

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE APPLICATION)
OF SOUTH DAKOTA NETWORK, INC. AND)
SDCEA, INC., FOR PERMISSION TO)
CONSTRUCT CENTRALIZED EQUAL)
ACCESS FACILITIES.)**

**AMENDED ORDER GRANTING
CONSTRUCTION PERMIT AND
APPROVING TARIFF**

(F-3860)

On October 6, 1989, the Public Utilities Commission (Commission) received an application filed by the South Dakota Network, Inc. (SDN) and South Dakota Centralized Equal Access, Inc. (SDCEA) for permission to construct in this state centralized equal access facilities. Through their application SDN and SDCEA seek authorization from the Commission under SDCL 49-31-20 and 49-31-21 to construct, lease or otherwise acquire and operate telecommunications access facilities within territories and communities already occupied and being served by other telecommunications companies.

On October 23, 1989, the Commission issued a Notice of Opportunity to Intervene or Comment whereby interested parties were given the opportunity to comment or intervene in this matter on or before November 6, 1989. In response, petitions to intervene were filed with the Commission by Dakota Cooperative Telecommunications, Inc. (DCT), U S WEST Communications (USWC), AT&T Communications of the Midwest, Inc. (AT&T) and Telecommunications Action Group, Inc. (TAG). By Commission Order dated November 21, 1989, all of the petitioners were granted intervention.

On December 5, 1989, the Commission set the above matter for initial hearing on January 29, 1990. The hearing was held as ordered. On April 25, 1990, after all parties had filed written briefs, but before the Commission had issued a decision, SDN and SDCEA filed with the Commission a Motion to Amend Application and to Reopen Hearing. In the Motion, SDN and SDCEA asked the Commission to enter an Order which (1) would allow SDN to amend its original application in Docket F-3860 to include a full and complete tariff filing, including all supporting documents, materials and exhibits; (2) set a date for filing the tariff application and supporting documents, including prefiled testimony to be filed with the tariff application, approximately 90 days from the date of its Motion; (3) set a schedule for prefiled testimony from the other parties and intervenors as soon thereafter as possible; and (4) reopen the hearing held January 29, 1990, and set a continuation date for said hearing at some date certain after the filing of all prefiled testimony.

On May 1, 1990, the Commission issued an Order for and Notice of Hearing on the Motion to Amend Application and to Reopen Hearing scheduling a hearing for May 8, 1990. A hearing was held before the Commission on that date, and at such time, based on the arguments presented, the Commission determined that there was good cause to grant SDN and SDCEA's Motion in all respects. Pursuant to ARSD 20:10:01:27.01, the Commission concluded that the record should be reopened and that the matter should be set for further hearing.

A procedural schedule was set by an Order dated July 13, 1990, which established dates for prehearing testimony and set the matter for hearing on

October 30 and November 1, 1990, in the Capitol Building, Pierre, South Dakota. Prehearing testimony was filed by SDN and SDCEA, Inc., AT&T and USWC. The second hearing was held on October 31 and November 1, 1990. Pursuant to notice, the place of the second hearing was changed from the Capitol Building to the Kings Inn, Pierre, South Dakota. A briefing schedule followed whereby all parties were offered the opportunity to submit briefs on the issues raised at hearing and to submit Findings of Fact and Conclusions of Law.

At a Commission Meeting on December 28, 1990, the Commission approved the SDN application, finding it to be in the public interest, Commissioner Schoenfelder, concurring in part and dissenting in part. The Commission's written Order was issued on February 22, 1991.

The Commission received several Petitions For Rehearing, including a petition from DCT on March 7, 1991, USWC on March 21, 1991, and AT&T on March 22, 1991. DCT submitted a motion entitled Withdrawal Of Intervention And Application For Rehearing on April 2, 1991. By Order For And Notice Of Hearing On Applications For Rehearing, dated March 28, 1991, the Commission set the rehearing petitions for oral argument on April 3, 1991, at 11:00 A.M., in Room 412 of the State Capitol in Pierre, South Dakota.

The Commission having held hearings on the merits of the SDN-SDCEA application on January 29, 1990, and on October 31 and November 1, 1990, the Commission makes the following:

FINDINGS OF FACT

1. On October 6, 1989, the South Dakota Public Utilities Commission (Commission) received an application filed by the SDN and SDCEA, for permission to construct in this state centralized equal access facilities pursuant to SDCL 49-31-20 and 49-31-21. The facilities proposed are a fiber optic line and centralized equal access tandem switch, to be located within the State of South Dakota and interconnect with both local exchange carriers (LEC's) and interexchange carriers (IXC's) in Sioux Falls, South Dakota.

2. The SDN fiber optic facility proposed is a line which begins from the northern meet points with Valley Telecommunications Cooperative located twenty-three miles northwest of Aberdeen, South Dakota, and James Valley Cooperative located fifteen miles east of Aberdeen, South Dakota. These two lines join south of Aberdeen and then proceed south to the meet point with Sully Buttes Telephone Cooperative located near Hitchcock, South Dakota. From Hitchcock the line proceeds south to the meet point with Sanborn Telephone Cooperative at Woonsocket. From Woonsocket the line proceeds south to a meet point north of Mount Vernon. From Mount Vernon a separate line extends west to Plankinton, which line connects the meet points of Sioux Valley Telephone Cooperative and Midstate Cooperative with SDN. South of Mount Vernon the line turns east running south of Mitchell to Sioux Falls. Along the eastern route to Sioux Falls there are meet points with the Tri-County Mutual Telephone Company located at Emery, South Dakota, and McCook Cooperative in Salem, South Dakota. The SDN line terminates at the centralized equal access tandem switch to be located in or near Sioux Falls, South Dakota. SDN also proposes construction of eight miles of line north from Sioux Falls to the meet point with Baltic Cooperative at the Crooks exchange. Last, SDN will construct a line seventeen miles north and east to the Splitrock Telecom Cooperative meet point at its Brandon exchange.

3. The facility will also include the construction of a centralized equal access digital switch to be located in or near Sioux Falls, South Dakota.

4. The facility will be located entirely within the State of South Dakota, and over its course it will cross the certified local exchange boundaries of the following telecommunications companies who are not members of SDN: USWC, Hanson County Telephone Company and Union Telephone Company. The centralized equal access switch will be installed and constructed in or near Sioux Falls, South Dakota, which is within the certified local exchange territory of USWC. The SDN will provide interconnection for USWC and other long distance companies located in Sioux Falls, South Dakota with SDN member exchanges. The proposed facility will not, however, access the local exchange customers or the local exchange switching facilities of any non-member SDN company.

5. The proposed facility will be owned by SDN and will be leased to and operated by SDCEA, a wholly owned subsidiary of SDN. The facility will provide inter and intrastate and inter and intralATA switched access telecommunications services between Sioux Falls and the 76 exchanges of the 12 member telecommunications companies that comprise SDN.

6. South Dakota Network, Inc. and SDCEA, Inc. are South Dakota corporations organized under Chapter 47-2 of the South Dakota Codified Laws.

7. The member companies of SDN are:

Baltic Telecom Cooperative
Baltic, South Dakota 57003

Sanborn Telephone Cooperative
Woonsocket, SD 57385

Brookings Municipal Utilities
Brookings, South Dakota 57006

Sioux Valley Telephone Company
Dell Rapids, South Dakota 57022

Interstate Telephone Cooperative
Clear Lake, South Dakota 57226

Splitrock Telecom Cooperative, Inc.
Garretson, South Dakota 57030

James Valley Cooperative Telephone
Groton, South Dakota 57445

Sully Buttes Telephone Coop., Inc.
Highmore, South Dakota 57345

McCook Cooperative Telephone Company
Salem, South Dakota 57058

Tri-County Mutual Telephone Company
Emery, South Dakota 57332

Midstate Telephone Company
Kimball, South Dakota 57355

Valley Telecommunications Coop.
Herreid, South Dakota 57632

8. The 12 member companies of SDN serve seventy-six local exchanges located in eastern South Dakota and approximately 37,067 access lines. All of the local exchanges are located east of the Missouri River in South Dakota. Each of the members of SDN is a small independent, cooperative, or municipal telecommunications company. The primary business of each SDN member is the provision of local exchange telephone service and access service. SDN is not in the business of providing local exchange telephone service. SDN's primary business activity will be to transport toll calls to and from its member companies' exchanges.

9. SDN and SDCEA have admitted that the companies and the facility are subject to the full regulatory jurisdiction of the Commission. SDN has agreed to

make available to the Commission for inspection and analysis copies of all executed written lease agreements for system capacity.

10. SDN and SDCEA have applied to the Federal Communications Commission (FCC) for authority under 47 U.S.C. Section 214 to construct and operate the proposed facilities. SDN's application before the FCC was approved in all respects by Order adopted November 9, 1990. The Commission takes judicial notice of the proceedings before the FCC in this matter. The FCC has concluded that under Section 214, SDCEA's application is in the public interest.

11. SDN requests to transport all originating intrastate and interstate traffic from meet points with its member systems over SDN facilities to SDN's centralized equal access tandem switch located in or near Sioux Falls, South Dakota, and to transport all terminating interstate and intrastate long distance traffic, regardless of its point of origin, from SDN's centralized equal access tandem switch in or near Sioux Falls, South Dakota, to the SDN member meet points over SDN facilities.

12. The SDN application requires that all interexchange carriers meet and connect with the SDN facilities only at its switch in Sioux Falls. All telecommunications traffic, whether originating from or terminating to the local exchanges of the SDN member companies must pass through the SDN switching facilities in Sioux Falls.

13. SDN agrees that participation by interexchange carriers in SDN for presubscribed 1+ access through customer balloting would be voluntary. SDN also agrees that the balloting would essentially follow the method approved by the FCC for balloting for presubscribed equal access in the interstate jurisdiction.

14. SDN's estimated cost of providing the centralized equal access switch, in both interstate and intrastate jurisdictions, together with all facilities necessary and incidental thereto, and the cost of providing fiber optic transport facilities from the SDN switch to the various meet points with SDN's member companies is approximately \$7.4 million. Of this amount, the switch along with the circuit equipment is estimated to cost \$3.17 million. The cost of the construction of the 284 miles of fiber cable is estimated at \$2.4 million. An additional \$628,000 will be invested by the individual SDN member companies for connecting to the proposed SDN fiber facilities. SDN has made a substantial effort to accurately quantify total project costs and expenses. The methods used by SDN to estimate the costs and expenses are reasonable.

15. Currently, to provide an AT&T long distance call from or to a SDN member customer residing within a SDN member local exchange area, AT&T purchases a combination of switched access services from LEC's (independents and USWC). Within South Dakota, USWC provides intraLATA interexchange access services (intraLATA transport and switching) from or to SDN member local exchange meet points to AT&T's Sioux Falls point of presence. Within the SDN member local exchange areas, SDN members provide local exchange access service (local transport and switching). USWC's interLATA-interexchange transport and switching access services will be governed by tariffs filed with the FCC. The SDN member interstate access transport and switching services are governed by the National Exchange Carriers Association (NECA) Tariff No. 5, which is filed with the FCC. SDN's interstate access transport and switching services will be governed by its interstate tariff.

16. At the present time, SDN member subscribers do not enjoy the benefits of equal access and the competitive toll services which accompany equal access. At the present time, there is a lack of competition in the SDN member service areas as is evidenced by the fact that no long distance companies have requested equal access. In addition, Feature Group A and Feature Group B traffic constitutes less than 11% of the total traffic of the SDN member companies.

17. At the present time, the subscribers of SDN member companies do not enjoy "1+" equal access dialing capability in either the intrastate or interstate jurisdictions.

18. The SDN project, as proposed, will provide presubscription, or centralized equal access, on a "1+" basis in all long distance jurisdictions, including intraLATA-intrastate, intraLATA-interstate, interLATA-interstate and interLATA-intrastate. SDN will allow a customer to choose, by dialing the number 1 plus the 10 or 7 digit telephone number, the inter and intraLATA interexchange carrier, respectively, as the primary interexchange carrier (PIC) of his long distance telecommunications. This is an option which said subscribers do not have at the present time. The SDN switching facility will provide the appropriate computer software to allow the customer the full 2 PIC capability for 1+ presubscription to the inter and intraLATA long distance carrier of his or her choice. In addition, all long distance companies can be used by the subscriber by dialing "10xxx".

19. SDN will offer Feature Group A, B and D switched access service to all long distance companies through its Sioux Falls centralized equal access tandem switch. These feature groups will all be offered at the same rate.

20. SDN access services will be equivalent in type and quality for all long distance companies, without discrimination as to company identity, and will include presubscription and access signaling to non-presubscribed carriers via dialing a minimum number of digits.

21. SDN will also furnish screening and related functions for the WATS and WATS-type services provided by long distance companies.

22. At the time of hearing this application, SDN member companies have had no bona fide requests for equal access from long distance companies at any of the SDN member exchanges, and there are no competitive long distance services being offered on an equal access basis to any of SDN's member subscribers.

23. SDN's proposed fiber optic facility, together with its centralized equal access tandem switch, will provide state-of-the-art intrastate and interstate access services to the rural areas within the SDN member service areas, which will result in a higher quality of service.

24. The SDN project will aggregate SDN member subscribers' long distance traffic in Sioux Falls, South Dakota, which currently is a point of presence for many long distance companies. Further, SDN will encourage other long distance companies to establish a point of presence (POP) in Sioux Falls and will foster competition by encouraging long distance companies to bring additional new and competitive services to the SDN centralized equal access network.

25. USWC at the present time aggregates its long distance traffic at its access tandem in Sioux Falls, South Dakota, through the use of end office

conversions and host remote configurations. USWC is able to provide interstate equal access services in Sioux Falls, South Dakota, for its switches at various exchanges in South Dakota.

26. Without the construction of a centralized equal access tandem switch and fiber optic transport system as proposed by SDN, it is unlikely that SDN member subscribers, which are located primarily in rural areas, will soon enjoy the benefits or services provided by "1+" equal access in either the interstate or intrastate jurisdiction.

27. The centralized equal access project as proposed by SDN will provide equal access at a cost which is significantly lower than the transport and switching cost that would be necessitated by USWC's proposed alternative of end office conversion.

28. End office conversion is not a feasible alternative because of the lack of interest on the part of long distance companies to come to rural South Dakota exchanges and due to the high cost of end office conversions.

29. The SDN project will enhance the concept of universal service in the rural areas located within the SDN member service areas.

30. NAC does not have the technical capability to provide the same future growth and services which are now in the planning stages throughout the country, such as Signaling System Seven. Further, NAC may not provide 10xxx dialing. The NAC proposal is an outdated technology and an interim measure which in the long run would result in more costs and expenses to SDN members when replaced with a true equal access system in the future.

31. USWC has proposed to lease transport facilities to SDN in lieu of SDN's constructing its fiber optic facilities. The USWC lease proposal is not adequate to meet the needs and requirements of the member subscribers in the SDN member service areas. The USWC lease proposal would cover only initial capacity requirements of the project and does not allow for future growth. Based on normal growth, as computed on a historical basis, the USWC lease cost would almost double and the transport cost to SDN would exceed the transport cost of constructing the project. In addition, the sixty month time limitation on the lease creates an unacceptable level of uncertainty regarding future costs of the project. Further, USWC's leased facilities would not be state of the art fiber. Last, a lease does not provide sufficient certainty for long term planning and management.

32. The SDN annual charges to toll providers as shown in Martin's exhibit No. 10 are less than the annual charges to toll providers proposed by USWC. The information contained on Martin's Exhibit No. 10 has not been rebutted by any evidence introduced by USWC.

33. The SDN project will provide for competitive long distance services which would not otherwise be available to SDN members' subscribers. These services include: "1+" presubscription in both interLATA and intraLATA jurisdictions; 10xxx dialing; access to emergency medical service through the SDN improved facilities by using optic fiber and state-of-the-art switching; access to state-of-the-art law enforcement, fire and other emergency services such as are provided by Enhanced 911; and Signaling System Seven when available. All of

the above will be provided through state-of-the-art fiber optic facilities not presently available to all SDN member subscriber areas.

34. The SDN fiber optic network as proposed will encourage and enhance the use of two-way interactive educational television services by the rural school districts located within the SDN members' subscriber areas.

35. The SDN project will benefit economic development in the SDN members' subscriber areas by bringing state-of-the-art telecommunications facilities to rural exchanges where economic development is a necessity for the preservation of South Dakota's rural communities.

36. The businesses presently operating in the SDN member service areas in South Dakota have expressed a desire to realize the benefits of equal access and "1+" presubscription in order to preserve and protect their businesses and the business environment in the rural communities served by the SDN member systems.

37. Centralized equal access will provide needed competitive benefits to existing businesses located within the SDN member subscriber areas.

38. The SDN project will provide equal access for consumers to the competitive long distance companies on an "occasional caller" basis ("10xxx") in both the intrastate and interstate jurisdictions.

39. The construction of the SDN facilities and the implementation of those facilities into the telecommunications network in South Dakota may result in USWC's losing access revenues. The loss of access revenue by USWC is a direct result of the competition fostered by Senate Bill 42, which included amendments to SDCL 49-31-20 and 49-31-21.

40. The SDN proposed project provides needed state-of-the-art telecommunications services in the rural areas of South Dakota and promotes the concept of universal service, which is essential to low cost high quality telecommunications throughout the State of South Dakota, and specifically in the rural areas contained in the SDN member service areas.

41. Construction and operation of the SDN project will foster toll competition, and through the use of centralized equal access, bring toll competition and other competitive services to the rural subscribers in the SDN member service areas, which would not otherwise be realized.

42. USWC initially recommended to the Commission that the Commission authorize the SDN project and include as part of that project competitive terminating access on both the interstate and intrastate jurisdictions. Competitive terminating access is a method of transporting long distance calls whereby long distance companies have the choice of which carrier to use to terminate calls.

43. The FCC, in its recent decision approving construction and operation of the SDN network, (In Re the Application of SDCEA, Inc., File No. W-P-C-6486), relying on its past decision addressing Iowa Network Services (INS), rejected USWC's argument that it should be able to compete with SDCEA for traffic terminating at SDCEA's participating telephone company exchanges.

44. At the present time, generally, regulators have not viewed "switched access" as a competitive service and have been reluctant to open the switched access services market and the local exchange market to competition.

45. The proposed construction of facilities by SDN will not result in a significant duplication of existing USWC's facilities, nor result in significant USWC stranded plant or investment. The benefits of toll competition and state-of-the-art services provided by the SDN project far outweigh the losses, if any, which USWC alleges it will sustain.

46. The cost of converting to equal access on an interstate basis throughout the country has been borne by all customers in the United States, whether or not they were provided equal access. The contribution of USWC's customers to the SDN proposal, if any, through increased rates charged by USWC, as approved by this Commission, would be consistent with the universal cost of equalized access being supported by consumers throughout the United States. SDN's members' subscribers have paid for USWC's costs to convert its exchanges to equal access for several years.

47. Any losses USWC suffers as a result of the construction of the SDN project are less significant than the benefits which accrue to the subscribers of SDN member systems through state-of-the-art services, improved services, and from the benefit of competition for long distance services. Lost revenues as a result of deregulation and increased long distance competition should not have the effect of stifling new goods and services that will benefit the public interest.

48. The construction of the facilities will discourage the threat of bypass, which is detrimental to the SDN member systems.

49. SDN will encourage and protect average long distance rates, thereby protecting rural subscribers from the threat of deaveraged toll rates.

50. The SDN project benefits the public interest because it will foster competition and provide for competition over the facilities by effectively bringing all of the 76 rural exchanges to the city of Sioux Falls through a centralized point of presence for long distance companies, many of which already have facilities in existence in the City of Sioux Falls.

51. The SDN project will stimulate and preserve the small independent telephone companies in South Dakota, enabling them to better plan for their survival in the future telecommunications environment.

52. SDN and SDCEA, in support of their application for construction of the facilities, have filed a tariff including rates and specific terms and conditions relating to the proposed CEA service. The access rates and other charges included in the tariff are based entirely on cost and expense estimates and revenue projections.

53. SDCEA's present tariffed rates are interim rates and will need to be reviewed and adjusted after SDCEA has commenced operations. SDN and SDCEA have admitted that a "true-up" filing will be necessary and have indicated that it would be reasonable to require such a filing after the first 18 months of operation.

54. Eighteen months of operation would provide a sufficient record of actual expenses and revenues for the Commission to fairly review and set SDCEA's access rates.

55. The tariff, as filed by SDN, which used a fundamental methodology for determining centralized equal access rates and transport rate elements, is based upon FCC Part 36 and Part 69 procedures. The use of rate elements for other than centralized equal access and transport functions which result from the mirroring of National Exchange Carrier Association rate elements is an acceptable interim procedure in this matter. The rates developed by witness Thomas R. Farm, using the information submitted by SDN in justification of those rates, are in the interim, fair and reasonable and provide reasonable compensation to SDN. The interim rates and methodologies in the SDN tariff will, however, have to be reviewed in the future to make adjustments which will reflect actual expenses and revenues.

56. USWC's modified 1 PIC capability is not functionally equivalent to the equal access proposed by SDN. USWC's modified 1 PIC can only provide interLATA equal access. 10xxx dialing to an intraLATA carrier is not an equivalent for intraLATA equal access. USWC would only provide its 2 PIC alternative if ordered by the Commission, which indicates USWC's reluctance to provide this alternative.

57. SDN and SDCEA have asked the Commission to order that new members (ILEC's) may be added to the SDN project without further proceedings. Their application states, however, that "[t]he PTC's will separately file with the Commission, as appropriate, applications for authorization to construct facilities to connect their end offices with the designated meet points of the proposed system."

58. Brookings Municipal Telephone, Interstate Telecommunications Cooperative, Inc., McCook Cooperative Telephone Company and Sioux Valley Telephone Company, presently SDN members, have facilities construction planned and have filed an application for approval under SDCL 49-31-20 and 49-31-21 in Docket F-3866.

59. Shortly after November 26, 1990, each Commissioner received in the mail a document entitled, "South Dakota Telecommunications Policy Review" (SDTPR). The SDTPR is a one page document entitled: "SDN: A Multi-Million Dollar Mistake", which was authored by Craig Anderson, General Counsel for Dial Net. The SDTPR advocates that the SDN application be rejected by the Commission. It also advocates that members of the public write to the Commission to express their opinion. The Commission received approximately 20 letters from the public, the vast majority of which echoed the same views as the SDTPR regarding the SDN project. Dial Net is a member of TAG, who is a party to this proceeding. The SDTPR contains a footnote which claims that the views expressed in the SDTPR are those of Craig Anderson and "do not necessarily represent the views of Dial Net or TAG."

60. Without a monopoly on both originating and terminating access services, at least initially, SDN may not be able to compete with USWC, who established its interexchange access services under monopoly protections that existed prior to the passage of Senate Bill 42. Short term monopoly protection is necessary to insure that the SDN, as a new competitor, will survive and prosper to ultimately compete with USWC for interexchange access services without any monopoly protections. Under prior Commission precedent in Commission Docket F-3832, the

record established that the F-3832 project could survive without monopoly protection from its inception.

From the foregoing Findings of Fact, the Commission now makes the following:

CONCLUSIONS OF LAW

1. SDN and SDCEA are both "telecommunications companies," as defined under SDCL 49-31-1(9), and are subject to full Commission regulation under SDCL Chapter 49-31, more specifically, 49-31-1.1, 49-31-3, 49-31-4, 49-31-4.2, 49-31-4.3, 49-31-5, 49-31-7, 49-31-7.1, 49-31-11, 49-31-12, 49-31-12.2, 49-31-12.4 and 49-31-15 through 49-31-21, inclusive.

2. As "telecommunications companies", SDN and SDCEA must register with the Commission under SDCL 49-31-3 within 30 days prior to initiating business in the state. At some point, before actually providing the CEA service, SDN and SDCEA must file separate applications for registration, including all information required under ARSD 20:10:24:02.

3. In filing for registration, SDCEA shall refile its tariff to permit Commission action directly on the specific tariff provisions regarding terms and conditions of service. Any such refiling must include those tariff changes necessary to comply with the Commission's decision in this docket.

4. The Commission has jurisdiction over the connectivity of the SDN facilities within the State of South Dakota to all other telecommunications companies, including the POP connections between SDN member companies and SDN, and SDN and other interexchange and intraexchange carriers.

5. The FCC's decisions on the INS, MIEAC and SDN centralized equal access networks do not affect this Commission's jurisdiction over the intralATA toll traffic carried to and from the SDN PTC's. The FCC, in its decision on the SDN network, specifically stated that its "action does not preempt any state orders relating to intrastate traffic."

6. For the purposes of SDCL 49-31-20 and 49-31-21, SDN member facilities are "access" facilities, which must obtain a construction permit from the Commission prior to construction of the initial SDN project and any extensions thereto.

7. "Switched access service", which includes SDN and SDCEA's centralized access service, has been classified as a "noncompetitive" service under SDCL 49-31-1.1(6). The rates for "noncompetitive" services are subject to rate of return regulation under various statutory provisions in SDCL Chapter 49-31, and must be "fair and reasonable". Access is further subject to regulation by the Commission pursuant to SDCL 49-31-15 through 49-31-19.

8. The Commission must, at some point, review SDCEA's tariffed rates based on actual expenses incurred and revenues collected and determine whether the rates and charges established in the tariff are "fair and reasonable" on a "rate of return" basis.

9. SDCEA shall, at the earliest opportunity, after its first 18 months of operation (no later than 24 months after commencing service), refile for approval by the Commission all of its rates and charges. Additionally, SDN-SDCEA shall at

such time present to the Commission evidence showing the effects of its terminating transport monopoly.

10. SDCEA shall also file quarterly reports with the Commission after it begins providing its CEA service, including (1) a report of all revenues and expenses; (2) a balance sheet; (3) a report of all originating and terminating minutes of use over the SDN network facilities; and (4) a list of all IXC's serving the SDN participating exchanges.

11. SDCEA shall file monthly reports regarding balloting activities with the Commission. SDN or SDCEA must inform the Commission of any balloting problems when they occur.

12. Construction of the SDN project, including the construction of fiber optic cable, provides for future growth and expansion of SDN capacity, including the provision of future services, and therefore is in the public interest. The lease proposal by USWC does not provide the same future capacity for SDN, is more costly than the SDN proposal when considered in light of future growth and expansion in the telecommunications industry, based on historical data, and therefore, the lease proposal does not benefit the public interest.

13. The construction of the SDN facility as proposed will encourage competition in the SDN member local service areas where competition is not now present, it will encourage long distance companies to establish interconnection with SDN at Sioux Falls because of the aggregation of 37,000 access lines to a single POP in Sioux Falls, South Dakota, and thereby, competition will be created, encouraged and fostered by SDN, all of which benefit the public interest.

14. SDCL 49-31-15 through 49-31-17, inclusive, allow the Commission to compel access at exchanges. The access being requested by SDN falls within the requirements of those statutes. Accordingly, the Commission has authority to compel access at USWC's exchange in Sioux Falls, South Dakota, as proposed in the SDN application.

15. Access services, as provided by the SDN project, will be equivalent in type and quality for all long distance companies, without discrimination as to company identity, and will include presubscription and access signaling to non-presubscribed carriers via dialing a minimum number of digits, all of which benefit the public interest.

16. Based on the entire record in this matter, SDN and SDCEA have clearly demonstrated that the construction and operation of the SDN Network is in the public interest pursuant to SDCL 49-31-20 and 49-31-21. As the Commission's final decision in this matter, it is therefore

ORDERED, that the SDN-SDCEA application for a construction permit pursuant to SDCL 49-31-20 and 49-31-21, to build centralized equal access facilities within South Dakota, is found to be in the public interest and hereby approved; and it is

FURTHER ORDERED, that SDN-SDCEA shall have a monopoly over all switched access service originating or terminating in the SDN member exchanges; and it is

FURTHER ORDERED, that all interexchange carriers shall connect at SDN's tandem switch at or near Sioux Falls to gain access to the SDN member exchanges; and it is

FURTHER ORDERED, that SDN and SDCEA must separately register with the Commission as telecommunications companies, pursuant to SDCL 49-31-3 and ARSD 20:20:24:02, within 30 days prior to initiating telecommunications services in South Dakota; and it is

FURTHER ORDERED, that SDN-SDCEA shall, after its first 18 months of operation (no later than 24 months after commencing service), refile for approval by the Commission, its tariffed rates and charges. Furthermore, SDN-SDCEA shall present evidence to the Commission at such time which shows the effects of being granted a terminating access transport monopoly and what affect the elimination of this monopoly would have on SDN-SDCEA; and it is

FURTHER ORDERED, that SDN-SDCEA shall, after commencing operations, file the following quarterly reports with the Commission: income statement; balance sheet; a report showing all originating and terminating minutes of use in both the intra and interstate jurisdictions; and a list of all IXC's serving SDN member exchanges; and it is

FURTHER ORDERED, that SDN-SDCEA shall file monthly reports regarding balloting activities and shall advise the Commission of any problems; and it is

FURTHER ORDERED, that all SDN member LEC's constructing facilities to connect to SDN, which facilities were not described or included in the original SDN application, shall apply, pursuant to SDCL 49-31-20 and 49-31-21, before constructing or connecting with the SDN network approved in this docket. Issues presented in this docket regarding whether or not the SDN network backbone is in the public interest need not be relitigated. Any new SDN members must also apply for authority before connecting to the existing SDN network; and it is

FURTHER ORDERED, that SDN-SDCEA's proposed tariff rates are found to be fair and reasonable on an interim basis. The full SDN-SDCEA tariff shall be filed with their telecommunications registrations for further review as to the tariffs' terms and conditions for service; and it is

FURTHER ORDERED, that SDN's request for an extension of time to file a late brief in response to AT&T's brief is granted because of the late arrival of AT&T's brief to SDN; and it is

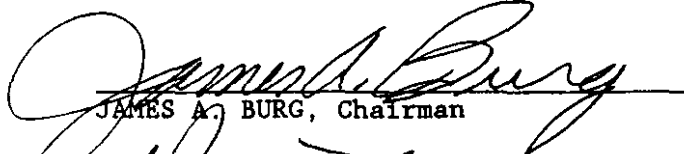
FURTHER ORDERED, that SDN's Complaint, which shall be treated as a motion to strike, shall be granted as follows. The "SDTPR", authored by Craig Anderson, who is Vice President - Chief Financial Officer and General Counsel for Dial Net, shall be identified as the next numbered exhibit in the record, however, since the "SDTPR" was submitted after hearing and briefing it shall be given no consideration by the Commission. Furthermore, all letters from the public received by the Commission, as a result of the "SDTPR", shall be identified as a group and be numbered as the next exhibit, however, since they were received after the hearing and briefing they shall be given no consideration by the Commission.

FURTHER ORDERED, that USWC's and AT&T's petitions for rehearing shall be granted in part, only to the extent they requested Commission action consistent

with this Order. Further, the petitions shall be granted only for the purpose of reconsidering the Commission's prior Order. No further hearings shall be held. To the extent this Order is inconsistent with the petitions for rehearing, the petitions are denied. DCT withdrew prior to this decision, therefore, the Commission shall not rule upon DCT's Petition for Rehearing.

Dated at Pierre, South Dakota, this 12th day of April, 1991.


BY ORDER OF THE COMMISSION:



JAMES A. BURG, Chairman



KENNETH STOFFERAHN, Commissioner



LASKA SCHOENFELDER, Commissioner
(Concurring in Part and Dissenting in Part)
(Dissenting Opinion attached)

(OFFICIAL SEAL)

DISSENTING OPINION OF
COMMISSIONER LASKA SCHOENFELDER

While 1+ equal access for intraLATA calls is definitely in the public interest, I believe that before the application of SDN was made, an alternative to construction should have been pursued more vigorously and with real commitment by the parties involved. Since that has not been the case, I believe that the construction of the proposed duplicate facility will be in the public interest for a variety of reasons, some of which Commissioner Stofferahn referred to in his motion. However, I do not believe that the creation of a new monopoly, even for a limited period of time, will serve the public interest.

Forcing interexchange companies to use SDN facilities to originate and terminate toll traffic to SDN member LEC's will not encourage competition in the market and will cause an increase in access charges to the interexchange companies. To truly be in the public interest for all South Dakotans, this new telecommunications facility should drive the cost of access as low as possible, and that can only be accomplished by ordering the terminating transport portion of access to be competitive. By that, I mean that interexchange carriers should be allowed to purchase terminating transport access from either USWC or from the SDN network.

In addition, to mandate that USWC not be allowed to use their existing facilities to terminate their own traffic will result in increased access rates for USWC customers, caused by stranded investment in part and in part by increased terminating access charges.

In addition to my dissent to the original order in F-3860, I dissent to the Amended Order as follows. Regarding Finding of Fact 59, I agree to strike the final sentence. Regarding Conclusion of Law 17, the Commission has the legal authority and the obligation to control the actions and behavior of the parties to the proceedings before it. I do not agree to the deletion of Conclusion of Law 17.

The last FURTHER ORDERED paragraph on page 12 of the original order should stand as originally written and I dissent to its removal. The Commission voted unanimously at a legally noticed public meeting to grant SDN's complaint as a motion to strike. Mr. Anderson, who was notified of the meeting and proceedings, could have been present to argue his case. By failing to attend or object, he waived his objection to SDN's motion. Furthermore, this portion of the Order was legal, correct and appropriate. The entire paragraph should be a part of the Amended order and I would object to its removal.

I would also note for the record that although my dissent with the majority vote is intended to send a strong message to all parties with business before this Commission, in regard to acceptable practices by attorneys and parties, I also wish to convey the additional message that the public interest can only be adequately represented if Dial Net and all other companies participate in Commission proceedings under the appropriate rules and procedures. I would, therefore, encourage Dial Net's active intervention in dockets that would affect them and their customers. without their participation, our move to a more competitive telecommunications market will not progress.

Regarding Finding of Fact 60, if the SDN is not economically feasible in a competitive environment and needs to be nurtured by the establishment of a new monopoly, then the public interest would be better served by this Commission ordering USWC to provide centralized equal access for both (2 PIC) intrastate, intraLATA and interLATA traffic. Further, ordering USWC to provide its 2 PIC alternative would retain the existing network that South Dakota ratepayers have already invested in and avoid the stranded investment that USWC will suffer.

If the record in Docket F-3832 established that the F-3832 project could survive without monopoly protection, then I submit that SDN could also survive in the same fashion. While the numbers of access lines and the dollars invested are larger for the SDN project, the circumstances of the two projects are nearly identical. Last, the intention is that both projects will work in tandem.


LASKA SCHOENFELDER, Commissioner