

DOCKET NO. _____

In the Matter of **IN THE MATTER OF EZTEL NETWORK SERVICES, LLC'S FAILURE TO SUBMIT A REPORT AND PAY THE GROSS RECEIPTS TAX**

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
12/31/03	Order for and Notice of Show Cause Hearing;
12/31/03	Waived Filings;
1/9/04	Paid Gross Receipts Tax;
1/9/04	Docket Closed.

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

IN THE MATTER OF EZTEL NETWORK)	ORDER FOR AND NOTICE
SERVICES, LLC'S FAILURE TO SUBMIT A)	OF SHOW CAUSE HEARING
REPORT AND PAY THE GROSS RECEIPTS)	
TAX)	TC03-212

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 April 28, 2003 and September 26 2003, ezTel Network Services, LLC (ezTel) 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.

ezTel shall appear on January 20, 2004, at 10:00 A.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 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 ezTel's Certificate of Authority, assess a civil fine against the company, and/or institute collection proceedings against ezTel 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 ezTel's Certificate of Authority, assess a civil fine against the company, and/or institute collection proceedings against ezTel 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 ezTel shall be held on January 20, 2004, at 10:00 A.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 ezTel 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 1-800-332-1782 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 31st day of December, 2003.

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>William Kolbo</u>
Date:	<u>1/2/04</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner

**South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of December 18 through December 31, 2003**

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 report. Phone: 605-773-3201

CONSUMER COMPLAINTS

CT03-159 **In the Matter of the Complaint filed by Arnold Wienk, Lake Preston, South Dakota, against S&S Communications/Alterna-Cell Regarding Loss of Long Distance Services.**

Complainant states that he purchased a four-year prepaid long distance service plan on July 2, 2002. Service was terminated without notice in early June of 2003. Complainant seeks to be reimbursed for the prepaid service not provided.

Staff Analyst: Jim Mehlhaff
Staff Attorney: Kelly Frazier
Date Docketed: 12/18/03
Intervention deadline: N/A

ELECTRIC

EL03-033 **In the Matter of the Request by Xcel Energy for Approval of the Construction of a Third Simple Cycle Combustion Turbine Generator at the Angus C. Anson Site Near Sioux Falls.**

On December 19, 2003, the Commission received a request from Xcel Energy that the facility permit order issued in Docket EL91-001 on May 20, 1993, be amended to reflect the proposed construction of a third simple cycle combustion turbine generator at the Angus C. Anson Site near Sioux Falls, South Dakota. The unit will be a General Electric Model 7FA, with a nominal capacity of 160 MW. The Commission's original order approved the construction for up to four 100-megawatt simple cycle combustion turbine generators at the site. Two 105-megawatt combustion turbines have already been installed. This filing by Xcel Energy is to certify that the conditions leading to the issuance of the Facility Siting Permit in Docket EL91-001 will continue to be met.

Staff Analyst: Michele Farris
Staff Attorney: Karen Cremer
Date Docketed: 12/19/03
Intervention deadline: 01/09/04

TELECOMMUNICATIONS

TC03-201 **In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and DIECA Communications, Inc. d/b/a Covad Communications Company.**

On December 18, 2003, the Commission received a Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and DIECA Communications, Inc. d/b/a Covad

Communications Company. According to the parties, the Amendment is made in order to replace the previously approved Joint Testing Amendment, in its entirety, with the terms, conditions and rates for Joint Testing as set forth in Attachment 1 and Exhibit A, which were filed with the Amendment. The original Agreement was approved by the Commission on November 18, 1999, in Docket No. TC99-017. 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 January 7, 2004. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 12/18/03
Initial Comments Due: 01/07/04

TC03-202 In the Matter of the Application of Computer Network Technology Corporation for a Certificate of Authority to Provide Interexchange Telecommunications Services and Local Exchange Services in South Dakota.

Computer Network Technology Corporation filed an application for a Certificate of Authority to provide local exchange and interexchange telecommunications services in South Dakota. The applicant intends to provide "non-switched local intrastate interexchange services, specifically private line special access services." The applicant does not intend to provide rural local exchange services.

Staff Analyst: Steve Wegman
Staff Attorney: Kelly Frazier
Date Docketed: 12/19/03
Intervention Deadline: 01/16/04

TC03-203 In the Matter of the Application of Phonetec PCS, LLC for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota.

On December 24, 2003, Phonetec PCS, LLC filed an application for a Certificate of Authority to provide resold interexchange telecommunication service in South Dakota. Phonetec intends to offer 1+ and 101XXXX outbound dialing, 800/888 toll-free inbound dialing, directory assistance, data services and postpaid calling card service throughout South Dakota.

Staff Analyst: Michele Farris
Staff Attorney: Karen Cremer
Date Docketed: 12/24/03
Intervention Deadline: 01/16/04

TC03-204 In the Matter of the Filing for Approval of a Reciprocal Transport and Termination Agreement between Qwest Wireless, LLC and TW Wireless, LLC and PrairieWave Telecommunications, Inc.

On December 24, 2003, the Commission received a Filing of a Reciprocal Transport and Termination Agreement between Qwest Wireless, LLC and TW Wireless, LLC and PrairieWave Telecommunications, Inc. for approval. According to the filing, the parties wish to put in place an arrangement for the mutual exchange and reciprocal compensation of local telecommunications traffic in accord with the 1996 Telecommunications Act which is intended to supersede any previous arrangements between the parties relating to such traffic. 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 January 13, 2004. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 12/24/03
Initial Comments Due: 01/13/04

- TC03-205 In the Matter of ACSI Local Switched Services, Inc. d/b/a e.spire's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-206 In the Matter of All-Star Acquisition Corporation's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-207 In the Matter of Atlas Communications, LTD's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-208 In the Matter of Big Planet, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-209 In the Matter of Comtel Network, LLC's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-210 In the Matter of Eastern Telecommunications Incorporated's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-211 In the Matter of Essex Communications, Inc. d/b/a eLEC Communications' Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-212 In the Matter of ezTel Network Services, LLC's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-213 In the Matter of GLD Group Long Distance, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-214 In the Matter of Glyphics Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-215 In the Matter of Intelecall Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-216 In the Matter of Intercontinental Communications Group, Inc. d/b/a Fusion Telecom/Fusion - Trucker Phone's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-217 In the Matter of LD Exchange.com, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-218 In the Matter of Long Distance Billing Services, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

- TC03-219 In the Matter of Maxcess, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-220 In the Matter of Natel, LLC's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-221 In the Matter of Norstar Communications, Inc. d/b/a Business Savings Plan's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-222 In the Matter of QuantumShift Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-223 In the Matter of S&S Communications/Alternacell's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-224 In the Matter of Sonix4U, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-225 In the Matter of Special Accounts Billing Group, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-226 In the Matter of TON Services, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-227 In the Matter of TransNet Connect, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-228 In the Matter of UKI Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-229 In the Matter of United Communications HUB, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC03-230 In the Matter of Western CLEC Corporation d/b/a Business Services by Cellular One's Failure to Submit a Report and Pay the Gross Receipts Tax.

The above companies shall appear on January 20, 2004, at 10:00 a.m. 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.

Deputy Executive Director: Heather Forney
Staff Attorney: Karen Cremer
Date Docketed: 12/31/03
Hearing Date: 01/20/04

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 Street, Apt. No.,
 or PO Box No. *667-D Highway 51 North*
 City, State, ZIP+4
Wadsworth MS 39157

**SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
GROSS RECEIPTS TAX FUND ASSESSMENT**

RECEIVED

For the Calendar Year ended December 31, 2002
Payment due on June 1, 2003

JAN 6 9 2004

TELECOMMUNICATIONS
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
(Independent, Cooperative, Municipal, AOS, Reseller, Cellular, Radio Common Carrier)

Name of Company & D/B/A e2Tel Network Services, LLC

Address of Company

436 Lynchburg Ave

Proskel, VA 24528

Tax ID # 52 - 2206908

Phone # (34)376-1046

Local Service Revenues

Access Service Revenues

Toll Service Revenues

Any Other SD Intrastate Revenues

TOTAL SD INTRASTATE REVENUES

Assessment * (.0015 of South Dakota Gross Revenues or \$250.00 whichever is greater.)

\$ 250 -

<u>486.68</u>
<u>-</u>
<u>486.68</u>
<u>-</u>
<u>-</u>

INTRASTATE - SOUTH DAKOTA

Signed by Company Officer:

T. Patrick Boegs, Pres, Dent & CEO
(Type or Print Name and Title)

Subscribed and sworn to before me this 7th day of January, 2003

(Notary Public)

Chas S. Barrio

My Commission expires: October 31, 2006

(SEAL)

Checks are to be made payable to the State of South Dakota & are due **June 1, 2003**. (SDCL 49-1A-5)
Mail form and payment to: Public Utilities Commission, 500 E Capitol, Pierre SD 57501-5070.

THIS DOCUMENT HAS A COLORED BACKGROUND AND MICROPRINTING. THE REVERSE SIDE INCLUDES AN ARTIFICIAL WATERMARK.

ezTel, LLC
436 Lynchburg Avenue
Brookneal, VA 24528
434-376-1046

SunTrust
2323 Memorial Avenue
Suite 1
Lynchburg, VA 24501
434-847-2347
68-2 / 510

2722

1/7/2004

PAY TO THE
ORDER OF

State of South Dakota

\$ **250.00

Two Hundred Fifty and 00/100*****

DOLLARS

Public Utilities Commission
500 E. Capitol
Pierre, SD 57501-5070


AUTHORIZED SIGNATURE

MEMO

52-2206908

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