

RM 04-001

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

Pam Bonrud  
Executive Secretary  
Public Utilities Commission  
500 East Capitol Avenue  
Pierre, South Dakota 57501

RE: IN THE MATTER OF ARSD 20:10:33:19  
Our file: 0053

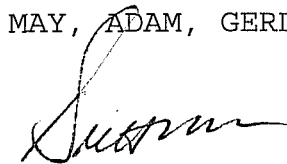
Dear Pam:

Enclosed are original and ten copies of a Petition for Rulemaking from Midcontinent Communications. Please file the enclosure.

With a copy of this letter, I am serving the Petition on Richard Coit and Jim Cremer. Thank you very much.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP



BRETT KOENECKE

BK:mw

Enclosures

cc/enc: Richard Coit  
James M. Cremer  
Tom Simmons

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE  
STATE OF SOUTH DAKOTA

IN THE MATTER OF ARSD 20:10:33:19 )  
 )  
 ) PETITION FOR  
 ) RULEMAKING  
 )

Midcontinent Communications, a duly authorized Local Exchange Carrier serving exchanges in South Dakota, by and through its undersigned attorneys of record, hereby files this Petition for Rulemaking, pursuant to SDCL § 1-26-13, seeking the Commission's amendment of the rule found at ARSD 20:10:33:19.

The Rule as currently written:

**20:10:33:19. Auxiliary and battery power requirements.** Each local central office, toll switching office, or tandem switching office of a local exchange company shall contain a minimum of 8 hours, plus or minus 15 percent, of battery reserve rated for peak traffic load requirements. A permanent auxiliary power unit may be utilized to meet this requirement. In central offices and toll tandem switching offices, a permanent auxiliary power unit shall be installed or a mobile power source shall be available which normally can be delivered and connected within four hours. The remote terminating electronics of a local exchange company shall be equipped with a local or remote battery plant designed for a minimum of 8 hours, plus or minus 15 percent, of battery reserve rated for peak traffic load requirements. The batteries shall be tested and reported internally on a regular basis, not to exceed once a year.

**Source:** 25 SDR 89, effective December 27, 1998.

Advances in technology and consumer preference have made the rule impractical. The rule makes no apparent provision for the use of telephony architecture other than traditional copper based systems. The rule's reference to "remote terminating electronics" would appear to consider only electronic devices powered on copper plant by DC power. The rule does not appear to speak to electronic devices powered on coaxial cable plant by AC power, modems powered by AC power, computers powered by AC power, VOIP devices, cellular telephone

tower electronics, wireless cellular telephone receivers, FTTH fiber-optic receivers, MTA receivers, Vonage phone adapters and network interface units and future unknown communication devices. None of the above named technologies can easily comply with the Rule.

Midcontinent for example uses a coaxial cable based system which is “always on” but which requires the use of amplifiers on alternating current which make batteries impractical. Batteries, being comprised of numbers of cells in order to meet stated voltage, can fail to provide the stated voltage and fail the system if just one cell fails.

Further, the days of finding analog telephones in the majority of South Dakota residences have passed. Currently the market for handheld receivers is dominated by two types of equipment, wireless receivers with electrically powered bases and wireless cell phones. The current rule provides no solution for keeping the service of either of these equipment types operating during a power outage. A third entry into the telephone market place, VOIP, also is a technology that the current rules have not taken into consideration and is under study by the Federal Communications Commission (FCC) pertaining to current telephony rules. The purchase of any of these types of equipment by South Dakota telephone customers is a choice that precludes service operation during periods of normal interruptions of commercial power and is outside the control of the telephony provider.

Midcontinent proposes amending the rule to read as follows:

All telephony providers shall maintain continuous service to local residents during localized power interruptions. Localized power interruptions are those affecting not greater than ten percent of the customers served within an exchange.

All telephony providers shall provide best efforts to maintain service during catastrophic power interruptions. Catastrophic power interruptions include all events where commercial power is lost to greater than ten percent of the customers served within an exchange. Events causing catastrophic power

interruptions include but are not limited to natural disasters such as flood, hail storms, ice storms, tornado, wind storms, snow storms, fires and man-made hazards such as hazardous materials incidents, ground transportation incidents, fires, nuclear attacks, terrorist attacks, explosions and releases of poisonous gas into the atmosphere.

Each Local central office, toll switching office or tandem switching office of a local exchange company shall contain a minimum of 8 hours, plus or minus 15 percent, of battery reserve rated for peak traffic load requirements. A permanent auxiliary power unit may be utilized to meet this requirement. In central offices and toll tandem switching offices, a permanent auxiliary power unit shall be installed or a mobile power source shall be available which normally can be delivered and connected within four hours. All wireless or cellular tower electronics shall be considered a tandem switching office for the applicability of this rule.

This new rule would provide a baseline for service requirements, would allow telephony providers to use their ingenuity to determine which system of electrical backup will keep their customers in communication and would allow for technical and technological innovations in the future. Midcontinent urges the commission to adopt this revision to the rule in place.

Dated this 15<sup>th</sup> day of April, 2004.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

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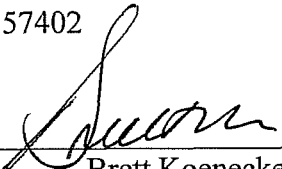
#### CERTIFICATE OF SERVICE

Brett Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 15<sup>th</sup> day of April, 2004, he mailed by United States mail, first class postage thereon prepaid, a true

and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Richard D. Coit, Executive  
Director and General Counsel  
SDTA  
P.O. Box 57  
Pierre, SD 57501-0057

James M. Cremer  
Bantz, Gosch & Cremer  
P.O. Box 970  
Aberdeen, SD 57402

  
Brett Koenecke

## CHAPTER 20:10:33

### SERVICE STANDARDS FOR TELECOMMUNICATIONS COMPANIES

**20:10:33:19. Auxiliary and battery power requirements.** All telephony providers shall maintain continuous service to local residents during localized power interruptions. Localized power interruptions are those affecting not greater than ten percent of the customers served within an exchange. All telephony providers shall provide best efforts to maintain service during catastrophic power interruptions. Catastrophic power interruptions include all events where commercial power is lost to greater than ten percent of the customers served within an exchange. Events causing catastrophic power interruptions include but are not limited to natural disasters such as flood, hail storms, ice storms, tornado, wind storms, snow storms, fires and man-made hazards such as hazardous materials incidents, ground transportation incidents, fires, nuclear attacks, terrorist attacks, explosions and releases of poisonous gas into the atmosphere.

Each local central office, toll switching office, or tandem switching office of a local exchange company shall contain a minimum of 8 hours, plus or minus 15 percent, of battery reserve rated for peak traffic load requirements. A permanent auxiliary power unit may be utilized to meet this requirement. In central offices and toll tandem switching offices, a permanent auxiliary power unit shall be installed or a mobile power source shall be available which normally can be delivered and connected within four hours. ~~The remote terminating electronics of a local exchange company shall be equipped with a local or remote battery plant designed for a minimum of 8 hours, plus or minus 15 percent, of battery reserve rated for peak traffic load requirements. The~~

batteries shall be tested and reported internally on a regular basis, not to exceed once a year. All wireless or cellular tower electronics shall be considered a tandem switching office for the applicability of this rule.

**Source:** 25 SDR 89, effective December 27, 1998.

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

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

## CHAPTER 20:10:35

### TELECOMMUNICATIONS SERVICES

#### Section

- 20:10:35:01 Definitions.
- 20:10:35:02 Establishment of the register.
- 20:10:35:03 Procedure for enrollment on the register.
- 20:10:35:04 Procedure for changing telephone numbers.
- 20:10:35:05 Fees for registration.
- 20:10:35:06 Telephone solicitors shall obtain a copy of the register.
- 20:10:35:07 Telephone solicitors limited in use of register.
- 20:10:35:08 Telephone solicitors shall pay an annual fee.
- 20:10:35:09 Annual fee due prior to making telephone solicitation calls.
- 20:10:35:10 Information required of telephone solicitors.
- 20:10:35:11 (Effective through December 31, 2004) Telephone solicitors are required to update register (Effective January 1, 2005) Telephone solicitors are required to update register.

- 20:10:35:12 Reporting of violations.
- 20:10:35:13 Information provided for complaints.
- 20:10:35:14 Investigation of complaints.

**20:10:35:11. (Effective through December 31, 2004) Telephone solicitors are required to update register.** Any telephone solicitor who makes unsolicited telephone calls to South Dakota residential telephone subscribers is required to update the South Dakota register every ninety days.

**(Effective January 1, 2005) Telephone solicitors are required to update register.** Any telephone solicitor who makes unsolicited telephone calls to South Dakota residential telephone subscribers is required to update the South Dakota register every ninety thirty-one days.

**Source:** 30 SDR 25, effective August 28, 2003.

**General Authority:** 49-31-99.

**Law Implemented:** 49-31-99, 49-31-100, 49-31-101, 49-31-102.