

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION
CT05-003

**IN THE MATTER OF THE COMPLAINT
FILED BY ELDON LINDQUIST ON BEHALF
OF PIERRE RADIO PAGING & TELEPHONE,
PIERRE, SOUTH DAKOTA,
AGAINST QWEST CORPORATION
REGARDING A BILLING DISPUTE**

**MOTION TO DISMISS
ALL CLAIMS PRIOR TO
APRIL 14, 1999**

Qwest Corporation ("Qwest"), by and through its counsel, hereby files this Motion to Dismiss All Claims Prior to April 14, 1999 pursuant to ARSD 20:10:01:11:01 requesting the South Dakota Public Utilities Commission ("Commission") to dismiss certain of Pierre Radio Paging & Telephone's ("PRPT") claims against Qwest. For the reasons set forth herein, PRPT does not have a good or sufficient reason for making a complaint for certain of its claims and those claims should be dismissed.

UNDISPUTED FACTS

As set forth in the Complaint filed by PRPT in this case, which Complaint includes copies of correspondence between the parties and between PRPT and its legal counsel, this dispute concerns the amounts Qwest billed to PRPT for local interconnection facilities that PRPT ordered from Qwest under Section 20 of the South Dakota Network and Exchange Tariff. The time period for the billings in dispute in this matter is from November 1996 to July 2000.¹

In Exhibit 1 to its Complaint, PRPT states that it received a letter from Qwest dated July 25, 2000. Exhibit 1 also correctly states that PRPT received a settlement proposal from Qwest on January 19, 2001. PRPT never responded to Qwest's January 19, 2001 offer of settlement.

¹ This fact is set forth in the February 8, 2001 letter attached to PRPT's Complaint and marked "DRAFT". This draft letter was apparently part of a fax from PRPT's legal counsel to Mr. Lindquist.

The documents submitted by PRPT include a *draft* letter written by PRPT's counsel in response to Qwest's January 19th offer; Qwest never received that letter.

The correspondence submitted by PRPT to the Commission as part of its Complaint then jumps ahead to January 28, 2004. In the January 28th letter, counsel for PRPT states to Mr. Lindquist: "The last time we talked about your interconnection matter I explained that we were hesitant to move the matter forward until we obtained a decision in the pending case, Mountain Communications v. FCC, since the outcome of that matter would have a direct relevance on your ability to obtain full relief from the LEC."

It is undisputed, based on the correspondence submitted to the Commission by PRPT with its Complaint, that while under the advice of legal counsel, PRPT delayed responding to Qwest's settlement offer of January 21, 2001 and delayed bringing a claim against Qwest for alleged outstanding amounts until April 14, 2005, the date PRPT filed its Complaint.

APPLICABLE LAW

SDCL 15-2-13 is the statute of limitations for claims brought under contract obligations. It provides that actions upon contract can be commenced only within six years after the cause of action has accrued. A tariff that has been approved by a public service commission becomes law and amounts to a binding contract between the utility and its customers. 64 *Am Jur 2d* PUBLIC UTILITIES § 61.

Furthermore, this Commission has ruled directly on the issue of the applicability of this statute of limitations to claims brought under intrastate tariffs. In the recent case of *In The Matter of the Complaint Filed by Black Hills Fibercom L.L.C., Rapid City, South Dakota, Against Qwest Corporation Regarding Intrastate Switched Access Charges Applied to ISP-*

Bound Calls Which Complainant Claims Are Interstate In Nature, Case No. CT03-154, paragraph 46, page 9, the Commission stated:

Qwest issued invoices to FiberCom for the ISP traffic pursuant to its intrastate Service Access Tariff. The jurisdiction and authority of the Commission to consider FiberCom's Complaint rests in its power to decide the propriety of charges levied under an intrastate tariff sanctioned under state law. We find that the six year statute of limitations imposed by SDCL 15-2-13 is applicable to this case.

ARGUMENT

In its Complaint, PRPT seeks damages from Qwest for the time period from November 1996 through July 2000. PRPT ordered the services at issue in this matter from Qwest under the South Dakota Exchange and Network Services Tariff. Thus, as in the Black Hills FiberCom, L.L.C. case cited above, SDCL 15-2-13 applies to PRPT's claims. Under SDCL 15-2-13, PRPT may bring claims only within six years after a cause of action has accrued. PRPT filed its Complaint in this case on April 14, 2005. The time period for which PRPT may lawfully seek damages from Qwest in this matter is limited to April 14, 1999 through July 2000 because PRPT's claims predating April 14, 1999 are time barred by the statute of limitations.

WHEREFORE, Qwest respectfully asks the Commission to dismiss all of PRPT's claims prior to April 14, 1999.

Respectfully submitted this 2nd day of May, 2005.

QWEST CORPORATION

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2005, an original and 10 copies of the foregoing **QWEST CORPORATION'S MOTION TO DISMISS ALL CLAIMS PRIOR TO APRIL 14, 1999** was served upon the following party:

Ms. Pam Bonrud
Executive Secretary
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070

a copy was also sent to the following:

Eldon Lindquist
Pierre Radio Paging and Telephone
P.O. Box 99
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