

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

Public Utilities Commission of the State of South Dakota

MEMORANDA

11/7 as Order for and Notice of New Cause Hearing;
11/20 as Order for
11/20 as Order for and Notice of New Cause Hearing; Notice of Entry of Final Order;
11/20 as Order for

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

**IN THE MATTER OF XTRACOM, INC.'S) ORDER FOR AND NOTICE
FAILURE TO SUBMIT A REPORT AND PAY) OF SHOW CAUSE HEARING
THE GROSS RECEIPTS TAX)
)
) TC01-188**

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, Xtracom, Inc. (Xtracom) 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.

Xtracom 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 Xtracom's Certificate of Authority, assess a civil fine against the company, and/or institute collection proceedings against Xtracom 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

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

Send To:
Tracom, Inc

Postage: \$
 Insurance: \$
 Return Receipt Fee: \$
 Restricted Delivery Fee: \$
 Sales Tax: \$
 Other Postage & Fees: \$

Postmark Here

Address (Please Print Clearly) (To be completed by mailer)

Street, Apt. No. or PO Box No.
833 West Chicago Ave
Chicago, IL

See Reverse for Instructions

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SENDER:

1. Complete items 1-4 for additional services.
 2. Complete items 5-8, and do not place your return address on the reverse of this form so that we can return this card to you.
 3. Attach this form to the front of the package, or on the back if space does not permit.
 4. Write "Return Receipt Requested" on the multipiece below the article number.
 5. 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.

2. **Addressed to:**
Tracom, Inc.
833 West Chicago Ave.
Chicago, IL 60623

4a. Article Number
70993220000452015719

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

7. Date of Delivery
11/14

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

9. Signature (Postoffice or Agent)
 [Signature]

Thank you for using Return Receipt Service.

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 Debra Kolbe within five business days of this filing. Phone: 605-773-3705 Fax: 605-773-3809

CONSUMER COMPLAINTS

0701-003 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 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 stress, harassment, mental anguish and the many sleepless nights they have caused her.

Staff Analyst: Mary Healy
Staff Attorney: Karen Corner
Date Docketed: 11/05/01
Investigator/Deputy: N/A

0701-002 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: Christine Lund
Staff Attorney: Kelly Franer
Date Docketed: 11/07/01
Investigator/Deputy: N/A

ELECTRIC

0101-026 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 1, 2001 the Commission received a filing from Otter Tail Power Company in accordance 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 Franer
Date Docketed: 11/02/01
Investigator/Deputy: 11/23/01

Report and Pay the Gross Receipts Tax.

- TE01-170** In the Matter of Enhanced Communications Network, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-171** In the Matter of erbia Network, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-172** In the Matter of Internet Telephone Company's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-173** In the Matter of JATO Operating Two Corp.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-174** In the Matter of LDC Telecommunications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-175** In the Matter of NewPath Holdings, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-176** In the Matter of Ozark Telecom, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-177** In the Matter of PAM Oil, Inc. d/b/a PAM Communications' Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-178** 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.
- TE01-179** In the Matter of ServiSense.com, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-180** In the Matter of SouthNet Telecomm Services, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-181** In the Matter of Special Accounts Billing Group, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-182** In the Matter of Telera Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-183** In the Matter of Telicor Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-184** In the Matter of Telscope USA, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-185** In the Matter of Teltrust Communications Services, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-186** In the Matter of TotalAcess.com, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TE01-187** 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.

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

IN THE MATTER OF XTRACOM, INC.'S)	FINDINGS OF FACT,
FAILURE TO SUBMIT A REPORT AND PAY)	CONCLUSIONS OF LAW
THE GROSS RECEIPTS TAX)	AND FINAL ORDER; NOTICE
)	OF ENTRY OF FINAL
)	ORDER
)	TC01-188

On November 7, 2001, the Public Utilities Commission (Commission) issued an Order for and Notice of Show Cause Hearing against Xtracom, Inc. (Xtracom) for failure to submit an annual report and pay the gross receipts tax. The hearing was held as scheduled on December 12, 2001, at 3:00 P.M. in the Caucus Conference Room, State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The reason for the hearing was to give Xtracom 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 Xtracom appeared at the hearing. After hearing the testimony, the Commission voted unanimously to revoke Xtracom'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

- 1 Xtracom is a telecommunications company holding a Certificate of Authority, issued by the Commission, to provide telecommunications services in South Dakota.
- 2 Sue Cichos, Deputy Executive Director for the Commission, sent letters to Xtracom on May 1, 2001 and July 13, 2001, requesting payment of the gross receipts tax as authorized by SDCL 49-1A-1. She testified that Xtracom never paid the gross receipts tax.
- 3 A copy of the Order for and Notice of Show Cause Hearing was sent by certified mail to Xtracom on November 9, 2001.
- 4 No representative of Xtracom 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.

3. Xtracom has failed to pay the gross receipts tax.

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 Xtracom to pay the gross receipts tax in violation of 49-1A-5, the Commission hereby suspends Xtracom's Certificate of Authority.

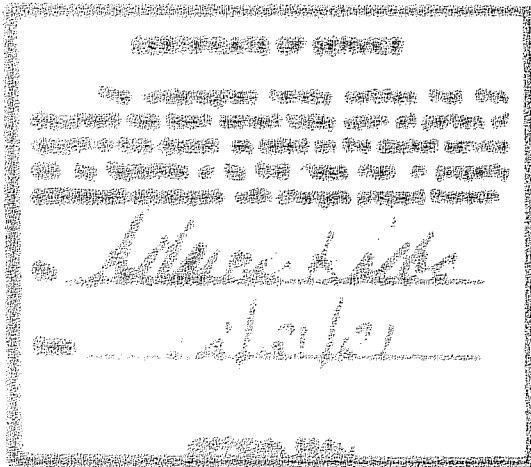
Based on the foregoing Findings of Fact and Conclusions of Law, it is therefore

ORDERED that the Certificate of Authority granted to Xtracom by this Commission is hereby suspended and that 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 30th day of December, 2001. Pursuant to SDCL 1-26-12 this Order will take effect 10 days after the date of receipt or filing to accept service of the decision by the parties.

Done at Pierre, South Dakota this 30th day of December, 2001.



BY ORDER OF THE COMMISSION:

[Handwritten Signature]
JAMES A. BURG, Chairman

[Handwritten Signature]
PAM NELSON, Commissioner