

TC98-173

CH/SL

In the Matter of _____

IN THE MATTER OF XIEX
TELECOMMUNICATIONS, INC.'S
FAILURE TO SUBMIT A REPORT AND
PAY THE GROSS RECEIPTS TAX

Public Utilities Commission of the State of South Dakota

DATE

MEMORANDA

DATE	MEMORANDA
9/21/98	Order for and Notice of Show Cause Hearing;
9/24/98	Weekly Filings;
10/29/98	Find. of Fact, Con. of Law and Final Order; Notice of Entry of
10/29/98	Docket Closed.

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

IN THE MATTER OF XIEX)	ORDER FOR AND NOTICE
TELECOMMUNICATIONS, INC.'S FAILURE TO)	OF SHOW CAUSE HEARING
SUBMIT A REPORT AND PAY THE GROSS)	
RECEIPTS TAX)	TC98-173

SDCL 49-1A-1 establishes the South Dakota Public Utilities Commission (Commission) Gross Receipts Tax Fund. This fund is financed by assessing a tax of .0015 or \$250, whichever is greater, on the annual intrastate gross receipts received by a utility from the company's customers within the state of South Dakota, and requires that all telecommunications companies submit on June 1, each year, a report of the amount of such gross receipts received during the preceding calendar year and pay the tax. A penalty of 10% of the tax is imposed for each month of delinquency.

Despite reminder letters from the Commission on May 7, 1998, and on July 7, 1998, XIEX Telecommunications, Inc., has failed to file the required report and pay the gross receipts tax.

Pursuant to SDCL 49-1A-6, the Commission may collect this debt by distress and sale of any personal property of the company within South Dakota. Further, the Commission has the authority, under SDCL 49-31-3, to suspend or revoke the certificate of authority granted to the company; assess a civil fine against the company from \$200 to \$1,000 under SDCL 49-31-38; proceed under SDCL 49-31-38.2 or 49-31-38.3 to stop the company from transacting any future business in South Dakota; or take any other enforcement actions against the company allowed by law.

XIEX Telecommunications, Inc., shall appear on October 20, 1998, at 1:30 P.M. (CDT) in the Cactus Conference Room, State Capitol Building, Pierre, South Dakota, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A. The hearing is being held pursuant to Commission's jurisdiction over telecommunications companies found at SDCL Chapter 1-26, 49-1A, and 49-31, specifically, 49-1-11(4), 49-1A-3, 49-1A-4, 49-1A-5, 49-1A-6, 49-31-3, and ARSD 20:10:01:45.

The issue at the hearing is whether the Commission shall fine, or suspend or revoke XIEX Telecommunications, Inc.'s Certificate of Authority or otherwise institute collection proceedings against XIEX Telecommunications, Inc., for failure to pay gross receipts tax.

At the hearing representatives of the company may appear in person and may be represented by legal counsel or legal assistant (paralegal) if desired. The hearing shall be an adversary proceeding and the company shall have the burden of proving that none of the above enumerated adverse actions should be taken against it. These and other due process rights shall be deemed waived if not exercised at the hearing. The decision of the

Commission may be appealed to the Circuit Court and the State Supreme Court as provided by law. It is therefore

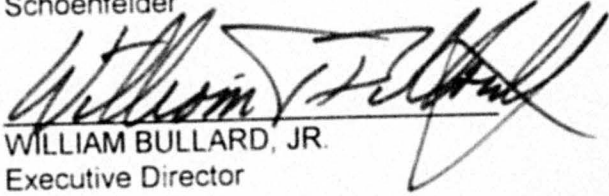
ORDERED, that a show cause hearing in the matter of XIEX Telecommunications, Inc., shall be held on October 20, 1998, at 1:30 P.M. (CDT) (or as soon thereafter as the parties can be heard) in the Cactus Conference Room, State Capitol Building, Pierre, South Dakota. And it is

FURTHER ORDERED, that, in the event XIEX Telecommunications, Inc., shall file an appropriate report and pay the delinquent gross receipts tax, including the 10% penalty for the months of June, July, August, and September, the hearing and actions mentioned herein shall not be held or taken, otherwise this order shall remain in effect.

Dated at Pierre, South Dakota, this 21 day of September, 1998.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By	<u>Richard Kalbo</u>
Date	<u>9/22/98</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:
Commissioners Burg, Nelson and
Schoenfelder


WILLIAM BULLARD, JR.
Executive Director

Z 348 318 015



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PS Form 3800, March 1993

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City and State: <i>Houston, TX 77027-5132</i>	
Postage	\$
Terminal Fee	
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2900 Wesleyan, Ste 250
Houston, TX
77027-5132

4a. Article Number
Z 348 318 015

4b. Service Type
 Registered Certified
 Express Mail Insured
 Return Receipt for Merchandise COD

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9-28-98

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6. Signature (Addressee or Agent)
X Barbara Kimbro

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South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of September 18, 1998 through September 24, 1998

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this filing.

Phone: 605-773-3705. Fax: 605-773-3809.

GAS AND ELECTRIC

GE98-002 In the Matter of the Application of MidAmerican Energy Company for a Statement to the Securities and Exchange Commission Regarding Investment in a Foreign Utility.

Application by MidAmerican Energy Company for an order by the Commission claiming jurisdiction over MidAmerican in order to be exempt from the Public Utility Holding Company Act. MidAmerican is being acquired by CalEnergy and as a result will have an indirect interest in several foreign utility properties. PUHCA provides that foreign utility companies will not be subject to regulation as utilities if certification by Regulatory Commissions is received by the Securities and Exchange Commission stating the Commission has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority to the fullest extent allowed by law.

Staff Attorney: Camron Hoseck

Staff Analyst: Dave Jacobson

Date Filed: 09/17/98

Intervention Deadline: NA

TELECOMMUNICATIONS

TC98-158 In the Matter of Cypress Telecommunications Corporation's Failure to Submit a Report and Pay the Gross Receipts Tax.

Cypress Telecommunications Corporation shall appear on October 20, 1998, at 1:30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck

Deputy Executive Director: Sue Cichos

Date Opened: 09/21/98

Hearing Date: 10/20/98

TC98-159 In the Matter of Freedom Communications Corp.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

Freedom Communications Corp. shall appear on October 20, 1998, at 1 30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-160 In the Matter of Global Telemedia International, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

Global Telemedia International, Inc. shall appear on October 20, 1998, at 1 30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-161 In the Matter of Host Network, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

Host Network, Inc. shall appear on October 20, 1998, at 1 30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-162 In the Matter of Long Distance Direct Holdings, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

Long Distance Direct Holdings, Inc. shall appear on October 20, 1998, at 1 30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-163 In the Matter of Meridian Telecom Corporation's Failure to Submit a Report and Pay the Gross Receipts Tax.

Meridian Telecom Corporation shall appear on October 20, 1998, at 1:30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-164 In the Matter of Micro-Comm, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

Micro-Comm, Inc. shall appear on October 20, 1998, at 1:30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-165 In the Matter of Polar Communications Corporation's Failure to Submit a Report and Pay the Gross Receipts Tax.

Polar Communications Corporation shall appear on October 20, 1998, at 1:30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-166 In the Matter of Professional Communications Management Services, Inc. d/b/a PROCOM's Failure to Submit a Report and Pay the Gross Receipts Tax.

Professional Communications Management Services, Inc. d/b/a PROCOM shall appear on October 20, 1998, at 1:30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-167 In the Matter of Providian Group, LLC's Failure to Submit a Report and Pay the Gross Receipts Tax.

Providian Group, LLC shall appear on October 20, 1998, at 1 30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-168 In the Matter of SmarTel Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

SmarTel Communications, Inc. shall appear on October 20, 1998, at 1:30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-169 In the Matter of The Phonco, Inc. d/b/a Network Services Long Distance's Failure to Submit a Report and Pay the Gross Receipts Tax.

The Phonco, Inc. d/b/a Network Services Long Distance shall appear on October 20, 1998, at 1:30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-170 In the Matter of TW Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TW Communications, Inc. shall appear on October 20, 1998, at 1:30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-171 In the Matter of United Wats, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

United Wats, Inc. shall appear on October 20, 1998, at 1:30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-172 In the Matter of V.I.P. Telephone Network, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

V.I.P. Telephone Network, Inc. shall appear on October 20, 1998, at 1:30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-173 In the Matter of XIEX Telecommunications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

XIEX Telecommunications, Inc. shall appear on October 20, 1998, at 1:30 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Staff Attorney: Camron Hoseck
Deputy Executive Director: Sue Cichos
Date Opened: 09/21/98
Hearing Date: 10/20/98

TC98-174 In the Matter of the Application of PremierCom, Inc., for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Application by PremierCom, Inc., for a certificate of authority to provide intrastate, interexchange switched inbound, switched outbound, and calling card services on a resale basis.

Staff Attorney: Camron Hoseck
Staff Analyst: Dave Jacobson
Date Filed: 09/22/98
Intervention Deadline: 10/09/98

TC98-175 In the Matter of the Complaint filed by John R. Steele, Plankinton, South Dakota, against MCI Telecommunications Corporation Regarding Fraudulent Marketing Practices.

Complaint by John R. Steele, Plankinton against MCI. Complainant alleges that actual rates charged by MCI were higher than rates promised for intra and interstate long distance calls. Complainant is requesting that MCI honor a \$ 12 per minute rate along with a 20 percent rebate at the end of the first year, or that MCI switch his service back to DTG and rerate his current bill at the promised rate.

Staff Attorney: Karen Cremer
Consumer Representative: Leni Healy
Date Filed: September 14, 1998
Intervention Deadline: N/A

TC98-176 In the Matter of the Complaint filed by Randy Kieffer, Sturgis, South Dakota, against U S WEST Communications, Inc., Regarding Service Problems.

On September 21, 1998, the Commission received a complaint from Randy Kieffer, Sturgis, SD, against U S WEST regarding service problems. The complaint states

several incidents of ongoing service problems and poor or slow response by U S WEST. The phone outages require the complainant to drive 26 miles to Sturgis to report the outage and to make necessary phone calls. The complainant paid \$2,500 last year to have a telephone line installed. The complainant asks that U S WEST reimburse time and travel expenses for past and future phone outages or that U S WEST provide two cellular phones free of cost to be used when the outages occur.

Staff Attorney: Camron Hoseck
Consumer Representative: Leni Healy
Date Filed: 09/21/98
Intervention Deadline: N/A

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

IN THE MATTER OF XIEX) TELECOMMUNICATIONS, INC.'S FAILURE TO) SUBMIT A REPORT AND PAY THE GROSS) RECEIPTS TAX)) FINDINGS OF FACT,) CONCLUSIONS OF LAW) AND FINAL ORDER; NOTICE) OF ENTRY OF FINAL) ORDER) TC98-173
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On September 21, 1998, the Public Utilities Commission (Commission) issued an Order for and Notice of Show Cause Hearing against XIEX Telecommunications, Inc. for failure to submit an annual report and pay the gross receipts tax. The hearing was held as scheduled on October 20, 1998, at 1:30 p.m., in the Commission's Conference Room, State Capitol Building, Pierre, South Dakota. The reason for the hearing was to give XIEX Telecommunications, Inc. an opportunity to show cause why the Commission should not revoke its Certificate of Authority, or other specified actions, for failure to pay the gross receipts tax as required by SDCL 49-1A-1. Commissioners Burg, Nelson, and Schoenfelder were present. Also present were Camron Hoseck, Commission Staff Attorney and Sue Cichos, Business Manager for the Commission. No representative of XIEX Telecommunications, Inc. appeared at the hearing. After hearing the testimony, the Commission voted unanimously to revoke XIEX Telecommunications, Inc.'s Certificate of Authority for failure to pay the gross receipts tax.

The Commission, having heard the testimony presented at the hearing, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I

XIEX Telecommunications, Inc. is a telecommunications company holding a Certificate of Authority, issued by this Commission, to provide telecommunications services in South Dakota.

II

Sue Cichos, Business Manager for the Commission, sent letters to XIEX Telecommunications, Inc. on May 7, 1998, and July 7, 1998, requesting payment of the gross receipts tax as authorized by SDCL 49-1A-1. She testified that XIEX Telecommunications, Inc. never paid the gross receipts tax.

III

A copy of the Order for and Notice of Show Cause Hearing was sent by certified mail to XIEX Telecommunications, Inc.

IV

No representative of XIEX Telecommunications, Inc. appeared at the hearing to show cause why the Commission should not revoke its Certificate of Authority.

CONCLUSIONS OF LAW

I

The Commission has jurisdiction over this matter pursuant to SDCL 49-1A-3, 49-1A-4, 49-1A-5, 49-1A-6, and 49-31-3.

II

Pursuant to 49-1A-3, the Commission assesses a tax of .0015 or \$250, whichever is greater, on the annual intrastate gross receipts received by a telecommunications company from the company's customers within the state of South Dakota. Pursuant to 49-1A-5, the tax is due on June first of each year.

III

XIEX Telecommunications, Inc. has failed to pay the gross receipts tax.

IV

The Commission has the authority, under SDCL 49-31-3, to suspend or revoke a Certificate of Authority granted to a company for a willful violation of the laws of this state. Based on the failure of XIEX Telecommunications, Inc. to pay the gross receipts tax in violation of 49-1A-5, the Commission revokes XIEX Telecommunications, Inc.'s Certificate of Authority.

Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore

ORDERED, that the Certificate of Authority granted to XIEX Telecommunications, Inc. by this Commission is hereby revoked and shall be returned to the Commission within thirty (30) days from the date of this Order.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 29th day of October, 1998. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 29th day of October, 1998.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By	<u>Delaine Kalkes</u>
Date	<u>10/30/98</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner