRIER (Cont'd)

- 2.2.6 Customer shall indemnify and hold Carrier harmless from any and all losses, 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 Customer or others, caused or claimed to have been caused directly or indirectly by the installation, operation, failure to operate, maintenance, removal, condition, location or use of any installation provided by Carrier. Carrier reserves the right to require each Customer to sign an agreement acknowledging acceptance of the provisions of this section as a condition precedent to such installations.
- 2.2.7 Carrier shall not be liable for any defacement of or damage to Customer premises resulting from the furnishing of services of equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by gross negligence or willful misconduct of Carrier's agents or employees. No agents or employees of other participating carriers shall be deemed to be agents or employees of Carrier.
- 2.2.8 Notwithstanding Customer's obligations as set forth in Section 2.3.2, Carrier shall be indemnified, defended, and held harmless by Customer or by others authorized by it to use the service against any claim, loss or damage arising from Customer's use of services furnished under this Tariff, including:
- 2.2.8.1 Claims for defamation libel, slander, invasion of privacy, infringement of copyright, unauthorized use of trademark, trade name, or service mark, unfair competition, interference with or misappropriation, or violation of any contract, proprietary or creative right, or any other injury to any proprietary or creative right, or any other injury to any person, property, or entity arising from the material, data, information, or content, revealed to, transmitted, processed, handled, or used by Carrier under this Tariff.
- 2.2.8.2 patent infringement claims arising from combining or connecting the service offered by Carrier with apparatus and systems of Customer or others; and
- 2.2.8.3 all other claims arising out of any act or omission of Customer or others, in connection with any service provided by Carrier pursuant to this Tariff.
- 2.2.9 The entire liability of Carrier for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid to Carrier by Customer for the specific services giving rise to the claim, and no action or proceeding against Carrier shall be commenced more than one year after the service is rendered.
- 2.2.10 CARRIER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.

Issued:

By:

Effective:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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2.2 **LIABILITY OF CARRIER (Cont'd)**

- 2.2.11 Carrier shall not be liable for any act or omission of any other company or companies furnishing a portion of the service, or for damages associated with service, channels, or equipment which it does not furnish, or for damages which result from the operation of Customer-provided systems, equipment, facilities or services which are interconnected with Carrier services.
- 2.2.12 No agent or employee of any other carrier shall be deemed to be an agent or employee of Carrier.
- 2.2.13 With respect to Emergency Number 911 Service:
- 2.2.13.1 This service is offered as an aid in handling assistance calls in connection with fire, police and other emergencies. Carrier is not responsible for any losses, claims, demands, suits or any liability whatsoever, whether suffered, made, instituted or asserted by Customer or by any other party or person for any personal injury to or death of any person or persons, and for any loss, damage or destruction of property, whether owned by Customer or others, caused or claimed to have been caused by: (1) mistakes, omissions, interruptions, delays, errors or other defects in the provision of this service, or (2) installation, operation, failure to operate, maintenance, removal, presence, condition, location or use of any equipment and facilities furnishing this service.
- 2.2.13.2 Neither is Carrier responsible for any infringement or invasion of the right of privacy of any person or persons, caused or claimed to have been caused, directly or indirectly, by the installation, operation, failure to operate, maintenance, removal, presence, condition, occasion or use of emergency 911 service features and the equipment associated therewith, or by any services furnished by Carrier including, but not limited to, the identification of the telephone number, address or name associated with the telephone used by the party or parties accessing Emergency 911 service, and which arise out of the negligence or other wrongful act of Carrier, Customer, its Users, agencies or municipalities, or the employees or agents of any one of them.
- 2.2.14 Carrier's liability arising from errors or omissions in Directory Listings, other than charged listings, shall be limited to the amount of actual impairment to Customer's service and in no event shall exceed one-half the amount of the fixed monthly charges applicable to exchange service affected during the period covered by the directory in which the error or omission occurs. In cases of charged Directory Listings, the liability of Carrier shall be limited to an amount not exceeding the amount of charges for the charged listings involved during the period covered by the directory in which the error or omission occurs.
- 2.2.15 In conjunction with a non-published telephone number, Carrier will not be liable for failure or refusal to complete any call to such telephone when the call is not placed by the number. Carrier will try to prevent the disclosure of the number of such telephone, but will not be liable should such number be divulged.

2.2 **LIABILITY OF CARRIER (Cont'd)**

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
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- 2.2.16 When a Customer with a non-published telephone number places a call to the Emergency 911 Service, Carrier will release the name and address of the calling party, where such information can be determined to the appropriate local governmental authority responsible for the Emergency 911 Service upon request of such governmental authority. By subscribing to service under this Tariff, Customer acknowledges and agrees with the release of information as described above.

2.3 OBLIGATIONS OF CUSTOMER

2.3.1 General

Customer shall be responsible for:

- 2.3.1.1 placing orders for service.

When placing an order for service, Customer must provide:

- A. the name(s) and address(es) of the person(s) responsible for the payment of service charges; and
- B. The name(s), telephone number(s), and address(es) of Customer contact person(s).

- 2.3.1.2 the payment of all applicable charges pursuant to this Tariff;

- 2.3.1.3 reimbursing Carrier for damage to, or loss of, Carrier's facilities or equipment caused by the acts or omissions of Customer; or the noncompliance by Customer, with these regulations; or by fire or theft or other casualty on Customer's premises, unless caused by the negligence or willful misconduct of the employees or agents of Carrier. Carrier will, upon reimbursement for damages, cooperate with Customer in prosecuting a claim against the person causing such damage and Customer shall be subrogated to Carrier's right of recovery of damages to the extent of such payment.

- 2.3.1.4 providing at no charge, as specified from time to time by Carrier, any needed personnel, equipment, space and power to operate Carrier facilities and equipment installed on the premises of Customer, and the level of heating and air conditioning necessary to maintain the operating environment on such premises;

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13 OBLIGATIONS OF CUSTOMER (Cont'd)**2.3.1 General (Cont'd)**

- 2.3.1.5 obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduit necessary for installation of fiber optic cable and associated equipment used to provide local exchange service to Customer from the cable building entrance or property line to the location of the equipment space described in 2.3.1.4. Any costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of Carrier-provided facilities, shall be borne entirely by, or may be charged by Carrier to, Customer. Carrier may require Customer to demonstrate its compliance with this section prior to accepting an order for service;
- 2.3.1.6 providing a safe place to work and complying with all laws and regulations regarding the working conditions on the premises at which Carrier employees and agents shall be installing or maintaining Carrier's facilities and equipment. Customer may be required to install and maintain Carrier facilities and equipment within a hazardous area if, in Carrier's opinion, injury or damage to Carrier's employees or property might result from installation or maintenance by Carrier. 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;
- 2.3.1.7 complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as maybe required with respect to, the location of Carrier facilities and equipment in any Customer premises or the rights-of-way for which Customer is responsible under section 2.3.1.5 above; and granting or obtaining permission for Carrier agents or employees to enter the premises of 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 Carrier;
- 2.3.1.8 not creating or allowing to be placed or maintained any liens or other encumbrances on Carrier's equipment or facilities; and
- 2.3.1.9 making Carrier facilities and equipment available periodically for maintenance purposes at a time agreeable to both Carrier and Customer. No allowance for interruptions in service will be made for the period during which service is interrupted for such purposes.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
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2.1 OBLIGATIONS OF CUSTOMER (Cont'd)**2.3.2 Claims**

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

- 2.3.2.1 any loss, destruction or damage to property of Carrier or any third party, or the death of or injury to persons, including, but not limited to, employees or invitees of either Carrier or Customer, to the extent caused by or resulting from negligent or intentional act or omission of Customer, its employees, agents, representatives or invitees; or
- 2.3.2.2 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 any act or omission by Customer, including, with limitation, use of Carrier's services and facilities in a manner not contemplated by the agreement between Customer and Carrier.

2.4 CUSTOMER EQUIPMENT AND CHANNELS**2.4.1 Interconnection of Facilities**

- 2.4.1.1 Services furnished by Carrier may be interconnected to the services or facilities of other authorized communications carriers and with private systems only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections. Service furnished by Carrier is not part of a joint undertaking with such other carriers.
- 2.4.1.2 Any special interface equipment necessary to achieve compatibility between the facilities and equipment of Carrier used for furnishing local exchange service and the channels, facilities, or equipment of others may be provided at Customer's expense.
- 2.4.1.3 Facilities furnished under this Tariff may be connected to Customer provided terminal equipment in accordance with the provisions of this Tariff.
- 2.4.1.4 Customer is responsible for taking all necessary legal steps for interconnecting his or her customer provided terminal equipment of communications systems with Carrier's facilities. Customers shall secure all licenses, permits, rights-of-way, and other arrangements necessary for such interconnections.

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Comm South Companies, Inc.
6830 Walling Lane
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2.4 CUSTOMER EQUIPMENT AND CHANNELS (Cont'd)**2.4.2** Inspections

2.4.2.1 Upon reasonable notification to Customer, and at a reasonable time, Carrier may make such tests and inspections as may be necessary to determine that Customer is complying with the requirements set forth herein for the installation, operation, and maintenance of any Customer-provided facilities and equipment to any Carrier-owned facilities and equipment. No credit will be allowed for any interruptions occurring during such inspections.

2.4.2.2 If the protective requirements for Customer-provided equipment are not being complied with, Carrier may take such action as it deems necessary to protect its facilities, equipment, and personnel. Carrier will notify Customer promptly if there is any need for further corrective action. Within ten (10) days of receiving this notice Customer must take this corrective action and notify Carrier of the action taken. If Customer fails to do this, Carrier may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm. Carrier will, upon request 24 hours in advance, provide Customer with a statement of technical parameters that Customer's equipment must meet.

2.4.3 Availability of Service for Maintenance, Testing, and Adjustment

Upon reasonable notice, the facilities provided by Carrier shall be made available to Carrier for such tests and adjustments as may be necessary to maintain them in satisfactory condition.

2.5 PAYMENT ARRANGEMENTS**2.5.1** Payment for Service

Customer is responsible for payment of all charges for service and facilities furnished by Carrier to Customer or authorized users. Objections must be received by Carrier within thirty (30) days after the due date, or the charges shall be deemed correct. Should Customer pay the charges under protest, he may have an additional thirty (30) days to dispute same in writing or the charges will become binding upon Customer. If an entity other than Carrier imposes charges on Carrier, in addition to its own internal costs, in connection with a service for which a Carrier Non-Recurring Charge is specified, those charges may be passed on to Customer.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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2.5 PAYMENT ARRANGEMENTS (Cont'd)**2.5.1** Payment for Service (Cont'd)

2.5.1.1 Taxes: Customer is responsible for the payment of any sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) excluding taxes on Carrier's net income assessed in conjunction with service used. Any taxes imposed by a local jurisdiction (e.g. County and municipal taxes) will only be recovered from those Customers residing in the affected jurisdictions. It shall be the responsibility of Customer to pay any such taxes that subsequently become applicable retroactively.

2.5.2 Billing and Collection of Charges

2.5.2.1 Monthly service provided by Carrier shall be prepaid by Customer for each one-month period. Carrier shall present a bill or Reminder Notice for monthly charges to the Customer in advance of the month for which service is being provided.

2.5.2.2 Bills are to be prepaid each month. The first payment is due in advance when the Customer signs up for service - the activation date. All other payments are due monthly on the anniversary of the Customer's activation date for the ensuing month's service. An account not fully paid in full by the due date will be considered delinquent.

2.5.2.3 Customer is responsible for payment of all charges for service furnished to Customer, including, but not limited to all calls originated and/or received at Customer's number(s). Notwithstanding Section 4.1.1 of this Tariff, which provides for the blocking of certain toll calls, including direct dial long distance, collect calls, operator-assisted calls, and third number billed calls, in the event that the blocking of these calls is circumvented by Customer, or in the event of a temporary failure of the blocking mechanism, Customer is responsible for payment of any toll charges billed to Customer's number(s). The initial billing may include the account set-up charge where applicable.

2.5.2.4 For existing customers whose service is disconnected, 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 thirty (30) days.

2.5.2.5 Customers may pay for service by credit card, an authorized payment agent, or money order.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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2.5 PAYMENT ARRANGEMENTS (Cont'd)

2.5.2 Billing and Collection of Charges (Cont'd)

2.5.2.6 Carrier will bill Customer a one-time charge of \$20.00 if Customer's check for payment of service is returned for insufficient or uncollected funds, closed accounts, or any other insufficiency or discrepancy necessitating return of the check at the discretion of the drawee bank or other financial institution.

2.5.2.7 A charge of \$20.00 or the applicable statutory charge for reconnection of service (if any), whichever is greater, will apply whenever a Subscriber requests to be reconnected to the Services after Carrier has terminated Services to Subscriber for any reason allowed by this Tariff.

2.5.2.8 Customer is liable for all costs associated with collecting past due charges, including all attorneys' fees.

2.5.3 Application of Charges

The charges for service are those in effect for the period that service is furnished. If the charge for a service covered by a bill changes after the bill has been rendered, the bill will be adjusted to reflect the new charges.

2.5.4 Deposits

Carrier does not require deposits from Customers.

2.5.5 Disputed Bills

Customer shall notify Carrier of any disputed items on a bill within 10 days after the due date. Carrier will notify Customer that if Customer and Carrier are unable to resolve the dispute to their mutual satisfaction, Customer may appeal to the Public Utilities Commission at 500 East Capitol, Pierre, South Dakota or by telephone at (605) 773-3201 in accordance with Section 20-10-06-03 of the Commission's Administrative Rules.

2.5.5.1 The date of the dispute shall be the date Carrier receives sufficient documentation to enable it to investigate the dispute. The date of the resolution is the date Carrier completes its investigation and notifies Customer of the disposition of the dispute.

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Comm South Companies, Inc.
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2.6 DISCONNECTION OF SERVICE BY CARRIER

- 2.6.1 Carrier may discontinue Customer's Service without Carrier incurring any liability for any of the following reasons:
- 2.6.1.1 Nonpayment of an undisputed delinquent account as provided in Section 20:20:10:03 of the Commission's Administrative Rules.
 - 2.6.1.2 Violation of or noncompliance with any governmental or SD P.U.C. rules or regulations set forth in Subdivision 20:10:09:03(5) of the Commission's Administrative Rules.
 - 2.6.1.3 Failure to comply with an agreement to liquidate a continuing debt as described in subdivision 20:10:10:03(4) of the Commission's Administrative Rules.
 - 2.6.1.4 Failure to pay an increased deposit as described in Section 20:10:08:03 of the Commission's Administrative Rules.
 - 2.6.1.5 Failure to pay an increased deposit as described in Section 20:10:08:03 of the Commission's Administrative Rules.
 - 2.6.1.6 Failure to pay an undisputed bill for telecommunications charges owed to an interstate carrier for whom a telephone utility is acting as a billing agent.
 - 2.6.1.7 Customer provides false information to Carrier regarding Customer's identity, address, current use of common carrier communications services, or its planned use of Carrier's service(s).
 - 2.6.1.8 Condemnation of any material portion of the facilities used by Carrier to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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2.6 DISCONNECTION OF SERVICE BY CARRIER (Cont'd)

2.6.1 (Cont'd)

- 2.6.1.9 Use of service in such a manner as to interfere with the service of other users.
- 2.6.1.10 Use of service for unlawful purposes.
- 2.6.1.11 Carrier deems that such action is necessary to prevent or to protect its personnel, agents, facilities or services.
- 2.6.1.12 Upon any governmental prohibition, or required alteration of the services to be provided or any violation of any applicable law or regulation.
- 2.6.1.13 Where a dangerous condition exists for as long as the condition exists or where service is connected without authority by a person who has not made application for service or who has reconnected service following suspension of service for nonpayment.
- 2.6.1.14 Upon Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, failing to discharge an involuntary petition within the time permitted by law, or abandonment of service.
- 2.6.1.15 Customer uses, or attempts to use, service with the intent to avoid the payment, either in whole or in part, of the tariffed charges for the service by:
- A. Using or attempting to use service by rearranging, tampering with, or making connections to Carrier's service not authorized by this Tariff; or
 - B. Using tricks, schemes, false or invalid numbers, false credit devices, electronic devices; or
 - C. Any other fraudulent means or devices.
- 2.6.1.16 Unless otherwise stated, Carrier will provide Customer with notice prior to any discontinuation or removal of service.
- 2.6.1.17 The suspension or discontinuance of service(s) by Carrier pursuant to this Section does not relieve Customer of any obligation to pay Carrier for charges due and owing for service(s) furnished during the time of or up to suspension or discontinuance.
- 2.6.1.18 Upon Carrier's discontinuance of service to Customer under this Section, all applicable charges, including termination charges, shall become due. This is in addition to all other remedies that may be available to Carrier at law or in equity or under any other provision of this Tariff.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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2.6 DISCONNECTION OF SERVICE BY CARRIER (Cont'd)2.6.2 Restoration of Service

Service shall be restored in accordance with Commission Administrative Rules.

2.6.3 Restoration of Service in Emergencies

The use and restoration of service in emergencies shall be in accordance with the priority system specified in Part 64, Subpart D of the Rules and Regulations of the Federal Communications Commission.

2.6.4 Fractional Charges

Charges for a fractional part of a month are calculated by counting the number of days remaining in the billing period after service is furnished. Divide that number of days by 30 days (billing period). The result is then multiplied by the applicable monthly service charge to arrive at the appropriate fractional monthly service charge.

2.7 RESPONSIBILITY OF CARRIER2.7.1 Allowances for Interruption of Service

2.7.1.1 When the use of service or facilities furnished by Carrier is interrupted due to any cause other than the negligence or willful act of Customer, or the operation or failure of the facilities or equipment provided by Customer, a pro rata adjustment of the monthly Charges subject to interruption will be allowed for the service and facilities rendered useless and inoperative by reason of the interruption whenever said interruption continues for a period of 24 hours or more from the time the interruption is reported to or known to exist by Carrier, except as otherwise specified in Carrier's Tariffs.

2.7.1.2 It shall be the obligation of Customer to notify Carrier immediately of any interruption in service for which a credit allowance is desired by Customer. Before giving such notice, Customer shall ascertain that the trouble is not being caused by any action or omission of Customer within his or her control, or is not in writing or equipment, if any, furnished by Customer and connected to Carrier's terminal. If 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.

2.7.2 Credit Allowances

2.7.2.1 In the event Customer's service is interrupted for reasons other than the negligence or willful act of Carrier and when Service remains out of order for more than 24 hours after being reported, appropriate adjustments or refunds shall be made to Customer. Credit allowances for failure of service or equipment starts when Customer notifies Carrier of the failure or when Carrier becomes aware of the failure and ceases when the operation has been restored.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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2.7 RESPONSIBILITY OF CARRIER (Cont'd)2.7.2 Credit Allowances (Cont'd)

2.7.2.2 Credit for failure of service or equipment will be allowed only when failure is caused by or occurs in facilities or equipment owned, provided and billed for, by Carrier.

2.7.2.3 Only those portions of Service or equipment disabled will be credited.

2.7.2.4 Customer shall notify Carrier of failures of service or equipment and make reasonable attempts to ascertain that the failure is not caused by Customer provided facilities, any act or omission of Customer, or in wiring or equipment connected to the terminal.

2.7.3 Limitations on Allowances

No credit allowances will be made for:

2.7.3.1 interruptions due to the negligence of, or noncompliance with the provisions of this Tariff by Customer;

2.7.3.2 interruptions due to the negligence of any person using Carrier's facilities with Customer's permission;

2.7.3.3 interruptions due to the failure or malfunction of non-Carrier equipment;

2.7.3.4 interruptions of service during any period in which Carrier is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;

2.7.3.5 interruptions of service during a period in which Customer continues to use the service on an impaired basis;

2.7.3.6 interruptions of service during any period when Customer has released service to Carrier for maintenance purposes or for implementation of a Customer order for a change in service arrangements; or

2.7.3.7 interruption of service due to circumstances or causes beyond the control of Carrier interruptions of service resulting from Carrier performing routine maintenance.

2.7.4 Calculation of Credit Allowance

Pursuant to limitations otherwise set forth in Section 2.7, when service is interrupted the credit allowance will be computed on the following basis:

2.7.4.1 No credit shall be allowed for an interruption of less than two hours.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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2.7 RESPONSIBILITY OF CARRIER (Cont'd)2.7.4 Calculation of Credit Allowance (Cont'd)

2.7.4.2 Customer shall be credited for an interruption of two hours or more for as long as the interruption continues.

2.7.4.3 For each period of two hours that the interruption continues the credit shall equal 1/360th of the monthly charge.

2.7.4.4 If notice of a dispute as to charges is not received in writing by Carrier within 30 days after billing is received by Customer, the invoice shall be considered correct and binding on Customer, unless extraordinary circumstances are demonstrated.

2.7.5 Credit Upon Cancellation of Service

Where Carrier cancels a service and the final service period is less than the monthly billing period, a credit will be issued for any amounts billed in advance, prorated at 1/30th of the monthly recurring charge for each day after the service was discontinued. This credit will be issued to Customer or applied against the balance remaining on Customer's account.

2.7.6 Allowances for Uncompleted Calls/Wrong Numbers

Carrier shall give credit to customers for uncompleted calls and wrong numbers.

2.8 CANCELLATION OF SERVICE2.8.1 Cancellation of Application for Service

2.8.1.1 Applications for service are noncancellable unless Carrier otherwise agrees. Where Carrier permits Customer to cancel an application for service prior to the start of service or prior to any special constructions, no charges will be imposed except for those specified below.

2.8.1.2 Where, prior to cancellation by Customer, Carrier 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 Carrier incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of service ordered, including installation charges, and all charges others levy against Carrier that would have been chargeable to Customer had service begun.

2.8.1.3 The special charges described in 2.8.1.1 and 2.8.1.2 will be calculated and applied on a case-by-case basis.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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2.8 CANCELLATION OF SERVICE (Cont'd)

2.8.2 Cancellation of Service by a Customer

2.8.2.1 Customer may cancel service any time after meeting the minimum service period.

2.8.2.2 If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a service interruption (as defined in Section 2.7.1 above), Customer agrees to pay to Carrier the following sums which 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, all costs, fees and expenses incurred in connection with:

- A. all Non-Recurring Charges reasonably expended by Carrier to establish service to Customer, plus
- B. any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Carrier on behalf of Customer, plus
- C. all Recurring Charges for the applicable notice period.

2.9 TRANSFERS AND ASSIGNMENTS

Neither Carrier nor Customer may assign or transfer its rights or duties in connection with the services and facilities provided by Carrier without the written consent of the other party, except that Carrier may assign its rights and duties (a) to any subsidiary, parent company or affiliate of Carrier; (b) pursuant to any sale or transfer or substantially all the assets of Carrier; or (c) pursuant to any financing, merger or reorganization of Carrier.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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2.10 NOTICES AND COMMUNICATIONS

- 2.10.1 Customer shall designate an address to which Carrier shall mail or deliver all notices and other communications, except that Customer may also designate a separate address to which Carrier's bills for service shall be mailed.
- 2.10.2 Carrier shall designate an address to which Customer shall mail or deliver all notices and other communications, except that Carrier may designate a separate address to which Customer shall mail payment on that bill.
- 2.10.3 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 Carrier, shall be presumed to have been delivered to the other party on the third business day following deposit 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.
- 2.10.4 Carrier or Customer shall advise the other party of any changes to the addresses designated for notices or other communications, by following the procedures for giving notice set forth herein.

2.11 TIMING OF CALLS

Chargeable time begins when two way communications is possible between Customer and the calling or called station, and the call ends when either station "hangs up."

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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TELECOMMUNICATIONS SERVICES

SECTION 3 - DESCRIPTION OF LOCAL SERVICE AREA

3.1 LOCAL EXCHANGES

- 3.1.1 Service Area - Comm South Companies, Inc. will be providing service in the local service territories presently served by U S West Companies.
- 3.1.2 Local Calling Areas - Exchanges included in the local calling area for each of the NXX designations may be found in the telephone directory published by the dominant exchange service provider in Customer's exchange service area.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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SECTION 4 - DESCRIPTION OF SERVICES4.1 LOCAL EXCHANGE SERVICE

Carrier's Local Telephone Service provides Customers with the ability to connect to the ILEC's switching network which enables Customers to:

- Place or receive calls to any calling Station in the local calling area, as defined herein.
- Access basic 911 Emergency Service if available in Customer's area.
- Where available, place or receive calls to 800 telephone numbers.

Carrier's service can not be used to place calls that will result in a charge being billed to Customer's account (e.g., 900 number calls to "psychic advice networks" or 976 number calls to private "chat rooms").

4.1.1 Prepaid Local Exchange Service

Prepaid Local Exchange Service is a prepaid, switched, intrastate, telecommunications service which permits customers to establish communications between two locations within Customers' local calling area. Prepaid Local Exchange Service allows customers to place calls within the local calling area, to access "911" and/or "E 911" service, if available, in Customer's local calling area and to place calls to toll-free "800" or "888" numbers. Service will be charged on a monthly basis, and upon payment, a Customer will have unlimited use of the aforementioned service for that month. For an additional charge, Customers may also purchase custom services such as call waiting, call forwarding, three-way calling, speed dial, call return, caller ID, and non-published number service.

Prepaid Local Exchange Service does not include any long distance service or other toll services. The following types of calls and services will be blocked by Carrier: intraLATA, interLATA, interstate or international long distance (e.g. "1+" or "0+" calls); incoming collect calls; operator-assisted, *69 or directory-assisted calls; third number billed calls or any service that may be billed to Customer's telephone number (e.g. "900" and "976" calls). Customers are not restricted from placing collect calls, using pre- or post-paid calling cards, or from directly contracting with long distance service providers to make long distance calls, access directory assistance, or place otherwise restricted toll calls.

4.1.2 Optional Services4.1.2.1 Call Forwarding

Allows calls to automatically ring to another phone number.

4.1.2.2 Call Return

The Subscriber may return the last call to Customer's telephone number by dialing a one or two-digit code.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES

4.1 LOCAL EXCHANGE SERVICE (Cont'd)

4.1.2 Optional Services (Cont'd)

4.1.2.3 Call Waiting

Allows Customer to be notified of an incoming call while Customer is having a conversation with another party.

4.1.2.4 Caller ID

Caller ID is an optional feature which allows the subscriber to see the telephone number of an incoming call displayed on Customer provided display unit. The telephone number of an incoming call will display between the first and second rings. Caller ID service works only on calls which originate and terminate in central offices which are equipped and have SS7 connectivity. Caller ID is available to customers by monthly subscription only, which provides unlimited use of this service. The Caller ID box is not included in the rate for the monthly service fee.

The telephone numbers that will be displayed on a Caller ID subscriber's display unit include listed, non-listed and non-published telephone numbers.

Telephone number that will not be displayed to the Caller ID subscriber are: (1) calls from customers who use Per-Call Blocking or Per-Line Blocking; (2) calls from customers located in central offices not a part of the SS7 Signaling System; and (3) calls placed through an operator. When these types of calls are received by a Caller ID subscriber, their display unit will notify them that the calling telephone number is unavailable.

4.1.2.5 Non-Published Number

Allows Customer to keep his local phone number out of the phone book or directory assistance.

4.1.2.6 Speed Dial

The Subscriber may call pre-selected, pre-programmed telephone numbers by dialing a one or two-digit code.

4.1.2.7 "Three-Way" Calling

Allows Customer to add a third party to a conversation.

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By:
Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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TELECOMMUNICATIONS SERVICES

4.2 DIRECTORY LISTINGS

Carrier shall provide for a single directory listing, termed the primary listing, in the telephone directory published by the dominant exchange service provider in Customer's exchange area of the Station number which is designated as Customer's main billing number.

- 4.2.1 Carrier reserves the right to limit the length of any listing in the directory by the use of abbreviations when, in its judgment, the clearness of the listing or the identification of Customer is not impaired thereby. Where more than one line is required to properly list Customer, no additional charge is made.
- 4.2.2 Carrier may refuse a listing which is known not to constitute a legally authorized or adopted name, obscenities in the name, or any listing which, in the opinion of Carrier, is likely to mislead or deceive calling persons as to the identity of the listed party, or is a contrived name used for advertising purposes or to secure a preferential position in the directory or is more elaborate than is reasonably necessary to identify the listed party. Carrier, upon notification to Customer, will withdraw any listing which is found to be in violation of its rules with respect thereto.
- 4.2.3 In order for listings to appear in an upcoming directory, Customer must furnish the listing to Carrier in time to meet the directory publishing schedule.
- 4.2.4 Directory listings are provided in connection with each Customer service as specified herein.

4.3 MISCELLANEOUS**4.3.1** Service Reconnection Fee

Charge for restoral of service after disconnection or for initiation of service subsequent to a customer location move.

4.3.2 Optional Feature Addition Charge

Per request charge for addition of an optional feature or features subsequent to initiation of basic service.

4.3.3 Transfer Fee

Charge for initiation of service subsequent to a customer location move.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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4.4 EMERGENCY SERVICES (ENHANCED 911)

Allows Customers to reach appropriate emergency services including police, fire and medical services. Enhanced 911 has the ability to selectively route an emergency call to the primary E911 provider so that it reaches the correct emergency service located closest to the caller. In addition, Customer's address and telephone information will be provided to the primary E911 provider for display at the Public Service Answering Point (PSAP).

4.5 SPECIAL PRICING ARRANGEMENTS - INDIVIDUAL CASE BASIS (ICB)

In lieu of the rates otherwise set forth in this Tariff, rates and charges, including installation, special construction, and recurring charges, may be established at negotiated rates on an Individual Case Basis (ICB), taking into account such factors as the nature of the facilities and services, the costs of construction and operation, the volume of traffic commitment, and the length of service commitment by the Customer, as long as the rates and charges are not less than Carrier's costs of providing the service. Such arrangements shall be considered Special Pricing Arrangements, the terms of which will be set forth in individual contracts or Customer Term Agreements. Specialized Pricing Arrangement rates or charges will be made available to similarly-situated Customers on comparable terms and conditions. Upon reasonable request, Carrier will make the terms of these contracts available to the Commission and its staff for review on a confidential and proprietary basis.

4.6 PROMOTIONS

Carrier may, from time to time, engage in national and/or intrastate promotional offerings or trials, designed to attract new Customers, to stimulate Customer usage, to test potential new services, and/or to increase existing Customer awareness of Carrier services. These offerings may be limited to certain services, dates, times of day and/or locations determined by Carrier. National offerings, the terms of which are set forth in the applicable interstate tariffs governing such programs, may include without limitations, discounts, redeemable points, or cash rewards to Customers. To the extent that these programs extend to intrastate services, the terms of these national offerings are incorporated by reference, herein.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICESSECTION 5 - SERVICE RATES AND CHARGES5.1 LOCAL EXCHANGE SERVICE RATES AND CHARGES5.1.1 Prepaid Local Exchange Service Rates and Charges

A Prepaid Local Exchange Service Customer will be charged applicable Non-Recurring Charges and monthly Recurring Charges as specified below.

5.1.1.1 One-Time Activation Fee

One-Time Activation Fee	\$ 40.00
-------------------------	----------

5.1.1.2 Recurring Charges

Monthly Service Charge	\$ 49.00
------------------------	----------

5.1.2 Optional Services Rates and Charges

	<u>Monthly</u>	<u>One-Time Activation Fee</u>
Call Forwarding	\$ 5.00	N/A
Call Return	\$ 5.00	N/A
Call Waiting	\$ 5.00	N/A
Caller ID	\$ 10.00	\$ 10.00
Non-Published Number	\$ 5.00	N/A
Speed Dial	\$ 5.00	N/A
Three-Way Calling	\$ 5.00	N/A
All Options Above	\$ 20.00	N/A

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Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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5.2 DIRECTORY LISTINGS RATES AND CHARGES5.2.1 Non-Recurring Charges

Primary Listing (one number): N/C

5.2.2 Recurring ChargesMonthly

Primary Listing (one number) N/C

5.3 MISCELLANEOUS RATES AND CHARGES

5.3.1 Service Reconnection Fee \$ 20.00

5.3.2 Optional Feature Addition Charge \$15.00

5.3.3 Transfer Fee \$50.00

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By:

Effective:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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**COMM SOUTH COMPANIES, INC.
AND SUBSIDIARIES**

Consolidated Financial Statements

December 31, 1998 and 1997

(With Independent Auditors' Report Thereon)

200 Crescent Court
Suite 300
Dallas, TX 75201-4225

Independent Auditors' Report

The Board of Directors and Shareholders
Comm South Companies, Inc.:

We have audited the accompanying consolidated balance sheets of Comm South Companies, Inc. and subsidiaries as of December 31, 1998 and 1997, and the related statements of operations, stockholders' deficits, and cash flows for the years then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the 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 audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Comm South Companies, Inc. and subsidiaries as of December 31, 1998 and 1997, and the results of their operations and their cash flows for the years then ended in conformity with generally accepted accounting principles.

KPMG LLP

March 19, 1999

COMM-SOUTH COMPANIES, INC.
AND SUBSIDIARIES

Consolidated Statements of Operations

Years ended December 31, 1998 and 1997

	1998	1997
Revenue		
Cost of revenues	\$ 80,441,992	77,641,698
Gross margin	37,108,558	32,992,134
Selling, general and administrative	45,333,454	44,772,564
Depreciation and amortization	46,421,252	43,473,758
Total expenses	134,179	91,396
Income (loss) from operations	46,855,731	3,663,154
	(3,522,297)	507,410
Other income (expense):		
Interest income	44,406	50,090
Interest expense	(91,385)	(107,675)
Other income, net	7,481	9,791
Total other income (expense)	(39,498)	(67,794)
Net income (loss)	\$ (3,561,795)	439,616

See accompanying notes to consolidated financial statements.

**COMM SOUTH COMPANIES, INC.
AND SUBSIDIARIES**

Consolidated Statements of Stockholders' Deficit

Years ended December 31, 1998 and 1997

	<u>Common stock</u>		<u>Accumulated deficit</u>	<u>Total stockholders deficit</u>
	<u>Number of shares</u>	<u>Amount</u>		
Balance at December 31, 1996	1,000	\$ 1,000	(1,759,057)	(1,758,057)
Net income	—	—	439,616	439,616
Balance at December 31, 1997	1,000	1,000	(1,319,441)	(1,318,441)
Net loss	—	—	(3,561,795)	(3,561,795)
Balance at December 31, 1998	1,000	\$ 1,000	(4,881,236)	(4,880,236)

See accompanying notes to consolidated financial statements.

COMM-SOUTH COMPANIES, INC.
AND SUBSIDIARIES

Consolidated Statements of Cash Flows

Years ended December 31, 1998 and 1997

	1998	1997
Cash flows from operating activities:		
Net income (loss)	\$ 3,561,777	439,616
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Depreciation and amortization	454,477	191,356
Accretion of investment securities	—	(8,000)
Change in operating assets and liabilities:		
Accounts receivable	(3,499,544)	(2,313,332)
Accounts receivable - affiliates	(171,334)	(23,892)
Prepaids	(17,375)	—
Accounts payable and accrued expenses	4,196,746	1,471,896
Deferred revenue	3,242,904	2,033,918
Net cash provided by operating activities	622,241	1,593,402
Cash flows from investing activities:		
Purchases of property and equipment	(630,132)	(1,153,943)
Purchase of investment securities	—	(190,000)
Proceeds from sale of investment securities	302,714	—
Issuance of notes receivable	(20,000)	(375,799)
Payments received on notes receivable	289,373	97,008
Deposits	(17,830)	(111,197)
Net cash used in investing activities	(175,935)	(1,733,933)
Cash flows from financing activities:		
Payments of principal on capital lease obligations	(52,947)	(14,343)
Proceeds from note payable to bank	—	610,000
Payments of note payable to bank	(340,873)	(159,149)
Payments of auto loans	(47,424)	—
Proceeds from notes payable to shareholders	—	400,000
Payments of notes payable to shareholders	(85,073)	(441,754)
Net cash provided by (used in) financing activities	(506,416)	394,754
Net increase in cash and cash equivalents	(39,091)	254,223
Cash and cash equivalents at beginning of year	445,256	191,033
Cash and cash equivalents at end of year	\$ 386,161	445,256
Supplemental disclosure of cash flow information - cash paid during the year for interest:	\$ 25,189	169,104
Supplemental schedule of noncash investing and financing activities - acquisition of equipment through capital leases	\$ —	195,026
Acquisition of autos through notes payable	\$ 132,591	—

See accompanying notes to consolidated financial statements.

COMM SOUTH COMPANIES, INC.
AND SUBSIDIARIES

Notes to Consolidated Financial Statements

December 31, 1998 and 1997

(1) **Business and Summary of Significant Accounting Policies**

(a) *Nature of Business and Background*

Comm South Companies, Inc. (the "Company") provides local and long distance telephone services to residential users in fifteen states throughout the southern part of the United States. The Company offers integrated local and long distance telephone services, but focuses primarily on offering prepaid local telephone services and enhanced local service features such as call waiting, caller ID and call forwarding.

The Company provides its telephone services through the resale of bundled network elements provided by Regional Bell Operating Companies ("RBOC's") and other incumbent local exchange carriers ("ILEC's") such as GTE, Sprint, etc. The Company has resale and/or interconnection agreements with seven RBOC's/ILEC's and transport arrangements with one long-distance carrier as of December 31, 1998. The Company obtained competitive local exchange carrier ("CLEC") certification in 36 states and has pending applications for CLEC certification in 4 other states.

The Company was formed on March 17, 1995. The Company has targeted the residential, credit-challenged, cash-based, pay-as-you-go market segment. The Company markets its services to these customers through television or advertising in conjunction with check cashing stores, rent-to-own retailers and other commercial sales agents representing the Company. Each agent acts as a payment collection center where customers initially sign up for the Company's service and subsequently remit payments in advance for services to be rendered by the Company in the following month.

(b) *Principles of Consolidation*

The consolidated financial statements include the financial statements of Comm South Companies, Inc. and its wholly-owned subsidiaries, Georgia Comm, Inc. and E-Z Tel, Inc. All significant intercompany balances and transactions have been eliminated in consolidation.

(c) *Cash and Cash Equivalents*

For purposes of the statements of cash flows, the Company considers all highly liquid investment securities with original maturities of three months or less to be cash equivalents.

**COMM SOUTH COMPANIES, INC.
AND SUBSIDIARIES**

Notes to Consolidated Financial Statements

December 31, 1998 and 1997

d) Property and Equipment

Property and equipment are recorded at cost, including certain direct and indirect costs associated with the installation of telecommunications systems. Depreciation and amortization on installed equipment which is ready for its intended use is calculated using the straight-line method over the estimated useful lives of the assets which are as follows:

	Lesser of lease term or useful life
Leasehold improvements	
Office equipment	5-7 years
Telecommunications equipment	5 years
Automobiles	5 years
Internal use software	3 years

Expenditures for major renewals and betterments are capitalized; expenditures for maintenance and repairs are charged to expense as incurred. When equipment is retired, the related cost and accumulated depreciation are removed from the accounts and any gain or loss is reflected in operations.

Internal use software costs were capitalized in accordance with the provisions of SOP 98-1, *Accounting for the Costs of Computer Software Developed or Obtained for Internal Use*.

(e) Investment Securities

Investments in securities at December 31, 1997 consisted of U.S. Treasury Notes. These securities were restricted as they represented collateral securing the note payable to bank as described in note 5.

(f) Revenue Recognition

Revenues are recognized as the service is provided to customers and an allowance for estimated uncollectible customer accounts is provided. Amounts billed in advance are recorded as deferred revenue and recognized as service is provided.

COMM SOUTH COMPANIES, INC.
AND SUBSIDIARIES

Notes to Consolidated Financial Statements

December 31, 1998 and 1997

(g) *Income Taxes*

Deferred income taxes are recognized for the tax consequences in future years of differences between the tax bases of assets and liabilities and their financial reporting amounts at each year-end based on enacted tax laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable earnings. Valuation allowances are established when necessary to reduce deferred tax assets to the amount more likely than not to be realized. Income tax expense is the total of tax payable for the period and the change during the period in deferred tax assets and liabilities.

(h) *Use of Estimates*

Management of the Company has made a number of estimates and assumptions relating to the reporting of assets and liabilities and the disclosure of contingent assets and liabilities to prepare these financial statements in conformity with generally accepted accounting principles. Actual results could differ from those estimates.

(i) *Impairment of Long-Lived Assets and Long-Lived Assets to Be Disposed Of*

The Company accounts for long-lived assets in accordance with the provisions of SFAS No. 121, *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of*. The Statement requires that long-lived assets and certain identifiable intangibles be assessed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future net cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell.

(j) *Financial Instruments*

The Company's financial instruments include cash, receivables, deposits in money market accounts, accrued expenses, capital leases and long-term debt. The carrying amount of such financial instruments approximates fair value because of the short maturity of these instruments and, in the case of capital lease and long-term debt, because the contractual interest rates approximate market.

COMM SOUTH COMPANIES, INC.
AND SUBSIDIARIES

Notes to Consolidated Financial Statements

December 31, 1998 and 1997

(k) *Advertising*

Advertising costs are expensed as incurred. Advertising expenses were \$6,762,730 and \$1,730,942 in 1998 and 1997, respectively.

(l) *Concentrations of Credit Risk*

The Company's customers are primarily residential, credit-challenged customers and are concentrated primarily in the southern regions of the United States.

The customers are billed in advance for services to be provided by the Company in the following month. If such payment is not received within a reasonable period of time (approximately 30-40 days), the customer is disconnected and their receivable balance is written off.

(m) *Other Assets*

Other assets consist principally of deposits held at the request of the Georgia Public Utility Commission. The deposits are held at two financial institutions and are invested in money-market accounts.

(n) *Commissions*

Commissions to sales agents are paid and expensed based on a flat fee and/or a percentage of billings as incurred. Commission expense was \$7,584,283 and \$2,041,639 in 1998 and 1997, respectively.

(2) *Liquidity*

The Company's consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. As shown in the consolidated financial statements during the year ended December 31, 1998, the Company reported a net loss of \$3,561,795. In addition, as of December 31, 1998, the Company had a working capital deficit of \$6,674,340. The net loss and working capital deficit at December 31, 1998 are principally the result of discretionary expenditures made in the current year.

The Company expects to generate sufficient cash flow to fully implement its business strategy without obtaining additional capital or financing by significantly reducing the discretionary expenditures in 1999.

**COMM SOUTH COMPANIES, INC.
AND SUBSIDIARIES**

Notes to Consolidated Financial Statements

December 31, 1998 and 1997

(3) Property and Equipment

Property and equipment consist of the following at December 31, 1998 and 1997:

	1998	1997
Furniture and equipment	\$ 391,860	374,097
Equipment under capital leases	195,026	195,026
Leasehold improvements	346,046	421,751
Internal use software	253,767	253,767
Computer hardware	629,637	341,533
Automobiles	132,691	—
	<u>2,549,027</u>	<u>1,586,174</u>
Accumulated depreciation and amortization	<u>(640,723)</u>	<u>(206,244)</u>
	<u>\$ 1,908,304</u>	<u>1,379,930</u>

Accumulated amortization related to equipment under capital leases amounted to \$33,257 and \$16,252 at December 31, 1998 and 1997, respectively.

Net capitalized internal use software costs amounted to \$129,737 and \$214,335, net of amortization, as of December 31, 1998 and 1997, respectively. Amortization of computer software costs was \$124,030 and \$39,442 in 1998 and 1997, respectively.

(4) Related Party Transactions

During 1997, the Company borrowed money from its shareholders for various business purposes. Such loans are unsecured and bear interest at 12% per annum, compounded monthly. The loans are subordinate to the note payable to bank (note 6) and are due on demand. There was approximately \$129,044 and \$98,879 of accrued but unpaid interest on the shareholder notes at December 31, 1998 and 1997, respectively.

**COMM SOUTH COMPANIES, INC.
AND SUBSIDIARIES**

Notes to Consolidated Financial Statements

December 31, 1998 and 1997

The balance of the notes payable to shareholders consists of the following at December 31, 1998 and 1997:

	1998	1997
William T. Wilson	\$ 225,577	211,746
Steve Maryanek	—	100,000
	<u>\$ 225,577</u>	<u>311,746</u>

The Company has had transactions with two separate businesses in which one of the shareholders holds an interest. The Company paid expenses on behalf of these affiliated businesses and the affiliated businesses have paid expenses on behalf of the Company. The net amounts resulting from such payments are included in due from affiliates at December 31, 1998 and 1997 and consist of the following:

	1998	1997
Mr. G's	\$ 178,802	35,893
Art Title Pawn	68,120	38,000
Miscellaneous	—	1,494
	<u>\$ 246,922</u>	<u>75,387</u>

5. Leases

The Company leases office space and various equipment under operating leases existing in various years through 2003. In the normal course of business, operating leases are generally renewed or replaced by other leases. Total rental expense was \$475,338 and \$205,870 for 1998 and 1997, respectively.

The Company leases a phone system under a five-year noncancellable capital lease. Monthly installments on such a lease are approximately \$4,076 including interest of 9.6% with ownership transferring to the Company at the end of the lease.

COMM SOUTH COMPANIES, INC.
AND SUBSIDIARIES

Notes to Consolidated Financial Statements

December 31, 1998 and 1997

At December 31, 1998, future minimum lease payments and the present value of future minimum capital lease payments were as follows:

	Capital lease	Operating leases
Year ending December 31:		
1999	\$ 48,907	480,545
2000	48,907	393,508
2001	48,907	289,546
2002	28,551	213,246
2003	—	500,500
Total future minimum lease payments	175,252	\$ 1,877,345
Less amount representing interest:	(27,516)	
Present value of future minimum capital lease payments	147,736	
Less current portion	(36,263)	
Obligation under capital leases, excluding current portion	\$ 111,473	

(b) Long-term Debt

Long-term debt consists of the following at December 31, 1998 and 1997:

	1998	1997
Note payable to bank*	\$ 109,981	450,851
Auto loans	85,165	—
Total long-term debt	195,146	450,851
Less current portion	157,096	129,016
	\$ 38,050	\$ 321,835

In February 1997, the Company entered into a note payable with a bank in the amount of \$550,000 for working capital purposes and to finance leasehold improvements. The note bears interest at the bank's prime rate plus 0.5% (total interest rates of 8.25% and 9.0% at December 31, 1998 and 1997, respectively). The note is personally guaranteed by all three shareholders of the Company. In addition, the note is collateralized by all assets of the Company. The note is payable in monthly

**COMM SOUTH COMPANIES, INC.
AND SUBSIDIARIES**

Notes to Consolidated Financial Statements

December 31, 1998 and 1997

installments of principal and interest. In June 1998, the Company liquidated the investment securities held at December 31, 1997 and applied the proceeds of \$202,714 to the note. As a result of this prepayment, the note is scheduled to be paid off on September 10, 1999. The Company was in violation of a net worth covenant at December 31, 1998 and obtained a waiver for such covenant violation.

As of December 31, 1998, principal payments due on indebtedness in future years were as follows:

	1998
1999	\$ 157,096
2000	20,653
2001	17,397
	<u>\$ 195,146</u>

(7) Income Taxes

Total income tax expense (benefit) differed from the amount computed by applying the U.S. federal statutory income tax rate of 34% to income (loss) before income taxes as a result of the following:

	1998	1997
Computed "expected" tax expense (benefit)	\$ (1,211,010)	149,469
State income tax (benefit)	(106,854)	13,189
Change in beginning of year valuation allowance due to utilization of prior year net operating losses	—	(162,658)
Net operating loss providing no tax benefit	<u>1,317,864</u>	<u>—</u>
	<u>\$ —</u>	<u>—</u>

**COMM SOUTH COMPANIES, INC.
AND SUBSIDIARIES**

Notes to Consolidated Financial Statements

December 31, 1998 and 1997

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and liabilities at December 31, 1998 and 1997 are presented below:

	<u>1998</u>	<u>1997</u>
Deferred tax assets:		
Net operating loss carryforward	\$ - 1,809,585	457,434
Accrued liabilities	47,746	36,585
Total deferred tax assets	1,857,331	494,019
Less valuation allowance	(1,743,907)	(426,675)
Net deferred tax assets	113,424	67,344
Deferred tax liability:		
Property and equipment, primarily resulting from differences in depreciation	(113,424)	(67,344)
Net deferred tax liability	\$ —	—

Deferred tax assets and liabilities are computed by applying the federal and state income tax rates in effect to the gross amounts of temporary differences and other tax attributes, such as net operating loss carryforwards.

The Company has available a net operating loss carryforward of approximately \$4,900,000 to offset future taxable income. The net operating loss carryforwards expire in years 2011-2018.

In assessing the realizability of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. Management considers the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. Based on these considerations the Company has recognized deferred tax assets to the extent such assets can be realized through future reversals of existing taxable temporary differences.

COMM SOUTH COMPANIES, INC.
AND SUBSIDIARIES

Notes to Consolidated Financial Statements

December 31, 1998 and 1997

(8) Year 2000

In 1997, the Company initiated a plan ("Plan") to identify, assess, and remediate "Year 2000" issues within each of its significant computer programs and certain equipment which contain micro-processors. The Plan addresses the issue of computer programs and embedded computer chips being unable to distinguish between the year 1900 and the year 2000, if a program or chip only used two digits rather than four to define the applicable year. The Company has divided the Plan into five major phases: assessment, planning, conversion, implementation and testing. After completing the assessment and planning phases earlier in 1998, the Company is currently in the conversion, implementation and testing phases. Systems which have been determined not to be Year 2000 compliant are being either replaced or reprogrammed, and thereafter tested for Year 2000 compliance. The Plan anticipates that by mid-1999 the conversion, implementation and testing phases will be completed.

The Company is in the process of identifying and contacting critical suppliers and customers whose computerized systems interface with the Company's systems, regarding their plans and progress in addressing their Year 2000 issues. Contingency plans are being developed in the event that any critical supplier or customer is not compliant.

The failure to correct a material Year 2000 problem could result in an interruption in, or a failure of, certain normal business activities or operations. Such failures could materially and adversely affect the Company's operations, liquidity and financial condition. Due to general uncertainty of the Year 2000 readiness of third-party suppliers and customers, the Company is unable to determine at this time whether the consequences of Year 2000 failures will have a material impact on the Company's operations, liquidity or financial condition.

Topp Telecom
Proforma Balance Sheet
as of May 31, 1999

	Balance at 12/31/1998	Proforma Balance at 05/31/99
ASSETS		
Current Assets		
Cash in Bank	372,078	28,657,311
Receivable Cash (CD's)	3,098,900	3,436,730
Accounts Receivable, net	8,556,379	12,242,359
Inventory	1,263,319	2,267,719
Prepaid Expenses	1,383,137	6,328,932
Total Current Assets	14,683,813	52,943,052
Investment in Comm South		77,500,000
Fixed Assets		
Property and Equipment, net	2,453,766	3,373,949
Computerized Software, net	1,699,796	1,546,372
Other	287,975	228,645
Total Assets	19,125,350	135,592,018
Liabilities and Stockholders' Equity		
Accounts Payable	13,836,327	6,441,593
Accrued Expenses	20,238,513	24,625,393
Deferred Revenue	3,244,466	4,837,637
Bank Overdraft	3,597,765	
Advances under Factoring agreement	976,318	
Revolving Line of Credit	93,230	
Notes Payable-Current	813,877	824,607
Current Portion of capital lease obligation	289,764	289,764
Total Current Liabilities	43,090,260	37,018,993
Long-term Portion of capital lease obligation	740,843	669,359
Due To Affiliates	26,732,804	27,434,372
Total Liabilities	70,563,907	65,122,724
Stockholders' Equity		
Class A common stock	61	278
Class B common stock	1,335	5,892
Additional paid in capital	4,103,605	146,080,455
Retained Earnings	(55,543,558)	(75,617,331)
Total stockholders' equity	(51,438,557)	70,469,294
Total liabilities and stockholders' equity	19,125,350	135,552,018

TOPP TELECOM, INC.

REPORT ON AUDITS OF FINANCIAL STATEMENTS

AS OF DECEMBER 31, 1998 AND 1997

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PricewaterhouseCoopers LLP
200 South Biscayne Boulevard
Suite 1900
Miami, FL 33131
Telephone (305) 375-7400
Facsimile (305) 375-6221

Report of Independent Certified Public Accountants

To the Stockholders of
Topp Telecom, Inc.

In our opinion, the accompanying balance sheets and the related statements of operations, changes in stockholders' deficit and cash flows present fairly, in all material respects, the financial position of Topp Telecom, Inc. at December 31, 1998 and 1997, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles. 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 audits. We conducted our audits of these statements in accordance with generally accepted auditing standards which require that we plan and perform the audits to obtain reasonable assurance about whether the 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, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for the opinion expressed above.

PricewaterhouseCoopers LLP

August 9, 1999

TOPP TELECOM, INC. **BALANCE SHEETS**

December 31, 1998 and 1997

ASSETS

	1998	1997
Current assets:		
Cash		
Restricted certificates of deposit	\$ 372,078	\$ 20,727
Trade accounts receivable, net of allowance for doubtful accounts of \$1,843,000 and \$990,600	3,098,900	2,927,750
Inventory, net of reserve of \$1,050,000 in 1998	8,566,379	7,272,780
Prepaid expenses and other current assets	1,263,319	1,233,204
	2,561,380	735,066
Total current assets	15,862,056	12,189,547
Property and equipment, net	2,453,766	549,036
Capitalized software, net	1,699,796	1,816,612
Other	287,975	68,999
Total assets	\$ 20,303,593	\$ 14,624,194

LIABILITIES AND STOCKHOLDERS' DEFICIT

Current liabilities:		
Accounts payable	\$ 13,836,327	\$ 8,058,602
Accrued liabilities	20,238,513	4,281,927
Deferred revenue	5,833,972	4,208,194
Bank overdraft	3,597,765	478,971
Advances under factoring agreement	976,318	1,463,523
Revolving line of credit	93,230	3,337,800
Notes payable	813,877	926,750
Current portion of capital lease obligations	289,764	-
Total current liabilities	45,679,766	22,755,767
Long-term portion of capital leases obligations	740,843	-
Due to affiliate	26,732,804	-
Total liabilities	73,153,413	22,755,767
Commitments and contingencies (Note 11)		
Stockholders' deficit:		
Class A convertible preferred stock; \$.01 par value	61	61
Class B convertible preferred stock; \$.01 par value	1,335	1,335
Class A common stock; \$.01 par value	4,103,605	4,103,605
Class B common stock; \$.01 par value	(56,954,821)	(12,236,574)
Additional paid-in capital	(52,849,820)	(8,131,573)
Accumulated deficit	\$ 20,303,593	\$ 14,624,194
Total stockholders' deficit		
Total liabilities and stockholders' deficit		

The accompanying notes are an integral part of these financial statements.

TOPP TELECOM, INC.
STATEMENTS OF OPERATIONS
for the years ended December 31, 1998 and 1997

	1998	1997
Airtime revenues	\$ 37,542,609	\$ 8,954,047
Cellular telephone equipment revenue	26,693,930	15,763,082
Total revenues	64,236,539	24,717,129
Cost of airtime	33,151,762	9,761,219
Cost of cellular telephone equipment	36,374,170	16,193,833
Depreciation and amortization	903,657	639,913
Selling, general and administrative expenses	41,903,196	9,753,963
Total costs and expenses	112,332,785	36,348,928
Operating loss	(48,096,246)	(11,631,799)
Non operating income(expenses)		
Licensing fees	4,000,000	-
Other income	367,571	127,748
Interest expense, net	(989,572)	(345,789)
Total other	3,377,999	(218,041)
Net loss	\$ (44,718,247)	\$ (11,849,840)

The accompanying notes are an integral part of these financial statements

TOPP TELECOM, INC.
STATEMENTS OF CASH FLOWS
for the year ended December 31, 1998 and 1997

	1998	1997
Cash flows from operating activities:		
Net loss	\$ (44,718,247)	\$ (11,849,840)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	903,657	639,913
Bad debt expense	324,922	386,804
Provision for inventory obsolescence	1,050,000	
Changes in operating assets and liabilities:		
Trade accounts receivable	(1,618,521)	(6,499,574)
Inventory	(1,080,115)	(1,091,639)
Prepaid expenses and other	(2,045,270)	(744,591)
Deferred revenue	1,625,778	4,208,194
Accounts payable and accrued expenses	21,734,311	13,858,813
Net cash used in operating activities	(23,823,485)	(1,093,920)
Cash flows from investing activities:		
Purchases of certificates of deposit	(2,498,900)	(2,927,750)
Redemptions of certificates of deposit	2,327,750	
Purchase of property and equipment	(1,234,681)	(411,678)
Purchase of capitalized software	(320,082)	(141,506)
Net cash used in investing activities	(1,725,913)	(3,480,934)
Cash flows from financing activities:		
Net advances from affiliate	26,732,804	(931,917)
Net (repayments) advances under factoring agreement	(487,205)	1,463,523
Bank overdraft payable	3,118,794	478,971
(Repayments of) advances on line of credit, net	(3,244,570)	3,337,800
Issuance of common stock		1,100,000
Payments of principal on capital lease obligations	(106,200)	
Repayment of principal on long-term debt	(112,874)	(913,250)
Net cash provided by financing activities	25,900,749	4,535,127
Net change in cash	351,351	(39,727)
Cash, beginning of year	20,727	60,454
Cash, end of year	\$ 372,078	\$ 20,727
Non-cash investing and financing activities:		
Purchase of property, plant and equipment through capital leases	\$ 1,136,808	\$ -
Issuance of stock in satisfaction of liabilities	\$ -	\$ 3,000,000
Supplemental disclosures:		
Interest paid	\$ 951,771	\$ 267,171

The accompanying notes are an integral part of these financial statements.

TOPP TELECOM, INC.

NOTES TO FINANCIAL STATEMENTS

1. Organization and Nature of Operations:

Topp Telecom, Inc. (the "Company") was incorporated in the State of Florida on March 21, 1996. The Company resells cellular airtime to customers using telephones equipped with the Company's software which enables the Company to program the telephone to allow the end user to only use the telephone for the amount of time for which the end user has paid. The end user can buy additional time from several retail establishments. The time is added to the telephone when the end user calls the Company's call center. The Company does not own any cellular facilities, but purchases airtime from carriers nationwide. Revenue derived from the sale of cellular telephones is incidental to the Company's main business of reselling cellular airtime.

2. Summary of Significant Accounting Policies:

Revenue Recognition

The Company sells prepaid cellular cards or airtime redemption codes to retailers at a fixed price with normal credit terms. When the retailer is invoiced, deferred revenue is recorded. The Company recognizes revenue and reduces deferred revenue as the end user utilizes cellular airtime. Sales of cellular telephones and accessories are recorded as revenue upon shipment. Revenue on activation commissions received from airtime carriers is deferred and recognized over six months as a reduction in cost of airtime.

