DOCKET NO. TC01-173

In the Matter of IN THE MATTER OF JATO OPERATING TWO CORP.'S FAILURE TO SUBMIT A REPORT AND PAY THE GROSS RECEIPTS TAX

Public Utilities Commission of the State of South Dakota

DATE		MEMORANDA
11/7	01	Order for and Notice of Show Cause Hearing.
11/8	01	Yoakley Filing.
12/20	01	Find of Fact Con. of Law and Conclusion, Notice of Entry of Judgment.
12/20	01	Docket Closed.

STATE PUBLISHING CO., PIERRE, SOUTH DAKOTA

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF JATO OPERATING TWO CORP.'S FAILURE TO SUBMIT A REPORT AND PAY THE GROSS RECEIPTS TAX	))))	ORDER FOR AND NOTICE OF SHOW CAUSE HEARING TC01-173

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 3, 2001 and July 13, 2001, JATO Operating Two Corp. (JATO) 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.

JATO shall appear on December 12, 2001, at 3:00 P.M. (CST) in the Cactus Conference Room, State Capitol Building, 500 E. Capitol, 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 the Commission's jurisdiction over telecommunications companies found at SDCL Chapters 1-26, 49-1, 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 JATO's Certificate of Authority, assess a civil fine against the company, and/or institute collection proceedings against JATO for failure to pay gross receipts tax.

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 to fine, or suspend or revoke JATO's Certificate of Authority, assess a civil fine against the company, and/or institute collection proceedings against JATO for failure to pay gross receipts tax. 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 show cause hearing in the matter of JATO shall be held on December 12, 2001, at 3:00 P.M. (CST) in the Cactus Conference Room, State Capitol Building, 500 E. Capitol, Pierre, South Dakota. And it is

FURTHER ORDERED, that, in the event JATO shall file an appropriate report and pay the delinquent gross receipts tax, including the 10% penalty for each month of delinquency, the hearing and actions mentioned herein shall not be held or taken, otherwise this order shall remain in effect.

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-[illegible]-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 November, 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.

By: Delaine Kolbo

Date: 11/6/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg

JAMES A. BURG, Chairman

Pam Nelson

PAM NELSON, Commissioner

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Sent to JATO Operating Two Corp.

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

Street, Apt. No.; or PO Box No. 999 18th St, Ste. 2600
City, State, ZIP+4 Denver CO 80202-2489

PS Form 3800, July 1999 See Reverse for Instructions

POSTAGE REQUIRED

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of November 1, 2001 through November 7, 2001

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

CONSUMER COMPLAINTS

CT01-049 In the Matter of the Complaint filed by Ida Lagge, Scotland, South Dakota, against MCI WorldCom Regarding Unauthorized Switching of Services.

Complainant states that she continuously receives calls from MCI asking her to change her long distance service to MCI. Each time Complainant states that she told the caller that she did not want to change providers. To Complainant's knowledge, she did not change her long distance provider to MCI. Complainant became aware that her long distance had been changed when she attempted to make a long distance call and she had no long distance service on her line. Complainant requests that the Commission review the tape of her conversation with the MCI representative and put sanctions on MCI. Complainant also requests that all charges be removed and that she be awarded $1,500.00 from MCI for the undue harassment, mental anguish and the many sleepless nights they have caused her.

Staff Analyst: Mary Healy
Staff Attorney: Karen Cremer
Date Docketed: 11/06/01
Intervention Deadline: N/A

CT01-050 In the Matter of the Complaint filed by Margaret Underwood, Pierre, South Dakota, against Talk America, Inc. Regarding Failure to Cancel Telecommunications Services.

Complainant states that she is receiving unauthorized billings by Talk America, Inc. Complainant further states that the company told her that they would remove the monthly charge and refund her money, but on the next bill she was charged again and not given a refund. Complainant states she wants the account closed and a complete refund of all charges.

Staff Analyst: Charlene Lund
Staff Attorney: Kelly Frazier
Date Docketed: 11/07/01
Intervention Deadline: N/A

ELECTRIC

EL01-026 In the Matter of the Filing by Otter Tail Power Company for Approval of an Electric Service Agreement for the Supply of Bulk Interruptible Power between Otter Tail Power Company and Valley Queen Cheese Factory, Inc.

On November 2, 2001, the Commission received a filing from Otter Tail Power Company in compliance with South Dakota Codified Law 49-34A. The Agreement is entered into pursuant to Otter Tail's Bulk Interruptible Service Tariff, as on file with the Commission.

Staff Analyst: Dave Jacobson
Staff Attorney: Kelly Frazier
Date Docketed: 11/02/01
Intervention Deadline: 11/23/01

Report and Pay the Gross Receipts Tax.

TC01-170 In the Matter of Enhanced Communications Network, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-171 In the Matter of erbia Network, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-172 In the Matter of Internet Telephone Company's Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-173 In the Matter of JATO Operating Two Corp.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-174 In the Matter of LDC Telecommunications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-175 In the Matter of NewPath Holdings, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-176 In the Matter of Ozark Telecom, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-177 In the Matter of PAM Oil, Inc. d/b/a PAM Communications' Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-178 In the Matter of PNV, Inc. f/k/a PNV.net, Inc. f/k/a Park 'N View, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-179 In the Matter of ServiSense.com, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-180 In the Matter of SouthNet Telecomm Services, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-181 In the Matter of Special Accounts Billing Group, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-182 In the Matter of Telera Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-183 In the Matter of Telicor Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-184 In the Matter of Telscape USA, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-185 In the Matter of Teltrust Communications Services, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-186 In the Matter of TotalAccess.com, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-187 In the Matter of Vee Em, Inc. f/k/a Speer Virtual Media, Ltd.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

Public Utilities Commission
500 East Capitol Avenue
Pierre SD 57501-5070

Temp Return Service Requested

CERTIFIED MAIL

7099 3220 0004 5201 5528

JATO OPERATING TWO CORP
999 18TH STREET SUITE 2600
DENVER CO 80202-2489

JATO999* 802022011 1601 39 11/13/01
RETURN TO SENDER
:JATO OPERATING TWO CORP
600 17TH ST STE 1800S
DENVER CO 80202-5441

RETURN TO SENDER

802022011080 302

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

7099 3220 0004 0657 5047

Article Sent To:

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	$

Postmark Here

Name (Please Print Clearly) (To be completed by mailer)
JATO Operating Two Corp
Street, Apt. No.; or PO Box No.
600 17th St., Suite 1800S
City, State, ZIP+4
Denver, CO 80202-5441

PS Form 3800, July 1999 See Reverse for Instructions

Is your RETURN ADDRESS completed on the reverse side?

SENDER:
- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write *"Return Receipt Requested"* on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):
1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
JATO Operating Two Corp.
600 17th St., Ste 1800S
Denver, CO
80202-5441

4a. Article Number
7099 3220 0004 0657 5047

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

7. Date of Delivery
11-26-01

5. Received By: *(Print Name)*
Sue Toms

8. Addressee's Address (Only if requested and fee is paid)

Return Receipt

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF JATO OPERATING TWO CORP.'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 TC01-173

On November 7, 2001, the Public Utilities Commission (Commission) issued an Order for and Notice of Show Cause Hearing against JATO Operating Two Corp. (JATO) for failure to submit an annual report and pay the gross receipts tax. The hearing was held as scheduled on December 13, 2001, at 3:00 P.M., in the Cactus Conference Room, State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The reason for the hearing was to give JATO an opportunity to show cause why the Commission should not revoke its Certificate of Authority, or other specified actions, for failure to submit an annual report as required by ARSD 20:10:24:04 or pay the gross receipts tax as required by SDCL 49-1A-1. Commissioners Burg and Nelson were present. Also present were Karen E. Cremer, Commission Staff Attorney and Sue Cichos, Deputy Executive Director for the Commission. No representative of JATO appeared at the hearing. After hearing the testimony, the Commission voted unanimously to revoke JATO's Certificate of Authority for failure to file the gross receipts tax report.

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

FINDINGS OF FACT

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

2. Sue Cichos, Deputy Executive Director for the Commission, sent letters to JATO on May 3, 2001 and July 13, 2001, requesting payment of the gross receipts tax as authorized by SDCL 49-1A-1. She testified that JATO never filed its gross receipts tax report.

3. A copy of the Order for and Notice of Show Cause Hearing was sent by certified mail to JATO on November 8, 2001.

4. No representative of JATO appeared at the hearing to show cause why the Commission should not revoke its Certificate of Authority.

CONCLUSIONS OF LAW

1. 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.

2. 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.

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3. JATO has failed to file the gross receipts tax report.

4. 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 JATO to file the gross receipts tax report in violation of 49-1A-4, the Commission revokes JATO'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 JATO 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 20th day of December, 2001. 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 20th day of December, 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.

By: Delaine Kolbo

Date: 12/21/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner