

Agreement Number ND02777

Billing Number 7013552255

QWEST ISDN PRIMARY RATE SERVICE AGREEMENT

This is an Agreement between SMART NET INC ("CUSTOMER"), and Qwest Corporation ("QWEST"), formerly known as U S WEST Communications, Inc. ("USWC"), for the provision of QWEST Integrated Switched Digital Network ("ISDN") Primary Rate Service ("Service" or "PRS").

1. SCOPE.

1.1 QWEST shall provide and CUSTOMER shall pay for Service which provides a digital IntraLATA, intrastate, switched local exchange telecommunications service transporting and distributing voice, data, image, and/or facsimile communications separately or simultaneously over the public switched local exchange network, as defined herein. QWEST shall provide Service in accordance with the applicable State Tariff, Price List, Price Schedule, Administrative Guideline, and/or Catalog ("Tariff") which governs Service in the state Service is provided, incorporated herein by this reference.

1.2 Service operates at 1,544 megabits per second (Mbps). It is comprised of 23 B channels and one D channel. Each B Channel transmits voice or data at 64 kilobits per second (Kbps). The D channel carries signaling information at 64 Kbps.

1.3 Subject to availability, a second PRS may be equipped at the same location to provide 24 B channels only (24B) or to provide 23 B channels plus 1 back-up channel (23B+BUD).

2. TERM.

2.1 The term of this Agreement shall commence on the latest signature date, provided any mandatory commission filing requirements have been met. The minimum Service period for PRS is twelve (12) months. The term of this Agreement will expire Thirty-six (36) months from either:

- a. The first installation date of PRS (as evidenced by QWEST's records), if Service is new; or
- b. The date of 06/15/2001.

2.2 Should QWEST continue to provide PRS after this term without a further agreement, the PRS charges will convert to the applicable month-to-month rate under these terms and conditions.

3. **SERVICE PROVIDED.** QWEST will provide and maintain the Service terminating at the locations and in the quantities noted in Section 4 below.

4. CHARGES AND LOCATIONS.

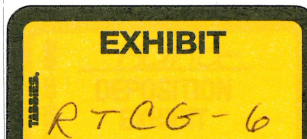
4.1 Service will be provided at the following locations: 1615 CAPITAL WAY BISMARCK

4.2 CUSTOMER is ordering (check one): Voice and Data PRS; Data Only PRS; UAS PRS

57 PU-2967-03-666

Pages: 6

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4.3. CUSTOMER agrees to pay the following charges for Service:

Quantity: 1
Usoc: ZPXB3

Total Rate Stabilized Monthly Recurring Charge.	\$ 340.00
Total Nonrecurring Charge:	\$ 2125.00

In addition to the monthly recurring charges and nonrecurring charges, CUSTOMER shall pay QWEST all applicable taxes, usual and customary surcharges and all government imposed fees and charges that relate to the Service or installation rendered hereunder.

4.4. The charges for Services under this Agreement, including any and all discounts to which CUSTOMER may be entitled, will be offered and charged to CUSTOMER independently from and regardless of the CUSTOMER's purchase of any customer premises equipment or enhanced services from QWEST.

4.5. If Service is not available in CUSTOMER's switch, an Interoffice Mileage Charge for transport between switches shall apply and it shall be included in the above total monthly recurring charge.

5. **BILLING FOR SERVICE.** CUSTOMER shall pay each bill in full by the payment due date. If late payment charges are applicable and permitted by law, they may be assessed and billed at 1 1/2 percent per month or the highest lawful rate, whichever is less, on the unpaid balance.

6. SERVICE CHANGES.

6.1. **MOVES.** CUSTOMER may move the physical location of all or part of Service to another location within the same QWEST intrastate IntraLATA serving area as this Service provided the following conditions for the move ("New Service") are met; 1) the New Service is provided to CUSTOMER by QWEST; 2) CUSTOMER advises QWEST that the requested new service replaces existing Service; 3) CUSTOMER's requests for the disconnection of the existing Service and the installation of the New Service are received by QWEST on the same date; 4) CUSTOMER requests QWEST to install the New Service on or prior to the disconnection date of the existing Service; and 5) CUSTOMER agrees to sign appropriate agreements and to pay all then current recurring and nonrecurring charges related to the New Service.

