

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

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

UNITED STATES TELECOM ASSOCIATION,)

Petitioner,)

v.)

FEDERAL COMMUNICATIONS COMMISSION)
and UNITED STATES OF AMERICA,)

Respondents.)

Case No. 00-1428

STATEMENT OF INTERVENOR
SOUTH DAKOTA INDEPENDENT TELEPHONE COALITION, INC.

In accordance with this Court's Order of January 19, 2001, South Dakota Independent Telephone Coalition, Inc. ("SDITC"), intervenor in the above-captioned proceeding, hereby respectfully notifies the Court that it intends to support the position of the Petitioner in this proceeding. SDITC also hereby respectfully submits the non-binding statement of issues below. In light of the Court's Order holding this proceeding in abeyance pending further action by the FCC, SDITC reserves the right to modify its statement of issues, if necessary, based on the FCC's further actions.

Statement of Issues

1. Whether the FCC's issuance of a Declaratory Ruling, where facts are in dispute and key elements of the alleged "uncertainty" being addressed by the FCC were pending before the

South Dakota Supreme Court, is an abuse of discretion and contrary to Commission precedent?

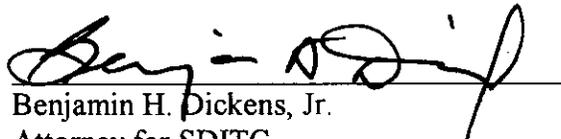
2. Whether the FCC's Declaratory Ruling, which concludes that 47 U.S.C. § 214(e) does not require a carrier to actually provide service throughout the service area prior to designation as an eligible telecommunications carrier (ETC) is contrary to the plain meaning of the statute?
3. Whether the FCC's conclusion that a state requirement that a carrier actually provide service before it can be designated as an ETC violates 47 U.S.C. § 253(a) is unsupported by the record, arbitrary and capricious, and contrary to law and Commission precedent?
4. Whether the FCC's Declaratory Ruling violates 47 U.S.C. § 253(d) which authorizes FCC preemption "to the extent necessary to correct... a violation or inconsistency [with sections 253(a) or (b)]?"
5. Whether the FCC erred in disregarding the provisions of 47 U.S.C. § 253(f)?
6. Whether the FCC violated constitutional due process protections in issuing its Declaratory Ruling instead of ruling directly on the federal preemption petition filed by Western Wireless Corporation?

7. 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?

Respectfully submitted,

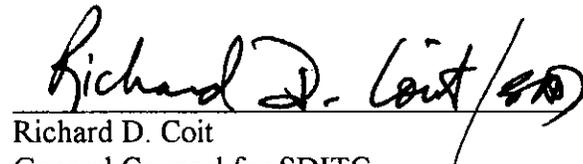
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Dated: January 29, 2001

CERTIFICATE OF SERVICE

I hereby certify that on this 29th of January, 2001, I caused copies of the foregoing Statement of Intervenor to be served by messenger upon the following indicated by an asterisk, and by U.S. mail, first class, postage pre-paid, on the others listed below:

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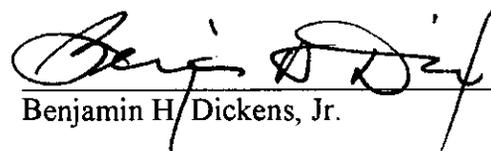
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