

DIVIDER

**STATE OF NORTH DAKOTA
INFORMATION TECHNOLOGY DEPARTMENT
SFN 2053 (4-2002)**

**PU-2248-00-105
Essential.com, Inc./U S WEST Communications, Inc.
Interconnection Agreement
Application
Filed 3/9/2000**

00

Closed 5/11/2000

Scott, Sandi L.

From: Bauske, Shelly A.
Sent: Monday, July 17, 2000 3:47 PM
To: Scott, Sandi L.
Subject: Money Received.....

Case No. PU-2248-00-105 - \$64.13 from essential.com

Case No. PU-2236-00-61 - \$121.24 from Fleischman and Walsh for New Path Holdings

13 PU-2248-00-105

Pages: 0

07/17/2000

Essential.com, Inc. / U S WEST Communicator
\$64.13 received from Essential.com, Inc.

CC: Comm Legal PUD (3)

Scott, Sandi L.

From: Bauske, Shelly A.

Sent: Monday, July 10, 2000 1:37 PM

To: Scott, Sandi L.

Subject: Money Received.....

Case No. PU-2249-00-116 - \$163.20 from Maxcess, Inc.

Case No. PU-2239-00-77 - \$128.27 from SRT

Case No. PU-2240-00-78 - \$64.14 from SRT

Case No. PU-2207-00-85 - \$64.14 from U S WEST

Case No. PU-2248-00-105 - \$64.13 from U S WEST

12 PU-2248-00-105

07/10/2000

U S WEST Communications

\$64.13 received

Pages: 0

CC: Comm Legal PUD (3)



Public Service Commission
State of North Dakota

COMMISSIONERS

Bruce Hagen
President
Susan E. Wefald
Leo M. Reinbold

June 20, 2000

600 E Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480
e-mail: sab@oracle.psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
Phone 701-328-2400

Executive Secretary
Jon H. Mielke

Mr. Scott Macintosh
U S WEST Communications, Inc.
220 N 5th Street
Bismarck, ND 58501

John Duffy
Essential.com Inc.
3 Burlington Woods Drive 4th Floor
Burlington MA 01803

RE: Case No. PU-2248-00-105
Essential.com, Inc./U S WEST Communications, Inc.
Interconnection Agreement
Application

Gentlemen:

Enclosed is a copy of the statement approved at the June 20, 2000 Public Service Commission meeting for the expenses incurred to date in Case No. PU-2248-00-105.

Under N.D.C.C. 49-21-01.7, these expenses are billed through the Valuation Fund and must be paid for by the Telecommunications Company involved.

Please make your check payable to the Public Service Commission.

Sincerely,

Gloria Geiger
Administrative Assistant
701-328-2401

Enc.

11 **PU-2248-00-105**

Pages: 2

06/20/2000

Public Service Commission

Motion and statement for costs incurred

CC: Comm Legal PUD (3)

APPROVED:
DATE: 6-20-00
Clem

MOTION

June 20, 2000

Essential.com, Inc./U S WEST
Communications, Inc.
Interconnection Agreement
Application

PU-2248-00-105

I move the Commission bill Essential.com and U S WEST
Communications, Inc., in the total amount of \$128.26 for costs incurred in Case
No. PU-2248-00-105, Essential.com, Inc./U S WEST Communications, Inc.,
Interconnection Agreement, Application.

ND Advertising Service, Inc.	\$128.26
U S WEST	\$64.13
Essential.com	\$64.13

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Essential.com, Inc./U S WEST Communications, Inc.
Interconnection Agreement
Application

Case No. PU-2248-00-105

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **11th day of May, 2000**, she deposited in the United States Mail, Bismarck, North Dakota, **two** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Order

The envelopes were addressed as follows:

John Duffy Peter Mills
Essential.com Inc
3 Burlington Woods Dr 4th Fl
Burlington MA 01803
Cert. No. Z324 719 771

John Munn
U S West Communications
1801 California St Rm 5100
Denver CO 80202
Cert. No. Z324 719 767

Sharon Helbling further deposes and says that on the **11th day of May, 2000**, she deposited in the United States Mail, Bismarck, North Dakota, **four** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Scott Macintosh
U S WEST
P O Box 5508
Bismarck ND 58502-5508

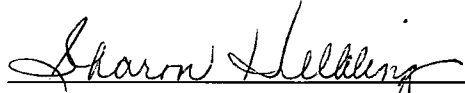
Dir-Interconnection Compliance
U S WEST
1801 California St Rm 2410
Denver CO 80202

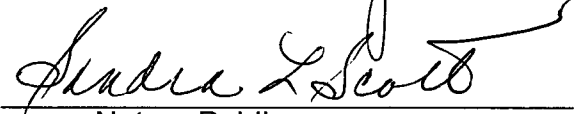
U S WEST Law Dept
General Counsel-Interconnection
1801 California St 51st Fl
Denver CO 80202

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **11th day of May, 2000**.

SEAL





Notary Public

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

APPROVED:

DATE: 5-10-00
KMF

MOTION

May 10, 2000

Essential.com/U S WEST Communications, Inc.
Interconnection Agreement
Application

Case No. PU-2248-00-105

I move the Commission adopt the Order Approving Interconnection Agreement in the application of U S WEST for approval of a service resale agreement negotiated with Essential.com, Case No. PU-2248-00-105.

JRL/sdh

000105-5.doc

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Essential.com/U S WEST Communications, Inc.
Interconnection Agreement
Application

Case No. PU-2248-00-105

ORDER APPROVING INTERCONNECTION AGREEMENT

May 10, 2000

On March 9, 2000, in Case No. PU-2248-00-105, U S WEST Communications, Inc. (U S WEST) filed an application for approval of a service resale agreement negotiated with Essential.com. This agreement sets forth the terms, conditions and prices under which U S WEST agrees to provide services for resale.

This agreement was filed under Section 252(e) of the Telecommunications Act of 1996 (Act). The Act requires that any agreement adopted by negotiation or arbitration be submitted for approval to the Commission. Under section 252(e)(2)(A), the Commission may only reject an agreement (or portion thereof) adopted by negotiation if it finds that:

1. the agreement (or portion thereof) discriminates against a telecommunications carrier that was not a party to the agreement;
2. the implementation of the agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity.

In addition, the Commission may include in its review state requirements that do not constitute barriers to entry under section 253.

Section 252(e)(4) requires that the Commission must act to approve or reject an agreement adopted by negotiation within ninety (90) days after submission by the parties.

On March 15, 2000, the Commission issued a Notice of Opportunity to File Written Comments, which provided that the Commission would receive written comments on the agreement until April 17, 2000. No comments have been received.

The Commission has reviewed the agreement and finds that it has not been shown to discriminate against a telecommunications carrier that was not a party to the agreement. The Commission further finds that implementation of the agreement has not been shown to be inconsistent with the public interest, convenience and necessity.

8 **PU-2248-00-105** Pages: 2
05/10/2000
Public Service Commission
Order Approving Interconnection Agreement

CC: Comm Legal PUD (3)

Order

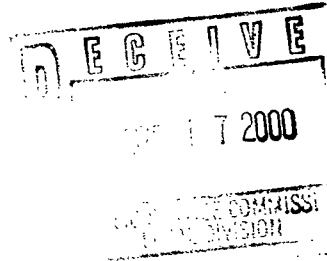
The Commission orders:

1. The service resale agreement negotiated between Essential.com and U S WEST filed with the Commission on March 9, 2000, is APPROVED.
2. The Commission retains continuing jurisdiction over the agreement at all times.
3. Notice of any changes to the agreement must be filed promptly with the Commission.
4. The agreement must not be assigned, assumed or otherwise transferred without the approval of the Commission.
5. Each party to the agreement shall respond reasonably and in good faith to the other party's requests to implement the agreement.

PUBLIC SERVICE COMMISSION

		
<hr/>	<hr/>	<hr/>
Susan E. Wefald Commissioner	Bruce Hagen President	Leo M. Reinbold Commissioner

Affidavit of Publication



State of North Dakota)
County of Burleigh)

Laurie Thiel

, being duly sworn, state as follows:

1. I am the designated agent, under the provisions and for the purposes of, Section 31-04-06, NDCC, for the newspapers listed on the attached exhibits.
2. The newspapers listed on the exhibits published the advertisement of:
SRT / comnet / Pathnet , 1 time(s)
as required by law or ordinance.
3. All of the listed newspapers are legal newspapers in the State of North Dakota and, under the provisions of Section 46-05-01, NDCC, are qualified to publish any public notice or any matter required by law or ordinance to be printed or published in a newspaper in North Dakota.

Signed: Laurie Thiel

Subscribed and sworn to before me this 3rd day of April A.D. 2000

Laurie Schaffer

LAURIE SCHAFFER
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires DEC. 1, 2005

✓ **PU-2248-00-105** Pages: 11
04/17/2000
North Dakota Advertising Service, Inc.
Affidavit of Publication

CC: Comm Legal PUD (3)

9 PU-2240-00-78 Pages: 11
04/17/2000
North Dakota Advertising Service, Inc.
Affidavit of Publication

CC: Comm Legal PUD (3)

8 PU-2207-00-85 Pages: 11
04/17/2000
North Dakota Advertising Service, Inc.
Affidavit of Publication

8 PU-2239-00-77 Pages: 11
04/17/2000
North Dakota Advertising Service, Inc.
Affidavit of Publication

CC: Comm Legal PUD (3)

CC: Comm Legal PUD (3)

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**North Dakota Network Co./SRT Communications, Inc. Case No. PU-2239-00-77
Interconnection Agreement
Application**

**CommNet Cellular, Inc./SRT Communications, Inc. Case No. PU-2240-00-78
Interconnection Agreement
Application**

**Pathnet, Inc./U S WEST Communications, Inc. Case No. PU-2207-00-85
Amended Interconnection Agreement
Application**

**Essential.com, Inc./U S WEST Communications, Inc. Case No. PU-2248-00-105
Interconnection Agreement
Application**

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL AND ORDINARY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **17th day of March, 2000**, she deposited in the United States Mail, Bismarck, North Dakota, **six** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and each containing a photocopy of:

Notice of Opportunity to File Written Comments

The envelopes were addressed as follows:

Warren Hight
SRT Communications Inc
P O Box 2027
Minot ND 58702-2027
Cert. No. P443 354 763

Valerie L Kendrick
CommNet Cellular Inc
8350 E Crescent Pkwy Ste 400
Englewood CO 80111
Cert. No. P443 354 766

Michael Lubin
Pathnet Inc
1015 31st St NW Ste 500
Washington D C 20007
Cert. No. P443 354 767

J Alfred Baird VP
Pathnet Inc
1015 31st St NW Ste 500
Washington D C 20007
Cert. No. P443 354 768

John Duffy Peter Mills
Essential.com Inc
3 Burlington Woods Dr 4th Fl
Burlington MA 01803
Cert. No. P443 354 771

John Munn
U S West Communications
1801 California St Rm 5100
Denver CO 80202
Cert. No. P443 354 772

Sharon Helbling further deposes and says that on the **17th day of March, 2000**, she deposited in the United States Mail, Bismarck, North Dakota, **four** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Scott Macintosh
U S WEST
P O Box 5508
Bismarck ND 58502-5508

Steven D Lysne
SRT Wireless
P O Box 2027
Minot ND 58702-2027

Dir-Interconnection Compliance
U S WEST
1801 California St Rm 2410
Denver CO 80202

U S WEST Law Dept
General Counsel-Interconnection
1801 California St 51st Fl
Denver CO 80202

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **17th day of March, 2000**.

SEAL





Notary Public
SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

North Dakota Network Co./SRT Communications, Inc.
Interconnection Agreement
Application

Case No. PU-2239-00-77

CommNet Cellular, Inc./SRT Communications, Inc.
Interconnection Agreement
Application

Case No. PU-2240-00-78

Pathnet, Inc./U S WEST Communications, Inc.
Interconnection Agreement
Application

Case No. PU-2207-00-85

Essential.com, Inc./U S WEST Communications, Inc.
Interconnection Agreement
Application

Case No. PU-2248-00-105

AFFIDAVIT OF SERVICE BY ORDINARY MAIL OR E-MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Sharon Helbling deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **17th day of March, 2000**, she deposited in the United States Mail, Bismarck, North Dakota, envelopes by first class mail, fully prepaid, securely sealed, each containing a photocopy of:

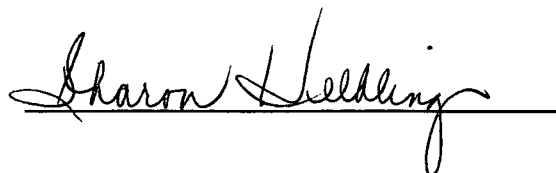
Notice of Opportunity to File Written Comments

The envelopes were addressed as follows:

See Attached List

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **17th day of March, 2000**.




Notary Public

SANDRA L. SCOTT
Notary Public, STATE OF NORTH DAKOTA
My Commission Expires JUNE 11, 2004

SEAL

5 **PU-2248-00-105** Pages: 13
03/17/2000
Public Service Commission
Affidavit of Service by Ordinary Mail or E-Mail

CC: Comm Legal PUD (3)

PU-2248-00-105

Copies To:

State Library (8 copies)

Historical Society

Associated Press

donlee@martin-associates.com
Don Lee
81 Grand St
New York NY 10013

Myer Shark
2277 Gene Autry Tr Unit C
Palm Springs CA 92264

Myer Shark
Knollwood Place Apts #221
3630 Phillips Pkwy
St Louis Park MN 55426

nlarsen@nvc.net
Clint Hanson
Accent Communications Inc
235 E 1st Ave
Groton SD 57445

jlchapman@acomminc.com
Jerry Chapman
Acomm Inc
510 1st Ave N Ste 203
Minneapolis MN 55403-0343

smassey@bepc.com
Sheryl Massey
Basin Electric Power Coop
1717 E Interstate Ave
Bismarck ND 58501-0564

jtmgr@bektel.com
Jerome Tishmack
BEK Communications Cooperative
PO Box 230
Steele ND 58482-0230

jtmgr@bektel.com
Jerome Tishmack
BEK Communications I Inc
PO Box 230
Steele ND 58482-0230

ken@staff.ctctel.com
L Dan Wilhelmson
Consolidated Communications Networks
Inc
PO Box 1077
Dickinson ND 58601-1077

ken@staff.ctctel.com
L Dan Wilhelmson
Consolidated Telcom Inc
PO Box 1077
Dickinson ND 58601-1077

ken@staff.ctctel.com
L Dan Wilhelmson
Consolidated Telephone Cooperative
PO Box 1077
Dickinson ND 58601-1077

drtc@drsolutions.com
Roger L Johnson
Dickey Rural Telephone Cooperative
PO Box 69
Ellendale ND 58436-0069

nschmid@acginc.net
Neil Schmid
FirstTel Inc
2900 West 11th St
Sioux Falls SD 57104

meredith.gifford@gecapital.com
Meredith Gifford
GE Capital Comm Services Corp
6540 Powers Ferry Rd
Atlanta GA 30339

cooperstown@mlgc.com
Ray Brown
Griggs County Telephone Company
Cooperstown ND 58425

rlaqua@rrv.net
Ronald Laqua
Halstad Telephone Company
PO Box 55
Halstad MN 56548-0055

hold@texas.net
Dana Wilson
Home Owners Long Distance Inc
8647 wurzbach Rd #M-1
San Antonio TX 78240-1245

dclark@hq.ictc.net
Diane Clark
IDT Corporation
190 Main St
Hackensack NJ 07601

kander@ictc.com
Keith Anderson
Inter-Community Telephone Co
PO Box 8
Nome ND 58062-0008

kander@ictc.com
Keith Anderson
Inter-Community Telephone Co. II
PO Box 8
Nome ND 58062-0008

itci@means.net
Bruce Reuber
Interstate Telcom Consulting Inc
130 Birch Ave W
Hector MN 55342-0668

skat@means.net
Steven Katka
Loretel Systems Inc
13 E 4th Ave
Ada MN 56510

Michel.Murray@MCI.com
Michel Murray
MCI WorldCom Inc
707 17th St Ste 3600
Denver CO 80202

skillebrew@deltacom.com
Sharon Killebrew
McLeodUSA

john_sullivan@cable.comcast.com
John Sullivan
McLeodUSA

whaas@mcleodusa.com
William Haas
McLeodUSA
P O Box 3177
Cedar Rapids IA 52406-3547

amy.ibis@dtg.com
Amy Ibis
McLeodUSA
140 North Phillips Ave Ste 404
Sioux Falls SD 57104-6711

gerrya@midrivers.com
Gerry Anderson
Mid-Rivers Telephone Coop Inc
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Circle MT 59215-0280

sbunn@m1gc.com
Shelie Bunn
Moore & Liberty Telephone Co
Enderlin ND 58027

hfuglest@ndarec.com
Harlan Fugelsten
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

dhill@ndarec.com
Dennis Hill
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PO Box 727
Mandan ND 58554-0727

pschaner@ndarec.com
Patti Schaner
ND Assn Rural Electric Coops
PO Box 727
Mandan ND 58554-0727

lclemens@nft.net
Larry Clemens
Noonan Farmers Tele Co
Noonan ND 58765

rer@norligh om
Robert E Rugers
NorLight Inc
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Brookfield WI 53045

cajuul@norstan.com
Cathy Juul
Norstan Network Services Inc
P O Box 5715
Minnetonka MN 5534333-57

pagnpta@btigate.com
Patricia Gisinger
North Dakota Telephone Assoc
PO Box 2614
Bismarck ND 58502-2614

klund@nccray.com
Kenneth Lund
Northwest Communications Corp
PO Box 38
Ray ND 58849-0038

royce@restel.net
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Cedar Grove NJ 07009

jram@erols.com
John Ramsey
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Cedar Grove NJ 07009

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Park River ND 58270-0270

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PO Box 270
Park River ND 58270-0270

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David Dunning
Polar Telecommunications Inc
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St Paul MN 55113-6317

pam@tnics.com
Pamela Harrington
RC Communications Inc
PO Box 197
New Effington SD 57255-0197

ardondoran@rrt.net
Ardon Doran
Red River Rural Tele Assoc
PO Box 136
Abercrombie ND 58001

ardondoran@rrt.net
Ardon Doran
Red River Telecom Inc
PO Box 136
Abercrombie ND 58001-0136

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Marcia Burckhard
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New Effington SD 57255

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Souris River Tele Coop
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Minot ND 58702-2027

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Kim Weydahl
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Marcy Dickerson
State Tax Department
Utility Tax Appraiser
State Capitol
Bismarck ND 58505

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Darrell Henderson
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Bison SD 57620-0039

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Caroline Larson
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Telephone Co of Central Florida Inc
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Atmore AL 36502

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U S Link Inc
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Pequot Lakes MN 56472

kjvannin@usgs.gov
K Vannin
U S Geological Survey

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Timothy Kunkleman
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John Munn
U S WEST Communications Inc
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Paul Ihland
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Lenora Hall
U S Geological Survey

afranklin@us-south.net
Anne Franklin
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saberry@uswest.com
Sharon Berry
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Fargo ND 58102-4802

johng@unidial.com
John Greive
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Louisville KY 40223

kander@ictc.com
Keith Anderson
Valley Communications Inc
P O Box 8
Nome ND 58062

bonniek@westriv.com
Bonnie Krause
West River Telecomm Coop
PO Box 467
Hazen ND 58545-0467

Neil Talbot
81 Grand St
New York NY 10013

Myer Shark
2277 Gene Autry Trail Unit C
Palm Springs CA 92264

Ann Faught
Absaraka Co-op Tele Co
Absaraka ND 58002

ACN Communications Services Inc
32991 Hamilton Ct
Farmington Hills MI 48334

Mark Waind
Altru Health System
1200 South Columbia Rd
Grand Forks ND 58201

John Summers
AmeriTel Pay Phones Inc
180 Northwest Oldham Pkwy
Lee's Summit MO 64081

Arch Paging
11437 Valley View Rd
Eden Prairie MN 55344

Leeann Brunnette
AT&T
321 E Walnut St
Des Moines IA 50309

Jack Medaris
Atlas Communications LTD
484 Norristown Rd Ste 123
Blue Bell PA 19422

Dorothy Jones
Bell Atlantic Communications Inc
1320 N Courthouse Rd 9th Fl
Arlington VA 22201

Bethany Management Services Inc
201 South University Dr
Fargo ND 58103

Jennifer Whitley
Business Discount Plan Inc
3780 Kilroy Arpt Wy
Long Beach CA 90806

Rachel Rothstein
Cable & Wireless Comm Inc
8219 Leesburg Pike
Vienna VA 22182

Scott Geston
Cable One of Fargo
P O Box 10624
Fargo ND 58106-0624

Choctaw Communications Inc
8400 S Gessner
Houston TX 77074

Robert Fallan
Coast International
14303 W 95th St
Lenexa KS 66215-5210

Comcast Telecommunications
1500 Market St
Philadelphia PA 19102

Molli Harper
Commnet Cellular Inc
8350 E Crescent Pkwy Ste 400
Englewood CO 80111

Murray Barr
Competitive Strategies Group Inc
70 East Lake St 7th Fl
Chicago IL 80112

Elaine McHale
Concert Communications Sales LLC
295 N Maple Ave Rm 5463A2
Basking Ridge NJ 07920

D D D Calling Inc
5120 Woodway Ste 8020
Houston TX 77056

Robert Hill
Dakota Central Telecom I
PO Box 299
Carrington ND 58421-0299

Dickey Rural Communications Inc
PO Box 69
Ellendale ND 58436-0069

Easton Telecom Services Inc
4646 W Streetsboro
Richfield OH 44286

Excel Communications Inc
P O Box 650582
Dallas TX 75265

Framco Inc
P O Box 388
Fargo ND 58107

Craig Brewerton
Geo Economics
PO Box 4272
Missoula MT 59806-4272

Lucille Nilson
Griggs County Telephone Company
Cooperstown ND 58425

GTE Communications Corp
5221 N O'Connor Blvd
Irving TX 75039

IdeaOne Telecom Group LLC
3239 39th St SW
Fargo ND 58104

Robert Hill
Dakota Central Tele Coop
PO Box 299
Carrington ND 58421-0299

Darcy Delaney
DaveTel Inc
10120 Windhorst Rd
Tampa FL 33619

DSLnet Communications LLC
545 Long Wharf Dr
New Haven CT 06511

Eclipse Communications Corp
2001 NW Sammamish Rd #100
Issaquah WA 98027

Brad Van Leur
FirstTel Inc
2900 West 11th St
Sioux Falls SD 57104

Ronald Rodemerck
Frontier Comm International
180 S Clinton Ave
Rochester NY 14646-0500

Giuseppe Vitale
Giuseppe Vitale Pres
UKI Communications Inc
500 N Rainbow Blvd Ste 300
Las Vegas NV 89107

Group Long Distance Inc
6600 N Andrews Ave Ste 140
Ft Lauderdale FL 33309

HJN Telecom Inc
3235 Satellite Blvd Bldg 400 Ste 300
Duluth GA 30096

Innovative Telecom Corp
1740 Massachusetts Ave
Boxborough MA 01719-2209

Nanette Edwards
ITC DELTACOM INC
4092 Memorial Pkwy SW
Huntsville AL 35802-1382

Larry Barr
IXC/SSC-Regulatory Affairs
1122 S Capital of TX Hwy
Austin TX 78746-6426

LCI International Telecom Corp
4650 Lakehurst Ct
Dublin OH 43017

LDM Systems Inc
430 Park Ave 5th Fl
New York NY 10022

Level 3 Communications LLC
3555 Farnam St
Omaha NE 68131

Jan Lowe
Long Dist Consolidated Billing Co
145 S Livernois Rd #199
Rochester MI 48307-1837

Randy Valoue
Long Distance International Inc
4150 SW 28th Way
Ft. Lauderdale FL 33312

Marilyn Foss
MCI WorldCom Inc
707 17th St Ste 3600
Denver CO 80202

MCImetro Access Transmission Services
1801 Pennsylvania Ave NW
Washington DC 20006

McLeodUSA
P O Box 3177
Cedar Rapids IA 52406-3177

Carolyn Fodor
MIDCOM Communications Inc
26913 Northwestern Hwy #165
Southfield MI 48034

Midcontinent Communications
410 South Phillips Ave
Sioux Falls SD 57104

Mid-Rivers Telephone Coop Inc
P O Box 280
Circle MT 59215

Gordon Wilhelmi
Midstate Communications Inc
PO Box 400
Stanley ND 58784-0400

Mark Wilhelmi
Midstate Telephone Co
PO Box 400
Stanley ND 58784-0400

Minnesota Independent Equal Access
Corp
10300 6th Avenue N
Plymouth MN 55441

Mike Strand
MITS
PO Box 5237
Helena MT 59604-5237

MVX Communications LLC
100 Rowland Way Ste 145
Novato CA 94945

Dave Crothers
NDATC
Box 1144
Mandan ND 58554-1144

Richard Thronson
Nemont Telephone Cooperative Inc
Scobey MT 59263

Sharon Meinhart
NetLogix Telecom Inc
501 Bath St
Santa Barbara CA 93101

Net-tel Corporation
1023 31st St NW
Washington DC 20007

Nextel West Corp
2001 Edmund Halley Dr
Reston VA 20191-3436

Dave Dircks
North Dakota Telephone Company
PO Box 180
Devils Lake ND 58301-0180

Holly Sasscer
Operator Communications Inc
3530 Forest Ln Ste 200
Dallas TX 75234-7910

Patrick Delaney
Overlook Communications International
3125 North Meadow Pkwy #S110
Roswell GA 30076

Pamcomm
P O Box 5200
Sioux Falls SD 57117-5200

Bryan Engle
Parcel Consultants Inc
150 Commerce Rd
Cedar Grove NJ 07009

David Bryson
Phoenix Network Inc
555 17th St
Denver CO 80202

Primus Telecommunications Inc
1700 Old Meadow Rd 3rd Fl
McLean VA 22102

Jan Seby
Pringle and Herigstad P C
PO Box 1000
Minot ND 58702-1000

Quintelco Inc
1 Blue Hill Plaza
Pearl River NY 10965

Heather Troxell
Qwest Communications Corporation
4250 Fairfax Dr
Arlington VA 22203

Dean Polkow
RCC Network Inc
PO Box 2000
Alexandria MN 56308-2000

RCN Long Distance Company
105 Carnegie Ctr
Princeton NJ 08540

Gene Sloan
Reservation Telephone Cooperative
Parshall ND 58770

Skyland Technologies Inc
P O Box 5237
Helena MT 59604-5237

Lisa Dabkowski
SNET America Inc
6 Devine St 1st Fl
North Haven CT 06743

Andrew Jones
Sprint
8140 Ward Pkwy Flr 5E
Kansas City MO 64114

Randy Burckhard
SRT Communications Inc
P O Box 789
Minot ND 58702-0789

Harris Saele
T P C Inc
PO Box 180
Devils Lake ND 58301-0180

Regulatory Analyst
Technologies Management Inc
PO Drawer 200
Winter Park FL 32790-0200

Jack Medaris
Telco Partners Inc
484 Norristown Rd Ste 123
Blue Bell PA 19422

Tele-Tech Inc
2900 W 11th St
Sioux Falls SD 57104-3660

Thomas K Crowe
Thomas K Crowe Pres
Law Offices of Thomas K Crowe PC
2300 M St NW Ste 800
Washington DC 20037

Kenneth Carlson
Turtle Mountain Communications
PO Box 729
Langdon ND 58249-0729

Tim Kunkelman
U S WEST Communications Inc
1801 California St Rm 4630
Denver CO 80202

Sam Billingsley
United States Advanced Network Inc
3000 Nrothwoods Pkwy Ste 140
Norcross GA 30071

Dennis Houston
Universal Network Services of ND
1572 North Batavia St Ste 1A
Orange CA 92867

USBG Inc
5601 W 120th St
Alsip IL 60658

Target Telecom Inc
1515 S Federal Hwy Ste 400
Boca Raton FL 33432-7451

Thomas Cirrito
Telco Communications
1100 Wilson Blvd Ste 1425
Arlington VA 22209-2297

Al Bosch
Tele-Beep Company
PO Box 7072
Bismarck ND 58502-7072

Liz Petroni
Teltrust Comm Services Inc
6322 S 3000 East
Salt Lake City UT 84121

T-Netix Inc
67 Inverness Drive E
Englewood CO 80112

Judy Pepler
U S WEST Communications Inc
PO Box 5508
Bismarck ND 58502-5508

Dick Boyer
U S West Interprise America Inc
1999 Bdwy Rm 700
Denver CO 80202

Kenneth Carlson
United Telephone Mut Aid Corp
Langdon ND 58249

Telecomm Dept
University of North Dakota
Box 8193
Grand Forks ND 58202-7141

Thomas Bandenburg
USN Communications Long Dist Inc
10 S Riverside Plaza Ste 401
Chicago IL 60606

Val-Ed Joint Venture LLP
150 2nd St SW
Perham MN 56573

Robert Barfield
West River Communications Inc
PO Box 467
Hazen ND 58545-0467

Robert Barfield
West River Telecomm Coop
PO Box 467
Hazen ND 58545-0467

Randy Houder
Venture Communications Inc
PO Box 157
Highmore SD 57345-0157

Doris Cooper
West River Long Distance Co
PO Box 467
Hazen ND 58545-0467

Z-Tel Communications Inc
601 S Harbour Island Blvd Ste 220
Tampa FL 33602-5925

Helbling, Sharon D.

From: Helbling, Sharon D.
Sent: Thursday, March 16, 2000 3:10 PM
To: 'ndna'
Subject: Attached Notices

Please have the attached Notices published as legal publications in the next issue of the ten North Dakota daily newspapers. In addition to publishing it, would you also run it as a news item only article.

Please send the bill to the Public Service Commission along with a tear sheet for billing purposes.

If you have any questions, please call me at 328-4076.

Thank you.

Sharon Helbling

29.doc

1.doc

1.doc

4 **PU-2248-00-105** Pages: 1

03/16/2000

Public Service Commission

Notice e-mailed to NDNA requesting
publication

CC: Comm Legal PUD (3)

1

MOTION

March 15, 2000

**North Dakota Network Co./SRT Communications,
Inc.
Interconnection Agreement
Application**

Case No. PU-2239-00-77

**CommNet Cellular, Inc./SRT Communications,
Inc.
Interconnection Agreement
Application**

Case No. PU-2240-00-78

**Pathnet, Inc./U S WEST Communications, Inc.
Amended Interconnection Agreement
Application**

Case No. PU-2207-00-85

**Essential.com/U S WEST Communications, Inc.
Interconnection Agreement
Application**

Case No. PU-2248-00-105

I move the Commission issue a Notice of Opportunity to File Written Comments in the above Interconnection Agreement Applications, Case Nos. PU-2239-00-77, PU-2240-00-78, PU-2207-00-85, and PU-2248-00-105.

JRL/sdh

000105-2.doc

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**North Dakota Network Co./SRT Communications,
Inc.
Interconnection Agreement
Application**

Case No. PU-2239-00-77

**CommNet Cellular, Inc./SRT Communications,
Inc.
Interconnection Agreement
Application**

Case No. PU-2240-00-78

**Pathnet, Inc./U S WEST Communications, Inc.
Interconnection Agreement
Application**

Case No. PU-2207-00-85

**Essential.com/U S WEST Communications, Inc.
Interconnection Agreement
Application**

Case No. PU-2248-00-105

NOTICE OF OPPORTUNITY TO FILE WRITTEN COMMENTS

March 15, 2000

On February 23, 2000, in Case No. PU-2239-00-77, SRT communications, Inc. (SRT) filed an application for approval of a Wireless Interconnection Agreement negotiated with North Dakota Network company dba SRT Wireless.

Also on February 23, 2000, in Case No. PU-2240-00-78, SRT filed an application for approval of a Wireless Interconnection Agreement negotiated with CommNet Cellular, Inc.

These agreements includes terms, conditions, and prices for wireless network interconnection and exchange of local traffic.

On March 1, 2000, in Case No. PU-2207-00-85, U S WEST Communications, Inc. (U S WEST) filed an application for approval of negotiated amendments to its interconnection agreement with Pathnet, Inc. to incorporate language that was inadvertently omitted from the original agreement approved by the Commission in Case No. PU-2207-99-650.

On March 9, 2000, in Case No. PU-2248-00-105, U S WEST filed an application for approval of a resale agreement negotiated with Essential.com. This agreement sets

forth the terms, conditions and prices under which U S WEST agrees to provide services for resale.

These agreements were filed under Section 252(e) of the Telecommunications Act of 1996 (Act). The Act requires that any agreement adopted by negotiation or arbitration be submitted for approval to the Commission. Under section 252(e)(2)(A), the Commission may only reject an agreement (or portion thereof) adopted by negotiation if it finds that:

1. the agreement (or portion thereof) discriminates against a telecommunications carrier that was not a party to the agreement;
2. the implementation of the agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity.

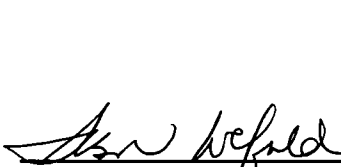


In addition, the Commission may include in its review state requirements that do not constitute barriers to entry under section 253.

Section 252(e)(4) requires that the Commission must act to approve or reject an agreement adopted by negotiation within ninety (90) days after submission by the parties.

The Commission will receive written comments on these Interconnection Agreements until April 17, 2000.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Jon Mielke, Executive Secretary, at least 24 hours prior.

PUBLIC SERVICE COMMISSION

		
Susan E. Wefald Commissioner	Bruce Hagen President	Leo M. Reinbold Commissioner

U S WEST Communications
7800 E. Orchard Road, Suite 250
Englewood, Colorado 80111
(303) 793-6605-Phone
(303) 793-6633-Fax
kxmacne@uswest.com

Kristine B. Macneal
Contract Administrator

Contract Development
and Services

Law Department



March 7, 2000

Via Overnight Delivery

Mr. Jon H. Mielke, Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**Re: Filing of Resale Agreement between U S WEST Communications, Inc.
and essential.com**

Dear Mr. Mielke:

Enclosed for filing is an original and seven (7) copies of the Resale Interconnection Agreement (the "Agreement") between essential.com ("essential.com") and U S WEST Communications, Inc. ("U S WEST") for approval by the Commission. This Agreement was reached through voluntary negotiation between U S WEST and essential.com. Pursuant to the terms of the Agreement, the parties are requesting the Commission expedite its review and approval.

Also enclosed is the original certified copy of the Certificate of Good Standing and a copy of the Certificate of Authority together with an extra copy of this letter. Please date stamp the extra copy and return it to me in the enclosed self-addressed stamped envelope. Please send any and all correspondence regarding this matter to the undersigned. Thank you for your cooperation and assistance in this matter.

Yours truly,

Enclosures

cc: essential.com
John Duffy
3 Burlington Woods Drive, 4th Floor
Burlington, MA 01803



1 PU-2248-00-105 Pages: 74
03/09/2000
Essential.com, Inc. / U S WEST Communication
Interconnection Agreement application

CC: Comm Legal PUD (3)

U S WEST, Inc. Law Department
Counsel, Interconnection
1801 California Street, 51st Floor
Denver, Colorado 80202

Scott A. Macintosh
Manager - Public Policy
U S WEST Communications, Inc.
220 N 5 Street
Bismarck, ND 58506



**CERTIFICATE OF AUTHORITY
FOREIGN CORPORATION
APPLICATION
SECRETARY OF STATE
SFN 13100 (8-87)**

SEE REVERSE SIDE FOR FEES, FILING AND MAILING INSTRUCTIONS

FOR OFFICE USE ONLY

ID #	15091900
WG #	732830
Filed	10-8-99
By	[Signature]

RECEIVED

OCT 04 1999

SEC. OF STATE

1.A. The application **MUST** be accompanied by **ALL** of the following:

- Filing fee of \$125 if a ~~Foreign Business or Professional Corporation~~
- Filing fee of \$40 if a ~~Foreign Nonprofit Corporation~~
- Signed Consent of Registered Agent and fee of \$10
- Current **ORIGINAL CERTIFICATE OF GOOD STANDING OR CERTIFICATE OF EXISTENCE** verifying corporate existence certified by the incorporating officer of the state or country of incorporation.

The following **MAY** be required:

- Certification of professional licensure from the North Dakota licensing board for the profession
- Signed consent to use of name and fee of \$10
- Trade Name Registration and fee of \$25

TYPE OR PRINT LEGIBLY

For reference, see North Dakota Century Code, Section 10-19.1-135 or 10-33-125.

2. Type of corporation applying for Certificate of Authority: (check one)

- Foreign Business Foreign Professional Foreign Nonprofit

3.A. Name of corporation **EXACTLY** as it appears on Certificate of Good Standing from state of origin

B. Federal ID #

essential.com, Inc.

C. If the corporation chooses to use a name other than its corporate name, that name is a trade name and must be registered with the North Dakota Secretary of State. (SEE INSTRUCTION 3.C.) if applicable, provide the trade name below and complete the Trade Name Registration form if the selected trade name is not already registered in North Dakota.

D. If the corporation has been notified by the North Dakota Secretary of State that its corporate name is the same as, or deceptively similar to a name already registered, this application for Certificate of Authority must be accompanied by one of the following (check one)

- Consent to use of name from the conflicting name holder(s)
- An application for registration of a trade name for use in transacting business in North Dakota. The trade name adopted is:

Certified copy of a final decree of a court of competent jurisdiction establishing prior right of this corporation to use of the name in North Dakota

4. Complete mailing address of principal executive office which may not only be a post office box (Street/RR, and PO Box if applicable, city, state, zip + 4) 3 Burlington Woods Drive, Burlington, Massachusetts 01803

5.A. STATE or country where incorporated

B. EXACT date incorporated (Month, day, AND year)

C. Duration of corporation
 Perpetual
 Other (Specify)

D. Telephone #

781-229-9599

Delaware

October 30, 1998

E. Toll-free telephone #

6.A. Name of required registered agent in **NORTH DAKOTA** (SEE INSTRUCTION 6.A.)

B. Federal ID/social security # of registered agent

C T Corporation System

51-0006522

C. Address of registered agent in **NORTH DAKOTA** which may not only be a post office box number (Street/RR, and PO Box if applicable, city, state, zip +4) c/o C T Corporation System, 314 East Thayer Avenue, Bismarck, North Dakota 58501

7. Nature of business or activities the corporation intends to conduct in the State of North Dakota

To sell local and long distance telecommunications services, energy home services and other services all in accordance with state and federal law.

OFFICERS AND DIRECTORS OF THE CORPORATION

OFFICE	Check box if officer also serves as director	NAME	COMPLETE MAILING ADDRESS			
			Street/RR	PO Box	City	State Zip + 4
PRESIDENT	<input checked="" type="checkbox"/>	Akhil Garland	3 Burlington Massachusetts	Woods Drive, 01803	Burlington,	
VICE PRESIDENT	<input checked="" type="checkbox"/>	Patrick J. Moran	3 Burlington Massachusetts	Woods Drive, 01803	Burlington,	
SECRETARY	<input type="checkbox"/>	Linda DeRenzo	Testa, Hurwitz, & Thibault, Street, Boston, Massachusetts	LLP 125 High	02110	
TREASURER	<input type="checkbox"/>					
DIRECTOR		See attached list of directors				
DIRECTOR						

9. The undersigned, a person authorized by the corporation to sign this application, knows the contents thereof, and believes the statements made to be true.

[Signature] 9/17/99
Original signatory Akhil Garland Date

10. Name of person to contact about this application

Daytime telephone #

Appendix to North Dakota
Certificate of Authority Foreign Corporation Application

**Directors of
Essential.com, Inc.**

1. Akhil Garland
3 Burlington Woods Drive
Burlington, Massachusetts 01803
2. Patrick J. Moran
3 Burlington Woods Drive
Burlington, Massachusetts 01803
3. Scott Ungerer
EnterTech Capital, 435 Devon Park Drive, 700 Building
Wayne, Pennsylvania 19087
4. Rob Soni
Bessemer Venture Partners, 83 Walnut Street
Wellesley Hills, Massachusetts 02481
5. Christopher Kirchen
Brand Equity Ventures, Three Pickwick Plaza
Greenwich, Connecticut 06830



REGISTERED AGENT
CONSENT TO SERVE
SECRETARY OF STATE
SFN 7374 (9-97)

RECEIVED

OCT 04 1999

SEC. OF STATE

FOR OFFICE USE ONLY

ID #	15091900
File #	
WO #	722830
Filed	10-8-99
By	[Signature]

SEE REVERSE SIDE FOR FILING AND MAILING INSTRUCTIONS

1. FILING FEE: \$10.00

TYPE OR PRINT LEGIBLY

2. Name of the organization for which the registered agent is to serve (corporation, limited liability company, limited liability partnership or real estate investment trust)

Essential.com, Inc.