6.2. **ADDITIONS TO SERVICE.** CUSTOMER may request additions to Service and QWEST will supply such additions to CUSTOMER, subject to the following conditions: 1) QWEST commercially offers such additions and necessary facilities are technically and practicably available; 2) the charges for additional Service will be charged the then current charges in effect for Service at the time of such additions, and which correspond to the term of this Agreement.

6.3. QWEST and CUSTOMER agree to execute written amendments to this Agreement for such additions.

7. TERMINATION.

7.1. Either party may terminate this Agreement for cause provided written notice specifying the cause for termination and requesting correction within thirty (30) days is given the other party and such cause is not corrected within that thirty (30) day period. Cause is any material breach of the terms of this Agreement. If QWEST terminates this Agreement for cause or if CUSTOMER terminates this Agreement WITHOUT cause, CUSTOMER shall pay early termination charges. If termination is prior to installation of Service and after execution of this Agreement, early termination charges shall be those reasonable expenses incurred by QWEST through the date of termination. If, during the Minimum Service Period of

12 months ("Minimum Service Period"), CUSTOMER disconnects all or part of Service after installation, CUSTOMER shall pay a termination charge of 100% for the months remaining in the Minimum Service Period, plus 25% for the remaining term of the Agreement; plus the balance of all billed but unpaid recurring and all outstanding nonrecurring charges. If CUSTOMER disconnects all or part of Service after the Minimum Service Period, CUSTOMER shall pay a termination charge equal to twenty-five percent (25%) of the monthly rate for Service terminated multiplied by the number of months, or portion thereof, remaining in the term of this Agreement; plus the balance of all billed but unpaid recurring and all outstanding nonrecurring charges.

7.2. A termination charge will be waived when the CUSTOMER discontinues Service(s); and ALL of the following conditions are met: 1) CUSTOMER signs a service agreement for any other QWEST-provided new service(s). All applicable nonrecurring charges will be assessed for the new service(s); 2) Both the current Service and the new service(s) are provided solely by QWEST; 3) The order to discontinue Service and the order to establish new service(s) are received by QWEST within thirty (30) calendar days of each other if service is in New Mexico and at the same time if service is in any other state; 4) The new service(s) installation must be completed within thirty (30) calendar days of the disconnection of Service, unless such installation delay is caused by QWEST; 5) The total value of the new service agreement(s), excluding any special construction charges, is equal to or greater than one hundred fifteen percent (115%) of the remaining value of this Agreement; 6) A new Minimum Service Period, if applicable, will go into effect when the new service agreement(s) term begins; and 7) CUSTOMER agrees to pay any previously billed but unpaid recurring and any outstanding nonrecurring charges—these charges cannot be included as part of the new service agreement(s). New service is defined as a newly installed service placed under a new service agreement(s), or newly installed additions to an existing service agreement(s), but does not include renewals of expiring service agreement(s), renegotiations of existing service agreement(s) and conversions from month-to-month service to contracted service.

8. **OUT-OF-SERVICE CREDIT.** If QWEST causes a Service interruption, an out-of-service credit will be calculated under the state local exchange tariff. If there is no applicable tariff and the interruption lasts for more than twenty-four (24) consecutive hours after QWEST receives notice of it, QWEST will give CUSTOMER credit calculated by: (a) dividing the monthly rate for the affected Service by thirty (30) days; and then (b) multiplying that daily rate by the number of days, or major fraction, that Service was interrupted.

9. **OWNERSHIP AND PROVISIONING OF SERVICE.** Title to, and ownership of, all equipment and facilities QWEST uses in supplying Service is and remains with QWEST. QWEST will provision and supply Service described in this Agreement in any manner and by means of any equipment, software, and facilities QWEST chooses. The method of provisioning of Service is a matter within QWEST's sole discretion.

10. **SERVICE SUSPENSION/MAINTENANCE.** QWEST may from time to time suspend Service for routine maintenance or rearrangement of facilities or equipment. QWEST will give CUSTOMER advance notification of the Service suspension. Such Service suspension is not considered an Out-of-Service condition provided Service is restored by the end of the period specified in the notification.