Inventory

Cellular telephone inventory and accessories are stated at the lower of cost or market. Cost is determined by using the first-in, first-out (FIFO) method.

Property and Equipment

Property and equipment is recorded at cost less accumulated depreciation and amortization. Depreciation and amortization are computed using the straight-line method based on the estimated useful lives. When equipment is retired or sold, the related cost and accumulated depreciation and amortization are removed from the accounts and any resulting gain or loss is reflected in earnings. The costs of normal maintenance and repairs are charged to expense as incurred and expenditures for major improvements are capitalized at cost.

The estimated useful lives are generally as follows:

Computer equipment	3 years
Phone equipment	5 years
Furniture and fixtures	5 years
Leasehold improvements	5-10 years

TOPP TELECOM, INC.
NOTES TO FINANCIAL STATEMENTS, Continued

2. Summary of Significant Accounting Policies, Continued:

Capitalized Software

Capitalized software represents software purchased from third parties and is stated at cost. Amortization is computed using the straight-line method over five years. Accumulated amortization at December 31, 1998 and 1997 amounted to approximately \$890,000 and \$453,000, respectively.

Advertising

The Company expenses the cost of advertising the first time that the advertising takes place. Advertising expense amounted to approximately \$1,440,000 and \$874,000 for the years ended December 31, 1998 and 1997, respectively.

Income Taxes

Effective November 1, 1997, the Company elected to be treated as a C Corporation. Prior to such time, the Company and its stockholders had elected to be treated as an S Corporation. Under these provisions, taxable income or loss of the Company was reflected by the stockholders on their personal income tax returns.

Upon termination of the S-Corporation status, the Company recorded an asset of approximately \$1,112,882 for deferred taxes reflecting the tax effect of temporary differences between the Company's book and tax basis of certain assets and liabilities. It is management's opinion that it is more likely than not that this deferred tax asset will not be realized and a full valuation allowance was provided.

The Company utilizes the liability method of accounting for deferred income taxes. Under this method, deferred income taxes are determined based on the differences between the financial reporting basis and tax basis of assets and liabilities and are measured using the enacted laws that will be in effect when the differences are expected to reverse.

Concentration of Credit Risk

Financial instruments which potentially subject the Company to concentrations of credit risk consist principally of trade accounts receivable. The Company has not experienced significant bad debt write-offs and does not require collateral from its customers. For the years ended December 31, 1998 and 1997, one customer accounted for approximately 32% and 30% of total revenues, respectively.

TOPP TELECOM, INC.
NOTES TO FINANCIAL STATEMENTS, Continued

2. Summary of Significant Accounting Policies, Continued:

Common Stock

The Company has authorized 5,000,000 shares of its Class A common stock, of which 6,100 shares are issued and outstanding as of December 31, 1998 and 1997. The Company has also authorized 5,000,000 shares of its Class B common stock, of which 133,463 shares are issued and outstanding as of December 31, 1998 and 1997. The Class A Common Stock and the Class B Common Stock have identical rights with respect to (1) distributions from the Company, (2) liquidation of the Company, and (3) all other matters affecting the Company, except that the holders of the Class B Common Stock are not entitled to vote on matters affecting the Company.

Convertible Preferred Stock

The Company has authorized 1,043 shares of its Class A convertible preferred stock and 17,988 shares of its Class B convertible preferred stock. There were no shares issued or outstanding as of December 31, 1998 and 1997. Both classes of preferred stock are convertible in their respective class of common stock at a one to one ratio. All classes of preferred stock were cancelled as a result of the Acquisition (See Note 12).

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Such estimates consist principally of the allowance for doubtful accounts, the reserve for inventory obsolescence, the estimated lives of property and equipment, the valuation allowance on the net deferred tax asset and accrued liabilities. Actual results could differ from those estimates.

TOPP TELECOM, INC.
NOTES TO FINANCIAL STATEMENTS, Continued

3. Property and Equipment:

Property and equipment consists of the following:

	December 31,	
	1998	1997
Phone and computer equipment	\$ 2,056,823	\$ 713,992
Leasehold improvements	366,896	35,400
Furniture and fixtures	663,913	51,858
	<u>3,087,632</u>	<u>801,250</u>
Less accumulated depreciation and amortization	<u>(633,865)</u>	<u>(252,214)</u>
	<u>\$ 2,453,765</u>	<u>\$ 549,036</u>

4. Accounts Receivable Factoring:

On January 31, 1997, the Company entered into a one year agreement with a factoring company whereby the Company factored certain receivables. All amounts advanced to the Company were guaranteed by a related entity and bore interest at prime plus 0.5%. This agreement was cancelled on May 14, 1998.

On November 25, 1998, the Company entered into an agreement with another factoring company, whereby the Company could factor up to the lesser of \$5,000,000 or 75% of the outstanding accounts receivable. Amounts advanced to the Company bore interest at various rates. This agreement is effective until March 31, 1999, after which the agreement automatically renews for 90 days unless terminated by either party by written notice.

5. License Agreement:

Pursuant to a License Agreement dated July 7, 1998 between the Company and Motorola, Inc. ("Motorola"), the Company provided Motorola the right to incorporate the Company's proprietary software into certain Motorola cellular telephones sold in Latin America. The Company received a payment of \$4,000,000 pursuant to this agreement.

6. Notes Payable:

In connection with the Company's purchase of certain software on November 30, 1996, the Company issued a note payable to the vendor for \$1,300,000 and a note payable to an individual for \$700,000. Each of these notes is payable monthly through October 31, 1998 and incur interest at 5.96%. As a result of the litigation discussed in Note 11, the Company ceased payments on these notes pending the resolution of the litigation. As of December 31, 1998, the outstanding balance on the note due to the vendor was \$526,000 and the outstanding balance on the note due to the individual was \$253,750.

TOPP TELECOM, INC.
NOTES TO FINANCIAL STATEMENTS, Continued

6. Notes Payable, Continued:

The Company has a revolving line of credit agreement with a commercial bank with outstanding borrowings of \$93,230 as of December 31, 1998. Interest on outstanding borrowings currently accrues at the bank's prime rate of interest (7.75% at December 31, 1998). The facility is secured by the Company's accounts receivable, inventory, and equipment. Proceeds from the loan have been used to purchase certificates of deposit used as collateral for standby letters of credit in favor of major cellular carriers. The credit agreement expired on June 27, 1998, upon which all unpaid interest and principal was due and payable but was extended through January 1999. All amounts outstanding under the loan agreement were paid in full in January 1999.

The Company also has a note payable in the amount of \$34,127 with a bank which is collateralized by a vehicle.

7. Capital Leases:

The Company leases certain furniture and computer equipment under capital leases which expire on various dates through 2003. Accordingly, the leased assets have been included in property and equipment. Assets recorded under capital leases include cost and accumulated amortization of \$1,137,000 and \$115,000, respectively, in 1998. There were no capital leases at December 31, 1997.

Future minimum lease payments, including principal and interest, under capital leases as of December 31, 1998, are as follows:

1999	\$ 354,902
2000	354,902
2001	225,058
2002	130,088
2003	108,407
	1,173,357
Less amount representing interest	(142,750)
Present value of minimum lease payments	1,030,607
Less current principal obligations	(289,764)
Long-term principal obligations	\$ 740,843

TOPP TELECOM, INC.
NOTES TO FINANCIAL STATEMENTS, Continued

8. Carrier Agreements, Standby Letters of Credit, and Restricted Investments:

To provide airtime to its customers, the Company has entered into agreements with various national airtime carriers. To secure the Company's financial performance under the terms of these agreements, some carriers may require that the Company post security, typically in the form of an irrevocable standby letter of credit.

Commercial banks have issued irrevocable standby letters of credit to meet the security requirements under the carrier agreements. To secure these letters of credit, the Company has placed funds on deposit with the bank in the form of certificates of deposit with maturity dates coinciding with the expiration dates of the carrier agreements which are generally six months to one year in duration. These amounts are classified as restricted certificates of deposit on the balance sheet.

9. Transactions with Related Parties:

Pursuant to a shareholder agreement dated November 1, 1997 between the Company and Cellstar Telecom, Inc. ("Cellstar"), Cellstar agreed to purchase an 18% voting equity interest in the Company for \$3,000,000. This purchase was effected by a cash payment from Cellstar of \$1,000,000 and an agreement by Cellstar to waive \$2,000,000 of accounts payable due from the Company for the purchase of telephone inventory.

Pursuant to an agreement dated August 16, 1998 between the Company and Cellstar, Cellstar agreed to make available to the Company a line of credit up to \$26,990,000. The line of credit is to be solely used to finance the purchase of cellular telephone inventory from Cellstar, which is ultimately sold by the Company to its customers. As of December 31, 1998, advances on this line of credit totaled \$26,732,804 and have been classified as due to affiliates (See Note 12). The average outstanding principal bears interest at 0.6% per month, which is payable monthly.

TOPP TELECOM, INC.
NOTES TO FINANCIAL STATEMENTS, Continued

10. Income Taxes:

At December 31, 1998 and 1997, deferred income taxes consist of the following:

	December 31, 1998		December 31, 1997	
	Deferred Taxes		Deferred Taxes	
	Assets	Liabilities	Assets	Liabilities
Bad debt	\$ 693,576	\$ -	\$ 372,753	\$ -
Accrued airtime	2,409,293	-	793,399	-
Accrued professional fees	1,069,335	-	112,890	-
Net operating loss	13,541,496	-	376,012	-
Inventory reserve	395,115	-	-	-
Depreciation and amortization	-	60,190	-	-
Valuation allowance	(18,153,215)	-	(1,754,398)	14,461
Other	104,590	-	113,796	-
	<u>\$ 60,190</u>	<u>\$ 60,190</u>	<u>\$ 14,462</u>	<u>\$ 14,461</u>
Net deferred tax		<u>\$ -</u>		<u>\$ -</u>

The Company has federal income tax loss carryforwards of \$35,985,904 and \$1,061,000 as of December 31, 1998 and 1997, respectively. These carryforwards expire beginning in the year 2017.

11. Commitments and Contingencies:

The Company leases office space, equipment, and computers from third parties. At December 31, 1998, aggregate annual rental payments for operating leases with remaining noncancelable terms in excess of one year are as follows:

Year Ending December 31,

1999
 2000
 2001
 2002
 2003

Total
1,176,549
1,133,501
1,108,709
1,077,221
854,682
<u>5,350,662</u>

Rent expense amounted to approximately \$587,000 and \$128,000 for the years ended December 31, 1998 and 1997, respectively.

TOPP TELECOM, INC.

NOTES TO FINANCIAL STATEMENTS, Continued

11. Commitments and Contingencies, Continued:

The Company is subject to various federal excise, state, and local taxes on revenues earned from the sale of airtime, which have not been paid since the Company's inception. Included in accrued liabilities at December 31, 1998 and 1997 are approximately \$6,541,000 and \$2,100,000, respectively for these various taxes, plus related interest and penalties. While the Company's ultimate liability may exceed or be less than the amounts accrued, the Company believes that it is unlikely that it would experience losses that are materially in excess of such estimated amounts. On April 6, 1999, an examination of the Company's federal excise taxes from inception through December 31, 1998 was completed. The assessed liability including interest and penalties did not exceed the amount accrued in the accompanying balance sheets.

The Company is currently a defendant in a lawsuit alleging, among other items, patent and trademark infringement. The Company is vigorously contesting the lawsuit and has filed a counterclaim. While the amounts claimed may be substantial, the ultimate liability cannot now be determined because of the considerable uncertainties that exist. Therefore, it is possible that results of operations could be materially affected by the outcome of the litigation. However, based on facts currently available, management believes that the disposition of this lawsuit will not have a materially adverse effect on the financial position, operations, or liquidity of the Company.

The Company is currently subject to legal proceedings in the ordinary course of its business. The Company does not believe that any of such legal proceedings could have a material adverse impact on the Company's financial position, results of operations, or cash flows.

The Company has employment agreements with certain of its executive officers that provide for guaranteed bonuses and stock option grants. All stock option grants made prior to December 31, 1998 have been canceled in favor of new option grants to be made in fiscal year 1999. The option grants expected to be made in 1999 are not anticipated to have a material impact on financial position, results of operations, or equity of the Company. The aggregate commitment for future salaries related to guaranteed bonuses at December 31, 1998 was approximately \$240,000.

TOPP TELECOM, INC.
NOTES TO FINANCIAL STATEMENTS, Continued

12. Subsequent Events:

On February 5, 1999, pursuant to a Stock Purchase Agreement entered into by Inmobiliaria Aztlán S.A. de CV, a wholly owned subsidiary of Telefonos de Mexico S.A. de CV ("TelMex"), and the Company, TelMex purchased 5,555 shares of Class A common stock and 117,796 shares of Class B common stock from the Company and 2,153 shares of Class A common stock and 45,646 shares of Class B common stock from certain selling shareholders. (the "Acquisition") The Acquisition closed on February 12, 1999 following the receipt of all regulatory approvals. The Company received \$40,000,000 in cash from the sale of the common stock. As a result of this transaction, TelMex obtained 55.5% of the outstanding Class A and Class B common stock of the Company.

As part of the Acquisition, Cellstar agreed to convert the amounts due under the line of credit to a four year term note with principal due in equal quarterly installments commencing April 30, 2000 and concluding on January 31, 2003.

On June 22, 1999, the Company entered into a Stock Purchase Agreement to purchase all of the issued and outstanding common stock of Comm South Companies, Inc. ("Comm South") for \$74,850,000 (the "Topp Acquisition"). Comm South is a provider of prepaid local telephone services. The Topp Acquisition was funded by a \$3,000,000 payment to the shareholders of Comm South followed by the delivery of \$71,850,000 into an interest bearing escrow account. The Company released \$22,500,000 from the escrow account on June 25, 1999. Final closing and the release the remaining funds is contingent upon the receipt of certain regulatory approvals. Pending the receipt of these approvals, the Company has entered into a management agreement with Comm South which allows the Company to manage the operations of Comm South. The Company will receive a fee of \$300,000 per month for these services. The management agreement will terminate when the purchase of the remaining common stock of Comm South is complete.

On June 25, 1999, the Company entered a Stock Purchase Agreement with TelMex ("First Agreement"). Under the terms of the First Agreement, the Company sold 10,414 shares of Class A common stock and 220,614 shares of Class B Common Stock to TelMex for \$74,850,000. The proceeds of this sale were used to fund the Topp Acquisition. On July 2, 1999, the Company entered into an additional Stock Purchase Agreement with TelMex ("Second Agreement"). Under the terms of the Second Agreement, the Company sold 3,496 shares of Class A common stock and 74,128 shares of Class B common stock to TelMex for \$25,150,000. The proceeds of this sale will be used for the working capital needs of the Company. As a result of these sales, TelMex obtained approximately 77% of the outstanding common stock of the Company.

On July 20, 1999, CellStar exercised certain preemptive rights granted to it as part of the Acquisition and converted principal amounts of \$22,854,154 outstanding under the line of credit into 3,174 shares of Class A Common Stock and 67,364 shares of Class B Common Stock.

**AGREEMENT
FOR SERVICE RESALE
Between
Comm South Companies, Inc.
and
U S WEST Communications, Inc.**

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AGREEMENT FOR SERVICE RESALE

This is an Agreement for Service Resale ("Agreement"), between Comm South Companies, Inc. ("Reseller"), a Certified Reseller, and U S WEST Communications, Inc. ("USWC") (collectively "the Parties") in which USWC will provide certain services to Reseller within the state of South Dakota. Where required, this Agreement or the portions of this Agreement relative to a particular state, will be submitted to the appropriate Public Utilities Commission ("Commission") and the Parties will specifically request that the Commission promptly approve this Agreement and refrain from taking any action to change, suspend or otherwise delay implementation of this Agreement. The Parties enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, or other public forum addressing any matters, including matters related to the types of arrangements prescribed by this Agreement.

The Parties agree and understand that USWC is proposing certain provisions in this Agreement based, in large part, on the FCC's First Report and Order, In the Matter of Implementing of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, rel. Aug. 8, 1996 ("FCC 1st Order") and the Second Report and Order and Memorandum Opinion and Order, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, rel. Aug. 8, 1996 ("FCC 2nd Order"). To the extent that certain of the rules contained in the FCC 1st Order and the FCC 2nd Order are deemed by the courts to be not effective, this Agreement shall be modified to comport with the final court decisions and subsequent FCC or state Commission decisions or rules issued to comply with the courts' decisions.

I. RECITALS & PRINCIPLES

WHEREAS, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to, Telecommunications Carriers; and

WHEREAS, USWC is an Incumbent Local Exchange Carrier or has a majority ownership interest in local exchange companies which are Incumbent Local Exchange Carriers; and

WHEREAS, the Telecommunications Act of 1996 has specific requirements for service resale, commonly referred to as a part of the "checklist" and USWC desires that this Agreement meet those checklist requirements; and

WHEREAS, USWC, for itself and its Affiliates, is willing to sell services for resale, on the terms and subject to the conditions of this Agreement; and

WHEREAS, Reseller is a Telecommunications Carrier and has requested that USWC negotiate an Agreement with Reseller for the provision of USWC services for resale pursuant to the Act and in conformance with USWC's duties under the Act; and

WHEREAS, the Parties have arrived at this Agreement through voluntary negotiations undertaken pursuant to the Act.

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Reseller and USWC hereby covenant and agree as follows:

II. SCOPE OF AGREEMENT

- A. This Agreement sets forth the terms, conditions and prices under which USWC agrees to provide telecommunications services for resale. Unless otherwise

provided in this Agreement, USWC will perform all of its obligations hereunder to the extent provided in the Appendices attached hereto. The Agreement includes all accompanying appendices.

- B. In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, the Act, FCC 1st and 2nd Orders, or a state Commission, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.
- C. The Parties have agreed to certain provisions in this Agreement, based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the "Existing Rules"). To the extent that certain of the Existing Rules are changed and modified, and it reasonably appears that the Parties would have negotiated and agreed to different term(s), condition(s), or covenant(s) than as contained herein had such change or modification been in existence before execution hereof, then this Agreement shall be amended to reflect such different term(s), condition(s), or covenant(s). Where the Parties fail to agree upon such an amendment, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement.

III. DEFINITIONS

- A. "Basic Exchange Telecommunications Service" means a service offered to end users which provides the end user with a telephonic connection to, and a unique local telephone number address on, the public switched telecommunications network, and which enables such end user to generally place calls to, or receive calls from, other stations on the public switched telecommunications network. Basic residence and business line services are Basic Exchange Telecommunication Services. As used solely in the context of this Agreement and unless otherwise agreed, Basic Exchange Telecommunication Services includes access to ancillary services such as 911, directory assistance and operator services.
- B. "Basic Exchange Switched Features" are optional end user switched service features which include, but are not necessarily limited to: Automatic Call Back; Call Trace; Caller ID and Related Blocking Features; Distinctive Ringing/Call Waiting; Selective Call Forward; Selective Call Rejection.
- C. "Commission" means the Public Utilities Commission in the state of South Dakota.
- D. "Enhanced Services" means any service offered over common carrier transmission facilities that employ computer processing applications that act on format, content, code, protocol or similar aspects of the subscriber's transmitted information; that provide the subscriber with additional, different or restructured information; or involve end user interaction with stored information.
- E. "Reseller" is a category of Local Exchange service providers that are certified to obtain dial tone and associated telecommunications services from another provider through the purchase of bundled finished services for resale to its end users.

- F. "Tariff" as used throughout this Agreement refers to USWC state tariffs, price lists, price schedules and catalogs.
- G. "Telecommunications Carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in Section 226 of the Act). A Telecommunications Carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.

IV. RESALE SERVICES

A. Description.

1. USWC services (as defined in Section III.A. and B.) and intraLATA toll originating from USWC exchanges (hereinafter "intraLATA toll") will be available for resale by USWC pursuant to the Act and will reference terms and conditions (except prices) in USWC tariffs, where applicable. Appendix A lists services which are available for resale under this Agreement and the applicable discounts, and is attached and incorporated herein by this reference.
2. The Parties agree that, at this time, certain USWC services are not available for resale under this Agreement, and certain other USWC services are available for resale but at no discount, as identified in Appendix A or in individual state tariffs. The availability of services and applicable discounts identified in Appendix A or in individual tariffs are subject to change pursuant to Section IV E.1.

B. Scope.

1. Basic Exchange Telecommunications Service, Basic Exchange Switched Features and IntraLATA toll may be resold only for their intended or disclosed use and only to the same class of end user to whom USWC sells such services; e.g., residence service may not be resold to business end users.
2. USWC shall provide to Reseller services for resale that are equal in quality, subject to the same conditions (including the conditions in USWC's effective tariffs), within provisioning time intervals that are substantially equal to the intervals USWC provides these services to others, including end users, and in accordance with any applicable state Commission service quality standards, including standards a state Commission may impose pursuant to Section 252 (e)(3) of the Act.

C. Ordering and Maintenance.

1. Reseller or Reseller's agent shall act as the single point of contact for its end users' service needs, including, without limitation, sales, service design, order taking, provisioning, change orders, training, maintenance, trouble reports, repair, post-sale servicing, billing, collection and inquiry. Reseller shall make it clear to its end users that they are end users of the Reseller for resold services. Reseller's end users contacting USWC will be instructed to contact the Reseller; however, nothing in this Agreement, except as provided in Section IV.C.7(e), shall be deemed to prohibit USWC

from discussing its products and services with Reseller's end users who call USWC for any reason.

2. Reseller shall transmit to USWC all information necessary for the installation (billing, listing and other information), repair, maintenance and post-installation servicing according to USWC's standard procedures as described in the USWC resale operations guide that will be provided to Reseller.

When USWC's end user or the end user's new service provider discontinues the end user's service in anticipation of moving to another service provider, USWC will render its closing bill to end user effective with the disconnection. If USWC is not the local service provider, USWC will issue a bill to Reseller for that portion of the service provided to the Reseller should Reseller's end user, a new service provider, or Reseller request service be discontinued to the end user. USWC will notify Reseller by FAX, OSS, or other processes when end user moves to another service provider. USWC will not provide Reseller with the name of the other reseller or service provider selected by the end user.

The Parties agree that they will not transfer their respective end users whose accounts are in arrears between each other. The Parties further agree that they will work cooperatively together to develop the standards and processes applicable to the transfer of such accounts.

3. Reseller shall provide USWC and USWC shall provide Reseller with points of contact for order entry, problem resolution and repair of the resold services.
4. Prior to placing orders on behalf of the end user, Reseller shall be responsible for obtaining and have in its possession Proof of Authorization ("POA"). POA shall consist of documentation acceptable to USWC of the end user's selection of Reseller. Such selection may be obtained in the following ways:
 - a. The end user's written Letter of Authorization or LOA.
 - b. The end user's electronic authorization by use of an 800 number.
 - c. The end user's oral authorization verified by an independent third party (with third party verification as POA).
 - d. A prepaid returnable postcard supplied by Reseller which has been signed and returned by end user. Reseller will wait fourteen (14) days after mailing the postcard before placing an order to change.

Reseller shall make POAs available to USWC upon request. Prior to placing orders that will disconnect a line from another reseller's account the Reseller is responsible for obtaining all information needed to process the disconnect order and re-establish the service on behalf of the end user. Should an end user dispute or a discrepancy arise regarding the authority of Reseller to act on behalf of the end user, the Reseller is responsible for providing written evidence of its authority to USWC within three (3) business days. If there is a conflict between the end user designation and Reseller's written evidence of its authority, USWC shall honor the designation of the end user and change the end user back to the previous service provider. If the Reseller does not provide the POA within three (3)

business days, or if the end user disputes the authority of the POA, then the Reseller must, by the end of the third business day

- notify USWC to change the end user back to the previous reseller or service provider, and
- provide any end user information and billing records the Reseller has obtained relating to the end user to the previous reseller, and
- notify the end user and USWC that the change has been made.
- remit to USWC a charge of \$100.00 ("slamming charge") as compensation for the change back to the previous reseller or service provider.

If an end user is switched from Reseller back to USWC and there is a dispute or discrepancy with respect to such change in service provider Reseller may request to see a copy of the POA which USWC has obtained from the end user to effectuate a return to USWC as the end user's service provider. If USWC is unable to produce a POA within three (3) business days, USWC shall change the end user back to Reseller (or other previous reseller) without imposition of any Customer Transfer Charge.

5. Reseller shall designate Primary Interexchange Carrier (PIC) assignments on behalf of its end-users for interLATA services and intraLATA services when intraLATA presubscription is implemented.
6. When end users switch from USWC to Reseller, or to Reseller from any other reseller, such end users shall be permitted to retain their current telephone numbers if they so desire and do not change their service address to an address served by a different central office. USWC shall take no action to prevent Reseller end users from retaining their current telephone numbers.
7. Reseller and USWC will employ the following procedures for handling misdirected repair calls:
 - a. Reseller and USWC will provide their respective end users with the correct telephone numbers to call for access to their respective repair bureaus.
 - b. End users of Reseller shall be instructed to report all cases of trouble to Reseller. End users of USWC shall be instructed to report all cases of trouble to USWC.
 - c. To the extent the correct provider can be determined, misdirected repair calls will be referred to the proper provider of Basic Exchange Telecommunications Service.
 - d. Reseller and USWC will provide their respective repair contact numbers to one another on a reciprocal basis.
 - e. In responding to repair calls, neither Party shall make disparaging remarks about each other, nor shall they use these repair calls as the basis for internal referrals or to solicit end users to market services. Either Party may respond with accurate information in answering end user questions.

D. Reseller Responsibilities.

1. Reseller must send USWC complete and accurate end-user listing information for directory assistance, directory listings, and 911 Emergency Services using USWC's resale order form and process. Reseller must provide to USWC accurate end-user information to ensure appropriate listings in any databases in which USWC is required to retain and/or maintain end-user information. USWC assumes no liability for the accuracy of information provided by Reseller.
2. Reseller may not reserve blocks of USWC telephone numbers, except as allowed by tariffs.
3. Reseller is liable for all fraud associated with service to its end-users and accounts. USWC takes no responsibility, will not investigate, and will make no adjustments to Reseller's account in cases of fraud unless such fraud is the result of any intentional act or gross negligence of USWC. Notwithstanding the above, if USWC becomes aware of potential fraud with respect to Reseller's accounts, USWC will promptly inform Reseller and, at the direction of Reseller, take reasonable action to mitigate the fraud where such action is possible. USWC will also be liable for charges incurred by Reseller as a result of USWC's failure to effect a Reseller order requesting blocking of services such as 900 numbers, *65 dialing, and services ordered on a per activation basis.
4. Reseller will indicate the date it will offer to residential and business subscribers telephone exchange services. The Reseller will provide a two year forecast within ninety (90) days of signing this Agreement. During the first year of the term of this Agreement, the forecast shall be updated and provided to USWC on a quarterly basis. Thereafter, during the term of this Agreement, Reseller will provide updated forecasts from time to time, as requested by USWC. The initial forecast will provide:
 - The date service will be offered (by city and/or state)
 - The type and quantity of service(s) which will be offered
 - Reseller's anticipated order volume
 - Reseller's key contact personnel

The information provided pursuant to this paragraph shall be considered Proprietary Information under Section VII. O. of this Agreement.

5. In the event USWC terminates the provisioning of any resold services to Reseller for any reason, Reseller shall be responsible for providing any and all necessary notice to its end users of the termination. In no case shall USWC be responsible for providing notice to Reseller's end users. USWC will provide notice to Reseller of its termination of a resold service on a timely basis consistent with Commission rules and notice requirements.

E. Rates and Charges

1. Resold services as listed in Appendix A are available for resale at the applicable discount percentage or rate per minute set forth in Appendix A or at the retail tariff rates for services available for resale but excluded from the wholesale pricing arrangement in this Agreement.

However, state Commissions may do any of the following (collectively referred to hereinafter as "Order") during the term of this Agreement:

3. A Customer Transfer Charge (CTC) as specified in Appendix A applies when transferring any existing account or lines to a Reseller. Tariffed non-recurring charges will apply to new installations.
4. A Subscriber Line Charge (SLC) will continue to be paid by the Reseller without discount to USWC for each local exchange line resold under this Agreement. All federal and state rules and regulations associated with SLC as found in the applicable tariffs also apply.
5. Reseller will pay to USWC the PIC change charge without discount associated with Reseller end user changes of inter-exchange or intraLATA carriers.
6. Reseller agrees to pay USWC when its end user activates any services or features that are billed on a per use or per activation basis subject to the applicable discount in Appendix A as such may be amended pursuant to Section IV.E.1 (e.g., continuous redial, last call return, call back calling, call trace, etc.).
7. Resold services are available only where facilities currently exist and are capable of providing such services without construction of additional facilities or enhancement of existing facilities. However, if Reseller requests that facilities be constructed or enhanced to provide resold services, USWC will review such requests on a case-by-case basis and determine, in its sole discretion, if it is economically feasible for USWC to build or enhance facilities. If USWC decides to build or enhance the requested facilities, USWC will develop and provide to Reseller a price quote for the construction. If the quote is accepted, Reseller will be billed the quoted price and construction will commence after receipt of payment.
8. Nonrecurring charges will not be discounted and will be billed at the applicable Tariff rates.
9. As part of the resold line, USWC provides and Reseller accepts, at this time, operator services, directory assistance, and intraLATA long distance with standard USWC branding. Reseller is not permitted to alter the branding of these services in any manner when the services are a part of the resold line without the prior written approval of USWC. However, at the request of Reseller and where technically feasible, USWC will rebrand operator services and directory assistance in the Reseller's name, provided the costs associated with such rebranding are paid by Reseller.

F. Collateral and Training.

The Parties will jointly develop procedures regarding Reseller's use of USWC's retail product training materials. Except for any rights granted by USWC to Reseller for the use or copying of product training material, product training provided under this Agreement shall be considered "Proprietary Information" as described in Section VII. O., and shall be subject to the terms and conditions specified therein.

V. ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS)

Access to OSS is described in Appendix C to this Agreement, which Appendix is attached hereto and incorporated herein by this reference.

VI. DIRECTORY LISTING.

USWC will accept at no charge one primary listing for each main telephone number belonging to Reseller's end user based on end user information provided to USWC by Reseller. USWC will place Reseller's listings in USWC's directory listing database for directory assistance purposes and will make listings available to directory publishers and other third parties. Additional terms and conditions with respect to directory listings are described in Appendix B which by this reference is incorporated and made a part of this Agreement.

VII. GENERAL PROVISIONS

A. Term.

This Agreement shall become effective upon Commission approval, pursuant to Sections 251 and 252 of the Act, and shall terminate on July 1, 2000, and shall be binding upon the Parties during that term, notwithstanding Section 252(i) of the Act. The Parties agree to commence negotiations on a new agreement no later than 135 calendar days prior to the termination date specified above, provided that Reseller, consistent with Section 252(i) of the Act, may opt into a then-existing, valid interconnection or resale agreement, in its entirety, at the conclusion of the said term of this Agreement. In the event that negotiations are not concluded as of the termination date specified above, the window of opportunity to file for arbitration to resolve outstanding contractual issues in accordance with the Act will open upon the termination date specified above.

B. Billing.

1. USWC shall bill Reseller and Reseller is responsible for all applicable charges for the resold services as provided herein. The Reseller shall also be responsible for all tariffed charges and charges separately identified in this Agreement associated with services that the Reseller resells to an end user under this Agreement.
2. USWC shall provide Reseller, on a monthly basis, within 7-10 days of the last day of the most recent billing period, in an agreed upon standard electronic billing format, billing information including (1) a summary bill, and (2) individual end user sub-account information consistent with the samples provided to Reseller for Reseller to render end user bills indicating all recurring and nonrecurring charges associated with each individual end user's account for the most recent billing period.

C. Payment.

1. Amounts payable under this Agreement are due and payable within thirty (30) days after the bill date of USWC's invoice. During the initial three billing cycles of this Agreement, Reseller and USWC agree that undisputed amounts shall be paid as provided herein. Reseller and USWC further agree that, during said three billing cycle period, they will cooperate to resolve amounts in dispute or billing process issues in a timely manner but

no later than sixty (60) days after the bill date of USWC's invoice or identification and notice of the billing process issue. Disputed amounts will be paid within thirty (30) days following resolution of the dispute.

2. After the three (3) month period outlined in Section C.1 above the Reseller will pay the bill in full within 30 days after the bill date of the invoice. Billing disputes will be processed and jointly resolved. Any disputed amounts that USWC remits to the Reseller will be credited on the next billing cycle including an interest credit of 1.5% per month compounded.
3. A late payment charge of 1.5% applies to all billed balances which are not paid by 30 days after the bill date shown on the invoice. USWC agrees, however, that the application of this provision will be suspended for the initial three billing cycles of this Agreement and will not apply to amounts billed during those three cycles.
4. USWC may discontinue processing orders for the failure by Reseller to make full payment for the resold services provided under this Agreement within thirty (30) days of the due date on Reseller's bill. USWC agrees, however, that the application of this provision will be suspended for the initial three billing cycles of this Agreement and will not apply to amounts billed during those three cycles.
5. USWC may disconnect for the failure by Reseller to make full payment for the resold services provided under this Agreement within sixty (60) days of the due date on Reseller's bill. Reseller will pay the tariff charge required to reconnect each end user line disconnected pursuant to this paragraph. USWC agrees, however, that the application of this provision will be suspended for the first three billing cycles under this Agreement and will not apply to amounts billed during those three cycles.

If USWC elects to disconnect Reseller pursuant to this paragraph, USWC will notify Reseller of such disconnection ten (10) days prior to the effective date of the disconnection. Immediately upon receipt of such notice, Reseller shall notify its end user customers that service will be disconnected on the date specified in USWC's notice to Reseller for Reseller's failure to make payments due hereunder. Reseller shall not disparage USWC or make otherwise false or misleading statements about USWC or the disconnection in Reseller's notice to its end user customers. USWC will not disconnect an end user customer without first obtaining the approval of the Commission.

6. Collection procedures and the requirements for deposit are unaffected by the application of a late payment charge.
7. USWC shall credit Reseller's account the amount due for any trouble or out-of-service conditions in the same manner that USWC credits the accounts of its own end-user and pursuant to any applicable provisions in USWC's tariffs. USWC shall reflect the amount of such credits on an individual end user telephone number basis in the billing information USWC provides Reseller.

8. In the event billing disputes relate to service quality issues, the dispute shall be referred to the USWC account executive assigned to Reseller who will evaluate the facts and circumstances of the service quality issues and will work with Reseller to resolve the dispute.

D. Deposit.

1. USWC may require Reseller to make a suitable deposit to be held by USWC as a guarantee of the payment of charges. Any deposit required of an existing reseller is due and payable within ten days after the requirement is imposed. The amount of the deposit shall be the estimated charges for the resold Service which will accrue for a two-month period.
2. When the service is terminated, or when Reseller has established satisfactory credit, the amount of the initial or additional deposit, with any interest due as set forth in applicable tariffs, will, at Reseller's option, either be credited to Reseller's account or refunded. Satisfactory credit for a reseller is defined as twelve consecutive months service as a reseller without a termination for nonpayment and with no more than one notification of intent to terminate Service for nonpayment. Interest on the deposit shall be accumulated by USWC at a rate equal to the federal discount rate, as published in the Wall Street Journal.

E. Taxes.

Each party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be for resale tax exemption, the purchasing Party shall furnish the providing Party a proper resale tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale tax exemption. Failure to timely provide said resale tax exemption certificate will result in no exemption being available to the purchasing Party.

F. Force Majeure.

Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its best efforts to

avoid or remove the cause of non-performance and both parties shall proceed to perform with dispatch once the causes are removed or cease.

G. Responsibility of Each Party.

Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at work locations or, (ii) waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the work locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

H. Limitation of Liability.

Except for indemnity obligations, each Party's liability to the other Party for any loss relating to or arising out of any negligent act or omission in its performance of this Agreement, whether in contract or in tort, shall be limited to the total amount that is or would have been charged to the other Party by such negligent or breaching Party for the service(s) or function(s) not performed or improperly performed.

Neither Party shall be liable to the other under this Agreement for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action, whether in contract, warranty, strict liability, tort, including (without limitation) negligence of any kind and regardless of whether the Parties know the possibility that such damages could result.

Nothing contained in this Section shall limit either Party's liability to the other for intentional, malicious misconduct.

I. Indemnification.

1. With respect to third party claims, each of the Parties agrees to release, indemnify, defend and hold harmless the other Party and each of its officers, directors, employees and agents (each an "Indemnitee") from and against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment or settlement of any nature or kind, known or unknown, liquidated or unliquidated including, but not limited to, costs and attorneys' fees, whether suffered, made, instituted, or asserted by any other party or person, for invasion of privacy, personal injury to or death of any person or persons, or for loss, damage to, or destruction of property, whether or not owned by others, resulting from the indemnifying Party's performance, breach of applicable law, or status of its employees, agents and

subcontractors; or for failure to perform under this Agreement, regardless of the form of action.

2. The indemnification provided herein shall be conditioned upon

- a. The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification. Failure to so notify the indemnifying Party shall not relieve the indemnifying Party of any liability that the indemnifying Party might have, except to the extent that such failure prejudices the indemnifying Party's ability to defend such claim.
- b. The indemnifying Party shall have sole authority to defend any such action, including the selection of legal counsel, and the indemnified Party may engage separate legal counsel only at its sole cost and expense.
- c. In no event shall the indemnifying Party settle or consent to any judgment pertaining to any such action without the prior written consent of the indemnified Party.

J. Intellectual Property

1. Each Party hereby grants to the other Party the limited, personal and nonexclusive right and license to use its patents, copyrights and trade secrets but only to the extent necessary to implement this Agreement or specifically required by the then applicable federal and state rules and regulations relating to Resale and access to telecommunications facilities and services, and for no other purposes. Nothing in this Agreement shall be construed as the grant to the other Party of any rights or licenses to trademarks.
2. The rights and licenses above are granted "AS IS" and the other Party's exercise of any such right and license shall be at the sole and exclusive risk of the other Party. Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding (hereinafter "claim") by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision of any facilities by either Party under this Agreement constitutes infringement, or misuse or misappropriation of any patent, copyright, trade secret, or any other proprietary or intellectual property right of any third party.
3. As a condition to the access or use of patents, copyrights, trade secrets and other intellectual property (including software) owned or controlled by a third party to the extent necessary to implement this Agreement or specifically required by the then applicable federal and state rules and regulations relating to resale and access to telecommunications facilities and services, the Party providing access may require the other upon written notice, from time to time, to obtain a license or permission for such access or use, make all payments in connection with obtaining such license, and provide evidence of such license.

4. Except as expressly provided in this Intellectual Property Section, nothing in this Agreement shall be construed as the grant of a license, either express or implied, with respect to any patent, copyright, logo, trademark, tradename, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party. Reseller may not use any patent, copyright, logo, trademark, tradename, trade secret or other intellectual property right of USWC or its affiliates without execution of a separate agreement between the Parties.
5. Reseller shall not, without the express written permission of USWC, state or imply that:
 - 1) Reseller is connected, or in any way affiliated with USWC or its affiliates or,
 - 2) Reseller is part of a joint business association or any similar arrangement with USWC or its affiliates or,
 - 3) USWC and its affiliates are in any way sponsoring, endorsing or certifying Reseller and its goods and services or,
 - 4) with respect to Reseller advertising or promotional activities or materials, that the resold goods and services are in any way associated with or originated from USWC or any of its affiliates.Notwithstanding the above, Reseller may state in response to a specific end user inquiry concerning the origin of the resold services that "Reseller is reselling USWC services." No other statements may be made.
6. Notwithstanding the above, unless otherwise prohibited by USWC pursuant to an applicable provision herein, Reseller may use the phrase "(Name of Reseller) is a reseller of U S WEST Communications services" (the "Authorized Phrase") in Reseller's printed materials provided:
 - a) The Authorized Phrase is not used in connection with any goods or services other than USWC services resold by Reseller.
 - b) Reseller's use of the Authorized Phrase does not, in USWC's sole discretion, cause end users to believe that Reseller is USWC.
 - c) The Authorized Phrase, when displayed, appears only in text form (Reseller may not use the U S WEST logo) with all letters being the same font and point size. The point size of the Authorized Phrase shall be no greater than one fourth the point size of the smallest use of Reseller's name and in no event shall exceed 8 point size.
 - d) Reseller shall provide all printed materials to USWC for its prior written approval.
 - e) If USWC determines that Reseller's use of the Authorized Phrase causes end user confusion, USWC may in its sole discretion, immediately terminate Reseller's right to use the Authorized Phrase.
 - f) Upon termination of the Reseller's right to use the Authorized Phrase or termination of this Agreement, all permission or right to use the Authorized Phrase shall immediately cease to exist and Reseller shall immediately cease any and all such use of the Authorized Phrase. Reseller shall either promptly return to USWC or destroy all materials in its possession or control displaying the Authorized Phrase.
7. Reseller acknowledges the value of the marks "U S WEST" and "U S WEST Communications" (the "Marks") and the goodwill associated therewith and acknowledges that such goodwill is a property right

belonging to U S WEST, Inc. and USWC respectively (the "Owners") Reseller recognizes that nothing contained in this Agreement is intended as an assignment or grant to Reseller of any right, title or interest in or to the Marks and that this Agreement does not confer any right or license to grant sublicenses or permission to third parties to use the Marks and is not assignable. Reseller will do nothing inconsistent with the Owners' ownership of the Marks, and all rights, if any, that may be acquired by use of the Marks shall inure to the benefit of the Owners. Reseller will not adopt, use (other than as authorized in Section 3 herein), register or seek to register any mark anywhere in the world which is identical or confusingly similar to the Marks or which is so similar thereto as to constitute a deceptive colorable imitation thereof or to suggest or imply some association, sponsorship, or endorsement by the Owners. The Owners make no warranties regarding its ownership of any rights in or the validity of the Marks.

K. Warranties.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

L. Assignment.

Neither Party may assign or transfer (whether by operation of law or otherwise) this Agreement (or any rights or obligations hereunder) to a third party without the prior written consent of the other Party provided that each Party may assign this Agreement to a corporate affiliate or an entity under its common control or an entity acquiring all or substantially all of its assets or equity by providing prior written notice to the other Party of such assignment or transfer. Any attempted assignment or transfer that is not permitted is void ab initio. Without limiting the generality of the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors and assigns.

M. Default.

If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other provision of this Agreement, and such default or violation shall continue for thirty (30) days after written notice thereof, the other Party may seek legal and/or regulatory relief. The failure of either Party to enforce any of the provisions of this Agreement or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall, nevertheless, be and remain in full force and effect.

N. Severability.

In accordance with this Agreement, if one or more of the provisions contained herein must be modified because of changes in Existing Rules or modifications to arbitration proceedings, the Parties will negotiate in good faith for replacement language. If replacement language cannot be agreed upon, either Party may seek regulatory intervention, including negotiations pursuant to Sections 251 and 252 of the Act. In all other respects, the provisions of this Agreement are not severable.

Nondisclosure.

1. All information including, but not limited to, specifications, microfilm, photocopies, magnetic disks, magnetic tapes, drawings, sketches, models, samples, tools, technical information, data, employee records, maps, financial reports, and market data, (i) furnished by one Party to the other Party dealing with end user specific, facility specific, or usage specific information other than end user information communicated for the purpose of publication of directory database inclusion, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential", "Proprietary", or (iii) communicated and declared to the receiving Party at the time of delivery, or by written notice given to the receiving Party within ten (10) days after delivery, to be "Confidential" or "Proprietary" (collectively referred to as "Proprietary Information"), shall remain the property of the disclosing Party. A Party who receives Proprietary Information via an oral communication may request written confirmation that the material is Proprietary Information. A Party who delivers Proprietary Information via an oral communication may request written confirmation that the Party receiving the information understands that the material is Proprietary Information.
2. Upon request by the disclosing Party, the receiving Party shall return all tangible copies of Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.
3. Each Party shall keep all of the other Party's Proprietary Information confidential and shall use the other Party's Proprietary Information only in connection with this Agreement. Neither Party shall use the other Party's Proprietary Information for any other purpose except upon such terms and conditions as may be agreed upon between the Parties in writing.
4. Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to the extent that such Proprietary Information:
 - a. was at the time of receipt already known to the receiving Party free of any obligation to keep it confidential (evidenced by written records prepared prior to delivery by the disclosing Party); or
 - b. is or becomes publicly known through no wrongful act of the receiving Party; or
 - c. is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation to the disclosing Party with respect to such information; or
 - d. is independently developed by an employee, agent, or contractor of the receiving Party which individual is not involved in any manner with the provision of services pursuant to the Agreement and does not have any direct or indirect access to the Proprietary Information; or
 - e. is disclosed to a third person by the disclosing Party without restrictions on such third person's rights; or

- f. is approved for release by written authorization of the disclosing Party; or
- g. is required to be made public by the receiving Party pursuant to applicable law or regulation provided that the receiving Party shall give sufficient notice of the requirement to the disclosing Party to enable the disclosing Party to seek protective orders where possible.
- h. **Effective Date Of This Section.** Notwithstanding any other provision of this Agreement, the Proprietary Information provisions of this Agreement shall apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.

P. Survival.

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

Q. Dispute Resolution.

If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents ("Dispute") cannot be settled through negotiation, it shall be resolved by arbitration conducted by a single arbitrator engaged in the practice of law, under the then current rules of the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall not have authority to award punitive damages. All expedited procedures prescribed by the AAA rules shall apply. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. The prevailing Party, as determined by the arbitrator, shall be entitled to an award of reasonable attorneys' fees and costs. The arbitration shall occur in Denver, Colorado. Nothing in this Section shall be construed to waive or limit either Party's right to seek relief from the Commission or the Federal Communications Commission as provided by state or federal law.

No Dispute, regardless of the form of action, arising out of this Agreement, may be brought by either Party more than two (2) years after the cause of action accrues.

R. Controlling Law.

This Agreement was negotiated by the Parties in accordance with the terms of the Act and the laws of South Dakota. It shall be interpreted solely in accordance with the terms of the Act, where applicable, and the laws of the state of South Dakota and shall be subject to the exclusive jurisdiction of the courts in that state, unless otherwise provided by the Act.

S. Joint Work Product.

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and their respective counsel and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

T. Notices.

Any notices required by or concerning this Agreement shall be sent to the Parties at the addresses shown below:

USWC

U S WEST Communications, Inc.
Lori Simpson
Director-Interconnection Compliance
150 South 5th Street
Room 2800
Minneapolis, Minnesota 55402
612-663-3425 (phone)
612-663-3551 (fax)

Reseller

Comm South Companies, Inc.
Jim H. Graham
6830 Walling Lane
Dallas Texas 75231

972-690-9955 (phone)

Each Party shall inform the other of any changes in the above addresses.

U. No Third-Party Beneficiaries.

Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

V. Publicity and Advertising.

Neither party shall publish or use any advertising, sales promotions or other publicity materials that use the other party's name, logo, trademarks or service marks without the prior written approval of the other party.

W. Amendment

Reseller and USWC may mutually agree to amend this Agreement in writing. Since it is possible that amendments to this Agreement may be needed to fully satisfy the purposes and objectives of this Agreement, the Parties agree to work cooperatively, promptly and in good faith to negotiate and implement any such additions, changes and corrections to this Agreement.

X. Executed in Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

Y. Headings of No Force or Effect

The headings of Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

Z. Cooperation

The Parties agree that this Agreement involves the provision of USWC services in ways such services were not previously available and the introduction of new processes and procedures to provide and bill such services. Accordingly, the Parties agree to work jointly and cooperatively in testing and implementing processes for pre-ordering, ordering, maintenance, provisioning and billing and in

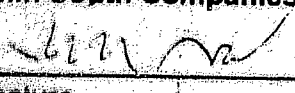
reasonably resolving issues which result from such implementation on a timely basis.

AA. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, representations, statements, negotiations, understandings, proposals and undertakings with respect to the subject matter hereof. This Agreement shall prevail in the event of any conflict between the "Resale Resource Guide" and the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

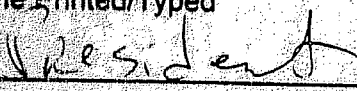
Comm South Companies, Inc.



Signature

Jim H. Graham

Name Printed/Typed



Title

Title

Date

3/25/98

U S WEST Communications, Inc.



Signature

Katherine L. Fleming

Name Printed/Typed

Executive Director-Interconnection

Title

Date

4/03/98

Signature does not waive any rights of either Party to seek administrative/judicial review of all or part of this Agreement or to reform this Agreement as a result of successful administrative/judicial review and/or future settlement agreements between the Parties to this Agreement.

**APPENDIX A - South Dakota
LOCAL EXCHANGE SERVICES RESALE OF SERVICES**

The Parties agree the following charges apply to the Resale of Local Services:

1. Nonrecurring Charges.

- a. Customer Transfer Charge (CTC): The following nonrecurring charges apply when converting a USWC account to a Reseller account or when changing an end user from one reseller to another:

Mediated access (OSS)	USOC	Nonrecurring Charge
• Residence		
First Line		\$12.64
Each Additional Line		\$11.16
• Business		
First Line		\$16.80
Each Additional Line		\$13.93
Non-Mediated Access (Manual)		
• Residence and Business		
First Line		\$22.20
Each Additional Line		\$16.38

- b. Product Specific Nonrecurring Charge: As set forth in USWC tariffs, the product specific nonrecurring charges, without discount, will apply when additional lines or trunks are added or when the end user adds features or services to existing lines or trunks.

2. The following USWC services are available for resale at the rates listed below:

Category:	Discount Rate
• Basic Exchange Business, PBX Trunks	12%
• ISDN, Frame Relay	12%
• Listings, CO Features	12%

IntraLATA toll is available for resale at the contract toll rates listed below without application of a further wholesale discount:

State:	Rate Per Minute of Use
South Dakota	.10

3. The following services are available for resale under this Agreement but are not included in the wholesale pricing reflected above: unless and until the state public utilities Commission in a particular state orders that wholesale discount rates are generally available to resellers with respect to these products in that state:

- Basic Exchange Residence
- Private Line
- Volume Discount and/or Term Arrangement (where contained in end user contracts or USWC tariffs)
- Centrex
- Public Access Lines

4. The following service is available for resale under this Agreement but is not included in the wholesale pricing reflected above:

- Special Access

5. The following services are not available for resale:

- Lifeline
- Technical Trials
- Enhanced Services (e.g., Voice Messaging)
- Promotions equal to or less than 90 days in length
- Inside wiring installation and maintenance (including maintenance plans)
- Grandfathered Products and Services *(except to end users currently served with such services)*
- Customer premises equipment (separately or when included in packages)
- Concession Service
- USWC Calling Cards

**APPENDIX B
DIRECTORY LISTINGS**

1. Scope.

a. Reseller White Pages Listing Service ("Listings") consists of USWC placing the names, addresses and telephone numbers of Reseller's end users in USWC's listing database based on end user information provided to USWC by Reseller. USWC is authorized to use Listings in Directory Assistance (DA) and as noted in 1.D.i or 1.D.ii.

b. Reseller will provide in standard format, and USWC will accept at no charge, one primary listing for each main telephone number belonging to Reseller's end users. Primary listings are as defined for USWC end users in USWC's general exchange tariffs. Reseller will be charged for privacy listings and premium listings, e.g., additional, foreign, cross reference, informational, etc., at USWC's general exchange listing tariff rates minus the applicable standard resale discount in each state.

c. USWC will furnish Reseller the Listings format specifications. USWC cannot accept Listings with advance completion dates.

d. Reseller grants USWC a non-exclusive license to incorporate Listings information into its directory assistance database. Reseller hereby selects one of two options for USWC's use of Listings and dissemination of Listings to third parties.

EITHER:

i. **Treat the same as USWC's end user listings -- No prior authorization is needed for USWC to release Listings to directory publishers or other third parties.** USWC will incorporate Listings information in all existing and future directory assistance applications developed by USWC. Reseller will authorize USWC to sell and otherwise make Listings available to directory publishers including USWC's publisher affiliate for inclusion in white pages published on USWC's behalf. USWC shall be entitled to retain all revenue associated with any such sales. Listings shall not be provided or sold in such a manner as to segregate end users by carrier.

OR:

ii. **Restrict to USWC's directory assistance -- Prior authorization required by Reseller for all other uses.** Reseller makes its own, separate agreements with USWC, third parties and directory publishers for all uses of its listings beyond DA. USWC will sell Listings to directory publishers (including USWC's publisher affiliate for inclusion in white pages published on USWC's behalf), other third parties and USWC products only after third party presents proof of Reseller's authorization. USWC shall be entitled to retain all revenue associated with any such sales. Listings shall not be provided or sold in such a manner as to segregate end users by carrier.

Reseller hereby selects Option: i or ii

e. To the extent that state tariffs limit USWC's liability with regard to Listings, the applicable state tariff(s) is incorporated herein and supersedes Section VII.G., "Limitation of Liability", of this Agreement with respect to Listings only.

2. USWC Responsibilities.

USWC is responsible for maintaining Listings, including entering, changing, correcting, rearranging and removing Listings in accordance with Reseller orders. USWC will take

reasonable steps in accordance with industry practices to accommodate non-published and non-listed listings provided that Reseller has supplied USWC the necessary privacy indicators on such Listings.

USWC will include Reseller's Listings in USWC's Directory Assistance service to ensure that callers to USWC's Directory Assistance service have non-discriminatory access to Reseller's Listings.

USWC will incorporate Reseller's Listings provided to USWC in the white pages directory published on USWC's behalf, in accordance with Reseller's selection under Section 1.d. above.

3. Reseller Responsibilities

- a. Reseller agrees to provide to USWC its end user names, addresses and telephone numbers in a standard format, as specified by USWC.
- b. Reseller will supply its ACNA/CIC or CLCC/OCN, as appropriate, with each order to provide USWC the means of identifying Listings ownership.
- c. Reseller represents and warrants the end user information provided to USWC is accurate and correct. Reseller further represents and warrants that it has reviewed all Listings provided to USWC, including end user requested restrictions on use such as non-published and non-listed. Reseller shall be solely responsible for knowing and adhering to state laws or rulings regarding Listings (e.g., no solicitation requirements in the states of Arizona and Oregon, privacy requirements in Colorado), and for supplying USWC the applicable Listing information.
- d. Reseller is responsible for all dealings with and on behalf of Reseller's end users, including:
 - i. All end user account activity, e.g., end user queries and complaints.
 - ii. All account maintenance activity, e.g., additions, changes, issuance of orders for Listings to USWC.
 - iii. Determining privacy requirements and accurately coding the privacy indicators for Reseller's end user information. If end user information provided by Reseller to USWC does not contain a privacy indicator, no privacy restrictions will apply.
 - iv. Any additional services requested by Reseller's end users.

APPENDIX C

ACCESS TO OPERATIONAL SUPPORT SYSTEMS (OSS)

USWC is developing a proposal for access to its Operational Support Systems (OSS) to meet the requirements of the FCC's 1st and 2nd Orders and to provide Reseller with electronic interfaces for pre-ordering, ordering, demand repairs and billing functions for Plain Old Telephone Services (POTS). These interfaces will also have the necessary mediation to protect the integrity of the network as well as allay any privacy concerns for end user information. The components described in this section are conceptual in nature and will be subject to change as the implementation process proceeds. There will be charges associated with the introduction of the interface and ongoing access to OSS operations which will include an initial access fee and an ongoing charge as described more fully below.

C.1 Operational Systems Interfaces - Interface Implementation Timetable

USWC's initial operational systems interfaces have been deployed and will support Pre-ordering, Ordering, Provisioning and Repair capabilities for POTS (non-design) services and Billing capabilities for most USWC product offerings. Subsequent phases of the plan incorporate the capabilities to support designed services for Pre-ordering, Ordering, Provisioning, and Maintenance and Repair. The specific features and functions are not discussed in this Agreement.

C.2 OSS Interface Design

- C.2.1 USWC will develop OSS interfaces using an electronic gateway solution consistent with the design prescribed by the FCC, Docket 96-98, FCC 96-325, paragraph 527. These gateways will act as a mediation or control point between Reseller's and USWC's Operations Systems. Additionally, these gateways will provide security for the interface, protecting the integrity of the USWC network and its databases.
- C.2.2 USWC proposes the use of the existing Electronic Data Interchange ("EDI") standard for the transmission of monthly local billing information. EDI is an established standard under the auspices of the American National Standards Institute/Accredited Standards Committee (ANSI/ASC) X12 Committee. A proper subset of this specification has been adopted by the Telecommunications Industry Forum (TCIF) as the "811 Guidelines" specifically for the purposes of telecommunications billing.
- C.2.3 For the exchange of daily usage data, including third party billed, collect, and card calls, USWC will use the Bellcore EMR format for the records, using the Network Data Mover ("NDM"), otherwise also known as the Connect:Direct method to transmit the information to carriers.

C.3 Accessible OSS Functions

C.3.1 Pre-ordering

"Pre-Ordering" refers to the set of activities whereby a service representative dialogs with Reseller in order to obtain service availability. In today's environment, the pre-order process is performed in conjunction with placing an order. Packaged as a separate activity, pre-order consists of the following functions: verify an address, check service availability, and return end user service information. USWC will provide on-line capabilities to perform these functions. These functions are described as follows.

C.3.1.1 Address Verification

This transaction will verify the end user's address.

If the address does not match USWC records, the AVR transaction will return "partial match" addresses and/or help as appropriate to assist Reseller to properly identify the end user's address for verification.

Once the address is verified, the AVR transaction will return the valid address and the current status (working, non-working, or pending out) and the date the status was posted for each line at the address.

If USWC does not have a record of the address, Reseller will have to contact USWC to input the record before the order can be submitted.

Note:

C.3.1.1.1 No detailed facility information (i.e., cable pair) will be returned as part of this transaction.

C.3.1.1.2 Rural addresses will not be supported.

C.3.1.1.3 The AVQ/AVR transaction attributes currently don't reflect the attributes required to support the error scenarios.

C.3.1.2 Service Availability

This transaction will return the list of products and services available for resale in the central office serving a particular end user address. The USWC rates for the products and services will also be returned, but the Reseller discount will not be applied.

C.3.1.3 End User Service Information Request

Gives Reseller the ability to request a listing of services and features USWC is currently providing to an end user and the rates USWC is charging for such services.

C.3.1.4 View/Update Service Query/Service Request Response

Gives Reseller the ability to view or update an existing Service Request (SR).

C.3.1.5 Store Service Request

This transaction allows an Reseller user to store a new or existing SR.

This SR can be stored for the number of days specified in USWC's methods and procedures before the SR must be submitted to USWC as a Work Order.

USWC will store the SR on-line until the associated Work Order is canceled by Reseller or completed by USWC.

C.3.2 Ordering

With the pre-ordering steps completed, the requisite information will have been obtained from Reseller and the initiation of a service order can begin. Submitting a service order will result in the provisioning and installation, if necessary, of an end user's service. The functional set required to order service is: open a service order, check facility availability, reserve an appointment if technician work is required in the field or at the end user's premises, reserve a telephone number if appropriate, cancel a service order, change a service order, send a firm order confirmation, support for work order status queries, and send notification of order completion.

C.3.2.1 Facility Availability

For each new line requested, this transaction will indicate if existing facilities are available or if new facilities are required, and if a technician must be dispatched to provide the facilities requested at the end user's address.

This transaction must be executed for any new line(s) requested.

Note:

C.3.2.1.1 This transaction does not reserve facilities and does not guarantee that facilities will be available when the work order is submitted.

C.3.2.1.2 USWC will automatically execute this transaction as part of order processing, any time a new line or transfer line is requested.

C.3.2.2 Telephone Number Availability

Enables a telephone number (TN) to be assigned to a line. Reseller will be able to accept the TN or exchange the TN for two other TNs. If the end user requests a specific number or a vanity number, Reseller must call the USWC Number Assignment Center (NAC) and the request will be handled manually. Reseller will not have direct access to the telephone number assignment system.

C.3.2.3 Exchange Telephone Numbers/Response

Enables Reseller to exchange the TN returned by the Telephone Number Availability Transaction for two more TNs. Reseller must select one of the three TNs to proceed with the Work Order.

C.3.2.4 Return Telephone Numbers

Enables Reseller to reject the TNs returned by the Telephone Number Availability transaction and the TNs will be returned to the pool.

C.3.2.5 Telephone Number Accept

Allows Reseller to reserve one telephone number returned by the Telephone Number Availability transaction for a period of one (1) day so that the end user can be informed of the TN(s) prior to the actual submission of a Work Order. The Work Order must be submitted before the TN expires, otherwise the TN will be returned to the available pool of TNs.

C.3.2.6 Appointment Availability

Allows Reseller to select an appointment from a calendar of available appointments. Reseller will not have direct access to the system but USWC will automatically execute this transaction after the Work Order has been submitted and a technician must be dispatched.

C.3.2.7 Appointment Reservation

Enables Reseller to reserve an available appointment after the appointment availability calendar has been returned to Reseller by USWC. USWC will return a confirmation number.

C.3.2.8 Work Order/Firm Order Completion

The work order provides the information and actions required for USWC to provision products, services and features. This transaction will also be used to cancel and change existing work orders. The information contained in a work order identifies Reseller, the end user desired due date, the service

being requested, the order type (only change and migration to Reseller), POA (Proof of Authorization), class of service, telephone number and additional information needed to successfully provision the requested service to the end user.

Once a work order is accepted by USWC, the assigned service order number will be returned to Reseller. This may not happen in real time. Reseller can then use the service order number to status the work order. Firm Order Confirmation means that USWC has received the order and assigned an order number for tracking. It does not mean that edits have been applied, so errors may still exist on the order.

C.3.2.9 Status Query/Response

This transaction will allow Reseller to obtain the status of a work order. USWC will return the current status, remarks and due date for specified work order.

Note: This status request is issued by Reseller on demand. Real Time Order Completion and Jeopardy Notification is not proactively issued by USWC.

C.3.2.10 Order Completion Report

Provides Reseller with a daily (Monday - Saturday) report, electronically, that identifies all work orders that were completed by USWC on that date. This report is called the Co-Provider Completion Report.

C.3.3 Repair

Repair functions allow Reseller to report trouble with communications circuits and services provided by USWC. The functions, processes and systems used in repair are based on a Trouble Report (TR), which is an electronic document maintained in one or more Operations Systems. A TR contains information about the end user, the trouble, the status of the work on the trouble and the results of the investigation and resolution efforts. These business processes have been summarized and will be made available to Reseller in the following functional set: open a trouble report, cancel a trouble report, send notification of status change and close a trouble report.

C.3.3.1 Verify Request

This transaction will be used to verify vertical features the end user currently owns. Technical discussions (e.g., Security) are currently ongoing within USWC as to how to provide this capability.

C.3.3.2 Open Trouble Report

Gives Reseller the capability to open a TR with USWC.

C.3.3.3 Open Trouble Report Response

Gives Reseller the capability to the Open TR request and contains information about the TR that Reseller needs to track or to convey to Reseller's end user.

C.3.3.4 Completion Notification

Provides notification to Reseller that a TR has been closed because the trouble was resolved.

C.3.3.5 Cancel Trouble Report Instruction

Allows Reseller to cancel a previous opened TR.

C.3.3.6 Status Change Notification

Provides Notification to Reseller that the status of a previously opened TR has changed.

C.4 Billing Interfaces

USWC offers interfaces for the exchange of several types of billing data:

- Monthly Billing Information,
- Daily Usage Data,
- Local Account Maintenance Report,
- Centralized Message Distribution System (CMDS) messages,
- Routing of in-region intraLATA collect, calling card, and third number billed messages.

C.4.1 Monthly Billing Information

Includes all connectivity charges, credits, and adjustments related to network elements and USWC-provided local service.

C.4.2 Daily Usage Data

The accumulated set of call information for a given day as captured, or "recorded," by the network switches. USWC will provide this data to Reseller with the same level of precision and accuracy it provides itself. Such precision cannot and will not exceed the current capabilities of the software in the switches today.

C.4.3 Local Account Maintenance Report

The list of phone numbers to which the carrier is no longer providing service since the last report.

C.4.4 Centralized Message Distribution System ("CMDS")

Distribution of CMDS messages for Reseller end users.

C.4.5 Routing of In-region IntraLATA Collect, Calling Card, and Third Number Billed Messages

USWC will distribute in-region intraLATA collect, calling card, and third number billed messages to Reseller and exchange with other Co-Providers operating in region in a manner consistent with existing inter-company processing agreements. Whenever the daily usage information is transmitted to a carrier, it will contain the records for these types of calls as well.

C.5 Compensation

- #### C.5.1 Compensation for OSS access will consist of an initial access fee which will be determined based on the specific access engineered and implemented for Reseller and is a function of the numbers of Reseller business office and repair service representatives accessing the system. The fee will include costs for hardware (if purchased through USWC), software (which must be purchased through USWC), telecommunications links and labor incurred to establish the interfaces to USWC's OSS for Reseller. The costs will be substantiated by purchasing invoices for the communications and computing hardware and software, and by time reports for the labor expended in their design and

implementation. Labor will be billed at the prevailing rates for contract labor for similar services.

C.5.2 The ongoing charge will be billed at a rate to be specified by the Commission at the completion of an appropriate cost study hearing.

VERIFICATION

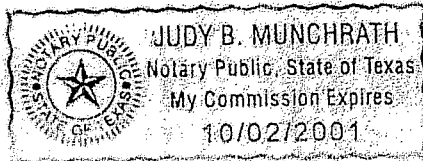
I, Chris A. Caffey, being duly sworn according to law, depose and say that I am a Senior Vice President and the Chief Financial Officer of Comm South Companies, Inc.; that I am authorized to and do make this verification for it; and that the facts set forth in the above Application are true and correct to the best of my knowledge, information and belief and that I expect Comm South Companies, Inc., to be able to prove the same at any hearing hereof.

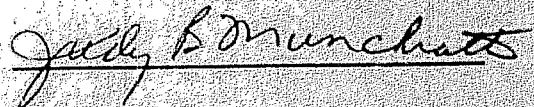

Chris A. Caffey

STATE OF TEXAS)
CITY AND COUNTY OF DALLAS) SS.

SUBSCRIBED AND SWORN to me this 23 day of Dec, 1999.

Witness my hand and official seal.




Notary Public

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of February 10, 2000 through February 16, 2000

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

CONSUMER COMPLAINTS

CT00-036 In the Matter of the Complaint filed by Fred Prah on behalf of Windows, Inc., DeSmet, South Dakota, against Inacom Communications, Inc. and U S WEST Communications, Inc. Regarding Unauthorized Switching of Services.

On February 10, 2000, the Commission received a complaint regarding unauthorized switching of service against Inacom Corp. and U S WEST. Windows, Inc. discovered that their phone service had been switched from 6 phone lines with hunting capabilities to the U S WEST Centrex 21 system on December 2, 1999. The complainant alleges Inacom obtained their signature to "verify that US West was the phone carrier for Windows, Inc." not to authorize a change in their telephone service. The complainant is requesting "to see this practice ended by taking away the licenses of the companies misrepresenting themselves in this manner and to prosecute persons representing these companies."

Staff Analyst: Heather Forney

Staff Attorney: Karen Cremer

Date Docketed: 02/10/00

Intervention Date: NA

CT00-037 In the Matter of the Complaint filed by Cheryl Plucker, Chancellor, South Dakota, against MCI WorldCom Regarding Unauthorized Switching of Services.

On February 11, 2000, the Commission received a complaint from Cheryl Plucker, Chancellor, South Dakota, against MCI regarding unauthorized switching of services. The complainant alleges that her long distance provider was switched to MCI without her authorization.

Staff Analyst: Keith Senger

Staff Attorney: Karen Cremer

Date Docketed: 02/14/2000

Intervention Date: N/A

EL00-003 In the Matter of the Filing by Montana-Dakota Utilities Co. for Approval of Waiver of Fuel Clause Rate 58 to Include Arbitration Costs.

Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., petitions the South Dakota Public Utilities Commission for a waiver of Fuel Clause Rate 58. The waiver is

requested to allow the pass-through, in the fuel cost adjustment, of arbitration costs that have resulted in savings to retail customers.

Staff Analyst: Michele Farris
Staff Attorney: Camron Hoseck
Date Docketed: 02/10/00
Intervention Date: 03/03/00

EL00-004 In the Matter of the Filing by Northern States Power Company for Confirmation of Angus C. Anson Combustion Turbine Facility.

Northern States Power Company seeks confirmation from the South Dakota Public Utilities Commission that proposed improvements to the Angus C. Anson Combustion Turbine facility continues to meet the conditions upon which the permit, as ordered in Docket Number EL91-001 signed on May 18, 1993, was issued.

Staff Analyst: Michele Farris
Staff Attorney: Camron Hoseck
Date Docketed: 02/15/00
Intervention Date: 03/03/00

GE00-001 In the Matter of the Filing by NorthWestern Public Service Company for Approval of Revised Bill Format.

Application by NorthWestern Public Service to revise customer bill text and associated sample form tariffs, to add notice on bills of the change and request for waiver of 30 day notice of change to the public.

Staff Analyst: Dave Jacobson
Staff Attorney: Karen Cremer
Date Docketed: 02/10/00
Intervention Deadline: NA

NG00-001 In the Matter of the Application of South Dakota Intrastate Pipeline Company to Recover Additional Costs.

On February 15, 2000, the Public Utilities Commission received a petition from South Dakota Intrastate Pipeline Company (SDIPC) seeking an amendment to its rate schedule to provide for an increase in its transportation charged to its only customer, Montana-Dakota Utilities Company. SDIPC proposes to make the change in its rate effective as of April 1, 2000.

Staff Analyst: Heather Forney
Staff Attorney: Karen Cremer
Date Docketed: 02/15/00
Intervention Date: 03/03/00

TC00-012 In the Matter of the Filing by U S WEST Communications, Inc. for Approval of Revisions to its Exchange and Network Services Tariff.

On February 10, 2000, U S WEST Communications, Inc. (U S WEST) filed an application for approval of revisions to its exchange and network services tariff. The purpose of the filing is to clarify the meaning of a fully assisted operator call and a partially assisted operator call. Rates will not be increased by this filing.

Staff Analyst: Heather Forney
Staff Attorney: Camron Hoseck
Date Docketed: 02/10/00
Intervention Date: 03/03/00

TC00-013 In the Matter of the Application of Adelphia Business Solutions Operations, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.

Adelphia Business Solutions Operations, Inc. is seeking a Certificate of Authority to provide resold and facilities-based local exchange telecommunication services in South Dakota. Adelphia does not intend to provide service in the territories of rural telecommunication companies.

Staff Analyst: Keith Senger
Staff Attorney: Camron Hoseck
Date Docketed: 02/10/00
Intervention Date: 03/3/00

TC00-014 In the Matter of the Application of Comm South Companies, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.

Comm South Companies, Inc. seeks to provide resold basic local exchange telecommunication services in areas of South Dakota currently served by U S WEST Communications and any other relevant incumbent facilities-based LEC or other authorized local exchange carrier, excluding service areas of rural telephone companies. A majority of the applicant's customers are residential consumers who are unable to obtain local telecommunication services from other local exchange carriers due to credit problems or prior disconnection. Services will include local calling, access to 911 emergency and 800 number services to residential customers on a prepaid basis. Applicant does not permit its customers of its local service to access usage-based services, such as direct-dial long distance calls, collect calls, operator-assisted calls and third-number billed calls.

Staff Analyst: Keith Senger
Staff Attorney: Camron Hoseck
Date Docketed: 02/10/00
Intervention Date: 03/03/00

TC00-015 In the Matter of the Application of Shared Communications Services, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Shared Communications Services, Inc. (Shared) seeks a Certificate of Authority to provide resold interexchange telecommunications services. Shared intends to offer interLATA and intraLATA switched message toll service, 800, calling card, directory assistance and operator services throughout South Dakota.

Staff Analyst: Heather Forney
Staff Attorney: Camron Hoseck
Date Docketed: 02/14/00
Intervention Date: 03/03/00

TC00-016 In the Matter of the Application of TeleDistance, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Qwest Communications Corporation, LCI International Telecom Corp., Phoenix Network, Inc. and TeleDistance, Inc., all wholly-owned, indirect subsidiaries of Qwest Communications International Inc. (the "Parties") filed a request for a Certificate of Authority for TeleDistance, Inc. to provide resold and facilities-based interexchange telecommunications services throughout South Dakota. TeleDistance, Inc. intends to offer retail and wholesale switched interLATA (and in certain instances intraLATA) long distance services (including direct distance 1+ service and toll free service), retail and wholesale private line services, frame relay/ATM transmission services, prepaid calling card services and operator services. The Parties also request that the Commission grant a waiver of Administrative Rules of South Dakota Chapter 20.10.34.02.01, governing unauthorized changes in carriers.

Staff Analyst: Michele Farris
Staff Attorney: Camron Hoseck
Date Docketed: 02/14/00
Intervention Date: 03/03/00

TC00-017 In the Matter of the Application of Pathnet, Inc. for a Certificate of Authority to Provide Local Exchange Services in South Dakota.

Pathnet, Inc. is seeking a Certificate of Authority to provide resold and facilities-based local exchange telecommunication services in South Dakota. Pathnet intends to provide point to point private line and data services. They do not plan to provide basic local dial tone services to end-users.

Staff Analyst: Keith Senger
Staff Attorney: Camron Hoseck
Date Docketed: 02/15/00
Intervention Date: 03/3/00

TC00-018 In the Matter of the Application of Pathnet, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Pathnet, Inc. is seeking a Certificate of Authority to provide resold and facilities-based interexchange telecommunication services in South Dakota. Pathnet intends to provide point to point private line and data services.

Staff Analyst: Keith Senger
Staff Attorney: Camron Hoseck
Date Docketed: 02/16/00
Intervention Date: 03/03/00

You may receive this listing and other PUC publications via our website or via internet e-mail.
You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc/>

TC00-014

LAW OFFICES
OLINGER, LOVALD, ROBBENNOLT, McCAHREN & REIMERS, P.C.
117 EAST CAPITOL
P.O. BOX 66

PIERRE, SOUTH DAKOTA 57501-0066

RONALD D. OLINGER
JOHN S. LOVALD
JAMES ROBBENNOLT
LEE C. "KIT" McCAHREN
WADE A. REIMERS

TELEPHONE 224-8855
AREA CODE 605
FAX 225-228300

March 30, 2000

South Dakota Public Utilities Commission
500 E Capitol
Pierre South Dakota 57501

Re: Comm South Companies, Inc.

Dear Commission:

Enclosed please find an original and one copy for filing Comm South Companies, Inc. Response to Interrogatories.

Sincerely,


JAMES ROBBENNOLT
Attorney at Law

JR/lrd

enclosures

cc: Jaqualin Friend Peterson

**COMM SOUTH COMPANIES, INC.
RESPONSE TO INTERROGATORIES
SD PUC DOCKET TC00-014**

1. Please provide an e-mail address for the applicant in accordance with ARSD 20:10:32:03(1).

RESPONSE: Applicant's e-mail address is: bglover@commsouth.net

2. Pursuant to ARSD 20:10:32:03(7)(b) please provide the time-frame by which the applicant intends to provide services.

RESPONSE: Applicant intends to provide services in South Dakota as soon as it is certified by the Commission and Applicant has the necessary tariff and resale agreements in place to begin operating.

3. Item 8 of the application incorporated maps on file with the Commission by reference. ARSD 20:10:32:03(8) asks the applicant to provide the service area maps with the application. Please provide the maps or provide a written request for waive of this rule.

RESPONSE: Applicant hereby supplements its application and requests that the South Dakota Public Utilities Commission (SD PUC) waive ARSD 20:10:32:03(8) requiring the filing of service area maps. As indicated in its application, Applicant does not own or control any property in South Dakota. Applicant intends to provide resold local service in those areas currently served by U S West Communications. As service will be provided on a statewide basis and will mirror the service areas of U S West, the filing of maps would be redundant. Accordingly, Applicant respectfully requests that it be allowed to incorporate by reference U S West's maps.

4. In order to protect South Dakota consumers, the South Dakota Public Utilities Commission (SD PUC) has required applicants with unknown or marginal financial capabilities to submit a bond naming the South Dakota Public Utilities Commission and the consumers of South Dakota as beneficiaries. Based on the financial information received, the applicant has not demonstrated adequate financial capability, therefore, I am requesting the applicant submit a \$25,000 surety bond. The bond requirement will be placed in the Commission order granting authority. The applicant is free to apply to the Commission for removal of the bond requirement once financial capability improves or is made known.

RESPONSE: Applicant agrees to obtain a \$25,000 surety bond naming the SD PUC and the consumers of South Dakota as beneficiaries.

5. Please provide the names and e-mail addresses for customer complaint and regulatory matter inquiries as required by ARSD 20:10:32:03(18).

RESPONSE: The name and e-mail address of the contact person for customer complaints and regulatory matters is:

Bobby Glover
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas, 75231
e-mail: bglover@commsouth.net

6. In the application you requested a waiver of portions of ARSD 20:10:32:10. To prevent any misunderstandings, please list the specific numbered items you are requesting this waiver for.

RESPONSE: Applicant is requesting a waiver of the following provisions:

- (1) Section 20:10:32:10(3), requiring access to local directory assistance;
- (2) Section 20:10:32:10(4), requiring access to operator services; and
- (3) Section 20:10:32:10(7), requiring access to interexchange services.

7. Page 4 of the application states that the "Applicant does not permit its customers of its local service to access usage-based services, such as direct-dial long distance calls." It goes on to say "Applicant's local service customers may obtain interexchange services by contracting with the toll carrier of their choice to obtain services, provided that the carrier will bill the customer directly." Please provide specific details on how the applicant will block access to interexchange services for some customers and not for others.

RESPONSE: As an initial matter, we clarify that the Applicant does not block access to interexchange services for some customers and not for others. All customer accounts are set up with a toll block that prevents the customer from presubscribing to an interexchange carrier or completing direct-dial long distance calls. However, the toll block does not prevent a customer from directly contracting with an interexchange carrier to obtain access to long distance services via an access code or from purchasing a prepaid long distance calling card. In such instances, the customer is able to obtain access to long distance services because of the customer's contractual relationship with the interexchange carrier.

8. How will the Applicant's customers obtain access to phone numbers not listed in the telephone book directory if the applicant is not providing access to local directory assistance?

RESPONSE: Applicant's customers will not have access to phone numbers not listed in the telephone book directory.

9. Please increase the customer dispute period to 180 days in sections 2.5.1, 2.5.5 and 2.7.4.4 and any other applicable sections in the proposed tariff.

RESPONSE: See Exhibit 1, Tariff Sheets 16, 18, and 23. A full copy of the revised tariff is being filed herewith as the substantive changes requested herein have significantly altered the original format of the tariff.

10. Section 2.6.1.4 and 2.6.1.5 of the proposed tariff are repetitive. Please delete section 2.6.1.5. Additionally, these sections discuss "increased deposits". Section 2.5.4 of the proposed tariff states that the "carrier does not require deposits from Customers." Please correct this discrepancy.

RESPONSE: See Exhibit 1, Tariff Sheets 19-20, eliminating Section 2.6.1.4 and Section 2.6.1.5.

11. Please add the Commission's toll free and hearing-impaired toll free phone numbers to section 2.5.5 of the proposed tariff. They are:

1-800-332-1782

TTY Through Relay South Dakota 1-800-877-1113

RESPONSE: See Exhibit 1, Tariff Sheet 18.

12. Comm South's proposed tariff attempts to limit the liability of the company. Under South Dakota law found at 49-13-1 and 49-13-1.1, a person has the right to claim damages from a telecommunications company by coming before the Commission or a court of competent jurisdiction. Please remove sections 2.2.1, the second sentence in section 2.2.2, the phrase "unavailability or right-of-ways" in section 2.2.3, section 2.2.6, the phrase "or others" in section 2.2.8.3, and sections 2.2.13.1, 2.2.13.2 and 2.2.14 from the proposed tariff. If you have any questions or concerns regarding this issue, please contact Camron Hoseck, staff attorney.

RESPONSE: Without waiving its right to revisit this issue should the policy of the SD PUC change, Applicant agrees to remove these tariff provisions. See Exhibit 1, Tariff Sheets 11-12.

13. Please remove the first sentence from section 2.3.1.6. If you have any questions or concerns regarding this issue, please contact Camron Hoseck, staff attorney.

RESPONSE: See Exhibit 1, Tariff Sheet 14.

14. ARSD 20:10:32:03(12) requests information about the interconnection agreement. Please provide this information. Additionally, the applicant has provided a copy of an executed resale agreement between U S WEST and Comm South. The commission has not approved this agreement. In fact, Comm South withdrew its application for approval of an interconnection agreement on October 26, 1998 (see attached order).

RESPONSE: On March 14, 2000, Applicant contacted U S West to obtain a new resale agreement that will permit Applicant to resale U S West's local exchange services in South Dakota. A copy of the e-mail correspondence between Applicant and U S West is attached hereto as Exhibit 2. Applicant will provide the Commission with a copy of the executed resale agreement when it is available.

J:\DATA\CLIENT\60\6044\INTERROG.SD

Exhibit 1

Revised Tariff

TELECOMMUNICATIONS SERVICES

Rates, Rules, and Regulations
Governing Telecommunications Services

Offered by

COMM SOUTH COMPANIES, INC.

Applicable

Throughout the State of South Dakota

This Tariff sets forth the services offerings, rates, terms and conditions applicable to the furnishing of intrastate telecommunications services by Comm South Companies, Inc. (hereinafter, "Carrier" or the "Company") with principal offices at 6830 Walling Lane, Dallas, Texas 75231.

This Tariff applies to services furnished in the State of South Dakota. This Tariff is on file with the South Dakota Public Utilities Commission (the "Commission"), and copies can be inspected, during normal business hours, at the Company's principal place of business.

Issued:

By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

Effective

TELECOMMUNICATIONS SERVICESCHECK SHEET

Sheets of this Tariff are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets, as named below, comprise all changes from the original Tariff that are currently in effect as of the date on the bottom of this sheet.

<u>SHEET</u>	<u>NUMBER OF REVISION</u> <u>(except as indicated)</u>	<u>EFFECTIVE</u> <u>DATE</u>
1	Original	
2	Original	
3	Original	
4	Original	
5	Original	
6	Original	
7	Original	
8	Original	
9	Original	
10	Original	
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32	Original	

Issued:

By:

Effective:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES

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By:

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICESEXPLANATION OF SYMBOLS AND ABBREVIATIONS

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.

The following is an abbreviation used in this Tariff:

LATA - Local Access and Transport Area

Issued:

By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

Effective:

TELECOMMUNICATIONS SERVICES

TARIFF FORMAT

- A. Sheet Numbering - Sheet numbers appear in the upper-right corner of the sheet. Sheets are numbered sequentially. However, new sheets are occasionally added to the Tariff. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between Sheets 14 and 15 would be 14.1.
- B. Sheet Revision Numbers - Revision numbers also appear in the upper-right corner of the sheet. These numbers are used to determine the most current sheet version on file with the Commission. For example, the 4th revised Sheet 14 cancels the third revised Sheet 14. Because of various suspension periods, deferrals, etc., the Commission follows in their Tariff approval process, the most current sheet number on file with the Commission is not always the Tariff page in effect. Consult the Check Sheet for the sheet currently in effect.
- C. Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level of coding.
- 2.
 - 2.1
 - 2.1.1
 - 2.1.1.1
 - 2.1.1.1.A
 - 2.1.1.1.A.1
 - 2.1.1.1.A.1.(a)
 - 2.1.1.1.A.1.(a).I
 - 2.1.1.1.A.1.(a).I.(i)
 - 2.1.1.1.A.1.(a).I.(i)(1)
- D. Check Sheets - When a Tariff filing is made with the Commission, an updated check sheet accompanies the Tariff filing. The check sheet lists the sheets contained in the Tariff, with a cross reference to the current revision number. When new sheets 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 sheet if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some sheets). The Tariff user should refer to the latest check sheet to find out if a particular sheet is the most current sheet on file with the Commission.

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By:

Effective:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICESAPPLICATION OF TARIFF

This Tariff contains the descriptions, regulations, and rates applicable to the furnishing of service and facilities for local telecommunications services provided by Comm South Companies, Inc. (hereinafter "Carrier") with principal offices at 6830 Walling Lane, Dallas, Texas 75231. This Tariff applies to services furnished within the State of South Dakota. This Tariff is on file with the South Dakota Public Utilities Commission ("SD P.U.C.") and copies may be inspected, during normal business hours, at Carrier's principal place of business.

Issued:

By:

E. Baerwald

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES

SECTION 1 - DEFINITIONS

Account Number - Customer's telephone number is his/her account number

Application for Service - A standard order form which includes all pertinent billing, technical, and other descriptive information which will enable the Carrier to provide telecommunication service as required.

Authorized User - A person that either is authorized by Customer to use local exchange telephone service at Customer's residence or other location, or is placed in a position by Customer, either through acts or omissions, to use local exchange telephone service.

Carrier - Comm South Companies, Inc., unless the context indicates otherwise.

Commission - South Dakota Public Utilities Commission ("S.D. P.U.C."), unless the context indicates otherwise.

Customer - The person, firm, corporation, or other entity which orders or uses service and is responsible for the payment of rates and charges and compliance with Tariff regulations.

Disconnection - The disconnection of a circuit, dedicated access line, or port connection being used for existing service.

Exchange Carrier - Any individual, partnership, association, joint-stock company, trust, governmental entity or corporation engaged in the provision of local exchange telephone service.

Holiday - Carrier's recognized Holidays are New Year's Day (January 1), Independence Day (July 4), Labor Day, Memorial Day, Thanksgiving Day, Christmas Day (December 25), Martin Luther King Day, and President's Day.

Incumbent Local Exchange Carrier (ILEC) - Local exchange carriers that are providing telephone exchange service in an area on the date of the enactment of the Telecommunications Act of 1996 and that are deemed to be members of the exchange carrier association.

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. 82-6192 for the provision and administration of communications services.

Local Calling - A completed call or telephone communication between a calling Station and any other Station within the local service area of the calling Station.

Local Exchange Carrier - A company which furnishes exchange telephone service.

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By:

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6530 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES

SECTION I - DEFINITIONS (Cont'd)

Non-Recurring Charges - The one-time initial charges for services or facilities, including but not limited to charges for processing and installation, for which Customer becomes liable at the time the Service Order is executed.

Premises - The space designated by a customer as its place or places of business for termination of service (whether for its own communications needs or for its resale customers). In the case of a non-profit sharing group, this term includes space at each sharer's place or places of business, as well as space at Customer's place of business.

Rates - Includes every compensation, tariff, charge, fare, fee, deposit, toll, rental and classification, or any of them demanded, observed, charged or collected, whether directly or indirectly by any public utility for any service, product, or commodity defined in the Public Utilities Act of 1974, and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, fee, toll, rental or classification.

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

Service Commencement Date - The first day following the date on which Carrier notifies Customer that the requested service or facility is available for use, unless extended by Customer's refusal to accept service which 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 Customer's acceptance of service. The parties may mutually agree on a substitute Service Commencement Date.

Services - The services covered by this Tariff shall include only the State of South Dakota.

Station - Telephone equipment from or to which calls are placed.

Telecommunications Utility - Any person, firm, partnership or corporation engaged in the business of furnishing telecommunications services to the public by the authority of and under the jurisdiction of the SD P.U.C. This includes both local exchange and intrastate long distance carriers.

Terminal Equipment - Telecommunications devices, apparatus, and their associated wiring, such as teleprinters, telephone, and data sets.

Trunk - A communications path connecting two switching systems in a network, used in the establishment of an end-to-end connection.

User - A Customer or any other person authorized by Customer to use Services provided under this Tariff.

Issued:

By:

Effective:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICESSECTION 2 - REGULATIONS2.1 UNDERTAKING OF CARRIER2.1.1 Scope

Carrier is a resale common carrier providing prepaid local exchange and interexchange services to Customers for their direct transmission and reception of voice, data, and other types of telecommunications. Service is available on a full-time basis, 24 hours a day, seven days a week, throughout the State of South Dakota.

2.1.2 Terms and Conditions

- 2.1.2.1 Service may not be used for any unlawful purpose or for any purpose as to which Customer has not obtained all required governmental approvals, authorizations, licenses, consents and permits. Service may not be used for any purpose for which any payment or other compensation is received by Customer except when Customer is a duly authorized regulated common carrier. This provision does not prohibit an arrangement between Customer, Authorized User, or joint user to share the cost of the service as long as the arrangement generates no profit for any participant in the arrangement.
- 2.1.2.2 Except as otherwise provided herein, the minimum period of service is one month. Unless otherwise specified herein, for the purpose of computing charges in this Tariff, a month is considered to have thirty (30) days. All calculations of dates set forth in this Tariff shall be based on calendar days. Should the applicable date fall on a Sunday or Federal holiday, Customer will be permitted to make payment on the next regular business day.
- 2.1.2.3 Any termination shall not relieve Customer of its obligation to pay any charges incurred under the Agreement and this Tariff prior to termination.
- 2.1.2.4 This Tariff shall be interpreted and governed by the laws of the State of South Dakota.
- 2.1.2.5 Another telephone company must not interfere with the right of any person or entity to obtain service directly from Carrier.
- 2.1.2.6 Customer has no property right to the telephone number or any other call number designation associated with services furnished by Carrier. Carrier reserves the right to change such numbers, or the central office designation associated with such numbers, or both, assigned to Customer, whenever Carrier deems it necessary to do so in the conduct of its business.
- 2.1.2.7 Carrier may require a Customer to immediately shut down its transmission of signals if said transmission is causing interference to others.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES

2.1 UNDERTAKING OF CARRIER (Cont'd)2.1.3 Limitations of Service

- 2.1.3.1 Except as otherwise provided herein, service is prepaid and provided on the basis of a minimum period of at least one month, and shall continue to be provided until Customer fails to prepay for the subsequent month pursuant to Carrier's monthly service Reminder Notice. Customers interested in Carrier's services shall file a service application with Carrier which fully identifies the Customer and identifies the services required.
- 2.1.3.1 Carrier reserves the right to limit or allocate the use of existing facilities, or of additional facilities offered by Carrier when necessary because of lack of facilities or due to some other cause beyond Carrier's control. Service is offered subject to the availability on a continuing basis of all necessary facilities and/or equipment and subject to the provisions of this Tariff. Carrier reserves the right not to provide service to or from a location where the necessary facilities or equipment are not available.
- 2.1.3.2 Carrier reserves the right to discontinue furnishing service, upon a written notice, when necessitated by conditions beyond its control, or when Customer is using the service in violation of any provision in this Tariff, the rules and regulations of the South Dakota Public Utilities Commission, or in violation of the law.
- 2.1.3.3 Customer has no property right to the telephone number or any other call number designation associated with services furnished by Carrier. Carrier reserves the right to change such numbers, or the central office designation associated with such numbers, or both, assigned to Customer, whenever Carrier deems it necessary to do so in the conduct of its business.

2.1.4 Notification of Service-Affecting Activities

Carrier will provide 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 routing preventive 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. Carrier will work cooperatively with Customer to determine the reasonable notifications requirements. With some emergency or unplanned service-affecting conditions, such as outage resulting from cable damage, notification to Customer may not be possible.

- 2.1.4.1 Carrier 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 Customer with, the regulations contained in this Tariff. Carrier does not guarantee availability by any such date and shall not be liable for any delays in commencing service to any Customer.

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By:

Effective:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES2.1 UNDERTAKING OF CARRIER (Cont'd)2.1.4 Notification of Service-Affecting Activities (Cont'd)

2.1.4.2 Carrier shall use reasonable efforts to maintain facilities that it furnishes to Customer. Customer may not, nor may Customer permit others except the Incumbent Local Exchange Carrier to, rearrange, disconnect, remove, attempt to repair or otherwise interfere with any of the facilities installed by Carrier, except upon written consent of Carrier.

2.1.5 Provision of Equipment and Facilities

2.1.5.1 Carrier 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 Carrier shall be limited to the furnishing of facilities offered under this Tariff and to the maintenance and operation of such facilities. Beyond this responsibility, Carrier shall not be responsible for:

- A. the transmission of signals by Customer provided equipment or for the quality of, or defects in, such transmission;
- B. the reception of signals by Customer provided equipment; or
- C. network control signaling where such signaling is performed by Customer-provided network control signaling equipment.

2.1.6 Non-routing Installation

At Customer's request, installation and/or maintenance may be performed outside Carrier's regular business hours or in hazardous locations. In such cases, charges based on the cost of the actual labor, material, or other costs incurred by or charged to Carrier will apply. If installation is started during regular business hours into time periods including, but not limited to, weekends, holidays, and/or night hours, additional charges may apply.

2.1.7 Ownership of Facilities

Title to all facilities provided in accordance with this Tariff remains in Carrier, its agents or contractors, or the Incumbent Local Exchange Carrier.

Issued:

By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

Effective:

TELECOMMUNICATIONS SERVICES

2.2 LIABILITY OF CARRIER

- 2.2.1 Carrier's liability for willful misconduct, if established as a result of judicial or administrative proceedings, is not limited by this Tariff.
- 2.2.2 Carrier 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; and 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 Carrier, or of any department, agency, commission, bureau, corporation or other instrumentality of any one or more these federal, state, or local governments, or of any military authority; preemption of existing service in compliance with national emergencies; insurrections, riots; wars; unavailability of materials, or strikes, lockouts, work stoppages, or other labor difficulties.
- 2.2.3 Carrier shall not be liable for: (a) any act or omission of any entity furnishing Carrier or Carrier's Customers facilities or equipment used for or with the services Carrier offers; or (b) the acts or omissions of other common carriers or warehousemen.
- 2.2.4 Carrier shall not be liable for any damages or losses due to the fault or negligence of, or any omission by, Customer or due to the failure or malfunction of Customer-provided equipment or facilities.
- 2.2.5 Carrier shall not be liable for any defacement of or damage to Customer premises resulting from the furnishing of services of equipment on such premises or the installation or removal thereof, unless such defacement or damage is caused by gross negligence or willful misconduct of Carrier's agents or employees. No agents or employees of other participating carriers shall be deemed to be agents or employees of Carrier.
- 2.2.6 Notwithstanding Customer's obligations as set forth in Section 2.3.2, Carrier shall be indemnified, defended, and held harmless by Customer or by others authorized by it to use the service against any claim, loss or damage arising from Customer's use of services furnished under this Tariff, including:
- 2.2.6.1 Claims for defamation libel, slander, invasion of privacy, infringement of copyright, unauthorized use of trademark, trade name, or service mark, unfair competition, interference with or misappropriation, or violation of any contract, proprietary or creative right, or any other injury to any proprietary or creative right, or any other injury to any person, property, or entity arising from the material, data, information, or content revealed to, transmitted, processed, handled, or used by Carrier under this Tariff.
- 2.2.6.2 patent infringement claims arising from combining or connecting the service offered by Carrier with apparatus and systems of Customer or others; and
- 2.2.6.3 all other claims arising out of any act or omission of Customer, in connection with any service provided by Carrier pursuant to this Tariff.

Issued:

By:

Effective

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES2.2 LIABILITY OF CARRIER (Cont'd)

- 2.2.7 The entire liability of Carrier for any claim, loss, damage or expense from any cause whatsoever shall in no event exceed sums actually paid to Carrier by Customer for the specific services giving rise to the claim, and no action or proceeding against Carrier shall be commenced more than one year after the service is rendered.
- 2.2.8 CARRIER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.
- 2.2.9 Carrier shall not be liable for any act or omission of any other company or companies furnishing a portion of the service, or for damages associated with service, channels, or equipment which it does not furnish, or for damages which result from the operation of Customer-provided systems, equipment, facilities or services which are interconnected with Carrier services.
- 2.2.10 No agent or employee of any other carrier shall be deemed to be an agent or employee of Carrier.
- 2.2.11 In conjunction with a non-published telephone number, Carrier will not be liable for failure or refusal to complete any call to such telephone when the call is not placed by the number. Carrier will try to prevent the disclosure of the number of such telephone, but will not be liable should such number be divulged.
- 2.2.16 When a Customer with a non-published telephone number places a call to the Emergency 911 Service, Carrier will release the name and address of the calling party, where such information can be determined to the appropriate local governmental authority responsible for the Emergency 911 Service upon request of such governmental authority. By subscribing to service under this Tariff, Customer acknowledges and agrees with the release of information as described above.

Issued:

By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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TELECOMMUNICATIONS SERVICES

2.3 OBLIGATIONS OF CUSTOMER2.3.1 General

Customer shall be responsible for:

2.3.1.1 placing orders for service.

When placing an order for service, Customer must provide:

- A. the name(s) and address(es) of the person(s) responsible for the payment of service charges; and
- B. The name(s), telephone number(s), and address(es) of Customer contact person(s).

2.3.1.2 the payment of all applicable charges pursuant to this Tariff.

2.3.1.3 reimbursing Carrier for damage to, or loss of, Carrier's facilities or equipment caused by the acts or omissions of Customer, or the noncompliance by Customer, with these regulations; or by fire or theft or other casualty on Customer's premises, unless caused by the negligence or willful misconduct of the employees or agents of Carrier. Carrier will, upon reimbursement for damages, cooperate with Customer in prosecuting a claim against the person causing such damage and Customer shall be subrogated to Carrier's right of recovery of damages to the extent of such payment.

2.3.1.4 providing at no charge, as specified from time to time by Carrier, any needed personnel, equipment, space and power to operate Carrier facilities and equipment installed on the premises of Customer, and the level of heating and air conditioning necessary to maintain the operating environment on such premises;

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By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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TELECOMMUNICATIONS SERVICES

13 OBLIGATIONS OF CUSTOMER (Cont'd)**23.1** General (Cont'd)

- 23.1.5** obtaining, maintaining, and otherwise having full responsibility for all rights-of-way and conduit necessary for installation of fiber optic cable and associated equipment used to provide local exchange service to Customer from the cable building entrance or property line to the location of the equipment space described in 2.3.1.4. Any costs associated with obtaining and maintaining the rights-of-way described herein, including the costs of altering the structure to permit installation of Carrier-provided facilities, shall be borne entirely by, or may be charged by Carrier to, Customer. Carrier may require Customer to demonstrate its compliance with this section prior to accepting an order for service;
- 23.1.6** Customer may be required to install and maintain Carrier facilities and equipment within a hazardous area if, in Carrier's opinion, injury or damage to Carrier's employees or property might result from installation or maintenance by Carrier. 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;
- 23.1.7** complying with all laws and regulations applicable to, and obtaining all consents, approvals, licenses and permits as maybe required with respect to, the location of Carrier facilities and equipment in any Customer premises or the rights-of-way for which Customer is responsible under section 2.3.1.5 above; and granting or obtaining permission for Carrier agents or employees to enter the premises of 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 Carrier;
- 23.1.8** not creating or allowing to be placed or maintained any liens or other encumbrances on Carrier's equipment or facilities; and
- 23.1.9** making Carrier facilities and equipment available periodically for maintenance purposes at a time agreeable to both Carrier and Customer. No allowance for interruptions in service will be made for the period during which service is interrupted for such purposes.

Signed:

By:

Effective:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES2.3 OBLIGATIONS OF CUSTOMER (Cont'd)2.3.2 Claims

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

2.3.2.1 any loss, destruction or damage to property of Carrier or any third party, or the death of or injury to persons, including, but not limited to, employees or invitees of either Carrier or Customer, to the extent caused by or resulting from negligent or intentional act or omission of Customer, its employees, agents, representatives or invitees; or

2.3.2.2 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 any act or omission by Customer, including, with limitation, use of Carrier's services and facilities in a manner not contemplated by the agreement between Customer and Carrier.

2.4 CUSTOMER EQUIPMENT AND CHANNELS2.4.1 Interconnection of Facilities

2.4.1.1 Services furnished by Carrier may be interconnected to the services or facilities of other authorized communications carriers and with private systems only when authorized by, and in accordance with, the terms and conditions of the tariffs of the other communications carriers which are applicable to such connections. Service furnished by Carrier is not part of a joint undertaking with such other carriers.

2.4.1.2 Any special interface equipment necessary to achieve compatibility between the facilities and equipment of Carrier used for furnishing local exchange service and the channels, facilities, or equipment of others may be provided at Customer's expense.

2.4.1.3 Facilities furnished under this Tariff may be connected to Customer provided terminal equipment in accordance with the provisions of this Tariff.

2.4.1.4 Customer is responsible for taking all necessary legal steps for interconnecting his or her customer provided terminal equipment of communications systems with Carrier's facilities. Customers shall secure all licenses, permits, rights-of-way, and other arrangements necessary for such interconnections.

Issued:

By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

Effective:

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2.4 CUSTOMER EQUIPMENT AND CHANNELS (Cont'd)**2.4.2** Inspections

2.4.2.1 Upon reasonable notification to Customer, and at a reasonable time, Carrier may make such tests and inspections as may be necessary to determine that Customer is complying with the requirements set forth herein for the installation, operation, and maintenance of any Customer-provided facilities and equipment to any Carrier-owned facilities and equipment. No credit will be allowed for any interruptions occurring during such inspections.

2.4.2.2 If the protective requirements for Customer-provided equipment are not being complied with, Carrier may take such action as it deems necessary to protect its facilities, equipment, and personnel. Carrier will notify Customer promptly if there is any need for further corrective action. Within ten (10) days of receiving this notice Customer must take this corrective action and notify Carrier of the action taken. If Customer fails to do this, Carrier may take whatever additional action is deemed necessary, including the suspension of service, to protect its facilities, equipment and personnel from harm. Carrier will, upon request 24 hours in advance, provide Customer with a statement of technical parameters that Customer's equipment must meet.

2.4.3 Availability of Service for Maintenance, Testing, and Adjustment

Upon reasonable notice, the facilities provided by Carrier shall be made available to Carrier for such tests and adjustments as may be necessary to maintain them in satisfactory condition.

2.5 PAYMENT ARRANGEMENTS**2.5.1** Payment for Service

Customer is responsible for payment of all charges for service and facilities furnished by Carrier to Customer or authorized users. Objections must be received by Carrier within one-hundred eighty (180) days after the due date, or the charges shall be deemed correct. If an entity other than Carrier imposes charges on Carrier, in addition to its own internal costs, in connection with a service for which a Carrier Non-Recurring Charge is specified, those charges may be passed on to Customer.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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2.5 PAYMENT ARRANGEMENTS (Cont'd)**2.5.1 Payment for Service (Cont'd)**

2.5.1.1 Taxes: Customer is responsible for the payment of any sales, use, gross receipts, excise, access or other local, state and federal taxes, charges or surcharges (however designated) excluding taxes on Carrier's net income assessed in conjunction with service used. Any taxes imposed by a local jurisdiction (e.g. County and municipal taxes) will only be recovered from those Customers residing in the affected jurisdictions. It shall be the responsibility of Customer to pay any such taxes that subsequently become applicable retroactively.

2.5.2 Billing and Collection of Charges

2.5.2.1 Monthly service provided by Carrier shall be prepaid by Customer for each one-month period. Carrier shall present a bill or Reminder Notice for monthly charges to the Customer in advance of the month for which service is being provided.

2.5.2.2 Bills are to be prepaid each month. The first payment is due in advance when the Customer signs up for service - the activation date. All other payments are due monthly on the anniversary of the Customer's activation date for the ensuing month's service. An account not fully paid in full by the due date will be considered delinquent.

2.5.2.3 Customer is responsible for payment of all charges for service furnished to Customer, including, but not limited to all calls originated and/or received at Customer's number(s). Notwithstanding Section 4.1.1 of this Tariff, which provides for the blocking of certain toll calls, including direct dial long distance, collect calls, operator-assisted calls, and third number billed calls, in the event that the blocking of these calls is circumvented by Customer, or in the event of a temporary failure of the blocking mechanism, Customer is responsible for payment of any toll charges billed to Customer's number(s). The initial billing may include the account set-up charge where applicable.

2.5.2.4 For existing customers whose service is disconnected, 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 thirty (30) days.

2.5.2.5 Customers may pay for service by credit card, an authorized payment agent, or money order.

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By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

Effective:

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2.5 PAYMENT ARRANGEMENTS (Cont'd)**2.5.2 Billing and Collection of Charges (Cont'd)**

2.5.2.6 Carrier will bill Customer a one-time charge of \$20.00 if Customer's check for payment of service is returned for insufficient or uncollected funds, closed accounts, or any other insufficiency or discrepancy necessitating return of the check at the discretion of the drawee bank or other financial institution.

2.5.2.7 A charge of \$20.00 or the applicable statutory charge for reconnection of service (if any), whichever is greater, will apply whenever a Subscriber requests to be reconnected to the Services after Carrier has terminated Services to Subscriber for any reason allowed by this Tariff.

2.5.2.8 Customer is liable for all costs associated with collecting past due charges, including all attorneys' fees.

2.5.3 Application of Charges

The charges for service are those in effect for the period that service is furnished. If the charge for a service covered by a bill changes after the bill has been rendered, the bill will be adjusted to reflect the new charges.

2.5.4 Deposits

Carrier does not require deposits from Customers.

2.5.5 Disputed Bills

Customer shall notify Carrier of any disputed items on a bill within one-hundred eighty (180) days after the due date. Carrier will notify Customer that if Customer and Carrier are unable to resolve the dispute to their mutual satisfaction, Customer may appeal to the South Dakota Public Utilities Commission in accordance with Section 20:10:06:03 of the Commission's Administrative Rules. The address and telephone numbers of the S.D. P.U.C. are:

500 East Capitol
Pierre, South Dakota
1-800-332-1782 (toll free)
605-773-3201
1-800-877-1113 (TTY Through Relay South Dakota)

2.5.5.1 The date of the dispute shall be the date Carrier receives sufficient documentation to enable it to investigate the dispute. The date of the resolution is the date Carrier completes its investigation and notifies Customer of the disposition of the dispute.

Issued:

By:

Effective:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES2.6 DISCONNECTION OF SERVICE BY CARRIER

- 2.6.1 Carrier may discontinue Customer's Service without Carrier incurring any liability for any of the following reasons:
- 2.6.1.1 Nonpayment of an undisputed delinquent account as provided in Section 20:20:10:03 of the Commission's Administrative Rules.
 - 2.6.1.2 Violation of or noncompliance with any governmental or SD P.U.C. rules or regulations set forth in Subdivision 20:10:09:03(5) of the Commission's Administrative Rules.
 - 2.6.1.3 Failure to comply with an agreement to liquidate a continuing debt as described in subdivision 20:10:10:03(4) of the Commission's Administrative Rules.
 - 2.6.1.4 Failure to pay an undisputed bill for telecommunications charges owed to an interstate carrier for whom a telephone utility is acting as a billing agent.
 - 2.6.1.5 Customer provides false information to Carrier regarding Customer's identity, address, current use of common carrier communications services, or its planned use of Carrier's service(s).
 - 2.6.1.6 Condemnation of any material portion of the facilities used by Carrier to provide service to a Customer or if a casualty renders all or any material portion of such facilities inoperable beyond feasible repair.
 - 2.6.1.7 Use of service in such a manner as to interfere with the service of other users.
 - 2.6.1.8 Use of service for unlawful purposes.
 - 2.6.1.9 Carrier deems that such action is necessary to prevent or to protect its personnel, agents, facilities or services.
 - 2.6.1.10 Upon any governmental prohibition, or required alteration of the services to be provided or any violation of any applicable law or regulation.
 - 2.6.1.11 Where a dangerous condition exists for as long as the condition exists or where service is connected without authority by a person who has not made application for service or who has reconnected service following suspension of service for nonpayment.

Issued:

By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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TELECOMMUNICATIONS SERVICES

2.6 DISCONNECTION OF SERVICE BY CARRIER (Cont'd)

2.6.1 (Cont'd)

- 2.6.1.12 Upon Customer's insolvency, assignment for the benefit of creditors, filing for bankruptcy or reorganization, failing to discharge an involuntary petition within the time permitted by law, or abandonment of service.
- 2.6.1.13 Customer uses, or attempts to use, service with the intent to avoid the payment, either in whole or in part, of the tariffed charges for the service by:
- A. Using or attempting to use service by rearranging, tampering with, or making connections to Carrier's service not authorized by this Tariff, or
 - B. Using tricks, schemes, false or invalid numbers, false credit devices, electronic devices; or
 - C. Any other fraudulent means or devices.
- 2.6.1.14 Unless otherwise stated, Carrier will provide Customer with notice prior to any discontinuation or removal of service.
- 2.6.1.15 The suspension or discontinuance of service(s) by Carrier pursuant to this Section does not relieve Customer of any obligation to pay Carrier for charges due and owing for service(s) furnished during the time of or up to suspension or discontinuance.
- 2.6.1.16 Upon Carrier's discontinuance of service to Customer under this Section, all applicable charges, including termination charges, shall become due. This is in addition to all other remedies that may be available to Carrier at law or in equity or under any other provision of this Tariff.

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By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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TELECOMMUNICATIONS SERVICES1.6 DISCONNECTION OF SERVICE BY CARRIER (Cont'd)1.6.2 Restoration of Service

Service shall be restored in accordance with Commission Administrative Rules.

1.6.3 Restoration of Service in Emergencies

The use and restoration of service in emergencies shall be in accordance with the priority system specified in Part 64, Subpart D of the Rules and Regulations of the Federal Communications Commission.

1.6.4 Fractional Charges

Charges for a fractional part of a month are calculated by counting the number of days remaining in the billing period after service is furnished. Divide that number of days by 30 days (billing period). The result is then multiplied by the applicable monthly service charge to arrive at the appropriate fractional monthly service charge.

1.7 RESPONSIBILITY OF CARRIER1.7.1 Allowances for Interruption of Service

1.7.1.1 When the use of service or facilities furnished by Carrier is interrupted due to any cause other than the negligence or willful act of Customer, or the operation or failure of the facilities or equipment provided by Customer, a pro rata adjustment of the monthly Charges subject to interruption will be allowed for the service and facilities rendered useless and inoperative by reason of the interruption whenever said interruption continues for a period of 24 hours or more from the time the interruption is reported to or known to exist by Carrier, except as otherwise specified in Carrier's Tariffs.

1.7.1.2 It shall be the obligation of Customer to notify Carrier immediately of any interruption in service for which a credit allowance is desired by Customer. Before giving such notice, Customer shall ascertain that the trouble is not being caused by any action or omission of Customer within his or her control, or is not in writing or equipment, if any, furnished by Customer and connected to Carrier's terminal. If 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.

1.7.2 Credit Allowances

1.7.2.1 In the event Customer's service is interrupted for reasons other than the negligence or willful act of Carrier and when Service remains out of order for more than 24 hours after being reported, appropriate adjustments or refunds shall be made to Customer. Credit allowances for failure of service or equipment starts when Customer notifies Carrier of the failure or when Carrier becomes aware of the failure and ceases when the operation has been restored.

By:

Effective:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES2.7 RESPONSIBILITY OF CARRIER (Cont'd)2.7.2 Credit Allowances (Cont'd)

2.7.2.2 Credit for failure of service or equipment will be allowed only when failure is caused by or occurs in facilities or equipment owned, provided and billed for, by Carrier.

2.7.2.3 Only those portions of Service or equipment disabled will be credited.

2.7.2.4 Customer shall notify Carrier of failures of service or equipment and make reasonable attempts to ascertain that the failure is not caused by Customer provided facilities, any act or omission of Customer, or in wiring or equipment connected to the terminal.

2.7.3 Limitations on Allowances

No credit allowances will be made for:

2.7.3.1 interruptions due to the negligence of, or noncompliance with the provisions of this Tariff by Customer;

2.7.3.2 interruptions due to the negligence of any person using Carrier's facilities with Customer's permission;

2.7.3.3 interruptions due to the failure or malfunction of non-Carrier equipment;

2.7.3.4 interruptions of service during any period in which Carrier is not given full and free access to its facilities and equipment for the purpose of investigating and correcting interruptions;

2.7.3.5 interruptions of service during a period in which Customer continues to use the service on an impaired basis;

2.7.3.6 interruptions of service during any period when Customer has released service to Carrier for maintenance purposes or for implementation of a Customer order for a change in service arrangements; or

2.7.3.7 interruption of service due to circumstances or causes beyond the control of Carrier interruptions of service resulting from Carrier performing routine maintenance.

2.7.4 Calculation of Credit Allowance

Pursuant to limitations otherwise set forth in Section 2.7, when service is interrupted the credit allowance will be computed on the following basis:

2.7.4.1 No credit shall be allowed for an interruption of less than two hours.

Executed

By:
Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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TELECOMMUNICATIONS SERVICES2.7 RESPONSIBILITY OF CARRIER (Cont'd)2.7.4 Calculation of Credit Allowance (Cont'd)

2.7.4.2 Customer shall be credited for an interruption of two hours or more for as long as the interruption continues.

2.7.4.3 For each period of two hours that the interruption continues the credit shall equal 1/360th of the monthly charge.

2.7.4.4 If notice of a dispute as to charges is not received in writing by Carrier within one-hundred eighty (180) days after billing is received by Customer, the invoice shall be considered correct and binding on Customer, unless extraordinary circumstances are demonstrated.

2.7.5 Credit Upon Cancellation of Service

Where Carrier cancels a service and the final service period is less than the monthly billing period, a credit will be issued for any amounts billed in advance, prorated at 1/30th of the monthly recurring charge for each day after the service was discontinued. This credit will be issued to Customer or applied against the balance remaining on Customer's account.

2.7.6 Allowances for Uncompleted Calls/Wrong Numbers

Carrier shall give credit to customers for uncompleted calls and wrong numbers.

2.8 CANCELLATION OF SERVICE2.8.1 Cancellation of Application for Service

2.8.1.1 Applications for service are noncancellable unless Carrier otherwise agrees. Where Carrier permits Customer to cancel an application for service prior to the start of service or prior to any special constructions, no charges will be imposed except for those specified below.

2.8.1.2 Where, prior to cancellation by Customer, Carrier 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 Carrier incurred, less net salvage, shall apply, but in no case shall this charge exceed the sum of the charge for the minimum period of service ordered, including installation charges, and all charges others levy against Carrier that would have been chargeable to Customer had service begun.

2.8.1.3 The special charges described in 2.8.1.1 and 2.8.1.2 will be calculated and applied on a case-by-case basis.

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By:

Effective:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES

2.8 CANCELLATION OF SERVICE (Cont'd)**2.8.1 Cancellation of Service by a Customer**

2.8.1.1 Customer may cancel service any time after meeting the minimum service period.

2.8.1.2 If a Customer cancels a Service Order or terminates services before the completion of the term for any reason whatsoever other than a service interruption (as defined in Section 2.7.1 above), Customer agrees to pay to Carrier the following sums which 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, all costs, fees and expenses incurred in connection with:

- A. all Non-Recurring Charges reasonably expended by Carrier to establish service to Customer, plus
- B. any disconnection, early cancellation or termination charges reasonably incurred and paid to third parties by Carrier on behalf of Customer, plus
- C. all Recurring Charges for the applicable notice period.

2.9 TRANSFERS AND ASSIGNMENTS

Neither Carrier nor Customer may assign or transfer its rights or duties in connection with the services and facilities provided by Carrier without the written consent of the other party, except that Carrier may assign its rights and duties (a) to any subsidiary, parent company or affiliate of Carrier; (b) pursuant to any sale or transfer of substantially all the assets of Carrier; or (c) pursuant to any financing, merger or reorganization of Carrier.

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By:
Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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TELECOMMUNICATIONS SERVICES2.10 NOTICES AND COMMUNICATIONS

- 2.10.1 Customer shall designate an address to which Carrier shall mail or deliver all notices and other communications, except that Customer may also designate a separate address to which Carrier's bills for service shall be mailed.
- 2.10.2 Carrier shall designate an address to which Customer shall mail or deliver all notices and other communications, except that Carrier may designate a separate address to which Customer shall mail payment on that bill.
- 2.10.3 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 Carrier, shall be presumed to have been delivered to the other party on the third business day following deposit 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.
- 2.10.4 Carrier or Customer shall advise the other party of any changes to the addresses designated for notices or other communications, by following the procedures for giving notice set forth herein.

2.11 TIMING OF CALLS

Chargeable time begins when two way communications is possible between Customer and the calling or called station, and the call ends when either station "hangs up."

By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

Effective:

TELECOMMUNICATIONS SERVICES

SECTION 3 - DESCRIPTION OF LOCAL SERVICE AREA

3.1 LOCAL EXCHANGES

- 3.1.1 Service Area - Comm South Companies, Inc. will be providing service in the local service territories presently served by U.S. West Companies.
- 3.1.2 Local Calling Areas - Exchanges included in the local calling area for each of the NXX designations may be found in the telephone directory published by the dominant exchange service provider in Customer's exchange service area.

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By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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TELECOMMUNICATIONS SERVICESSECTION 4 - DESCRIPTION OF SERVICES4.1 LOCAL EXCHANGE SERVICE

Carrier's Local Telephone Service provides Customers with the ability to connect to the ILEC's switching network which enables Customers to:

- Place or receive calls to any calling Station in the local calling area, as defined herein;
- Access basic 911 Emergency Service if available in Customer's area;
- Where available, place or receive calls to 800 telephone numbers.

Carrier's service can not be used to place calls that will result in a charge being billed to Customer's account (e.g., 900 number calls to "psychic advice networks" or 976 number calls to private "chat rooms").

4.1.1 Prepaid Local Exchange Service

Prepaid Local Exchange Service is a prepaid, switched, intrastate, telecommunications service which permits customers to establish communications between two locations within Customers' local calling area. Prepaid Local Exchange Service allows customers to place calls within the local calling area, to access "911" and/or "E-911" service, if available, in Customer's local calling area and to place calls to toll-free "800" or "888" numbers. Service will be charged on a monthly basis, and upon payment, a Customer will have unlimited use of the aforementioned service for that month. For an additional charge, Customers may also purchase custom services such as call waiting, call forwarding, three-way calling, speed dial, call return, caller ID, and non-published number service.

Prepaid Local Exchange Service does not include any long distance service or other toll services. The following types of calls and services will be blocked by Carrier: intraLATA, interLATA, interstate or international long distance (e.g. "1+" or "0+" calls); incoming collect calls; operator-assisted, *69 or directory-assisted calls; third number billed calls or any service that may be billed to Customer's telephone number (e.g. "900" and "976" calls). Customers are not restricted from placing collect calls, using pre- or post-paid calling cards, or from directly contracting with long distance service providers to make long distance calls, access directory assistance, or place otherwise restricted toll calls.

4.1.2 Optional Services4.1.2.1 Call Forwarding

Allows calls to automatically ring to another phone number.

4.1.2.2 Call Return

The Subscriber may return the last call to Customer's telephone number by dialing a one or two-digit code.

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Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES

4.1 LOCAL EXCHANGE SERVICE (Cont'd)4.1.2 Optional Services (Cont'd)4.1.2.3 Call Waiting

Allows Customer to be notified of an incoming call while Customer is having a conversation with another party.

4.1.2.4 Caller ID

Caller ID is an optional feature which allows the subscriber to see the telephone number of an incoming call displayed on Customer provided display unit. The telephone number of an incoming call will display between the first and second rings. Caller ID service works only on calls which originate and terminate in central offices which are equipped and have SS7 connectivity. Caller ID is available to customers by monthly subscription only, which provides unlimited use of this service. The Caller ID box is not included in the rate for the monthly service fee.

The telephone numbers that will be displayed on a Caller ID subscriber's display unit include listed, non-listed and non-published telephone numbers.

Telephone number that will not be displayed to the Caller ID subscriber are: (1) calls from customers who use Per-Call Blocking or Per-Line Blocking; (2) calls from customers located in central offices not a part of the SS7 Signaling System; and (3) calls placed through an operator. When these types of calls are received by a Caller ID subscriber, their display unit will notify them that the calling telephone number is unavailable.

4.1.2.5 Non-Published Number

Allows Customer to keep his local phone number out of the phone book or directory assistance.

4.1.2.6 Speed Dial

The Subscriber may call pre-selected, pre-programmed telephone numbers by dialing a one or two-digit code.

4.1.2.7 "Three-Way" Calling

Allows Customer to add a third party to a conversation.

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By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

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4.2 **DIRECTORY LISTINGS**

Carrier shall provide for a single directory listing, termed the primary listing, in the telephone directory published by the dominant exchange service provider in Customer's exchange area of the Station number which is designated as Customer's main billing number.

- 4.2.1 Carrier reserves the right to limit the length of any listing in the directory by the use of abbreviations when, in its judgment, the clearness of the listing or the identification of Customer is not impaired thereby. Where more than one line is required to properly list Customer, no additional charge is made.
- 4.2.2 Carrier may refuse a listing which is known not to constitute a legally authorized or adopted name, obscenities in the name, or any listing which, in the opinion of Carrier, is likely to mislead or deceive calling persons as to the identity of the listed party, or is a contrived name used for advertising purposes or to secure a preferential position in the directory or is more elaborate than is reasonably necessary to identify the listed party. Carrier, upon notification to Customer, will withdraw any listing which is found to be in violation of its rules with respect thereto.
- 4.2.3 In order for listings to appear in an upcoming directory, Customer must furnish the listing to Carrier in time to meet the directory publishing schedule.
- 4.2.4 Directory listings are provided in connection with each Customer service as specified herein.

4.3 **MISCELLANEOUS****4.3.1** **Service Reconnection Fee**

Charge for restoral of service after disconnection or for initiation of service subsequent to a customer location move.

4.3.2 **Optional Feature Addition Charge**

Per request charge for addition of an optional feature or features subsequent to initiation of basic service.

4.3.3 **Transfer Fee**

Charge for initiation of service subsequent to a customer location move.

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By:

Effective:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

TELECOMMUNICATIONS SERVICES4.3 EMERGENCY SERVICES (ENHANCED 911)

Allows Customers to reach appropriate emergency services including police, fire and medical services. Enhanced 911 has the ability to selectively route an emergency call to the primary E911 provider so that it reaches the correct emergency service located closest to the caller. In addition, Customer's address and telephone information will be provided to the primary E911 provider for display at the Public Service Answering Point (PSAP).

4.4 SPECIAL PRICING ARRANGEMENTS - INDIVIDUAL CASE BASIS (ICB)

In lieu of the rates otherwise set forth in this Tariff, rates and charges, including installation, special construction, and recurring charges, may be established at negotiated rates on an Individual Case Basis (ICB), taking into account such factors as the nature of the facilities and services, the costs of construction and operation, the volume of traffic commitment, and the length of service commitment by the Customer, as long as the rates and charges are not less than Carrier's costs of providing the service. Such arrangements shall be considered Special Pricing Arrangements, the terms of which will be set forth in individual contracts or Customer Term Agreements. Specialized Pricing Arrangement rates or charges will be made available to similarly-situated Customers on comparable terms and conditions. Upon reasonable request, Carrier will make the terms of these contracts available to the Commission and its staff for review on a confidential and proprietary basis.

4.5 PROMOTIONS

Carrier may, from time to time, engage in national and/or intrastate promotional offerings or trials, designed to attract new Customers, to stimulate Customer usage, to test potential new services, and/or to increase existing Customer awareness of Carrier services. These offerings may be limited to certain services, dates, times of day and/or locations determined by Carrier. National offerings, the terms of which are set forth in the applicable interstate tariffs governing such programs, may include without limitations, discounts, redeemable points, or cash rewards to Customers. To the extent that these programs extend to intrastate services, the terms of these national offerings are incorporated by reference, herein.

140003

By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

Effective:

TELECOMMUNICATIONS SERVICESSECTION 5 - SERVICE RATES AND CHARGES5.1 LOCAL EXCHANGE SERVICE RATES AND CHARGES5.1.1 Prepaid Local Exchange Service Rates and Charges

A Prepaid Local Exchange Service Customer will be charged applicable Non-Recurring Charges and monthly Recurring Charges as specified below.

5.1.1.1 One-Time Activation Fee

One-Time Activation Fee	\$ 40.00
-------------------------	----------

5.1.1.2 Recurring Charges

Monthly Service Charge	\$ 49.00
------------------------	----------

5.1.2 Optional Services Rates and Charges

	<u>Monthly</u>	<u>One-Time Activation Fee</u>
Call Forwarding	\$ 5.00	N/A
Call Return	\$ 5.00	N/A
Call Waiting	\$ 5.00	N/A
Caller ID	\$ 10.00	\$ 10.00
Non-Published Number	\$ 5.00	N/A
Speed Dial	\$ 5.00	N/A
Three-Way Calling	\$ 5.00	N/A
All Options Above	\$ 20.00	N/A

Issued:

By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

Effective:

TELECOMMUNICATIONS SERVICES1.2 DIRECTORY LISTINGS RATES AND CHARGES1.2.1 Non-Recurring Charges

Primary Listing (one number): N/C

1.2.2 Recurring ChargesMonthly

Primary Listing (one number) N/C

1.3 MISCELLANEOUS RATES AND CHARGES1.3.1 Service Reconnection Fee \$ 20.001.3.2 Optional Feature Addition Charge \$15.001.3.3 Transfer Fee \$50.00

Issued

By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

Effective:

Exhibit 2

Resale Negotiations Between Comm South and U S West

From: Roy Harsila
To: "rvanzan@uswest.com".GWIA.CSGWD01
Date: 3/14/00 4:47PM
Subject: Re: South Dakota

Ron,

Let's us the most current version of the resale agreement.

Larry Long, President/COO will be signing the agreement.

Notices can be sent to:

Roy Harsila
6830 Walling Lane
Dallas, TX 75231
Telephone: 972-643-6417
Fax: 972-690-9959

You can mail the agreement to me at the above the address.

>>> Ronald Van Zandbergen <rvanzan@uswest.com> 03/14/00 09:16AM >>>

Roy:

I would recommend that Comm South use our most current version of the resale agreement in South Dakota (see attached). If this is acceptable, either call or email me and we will prepare the SD resale agreement for Comm South.

If the name and title of the person signing the agreement and the name, address, phone and fax information for the "Notices" section is different than your previous agreements, please supply that information for your new agreement. Also, please indicate where you would like the agreement mailed for signature if the address is different than that provided in the "Notices" section.

If you have questions, please call me on (402) 422-3938.

Thanks

Ron Van Zandbergen

Roy Harsila wrote:

> Ron,

>

> We started to negotiate an agreement in the state of South Dakota, but we ended up cancelling it sometime toward the end of 1998. Can we restart this agreement or do we need to negotiate another one? Thank you for your time.

>

> Sincerely,

>

> Roy Harsila

> Comm South Companies

> 972-643-6417

> Fax: 972-690-9959

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Application of Comm) TC00-014
South Companies, Inc., Application for)
Certificate of Authority to do Business)
in The State of South Dakota)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 30th day of
March, 2000, he mailed a true and correct copy of the foregoing
Comm South Companies, Inc., Response to Interrogatories, South
Dakota PUC Docket TC00-014 along with the accompanying attachments
to

Public Utilities Commission
500 E Capitol
Pierre SD 57501

and that said mailing was by U. S. mail, first class with postage
thereon prepaid and mailed at the U. S. Post Office in Pierre,
South Dakota.



James Robbenolt
Attorney for Comm South Companies, Inc.

LAW OFFICES
OLINGER, LOVALD, ROBBENNOLT, McCAHREN & REIMERS, P.C.
117 EAST CAPITOL
P.O. BOX 66

PIERRE, SOUTH DAKOTA 57501-0066

SCOTT D. OLINGER
KIM S. LOVALD
JAMES ROBBENNOLT
LEE C. McCAHREN
WILLIAM A. REIMERS

TELEPHONE: 224-8851
AREA CODE 605
FAX: 605-224-8269

April 13, 2000

RECEIVED

APR 14 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

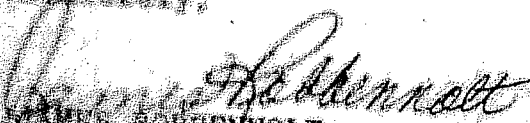
South Dakota Public Utilities Commission
500 E. Capitol
Pierre South Dakota 57501

Re: Comm South Companies, Inc.

Dear Commission:

Enclosed please find an original and one copy for filing, Response
to Second and Third Set of Interrogatories of Comm South Companies.

Sincerely,


JAMES ROBBENNOLT
Attorney at Law

cc: lrd

enc: aurea

cc: Jaqualin Friend Peterson
Glenn Richards

APR 14 2000

COMM SOUTH COMPANIES, INC.
RESPONSE TO SECOND AND THIRD SET OF INTERROGATORIES
SD PUC DOCKET TC00-014

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

April 6, 2000 Interrogatories:

1. The TTY toll-free phone number in section 2.5.5 of the updated tariff sheet No. 18 contains an error. The correct TTY Through Relay South Dakota phone number is 1-800-877-1113. Please update.

RESPONSE: See Exhibit 1 attached hereto, Tariff Sheet 18.

2. Response 9 states that a full copy of the revised tariff was submitted due to changes that altered the format. For clarification and review purposes, were any changes made to the tariff other than the Staff requested changes?

RESPONSE: No. Comm South's revised tariff contains only Staff requested changes.

April 10, 2000 Interrogatory:

In the original tariff at 2.2.9, there is a provision that limits the amount of damages which may be claimed against the applicant. This provision appears in the new tariff at 2.2.7. Please remove this provision.

RESPONSE: Without waiving its right to revisit this issue should the policy of the South Dakota Public Utilities Commission change, Applicant agrees to remove this tariff provision. See Exhibit 1, Tariff Sheet 12.

DATA CLIENT 40004 INTERROG SDI

Exhibit 1

Revised Tariff Sheets

TELECOMMUNICATIONS SERVICES

22 LIABILITY OF CARRIER (Cont'd)

- 22.7 CARRIER MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN.
- 22.8 Carrier shall not be liable for any act or omission of any other company or companies furnishing a portion of the service, or for damages associated with service, channels, or equipment which it does not furnish, or for damages which result from the operation of Customer-provided systems, equipment, facilities or services which are interconnected with Carrier services.
- 22.9 No agent or employee of any other carrier shall be deemed to be an agent or employee of Carrier.
- 22.10 In conjunction with a non-published telephone number, Carrier will not be liable for failure or refusal to complete any call to such telephone when the call is not placed by the number. Carrier will try to prevent the disclosure of the number of such telephone, but will not be liable should such number be divulged.
- 22.11 When a Customer with a non-published telephone number places a call to the Emergency 911 Service, Carrier will release the name and address of the calling party, where such information can be determined to the appropriate local governmental authority responsible for the Emergency 911 Service upon request of such governmental authority. By subscribing to service under this Tariff, Customer acknowledges and agrees with the release of information as described above.

Fixed

By:
Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

Effective:

TELECOMMUNICATIONS SERVICES

2.5 PAYMENT ARRANGEMENTS (Cont'd)**2.5.2 Billing and Collection of Charges (Cont'd)**

2.5.2.6 Carrier will bill Customer a one-time charge of \$20.00 if Customer's check for payment of service is returned for insufficient or uncollected funds, closed accounts, or any other insufficiency or discrepancy necessitating return of the check at the discretion of the drawee bank or other financial institution.

2.5.2.7 A charge of \$20.00 or the applicable statutory charge for reconnection of service (if any), whichever is greater, will apply whenever a Subscriber requests to be reconnected to the Services after Carrier has terminated Services to Subscriber for any reason allowed by this Tariff.

2.5.2.8 Customer is liable for all costs associated with collecting past due charges, including all attorneys' fees.

2.5.3 Application of Charges

The charges for service are those in effect for the period that service is furnished. If the charge for a service covered by a bill changes after the bill has been rendered, the bill will be adjusted to reflect the new charges.

2.5.4 Deposits

Carrier does not require deposits from Customers.

2.5.5 Disputed Bills

Customer shall notify Carrier of any disputed items on a bill within one-hundred eighty (180) days after the due date. Carrier will notify Customer that if Customer and Carrier are unable to resolve the dispute to their mutual satisfaction, Customer may appeal to the South Dakota Public Utilities Commission in accordance with Section 20:10:06:03 of the Commission's Administrative Rules. The address and telephone numbers of the S.D. P.U.C. are:

500 East Capitol
Pierre, South Dakota
1-800-332-1782 (toll free)
605-773-3201
1-800-877-1113 (TTY Through Relay South Dakota)

2.5.5.1 The date of the dispute shall be the date Carrier receives sufficient documentation to enable it to investigate the dispute. The date of the resolution is the date Carrier completes its investigation and notifies Customer of the disposition of the dispute.

Issued

By:

Chris A. Caffey, Senior Vice President and Chief Financial Officer
Comm South Companies, Inc.
6830 Walling Lane
Dallas, Texas 75231

Effective:

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Application of Comm) TC00-014
South Companies, Inc., Application for)
Certificate of Authority to do Business)
in the State of South Dakota)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of April, 2000, he mailed a true and correct copy of the foregoing Comm South Companies, Inc., Response to the Second and Third Set of Interrogatories, South Dakota PUC Docket TC00-014 along with the accompanying attachments to

Public Utilities Commission
500 E Capitol
Pierre SD 57501

and that said mailing was by U. S. mail, first class with postage thereon prepaid and mailed at the U. S. Post Office in Pierre, South Dakota.


James Robbennolt
Attorney for Comm South Companies, Inc.

LAW OFFICES
OLINGER, LOVALD, ROBBENNOLT, McCAHREN & REIMERS, P.C.

117 EAST CAPITOL
P.O. BOX 66

PIERRE, SOUTH DAKOTA 57501-0066

TELEPHONE: 224-8851
AREA CODE 605
FAX: 605-224-8269

WENALD OLINGER
KAREN LOVALD
JAMES ROBBENNOLT
LARRY ELL McCAHREN
WALTER REIMERS

July 10, 2000

RECEIVED

JUL 11 2000

South Dakota Public Utilities Commission
500 E Capitol
Pierre South Dakota 57501

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Re: In the Matter of the Application of Comm South Companies, Inc.
Application for Certificate of Authority to do Business
in the State of South Dakota.

Dear Commission:

Enclosed please find an original and one copy for filing Petition
for Declaratory Ruling and Brief in Support of Petition regarding
the above entitled matter. Thank you.

Sincerely,


JAMES ROBBENNOLT
Attorney at Law

cc: 
Jaqualin Friend Peterson

JUL 11 2000

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

In the Matter of the Application of Comm) TC00-014
 South Companies, Inc., Application for)
 Certificate of Authority to do Business)
 in the State of South Dakota)

PETITION FOR DECLARATORY RULING

Pursuant to the provisions of SDCL 1-26-15, I, James Rubenolt, of P. O. Box 66, Pierre, South Dakota, the local attorney for Comm South Companies, Inc., do hereby petition the South Dakota Public Utilities Commission for a declaratory ruling in regard to the following:

(1) The Commission rules in question are: ARSD 20:10:32:03(22) and 20:10:32:10.

(2) The facts and circumstances which give rise to the issue to be answered by the Commission are: Comm South has applied for Certificate of Authority to offer prepaid local telecommunication services to citizens of South Dakota who are for various reasons, including non-payment of bills, unable to secure local telecommunication service from conventional local exchange carriers. Comm South seeks to offer local telephone service on a prepaid monthly basis and proposes to block certain services including access to interexchange services, directory assistance, and operator services.

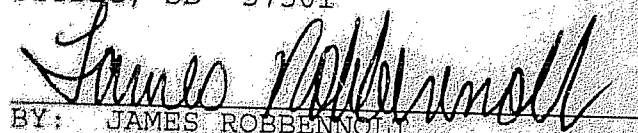
(3) The precise issue to be answered by the Commission's declaratory ruling is: Does the South Dakota Public Utilities Commission have the authority to waive portions of its rules relating to service obligations of all providers of telecommunication services if the proposed service is tailored to

South Petition-2

meet the needs of a particular portion of the population of the
State and the proposed service does not include all of the
requirements set forth in ARSD 20:10:32:0?

Dated at Pierre, South Dakota this 10th day of July, 2000.

OLINGER, LOVALD, ROBBENNOLT,
McCAHREN & REIMERS, P.C.
117 E. Capitol
PO Box 66
Pierre, SD 57501


BY: JAMES ROBBENNOLT

RECEIVED

JUL 11 2000

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PL
UTILITIES COMMISS

In the Matter of the Application of Comm)
South Companies, Inc., Application for)
Certificate of Authority to do Business)
in The State of South Dakota)

TC00-014

BRIEF IN SUPPORT OF PETITION FOR DECLARATORY RULING

FACTS

Comm South has applied for a Certificate of Authority from the South Dakota Public Utilities Commission to provide prepaid local telecommunication services to a very specific segment of the State's population. Comm South's intent is to provide local phone service to persons who cannot obtain conventional service because of credit problems or prior non-payment of telephone bills. Commission's legal staff has expressed reservations concerning the Commission's authority to waive the basic requirements of ARSD 20:10:12:10(3), (4) and (7).

ISSUE

Does the South Dakota Public Utilities Commission have the authority to waive portions of its rules relating to service obligations of all telecommunication service providers if the proposed service is tailored to meet the needs of a particular portion of the State's population?

BACKGROUND

As previously stated, Comm south proposes to offer local telecommunication services to a specific segment of South Dakotans who are at present unable to obtain conventional telecommunication services due to credit problems or prior disconnection. Specifically, Comm South seeks to provide local telecommunication

service, including unlimited local calling ("dialtone"), certain ~~CLASS~~ and custom services (e.g. call waiting, call forwarding, etc.), and access to 911 emergency and 800 number services, on a prepaid basis only.

Comm South does not perform consumer credit checking or application screening because the services are paid for prior to being rendered. To control costs, Comm South charges customers a fixed price for local service. So that the customer's bill does not vary, Comm South blocks direct-dial long distance calls, collect calls, operator-assisted calls, directory assistance and third-number billed calls. Customers who desire toll calling may contract directly with a long distance provider or use prepaid or post-paid calling cards, which are readily available to individuals through a variety of sources.

The terms and limitations of Comm South's services are fully disclosed to potential customers at all payment agent locations, where customers purchase the service, and in Comm South's tariff. Potential customers are required to complete a customer service agreement prior to receiving service. The agreement fully informs customers of Comm South's product offerings and payment terms. The agreement also establishes the monthly charges, which do not change from month-to-month, unless optional services are added or deleted by the customer. Specifically, customers are informed that they are required to pay a service initiation fee and that the first full month's service charge prior to receiving service. Customers also are informed that their payment will be due on approximately the same day each month, and that their service will

be discontinued upon failure to make a payment by the prescribed due date. Finally, customers are advised that toll services, directory assistance and operator services will be blocked by the Company.

In sum, the service provided by Comm South is different than that of other local exchange carriers. Consequently, Comm South has, in writing, requested waiver of those portions of ARSD 20:10:32:10 which are inconsistent with the Comm South's operations and the specific form of telecommunication services that Comm South is proposing to offer citizens of this State. (See Comm South Application for Carrier of Authority, Page 9, subsection (22)).

ARGUMENT AND AUTHORITIES

ARSD 20:10:32:10(3), (7) and (10) require all providers of local telecommunication services to offer their customers access to interexchange services, directory assistance, and operator services. ARSD 20:10:32:10 was enacted in 1998 when there were no telecommunication entities in south Dakota offering prepaid local telecommunication services such as the type now being proposed by Comm South.

ARSD 20:10:32:03(22) provides applicants the opportunity to request waivers of inapplicable rules when an application for a Certificate of Authority is filed. This Section, which also was enacted in 1998, is the basis for Comm South's waiver request. Specifically, Comm South contends that pursuant to this Section, the Commission is expressly authorized to waive its rules if such waiver is justified under the circumstances. Comm South notes that other state commissions have granted Comm South's and other prepaid

local exchange's carriers requests for waiver of their minimum service requirements. (e.g. Indiana, Massachusetts, Virginia) These commissions have found such waivers to be in the public interest because of the unique nature of Comm South's services and because it is their citizens who ultimately benefit from Comm South's presence in the local telecommunications marketplace.

The South Dakota Commission has yet to invoke ARSD 38:10:32:03(22). However, federal and state courts considering the waiver issue have permitted waivers of administrative rules in a number of circumstances. In the case of National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir 1993), the Court of Appeals for the District of Columbia ruled that the principle of waiver was relevant in considering whether the Federal Communications Commission had enacted a certain rule based upon "informed prediction." The court found that waiver processes are a permissible device for fine tuning a general rule, where, as here, the "informed predictions" upon which the general rule are based are not presently applicable to the market at issue. Id. at 181. Otherwise stated, an agency may waive inapplicable rules to address specific situations not anticipated by the agency at the time it enacted the general rule.

Similarly, in the case of Application of Jantzen, 511 N.W.2d 304 (Neb. 1994), the Supreme Court of Nebraska discussed the principles involved in waiver of administrative rules by the Nebraska Public Service Commission. As an initial matter, the court found that administrative agencies are permitted to depart from their own regulations. Id. at 512. Further, the court held

A rule waiver is appropriate, where, as here, the rule is a mere aid to guide the agency in the exercise of its independent discretion, and such waiver does not violate the rights of other parties or the citizens to whom the services are targeted. Id. at 313. "An agency must have sufficient latitude in its operations and in matters under its jurisdiction to exercise that jurisdiction fairly." Id.

In this case, the Commission's own rules allow for the "fine tuning" or waiver of inapplicable rules. Further, Comm South's request does not violate due process as there are no parties to object to or be damaged by the waiver. Comm South's customers will be fully informed of the limitations of Comm South's services. Moreover, Comm South will not be competing with other telecommunication companies presently offering conventional telecommunication services to the citizens of South Dakota. Comm South is poised to offer customers a new alternative, outstanding reliability and excellent customer service. Finally, because Comm South is structuring its service to attract customers in households that do not currently have local telephone service, approval of Comm South's Application will improve the State's telecommunications subscriber base and enhance universal service.

CONCLUSION

Based upon the foregoing Petitioner respectfully requests that the Commission grant the waiver requested in the application for this Certificate of Authority.

Dated this 10th day of July, 2000.

OLINGER, LOVALD, ROBBENNOLT,
McCAHREN & REIMERS, P.C.
117 E. Capitol
PO Box 66
Pierre, SD 57501

James Robbenolt
BY: JAMES ROBBENNOLT

CERTIFICATE OF SERVICE

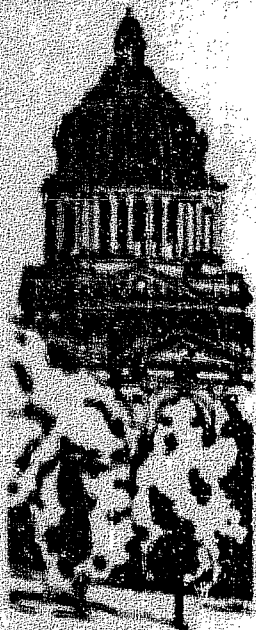
The undersigned hereby certifies that on the 10th day of July, 2000, he mailed a true and correct copy of the foregoing Petition for Declaratory Ruling and Brief in support thereof per Docket TC00-014 along with the accompanying attachments to

Public Utilities Commission
500 E Capitol
Pierre SD 57501

and that said mailing was by U. S. mail, first class with postage thereon prepaid and mailed at the U. S. Post Office in Pierre, South Dakota.

James Robbenolt
James Robbenolt

Attorney for Comm South Companies, Inc.



South Dakota Public Utilities Commission

State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070



August 1, 2000

Mr. James Robbennolt
Attorney at Law
Olinger, Lovald, Robbennolt, McCahren
& Reimers, P.C.
P. O. Box 66
Pierre, SD 57501-0066

Re: In the Matter of the Application of Comm
South Companies, Inc. for a Certificate of
Authority to Provide Local Exchange
Services in South Dakota
Docket No. TC00-014

Dear Mr. Robbennolt:

Enclosed you will find a copy of Commission Staff's Response to Petition
Declaratory Ruling in the above captioned matter. This is intended as service up
you by mail.

Very truly yours,

Karen E. Cremer
Staff Attorney

KEC:dk
Enc.

Capital Office
Telephone (605) 773-3181
FAX (605) 773-3189

Transportation
Warehouse Division
Telephone (605) 773-3180
FAX (605) 773-3134

Consumer Hotline
1-800-333-1783

TTY Through
Relay South Dakota
1-800-877-1113

Internet Website
www.state.sd.us/puc/

Don Borg
Chairman
Paul Nelson
Vice-Chairman
Linda Schumacher
Commissioner

William Dillard Jr.
Executive Director

Baron Best
Martin C. Haysman
Eve Cohen
Karen E. Cremer
Terry Enarson
Michelle M. Harris
Michelle Fiebbach
Heather K. Torrey
Lucy Foster
Mary Giddings
Loren Hammond
Lore Healy
Mary Healy
Cameron Hinesh
Lisa Hull
Dave Jacobson
Jennifer Kirk
Bob Knudsen
Sharon Kolbe
Charlene Lund
Gregory A. Kiefer
Kath Sangre
Brenda Allen Wood

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

**IN THE MATTER OF THE APPLICATION OF)
COMM SOUTH COMPANIES, INC. FOR A)
CERTIFICATE OF AUTHORITY TO PROVIDE)
LOCAL EXCHANGE SERVICES IN SOUTH)
DAKOTA)**

**COMMISSION STAFF'S
RESPONSE TO PETITION
FOR DECLARATORY
RULING
TC00-014**

FACTS

Commission Staff would agree with the facts as presented by Comm South with the exception of the statement found on page 3 which states that there were no telecommunication entities in South Dakota offering prepaid local telecommunications services similar to that proposed by Comm South. 1-800-RECONEX, Inc. offers the same type of service. It was issued a certificate of authority on November 4, 1998, Docket No. TC97-160. See Attachments 1 and 2.

ISSUE

Does the South Dakota Public Utilities Commission have the authority to waive portions of its rules?

ARGUMENT AND AUTHORITIES

Commission Staff's position is that properly adopted and filed agency regulations have the same binding effect of statutory law. They are binding upon the agency which enacts them, and the agency does not have the discretion to waive, suspend, or disregard in a particular case a validly adopted rule.

While this exact issue has not been addressed by the South Dakota Supreme Court, a number of other courts have addressed it. In Douglas County Welfare Administration v. Parks, 284 N.W.2d 10 (Neb. 1979), two former county employees

appealed the termination of their employment. The appeal was not filed until long after the 30-day period for appealing such matters. The former employees were informed by the Merit System Director that the appeal was denied as it was not timely filed. Almost one year later, the former employees were informed that the Merit System Director reversed his earlier decision and granted them an appeal hearing. Douglas County appealed and the District Court found that the granting of the second appeal was without authority because the former employees had not timely filed their appeal. The matter was then appealed to the Nebraska Supreme Court. The court wrote:

Generally, rules and regulations of an administrative agency governing proceedings before it, duly adopted and within the authority of the agency, are as binding as if they were statutes enacted by the Legislature. Likewise, procedural rules are binding upon the agency which enacts them as well as upon the public, and the agency does not, as a general rule, have the discretion to waive, suspend, or disregard, in a particular case, a validly adopted rule so long as such rule remains in force. This is true even though the adoption of the rule was a discretionary function, and plenary powers, or powers resting in the absolute discretion of an agency may thus be rendered subject to procedural limitations. To be valid, the action of the agency must conform to its rules which are in effect at the time the action is taken, particularly those designed to provide procedural safeguards for fundamental rights.

Id. at 11-12.

Other courts have made similar findings, see Micu v. City of Warren, 382 N.W.2d 123 (Mich. App. 1985); State ex rel. Independent School Dist. No. 6, Morrison County v. Johnson, 65 N.W.2d 668 (Minn. 1954); Schmidt v. State, 586 N.W.2d 148 (Neb. 1998); Johnson v. Nebraska Environmental Control Council, 509 N.W.2d 21 (Neb. App. 1993); Havener v. Glaser, 251 N.W.2d 753 (N.D. 1977).

Because rules can be promulgated only through the use of procedures set forth in SECL 1-26, that is, public notice of the proposed rule, receipt and consideration of comments on the proposed rule, and issuance of the final rule incorporating a statement of basis and purpose, all of which requires legislative approval before it becomes final, Staff believes that rules that affect substantial rights may not be waived by an agency unless there is language that specifically permits a waiver. Comm South cites to ARSD 20:10:32:03(22) as authority permitting the Commission to waive ARSD 20:10:32:10(3), (4), and (7). Staff would submit that the waiver language found in ARSD 20:10:32:03(22) is applicable only for purposes of ARSD 20:10:32:03 and not the whole chapter. Had the waiver been intended to be used for the whole chapter, it would be a separate section of the chapter, not a subparagraph of a section.

Comm South cites to Application of Jantzen, 511 N.W.2d 504 (Neb. 1994), as support for its position that Commission rules may be waived. In the Jantzen case, the Supreme Court of Nebraska found that the PSC's decision to waive this particular procedural rule was comparable to a trial court's discretion extending the time in which to file an untimely answer or reply. The court determined that the rule in question was but an aid to help the PSC in its decision; it did not confer a procedural benefit upon a party. Id. at 515.

Here Comm South is not asking for waiver of a rule to provide information to the Commission which would aid it in its decision. Rather the granting of a waiver in this case would confer upon Comm South a substantive benefit and would open the door to future requests for waiver of substantive rules, not merely those rules deemed procedural. Local

exchange companies that have been certificated and provide all the listed services in ARSD 20 10 32 10 will be damaged by such a waiver as such terms and conditions would not be on a competitively neutral basis. See SDCL 49-31-71.

CONCLUSION

Based upon the foregoing, Staff respectfully requests that the Commission deny the ~~waiver~~ requested by Comm South.

Dated at Pierre, South Dakota, this 15th day of August, 2000.



Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501
Telephone (605) 773-3201

CERTIFICATE OF SERVICE

I hereby certify that a copy of Commission Staff's Response to Petition for Declaratory Ruling was served on the following by mailing the same to him by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 15th day of August, 2000.

Mr. James Robbennolt
Attorney at Law
Ginger, Loyald, Robbennolt, McCahren
& Reimers, P.C.
P. O. Box 86
Pierre, SD 57501-0086



Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF)	ORDER GRANTING
STERLING INTERNATIONAL FUNDING, INC.)	CERTIFICATE OF
D/B/A RECONEX FOR A CERTIFICATE OF)	AUTHORITY
AUTHORITY TO PROVIDE)	
TELECOMMUNICATIONS SERVICES IN)	TC97-160
SOUTH DAKOTA)	

On September 24, 1997, the Public Utilities Commission (Commission), in accordance with SDCL 49-31-3 and ARSD 20:10:24:02, received an application for a certificate of authority from Sterling International Funding, Inc. d/b/a Reconex (Reconex).

Reconex proposes to offer service in the areas and exchanges currently being served by U.S. WEST. Reconex is an alternative telephone company primarily furnishing prepaid local dial tone service to individuals who have had their telephone disconnected, have voluntarily left their local exchange provider, or for money management reasons, prefer to address their local calling needs in a prepaid fashion at a set fee. A proposed tariff was filed by Reconex. The Commission has classified long distance service as fully competitive.

On September 25, 1997, the Commission electronically transmitted notice of the filing and the intervention deadline of October 10, 1997, to interested individuals and entities. No petitions to intervene or comments were filed. At its regularly scheduled May 28, 1998, meeting, the Commission considered Reconex's request for a certificate of authority. The Commission found that Reconex had not met the legal requirements established for the granting of a certificate of authority and denied the application. On July 1, 1998, Reconex filed a Motion for Application of Rehearing for a Certificate of Authority which the Commission granted on July 23, 1998.

Commission Staff submitted a data request to Reconex which the company responded to in a timely manner. At its regularly scheduled October 27, 1998, meeting, the Commission considered Reconex's request for a certificate of authority. Commission Staff recommended granting a certificate of authority.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-31, specifically 49-31-3 and ARSD 20:10:24:02 and 20:10:24:03. The Commission finds that Reconex has met the legal requirements established for the granting of a certificate of authority. Reconex has, in accordance with SDCL 49-31-3, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. The Commission approves Reconex's application for a certificate of authority. As the Commission's final decision in this matter, it is therefore

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document was last served upon all parties of record in this cause on the 4th day of November, 1998, at the office of the undersigned, who charges nothing thereon.

CERTIFICATE OF SERVICE

Dated at Pierre, South Dakota, this 4th day of November, 1998.

ORDERED, that Reconex's application for a certificate of authority is hereby granted. It is further ordered, that Reconex shall file informational copies of tariff changes with the Commission as the changes occur.

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF	)	AMENDED ORDER
STERLING INTERNATIONAL FUNDING, INC.	)	GRANTING CERTIFICATE
D/B/A RECONEX FOR A CERTIFICATE OF	)	OF AUTHORITY
AUTHORITY TO PROVIDE	)	
TELECOMMUNICATIONS SERVICES,	)	TC97-160
INCLUDING LOCAL EXCHANGE SERVICES, IN	)	
SOUTH DAKOTA	)	

On September 24, 1997, the Public Utilities Commission (Commission), in accordance with SDCL 49-31-3 and ARSD 20:10:24:02, received an application for a certificate of authority from Sterling International Funding, Inc. d/b/a Reconex (Reconex).

Reconex proposes to offer service in the areas and exchanges currently being served by U S WEST. Reconex is an alternative telephone company primarily furnishing prepaid local dial tone service to individuals who have had their telephone disconnected, have voluntarily left their local exchange provider, or for money management reasons, prefer to address their local calling needs in a prepaid fashion at a set fee. A proposed tariff was filed by Reconex. The Commission has classified long distance service as fully competitive.

On September 25, 1997, the Commission electronically transmitted notice of the filing and the intervention deadline of October 10, 1997, to interested individuals and entities. No petitions to intervene or comments were filed. At its regularly scheduled May 28, 1998, meeting, the Commission considered Reconex's request for a certificate of authority. The Commission found that Reconex had not met the legal requirements established for the granting of a certificate of authority and denied the application. On July 1, 1998, Reconex filed a Motion for Application of Rehearing for a Certificate of Authority which the Commission granted on July 23, 1998.

Commission Staff submitted a data request to Reconex which the company responded to in a timely manner. At its regularly scheduled October 27, 1998, meeting, the Commission considered Reconex's request for a certificate of authority. Commission Staff recommended granting a certificate of authority, subject to rural safeguards. Commission Staff further recommended a waiver of 20:10:24:02(8).

The Commission finds that it has jurisdiction over this matter pursuant to Chapter 49-31, specifically 49-31-3 and ARSD 20:10:24:02 and 20:10:24:03. The Commission finds that Reconex has met the legal requirements established for the granting of a certificate of authority. Reconex has, in accordance with SDCL 49-31-1, demonstrated sufficient technical, financial and managerial capabilities to offer telecommunications services in South Dakota. Further, the Commission finds that there is good cause to waive paragraph (8) of ARSD 20:10:24:02.

The Commission approves Reconex's application for a certificate of authority, subject to rural safeguards. The certificate of authority for Reconex shall authorize it to offer local exchange services in those areas in South Dakota where U S WEST Communications, Inc. is the incumbent local exchange carrier. In the future, should Reconex choose to provide local exchange services statewide, with respect to rural telephone companies, Reconex 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 Reconex's application for a Certificate of Authority to provide telecommunications services, including local exchange services, is granted, and it is

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

FURTHER ORDERED, that the Commission shall authorize Reconex to offer its services in those areas in South Dakota where U S WEST Communications, Inc. is the incumbent local exchange carrier, and it is

FURTHER ORDERED, that the Commission finds good cause to waive subparagraph (B) of ARSD 20:10:24.02.

Dated at Pierre, South Dakota, this 4th day of December, 1998.

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 _____	
Date _____	
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner

SDITC

South Dakota Independent
Telephone Coalition, Inc.

Richard D. Coit
Executive Director
rcsditc@sd.cybernet.net
<http://www.sditc.org>

August 28, 2000

William Hullard, Jr., Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
Pierre, SD 57501

RECEIVED

AUG 29 2000

RE: Docket TC00-014, Petition for Declaratory Ruling of
Comm South Companies, Inc.

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Dear Mr. Hullard:

With regard to the Petition for Declaratory Ruling filed by Comm South Companies, Inc. ("Comm South") in the above referenced Docket, SDITC on behalf of its member local exchange companies (LECs) submits the following comments.

SDITC would first note its concurrence in the comments filed by Commission Staff, dated August 1, 2000, concerning the issue of whether the Commission has the legal authority to waive any of the carrier service obligations set forth in ARSD 20:10:32:10 (for the specific benefit of Comm South). Comm South argues that certain waiver related language found in ARSD 20:10:32:03 gives the Commission authority to grant a waiver from any of the local service competition rules contained in ARSD Chapter 20:10:32. Specifically, Comm South relies on subsection (22) of ARSD 20:10:32:03 which provides that an application for a certificate of authority should include "[a] written request for waiver of those rules believed to be inapplicable." SDITC disagrees with Comm South's interpretation of this waiver language and concurs in the position of Staff that the language should only be interpreted to authorize a waiver of the specific "application requirements" set forth in section 20:10:32:03. The different interpretation argued by Comm South ignores other waiver related language found in the first paragraph of ARSD 20:10:32:03:

A telecommunications company required to apply for a certificate of authority for local exchange services from the commission shall submit a written application and provide the following information unless the commission grants a waiver to omit a specific item of information . . .

The above underlined language strongly supports Staff's position that the waiver language referenced by Comm South should be limited in application to the provisions of ARSD 20:10:32:03. Without question, the above language only authorizes waivers pertaining to the application information or application requirements otherwise required by ARSD 20:10:32:03 (1) thru (24). The waiver language found later in the same rule (within subsection (22)), is



obviously related and, accordingly, should be interpreted as having the same limited scope. As Staff has further stated, "the waiver language found in ARSD 20:10:32:03(22) is applicable only for purposes of ARSD 20:10:32:03 and not the whole chapter. Had the waiver been intended to be used for the whole chapter, it would be a separate section of the chapter, not a subparagraph of a section." It is clear that the language found in ARSD 20:10:32:03(22) is merely intended to instruct applicants for a certificate of authority that they should include in their application filed with the Commission a waiver request concerning the specific application requirements they feel are inapplicable to their operations.

Comm South cites certain case authorities in its Brief in Support of Petition for Declaratory Ruling. These case authorities fail to support its requested waiver of the rule provisions found in ARSD 20:10:32:10. The court in Application of Jantzen, 511 N.W.2d 504 (Neb. 1994), indicated that a waiver may be appropriate where the rule is a mere aid to guide the agency in the exercise of its independent discretion. A quick review of ARSD 20:10:32:10 indicates that the language used is very specific and non-discretionary. The rule provides as follows:

Service obligations of all providers. A telecommunications company providing local exchange services shall, at minimum, make the following available to each customer:

- (1) Access to the public switched network;
- (2) Access to emergency services such as 911 or enhanced 911;
- (3) Access to a local directory and directory assistance;
- (4) Access to operator services;
- (5) Telecommunications relay service capability or access necessary to comply with state and federal regulations;
- (6) Nonpublished service upon written or verbal request of the customer; and (7) access to interexchange services.

Emphasis added. The above language cannot reasonably be viewed as merely a guideline for Commission action that may be changed at any time. The rule states that a telecommunications company providing local exchange services "shall, at minimum" make each of the listed services available to customers. Given this language, granting a waiver of the specific service obligations listed would only be appropriate if there were other rule provisions authorizing such a waiver. As alluded to above, this is not the case. A new rule provision specifically authorizing a waiver of the same would be necessary.

For the sake of argument, even if the Commission concluded that it has authority to waive the service obligations contained in ARSD 20:10:32:10, there would be no justification for granting Comm South's requested waiver. Comm South proposes to provide in South Dakota certain local exchange services on a "prepaid basis." Comm South portrays its local service offering as being unique, suggesting that its service is structured in such a way that it brings telecommunications services to a specific segment of South Dakotans that are presently unable to obtain conventional telecommunication services due to credit problems or prior disconnection(s). Comm South attempts to justify its request for a waiver based on these claims, arguing that

making its service available will "improve the State's telecommunications subscriber base and enhance universal service." See Comm South Brief, p. 5. In order to facilitate its offering, Comm South is specifically requesting a waiver from having to provide access to directory assistance, access to operator services, and access to interexchange services. See ARSD 20:10:32:10(3), (4) and (7).

SDITC challenges the assertions by Comm South that it is offering some unique service which, if made available in South Dakota, would bring some significant benefit to consumers. Specifically, Comm South claims its service is different from conventional local service offerings because: (1) "the services are paid for prior to being rendered;" (2) the customers are charged a fixed price for local service; and, (3) because Comm South blocks direct dialed long distance calls, collect calls, operator assisted calls, directory assistance and third number billed calls. It is difficult to see how these service characteristics make Comm South's local service offering much different than the offerings of other local service providers. Most, if not all, of the SDITC member LECs bill for local exchange services a month in advance, before service is rendered. All of the LECs pursuant to the FCC's Lifeline rules are required to make toll blocking available and most, if not all, LECs also have at the least the technical ability to block access to other types of services if requested by the customer. Contrary to what Comm South alleges, its proposed offering would not make available to consumers any new or special services.

Comm South's offering appears different only to the extent that it makes certain call blocking services mandatory for the telephone subscriber. Comm South with its requested waiver is in effect asking the Commission to order that its subscribers be given no choice as to whether they will have access to interexchange services, directory assistance, and operator services. The SDITC member companies along with all other certified LECs are, in comparison, required by the provisions of ARSD 20:10:32:10 to offer access to all these services.

It is important to keep in mind that even though access to these services is required by law it does not mean the consumer has no choice. Consumers are not currently prevented from requesting services such as toll blocking and to request from their LEC certain other call blocking services. Existing LECs in South Dakota are permitted to make call blocking services available to their consumers even though the law requires each carrier, in the first instance, to provide access to interexchange services, operator services and directory assistance. Thus, Comm South, like any other LEC, is not prevented from offering a local exchange service that incorporates the blocking services it has described. What Comm South would like this Commission to do, however, is take away the consumer's choice. By receiving a waiver of the service obligations established pursuant to ARSD 20:10:32:10(3), (4) and (7), Comm South would be in a position to mandate blocking for all of its subscribers.

SDITC believes the waiver of service obligations proposed by Comm South is anti-consumer. It also would be unfair to all other LECs certified in South Dakota that are subject to all of the carrier service obligations set forth in ARSD 20:10:32:10. Comm South goes so far as to claim that because its service offering is non-conventional, the company will not be competing with

other telecommunications companies. This statement is ludicrous. Existing LECs serve many low-income subscribers, including many subscribers on Lifeline assistance. The numbers of low-income subscribers served will likely increase in the near future due to recently adopted federal rules enhancing the Lifeline and Link Up programs. Contrary to Comm South claims, there are parties that would be damaged by the waiver. Comm South would be given an advantage in the marketplace to the detriment of other LECs that have been made subject to all of the carrier service obligations described in ARSD 20:10:32:10.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard D. Coit", with a stylized, flowing script.

Richard D. Coit

Executive Director and General Counsel

cc: James Robbenolt
Attorney for Comm South Companies, Inc.

GLENN S. RICHARDS
202.454.7016 Alt: 202.663.8215
glenn.richards@shawpittman.com

November 20, 2000

RECEIVED

NOV 21 2000

Via Federal Express

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

Secretary
South Dakota Public Utilities Commission
Capitol Building, First Floor
301 East Capitol Avenue
Pierre, SD 57501-5070

Re: Comm South Companies, Inc.
SD PUC Docket TC00-014

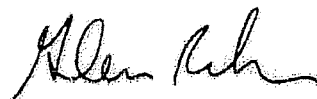
To the Secretary:

Comm South Companies, Inc. ("Comm South"), hereby amends the above-referenced Application for a Certificate of Public Convenience and Necessity to provide competitive local exchange services in South Dakota, by withdrawing the three waiver requests of the South Dakota Public Utilities Rules that were contained in the Application.

On February 10, 2000, Comm South filed an Application with the Commission which requested a waiver of ARSD 20:10:32:10(3), (4) and (7). These rules require local exchange service providers to offer customers access to local directory assistance, operator services, and interexchange services. There is an open question whether the Commission has the authority to waive its own rules. Accordingly, in an effort to have the Application considered in an expeditious manner, Comm South withdraws its waiver requests.

Please date-stamp the "Receipt" copy of this letter and return it in the enclosed self-addressed, stamped envelope. If you have any questions regarding this matter, please contact the undersigned.

Very truly yours,



Glenn S. Richards

cc: Keith Senger

Washington, DC
Northern Virginia
New York
Los Angeles
London

Glenn S. Richards
202.454.7016 Alt: 202.663.8215
Glenn.Richards@Shawpittman.com

January 16, 2001

RECEIVED

JAN 17 2001

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

By Federal Express

Secretary
South Dakota Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

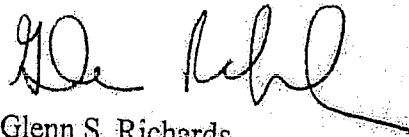
Re: Comm South Companies, Inc.; SD PUC Docket TC00-014

To the Secretary:

Comm South Companies, Inc. ("Comm South"), an applicant for a Certificate of Authority to provide competitive local exchange service in South Dakota, hereby submits an Indemnity Bond to the People of the State of South Dakota in the amount of twenty-five thousand dollars (\$25,000).

Please date-stamp the "Receipt" copy of this letter and return it in the enclosed self-addressed, stamped envelope. If you have any questions regarding this matter, please contact the undersigned.

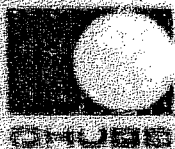
Very truly yours,



Glenn S. Richards

Enclosures

cc: Keith Senger



CHUBB GROUP OF INSURANCE COMPANIES

DUPLICATE

Surety Department 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615
Phone: (908) 903-3486 • Facsimile (908) 903-3656

INDEMNITY BOND TO THE PEOPLE OF THE STATE OF SOUTH DAKOTA

BOND NO. 8302-87-58

We, Comm South Companies, Inc., the principal and applicant for a CERTIFICATE OF AUTHORITY to provide local exchange telecommunications services within the State of South Dakota, and VIGILANT INSURANCE COMPANY, an admitted surety insurer, bind ourselves unto the Public Utilities Commission of the State of South Dakota and the consumers of South Dakota as Obligees, in the sum of TWENTY FIVE THOUSAND AND 00/100 (\$25,000.00)

The conditions of the obligation are such that the principal, having been granted such CERTIFICATE OF AUTHORITY subject to the provision that said principal purchase this Indemnity Bond and if principal shall in all respects fully and faithfully comply with all applicable provisions of South Dakota State law, and reimburse customers of Comm South Companies, Inc. for any prepayment or deposits they have made which may be unable or unwilling to return to said customers as a result of insolvency or other business failure, then this obligation shall be void, discharges and forever exonerated, otherwise to remain in full force and effect.

This bond shall take effect as of the date hereon and shall remain in force and effect until the surety is released from liability by the written order of the Public Utilities Commission, provided that the surety may cancel this Bond and be relieved of further liability hereunder by delivering thirty (30) days written notice to the Public Utilities Commission. Such cancellation shall not affect any liability incurred or accrued hereunder prior to the termination of said thirty- (30) day period.

Dated this 30th day of November, 2000.

To be effective this 30th day of November, 2000.

*Original bond is
in Reliance's bottom
left drawer.*

COMM SOUTH COMPANIES, INC.

BY: 

VIGILANT INSURANCE COMPANY

BY: 

J.M. Fairweather, Attorney-in-Fact

Countersigned this 3rd day of

January 2001.

Countersigned for South Dakota


Resident Agent

VIGILANT INSURANCE COMPANY

STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS

Statutory Basis

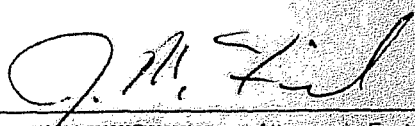
DECEMBER 31, 1999

(in thousands of dollars)

ASSETS		LIABILITIES AND SURPLUS TO POLICYHOLDERS	
Cash	\$ 2,189	Outstanding Losses and Loss Expenses	\$ 429,579
United States Government, State and Municipal Bonds	606,373	Unearned Premiums	122,962
Other Bonds	144,863	Provision for Reinsurance	3,317
Stocks	4,594	Other Liabilities	39,983
Short Term Investments	36,451		
TOTAL INVESTMENTS	794,470	TOTAL LIABILITIES	595,841
Investments in Affiliates	45,006	Capital Stock	4,000
Net Premiums Receivable	63,533	Paid-In Surplus	25,669
Other Assets	22,716	Unassigned Funds	267,878
		Unrealized Appreciation of Investments	32,337
		SURPLUS TO POLICYHOLDERS	329,884
TOTAL ADMITTED ASSETS	\$ 925,725	TOTAL LIABILITIES AND SURPLUS TO POLICYHOLDERS	\$ 925,725

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners.
Investments valued at \$7,620 are deposited with government authorities as required by law.

A CORRECT STATEMENT


J.M. Fairweather,
President, Secretary or Attorney-in-Fact



**POWER
OF
ATTORNEY**

**Federal Insurance Company
Vigilant Insurance Company
Pacific Indemnity Company**

**Attn.: Surety Department
15 Mountain View Road
Warren, NJ 07059**

Know All by These Presents, That **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, and **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, do each hereby constitute and appoint **Gerardo G. Mauriz, Frank E. Robertson, James E. Altman, F. Jay Scribner, Scott W. Bishop, John B. Fuoss, John F. Smith, Kenneth C. Mandel, Patricia S. Artinian, Edward J. French, Donna M. Powers, Christopher T. Parker, J. M. Fairweather, Jane M. Bender, Dekker Buckley, Richard W. Barnett, Edward J. Nailly, Helen S. Brown and Fred Spielberger** of Warren, New Jersey

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

We, **James Robertson**, and **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** have each signed and not sealed these presents and affixed their corporate seals on this 31st day of March, 2000.

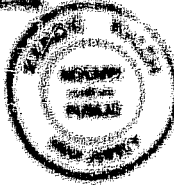
Peter Fitterer, Assistant Secretary

Amelia C. Lynch, Vice President

STATE OF NEW JERSEY
County of Somerset

On this 31st day of March, 2000, before me, a Notary Public of New Jersey, personally came Peter Fitterer, to me known to be Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**, the companies which executed the foregoing Power of Attorney, and the said Peter Fitterer being by me duly sworn, did depose and say that he is Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** and knows the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of the By-Laws of said Companies; and that he signed said Power of Attorney as Assistant Secretary of said Companies by the authority, and that he is acquainted with Amelia C. Lynch, and knows her to be Vice President of said Companies; and that the signature of Amelia C. Lynch, subscribed to said Power of Attorney is in the genuine handwriting of Amelia C. Lynch, and was thereto subscribed by authority of said By-Laws and to Fitterer's deposition.

Notary Seal



WENDIE WALSH
Notary Public, State of New Jersey
No. 0034504
Commission Expires April 10, 2003

Notary Public

CERTIFICATION

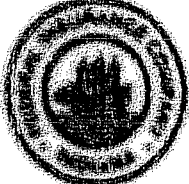
I, **James Robertson**, By-Laws of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY**:

"All powers of attorney for and on behalf of the Company may and shall be executed in the name and on behalf of the Company, either by the Chairman of the President or a Vice President or an Assistant Vice President, jointly with the Secretary or an Assistant Secretary, under their respective designations. The signature of such officers may be engraved, printed or lithographed. The signature of each of the following officers: Chairman, President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary and the seal of the Company may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such power of attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached."

We, **James Robertson**, Assistant Secretary of **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY** (the "Companies") do hereby certify that

- (a) the foregoing extract of the By-Laws of the Companies is true and correct,
- (b) the Companies are duly licensed and authorized to transact surety business in all 50 of the United States of America and the District of Columbia and are authorized by the U. S. Treasury Department; further, Federal and Vigilant are licensed in Puerto Rico and the U. S. Virgin Islands, and Federal is licensed in American Samoa, Guam, and each of the Provinces of Canada except Prince Edward Island; and
- (c) the foregoing Power of Attorney is true, correct and in full force and effect.

Done under my hand and seals of said Companies at Warren, NJ this 30 day of November, 2000



Assistant Secretary

IN THE EVENT YOU WISH TO NOTIFY US OF A CLAIM, VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT ADDRESS LISTED ABOVE, OR BY
Telephone (908) 903-3483 Fax (908) 903-3656 e-mail: surety@chubb.com

CHUBB SURETY

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

IN THE MATTER OF THE APPLICATION OF)	ORDER GRANTING
COMM SOUTH COMPANIES, INC. FOR A)	CERTIFICATE OF
CERTIFICATE OF AUTHORITY TO PROVIDE)	AUTHORITY
LOCAL EXCHANGE SERVICES IN SOUTH)	
DAKOTA)	TC00-014

On February 10, 2000, the Public Utilities Commission (Commission) received an application for a certificate of authority from Comm South Companies, Inc. (Comm South).

Comm South seeks to provide resold basic local telecommunications services, including local calling (dialtone) and access to 911 emergency and 800 number services, on a prepaid basis, to residential customers throughout South Dakota. Offerings will include optional services such as call waiting, call return, call forwarding, three-way calling, caller ID, non-published number service and speed dialing. A proposed tariff was filed by Comm South.

On February 17, 2000, the Commission electronically transmitted notice of the filing and the intervention deadline of March 3, 2000, to interested individuals and entities. No petitions to intervene or comments were filed. On July 11, 2000, Comm South filed a petition and brief for Declaratory Ruling as to whether or not the Commission has the authority to waive ARSD 20:10:32:10(3), (4) and (7). On August 1, 2000, Commission Staff filed a reply brief. At its regularly scheduled August 9, 2000, meeting, the Commission considered the Declaratory Ruling and moved to hold a hearing. On November 21, 2000, Comm South withdrew its request for waiver and its petition for Declaratory Ruling. At its regularly scheduled January 17, 2001, meeting, the Commission considered Comm South's request for a certificate of authority. Commission Staff recommended granting a certificate of authority, subject to a continuous \$25,000 surety bond, and subject to rural safeguards.

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

The Commission approves Comm South's application for a certificate of authority, subject to a continuous \$25,000 surety bond, and subject to rural safeguards. The certificate of authority for Comm South 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 Comm South choose to provide local exchange services statewide, with respect to rural telephone companies, Comm South 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 Comm South's application for a certificate of authority to provide local exchange services is granted, subject to a continuous \$25,000 surety bond; and it is

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

FURTHER ORDERED, that the Commission shall authorize Comm South 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 24th day of January, 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	<u>Melaine Kelbo</u>
on	<u>1/25/01</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, 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. TC00-014

This is to certify that

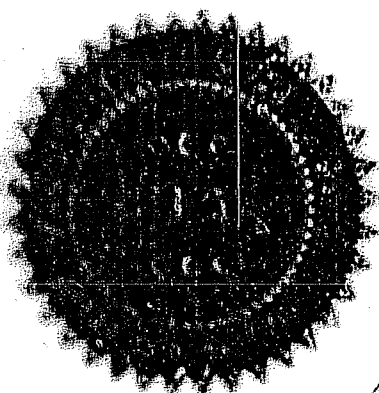
COMM SOUTH COMPANIES, INC.

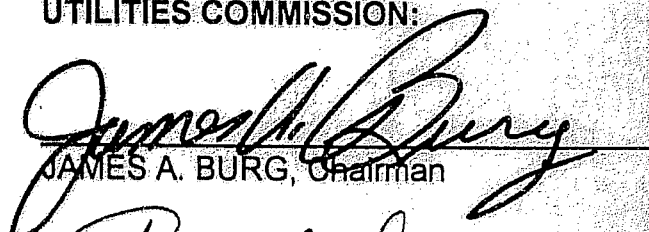
**is authorized to provide local exchange services in nonrural areas in
South Dakota.**

**This certificate is issued in accordance with SDCL 49-31-69 and ARSD
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 24th day of January, 2001.

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION:**




JAMES A. BURG, Chairman


PAM NELSON, Commissioner


LASKA SCHOENFELDER, Commissioner