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Via Overnight Delivery

11 November 1998

Mr. William Bullard, Jr.
Executive Secretary
Public Utilities Commission of
South Dakota
State Capitol
500 East Capitol Street
Pierre, South Dakota 5701-5070

RE: In the Matter of Telecommunications Rulemaking, Docket No. RM 98-001

Dear Mr. Bullard:

Enclosed are an original and ten (10) copies of the *Joint Comments of the Telecommunications Resellers Association* the above-captioned proceeding.

Questions may be directed to the undersigned.

Sincerely,

Telecommunications Resellers Association

Andrew O. Isar

Enclosures

BEFORE THE
PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

In the Matter of:	)	
	)	
Telecommunications Rulemaking	)	Docket No. RM 98-001
	)	

Comments of the
Telecommunications Resellers Association

The Telecommunications Resellers Association ("TRA")[1], on behalf of its members and pursuant to the South Dakota Public Service Commission's ("Commission") *Notice of Public Hearing to Adopt Rules* in the above-captioned proceeding, hereby comments on proposed new and amended rules governing the provision of telecommunications services in South Dakota. TRA generally supports the Commission's proposed rules and amendments, yet urges the Commission to amend certain procedural, certification, notification, service standards, and slamming provisions consistent with TRA's comments herein.

I. INTRODUCTION

TRA commends the Commission for development of a comprehensive regulatory framework that sets forth the requirements for the provision of telecommunications services in South Dakota. Whenever new rules are promulgated, regulators walk a fine line between upholding their obligation to protect the public interest and remaining cautious of the potential adverse effect that some rules may have on legitimate service providers. Rules which impose onerous requirements on legitimate

[1] Founded in 1992, the Telecommunications Resellers Association is the Washington, D.C.-based national organization for resellers of telecommunications services. TRA represents more than 700 companies involved in the resale of domestic and international long distance, local, wireless, and other enhanced telecommunications services. TRA was created and carries a continuing mandate to foster and promote telecommunications resale, to support the telecommunications industry, and to protect the interests of entities engaged in the resale of telecommunications services.

competitive service providers, and those who operate in an increasingly competitive market in particular, may act as a proverbial barrier to entry or impediment to competition.

Smaller companies, such as many of TRA's members, are disproportionately affected by overly rigorous rules that impose significant and unnecessary burdens on service providers. Because of the financial and operational impact that regulation has on smaller companies, the manner in which regulation is ultimately crafted will have a direct effect on whether many smaller companies are able to compete in South Dakota, let alone whether they enter the State. The impact that the proposed rules and amendments rules have not only on the public but on the industry, and on smaller companies specifically, should be carefully considered.

Another important consideration is how much market forces and competitive pressure should appropriately be allowed to "regulate" service providers. The pressure for competitors to attract and retain customers in competitive interexchange markets and in a local market dominated by an entrenched incumbent carrier is a significant motivating factor for service providers to serve the public responsibly. Rules once appropriate for monopoly service providers are less appropriate for new competitive service providers who must struggle to gain new subscribers. New rules must provide a degree of flexibility to enable competitive carriers to meet competitive and market demands, while ensuring that the public continues to be served responsibly.

Non-facilities-based resellers occupy a unique position in that they do not own, lease, maintain, or otherwise control a network. Their unique situation should also be considered in the adoption of service quality standards. Non-facilities-based resellers

will practically be unable to meet many technical and reporting standards because of their exclusive reliance on underlying carrier network services. They should not be held responsible for requirements over which they have no control.

It is with these considerations in mind, that TRA comments on specific provisions of the Commission's rules which TRA urges be amended further to comport more closely with business and competitive realities.

II. CHAPTER 20:10:01, GENERAL RULES OF PRACTICE

A. Associations and Corporations Should Continue to be Allowed Representation by a Bona Fide Officer or Employee.

Rule 20:10:01:02, *Appearances*, seemingly propose elimination of an important provision which allows corporations and associations, such as TRA, to be represented before the Commission by any bona fide officer or employee. It is unclear whether the Commission intends to make a simple textual change or impose a limitation on representation. If the former, allowing parties to be represented "in person" should appropriately continue to allow companies and associations to be represented by employees or officers. TRA would not oppose amendment of the rule if the proposed amendment is exclusively intended to eliminate duplicitous language. If, however, it is the Commission's intent to foreclose *pro se* representation, such a limitation would effectively and unfairly quash the voice of many smaller companies and groups.

TRA does not dispute the need for competent counsel to represent clients before the Commission in litigation or other complex formal proceedings. However, a broad elimination of the ability for companies and trade groups to appear *pro se* in rulemakings or other more administrative proceedings will effectively preclude many entities from being represented altogether. Such action will further deprive the

Commission from gaining valuable insight into how certain actions will affect those parties who are unable and/or unwilling to secure counsel.

No interested party, whether a member of the public, a regulated entity, or association, should be precluded from participation in Commission proceedings solely by virtue not engaging counsel. Counsel's legal and procedural knowledge is not needed when parties are simply expressing a position. Engagement of counsel can become prohibitively expensive, particularly in when companies and groups actively participate in regulatory proceedings throughout several states. To be sure, given TRA's limited regulatory resources, it is less likely that TRA would have submitted comments in the instant proceeding were it expected to engage counsel to file comments. This would deprive TRA from appropriately representing its members' interests in rulemaking which will have a material effect on members' South Dakota operations. Such an action is patently unfair, and accomplishes little more than to silence the voice of many constituents whose concerns should be heard by the Commission.

If it is the Commission's intent to eliminate duplicative language, TRA urges amendment of rule 20:10:01:02 to clarify intent as follows: "Any party to a proceeding may appear before the commission and be heard either ~~in person~~ by a bona fide officer of or employee of a corporation or association or by attorney." Otherwise, rule 20:10:01:02 should not limit representation of companies and associations.

II. CHAPTER 20:10:24, INTEREXCHANGE CARRIER AND CLASSIFICATION RULES

A. Cash Flow Statement Submissions Should Not Be Mandatory.

Rule 20:10:24:02(8), *Certificate of Authority for Interexchange Service*, imposes a new requirement not previously imposed on interexchange carrier applicants for certificates of authority to submit a cash flow statement as partial evidence of an applicant's financial viability. The cash flow requirement imposes a potentially burdensome and unnecessary requirement on new entrants generally, and on smaller companies in particular, and should be eliminated.

TRA recognizes that cash flow data may provide additional insight into an applicant's financial viability to serve the public and from that perspective may be useful to the Commission. However, to the extent that an applicant has not prepared detailed cash flow statements, it should not now be required to prepare and submit a cash flow statement exclusively to obtain certification in South Dakota. This is especially true of new entities with limited operating experience. Even assuming *arguendo*, that new entities could prepare cash flow statements, such statements would serve only as projections whose value to the Commission for purposes of assessing long-term viability would be questionable. As projections, these data would represent estimates whose reliability is a function of the assumptions they are based on.

New entities who have not developed cash flow statements should not be precluded from market entry by virtue of the fact that they have no operating history on which to base cash flow statements or projections. Preclusion of new entrants into the

market would undermine Congress' and the Commission's pro-competitive policies and prevent consumers from benefiting from competitive entry and choice.

Alternatively, TRA believes that cash flow statements may be required from new applicants on an *ad hoc* basis if an applicant's income statement and balance sheet leave lingering concerns over a new entrant's financial capability to serve the public. Submission of cash flow statements should, however, not be mandatory, nor should the grant of a certificate of public convenience and necessity be conditioned on the submission of a cash flow statement.[2]

B. Rule 20:10:24:02(11) Imposes an Unreasonably Broad Requirement to Supply Qualification of Marketing Sales Personnel Which Should be Deleted.

Under rule 20:10:24:02(11) applicants for interexchange service authority would be required to provide a "detailed description" of "the qualifications of its marketing sales personnel". Read literally, an applicant employing a dozen sales and marketing employees would be required to provide the Commission with detailed descriptions of each individual's experience and qualifications. Such a requirement is unnecessary, imposes additional burdens on new applicants, raises the potential for

[2] In considering an applicant's financial viability, the Commission would, pursuant to rules 20:10:24:03.01(8) through (11) consider the applicant's cash reserves, business or owner equity, long-term debt to capitalization ratio, and return on assets ratio. Each of these are important factors in determining initial financial viability. TRA cautions the Commission, however, that overly rigorous imposition of these financial standards may result in the wrongful rejection of legitimate applicants who, either because of acquisitions or because of the formation of a new entity, may fail to meet unspecified evaluation criteria. Financial indicators provided to the Commission are simply a picture in time subject to change. An applicant with strong financials may fail, as frequently occurs in competitive markets. Conversely, a new entity with weaker financials may become wildly successful. The Commission should therefore evaluate an applicant's technical, financial, and managerial capabilities as a whole, before summarily rejecting an application because an applicant may not yet meet one of the financial indicators. Alternatively, the Commission may consider an interim grant of certification pending periodic review of an applicant's financial standing until satisfied of that the company meets the Commission's financial expectations.

additional application processing delays, and results in the development of data which is only marginally relevant.

The Commission seeks information from new applicants concerning the method to be used by the applicant to market its services. Such information may generally provide the Commission with a good snapshot of how a new applicant proposes to approach the public and whether its proposed approach comports with Commission requirements. Just how specific knowledge of each individual sales person's qualifications will provide the Commission with a greater assurance that an applicant remains in compliance with the Commission's consumer-oriented rules, or possesses the *managerial* ability to serve the public, is entirely unclear.

Also unclear is how such information would be used by the Commission were it provided by new applicants. For example, would the Commission in fact require detailed descriptions from each sales person? If the applicant employed hundreds of sales and marketing employees, would separate descriptions be required for each individual? If the applicant employed no sales and marketing employees, but rather engaged telemarketers or sales agents, would the applicant be denied certification for failure to provide sales and marketing employee qualification data, or would the applicant be exempt from the requirement? Would the Commission deny certification to an applicant simply on the basis that it was staffing its sales and marketing organization with entry level sales people having little or no marketing experience? Would the Commission challenge the ability of a new applicant to serve the public on the basis of the limited amount of experience of one or more individuals? The potential for discriminatory certification looms heavily in the possible answers to these questions.

While information regarding senior management's business and sales experience may be appropriate and relevant, requiring detailed descriptions of all sales and marketing individuals seems misplaced and of little value in determining whether an applicant should be deemed qualified to serve the public. What remains relevant is whether the applicant will abide by Commission rules. Notwithstanding the burden of preparing detailed background descriptions, the effort involved in reviewing them, and the potential delays associated with review, such descriptions would provide little additional relevant insight into the company, its operations, or its ongoing behavior. The requirement for inclusion of marketing sales personnel descriptions should be deleted. Alternatively, the Commission should request only an overview of senior management's sales and marketing experience.

C. Provision of All Telemarketing Scripts Used by the Applicant and Its Third Party Verifier Should Not be Required of New Applicants.

Subsection 20:10:24:02(11) also imposes a requirement on new applicants to submit "all telemarketing scripts used by the applicant and its third party verifier." Presuming that new applicants have developed telemarketing scripts prior to certification, their submission with an application for certificate of authority suggests that the Commission will review and propose modifications to scripts under the certification process. A review of telemarketing scripts may be of limited utility in instances where companies are suspected of or charged with violating Commission rules. However, such a review will have no relevance as to the applicant's technical, financial, or managerial ability to serve the public and should not be considered under the certification process.

Telemarketing scripts should not be a factor for consideration of whether an applicant should be granted a certificate of authority. Rather than require applicants to

submit telemarketing scripts as a prerequisite for certification, TRA believes that all service providers should be subject to a set of Commission established guidelines which set forth that information which must be provided to the public.[3] Those who are in violation of the Commission's guidelines and rules may then be subjected to appropriate Commission enforcement action.

D. The Regulatory Process Should Not be Used to Protect the Financial Interests of Local Exchange Carriers.

According to rule 20:10:24:04.05, *Performance Bonds*, applicants could be required to post a bond as a condition to certification in part, "for the benefit of other telecommunications companies providing access to the local exchange networks for the applicant or any other customer of the applicant." Although TRA recognizes the utility of imposing bonding requirements on new entrants with fragile financial viability to protect the public, the requirement is entirely inappropriate for the benefit of local access service providers. When viewed in this light, the bonding requirement would ostensibly allow incumbent local exchange carriers to rely on the regulatory process to be made whole when exercising bad judgement or business practices in their relationships with other carriers. Such a "make whole" provision is a throwback to conventional monopoly regulation and is no longer appropriate in competitive markets.

By requiring new applicants to post performance bonds primarily to benefit incumbent carriers, the Commission establishes a *de facto* indemnification clause for the incumbents. The Commission would in essence condone saddling certain competitive providers with the financial and administrative burden of posting bonds so

[3] TRA proposes that if disclosure guidelines are to be considered by the Commission, that they be adopted through a separate rulemaking proceeding.

that the incumbent will receive all amounts due if the competitive carrier fails to pay. Despite the fact that the rules are unclear as to the circumstances under which the bond would be paid to the incumbent, *i.e.* whether disputed billing would nevertheless trigger bond redemption, the incumbent could be relieved of most of its financial responsibility for the relationships it establishes with other carriers.

Incumbent local exchange carriers must exercise the same solid business and legal practices employed by businesses to protect themselves and rate payers from non-paying customers. Incumbent tariffs and interconnection agreements already contain specific legal provisions for collection of deposits and recourse for non-payment. Incumbents should not be allowed to rely further on the regulatory process for financial protection. Incumbent arguments that rate payers would be adversely affected by non-paying incumbent carrier access customers would be specious. The cost of incumbents' failure to use sound business practices should be borne by stockholders, not rate payers. Reliance on the regulatory process to protect the incumbents' financial interests is entirely misplaced and should be rejected.

III. CHAPTER 20:10:32, LOCAL EXCHANGE SERVICE COMPETITION

A. Cash Flow Statement Submissions Should Not Be Mandatory.

Rule 20:10:32:03(12), *Certificate of authority for local exchange service – application requirements*, repeats the cash flow statement submission requirements contained in the proposed amendments to rule 20:10:24:02 governing interexchange carrier certifications. For the reasons expressed *supra*, TRA urges that the requirement be similarly struck from the local exchange carrier application requirements.

B. A Detailed Description of the Qualifications of Marketing Personnel Should be Eliminated.

Rule 20:10:32:03(16), like rule 20:10:24:02(11), would implicitly require that local exchange carrier applicants for certificates of authority to include the qualifications of all marketing personnel. As previously argued, TRA maintains that such information is unnecessary, burdensome to the applicant and Commission, may result in delays in processing applications and discriminatory certification, and ultimately may be of limited value to the Commission. Again, TRA urges the Commission to eliminate the requirement or alternatively require that applicants be required to provide only senior management qualifications.

C. Local Service Telemarketing Scripts Should Not be Required a Condition for Certification.

Rule 20:10:32:03(21) repeats the requirement of rule 20:10:24:02(11) which requires that applicants provide the Commission with proposed telemarketing scripts. TRA maintains that telemarketing scripts should not be considered under the Commission's certification process. Instead, the Commission should consider review of telemarketing scripts on an *ad hoc* basis as necessary to enforce its rules or alternatively consider development of telemarketing script guidelines, independent of the certification process.

D. Notice to Other Local Exchange Carriers in Proposed Service Areas Should not be Required.

According to rule 20:10:32:04, applicants for local exchange certificates of authority would be required to notify "each telecommunications company that already holds a certificate of authority to provide local exchange service in the geographic area where the applicant seeks to provide service" of its application. Notice to competitors

should not be considered necessary in a competitive environment, particularly given the Commission's weekly notification of proceedings to interested parties.

The requirement is not, in and of itself, particularly onerous at this juncture. As more and more competitive carriers receive certificates of authority, however, notice requirements could become burdensome, as was the case in California.[4] Moreover, as the Commission already publishes and distributes weekly agenda's and minutes of weekly meetings, the need for local exchange service applicants to notify competitors of the filing of an application seems unnecessary and duplicitous.

The onus should more appropriately fall on those local exchange carriers who wish to know who will be competing in their service area to seek such information, and not on new applicants to provide it. TRA proposes that the Commission create an electronic "interested parties" list. This list would contain the electronic mail addresses of interested parties who would receive Commission filing notices as part of the Commission's current agenda distribution process.

E. Competitive Local Exchange Carriers Should be Allowed to Offer Service in Service Areas Which Do Not Mirror Incumbent Service Areas.

Rule 20:10:32:11, *Local calling scope for alternative providers*, would require alternative providers to replicate the incumbent's local calling area. Establishment of minimum calling areas for competitive providers, who must in any event compete with the incumbent, conflicts with a central tenet of competition, to meet market demand. By the very nature of a competitive provider's intent to compete with an

[4] Over the course of only a few years, the service list for parties to be served by applicants for certificate of public convenience and necessity in California, where a service requirement similar to that proposed by the Commission had been adopted, ballooned from under 100 parties to more than 300. This resulted in a significant burden on the industry with little countervailing benefit to the public. The requirement was ultimately waived by the California Public Utilities Commission in its Rulemaking/Investigation on the

incumbent, the provider must offer service that is comparable, if not superior to, incumbent local calling areas. If competitive providers can not, or choose not to, provide broad based services, their likelihood of competing successfully with the incumbent would be in doubt. Yet providers wishing to target customers who have specific calling needs should be able to design innovative plans which enable customers to benefit from calling plans geared to their needs, and which are not simply a repackaging of incumbent service plans or calling areas.

Competitive providers should have the flexibility to establish calling areas that meet the specific demands of their subscribers. So long as prospective subscribers are fully informed and clearly understand the scope of the calling area they will receive as part of their local service, no restrictions or added requirements should be imposed on competitive providers.[5] The provision which allows the Commission to approve different calling areas than those of the incumbent upon a showing that a different calling area would not be contrary to universal service, public safety and welfare, quality of service, and consumer rights concerns is key toward providing this critical flexibility. The grant of such authority should not require more than a minimal justification as to why an applicant proposes to offer a different calling area than the incumbent, nor should such authority be unreasonably withheld.

IV. CHAPTER 20:10:33, SERVICE STANDARDS FOR TELECOMMUNICATIONS COMPANIES

As a general matter, the Commission should recognize that many of the technical service and reporting requirements are inapplicable to non-facilities-based

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Commission's Own Motion to Establish a Simplified Registration Process for Non-dominant Telecommunications Firms, R.94-02-003/I.94-02-004, Decision 97-06-107 (June 25, 1997)

resellers, whether implicitly or by explicit waiver in Chapter 20:10:33. Non-facilities-based resellers rely exclusively upon the technical capabilities of their underlying carriers. Resellers should not inadvertently find themselves subject to non-compliance with technical requirements over which they maintain no control.

For example, it would be impossible for a non-facilities-based reseller to meet the plant and performance criteria of rule 20:10:33:02, *Level of service provided by local exchange companies*, rules 20:10:33:04, *minimum transmission levels for local exchange service*, and all other service standards rules in Chapter 20:10:33 which are predicated on the local service provider owning, controlling, leasing, or otherwise managing a network. Failure to recognize the inability of non-facilities-based resellers to comply with these requirements could place resellers in an untenable position of having to comply with standards over which they exert no control.[6] TRA is not proposing amendments to the service quality standards, but rather urges the Commission to recognize the inapplicability of such standards on non-facilities-based resellers.

V. CHAPTER 20:10:34, PROHIBITION AGAINST UNAUTHORIZED SWITCHING OF CARRIERS AND CHARGING FOR UNAUTHORIZED SERVICES

TRA enthusiastically supports the Commission's desire to eliminate unauthorized customer account transfers. Clearly, slamming harms all legitimate parties

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[5] This is predicated upon the existence of an eligible telecommunications carrier which maintains broad responsibility to serve throughout its service territory.

[6] Notwithstanding the inapplicability of technical service standards on resellers, the detailed requirements proposed rules raise added concern over the need to impose rigorous service standards on competitive service providers generally. TRA is certainly not suggesting that the public should not expect to receive a minimum level of service. As is the case with establishment of minimum calling areas, competitors must provide comparable or superior service to that provided by incumbent carriers to succeed in a local market dominated by the incumbent. Competitive companies should also have the flexibility to offer alternative services at a different level of service, within the bounds of minimum acceptable service quality, which could appeal to customers seeking additional economy.

involved. Both customers and the service providers whose customers have been slammed are victimized by the actions of unscrupulous service providers who taint the reputation of reputable service providers and the industry as a whole. Adoption of rules that impose strict requirements governing verification of customer account transfers and penalties, coupled with vigorous enforcement and consumer education, are the keys to protect the public from the acts of disreputable service providers.

The current Federal Communications Commission ("FCC") telemarketing rules, 47 C.F.R. §§64.1100 and 64.1150, have served as a useful guideline of reasonable requirements for confirming new service subscriptions. State rules that are fashioned after the FCC's current telemarketing rules, such as those proposed by the Commission, have proven particularly effective when coupled with vigorous enforcement action against disreputable and illegitimate service providers whose intent is to defraud the public. Currently, at least forty (40) states' slamming rules generally mirror current federal telemarketing rules.[7] TRA generally supports the Commission's proposed slamming rules, with the following clarification and proposed amendments.

A. Penalties and Sanctions Should Appropriately Be Imposed on Disreputable Providers and Those Who Engage in Repeated Slamming

Proposed rule 20:10:34:06, *Telecommunications company liability*, appropriately imposes penalties or sanctions in the event of intentional (and undocumented) slamming. Slamming rules must eliminate the financial incentives for

[7] According to information available to TRA, slamming regulation adopted in the following states generally mirror current federal slamming rules: Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

unscrupulous service providers who engage in intentional slamming or those who do not correct repeated problems. However, slamming rules should not punish legitimate service providers who inadvertently initiate an unauthorized customer change. It is crucial that the Commission distinguish between *intentional* and *unintentional* slamming when considering imposition of penalties. Given the sheer volume of subscriber changes, the possibility of inadvertent error in processing applications increases, as does the probability of unintentional slamming. Number transpositions, incorrectly copied numbers or information, processing errors, and customer error all contribute to the potential for inadvertent slamming. Unintentional slamming may also result from errors made by the executing local exchange carrier.

The Commission's proposed rules would ensure that due process is accorded to service providers accused of slamming by allowing accused providers to demonstrate compliance with Commission verification rules before enforcement action were initiated. Service providers should not be presumed guilty. Fines and sanctions should apply only when a service provider has intentionally disregarded the Commission's rules or has demonstrated a continuing tendency to slam. Both fairness and due process require that the Commission fully consider the reliability of the source of complaints, the existence of incentives for inaccurate reporting of disputes, the circumstances of the disputes, and demonstration by accused carriers of compliance with Commission rules before it takes enforcement action.

North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

B. Changes in Primary Carrier Should Remain Consistent With Federal Verification Procedures.

Two methods of confirming primary carrier changes are authorized through proposed rules 20:10:34:02 and 03, *independent third party verification*, and *letters of agency*. Both verification methods are effective in documenting primary carrier changes. Yet absent in the proposed rules are the availability of electronic and information package postcard verification options which reside in federal rules.

Under 47 C.F.R. §64.1100(b), carriers may obtain the customer's authorization electronically through the customer's call to a toll-free number established specifically for the purpose.[9] Carriers may also verify customer primary carrier changes through the use of an information package sent to the customer following the subscription pursuant to 47 C.F.R. §64.1100(d).[10] These alternatives offer added flexibility to carriers, are no less effective in confirming primary carrier changes, and should be incorporated into the Commission's rules. Otherwise carriers will be severely constricted not only in the method used to confirm orders but likely in the method used to market services, with no countervailing protection to the public.

C. Telecommunications Companies Remain Solely Liable for the Actions of Agents and Employees.

Under a plain reading of proposed rule 20:10:34:06, a telecommunications company's agents or employees would be individually liable to subscribers and

[9] "The [interexchange carrier] has obtained the customer's electronic authorization, placed from the telephone number(s) on which the PIC is to be changed, to submit the order that confirms the information ... to confirm the authorization. [Interexchange carriers] electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC change, including automatically recording the originating [automatic number identification].

subscribers' presubscribed telecommunications companies for all unauthorized charges associated with slamming. The regulated telecommunications company is appropriately responsible, and therefore liable, for the actions of its agents and employees. Yet agents and employees should not individually be responsible for making end users or their primary carriers whole, nor does the Commission have jurisdiction over agents and company employees to make them individually liable. This is not to suggest that agents or employees are not to be held responsible or accountable for their actions. Only that such accountability is to the service provider which in turn is responsible to the public and Commission. TRA recommends that rule 20:10:34:06 be amended to delete reference to non-jurisdictional agents and employees, thus eliminating any potential issues that may arise from an unintended implication. Deletion of this reference in no way undermines the force or intent of this provision.

VI. CONCLUSION

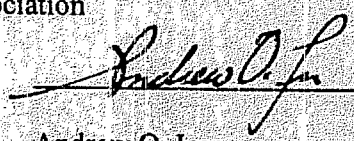
The Commission's proposed rules and amendments create a comprehensive regulatory framework governing telecommunications competition in South Dakota. By adopting the changes to the Commission's proposed rules and amendments suggested herein, the Commission will successfully maintain a solid balance between effectively protecting the public and maintaining a reasonable level of regulation on telecommunications providers in an increasingly competitive local and interexchange market. TRA urges the Commission to amend its proposed rules and amendments

[10] "Within three business days of the customer's request for a PIC change the [interexchange carrier must send each new customer an information package by first class mail containing ... (7) a postpaid postcard which the customer can use to deny, cancel or confirm a service order ..."

consistent with TRA's recommendations.

Respectfully submitted,

Telecommunications Resellers Association

By: 

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11 November 1998