11. **PERSONAL INJURY; PROPERTY DAMAGE.** Each party shall be responsible for any actual physical damages it directly causes in the course of its performance under this Agreement, limited to damages resulting from personal injuries, death, or property damage arising from negligent acts or omissions; PROVIDED HOWEVER, THAT NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT.

12. **LIMITATION OF LIABILITY.** QWEST SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING

BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT. EXCEPT AS PROVIDED IN THIS AGREEMENT, ANY QWEST LIABILITY TO CUSTOMER FOR ANY DAMAGES OF ANY KIND UNDER THIS AGREEMENT SHALL NOT EXCEED, IN AMOUNT, A SUM EQUIVALENT TO THE APPLICABLE OUT-OF-SERVICE CREDIT. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.

13. NO WARRANTIES. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

14. UNCONTROLLABLE CONDITIONS. Neither party shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of severe weather and storms; earthquakes or other natural occurrences; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies; acts of legislative, judicial, executive or administrative authorities; or any other circumstances which are not within its reasonable control.

15. DISPUTE RESOLUTION.

15.1. Other than those claims over which a regulatory agency has exclusive jurisdiction, all claims, regardless of legal theory, whenever brought and whether between the Parties or between one of the Parties to this Agreement and the employees, agents or affiliated businesses of the other Party, shall be resolved by arbitration. A single arbitrator engaged in the practice of law and knowledgeable about the subject matter of the dispute shall conduct the arbitration in accordance with the then current rules of the American Arbitration Association ("AAA"). The arbitration shall be conducted in the regional AAA office closest to where the claim arose, and all expedited procedures prescribed by the AAA rules shall apply.

15.2. The arbitrator's decision shall be final and binding and judgment may be entered in any court having jurisdiction thereof.

15.3. Other than the determination of those claims over which a regulatory agency has exclusive jurisdiction, federal law (including the provisions of the Federal Arbitration Act, 9 U.S.C. Sections 1-16) shall govern and control with respect to any issue relating to the validity of this Agreement to arbitrate and the arbitrability of the claims.

15.4. If any party files a judicial or administrative action asserting claims subject to arbitration, and another party successfully stays such action and/or compels arbitration of such claims, the party filing the action shall pay the other party's costs and expenses incurred in seeking such stay or compelling arbitration, including reasonable attorney's fees.

16. LAWFULNESS. This Agreement and the parties' actions under this Agreement shall comply with all applicable federal, state, and local laws, rules, regulations, court orders, and governmental agency orders. Any change in rates, charges or regulations mandated by the legally constituted authorities will act as a modification of any contract to that extent without further notice. This Agreement shall be governed by the laws of the state where Service is provided.

17. SEVERABILITY. In the event that a court, governmental agency, or regulatory agency with proper jurisdiction determines that this Agreement or a provision of this Agreement is unlawful, this Agreement, or that provision of the Agreement to the extent it is unlawful, shall terminate. If a provision of this Agreement is terminated but the parties can legally, commercially and practicably continue without the terminated provision, the remainder of this Agreement shall continue in effect.

18. GENERAL PROVISIONS.

18.1. Failure or delay by either party to exercise any right, power, or privilege hereunder, will not operate as a waiver hereto.

18.2. This is a retail end user contract. It may be assigned only with the consent of QWEST. CUSTOMER may not assign to a reseller or a telecommunications carrier under any circumstances.

18.3. This Agreement benefits CUSTOMER and QWEST. There are no third party beneficiaries.

18.4. This Agreement constitutes the entire understanding between CUSTOMER and QWEST with respect to Service provided herein and supersedes any prior agreements or understandings.

19. EXECUTION. If a party returns this Agreement by facsimile machine, the signing party intends the copy of this authorized signature printed by the receiving facsimile machine to be its original signature. The parties hereby execute and authorize this Agreement as of the latest date shown below:

CUSTOMER

QWEST CORPORATION

Bruce Burke
Signature

Signature

Bruce Burke
Name Printed or Typed/Title

Name Printed or Typed/Title

5-31-01
Date

Date

SmartNet, Inc.
P.O. Box 454, Dickinson, ND 58602-0454
Address for Notices:

Address for Notices: