SDTA
Rural roots, global connections

South Dakota Telecommunications Association
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June 1, 2006

Ms. Patty Van Gerpen, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
State Capitol Building
Pierre, SD 57501

RE: Docket RM 06-001 (IN THE MATTER OF THE ADOPTION OF RULES REGARDING ELIGIBILITY, CERTIFICATION AND REPORTING REQUIREMENTS FOR ELIGIBLE TELECOMMUNICATIONS CARRIERS)

Dear Ms. Van Gerpen:

Enclosed for filing with the Commission in the above referenced docket are SDTA Comments.

These written comments are intended as a follow-up to our comments made at the hearing on May 24, 2006.

Copies of these comments have been provided to all individuals on the Commission's established service list.

Thank you for your assistance in filing and distributing these documents.

Sincerely,

Richard D. Coit
Executive Director and General Counsel
SDTA

Rdc/ms

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE ADOPTION OF RULES REGARDING ELIGIBILITY, CERTIFICATION AND REPORTING REQUIREMENTS FOR ELIGIBLE TELECOMMUNICATIONS CARRIERS	))))))	**DOCKET NO. RM 06-001**

SDTA COMMENTS

The South Dakota Telecommunications Association ("SDTA") hereby submits the following comments in response to this Commission's "Notice of Public Hearing to Adopt Rules" issued in this matter. These comments are intended to supplement the oral comments presented by SDTA at the Commission's hearing on its proposed rule changes held on May 24, 2006.

ARSD § 20:10:32:43.01 Demonstration of commitment to provide service.

As noted at the hearing, SDTA believes that ARSD § 20:10:32:43.01, as presently drafted, is insufficient to require that, eventually, all designated ETCs be positioned to meet "Carrier of Last Resort" obligations. Subsection (2) of the proposed rule should be revised to eliminate the reference to "reasonable cost." Under § 20:10:32:43.01, an applicant for ETC designation is required to "commit to providing service throughout its proposed designated service area to all customers making a "reasonable request for service." SDTA would urge the Commission to retain some discretion in determining what constitutes a "reasonable request for service" and is concerned that the mere reference to "reasonable cost" within the proposed rule gives ETC applicant's an escape from any meaningful ETC obligations. This Commission should not adopt a rule that would permit an ETC to avoid service obligations by simply claiming that the service

cannot be extended for a "reasonable cost." As an alternative, the Commission may want to consider revising the relevant part of the rule to read as follows:

> *(2) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if the service does not impose excessive or unreasonable cost by:*

ARSD § 20:10:32:43.02 Submission of two-year plan.

SDTA agrees with comments made by the other parties that the language in ARSD § 20:10:32:43.02 referencing the submittal of information on a "wire center-by-wire center basis" should be changed. Other language in the rule, as drafted, already requires information that is sufficient to show where network improvements are being made within the applicant's requested ETC service area. The first sentence of the proposed rule requires that the two-year plan describe "with specificity" the proposed improvements or upgrades to the applicant's network. And, subsection (3) of the rule requires that the ETC applicant submit information showing "[t]he specific geographic areas where the improvements will be made."

As noted at the hearing, SDTA is concerned that the reference to information on a "wire center-by-wire center basis" not be interpreted to mean that each designated ETC must annually make network improvements or upgrades in each wire center area. The federal statutes do not intend this result. Under 47 U.S.C. § 254(e), it is only generally stated that a carrier that receives universal service support shall use the "support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." Subsequent FCC decisions interpreting this statutory provision have clarified that not all universal service support need be directed to facility investment. Use

of support to offset ongoing operational support expenses as a means of keeping local service rates affordable is also an appropriate use. In addition, with respect to the use of federal USF for facility investment, it has never been indicated by the FCC that facility investments must be made on a yearly basis in every single wire center within a defined ETC service area.

SDTA believes this Commission should revise the first paragraph of ARSD § 20:10:32:43.02 to strike the "wire center-by-wire center" references so that the relevant part reads as follows:

> *An applicant requesting designation as an eligible telecommunications carrier shall submit a two-year plan that describes with specificity all proposed improvements or upgrades to the applicant's network, to be made within the proposed designated service area. Each applicant shall demonstrate the following:*

ARSD § 20:10:32:43.03 Demonstration of ability to remain functional in emergency situations.

SDTA believes the Commission should revise proposed rule ARSD § 20:10:32:43.03 so that it describes more specifically a carrier's rerouting obligations. The rule currently indicates that the applicant carrier must be "able to reroute traffic around damaged facilities." The reference to "damaged facilities" isn't specific enough and could be interpreted to mean that carriers should establish redundant local line or local loop facilities. SDTA suspects this would go beyond the intended purpose of the rule. To address this concern and eliminate or lessen possible confusion, it is suggested that the language be changed to reference "damaged transport facilities."

ARSD § 20:10:32:43.04 Demonstration of ability to satisfy consumer protection and service quality standards.

SDTA believes that ARSD § 20:10:32:43.04, given its reference to "service quality standards," should also refer specifically to this Commission established "service standards" rules that are set forth in ARSD Chapter 20:10:33. That Chapter includes rules previously adopted by this Commission that prescribe certain service standards for "telecommunications companies" including both local exchange and interexchange companies. For purposes of consistency and to make it clear that the already adopted service standard rules continue to be applicable, they should be cited within the language of ARSD § 20:10:32:43.04.

Also, it is SDTA's understanding that the Cellular Telecommunications and Internet Association's ("CTIA") "Consumer Code for Wireless Service" is more directed to "consumer protection" and not "service quality standards." Accordingly, it is inadequate to simply reference the CTIA Consumer Code in the second to last sentence of the proposed rule. A wireless carrier's compliance with the CTIA Consumer Code would not address the separate requirement relating to "service quality standards."

SDTA would propose that ARSD § 20:10:32:43.04 be revised to read as follows:

> *An applicant requesting designation as an eligible telecommunications carrier shall demonstrate that it will satisfy applicable consumer protection and service quality standards, including the standards set forth in ARSD Chapter 20:10:33. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service may satisfy the consumer protection requirement. Other commitments will be considered on a case—case basis.*

ARSD § 20:10:32:43.07 Public interest standard.

SDTA would agree with the comments of certain other parties made at the hearing that the public interest review briefly described in the second sentence of ARSD § 20:10:32:43.07 is too limited, and does not appear to incorporate all of the public interest review criteria that this Commission has applied in its prior ETC designation proceedings. SDTA would strongly urge the Commission to redraft the proposed rule so that it incorporates a public interest review akin to what the Commission has earlier adopted and applied. To that end, SDTA would propose a redraft of the rule so that it reads as follows:

> *Prior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the public interest. In rural areas, the value of increased competition, by itself, is not sufficient to satisfy this public interest test. The commission shall in reviewing the public interest weigh numerous factors, including the benefits of increased competitive choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the applicant's service offerings, any commitments made regarding the quality of the telephone services provided, and the applicant's ability to provide the supported services throughout the designated service area within a reasonable time frame. In addition, the commission shall consider whether designation of the applicant will have detrimental effects on the provisioning of universal service by the incumbent local exchange carrier. If an applicant seeks designation below the study area level of a rural telephone company, the commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the applicant seeks designation against that of the wire centers in the study area in which the applicant does not seek designation. In its creamskimming analysis, the commission shall consider other factors, such as disaggregation of support pursuant to 47 C.F.R. § 54.315 (January 1, 2006) by the incumbent local exchange carrier.*

ARSD § 20:10:32:53 Requirements for previously designated eligible telecommunications carriers and pending applications.

SDTA believes this Commission should give some recognition in the proposed rules to the fact that incumbent carriers are positioned differently than already designated competitive ETCs or other carriers applying for ETC status in regards to the ability to provide all of the federally supported telecommunications services throughout the established ETC service areas. Incumbent carriers designated as ETCs, unlike other competitive ETCs, are operating with long established networks already built throughout their service areas. This being the case, from the perspective of incumbent carriers, some of the information requested, particularly that which is designed to gauge the extent of the ETC's network build-out or "coverage" seems completely unnecessary (See ARSD § 20:10:32:43.02(1) and 20:10:32:43.02(4)). Further, the provisions of ARSD § 20:10:32:53 indicate that all carriers that have been designated as ETCs should submit all of the information required by ARSD §§ 20:10:32:43.01 through 20:10:32:43.06, yet very clearly both §§ 20:10:32:43.05 and 20:10:32:43.06, as proposed, are intended to only apply to competitive eligible telecommunications carriers. In order to give fair recognition to the actual differences that exist between incumbent ETCs and competitive ETCs and to lessen or eliminate any undue additional reporting burdens on incumbent carriers, SDTA would urge the Commission to incorporate a waiver process into the provisions of ARSD § 20:10:32:53.

Specifically, SDTA proposes redrafting the rule so that it reads as follows:

A telecommunications carrier that has been designated as an eligible telecommunications carrier or that has submitted its application for designation before the effective date of these rules must submit the information required by §§ 20:10:32:43.01 through 20:10:32:43.06, inclusive, by August 1, 2006. A carrier designated as an eligible telecommunications carrier may request from the commission a waiver from having to submit all of the information set forth in §§ 20:10:32:43.01 through 20:10:32:43.06. The commission may grant the waiver if, after notice and opportunity for hearing, it is determined by the commission that requiring the information from the requesting carrier is unduly burdensome and unnecessary for the commission to determine and certify that the carrier is using federal high cost support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

ARSD § 20:10:32:54 Certification requirements.

As pointed out at the hearing, SDTA views the use of the word "potentially" in subsection (2) of ARSD § 20:10:32:54 as unnecessary. To eliminate any confusion as to which outages should be reported and which should not, SDTA believes the word should be stricken from that part of the rule.

Dated this 14 day of June, 2006.

South Dakota Telecommunications Association

By: _____
Richard D. Coit
Executive Director and General Counsel

CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies of the SDTA Comments in Docket RM 06-001 were hand-delivered to the South Dakota PUC on June 1, 2006, directed to the attention of:

Patty Van Gerpen
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A copy was sent by US Postal Service First Class mail to each of the following individuals:

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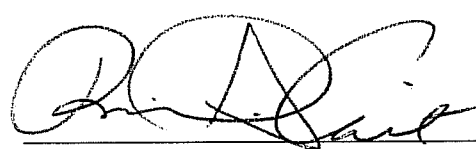
Dated this 1st day of June, 2006.



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