



Dakota Telecommunications Group

VIA FACSIMILE AND MAIL

November 13, 1998

William Bullard, Jr.  
Executive Director  
South Dakota Public Utilities Commission  
Capitol Building, 1<sup>st</sup> Floor  
500 East Capitol Avenue  
Pierre, SD 57501-5070

RECEIVED  
NOV 16 1998  
SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

FAX Received NOV 13 1998

RE: Additional Comments on Proposed Rules

Dear Mr. Bullard,

Attached are the original and ten copies of the additional comments of Dakota Telecommunications Group, Inc. (DTG) in this matter. In proposed rules 20:10:32:03(9), 13, 16 and 17 new language was added and other language deleted. Additional comments were made in proposed rules 20:10:32:43, and 51, and in 20:10:33:05. Language was deleted from the comments to 20:10:33:10. On the attached pages the rules mentioned above are indicated by an asterisk, and the language and comments that remain as originally submitted are X'd out.

DTG agrees with the comments filed by SDITC regarding the rule changes proposed to 20:10:28.

If you have any questions, please call. Thank you for the opportunity to provide these comments.

Sincerely,

William P. Heaston  
General Counsel

cc: Richard Coit, SDITC  
Thomas Welk, U S WEST  
Donald Low, Sprint  
Sandy Hofstetter, AT&T  
W. Tom Simmons, Midco

HEADQUARTERS  
P.O. Box 66  
29705 453<sup>rd</sup> AVENUE  
PIERRE, SOUTH DAKOTA  
57037-0066

605.263.3301  
800.239.7501  
FAX 605.263.3995

www.dtg.com

Source:

~~General Authority: SBCL 49-31-76.~~

~~Law Implemented: SDCL 49-31-3, 49-31-69, 49-31-76.~~

**DTG COMMENTS: MAKES THE INTENT CLEARER.**

\* **20:10:32:03. Certificate of authority for local exchange service -- Application requirements.** Telecommunications companies required to apply for a certificate of authority for local exchange services from the commission shall submit a written application including the following information:

(1) The applicant's legal name, address, telephone number, facsimile number, e-mail address, and whether applicant is a sole proprietorship, partnership, corporation, limited liability corporation, or limited liability partnership;

(2) If a sole proprietorship, the full name and business address of its owner; if a partnership, the full name and business address of each partner; if a corporation, a listing of the full names and business addresses of the corporate officers and directors; or, if a limited liability company, the full names and business addresses of each member;

(3) The name under which applicant will provide local exchange services if different than its legal name;

(4) If a corporation:

- a. The location of its principal office, if any, in this state and the name and address of its current registered agent;
- b. A list of shareholders owning twenty percent or more of the interest in the business;
- c. The state in which the applicant is incorporated, the date of incorporation, and a copy of its certificate of incorporation; and
- d. If it is an out-of-state corporation, a copy of its certificate of authority to transact business in South Dakota from the Secretary of State;

(5) A description of the applicant's business history, including:

- a. When the business was first organized, the dates of any subsequent reorganizations, the nature of the business, and the date the applicant started providing any telecommunications services; and
- b. The applicant's experience providing any telecommunications services in South Dakota or in other jurisdictions, including the types of services provided, and the dates and nature of state or federal authorization to provide the services;

(6) Name and addresses of applicant's affiliates, subsidiaries, and parent organizations, if any.

(7) A list and specific description of the general nature of the types of services the applicant seeks to offer and the means by which the services will be provided including:

- a. Information indicating the classes of customers the applicant intends to serve;
- b. Information indicating the extent to and time frame by which applicant will provide service through the use of its own facilities, the purchase of unbundled network elements, or resale;
- c. A description of all facilities that the applicant will utilize to furnish the proposed local exchange services, including any facilities of underlying carriers; and
- d. Information identifying the types of services it seeks authority to provide by reference to the general nature of the service;

(8) If the applicant intends to construct facilities to provide its local exchange services, a description of the facilities, the date construction of the facilities will begin, and the anticipated completion date;

(9) A proposed service area map and narrative description indicating with particularity the geographic area proposed to be served by the applicant and a narrative delineating specifically the areas where the applicant is prepared to provide service in the near future;

(10) Information regarding the technical competence of the applicant to provide its proposed local exchange services including:

- a. A description of the education and experience of the applicant's management personnel who will oversee the provision of the proposed local exchange services; and
- b. Information regarding policies, personnel, or arrangements made by the applicant which demonstrates the applicant's ability to respond to customer complaints and inquiries promptly and to perform facility and equipment maintenance necessary to ensure compliance with any commission quality of service requirements;

(11) Information explaining how the applicant will provide customers with access to emergency services such as 911 or enhanced 911, operator services, interexchange services, directory assistance, and telecommunications relay services;

(12) Financial information detailing financial resources that will support provisioning of the proposed local exchange service in a manner that ensures continued quality of telecommunications services and safeguards consumer and public interest including:

- a. For the most recent 12 month period, financial statements consisting of balance sheets, income statements, and cash flow statements; and
- b. If a public corporation, the applicant's latest annual report and report to

stockholders;

(13) Information detailing the following matters associated with interconnection to provide proposed local exchange services:

- a. The identity of all local exchange carriers with which the applicant plans to interconnect;
- b. The likely timing of initiation of interconnection service and a statement as to when negotiations for interconnection started or when they are likely to start; and
- c. A copy of any request for interconnection made by the applicant to any local exchange carrier;

(14) A tariff or price list indicating the prices, terms, and conditions of each contemplated local service offering;

~~(15) Cost support for rates shown in the company's tariff or price list for rate or price regulated noncompetitive or emerging competitive services;~~

~~(16) A detailed description of how the applicant intends to market its local exchange services, the qualifications of its marketing personnel, its target market, whether the applicant engages in multilevel marketing, and copies of any company brochures that will be used to assist in sale of the services;~~

(17) If the applicant is seeking authority to provide local exchange service in the service area of a rural telephone company, the date by which the applicant expects to meet the service obligations imposed pursuant to ' 20:10:32:16 and applicant's plans for meeting the service obligations;

(18) A list of the states in which the applicant is registered or certified to provide telecommunications services, whether the applicant has ever been denied registration or certification in any state and the reasons for any such denial, a statement as to whether or not the applicant is in good standing with the appropriate regulatory agency in the states where it is registered or certified, and a detailed explanation of why the applicant is not in good standing in a given state, if applicable;

(19) The names, addresses, telephone numbers, e-mail addresses, and facsimile numbers of the applicant's representatives to whom all inquiries should be made regarding customer complaints and other regulatory matters;

~~(20) Information detailing how applicant plans to bill for and collect charges from customers who subscribe to its proposed local exchange services;~~

~~(21) Information concerning the applicant's policies relating to solicitation of new customers, including all telemarketing scripts used by the applicant and its third party verifier, and a description of the efforts that will be made to prevent unauthorized switching of local service customers by the applicant, its employees, or agents;~~

(22) The number and nature of complaints filed against the applicant with any state or federal



commission regarding the unauthorized switching of a customer's telecommunications provider and the act of charging customers for services that have not been ordered;

(23) A written request for waiver of those rules believed to be inapplicable; and

(24) Other information requested by the commission needed to demonstrate that the applicant has sufficient technical, financial, and managerial capabilities to provide the local exchange services it intends to offer consistent with the requirements of this chapter and other applicable rules and laws.

However a telecommunications company serving less than fifty thousand local exchange subscribers is not required to file cost support information. Tariffs shall be filed for informational purposes only.

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-69, 49-31-76.

**DTG COMMENTS: A COMPETITIVE LOCAL EXCHANGE CARRIER SHOULD NOT HAVE TO DIVULGE COMPETITIVELY SENSITIVE AND CONFIDENTIAL FINANCIAL, MARKETING AND PRICING DATA TO THE COMMISSION. FINANCIAL DATA SHOULD BE LIMITED TO THAT PUBLICLY AVAILABLE. MARKETING AND PRICING DATA HAS NOTHING TO DO WITH THE APPLICANT'S FINANCIAL, TECHNICAL AND MANAGERIAL ABILITY TO PROVIDE SERVICE. THE COMMISSION SHOULD NOT BE OVERLY PROTECTIVE OF THE CUSTOMER, NOR OVERLY CONCERNED ABOUT THE ABILITY OF AN APPLICANT TO SUCCEED IN A COMPETITIVE MARKET. THE CUSTOMER HAS A CHOICE, AND THERE WILL BE AN INCUMBENT OR OTHER COMPETITOR AVAILABLE TO PROVIDE SERVICE. THE WHOLE CONCEPT OF REGULATION CHANGES, OR SHOULD CHANGE, WHEN DEALING WITH COMPETITION. THERE IS NO NEED TO PROTECT COMPANIES FROM EACH OTHER VIA SPECIFIC REGULATION. THERE IS NO NEED TO BURDEN ENTRY INTO THE MARKET WITH EXHAUSTIVE AND DETAILED REQUIREMENTS. COMPANIES WILL CHOOSE TO COMPETE OR NOT COMPETE BASED ON THEIR PERCEPTION OF THE DIFFICULTY OF ENTRY, THE ECONOMICS OF ENTRY, AND THE POTENTIAL REWARDS.**

~~20:10:32:04. Notice to other local exchange carriers in proposed service area -- Intervenor status. The applicant shall give notice of its application to 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 local exchange service. In addition, the commission shall, upon request, grant each of the already certified telecommunications companies intervenor status in any commission proceeding held on the application. The request for intervention submitted by any such company need not meet the requirements for petitions to intervene set forth in chapter 20:10:01.~~

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-75, 49-31-76.

~~20:10:31-11. Local calling scope for alternative providers. A telecommunications company that is granted authority to offer competitive local exchange services in an area where the incumbent local exchange carrier provides a certain local calling area shall provide no less than the same local calling area to its customers. An alternative provider of local exchange services may, subject to commission approval, offer a different local calling area upon showing that it would not be contrary to universal service, public safety and welfare, quality of service, and consumer rights concerns.~~

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-71, 49-31-76.

**DTG COMMENTS:** A COMPETITOR SHOULD NOT BE NECESSARILY LOCKED INTO CALLING AREAS WHICH WERE BASED ON MONOPOLY REGULATION, AND WHICH MAY NOT HAVE ANY RELATIONSHIP TO THE CURRENT TELECOMMUNICATIONS MARKETS, THE COMMUNITIES OF INTEREST, OR THE DESIRES OF INDIVIDUAL CUSTOMERS. CUSTOMERS OF A COMPETITOR MAY WANT A VERY SPECIFIC, NONTRADITIONAL CALLING AREA THAT DOES NOT CONFORM TO THE CALLING AREA OF THE INCUMBENT.

~~20:10:32-12. Prohibition of discrimination. Providers of local exchange service shall provide service on a nondiscriminatory basis consistent with the provisions of SDCL 49-31-11.~~

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-71, 49-31-76.

**DTG COMMENTS:** THERE IS NO NEED FOR THIS RULE. BY ITS TERMS THE STATUTE IS APPLICABLE TO ALL TELECOMMUNICATIONS COMPANIES.

~~20:10:32-13. Annual reporting requirements. After a telecommunications company has received a certificate of authority to provide local exchange services from the commission, the company shall submit to the commission by June 1 of each year thereafter the following information:~~

~~(1) A report of its annual revenues from the preceding year resulting from operations in South Dakota as attributed to major service categories such as private line and special access, business local exchange, residential local exchange, measured interexchange, and vertical services;~~

~~(2) A current financial statement and a statement of any changes in the financial position of the telecommunications company relating to operations of the company in South Dakota;~~

~~(3) A report identifying specifically the areas within its service area in the state where the~~



local exchange service to the affected area.

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-71, 49-31-76.

