

TCOO-089

680-0021

KC/2H

TC00-089

DOCKET NO.

In the Matter of

IN THE MATTER OF OLS, INC. AND
CERTAIN JOHN DOES

Public Utilities Commission of the State of South Dakota

DATE

MEMORANDA

4/4 cc Motion to Lessen Fines and Statutory Penalties;
 4/8 cc Reply Filing;
 4/20 cc Response to Motion to Lessen Fines and Statutory Penalties;
 5/1 cc Order for and Notice of Hearing;
 5/20 cc Order Cancelling Hearing;
 6/10 cc Settlement Agreement;
 6/21 cc Disposition Agreement, Dismissing Motion and Closing Docket;
 6/21 cc Docket Closed.

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

IN THE MATTER OF OLS, INC. AND CERTAIN JOHN DOES)))))	MOTION TO ASSESS FINES AND STATUTORY PENALTIES TC00-089
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The Staff of the South Dakota Public Utilities Commission respectfully moves the South Dakota Public Utilities Commission (Commission) to assess fines and penalties as specified in SDCL 49-31-38, 49-31-38.1, 49-31-93, 49-31-94, 49-31-95 and 49-31-96 against OLS, Inc.

The grounds for this Motion are that the Commission has received numerous complaints against OLS, Inc. within the recent past. Those complaints and their present status are:

DOCKET	FILED	COMPLAINANT	CURRENT STATUS
CT99-058	11-12-99	Bertsch	settled
CT99-060	11-19-99	Hoffmann	settled
CT99-061	11-22-99	Johnson	settled
CT99-062	11-22-99	Crompton	settled
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CT00-062	04-20-00	Jensen	pending
CT00-067	04-25-00	Slagle	pending

That the above referenced complaints represent a continuing pattern of reckless disregard for South Dakota law and a disregard for the rights of South Dakota consumers. The public interest demands that this situation be dealt with and that this type of activity not continue or recur in South Dakota.

WHEREFORE, in light of the apparent conduct of OLS, Inc., Staff respectfully moves the Commission to impose all appropriate fines and penalties as provided by law in its consideration of these complaints on an individual basis; such fines and penalties should include a civil fine of twenty thousand dollars per offense in accordance with SDCL 49-31-94, and if the totality of these offenses is sufficient in the opinion of the Commission, the revocation of OLS, Inc.'s certificate of authority in accordance with SDCL 49-31-3 and 49-31-94, and the imposition of a civil fine of not less than five hundred nor more than five thousand dollars for each offense upon the appropriate director, officer, receiver, trustee, lessee, agent, or person acting for or employed by such corporation who alone, or with any other corporation, company, person or party, intentionally permits or omits to be done, any act, matter or thing prohibited or declared to be unlawful in Chapters 49-13 and 49-31, inclusive. Staff would further request the assessment of all costs associated with processing these complaints as allowed by SDCL 49-31-96.

Dated at Pierre, South Dakota, this 16th day of June, 2000.

Karen E. Cremer

Karen E. Cremer
 Staff Attorney
 South Dakota Public Utilities Commission
 500 East Capitol
 Pierre, SD 57501
 Telephone (605) 773-3201

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF OLS, INC. AND CERTAIN)
JOHN DOES)

CERTIFICATE OF SERVICE

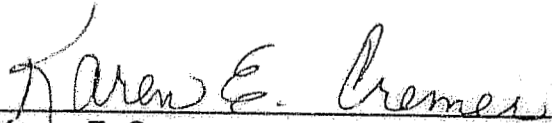
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TC00-089

I hereby certify that copies of Motion to Assess Fines and Statutory Penalties were served on the following by facsimile and by mailing the same to them by United States Post Office First Class Mail, postage thereon prepaid, at the address shown below on this the 6th day of June, 2000.

Mr. Gary K. Eubanks
President
OLS, Inc.
P.O. Box 2905
Alpharetta, GA 30023

Ms. Rogena Harris
Attorney at Law
Helein & Associates, P.C.
8180 Greensboro Drive, Suite 700
McLean, VA 22102

Mr. Tim Shatluck
Attorney at Law
Woods, Fuller, Shultz & Smith
P. O. Box 5027
Sioux Falls, SD 57117



Karen E. Cremer
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

 *** ACTIVITY REPORT ***

TIME	CONNECTION TEL	CONNECTION ID	NO.	MODE	PGS.	RESULT
13:45	9p14077400613		4363	TRANSMIT	5	OK 01'43
13:55	9p18502228195		4364	TRANSMIT	2	OK 01'01
13:58	9p18025422139		4365	TRANSMIT	1	OK 00'26
14:01	92248269	OLINGER LAW FIRM	4366	TRANSMIT	9	OK 11'33
14:02	917035287821		4367	TRANSMIT	0	NG 00'00
14:03					0	STOP
14:05	9p17035287821	FT ENERGY	4368	TRANSMIT	2	OK 01'21
14:07	9p2248269	OLINGER LAW FIRM	4369	TRANSMIT	3	OK 01'29
14:10	9p12028982213		4370	TRANSMIT	1	OK 00'29
14:12	9p13032900212		4371	TRANSMIT	2	OK 01'19
14:13	9p17035287821	FT ENERGY	4372	TRANSMIT	2	OK 01'22
14:14	9p16053574419		4373	TRANSMIT	0	NG 00'00
14:15					0	STOP
14:17	9p13193339021		4374	TRANSMIT	6	OK 02'52
14:18	9p2248269		4375	TRANSMIT	2	OK 01'25
14:19	9p16053394419		4376	TRANSMIT	2	OK 01'06
14:20	9p14084428730		4378	TRANSMIT	3	OK 01'15
14:21	9p14064429184		4377	TRANSMIT	0	NG 00'00
14:22					0	#018
14:23	9p15373551854		4379	TRANSMIT	2	OK 01'16
14:24	9p12028982213		4380	TRANSMIT	2	OK 02'13
14:25	9p2247102		4381	TRANSMIT	6	OK 03'04
14:26	9p2247102		4382	TRANSMIT	4	OK 02'36
14:27	4840		4383	TRANSMIT	2	OK 00'58
14:28	9p2248269	OLINGER LAW FIRM	4384	TRANSMIT	1	OK 00'44
14:29	9p18015352080	TELTRUST RECEIPT	4385	TRANSMIT	1	OK 00'53
14:30	9p14124315214		4386	TRANSMIT	3	OK 03'45
14:31	9p18005875816		4387	TRANSMIT	13	OK 06'51
14:32	9p18005875816		4388	TRANSMIT	1	OK 01'22
14:33	3608		4389	TRANSMIT	1	OK 00'25
14:34	9p16053395390		4390	TRANSMIT	2	OK 02'05
14:35	9p16126728397		4391	TRANSMIT	2	OK 01'26
14:36	9p19136245681	Sprint Ext Aff.	4392	TRANSMIT	1	OK 00'40
14:37	4840		4393	TRANSMIT	3	OK 01'04
14:38	9p16053321333	VIC	4394	TRANSMIT	2	OK 01'26
14:39	9p13037481978		4395	TRANSMIT	1	OK 00'34
14:40	9p12028982213		4396	TRANSMIT	1	OK 00'29
14:41			5936	AUTO FAX RX	11	OK 06'06
14:42	9p19136245681	Sprint Ext Aff.	4397	TRANSMIT	1	OK 00'41
14:43	3837		4398	TRANSMIT	1	OK 00'38
14:44	9p17037141330	Harris	4399	TRANSMIT	2	OK 01'06
14:45	9p17705609021	Ludens	4400	TRANSMIT	2	OK 01'46
14:46	9p16053393357	WOODS FULLER <i>Stattuch</i>	4401	TRANSMIT	2	OK 02'24

Action to Assess Fines and Statutory Penalties

South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of June 1, 2000 through June 7, 2000

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

ELECTRIC

EL00-020 In the Matter of the Filing by Montana-Dakota Utilities Company for Approval of its Revised Rate Sheets for its Cogeneration Rates.

Application by Montana-Dakota Utilities Company to comply with the Commission's Order in Docket F-3365 by remitting annually updated cogeneration rates for approval. No customers will be affected by the proposed changes as there are no customers currently served by these rates.

Staff Analyst: Dave Jacobson
Staff Attorney: Camron Hoseck
Date Docketed: 06/01/00
Intervention Deadline: NA

EL00-021 In the Matter of the Joint Request for Electric Service Territory Exception between McCook Electric Cooperative, Inc. and Sioux Valley-Southwestern Electric Cooperative, Inc.

On June 5, 2000, the Commission received a joint request for electric service territory exception between McCook Electric Cooperative and Sioux Valley Southwestern Electric Cooperative. The agreement between the two parties seeks an exception to the existing electric service territorial agreement to permit Sioux Valley Southwestern to provide electric service to Smith Farms, Inc. for a seed handling service in the Northeast quarter of Section 25, Township 103, Range 53 West.

Staff Analyst: Michele Farris
Staff Attorney: Karen Cremer
Date Docketed: 06/05/00
Intervention Deadline: 06/16/00

TELECOMMUNICATIONS

TC99-086 In the Matter of the Filing for Approval of a First Amendment to the Interconnection Agreement between DSLnet Communications, LLC and U S West Communications, Inc.

A first amendment to an interconnection agreement between DSLnet Communications, LLC and U S WEST Communications, Inc. was filed with the Commission. This amendment adds provisions which include UDIT, ADSL and line conditioning and associated rate elements.

Any party wishing to comment on the amendment may do so by filing written comments with the Commission and the parties to the amendment no later than June 26, 2000. Parties to the amendment may file written responses to the comments no later than twenty days after the service of the comments.

Staff Attorney: Camron Hoseck
Date Docketed: 05/05/00
Comments Due: 06/26/00

TC00-087 In the Matter of the Establishment of Switched Access Revenue Requirement for Midstate Communications, Inc.

Midstate Telephone Company and Heartland Communications, Inc., Kimball, South Dakota, filed a switched access cost study developing a revenue requirement that is included in the revenue requirement used to determine the switched access rates for the Local exchange Carrier Association. Midstate and Heartland were consolidated into Midstate Communications, Inc. on 01/01/00.

Staff Analyst: Heather K. Forney
Staff Attorney: Karen E. Cremer
Date Docketed: 06/01/00
Intervention Deadline: 06/23/00

TC00-088 In the Matter of the Filing for Approval of a First Amendment to an Amended Interconnection Agreement between U S WEST Communications, Inc. and Dakota Telecom, Inc.

A first amendment to an amended agreement for local wireline network interconnection and service resale between Dakota Telecom, Inc. and U S WEST Communications, Inc. was filed with the Commission. This amendment is made in order to allow Dakota Telecom, Inc. to originate EAS/local traffic from South Dakota and terminate this traffic in Nebraska. This EAS/local traffic must be within the same local calling areas as defined by U S WEST's current tariff.

Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than June 21, 2000. Parties to the amendment may file written responses to the comments no later than twenty days after the service of the comments.

Staff Attorney: Camron Hoseck
Date Docketed: 06/01/00
Comments Due: 06/21/00

TC00-089 In the Matter of OLS, Inc. and Certain John Does.

Commission Staff filed a Motion To Assess Fines and Statutory Penalties against OLS, Inc. The basis for this Motion is the number of complaints which have recently been filed against OLS, Inc. which are alleged to represent a continuing pattern of reckless

disregard for South Dakota law and a disregard for the rights of South Dakota consumers. Staff moves the Commission to assess fines and penalties in accordance with SDCL 49-31-93, 49-31-94, impose other remedies and assess costs associated with processing the complaints.

Staff Analyst: Leni Healy
Staff Attorney: Karen E. Cremer
Date Docketed: 06/06/00
Intervention Deadline: NA

You may receive this listing and other PUC publications via our website or via internet e-mail.
You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc/>

WOODS, FULLER, SHULTZ & SMITH P.C.

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FRANCIS M. SMITH - OF COUNSEL

MELVIN T. WOODS (1999-1998)
HOWELL L. FULLER (1909-1988)
JOHN B. SHULTZ (1912-1977)

WENDE A. JUNGROCK
ANDREW V. ANZELBOSCH
DEBRA E. SPROG
WILLIAM C. TAYLOR
WILLIAM H. FALKER
STUART L. FRED
DANIEL F. THORLEY
BRUCE E. CANNONBENDER
JAMES H. WOODBRIDGE
CLAYTON W. HANWAY-OTTOM
J. W. HERRICK
NORMAN W. CLEVELAND
FRANCIS M. SMITH
DANIEL E. KIRWAN
HOWARD W. WELDER

June 26, 2000

RECEIVED

JUN 28 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Ms. Karen Cremer
Staff Attorney
South Dakota Public
Utilities Commission
500 East Capitol
Pierre, SD 57501

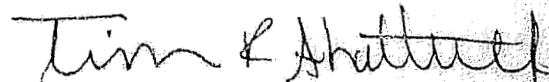
Re: In the Matter of OLS, Inc. and Certain John Does
TC00-089

Dear Karen:

Enclosed please find OLS' Response to Motion to Assess Fines and Statutory Penalties. I am in the process of speaking with OLS regarding whether it wants to pursue settlement discussions. Once I know where OLS stands settlement wise, I will be in touch.

Very truly yours,

WOODS, FULLER, SHULTZ & SMITH P.C.



Tim R. Shattuck

Enclosure

RECEIVED

JUN 28 2008

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

0-0

IN THE MATTER OF OLS, INC.
AND CERTAIN JOHN DOES.

RESPONSE TO MOTION TO
ASSESS FINES AND STATUTORY
PENALTIES
TC00-089

0-0

NOW COMES OLS, INC. ("OLS"), by and through its attorneys, and files this Response to the Staff of the South Dakota Public Utilities Commission's ("Staff") Motion to Assess Fines and Statutory Penalties ("Motion"), stating as follows:

1. The Staff states as its grounds for the Motion that the South Dakota Public Utilities Commission ("Commission") has recently received numerous complaints against OLS, listing each complaint and its current status. Forty-four of the 46 Complainants listed in the Motion were customers of OLS's interstate services only and were never customers of its intrastate services. Questions concerning the duties, charges, and liabilities of telephone companies with respect to interstate communications service are to be governed solely by federal law and states are precluded from acting in this area. Ivy Broadcasting Company v. American Telephone and Telegraph Company and New York Telephone Company, 391 F.2d 486 (2nd Cir. 1968). Pursuant to SDCL § 49-31-3, the Commission has no jurisdiction over interstate services otherwise regulated by federal law and regulation. Without waiving its objection to the jurisdiction of this Commission over the above-captioned complaint, OLS states the following for informational purposes only.

2. The Motion states that the complaints referenced therein represent a "continuing pattern of reckless disregard for South Dakota law." To the contrary, the feeding frenzy of complaints against OLS began with false statements by Staff to the media. On November 9,

1999, KELO-TV broadcast a statement by one of its reporters that she called the Commission to check on OLS or Online Services and found that OLS did "NOT have a certificate to legally do business in South Dakota." (Emphasis added.) This statement is false. OLS was granted its Certificate of Authority To Conduct Business As A Telecommunications Company Within The State of South Dakota by the Commission on June 30, 1998, effective July 28, 1998. Prior to the November 9th broadcast, according to the Commission's log of 1999 complaints, there had been only three informal complaints logged against OLS. Within days of the broadcast of the false information, there were hundreds of informal complaints. Tellingly, over seventy of those complainants had never even been OLS customers.

3. The result of the broadcast was the 46 complaints outlined in Staff's Motion, the first of which was filed on November 12, 1999. It is worth noting that while the filing period of the complaints spans November 1999 to April 2000, the complaints actually only relate to events occurring during the October, early November 1999 time period. Thus, it is clear from all of the above, that there is no pattern of continual reckless disregard on OLS's part.

4. OLS has used and is continuing to use its best efforts to investigate and respond to each complaining party as quickly as possible. OLS was not able to respond as quickly as it would have liked because its resources were heavily burdened by the large number of complaints generated by the uninformed reporting. Moreover, OLS has had to battle the public confusion resulting from being telemarketed by a number of different long distance carriers and having charges from multiple companies listed on one phone bill (to include not only actual carriers but also billing companies and underlying facilities-based carriers).

5. Notwithstanding the above and as evidenced by the Motion, in an effort to show good faith, irrespective of the merits of any particular complaint and the lack of jurisdiction of this

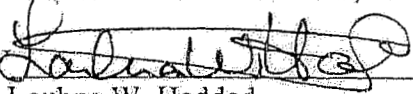
particular forum, OLS has settled 39 of the 46 complaints and continues to pursue settlements with the remaining seven complainants.

6. In assessing a civil penalty under SDCL § 49-31-94, the statute provides that the Commission should consider the size of the company, prior offense and compliance history, and the company's good faith in attempting to achieve compliance. First, OLS is a small, family-owned business that has been in the business of providing long distance services for only three years. Second, prior to broadcast of the false statement by KELO-TV on November 9, 1999, OLS had only three informal complaints logged against it. Moreover, no complaints were logged for any action undertaken by OLS after November 1999. Finally, OLS has gone to great lengths to settle all complaints against it, demonstrating a good faith effort on the part of OLS to achieve compliance. As such, the fines and penalties requested by the Staff are not warranted.

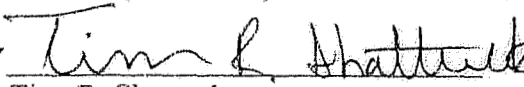
7. Based on the above, we respectfully request that the Commission deny the Motion to Assess Fines and Statutory Penalties.

Dated this 26th day of June, 2000.

HELEIN & ASSOCIATES, P.C.

BY 
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8180 Greensboro Drive, Suite 700
McLean, Virginia 22120
(703) 714-1321

WOODS, FULLER, SHULTZ & SMITH P.C.

BY 
Tim. R. Shattuck
300 South Phillips Avenue, Suite 300
Post Office Box 5027
Sioux Falls, SD 57117-5027
(605) 336-3890

Attorneys for OLS, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon Karen E. Cremer, Staff Attorney, South Dakota Public Utilities Commission, 500 East Capitol, Pierre, South Dakota 57501, by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By: Tim R. Hattuck

Date: June 26, 2000

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

IN THE MATTER OF OLS, INC. AND CERTAIN) ORDER FOR AND NOTICE
JOHN DOES) OF HEARING
)
)
) TC00-089

On June 6, 2000, the Staff of the South Dakota Public Utilities Commission respectfully moved the South Dakota Public Utilities Commission (Commission) to assess fines and penalties as specified in SDCL 49-31-38, 49-31-38.1, 49-31-93, 49-31-94, 49-31-95 and 49-31-96 against OLS, Inc.

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Commission Staff stated that the above referenced complaints represented a continuing pattern of reckless disregard for South Dakota law and a disregard for the rights of South Dakota consumers. Commission Staff stated that the public interest demanded that this situation be dealt with and that this type of activity not continue or recur in South Dakota.

On June 6, 2000, the Motion was sent to OLS. On June 28, 2000, the Commission received a Response to Motion to Assess Fines and Statutory Penalties from OLS.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13, including 49-13-1 through 49-13-16, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-7.3, 49-31-7.4, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, 49-31-89 through 49-31-97, inclusive, and ARSD Chapters 20:10:01 and 20:10:34.

A hearing shall be held on August 29, 2001, beginning at 9:00 A.M., in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. All persons testifying will be subject to cross-examination by the parties.

The issue at the hearing is whether OLS committed unlawful or unreasonable acts, rates, practices or omissions and, if so, whether OLS shall be assessed fines or other penalties pursuant to SDCL 49-31-38 through 49-31-38.3 and/or assessed a civil fine of not more than \$20,000 for each alleged violation of SDCL 49-31-89 through 49-31-97.

The hearing shall be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights shall be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of the hearing, the Commission shall determine whether OLS committed unlawful or unreasonable acts, rates, practices or omissions and, if so, whether OLS shall be assessed fines or other penalties pursuant to SDCL 49-31-38 through 49-31-38.3 and/or assessed a civil fine of not more than \$20,000 for each alleged violation of SDCL 49-31-89 through 49-31-97. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing shall be held at the time and place specified above on the issue of whether OLS committed unlawful or unreasonable acts, rates, practices or omissions and, if so, whether OLS shall be assessed fines or other penalties pursuant to SDCL 49-31-38 through 49-31-38.3 and/or assessed a civil fine of not more than \$20,000 for each alleged violation of SDCL 49-31-89 through 49-31-97.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 7th day of August, 2001.

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.	
Signed by	<u>Arlene Kelso</u>
Date	<u>8/7/01</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

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

IN THE MATTER OF OLS, INC. AND CERTAIN JOHN DOES))))	ORDER CANCELLING HEARING TC00-089
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On June 6, 2000, the Staff of the South Dakota Public Utilities Commission respectfully moved the South Dakota Public Utilities Commission (Commission) to assess fines and penalties as specified in SDCL 49-31-38, 49-31-38.1, 49-31-93, 49-31-94, 49-31-95 and 49-31-96 against OLS, Inc.

The grounds for this Motion were that the Commission had received numerous complaints against OLS, Inc. within the recent past. Those complaints and their present status are:

DOCKET	FILED	COMPLAINANT	CURRENT STATUS
CT99-056	11-12-99	Bertsch	settled
CT99-060	11-19-99	Hoffmann	settled
CT99-061	11-22-99	Johnson	settled
CT99-062	11-22-99	Crompton	settled
CT99-063	11-22-99	Beckler	settled
CT99-066	12-01-99	Daly	settled
CT99-067	12-02-99	Ries	settled
CT99-068	12-08-99	Binfet	settled
CT99-069	12-08-99	Curran	settled
CT99-070	12-09-99	C. Hansen	settled
CT99-073	12-07-99	Hammer	settled
CT99-074	12-10-99	Finwall	settled
CT99-075	12-13-99	J. Hansen	settled
CT99-077	12-14-99	Matteson	settled
CT99-078	12-14-99	Wilcox	settled
CT99-079	12-14-99	Bowen	settled
CT99-080	12-15-99	Enstad	settled
CT99-082	12-17-99	Beutow	settled
CT99-085	12-20-99	Wiese	settled
CT99-086	12-20-99	Bullene	settled
CT99-089	12-23-99	Erickson	settled
CT00-001	12-27-99	Moes	settled
CT00-003	12-28-99	Ingalls	settled
CT00-004	12-30-99	Stich	settled
CT00-005	12-30-99	Frost	settled
CT00-006	12-30-99	DeHoogh	settled

CT00-009	01-03-00	Ewald	settled
CT00-010	01-03-00	Fritz	settled
CT00-011	01-05-00	Schamber	settled
CT00-013	01-10-00	Becker	settled
CT00-015	01-11-00	Hinkleman	settled
CT00-016	01-11-00	Berget	settled
CT00-018	01-14-00	Howell	settled
CT00-027	01-25-00	Frederick	settled
CT00-028	01-25-00	Bendel	settled
CT00-032	02-01-00	Gertsen	settled
CT00-033	02-04-00	Hilgemann	settled
CT00-034	02-02-00	Glynn	settled
CT00-042	02-28-00	Migge	settled
CT00-045	02-22-00	Campbell	settled
CT00-046	03-02-00	Olson	settled
CT00-047	03-01-00	Stoltenburg	settled
CT00-053	03-23-00	Frye	settled
CT00-056	03-29-00	Braunstein	settled
CT00-062	04-20-00	Jensen	settled
CT00-067	04-25-00	Slagle	settled

Commission Staff stated that the above referenced complaints represented a continuing pattern of reckless disregard for South Dakota law and a disregard for the rights of South Dakota consumers. Commission Staff stated that the public interest demanded that this situation be dealt with and that this type of activity not continue or recur in South Dakota.

On June 6, 2000, the Motion was sent to OLS. On June 28, 2000, the Commission received a Response to Motion to Assess Fines and Statutory Penalties from OLS.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 49-13, including 49-13-1 through 49-13-16, inclusive, and SDCL Chapter 49-31, including 49-31-3, 49-31-7, 49-31-7.1, 49-31-7.2, 49-31-7.3, 49-31-7.4, 49-31-10, 49-31-11, 49-31-38, 49-31-38.1, 49-31-38.2, 49-31-38.3, 49-31-89 through 49-31-97, inclusive, and ARSD Chapters 20:10:01 and 20:10:34.

By order dated August 7, 2001, a hearing was scheduled for August 29, 2001, beginning at 9:00 A.M., in Room 412 of the State Capitol Building, 500 E. Capitol, Pierre, South Dakota. Commission Staff has informed the Commission that settlement is pending between Commission Staff and OLS, so therefore the hearing is cancelled. It is therefore

ORDERED, that the hearing scheduled for August 29, 2001, is cancelled.

Dated at Pierre, South Dakota, this 23rd day of August, 2001.

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.

Arlene Kaelo

Date 8/23/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

The Helein Law Group, P.C.

4180 Greensboro Drive
Suite 700
McLean, VA 22102

(703) 714-1300 (Telephone)
(703) 714-1330 (Facsimile)
mail@helein.com

Management Consulting Group
Global Telecompetition Consultants, Inc. (GTC)
(703) 714-1320 (Telephone)

Writer's Direct Dial Number

(703) 714-1321

October 18, 2001

Via Overnight Delivery

Karen Cremer, Staff Attorney
South Dakota Public Utilities Commission
State Capitol, 500 E. Capitol Avenue
Pierre, SD 57501

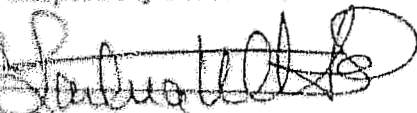
Re: In the Matter of OLS, Inc. and Certain John Does - TC 00-089

Dear Ms. Cremer:

On behalf of OLS, Inc., enclosed please find the original Settlement Agreement which has been signed by Gary Eubanks. This Agreement incorporates the modification to Paragraph 13 per your request.

Additional copies of this letter and Agreement are enclosed. Please date-stamp the extra copy, and return it to me in the enclosed postage-prepaid envelope. Should you have any questions with respect to this matter, please contact me.

Respectfully submitted,



Loubna W. Haddad

Enclosures

cc: Tim Shattuck, Esq.
Woods, Fuller, Shultz & Smith, PC
300 South Phillips Avenue, Suite 300
Sioux Falls, SD 57117-5027

RECEIVED

OCT 19 2001

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Received OCT 16 2001

Writer's E-mail Address:

lhaddad@helein.com

OCT 19 2001

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

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

**IN THE MATTER OF OLS, INC.
AND CERTAIN JOHN DOES**

)
)

**SETTLEMENT AGREEMENT
TC00-089**

INTRODUCTION

1. This Settlement Agreement ("Agreement") is entered into between the South Dakota Public Utilities Commission Staff ("Staff") and OLS, Inc. ("OLS").

2. OLS is a Georgia corporation with its principal place of business at 1030 Cambridge Square, Suite E, Alpharetta, Georgia, 30201. OLS was granted a Certificate of Authority to Conduct Business as a Telecommunications Company with the State of South Dakota by the Commission on July 30, 1998, effective, July 28, 1998.

3. Beginning in early November 1999, Staff was contacted by 641 South Dakota consumers making informal complaints related to OLS. Prior to this time, only three informal complaints had been logged against OLS in South Dakota. Also in early November 1999, a local television broadcast falsely reported that OLS was not authorized to conduct business in South Dakota.

4. Staff pursued 46 of the consumer complaints formally, and all were promptly settled by OLS without any admission or determination of liability. The other complaints were disposed of informally by mutual agreement of OLS and the consumer. On June 6, 2000, Staff filed a Motion to Assess Fines and Statutory Penalties against OLS. None of the instances cited in Staff's Motion involved actions undertaken by OLS

after the November 1999 broadcast.

5. OLS, by entering into this Agreement, makes no admission of liability as to any alleged wrongdoing and expressly denies any such wrongdoing.

6. OLS has consented to the entry of the Agreement without adjudication of any issues of fact or law solely in the interest of avoiding the expense, time, and uncertainty of formal proceedings.

FINAL SETTLEMENT

7. OLS is a small, family-owned business that has been in the business of providing long distance services for only three years.

8. OLS has vigorously pursued and succeeded in settling all disputes cited in Staff's Motion to the satisfaction of all parties involved. The majority of these - nearly 83% - were settled before initiation of Staff's Motion and all but a few were resolved by late February 2000.

9. OLS has incurred considerable expenses in settling these matters.

10. Since the initiation of Staff's Motion, OLS has worked with Staff in good faith.

11. OLS' resolution of all complaints and its interaction with Staff demonstrate its good faith efforts and substantial compliance with all applicable Commission rules.

12. OLS no longer markets to consumers in South Dakota and does not intend to market in South Dakota in the future, eliminating any potential for a recurrence of the

events alleged here. In addition, to further protect itself from similar risks in the future, OLS has transitioned to "in-house" marketing for all active territories and has replaced LEC billing with direct billing.

13. OLS shall make a voluntary payment in satisfaction of SDCL 49-31-94 to the State of South Dakota in the amount of Twenty Thousand Dollars (\$20,000.00) and pay costs pursuant to SDCL 49-31-96 to the South Dakota Public Utilities Commission in the sum of Six Thousand Dollars (\$6,000.00) as reimbursement for costs associated with the proceedings specified in Docket TC00-089. The parties understand and agree that these voluntary payment are not an admission of liability and are made in lieu of any fines, penalties, or actions that might be authorized under SDCL 49-31-38, 49-31-38.1, 49-31-93, and 49-31-95, or any other statutes or rules under which the South Dakota Public Utilities Commission is acting. The parties further agree that such payment is fair and reasonable, in the best interests of all parties involved, and an appropriate resolution of TC00-089.

14. The voluntary payment shall be made in three installments in the following manner: (1) a \$6,000 payment upon Commission approval of this Agreement; (2) a \$10,000 payment 60 days thereafter; and (3) a final \$10,000 payment 60 days thereafter.

15. The parties understand and agree that this Agreement addresses and encompasses the following specific Docket Numbers, each cited in Staff's Motion: CT99-056, CT99-060, CT99-061, CT99-062, CT99-063, CT99-066, CT99-067, CT99-068,

CT99-069, CT99-070, CT99-073, CT99-074, CT99-075, CT99-077, CT99-078, CT99-079, CT99-080, CT99-082, CT99-085, CT99-086, CT99-089, CT00-001, CT00-003, CT00-004, CT00-005, CT00-006, CT00-009, CT00-10, CT00-011, CT00-013, CT00-015, CT00-016, CT00-018, CT00-027, CT00-028, CT00-032, CT00-033, CT00-034, CT00-042, CT00-045, CT00-046, CT00-047, CT00-053, CT00-056, CT00-062, CT00-067. The parties further understand and agree that this Agreement encompasses any similar matters involving OLS occurring prior to the date of this Agreement.

16. Undersigned Staff agrees to advise the Public Utilities Commission of this Agreement and to request the Commission to enter an Order dismissing with prejudice Staff's Motion. Staff further agrees not to bring any other motion or request for proceedings relating to the matters referenced in Staff's Motion, intending this to be a full, final, and complete resolution.

OTHER PROVISIONS

17. This Agreement shall not be final and effective until it is approved and adopted by the South Dakota Public Utilities Commission. If the Commission does not approve this Agreement, it shall have no force or effect. If this Agreement is adopted by the Commission, with modification, the parties must consent to the modification in writing within 30 days of the Commission's order proposing modification. If the modifications are not acceptable to one of the Parties, then this Agreement is void.


18. If any portion, provision, or part of this Agreement is held to be invalid,

unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder, and shall not affect the validity or enforceability of the remaining provisions, portions, or parts.

19. The undersigned acknowledges that they are duly authorized to execute this Agreement on behalf of their respective principals, and that such execution is made within the course and scope of their respective agency and/or employment.

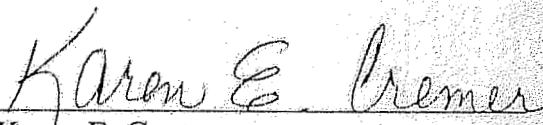
OLS INC.

DATE 10-17-01

By: 
Gary E. Banks, President

STAFF OF SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

DATE 10-19-01

By: 
Karen E. Cremer
Staff Attorney

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF OLS, INC. AND CERTAIN)
JOHN DOES)
)
)
)
)
)
)

ORDER APPROVING
AGREEMENT, DISMISSING
MOTION AND CLOSING
DOCKET

TC00-089

On June 6, 2000, the Staff (Staff) of the South Dakota Public Utilities Commission (Commission) filed a Motion to Assess Fines and Statutory Penalties against OLS, Inc. (OLS). Staff asked for the imposition of statutory fines and penalties, the recovery of costs and the revocation of OLS' certificate of authority should the Commission deem the acts of OLS sufficient to merit such action. On June 28, 2000, the Commission received a Response to Motion to Assess Fines and Statutory Penalties from OLS. A hearing in this matter was scheduled for August 29, 2001. By order dated August 23, 2001, the hearing was cancelled as Commission Staff informed the Commission that settlement was pending between Commission Staff and OLS.

On October 16, 2001, a Settlement Agreement (the Agreement) was filed with the Commission, said Agreement representing a compromise and settlement of this matter between OLS and Staff

The Commission has jurisdiction in this matter by reason of Chapter 49-31, SDCL, generally and SDCL 49-31-93, 49-31-94 and 49-31-96, in particular.

At its duly noticed October 23, 2001, meeting, the Commission considered whether to approve the Agreement. OLS appeared through its local counsel of record, Tim R. Shattuck. Commission Staff recommended its approval.

The Commission unanimously voted to approve the agreement. It is therefore

ORDERED, that the Commission approves the agreement; and it is

FURTHER ORDERED, that the terms and conditions of the Agreement shall be incorporated into this Order by reference and attached hereto, the same as if it was fully recited herein and shall as such be fully binding upon the parties to it; and it is

FURTHER ORDERED, that pursuant to the Agreement, the motion of Staff as described in this Order shall be dismissed with prejudice and the docket shall be closed.

Dated at Pierre, South Dakota, this 31st day of October, 2001.

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.	
Signed:	<u>Dulaine Koelbe</u>
Date:	<u>11/1/01</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF OLS, INC.) SETTLEMENT AGREEMENT
AND CERTAIN JOHN DOES) TC00-089

INTRODUCTION

1. This Settlement Agreement ("Agreement") is entered into between the South Dakota Public Utilities Commission Staff ("Staff") and OLS, Inc. ("OLS").

2. OLS is a Georgia corporation with its principal place of business at 1030 Cambridge Square, Suite E, Alpharetta, Georgia, 30201. OLS was granted a Certificate of Authority to Conduct Business as a Telecommunications Company with the State of South Dakota by the Commission on July 30, 1998, effective, July 28, 1998.

3. Beginning in early November 1999, Staff was contacted by 641 South Dakota consumers making informal complaints related to OLS. Prior to this time, only three informal complaints had been logged against OLS in South Dakota. Also in early November 1999, a local television broadcast falsely reported that OLS was not authorized to conduct business in South Dakota.

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after the November 1999 broadcast.

5. OLS, by entering into this Agreement, makes no admission of liability as to any alleged wrongdoing and expressly denies any such wrongdoing.

6. OLS has consented to the entry of the Agreement without adjudication of any issues of fact or law solely in the interest of avoiding the expense, time, and uncertainty of formal proceedings.

FINAL SETTLEMENT

7. OLS is a small, family-owned business that has been in the business of providing long distance services for only three years.

8. OLS has vigorously pursued and succeeded in settling all disputes cited in Staff's Motion to the satisfaction of all parties involved. The majority of these - nearly 80% - were settled before initiation of Staff's Motion and all but a few were resolved by late February 2000.

9. OLS has incurred considerable expenses in settling these matters.

10. Since the initiation of Staff's Motion, OLS has worked with Staff in good faith.

11. OLS' resolution of all complaints and its interaction with Staff demonstrate its good faith efforts and substantial compliance with all applicable Commission rules.

12. OLS no longer markets to consumers in South Dakota and does not intend to market in South Dakota in the future, eliminating any potential for a recurrence of the

events alleged here. In addition, to further protect itself from similar risks in the future, OLS has transitioned to "in-house" marketing for all active territories and has replaced LEC billing with direct billing.

13. OLS shall make a voluntary payment in satisfaction of SDCL 49-31-94 to the State of South Dakota in the amount of Twenty Thousand Dollars (\$20,000.00) and pay costs pursuant to SDCL 49-31-96 to the South Dakota Public Utilities Commission in the sum of Six Thousand Dollars (\$6,000.00) as reimbursement for costs associated with the proceedings specified in Docket TC00-089. The parties understand and agree that these voluntary payment are not an admission of liability and are made in lieu of any fines, penalties, or actions that might be authorized under SDCL 49-31-38, 49-31-38.1, 49-31-93, and 49-31-95, or any other statutes or rules under which the South Dakota Public Utilities Commission is acting. The parties further agree that such payment is fair and reasonable, in the best interests of all parties involved, and an appropriate resolution of TC00-089.

14. The voluntary payment shall be made in three installments in the following manner: (1) a \$6,000 payment upon Commission approval of this Agreement; (2) a \$10,000 payment 60 days thereafter; and (3) a final \$10,000 payment 60 days thereafter.

15. The parties understand and agree that this Agreement addresses and encompasses the following specific Docket Numbers, each cited in Staff's Motion: CT99-056, CT99-060, CT99-061, CT99-062, CT99-063, CT99-066, CT99-067, CT99-068,

CT99-069, CT99-070, CT99-073, CT99-074, CT99-075, CT99-077, CT99-078, CT99-079, CT99-080, CT99-082, CT99-085, CT99-086, CT99-089, CT00-001, CT00-003, CT00-004, CT00-005, CT00-006, CT00-009, CT00-10, CT00-011, CT00-013, CT00-015, CT00-016, CT00-018, CT00-027, CT00-028, CT00-032, CT00-033, CT00-034, CT00-042, CT00-045, CT00-046, CT00-047, CT00-053, CT00-056, CT00-062, CT00-067. The parties further understand and agree that this Agreement encompasses any similar matters involving OLS occurring prior to the date of this Agreement.

16. Undersigned Staff agrees to advise the Public Utilities Commission of this Agreement and to request the Commission to enter an Order dismissing with prejudice Staff's Motion. Staff further agrees not to bring any other motion or request for proceedings relating to the matters referenced in Staff's Motion, intending this to be a full, final, and complete resolution.

OTHER PROVISIONS

17. This Agreement shall not be final and effective until it is approved and adopted by the South Dakota Public Utilities Commission. If the Commission does not approve this Agreement, it shall have no force or effect. If this Agreement is adopted by the Commission, with modification, the parties must consent to the modification in writing within 30 days of the Commission's order proposing modification. If the modifications are not acceptable to one of the Parties, then this Agreement is void.

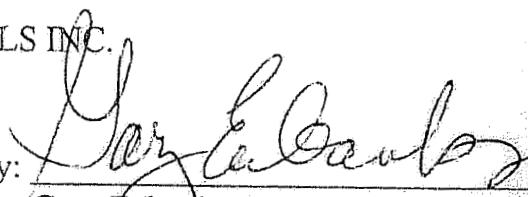
18. If any portion, provision, or part of this Agreement is held to be invalid,

unenforceable, or void for any reason whatsoever, that portion shall be severed from the remainder, and shall not affect the validity or enforceability of the remaining provisions, portions, or parts.

19. The undersigned acknowledges that they are duly authorized to execute this Agreement on behalf of their respective principals, and that such execution is made within the course and scope of their respective agency and/or employment.


OLS INC.

DATE: 10-17-01

By: 
Gary E. Banks, President

STAFF OF SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

DATE: 10-19-01

By: 
Karen E. Cremer
Staff Attorney

The Helein Law Group, P.C.

8180 Greensboro Drive
Suite 700
McLean, VA 22102

(703) 714-1300 (Telephone)
(703) 714-1330 (Facsimile)
mail@helein.com

Management Consulting Group
Global Telecompetition Consultants, Inc. (GTC)
(703) 714-1320 (Telephone)

RECEIVED

NOV 08 2001

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Writer's Direct Dial Number

(703) 714-1321

November 7, 2001

Writer's E-mail Address

lhaddad@helein.com

Via Overnight Delivery

Karen Cremer, Staff Attorney
South Dakota Public Utilities Commission
State Capitol, 500 E. Capitol Avenue
Pierre, SD 57501

Re: In the Matter of OLS, Inc. and Certain John Does - TC 00-089

Dear Ms. Cremer:

Pursuant to the Settlement Agreement of October 16, 2001, and subsequent Order approving said Settlement Agreement dated October 31, 2001, on behalf of OLS, Inc., enclosed please find the first installment in the amount of \$6,000.00 made out to the South Dakota Public Utilities Commission.

An additional copy of this letter is enclosed. Please date-stamp the extra copy, and return it to me in the enclosed postage-prepaid envelope. Should you have any questions with respect to this matter, please contact me.

Respectfully submitted,



Loubna W. Haddad

Enclosure

cc: Tim Shattuck, Esq.
Woods, Fuller, Shultz & Smith, PC
300 South Phillips Avenue, Suite 300
Sioux Falls, SD 57117-5027

OLS, INC.
OPERATING ACCOUNT
1100 CAMBRIDGE SQUARE, SUITE E
ALPHARETTA, GA 30004

SUNTRUST BANK
ATLANTA, GA 30303
64-10/610

11/6/2001

PAY TO THE ORDER OF South Dakota PUC

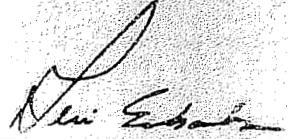
\$ **6,000.00

Six Thousand and 00/100*****

DOLLAR

South Dakota PUC

1st Payment



OLS, INC. / OPERATING ACCOUNT

South Dakota PUC
Professional Fees Legal Fees

11/6/2001

6,000.00

Operating - Checking 1st Payment

6,000.00

The Helein Law Group, P.C.

5150 Greenbark Drive
Suite 700
McLeish, VA 22102

(800) 714-1320 (Telephone)
(703) 714-1320 (Facsimile)
mailto:lh@helein.com

Management Consulting Group
Global Telecompetition Consultants, Inc. (GTC)
(800) 714-1320 (Telephone)

Writer's Direct Dial Number

(703) 714-1321

Writer's E-mail Address

lhaddad@helein.com

December 19, 2001

Via Overnight Delivery

Karen Cremer, Staff Attorney
South Dakota Public Utilities Commission
State Capitol, 500 E. Capitol Avenue
Pierre, SD 57501

Re: In the Matter of OLS, Inc. and Certain John Does - TC 00-089

Dear Ms. Cremer:

Pursuant to the Settlement Agreement of October 16, 2001, and subsequent Order approving said Settlement Agreement dated October 31, 2001, on behalf of OLS, Inc., enclosed please find the second installment of the voluntary payment in the amount of \$10,000.00 made out to the South Dakota Public Utilities Commission.

An additional copy of this letter is enclosed. Please date-stamp the extra copy and return to me in the enclosed postage-prepaid envelope. Should you have any questions with respect to this matter, please do not hesitate to contact me.

Enclosure

Cc: Tim Shattuck, Esq.
Geri Eubanks

RECEIVED

DEC 20 2001

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Respectfully,



Loubna W. Haddad
Counsel to OLS, Inc.