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August 18, 2005

VIA FAX: 605-773-3809
and NEXT DAY DELIVERY
 Pamela Bonrud
 Executive Director
 SD Public Utilities Commission
 500 E Capitol Avenue
 Pierre SD 57501

RE: WWC's Complaint against Golden West Companies Regarding
 Intercarrier Billings
 Docket CT 05-001
 GPGN File No. 5925.050089

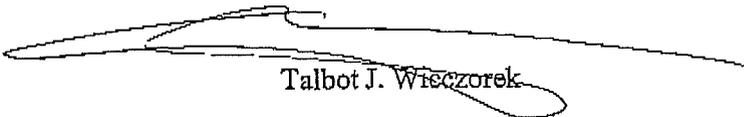
Dear Ms. Bonrud:

Enclosed for filing you will find a copy of WWC's RESPONSE TO MOTIONS FILED BY GOLDEN WEST COMPANIES in the above docket, along with the Affidavit of Mike Wilson. The original plus ten copies are being sent by Next Day Delivery to the Commission.

Please note in our responses a reference to a letter dated July 15, 2005 from WWC to Ms. Wiest and Ms. Rogers. This letter is attached to the Response.

If you have any questions, please call me.

Sincerely,



Talbot J. Wieczorek

TJW:klw
 Enclosures
 c: (w Encl)

Darla Pollman Rogers via fax 605-224-7102
 Rolayne Wiest via fax 605-773-3809
 Client

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT OF WWC LICENSE LLC AGAINST GOLDEN WEST TELECOMMUNICATIONS COOPERATIVE INC., ET AL.	CT05-001
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WWC's RESPONSE TO MOTIONS FILED BY GOLDEN WEST COMPANIES

COMES NOW, WWC LICENSE LLC, (hereinafter "WWC"), by and through its undersigned attorney, Talbot J. Wieczorek of Gunderson, Palmer, Goodsell, & Nelson, LLP, Rapid City, South Dakota, and submits its response in opposition to the Motions of Golden West Companies submitted and filed on Monday afternoon, August 15, 2005.

PRELIMINARY STATEMENT

This response is submitted to a Motion filed Monday afternoon by Golden West Companies. The exhibits to the motions were not provided to counsel for WWC until regular mail delivery on Wednesday, mid-morning. As to all issues, Golden West has a burden. An examination of Golden West's motions shows that Golden West cited no legal support for its motions. Secondly, examination of the facts underlying the motions will show that the posturing of the "facts" by Golden West is not tenable when reviewing all the facts.

Further, when reviewing the motions, it appears all the motions, except for the motion to postpone the hearing, deal with issues arising out of the counterclaim as opposed to those dealing with the Complaint asserted in the first place by WWC in this matter. The motion to postpone is based on Golden West Companies' position that it needs more time to prepare to assert its counterclaim.

WWC will respond to issues in the order they were presented in the motion filed by Golden West Companies.

I. MOTION TO PROHIBIT WWC FROM CONTESTING THE ACCURACY OF DATA PROVIDED and MOTION TO STRIKE LATE-FILED CLAIM

1. Golden West's contention that WWC should be prohibited from discussing the accuracy of the testing methodology is unsupported by the facts, the claims asserted or any law. Further, Golden West's desire to strike a late-filed claim is actually a request to prevent WWC from explaining some of the difficulties in coming up with a study for InterMTA and the inaccuracies contained in some of the methodology of testing for InterMTA accuracy.

2. From the outset, the Golden West Companies misrepresent the history of this matter. WWC has never sought to "thwart" the negotiations of an InterMTA traffic study. Rather, WWC has put in tens of thousands of dollars of man-hours and costs in trying to make a rational based InterMTA study for the ILECs of South Dakota.

3. One should realize that Larry Thompson was negotiating on behalf of numerous ILECs and not simply the Golden West Companies. WWC worked with Larry Thompson to in an attempt to come to agreement on a study methodology to come up with InterMTA numbers. There were several months where WWC waited for feedback or information from Larry Thompson in trying to come up with these studies and, in the end, there is still no agreement on methodology. It is not WWC's intent to go through all these issues at this time, but Golden West's attempt to simply assert bad faith and then demand that this Commission act on alleged bad faith without any evidentiary proof is inappropriate.

4. The history of these negotiations shows that WWC and Larry Thompson, on behalf of a majority of ILECs in the state, attempted to come up with a traffic study.

5. Golden West's motion is correct that a trial methodology was established by WWC but during discussions on the matter, WWC always made it clear it had no intent to collect this information on every company because of the extreme cost involved in man-hours, technical assistance, data retrieval, contact with other vendors, all required to attempt to do this methodology. Because of that issue, five representative companies were chosen and a study was attempted. Given the burden of conducting such a study and the questionable results of the study, it was WWC's position that InterMTA rates for the remaining ILECs would then be negotiated.

6. This study took several months longer than projected due to the complications involved. These complications lead to what Golden West has clarified as a claim of "inaccuracies in the CDRs."

7. WWC does not claim the CDRs are inaccurate. *See* Mike Wilson's Affidavit. What WWC has responded to in discovery is the methodology used for these five sample companies is not an appropriate methodology to try to calculate for every company because, among other reasons, you cannot account for every IXC originated call and remove the calls from the data and you cannot account for Type 1 numbers. Id.

8. The process of trying to do this methodology was extensive. *See* Affidavit of Mike Wilson WWC could not eliminate all IXC traffic because it could not get the information from various vendors and even where it could, the information was not always compatible in such a way that you could coordinate every call. It should be remembered that WWC was looking at tens of thousands of calls over a 15 days period. One must essentially review and try to eliminate from these calls non-InterMTA calls. It is extremely difficult because of InterMTA information is not automatically kept through any SS7 data or switch data, nor is traffic tracked

by CMRS carriers in such a way to account for this type of information. In fact, it was necessary for WWC to coordinate with various departments to coordinate and collect the data in such a way that it could then be used in this methodology.

9. Because of this, the CDR information reflects calls made. However, there are IXC calls within that data that cannot be removed because they cannot be accounted for.

10. It is essential for the Commission to understand the difficulty in pulling together this data and the near impossibility to eliminate all IXC traffic. One needs information from other vendors and that information is often not compatible or even obtainable from those vendors. Essentially, Golden West does not want this Commission to know the truth about the problems with the data and the difficulties in doing this study because the Golden West Companies understand that such a study is extremely expensive and never 100% accurate.

11. The CDR information should be subject to testimony as to its strengths and weaknesses. It should then be up to the Commission to give the proper weight in figuring the importance of the information and the reliability of the information.

12. A sub issue in Part I of Golden West's Motion appears to arise out of distortion of a letter that Commission Counsel asked counsel for WWC to provide to Golden West counsel to try to clarify some of the issues in this matter. The letter does not raise a separate issue as to access issues. The letter explains because the CDR information contains IXC calls, Golden West use of those IXC calls to up its InterMTA rate would essentially be double-dipping by getting access charges from the IXC, while also getting InterMTA payments from WWC. Thus, this is not a new issue, this is an issue dealing with how you calculate InterMTA, the appropriate formula to figure InterMTA and whether the Interconnection Agreement allows Golden West to collect both access charges and InterMTA charges from the same phone call. Golden West

Companies brought up the InterMTA issue as a counterclaim. WWC has the right to challenge how the Golden West Companies are calculating InterMTA and challenge Golden West's request from this Commission to collect both InterMTA and access charges from IXCs for the same call.

13. As mentioned above, there is no legal support in any of the motions to support these conclusions. Further, it would be inappropriate under this thin of a record to give Golden West some broad hammer to argue that WWC cannot contest its InterMTA calculations or charges.

II. MOTION TO COMPEL - Golden West cannot move to compel discovery where there is not an outstanding interrogatory and WWC should not be forced to expend tens of thousands of dollars and man-hours to accumulate information that will still contain calls that are not InterMTA calls.

14. One cannot make a Motion to Compel unless one has an outstanding discovery request. Golden West does not point to any interrogatory that they are seeking to compel discovery. The closest one might be able to come is Golden West's Exhibit H, is a request for production from the first set.

15. Prior to this Motion, the Golden West Companies did not seek further discovery on this issue and appeared to be satisfied with WWC's June 30, 2005, response to the first round of discovery. So as not to be misled by Golden West's request for production #2, one needs to go back to the actual interrogatory that is being incorporated into that request. Interrogatory #27 asks the following:

Interrogatory 27: Provide the total volume of InterMTA and IntraMTA traffic (in terms of Minutes of Use) that was terminated to Golden West companies for all 12 months of 2004 and January through May of 2005. Include and individually identify all minutes that were terminated either directly or indirectly as well as minutes that were terminated via an IXC.

Answer: WWC systems do not classify traffic as interMTA or intraMTA nor do WWC systems track traffic that was terminated to individual carriers such as the Golden West companies.

If this is the interrogatory and request that Golden West is now supposedly arguing that production it needs to compel, WWC questions the timeliness of this motion given that WWC has had the response for 45 days.

16. Additionally, as it made clear in the Answers to Interrogatories, WWC does not keep this information. In fact, WWC never even accumulates this information.

17. To the extent there was data information accumulated for Golden West when WWC was trying to negotiate a general rate for ILECs in South Dakota by taking a sampling of five companies, WWC had to accumulate the information from those five companies by prearranging to collect data not usually collected. Given that the information requested is for the past year, the information simply does not exist.

18. Furthermore, there is no way to recreate the information because of the massive amount of data collected on calls, WWC does not keep this data long-term. *See* Affidavit of Mike Wilson.

19. In paragraph 17 of Golden West Companies' motion, it attempts to ridicule WWC by claiming WWC should be able to provide this CDR information because it has been provided for the sample companies when attempting to negotiate rates with Mr. Thompson with the majority of the ILECs across the state. Golden West should know better because Golden West knows, and Larry Thompson knows, that the only way this information could have been collected when doing those studies was by prearranging for the collection of the information so as to capture additional, needed relevant information.

20. Golden West then goes on to request that there be raw data dumps from the switches together with technical documentation for data to enable Golden West Companies to

create accurate CDRs. First, WWC does not keep this raw data for a year. Secondly, one cannot make a determination of InterMTA calls from raw switch data because the information is not accumulated as part of the switch data information. *See* Affidavit of Wilson.

21. Finally, Golden West has never asked for this information in discovery and it would be inappropriate to compel production of information such as this without an initial discovery request. It is important that interrogatories and requests for production come before a motion to compel because it allows the parties, in this case WWC, the ability to register objections and seek protection orders. This is especially important because if Golden West desires raw data dumps from switches, depending on the time constraints and the information requested, it could require coordinating several departments at WWC and tens of thousands of dollars of man-hours. In such a scenario, WWC would file objections or seek a protection order requiring Golden West to pay for the man-hours to accumulate such data because it would be unduly burdensome.

III. MOTION TO ALLOW ADDITIONAL DISCOVERY - The Golden West Companies should not be allowed additional discovery on issues it claims it recently discovered as part of the case when they have known about these issues for a month, if not longer.

22. Golden West Companies claim WWC only on August 9, 2005, raised such issues as transiting issues and the right to charge intrastate access under the Agreement. *See* Golden West, ¶ 19. Also, Golden West complains it needs discovery because WWC has noticed a constitutionality of the statutes Golden West relies upon to charge intrastate rates against WWC. *See* Golden West ¶ 20. Golden West complains that none of these issues were included in WWC's Complaint and therefore they need additional discovery. *See* Golden West ¶ 21. These statements are incorrect.

23. Constitutionality of the statutes is a legal issue not subject to discovery in the first place. There does not exist a procedural rule that requires a party disclose every legal issue or every legal theory they have that counters a claim or supports a complaint. If a pure legal theory defense to Golden West demand that it be entitled under the statute to collect interstate rates on all CMRS calls because the calls lack sufficient data, the legal question of enforceability comes up without regard to the underlying facts.

24. It should also be noted that counsel for the Golden West Companies is involved in a federal court case that is challenging the constitutionality of these very statutes. It is difficult for WWC to imagine that Golden West counsel could be involved in that case, assert those very statutes in question in this matter, and then express shock when the legal authority of the South Dakota Legislature to constitutionality pass such statutes is raised. Golden West relies on the state statutes so it can charge intrastate rates to CRMS carriers. If those statutes are unconstitutional, they cannot charge intrastate rates.

25. This leaves the transiting issue. The transiting issue came into play because the counterclaim asserted by Golden West required a full review of the bills sent out. In reviewing the bills, it was determined that Golden West was charging transiting costs which there is no agreement between the parties to pay transiting costs. While Golden West acts surprised at this and claims that this issue first came up on August 9, 2005, that is a complete misrepresentation of what has occurred.

26. Once WWC determined that it appeared it had been billed for services inappropriately for transiting, the fact was raised in a letter on July 15, 2005, (attached hereto) to both Ms. Rogers and Ms. Wiest so they would have time to ask discovery questions about it. The August 9 letter then explains that WWC sees this transiting issue as a claim that could be

tried in this matter upon agreement of the parties as an additional claim or could be brought as a separate proceeding. Rather than complicate discovery in this matter and require additional discovery, WWC would simply agree that the Commission could enter an Order saying that transiting is not a part of this matter and WWC will bring a separate action or complaint to deal specifically with that issue.

IV. MOTION TO POSTPONE HEARING DATE

27. The request to postpone this hearing date is based on arguments asserted by Golden West regarding the discovery issues. As those issues have been examined above, the analysis illustrates there is not a need to continue this matter and this matter should be heard on schedule. The only issue that might raise the need for additional discovery is the transiting issue and WWC would agree to bring that issue in a separate matter as it is not directly related to the Complaint or counterclaim. Rather, it presents a different billing issue.

Dated this 18 day of August, 2005.

GUNDERSON, PALMER, GOODSSELL
& NELSON, LLP



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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE COMPLAINT OF WWC LICENSE LLC AGAINST GOLDEN WEST TELECOMMUNICATIONS COOPERATIVE, INC. ET AL.	CT05-001
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **WWC's RESPONSE TO MOTIONS FILED BY GOLDEN WEST COMPANIES** was served via fax and by postage paid, U.S. Mail, on the 18 day of August, 2005, addressed to:

VIA FAX : 605-224-7102
Darla Pollman Rogers
P.O. Box 280
Pierre, SD 57501

VIA FAX: 605-773-3809
Rolayne Wiest
SDPUC
500 E Capitol
Pierre SD 57501



Talbot J. Wieczorek

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Of Counsel

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July 15, 2005

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VIA FAX 1-605-773-3809
 Rolayne Ailts Wiest
 SD Public Utilities Commission
 500 E Capitol Avenue
 Pierre SD 57501

RE: WWC v. Golden West Telecommunications, et al.
 GPGN File No. 5925.050089 Docket CT05-001

Dear Ms. Rogers and Ms. Wiest:

In reviewing the bills submitted by Golden West to Western Wireless, it was discovered that Golden West is charging transiting charges to Western Wireless. Under the Reciprocal Interconnection Transport and Termination Agreement, it is Western Wireless' position that Golden West cannot charge transiting charges.

Since the actual amounts owed under the bills and what setoffs are going to be part of this proceeding, it is my intent to address these transiting charges. However, I do not want to raise a procedural objection. We could, by agreement of counsel, deal with this issue when we hear the InterMTA and overpayments.

If you have an objection to dealing with this transiting issue during this proceeding, please let me know immediately so I can make a determination of whether I should move to amend the complaint or file a separate complaint.

Sincerely,



Talbot J. Wieczorek

TJW:klw
 c: Client

“(b) To provide accurate CDRs for the remaining Golden West Companies.”

And;

That “Golden West Companies move the Commission to compel WWC to provide to Golden West Companies raw data from its switches, together with the technical documentation for said data, to enable Golden West Companies to create accurate CDRs for each Golden West Company. This will enable Golden West Companies to accurately calculate the appropriate InterMTA factor adjustment for each Golden West Company.”

3. CDRs, or call detail records, are the raw data from switches. There is not necessarily a difference between providing CDRs and providing “raw data from its switches”.

Technically, what was previously provided to Larry Thompson and Golden West, were CDRs with additional information and intuitive naming conventions for the columns.

4. WWC providing additional CDRs or raw data from its switches will not allow Golden West to derive interMTA factors but will be a significant burden on WWC... The accuracy of the CDRs that were previously produced is not in question, what is in question is the accuracy as it relates to the practical use of WWC switched CDRs in order to determine an interMTA factor for WWC originated calls. Providing additional CDRs will not resolve the issue of contamination of IXC traffic within the data set. When the original CDR method on attempting to calculate interMTA was discussed, the parties did not know that the required information to account for IXC calls could not be obtained.

5. I worked diligently with Larry Thompson to come up with an agreeable methodology for the identification of InterMTA traffic factors. I had described a methodology that involved obtaining data for 5 telcos and negotiating factors based on this data. I had communicated to Larry Thompson, by phone, that the method of exclusion of

IXC traffic was somewhat suspect but that I was confident that most of that traffic was indeed excluded due to our network configuration. I found out later that this was not the case. The description of the desired methodology did not represent what the actual study results included. WWC investigated the integrity of the interMTA factor after the study was produced. This investigation showed that there was indeed IXC traffic included in the CDRs that were used to derive interMTA factors. At the time that I communicated WWC's desired methodology to Larry Thompson, I did not know that our inter-machine trunking solution was not fully deployed in South Dakota and the surrounding markets. This meant that the method that was used to filter IXC traffic, which was to exclude traffic by NPA, was not sufficient to exclude all IXC traffic.

6. WWC providing additional CDRs or raw data from its switches would be burdensome. WWC has no dedicated resources to pull switched CDRs. WWC has historically had no financial interest in providing CDRs for reporting purposes. Therefore, WWC has not dedicated resources for this function. To pull this information for the five ILECs in the sample study required before the fact coordination with numerous departments. Even after pulling the data, extensive man hours were necessary in an effort to determine what calls may be interMTA. Additionally, pulling CDRs from the time period in question is no longer possible, as this data has been purged from our servers. WWC keeps CDRs for no longer than 60 days.

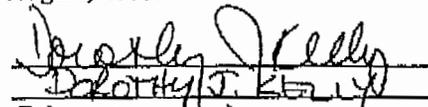
7. Provided that WWC could even produce such data, the CDRs alone would not allow Golden West to derive an interMTA factor. Again, IXC traffic contamination would prevent an accurate factor.

Further, affiant sayeth naught.



Michael Wilson

Subscribed and sworn to before me this 18th day of August, 2005.



(Print or type name)

Notary for the State of Washington

Residing at Bellevue, WA

My Commission Expires 10-15-06

