



South Dakota Public Utilities Commission



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January 26, 2001

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Clerk of the Court of Appeals
United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Avenue N.W.
Washington, DC 20001

Re: United States Telecom Association v.
Federal Communications Commission
and United States of America
No. 00-1428

Dear Clerk:

Enclosed for filing you will find original and four copies of Notification and Statement of Issues of the South Dakota Public Utilities Commission with reference to the above captioned matter.

Very truly yours,

Rolayne Ailts Wiest
Special Assistant Attorney General

RAW:dk
Enc.

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES TELECOM ASSOCIATION,)
)
 Petitioner,)
)
 v.) No. 00-1428
)
 FEDERAL COMMUNICATIONS)
 COMMISSION AND UNITED STATES OF)
 AMERICA,)
)
 Respondents.)

NOTIFICATION AND STATEMENT OF ISSUES OF THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

On August 10, 2000, the Federal Communications Commission ("FCC" or "Commission") issued a "Declaratory Ruling," *In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, FCC 00-248 (rel. Aug. 10, 2000) (the "Declaratory Ruling"), in which the Commission provided guidance regarding whether section 214(e)(1) of the Communications Act of 1934, as amended, (the "Act"), requires a common carrier to provide supported services throughout a service area prior to being designated an eligible telecommunications carrier. The FCC held that state public utilities commissions may not interpret section 214(e)(1) of the Act to require a common carrier to furnish supported services throughout a service area prior to being designated as an eligible telecommunications carrier (ETC). On October 5, 2000, the United States Telecom Association filed a Petition for Review with this Court alleging that the Declaratory Ruling is (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) in

excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (3) without observance of procedure required by law; and (4) unsupported by substantial evidence. The South Dakota Public Utilities Commission (SDPUC) has filed to intervene.

Pursuant to the Court's Order filed January 19, 2001, the SDPUC, by its attorney, hereby notifies the Court that the SDPUC is an intervenor on the side of the petitioner in this appeal. The SDPUC's statement of issues are as follows:

1. Whether the FCC's declaratory ruling regarding sections 214(e)(1), 253, and 254 of the Act was arbitrary, capricious, an abuse of discretion, and without observance of procedure required by law.
2. Whether the FCC erred in finding that requiring a new entrant to provide service throughout a service area prior to designation as an ETC is a legal requirement that has the effect of prohibiting the ability of a new entrant to provide intrastate or interstate telecommunications service and is in violation of section 253(a) of the Act.
3. Whether the FCC erred in finding that a requirement for new entrants to provide supported services throughout the service area prior to designation as an ETC is subject to the FCC's preemption authority under section 253(d) of the Act.
4. Whether the FCC erred in finding that a requirement that a carrier provide service throughout the service area prior to its designation as an ETC conflicts with the meaning and intent of section 214(e) of the Act.
5. Whether the FCC erred in finding that a requirement to provide service prior to designation as an ETC is not consistent with section 254 or section 253(b) of the Act.
6. Whether the FCC erred by disregarding the provisions of section 253(f) of the Act.

7. Whether the FCC violated constitutional due process protections by issuing its Declaratory Ruling instead of ruling directly on the federal preemption petition filed by Western Wireless Corporation.

Respectfully submitted,



Rolayne Ailtz Wiest
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Dated this 26th day of January, 2001.

CERTIFICATE OF SERVICE

I hereby certify that copies of Notification and Statement of Issues were served on the following by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 26th day of January, 2001.

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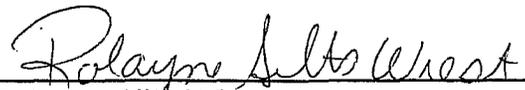
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