3.A. Name of the registered agent

C T Corporation System

B. Registered Agent is (Check One)

- An individual North Dakota resident
- A corporation
- A limited liability company
- A limited liability partnership

C. Federal ID # or social security # of registered agent

51-0006522

4. The undersigned, as registered agent, or as authorized to sign on behalf of the registered agent, consents to act in the capacity of registered agent until removed or until a resignation is submitted to the Secretary of State in accordance with North Dakota laws.

C T CORPORATION SYSTEM

By Lauren H. Kreatz 10/27/99
 Original signature of registered agent Date

LAUREN H. KREATZ,
SPECIAL ASSISTANT SECRETARY

State of North Dakota

SECRETARY OF STATE



CERTIFICATE OF GOOD STANDING

OF

ESSENTIAL.COM, INC.

The undersigned, as Secretary of State of the State of North Dakota, hereby certifies that ESSENTIAL.COM, INC., a Delaware corporation, authorized to transact business in the State of North Dakota on October 8, 1999, and according to the records of this office as of this date, has paid all fees due this office as required by North Dakota statutes governing foreign corporations.

ACCORDINGLY the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Good Standing to

ESSENTIAL.COM, INC.

Issued: March 2, 2000

A handwritten signature in cursive script, reading "Alvin A. Jaeger".

Alvin A. Jaeger
Secretary of State

State of North Dakota

SECRETARY OF STATE



CERTIFICATE OF AUTHORITY

OF

ESSENTIAL.COM, INC.

The undersigned, as Secretary of State of the State of North Dakota, hereby certifies that an application of

ESSENTIAL.COM, INC.

for a Certificate of Authority to transact business in this State, duly signed and verified pursuant to the provisions of the North Dakota Century Code, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Authority to

ESSENTIAL.COM, INC.

to transact business in this State under the name of

ESSENTIAL.COM, INC.

Issued: October 8, 1999

A handwritten signature in cursive script, reading "Alvin A. Jaeger".

Alvin A. Jaeger
Secretary of State

**RESALE
AGREEMENT**

BETWEEN

U S WEST COMMUNICATIONS, INC.

AND

ESSENTIAL.COM

FOR

NORTH DAKOTA

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PART A - GENERAL TERMS

This Resale Agreement is between essential.com ("RESELLER"), a Delaware corporation, and U S WEST Communications, Inc. ("USW"), a Colorado corporation.

(A)1. SCOPE OF AGREEMENT

- (A)1.1 Pursuant to this negotiated Resale Agreement ("Agreement"), RESELLER and USW (collectively, "the Parties") will extend certain arrangements to one another within the geographical areas where USW is the incumbent Local Exchange Carrier within the state of North Dakota for purposes of providing the resale of local Telecommunications Services. This Agreement or the portions of this Agreement relative to a particular state will be submitted to the North Dakota Public Service Commission for approval. Notwithstanding this mutual commitment, however, 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.
- (A)1.2 The provisions in this Agreement are based, in large part, on the existing state of the law, rules, regulations and interpretations thereof, as of the date hereof (the "Existing Rules"). Among the Existing Rules are or could be the results of arbitrated decisions by the Commission which are currently being challenged by USW. Among the Existing Rules are certain FCC rules and orders that are the subject of, or affected by, the opinion issued by the Supreme Court of the United States in *AT&T Corp., et al. v. Iowa Utilities Board, et al.* on January 25, 1999. Nothing in this Agreement shall preclude or stop USW from taking any position in any forum concerning the proper interpretation or effect of the Existing Rules or concerning whether the Existing Rules should be changed, dismissed, stayed or modified. To the extent that the Existing Rules are changed, vacated, dismissed, stayed or modified, then the Parties shall amend this Agreement and all contracts adopting all or part of this Agreement pursuant to Section 252(i) of the Act, shall be amended to reflect such modification or change of the Existing Rules. Where the Parties fail to agree upon such an amendment, it shall be resolved in accordance with the Dispute Resolution provision of this Agreement. It is expressly understood that this Agreement will be corrected to reflect the outcome of generic pricing proceedings by the Commission. This Section (A)1.2 shall be considered part of the rates, terms and conditions of each service resale arrangement contained in this Agreement, and this Section (A)1.2 shall be considered legitimately related to the purchase of each service for resale arrangement contained in this Agreement.
- (A)1.3 This Agreement is entered into as a result of both private negotiations between the Parties and the incorporation of some of the results of arbitrated decisions by the Commission, acting pursuant to Section 252 (b) of the Act, and involving interconnection/resale agreements of other parties. The Parties have included for convenience certain rates, terms or conditions in this Agreement which reflect

rates, terms or conditions established in some or all of those other arbitrations. RESELLER acknowledges: (1) that those rates, terms or conditions are extended only because of the arbitrated results in other dockets, (2) that USW intends to appeal certain of those decisions, and (3) that any negotiations, appeal, stay, injunction or similar proceeding impacting the applicability of those rates, terms or conditions to the local service providers who were parties to those arbitrations will similarly impact the applicability of those rates, terms or conditions to RESELLER. The Parties further recognize that this Agreement is subject to the generic proceedings by the Commission addressing the services in this Agreement.

(A)1.4 This Agreement sets forth the terms, conditions and prices under which USW agrees to provide services for resale to RESELLER, all for the sole purpose of providing Telecommunications Services.

(A)1.5 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, (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.

(A)1.6 USW may make services and features available to RESELLER for resale under this Agreement consistent with the way they are available to USW end users, without a formal amendment to this Agreement. Nothing herein prevents either Party from raising other issues through additional good faith negotiations.

(A)1.7 This Agreement is structured in the following format:

- Part A - General Terms
- Part B - Resale
- Part C - Directory Services
- Part D - Miscellaneous Provisions
- Part E - Rates
- Part F - Signature

(A)1.8 Prior to placing any orders for services under this Agreement, the Parties will jointly complete USW's "Reseller Questionnaire". This questionnaire will then be used to:

- Determine geographical requirements
- Identify RESELLER Ids
- Determine USW system requirements to support RESELLER specific activity
- Collect credit information
- Obtain billing information
- Create summary bills
- Establish input and output requirements
- Create and distribute USW and RESELLER contact lists
- Identify client hours and holidays

(A)2. DEFINITIONS

- (A)2.1 "Act" means the Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended by the Telecommunications Act of 1996, and as from time to time interpreted in the duly authorized rules and regulations of the FCC or a Commission within its state of jurisdiction.
- (A)2.2 "Basic Exchange Features" are optional end user switched services that 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; and Selective Call Rejection.
- (A)2.3 "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 Telecommunications Services. As used solely in the context of this statement and unless otherwise agreed, Basic Exchange Telecommunications Service includes access to ancillary services such as 911, directory assistance and operator services.
- (A)2.4 "Commission" means the Public Service Commission in the state of North Dakota.
- (A)2.5 "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.
- (A)2.6 "Interconnect & Resale Resource Guide" is a USW document that provides essential information needed to request services available under this Agreement. It is available on USW's Web site.
- (A)2.7 "Interexchange Carrier" or "IXC" means a carrier that provides interLATA or IntraLATA Toll services.
- (A)2.8 "IntraLATA Toll" is defined in accordance with USW's current intraLATA toll serving areas, as determined by the Federal Communications Commission.
- (A)2.9 "Local Exchange Carrier" or "LEC" means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under Section 332(c) of the Act, except to the extent that the FCC finds that such service should be included in the definition of such term.
- (A)2.10 "Party" means either USW or RESELLER and "Parties" means USW and RESELLER.

- (A)2.11 "Reseller" is a category of local exchange service provider that obtains dial tone and associated Telecommunications Services from another provider through the purchase of finished services for resale to its end users.
- (A)2.12 "Tariff" as used throughout this Agreement refers to USW interstate Tariffs and state Tariffs, price lists, price schedules and catalogs.
- (A)2.13 "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 Federal Communications Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.
- (A)2.14 "Telecommunications Services" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- (A)2.15 Terms not otherwise defined here, but defined in the Act shall have the meaning defined there. Where a term is defined in the regulations implementing the Act but not in this Agreement, the Parties do not necessarily intend to adopt the definition as set forth in said regulations.

(A)3. TERMS AND CONDITIONS

(A)3.1 General Provisions

- (A)3.1.1 Each Party is solely responsible for the services it provides to its end users and to other Telecommunications Carriers.
- (A)3.1.2 The Parties shall work cooperatively to minimize fraud associated with intra-LATA toll, third-number billed calls, and any other services related to this Agreement.
- (A)3.1.3 Nothing in this Agreement shall prevent either Party from seeking to recover the costs and expenses, if any, it may incur in (a) complying with and implementing its obligations under this Agreement, the Act, and the rules, regulations and orders of the FCC and the Commission, and (b) the development, modification, technical installation and maintenance of any systems or other infrastructure which it requires to comply with and to continue complying with its responsibilities and obligations under this Agreement.

(A)3.2 Term of Agreement

This Agreement shall become effective upon Commission approval, pursuant to Sections 251 and 252 of the Act, shall terminate on April 8, 2002, and shall be binding upon the Parties during that term, notwithstanding Section 252(i) of the Act. After the date specified above, this Agreement shall continue in force and

effect until terminated by either Party providing one hundred sixty (160) days written notice of termination to the other Party. The day the notice is served will determine the starting point for a 160-day negotiation period (in accordance with 252(b)1 of the Act. In the event of such termination, existing or pending service arrangements made available under this Agreement shall continue in total without interruption under either a) a new or adoption agreement executed by the Parties, or b) tariff terms and conditions generally available to all resellers.

(A)3.2.1 If the Parties are unable to negotiate a new agreement during the negotiation period described above, the window of opportunity to file for arbitration to resolve outstanding contractual issues in accordance with the Act will occur between days 135 and 160 of the 160 day notice period.

(A)3.2.2 If the Parties are able to reach agreement, this Agreement shall continue for the brief period of time needed to secure the Commission's approval of an adoption agreement or a new resale agreement. In the case of Section (A)3.2.1, this Agreement will expire on the termination date specified in the one hundred sixty (160) day notice referenced above, unless a petition for arbitration has been filed, but if such a petition has been filed then this Agreement shall continue for the period necessary for the Commission to act and resolve the disputed issues so that the Parties will have an effective resale agreement.

(A)3.3 Proof of Authorization

Where so indicated in specific sections of this Agreement, each party shall be responsible for obtaining and having in its possession Proof of Authorization ("POA"). POA shall consist of verification of the end user's selection and authorization adequate to document the end user's selection.. Such selection may be obtained in the following ways:

(A)3.3.1 The end user's written Letter of Authorization.

(A)3.3.2 The end user's electronic authorization by use of an 1-8XX number.

(A)3.3.3 The end user's oral authorization verified by an independent third party (with third party verification as POA).

The Parties shall make POAs available to each other upon request, in accordance with the applicable laws and rules. Unless prohibited by applicable laws or regulations, a charge of \$100.00 ("slamming charge") will be assessed if the POA cannot be provided supporting the change in service provider. If there is a conflict between the end user designation and the other Party's written evidence of its authority, the Parties shall honor the designation of the end user and change the end user back to the previous service provider.

(A)3.4 Payment

(A)3.4.1 Amounts payable under this Agreement are due and payable within thirty (30) calendar days after the date of USW's invoice, or within twenty (20) days after receipt of the invoice, whichever is later. If the payment due date is not a Business Day, the payment shall be made the next Business Day..

USW may discontinue processing orders for the failure by RESELLER to make full payment for the services provided under this Agreement within thirty (30) days of the due date on RESELLER's bill.

USW may disconnect for the failure by RESELLER to make full payment for the 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.

(A)3.4.2 Should RESELLER dispute, in good faith, any portion of the monthly billing under this Agreement, RESELLER will notify USW in writing within thirty (30) calendar days of the receipt of such billing, identifying the amount, reason and rationale of such dispute. RESELLER shall pay all amounts due. Both RESELLER and USW agree to expedite the investigation of any disputed amounts in an effort to resolve and settle the dispute prior to initiating any other rights or remedies. Should the dispute be resolved in RESELLER's favor and the resolved amount did not appear as a credit on RESELLER's next invoice from USW, USW will reimburse RESELLER the resolved amount plus interest from the date of payment. The amount of interest will be calculated using the late payment factor that would have applied to such amount had it not been paid on time.

(A)3.4.3 USW will determine RESELLER's credit status based on previous payment history with USW or credit reports such as Dun and Bradstreet. If RESELLER has not established satisfactory credit with USW or if RESELLER is repeatedly delinquent in making its payments, USW may require a deposit to be held as security for the payment of charges. "Repeatedly delinquent" means being thirty (30) calendar days or more delinquent for three (3) consecutive months. The deposit may not exceed the estimated total monthly charges for a two (2) month period. The deposit may be a surety bond, a letter of credit with terms and conditions acceptable to USW or some other form of mutually acceptable security such as a cash deposit. Required deposits are due and payable within ten (10) calendar days after demand in accordance with Commission requirements.

- (A)3.4.4 Interest will be paid on cash deposits at the rate applying to deposits under applicable Commission rules, regulations, or Tariffs. Cash deposits and accrued interest will be credited to RESELLER's account or refunded, as appropriate, upon the earlier of the termination of this Agreement or the establishment of satisfactory credit with USW, which will generally be one (1) full year of timely payments in full by RESELLER. The fact that a deposit has been made does not relieve RESELLER from any requirements of this Agreement.
- (A)3.4.5 USW may review RESELLER's credit standing and modify the amount of deposit required.
- (A)3.4.6 The late payment charge for amounts that are billed under this Agreement shall be in accordance with state Tariffs/Commission Rules and Orders.

(A)3.5 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. Until such time as a resale tax exemption certificate is provided, no exemptions will be applied.

(A)3.6 Force Majeure

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, work stoppages, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "Force Majeure Event"). The Party affected by a Force Majeure Event shall give prompt notice to the other Party, shall be excused from performance of its obligations hereunder on a day to day basis to the extent those obligations are prevented by the Force Majeure Event, and shall use reasonable efforts to remove or mitigate the Force Majeure Event. In the event of a labor dispute or strike the Parties agree to provide service to each other at a level equivalent to the level they provide themselves.

(A)3.7 Limitation of Liability

- (A)3.7.1 Except for losses relating to or arising out of any act or omission in its performance of services or functions provided under this Agreement, each Party shall be liable to the other for direct damages for any loss, defect or equipment failure resulting from the causing Party's conduct or the conduct of its agents or contractors in performing the obligations contained in this Agreement.
- (A)3.7.2 Neither Party shall be liable to the other 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.
- (A)3.7.3 Except for indemnity obligations, each Party's liability to the other Party for any loss relating to or arising out of any act or omission in its performance of services or functions provided under 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 breaching Party for the service(s) or function(s) not performed or improperly performed.
- (A)3.7.4 Nothing contained in this Section shall limit either Party's liability to the other for intentional, malicious misconduct.
- (A)3.7.5 Nothing contained in this Section shall limit either Party's obligations of indemnification as specified in the Indemnity Section of this Agreement.
- (A)3.7.6 Neither Party shall be liable to the other under any theory including indemnity on account of such Party's failure or neglect to have or maintain a system or systems that are Year 2000 compliant. As the Parties approach the Year 2000, date information associated with any interfaces between the Parties is expected to remain as it is.

(A)3.8 Indemnity

- (A)3.8.1 With respect to third party claims, the Parties agree to indemnify each other as follows:
 - (A)3.8.1.1 Except for claims made by end users of one Party against the other Party, which claims are based on defective or faulty services provided by the other Party to the one Party, each of the Parties agree 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.

(A)3.8.1.2 Where the third party claim is made by (or through) an end user of one Party against the other Party, which claim is based on defective or faulty services provided by the other Party to the one Party then there shall be no obligation of indemnity unless the act or omission giving rise to the defective or faulty services is shown to be intentional, malicious misconduct of the other Party.

(A)3.8.1.3 If the claim is made by (or through) an end user and where a claim is in the nature of a claim for invasion of privacy, libel, slander, or other claim based on the content of a transmission, and it is made against a Party who is not the immediate provider of the Telecommunications Service to the end user (the indemnified provider), then in the absence of fault or neglect on the part of the indemnified provider, the Party who is the immediate seller of such Telecommunications Service shall indemnify, defend and hold harmless the indemnified provider from such claim.

(A)3.8.2 The indemnification provided herein shall be conditioned upon:

(A)3.8.2.1 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.

(A)3.8.2.2 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.

- (A)3.8.2.3 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.

(A)3.9 Intellectual Property

- (A)3.9.1 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 Interconnection 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.
- (A)3.9.2 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.
- (A)3.9.3 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 Interconnection 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.
- (A)3.9.4 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, trade name, trade secret or any other intellectual property right now or hereafter owned, controlled or licensable by either Party.

Neither Party may use any patent, copyright, logo, trademark, trade name, trade secret or other intellectual property rights of the other Party or its affiliates without execution of a separate agreement between the Parties.

(A)3.9.5 Neither Party shall without the express written permission of the other Party, state or imply that: 1) it is connected, or in any way affiliated with the other or its affiliates, 2) it is part of a joint business association or any similar arrangement with the other or its affiliates, 3) the other Party and its affiliates are in any way sponsoring, endorsing or certifying it and its goods and services, or 4) with respect to its advertising or promotional activities or materials, that the resold goods and services are in any way associated with or originated from the other or any of its affiliates. Nothing in this paragraph shall prevent either Party from truthfully describing the network elements it uses to provide service to its end users, provided it does not represent the network elements as originating from the other Party or its affiliates.

(A)3.9.6 For purposes of resale only and notwithstanding the above, unless otherwise prohibited by USW pursuant to an applicable provision herein, RESELLER may use the phrase "RESELLER is a reseller of U S WEST Communications services" (the "Authorized Phrase") in RESELLER's printed materials provided:

(A)3.9.6.1 The Authorized Phrase is not used in connection with any goods or services other than USW services resold by RESELLER.

(A)3.9.6.2 RESELLER's use of the Authorized Phrase does not cause end users to believe that RESELLER is USW.

(A)3.9.6.3 RESELLER may not use the U S WEST logo. The Authorized Phrase, when displayed, appears only in text form 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.

(A)3.9.6.4 RESELLER shall provide all printed materials using the Authorized Phrase to USW for its prior written approval.

(A)3.9.6.5 If USW determines that RESELLER's use of the Authorized Phrase causes end user confusion, USW may immediately terminate RESELLER's right to use the Authorized Phrase.

(A)3.9.6.6 Upon termination of 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 USW or destroy all materials in its possession or control displaying the Authorized Phrase.

- (A)3.9.7 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 USW 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 Owner's 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 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 ownership of any rights in or the validity of the Marks.

(A)3.10 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.

(A)3.11 Assignment

- (A)3.11.1 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. Notwithstanding the foregoing, either Party may assign or transfer this Agreement to a corporate affiliate or an entity under its common control; however, if RESELLER's assignee or transferee has an interconnection agreement with USW, no assignment or transfer of this Agreement shall be effective without the prior written consent of USW. Such consent shall include appropriate resolutions of conflicts and discrepancies between the assignee's or transferee's interconnection agreement and this Agreement. 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.

- (A)3.11.2 Without limiting the generality of the foregoing subsection, any merger, dissolution, consolidation or other reorganization of RESELLER, or any sale, transfer, pledge or other disposition by RESELLER of securities representing more than 50% of the securities entitled to vote in an election of RESELLER's board of directors or other similar governing body, or any sale, transfer, pledge or other disposition by RESELLER of substantially all of its assets, shall be deemed a transfer of control. If any entity, other than RESELLER, involved in such merger, dissolution, consolidation, reorganization, sale, transfer, pledge or other disposition of RESELLER has an interconnection agreement with USW, the Parties agree that only one agreement, either this Agreement or the interconnection agreement of the other entity, will remain valid. All other interconnection agreements will be terminated. The Parties agree to work together to determine which interconnection agreement should remain valid and which should terminate. In the event the Parties cannot reach agreement on this issue, the issue shall be resolved through the Dispute Resolution process contained in this Agreement.

(A)3.12 Default

If either Party defaults in the payment of any amount due hereunder, or if either Party violates any other material provision of this Agreement, and such default or violation shall continue for thirty (30) calendar days after written notice thereof, the other Party may seek relief in accordance with the Dispute Resolution provision of this Agreement. 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.

(A)3.13 Disclaimer of Agency

Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

(A)3.14 Nondisclosure

- (A)3.14.1 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 providing directory assistance or publication of directory database, or (ii) in written, graphic, electromagnetic, or other tangible form and marked at the time of delivery as "Confidential" or "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) calendar 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.
- (A)3.14.2 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.
- (A)3.14.3 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.
- (A)3.14.4 Unless otherwise agreed, the obligations of confidentiality and non-use set forth in this Agreement do not apply to such Proprietary Information as:
- (A)3.14.4.1 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
 - (A)3.14.4.2 is or becomes publicly known through no wrongful act of the receiving Party; or

- (A)3.14.4.3 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
 - (A)3.14.4.4 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
 - (A)3.14.4.5 is disclosed to a third person by the disclosing Party without similar restrictions on such third person's rights; or
 - (A)3.14.4.6 is approved for release by written authorization of the disclosing Party; or
 - (A)3.14.4.7 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.
- (A)3.14.5 Nothing herein is intended to prohibit a Party from supplying factual information about its network and Telecommunications Services on or connected to its network to regulatory agencies including the Federal Communications Commission and the Commission so long as any confidential obligation is protected.
- (A)3.14.6 **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.

(A)3.15 Survival

Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement; any obligation of a Party under the provisions regarding indemnification, Confidential or Proprietary Information, limitations of liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination hereof.

(A)3.16 Dispute Resolution

- (A)3.16.1 If any claim, controversy or dispute between the Parties, their agents, employees, officers, directors or affiliated agents should arise, and the Parties do not resolve it in the ordinary course of their dealings (the "Dispute"), then it shall be resolved in accordance with the

dispute resolution process set forth in this Section. Each notice of default, unless cured within the applicable cure period, shall be resolved in accordance herewith.

- (A)3.16.2 At the written request of either Party, and prior to any other formal dispute resolution proceedings, each Party shall designate an officer-level employee, at no less than the vice president level, to review, meet, and negotiate, in good faith, to resolve the Dispute. The Parties intend that these negotiations be conducted by non-lawyer, business representatives, and the locations, format, frequency, duration, and conclusions of these discussions shall be at the discretion of the representatives. By mutual agreement, the representatives may use other procedures, such as mediation, to assist in these negotiations. The discussions and correspondence among the representatives for the purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, and shall be exempt from discovery and production, and shall not be admissible in any subsequent arbitration or other proceedings without the concurrence of both of the Parties.
- (A)3.16.3 If the vice-presidential level representatives have not reached a resolution of the Dispute within thirty (30) calendar days after the matter is referred to them, then either Party may demand that the Dispute be settled by arbitration. Such an arbitration proceeding shall be conducted by a single arbitrator, knowledgeable about the telecommunications industry. The arbitration proceedings shall be conducted under the then current rules of the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. Sections 1-16, not state law, shall govern the arbitrability of the Dispute. 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. Each Party shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Denver, Colorado metropolitan area. It is acknowledged that the Parties, by mutual, written agreement, may change any of these arbitration practices for a particular, some, or all Dispute(s).
- (A)3.16.4 Should it become necessary to resort to court proceedings to enforce a Party's compliance with the dispute resolution process set forth herein, and the court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney fees, incurred by the Party requesting such enforcement shall be reimbursed by the non-complying Party to the requesting Party.

(A)3.16.5 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.

(A)3.17 Controlling Law

This Agreement was negotiated by the Parties in accordance with the terms of the Act and the laws of the state where service is provided hereunder. It shall be interpreted solely in accordance with the terms of the Act and the applicable state law in the state where the service is provided.

(A)3.18 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.

(A)3.19 Responsibility for Environmental Contamination

Neither Party shall be liable to the other for any costs whatsoever resulting from the presence or release of any environmental hazard that either Party did not introduce to the affected work location. Both Parties shall defend and hold harmless the other, its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any environmental hazard that the indemnifying Party, its contractors or agents introduce to the work locations or (ii) the presence or release of any environmental hazard for which the indemnifying Party is responsible under applicable law.

(A)3.20 Notices

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

USW
Director Interconnection Compliance
1801 California, Room 2410
Denver, CO 80202

With copy to:
U S WEST Law Department
Attention: General Counsel, Interconnection
1801 California Street, 51st Floor
Denver, CO 80202

RESELLER
John Duffy
Peter Mills
3 Burlington Woods Drive
4th Floor
Burlington, MA 01803
Phone: 781-229-9599, ext. 136
Fax: 781-229-9499
E-mail: jduffy@essential.com

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

(A)3.21 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.

(A)3.22 No Third Party Beneficiaries

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.

(A)3.23 Referenced Documents

All references to Sections shall be deemed to be references to Sections of this Agreement unless the context shall otherwise require. Whenever any provision of this Agreement refers to a technical reference, technical publication, RESELLER practice, USW practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent

version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, RESELLER practice, USW practice, or publication of industry standards. USW will not implement changes in the most recent version or edition in the documents described above when such changes are optional. The existing configuration of either Party's network may not be in immediate compliance with the latest release of applicable referenced documents.

(A)3.24 Publicity

Neither Party shall publish or use any publicity materials with respect to the execution and delivery or existence of this Agreement without the prior written approval of the other Party.

(A)3.25 Amendment

RESELLER and USW 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.

(A)3.26 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.

(A)3.27 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.

(A)3.28 Regulatory Approval

The Parties understand and agree that this Agreement will be filed with the Commission for approval. In the event the Commission rejects any portion of this Agreement, renders it inoperable or creates an ambiguity that requires further amendment, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification.

(A)3.29 Compliance

Each Party shall comply with all federal, state, and local laws, rules and regulations applicable to its performance under this Agreement. Without limiting the foregoing, USW and RESELLER agree to take all action necessary to keep and maintain in full force and effect all permits, licenses, certificates, insurance, and other authorities needed to perform their respective obligations hereunder.

(A)3.30 Compliance with the Communications Assistance for Law Enforcement Act of 1994 ("CALEA")

Each Party represents and warrants that any equipment, facilities or services provided to the other Party under this Agreement comply with CALEA. Each Party shall indemnify and hold the other Party harmless from any and all penalties imposed upon the other Party for such noncompliance and shall at the non-compliant Party's sole cost and expense, modify or replace any equipment, facilities or services provided to the other Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

(A)3.31 Cooperation

The Parties agree that this Agreement involves the provision of USW 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. Electronic processes and procedures are addressed in Part D of this Agreement.

(A)3.32 Availability of Other Agreements

With regard to the availability of other agreements, the Parties agree that the provisions of Section 252(i) of the Act shall apply, including state and federal, Commission and court interpretive regulations and decisions in effect from time to time.

PART B - RESALE

(B)1. Description

- (B)1.1 Pursuant to the Act and this Part B, USW shall offer for resale at wholesale rates any Telecommunications Services it provides to end users who are not Telecommunications Carriers including terms and conditions (except prices) in the USW Tariffs, where applicable. RESELLER may obtain intraLATA toll service from USW for resale or RESELLER has the option to self-provision intraLATA toll or to obtain intraLATA toll for resale from another provider.
- (B)1.2 The Parties agree that certain USW services are not available for resale under this Agreement and certain other USW services are available for resale but not at a discount, as identified in Part E or in individual state Tariffs. The availability of services and applicable discounts identified in Part E or in individual Tariffs are subject to change pursuant to the Rates and Charges sub-section of this Resale section.

(B)2. Terms and Conditions

- (B)2.1 Basic Exchange Telecommunications Service, Basic Exchange Features, Private Line Service, Frame Relay Service and intraLATA Toll may be resold only for their intended or disclosed use and only to the same class of end user to which USW sells such services (e.g., residence service may not be resold to business end users). Service provided directly to RESELLER for its own use, such as administrative services, must be identified by RESELLER and RESELLER must pay the full retail rates and prices for such services.
- (B)2.2 USW shall provide to RESELLER Telecommunications Services for resale that are at least equal in quality, and in substantially the same time and manner that USW provides these services to others, including other Resellers and end users, and in accordance with any applicable Commission service quality standards, including standards the Commission may impose pursuant to Section 252 (e)(3) of the Act.
- (B)2.3 In the event that there are existing agreements between RESELLER and USW for resale under USW retail Tariff discounts, RESELLER may elect to continue to obtain services for resale under the existing agreements and retail Tariff discounts or RESELLER may elect to terminate such existing agreements and obtain such services under this Agreement with the associated wholesale discount specified in Part E of this Agreement.
- (B)2.4 In accordance with the Act, RESELLER will provide the date it will begin to offer Telecommunications Services to residential and business end users. RESELLER will provide a two (2) year forecast within ninety (90) calendar days of signing this Agreement. The forecast shall be updated and provided to USW on an annual basis or as requested by USW. Each 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 number of service orders
- Name of RESELLER's key contact personnel

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

- (B)2.5 RESELLER may not reserve blocks of USW telephone numbers, except as allowed by Tariffs.
- (B)2.6 USW 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 USW by RESELLER. USW will place RESELLER's listings in USW's directory listing database for directory assistance purposes. Additional terms and conditions with respect to directory listings are described in Part C of this Agreement.
- (B)2.7 USW shall provide to RESELLER, for RESELLER's end users, E911/911 call routing to the appropriate Public Safety Answering Point ("PSAP). USW shall not be responsible for any failure of RESELLER to provide accurate end user information for listings in any databases in which USW is required to retain and/or maintain end user information.. USW shall provide and validate RESELLER's end user information to the Automatic Location Identification/Database Management System ("ALI/DMS"). USW shall use its standard process to update and maintain, on the same schedule that it uses for its end users, RESELLER's end user service information in the ALI/DMS used to support E911/911 services. USW assumes no liability for the accuracy of information provided by RESELLER.
- (B)2.8 If USW provides and RESELLER accepts operator services, directory assistance, and intraLATA long distance as a part of the resold line, it will be offered with standard USW 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 USW. However, at the request of RESELLER and where technically feasible, USW will rebrand operator services and directory assistance in RESELLER's name, provided the charges associated with such rebranding are paid by RESELLER.
- (B)2.9 RESELLER shall designate the Primary Interexchange Carrier (PIC) assignments on behalf of its end users for interLATA services and intraLATA services.
- (B)2.10 When end users switch from USW to RESELLER, or to RESELLER from any other Reseller, and if they do not change their service address to an address served by a different Central Office, such end users shall be permitted to retain their current telephone numbers if they so desire. USW shall take no action to prevent RESELLER end users from retaining their current telephone numbers.
- (B)2.11 RESELLER is liable for all fraud associated with service to its end-users and accounts. USW 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 USW. Notwithstanding the above, if USW becomes aware of potential fraud with respect to RESELLER's accounts, USW will promptly inform RESELLER and, at the direction of RESELLER, take reasonable action to mitigate the fraud where such action is possible.

- (B)2.12 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, USW will review such requests on a case-by-case basis and determine if it is economically feasible for USW to build or enhance facilities. If USW decides to build or enhance the requested facilities, USW will develop and provide to RESELLER a price quote for the construction. Construction charges associated with resold services will be applied in the same manner that construction charges apply to USW's retail end users. If the quote is accepted, RESELLER will be billed the quoted price and construction will commence after receipt of payment.
- (B)2.13 In the event USW terminates the provisioning of any resold services to RESELLER for any reason, including RESELLER's non-payment of charges, RESELLER shall be responsible for providing any and all necessary notice to its end users of the termination. In no case shall USW be responsible for providing such notice to RESELLER's end users. USW will provide notice to RESELLER of USW's termination of a resold service on a timely basis consistent with Commission rules and notice requirements.
- (B)2.14 The underlying network provider of a resold service shall be entitled to receive, from the purchaser of Switched Access, the appropriate access charges pursuant to its then effective Switched Access Tariff.
- (B)2.15 Centrex terms and conditions related to calculation of charges for, and provisioning of common blocks, station lines, and optional features will be based on the Centrex definition of a system and a Reseller's serving location.
- (B) 2.15.1 Where a common block is applicable, a Centrex system is defined by a single common block or multiple common blocks for a single RESELLER within a single Central Office switching system. A common block defines the dialing plan for intercom calling, access to Public Switched Network and/or private facilities, station line and system restrictions and feature access arrangements and functionality. RESELLER may purchase multiple common blocks within a single Central Office switching system when RESELLER requires different dialing plans, feature access arrangements and station line or system restrictions within a single system operation. A Reseller with multiple common blocks within the same Central

Office switch may have Network Access Register and Private Facility trunk groups aggregated across multiple common blocks. Centrex system based optional features (i.e. Automatic Route Selection) may not be aggregated across multiple common blocks. A Centrex system must provide station lines to at least one location and may provide station lines to multiple locations.

- (B)2.15.2 Centrex station lines are provisioned and charges are calculated based on serving Reseller's location. A location is defined as the site where USW facilities (cable plant from the serving Central Office switch) meet Reseller facilities (inside wire). In a multi-tenant building, USW may bring facilities directly to a single point of interconnection with Reseller facilities, typically in a basement equipment room, which would be considered a single location for this multi-tenant building. Should USW bring service to multiple floors or offices within a multi-tenant building each floor or office with a separate Reseller facilities termination point is considered a location. Multiple buildings within contiguous property (campus) will be provisioned and billed as a single location. Contiguous property is defined as property owned or leased by a single end user and not separated by public thoroughfare, river or railroad rights-of-way. Property will be considered contiguous when connected via connecting passageways or conduit acceptable to USW for its facilities. A Reseller with Centrex station lines from multiple Central Office switching systems, within the same USW Wire Center, and provisioned to the same location will not be charged for service or provisioned as if service was originating from a single Centrex system. For example, station lines may only be aggregated from a single Centrex Reseller system to a single Reseller serving location for rating purposes. RESELLER may not specify a USW Central Office as a RESELLER location for termination of Centrex station lines.

- (B)2.16 Private Line Service used for Special Access is available for resale but not at a discount.
- (B)2.17 DSL Service (such as Megabit Service) is available for resale by RESELLER out of USW's Interstate Tariff, but at no wholesale discount.

(B)3. Rates and Charges

- (B)3.1 The Telecommunications Services identified in Part E are available for resale at the wholesale discount percentage shown in Part E. Telecommunications Services available for resale but excluded from the wholesale pricing arrangement in this Agreement are available at the retail Tariff rates.

- (B)3.2 The Customer Transfer Charges (CTC) as specified in Part E apply when transferring services to RESELLER.
- (B)3.3 A Subscriber Line Charge (SLC), or any subsequent federally mandated charge to end users, will continue to be paid by RESELLER without discount 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.
- (B)3.4 RESELLER will pay to USW the PIC change charge without discount for RESELLER end user changes of interexchange or intraLATA carriers. Any change in RESELLER's end users' interexchange or intraLATA carrier must be requested by RESELLER on behalf of its end user.
- (B)3.5 RESELLER agrees to pay USW 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 Part E as such may be amended pursuant to this Section (e.g., continuous redial, last call return, call back calling, call trace, etc.).
- (B)3.6 Product specific non-recurring charges, as set forth in USW's applicable Tariffs will apply when additional lines, trunks or circuits are added or when the end user adds features or services to existing lines or trunks.
- (B)3.7 Miscellaneous charges, if applicable, will be consistent with charges for equivalent services ordered by USW end users.
- (B)3.8 The wholesale discount rates in Part E established in the North Dakota Case No. PU-453-96-497, "In the Matter of AT&T Corporation and U S WEST Communications, Inc., for Arbitration of the Interconnection Rates, Terms and Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996", (the "AT&T Arbitration") are interim rates and are pending the outcome of a final Commission decision in an interconnection cost docket. Such rates, as adopted in this Agreement, will be subject to true-up from the date those rates became effective in this Agreement to the effective date of the final interconnection cost docket order. Notwithstanding this true-up obligation, the Parties agree that rates in this Agreement will remain in effect as described below until the exhaustion of all appeals of the final order in the interconnection cost docket.
- (B)3.9 The Parties intend that, if the AT&T rates or the services in the AT&T Arbitration are changed by any negotiations, appeal, stay, injunction, settlement, or similar proceeding with respect to AT&T, those rates and services, if they have been adopted into this Agreement, shall be changed in this Agreement to the same extent as the rates and services in the AT&T Arbitration. Notwithstanding the above, the Parties agree that in the event a stay or injunction is granted with respect to the implementation of the services and rates in the AT&T Arbitration, the Parties agree that the telecommunications services still available for resale following the stay or

injunction will be available to RESELLER, effective as of the date of the stay order or injunction, at a wholesale discount rate of 12% (the "Standard Rate") until such time as a nonappealable order establishes a wholesale discount rate(s). If the Standard Rate becomes effective pursuant to this paragraph, the Standard Rate will also be subject to true-up to the rate(s) established in the nonappealable order for the period that the Standard Rate was in effect. If the AT&T rates or the applicability of the rate to the services in Part E is changed by a nonappealable administrative or judicial order following approval of negotiated rates, rates reached in an approved settlement agreement, a decision on appeal or other similar proceeding, such changed rate(s) will be available to RESELLER, effective as of the date of the order. The AT&T rate shall be subject to true-up to the changed rates for the period of time the AT&T rate was in effect. Notwithstanding the above, no true-up of either the Standard Rate or the AT&T rate will occur unless ordered as a part of the nonappealable administrative or judicial order.

- (B)3.10 If the resold services are purchased pursuant to Tariffs and the Tariff rates change, charges billed to RESELLER for such services will be based upon the new Tariff rates less the applicable wholesale discount, if any, as agreed to herein or as established by Commission order and/or resale Tariff. The new rate will be effective upon the Tariff effective date.

(B)4. Ordering Process

- (B)4.1 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 inform its end users that they are end users of RESELLER for resold services. RESELLER's end users contacting USW will be instructed to contact RESELLER; however, nothing in this Agreement, except as provided below, shall be deemed to prohibit USW from discussing its products and services with RESELLER's end users who call USW.
- (B)4.2 RESELLER shall transmit to USW all information necessary for the ordering (billing, listing and other information), installation, repair, maintenance and post-installation servicing according to USW's standard procedures, as described in the USW Interconnect & Resale Resource Guide available on USW's Web site. Information shall be provided using USW's designated Local Service Request (LSR) format which may include the LSR, end user and resale forms. RESELLER must send USW complete and accurate end user listing information for Directory Assistance, Directory Listings, and 911 Emergency Services using USW's designated resale directory listing order forms. When USW's end user or the end user's new service provider orders the discontinuance of the end user's existing service in anticipation of moving to another service provider, USW will render its closing bill to the end user effective with the disconnection. If another service provider, RESELLER's end

user or RESELLER requests that service be discontinued from RESELLER and subsequently USW's service to RESELLER is discontinued USW will issue a bill to RESELLER for that portion of the service provided to RESELLER.. USW will notify RESELLER by FAX, OSS interface or other agreed upon processes, in accordance with the OSS section of this Agreement when an end user moves to another service provider. USW will not provide RESELLER with the name of the other service provider selected by the end user.

- (B)4.3 RESELLER shall provide USW and USW shall provide RESELLER with points of contact for order entry, problem resolution and repair of the resold services.
- (B)4.4 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"), as set forth in Part A of this Agreement.
- (B)4.5 Due date interval standards are addressed in the Interconnect & Resale Resource Guide.
- (B)4.6 Firm Order Confirmation (FOC) guidelines are addressed in the Interconnect & Resale Resource Guide.
- (B)4.7 USW will provide completion notification that is equal to that provided to USW end users.
- (B)4.8 USW will provide Design Layout Records when requested under terms and conditions consistent with USW end users.
- (B)4.9 USW will handle jeopardy orders based upon the same performance standards and criteria that USW provides to itself.

(B)5. Billing

- (B)5.1 USW shall bill RESELLER and RESELLER is responsible for all applicable charges for the resold services as provided herein. RESELLER shall also be responsible for all Tariffed charges and charges separately identified in this Agreement associated with services that RESELLER resells to an end user under this Agreement.
- (B)5.2 USW shall provide RESELLER, on a monthly basis, within 7-10 calendar days of the last day of the most recent billing period, in an agreed upon standard electronic billing format as detailed in Part D, billing information including (1) a summary bill, and (2) individual end user sub-account information consistent with the samples available for RESELLER review.

(B)6. Maintenance and Repair

RESELLER and USW will employ the procedures for handling misdirected repair calls as specified in the Maintenance and Repair Section of this Agreement.

- (B)6.1 USW will maintain facilities and equipment used to provide RESELLER resold services. RESELLER or its end user may not rearrange, move, disconnect, or attempt to repair USW facilities or equipment, other than by connection or

disconnection to any interface between USW and the end user, without written consent of USW.

(B)6.2 Maintenance and repair processes are detailed in the Maintenance and Repair Section of this Agreement.