**20:10:32:16. Rural service area -- Additional service obligations.** If a telecommunications company is seeking authority to provide local exchange service in the service area of a rural telephone company, the company shall satisfy the service requirements imposed on eligible telecommunications carriers pursuant to 47 U.S.C. § 214(e)(1) (September 10, 1998) and applicable federal regulations. These service requirements shall be imposed on the ~~alternative local service provider~~ competitive local exchange carrier throughout the rural telephone company's service area, unless the commission, after notice and opportunity for hearing, determines that the requirements should be imposed over a different geographic area. The local service provider seeking authority in the rural service area shall be required to meet the eligible telecommunications carrier service requirements within 12 months after the later of:

(1) The date of the commission's order granting the provider a certificate of authority to provide local exchange services; or

(2) The date of the commission order approving any agreements for resale, interconnection, or network elements that are necessary for the provider to provide its local exchange services. The 12 month time requirement may be extended by the commission if good cause is shown.

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-73, 49-31-76.

**DTG COMMENTS: THIS RULE SHOULD MEAN THAT THE COMPETITIVE ENTRANT WILL BE GIVEN ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS FOR THE SERVICE AREA AFFECTED, SO THAT IT CAN EFFECTIVELY COMPETE WITH THE INCUMBENT FOR THE HIGH COST, LOW INCOME CUSTOMER. ONLY IN THAT WAY CAN THE RULE BE TRULY COMPETITIVELY NEUTRAL. DTG ALSO BELIEVES THIS RULE IS INAPPROPRIATE DESPITE FEDERAL LAW AUTHORITY TO IMPOSE IT. SUCH A RULE VIRTUALLY GUARANTEES NO COMPETITIVE ENTRY INTO RURAL COMPANY EXCHANGES, ESPECIALLY IF THE SERVICE AREAS OF THE RURAL COMPANIES ARE NOT COMPLETELY DISAGGREGATED.**

**20:10:32:17. Good faith offering requirement.** All services required to be provided by the ~~alternative provider of~~ competitive local exchange services carrier pursuant to 20:10:32:16 shall be provided at prices and on terms which reflect a good faith offering of the services throughout the rural telephone company's service area, or a different geographic area as determined by the commission. This includes an obligation to advertise the availability of local exchange services and prices to potential customers throughout the relevant area using media of general distribution

in accord with any specific advertising requirements imposed by the commission. In addition, the alternative provider shall provide the required services in a manner that ensures continued reliable access to quality local exchange services.

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-73, 49-31-76.

**DTG COMMENTS: THE LAST SENTENCE SHOULD BE DELETED. THE ESSENCE OF COMPETITION IS THE ABILITY OF THE CUSTOMER TO USE THE COMPETITIVE ALTERNATIVE IF THE OTHER PROVIDER DOES NOT PROVIDE THE QUALITY OF SERVICE THE CUSTOMER EXPECTS. THE CUSTOMER, NOT THE COMMISSION SHOULD BE THE ARBITER OF SERVICE QUALITY IN A COMPETITIVE MARKET. THE COMMISSION IS INTERFERING IN THE OPERATION OF THE COMPETITIVE MARKET.**

**20:10:32:18. Report of progress toward meeting service obligations.** Any local service provider required to meet eligible telecommunications service requirements pursuant to 20:10:32:16 shall, six months prior to the deadline identified in that section, report to the commission regarding the extent to which it is offering its local exchange services in the relevant rural telephone company areas. The report shall include the following:

- (1) Information indicating which portions of the relevant rural telephone company areas, if any, remain non-operational and delineate the local service provider's current plans for meeting the eligible telecommunications carrier service requirements throughout such areas;
- (2) Information describing how the local service provider has advertised the availability of the services it is required to offer; and
- (3) The current prices, terms, and conditions under which the local service provider is offering the required services, if different from the prices, terms and conditions provided along with its application for a certificate of authority to provide local exchange services.

The commission may require additional information.

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-73, 49-31-76.

**DTG COMMENTS: SEE COMMENT TO PROPOSED RULE 20:10:32:07, ABOVE.**

**20:10:37:19. Waiver of eligible telecommunications carrier service requirements.** A telecommunications company seeking authority to provide local exchange services in the service area of a rural telephone company may petition the commission for a waiver from having to satisfy the eligible telecommunications service requirements as set forth in 47 U.S.C. § 214(e)(1) (September 10, 1998) and applicable federal regulations. The commission may grant the waiver



- (1) The legal name, address, and telephone number of the local exchange carrier and its designated contact person;
- (2) The number of subscriber lines the local exchange carrier has nationwide, at the holding company level;
- (3) A description of the obligations the local exchange carrier seeks to suspend or modify, including specific references to the relevant provisions found in 47 U.S.C. §§ 251(b) or 251(c) (September 10, 1998);
- (4) A detailed description of the suspensions or modifications the local exchange carrier is seeking, including the proposed duration of each suspension or modification;
- (5) The proposed effective date of each suspension or modification sought by the local exchange carrier;
- (6) A statement supporting the petition indicating why the requested suspensions or modifications meet the standards for granting suspensions or modifications as set forth in SDCL 49-31-80; and
- (7) A statement as to whether the local exchange carrier requests the commission to grant a temporary stay, as provided for in SDCL 49-31-80, of the obligations the carrier seeks to suspend or modify.

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-76, 49-31-80.

**20:10:32:41. Copy of petition to affected local service providers.** A copy of the petition for suspension or modification of interconnection requirements shall be served upon each local service provider to which the requested suspensions or modifications would likely apply.

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-76, 49-31-80.

**20:10:32:42. Timeline for reviewing petition.** The commission shall take final action on any petition for suspension or modification made pursuant to 47 U.S.C. § 251(f)(2) (September 10, 1998) within 180 days after the petition is filed.

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-76, 49-31-80.

\***20:10:32:43. Designation of eligible telecommunications carriers.** The commission on its own

motion or upon request shall designate a local service provider which meets the requirements of 47 C.F.R. § 54.201 (September 10, 1998) to serve as an eligible telecommunications carrier within each service area of the state. Upon request and consistent with the public interest, convenience, and necessity, the commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one local service provider as an eligible telecommunications carrier for a service area designated by the commission, so long as each additional requesting carrier meets the requirements of 47 C.F.R. § 54.201 (September 10, 1998). The commission may not, in an area served by a rural telephone company, designate more than one eligible telecommunications carrier absent a finding that the additional designation would be in the public interest. In reviewing any proposed additional eligible telecommunications carrier designation within an area served by a rural telephone company, the commission shall not find it to be in the public interest if the provider requesting such designation is not offering its services coextensive with the rural telephone company service area.

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-76, 49-31-78.

**DTG COMMENTS: SEE COMMENTS TO 20:10:32:16, ABOVE. DTG ALSO AGREES WITH THE COMMENT MADE AT THE HEARING THAT THIS RULE PREDETERMINES THE PUBLIC INTEREST ISSUE WITHOUT BENEFIT OF EVIDENCE, A HEARING, OR OPPORTUNITY FOR PARTIES TO BE HEARD.**

~~**20:10:32:44. Eligible telecommunications carrier petitions.** A local service provider that desires designation as an eligible telecommunications carrier shall file a petition for such designation with the commission. The petition for designation shall include the following information:~~

- ~~(1) The legal name, address, and telephone number of the local service provider and its designated contact person.~~
- ~~(2) The proposed effective date of designation of eligible telecommunications carrier status.~~
- ~~(3) Identification of the service area for which the designation is sought;~~
- ~~(4) A statement supporting the petition which specifies why the requested designation satisfies the requirements for eligible telecommunications designation and receiving federal universal service support under 47 C.F.R. § 54.201 (September 10, 1998);~~
- ~~(5) Whether the provider is seeking a waiver of any eligible telecommunications carrier service requirements pursuant to 47 C.F.R. § 54.101 (September 10, 1998), the specific reasons for the waiver, and the length of time for which the waiver is requested; and~~
- ~~(6) If the local service provider is requesting designation in an area served by a rural telephone company and the rural company has already been designated an eligible telecommunications carrier, a statement which specifies why its proposed additional designation would be in the~~

**Law Implemented:** SDCL 49-31-3, 49-31-76, 49-31-78.

~~20:10:32:50. Revocation of eligible telecommunications carrier status. Upon finding that any local service provider designated as an eligible telecommunications carrier does not qualify as an eligible telecommunications carrier under 47 C.F.R. § 54.201 (September 10, 1998) and should not be entitled to federal universal service support, the commission shall revoke, after notice and a hearing, the local service provider's eligible telecommunications carrier designation.~~

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-76, 49-31-78.

**DTG COMMENTS: IF THE COMMISSION IS GOING TO REVOKE THE ABILITY TO QUALIFY FOR UNIVERSAL SERVICE FUNDING, THEN SOME BASIC DUE PROCESS IS REQUIRED, TO INCLUDE NOTICE, HEARING, AND HAVING THE COMPLAINANT BEAR THE BURDEN OF PROOF.**

\* 20:10:32:51. Monitoring of competitive local exchange services. The commission shall monitor the effectiveness of the regulatory requirements prescribed in this chapter to ensure that local service competition occurs in a manner that is consistent with preserving and advancing universal service, protecting the public safety and welfare, ensuring the continued quality of service, and safeguarding the rights of affected consumers. ~~The commission reserves the right to impose additional requirements by order or rulemaking that may be necessary to meet these objectives.~~

**Source:**

**General Authority:** SDCL 49-31-76.

**Law Implemented:** SDCL 49-31-3, 49-31-71, 49-31-76.

**DTG COMMENTS: THE COMMISSION DOES NOT NEED TO RESERVE A STATUTORY RIGHT TO MAKE RULES. IT CANNOT, HOWEVER, CREATE A POWER TO DO BY ORDER WHAT IT ONLY HAS AUTHORITY TO DO BY RULE. THE CITED STATUTE, SDCL 49-31-76, ONLY GIVES RULE MAKING AUTHORITY IN THIS AREA. THUS THE LAST SENTENCE SHOULD BE DELETED.**



**Law Implemented:** SDCL 49-31-3, 49-31-77, 49-31-84, 49-31-85.

**DIG COMMENTS: THE ASSUMPTION IS THAT THIS RULE DOES NOT APPLY TO THE WIRELESS LOCAL LOOP, INDEED THE ASSUMPTION IS THAT NONE OF THESE RULES APPLY TO WIRELESS SERVICE BECAUSE THE COMMISSION DOES NOT REGULATE WIRELESS SERVICES.**

**20:10:33:04. Minimum transmission levels for local exchange service.** A local exchange company's subscriber loops shall meet the following minimum transmission levels from the subscriber network interface or demarcation point:

- (1) Transmission loss from the central office to the subscriber network interface or demarcation point for existing subscriber loops may not exceed 10 dB at 1004 Hertz. All new, upgraded, or replaced subscriber loops may not exceed 8dB at 1004 Hertz.
- (2) Loop current shall be above 20 milliamperes;
- (3) Total external loop resistance, excluding customer premises equipment, may not exceed the basic range requirement of the terminating electronics. Range extension equipment shall be applied to those subscriber loops that are longer than the basic working range of the terminating electronics;
- (4) Circuit noise objective on subscriber loops measured at the subscriber network interface or demarcation point shall be equal or less than 20 dBmC;
- (5) The minimum data rate shall be 14,400 bps;
- (6) The frequency response range shall be 300 Hertz to 3,000 Hertz with an amplitude deviation not to exceed four dB;
- (7) The power influence level shall be less than 90 dBmC; and
- (8) The longitudinal balance shall be greater than 60 dB.

All subscriber loops shall meet these minimum transmission levels by January 1, 2001.

**Source:**

**General Authority:** SDCL 49-31-77, 49-31-85.

**Law Implemented:** SDCL 49-31-3, 49-31-77, 49-31-85.

- \* **20:10:33:05. Minimum requirements for new, upgraded, or replaced facilities.** Outside plant, including subscriber loops, constructed, upgraded, or replaced after January 1, 1999, shall be able to provide, as built or with additional equipment, transmission and reception of data at a rate no lower than 1 Mbps. New or replacement switching systems installed after January 1, 1999, shall be capable of providing custom calling features. At a minimum, custom calling features must include call waiting, call forwarding, abbreviated dialing, caller identification, and three-way calling. New or replacement switching systems installed after January 1, 1999, shall also be capable of providing enhanced 911 service.

**Source:**

**General Authority:** SDCL 49-31-77, 49-31-85.

**Law Implemented:** SDCL 49-31-3, 49-31-77, 49-31-85.

**DTG COMMENTS: THE ONE MAJOR ISSUE NOT ADDRESSED IS THE COST. THESE STANDARDS APPEAR TO COME FROM RUS FUNDING REQUIREMENTS. SOME COMPANIES DO NOT QUALIFY FOR THAT LARGESSE. THUS COSTS ARE MORE APPARENT TO THE NONQUALIFYING COMPANIES AND TO THE CUSTOMERS OF THOSE COMPANIES. THE ISSUE OF REGULATORY TAKING HAS BEEN IGNORED. AN UNCONSTITUTIONAL REGULATORY TAKING CAN OCCUR WHERE THE COMMISSION ORDERS CERTAIN FACILITIES TO BE INSTALLED BUT DOES NOT PROVIDE THE COMPANY THE ABILITY TO RECOVER ITS COST. ALTHOUGH SDCL 49-31-60 ONLY EMBODIES THE INTENT OF THE LEGISLATURE, AND AS SUCH IT MAY BE ARGUABLE WHETHER IT CREATES ANY LEGAL REQUIREMENT, IT DOES RECOGNIZE THE TAKINGS ISSUE BY SEEMINGLY IMPOSING ON THE COMMISSION IN THE PROMULGATION OF THESE RULES THE NEED TO CONSIDER THE RETURN ON THE INVESTMENT THE RULES REQUIRE. THERE HAS BEEN NO DISCUSSION OF THAT IN ANY OF THESE RULES. THESE RULES ALSO RESULT IN A FREEZE OF PARTICULAR TECHNICAL STANDARDS WHICH MAY OR MAY NOT BE APPROPRIATE IN A RAPIDLY CHANGING TECHNOLOGICAL ENVIRONMENT. THEY ALSO ERECT A VERY SUBSTANTIAL BARRIER TO NEW ENTRANTS INTO THE MARKET, SINCE NEW ENTRANTS WILL HAVE TO BUILD FACILITIES THAT MAY BE ORDERS OF MAGNITUDE BETTER THAN THE INCUMBENT HAS, JUST TO GET IN. THIS IS, AT THE LEAST, DISCRIMINATORY UNDER BOTH STATE AND FEDERAL LAW.**

**20:10:33:06. Minimum requirements for channel capacity.** A local exchange company shall maintain sufficient central office and interoffice channel capacity plus other necessary facilities to meet the following minimum requirements during any busy hour:

- (1) Dial tone within three seconds for 98 percent of call attempts on the switched network;
- (2) Correct termination of 98 percent of properly dialed intraoffice or interoffice calls within an extended service area; and
- (3) Correct termination of 98 percent of properly dialed calls when the call is routed entirely over the network of the local exchange company.

**Source:**

**General Authority:** SDCL 49-31-77, 49-31-85.

**Law Implemented:** SDCL 49-31-3, 49-31-77, 49-31-85.

**20:10:33:07. Minimum levels of trunking facilities provided by interexchange companies.** Interexchange companies shall design, construct, and maintain sufficient trunking facilities so

that at least 98 percent of telephone calls offered to the group will not encounter an all-trunks-busy condition and 98 percent of correctly dialed toll calls are correctly terminated. All interexchange companies which use both line and trunk side connections for access shall have sufficient quantities of switched access service from the local exchange company to maintain acceptable blocking probability for each type of access. A .01 blocking probability is acceptable.

**Source:**

**General Authority:** SDCL 49-31-77, 49-31-85.

**Law Implemented:** SDCL 49-31-3, 49-31-77, 49-31-85.

**DTG COMMENTS: DO NOT UNDERSTAND WHAT "OFFERED TO THE GROUP" MEANS.**

**20:10:33:08. Requirements for good engineering practices.** The telephone plant of each telecommunications company shall be designed, constructed, installed, maintained, and operated subject to the provisions of applicable electrical safety codes and in accordance with accepted good engineering practices of the telecommunications industry to assure continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

**Source:**

**General Authority:** SDCL 49-31-77, 49-31-85.

**Law Implemented:** SDCL 49-31-3, 49-31-77, 49-31-85.

**20:10:33:09. Requirement for sufficient equipment and adequate personnel.** Each telecommunications company shall employ prudent management and engineering practices so that sufficient equipment and adequate personnel are available at all times, including busy hours.

**Source:**

**General Authority:** SDCL 49-31-77, 49-31-85.

**Law Implemented:** SDCL 49-31-3, 49-31-77, 49-31-85.

**\* 20:10:33:10. Required documentation to show sufficient equipment and adequate personnel.** Each telecommunications company shall ~~conduct traffic studies,~~ employ reasonable procedures for forecasting future service demand, and maintain records necessary to demonstrate to the commission that sufficient equipment is in use and that an adequate operating workforce is provided. ~~However, average schedule companies are not required to conduct traffic studies.~~ The records shall be available for review by the commission upon request.

**Source:**

**General Authority:** SDCL 49-31-77, 49-31-85.

**Law Implemented:** SDCL 49-31-3, 49-31-77, 49-31-85.

**DTG COMMENTS: IF TRAFFIC STUDIES ARE REQUIRED, THEN THE AVERAGE**



**SCHEDULE COMPANIES SHOULD BE INCLUDED. IT WOULD BE EASIER TO ELIMINATE THE SPECIFIC REFERENCE TO TRAFFIC STUDIES RATHER THAN DISCRIMINATE IN FAVOR OF ONE PARTICULAR KIND OF COMPANY. SDCL 49-31-85 REQUIRES THAT THE RULES BE NONDISCRIMINATORY.**

**20:10:33:11. Assignment of facilities.** Each telecommunications company shall employ adequate procedures for assignment of facilities. The assignment records shall be kept up-to-date and checked periodically to determine if adjustments are necessary to maintain proper balance in all trunk and equipment groups. The records shall be available for review by the commission upon request.

**Source:**

**General Authority:** SDCL 49-31-77, 49-31-85.

**Law Implemented:** SDCL 49-31-3, 49-31-77, 49-31-85.

**DTG COMMENTS: THE ASSUMPTION IS THAT THIS RULE DEALS WITH OUTSIDE PLANT FACILITIES. DTG IS CONTINUALLY MONITORING THESE FACILITIES ON A REAL TIME BASIS AND MAKING ADJUSTMENTS ALMOST DAILY. RECORDS ARE MAINTAINED ELECTRONICALLY ON A CURRENT BASIS. THERE IS NO NEED TO KEEP HISTORICAL RECORDS.**

**20:10:33:12. Charges for construction of facilities.** If required as a condition of a federal Rural Utilities Service loan, a telecommunications company shall furnish telecommunications services to a customer without payment by the customer of any extra charge as a contribution to the cost of construction of facilities needed to provide the services.

**Source:**

**General Authority:** SDCL 49-31-77, 49-31-85.

**Law Implemented:** SDCL 49-31-3, 49-31-77, 49-31-85.

**DTG COMMENTS: IF IT IS REQUIRED BY THE FINANCE DOCUMENTS, WHAT NEED IS THERE FOR A RULE?**

**20:10:33:13. Records of tests and inspections.** Records of various tests and inspections shall be kept on file in the office of the telecommunications company for a minimum of two years. These records shall show the plant or equipment tested or inspected, the reason for the test, the general result of the test, and any corrections made. The records shall be available for review by the commission upon request.

**Source:**

**General Authority:** SDCL 49-31-77, 49-31-85.

**Law Implemented:** SDCL 49-31-3, 49-31-77, 49-31-85.

**DTG COMMENTS: MOST TESTING IS DONE AUTOMATICALLY AND RESULTS KEPT FOR A SHORT PERIOD OF TIME (ABOUT 30 DAYS) ELECTRONICALLY.**