

TC04-235

KC/HZ

TC04-235

DOCKET NO. _____

In the Matter of IN THE MATTER OF KIGER TELEPHONE & TELEPHONY, LLC'S FAILURE TO SUBMIT A REPORT AND PAY THE GROSS RECEIPTS TAX

Public Utilities Commission of the State of South Dakota

DATE	MEMORANDA
11/22/04	<i>Order for and Notice of Show Cause Hearing;</i>
11/24/04	<i>Weekly Filings;</i>
12/29/04	<i>Findings of Fact, Conclusions of Law and Final Order; Notice of Entry of ^{Final Order} Order</i>
12/29/04	<i>Docket Closed.</i>

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

IN THE MATTER OF KIGER TELEPHONE & TELEPHONY, LLC'S FAILURE TO SUBMIT A REPORT AND PAY THE GROSS RECEIPTS TAX)	ORDER FOR AND NOTICE OF SHOW CAUSE HEARING
)	
)	TC04-235

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 March 15, 2004, April 16, 2004, June 28, 2004, and August 22, 2004, Kiger Telephone & Telephony, LLC (Company) 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.

Company shall appear on December 28, 2004, at 1:30 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 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 Company's Certificate of Authority, assess a civil fine against Company, and/or institute collection proceedings against Company 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 Company's Certificate of Authority, assess a civil fine against Company, and/or institute collection proceedings against Company 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 Company shall be held at the time and place specified above. And it is

FURTHER ORDERED, that, in the event Company 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 22nd day of November, 2004.

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><i>Rebecca Kolbo</i></u>
Date:	<u>11/23/04</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

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Sen
 KIGER TELEPHONE & TELEPHONY LLC
 Str or F 999 18TH STREET SUITE 1825
 City DENVER CO 80202

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 Kiger Telephone & Telephony, LLC
 999 18th Street, Ste 1825
 Denver, CO 80202

2. Article Number
 (Transfer from service label) **7002**

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
 B. Received by (Printed Name) **R. G. GR**
 C. Date of Delivery **12-1-04**
 D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type **TC04-235**
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4. **KIGER 802022006 170**
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 : KIGER TELEPHONE & TELE
 2703 E 3RD AVE
 DENVER CO 80206-4802



South Dakota Public Utilities Commission
WEEKLY FILINGS
For the Period of November 18, 2004 through November 24, 2004

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

ELECTRIC

EL04-035 In the Matter of the Joint Request for an Electric Service Territory Boundary Change between Xcel Energy, Inc. and Sioux Valley-Southwestern Electric Cooperative, Inc. d/b/a Sioux Valley Energy.

On November 18, 2004, Sioux Valley Energy filed for Commission approval a Service Territory Exchange Agreement between Northern States Power Company, d/b/a Xcel Energy, Inc. (Xcel Energy) and Sioux Valley-Southwestern Electric Cooperative, Inc. d/b/a Sioux Valley Energy (SVE). SVE agrees to transfer to Xcel Energy eleven lots presently residing north of the territory boundary line in the Canterbury Heights Addition within the city of Sioux Falls within the SE 1/4 of Section 12 of Township 101N, Range 49W within Minnehaha County, South Dakota. Xcel Energy agrees to transfer to SVE twelve lots presently residing south of the territory boundary line previously described. The agreement seeks the modification to existing service territories to allow each party to better serve present and future customers within the modified territories.

Staff Analyst: Michele Farris
Staff Attorney: Karen E. Cremer
Date Filed: 11/18/04
Intervention Deadline: 12/03/04

EL04-036 In the Matter of the Filing by MidAmerican Energy Company for Approval of Tariff Revisions.

Application by MidAmerican Energy Company to revise its customer bill format by rearranging information, creating a "Message Center" area on the bill containing information and technical terms and deleting the definitions currently on the back of the bill, and other changes. The changes are the result of customer inquiries and feedback and customer focus groups.

Staff Analyst: Dave Jacobson
Staff Attorney: Sara Harens
Date Filed: 11/22/04
Intervention Deadline: 12/10/04

EL04-037 In the Matter of the Filing by Black Hills Power, Inc. for Approval of a Contract with Deviations with Black Hills Chair Lift Company d/b/a Terry Peak Ski Area.

Application by Black Hills Power for approval of a contract with deviations to provide Energy Storage Service which deviates from the rates, terms and conditions of its regular tariffed Energy Storage Service rate. Black Hills explains that because of the unique operational characteristics of Black Hills Chair Lift, this contract is appropriate for the continuation of service to this facility.

Staff Analyst: Dave Jacobson
Staff Attorney: Karen Cremer
Date Filed: 11/23/04
Intervention Deadline: 12/10/04

NATURAL GAS

NG04-012 In the Matter of the Filing by MidAmerican Energy Company for Approval of Tariff Revisions.

Application by MidAmerican Energy Company to revise its customer bill format by rearranging information, creating a "Message Center" area on the bill containing information and technical terms and deleting the definitions currently on the back of the bill, and other changes. The changes are the result of customer inquiries and feedback and customer focus groups.

Staff Analyst: Dave Jacobson
Staff Attorney: Sara Harens
Date Filed: 11/22/04
Intervention Deadline: 12/10/04

TELECOMMUNICATIONS

- TC04-226 In the Matter of Access One, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC04-227 In the Matter of ACCXX Communications, LLC's Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC04-228 In the Matter of Association Administrators, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC04-229 In the Matter of BellSouth Long Distance, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC04-230 In the Matter of Choice Telco, LLC's Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC04-231 In the Matter of Global Crest Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC04-232 In the Matter of Integra Telecom of South Dakota, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC04-233 In the Matter of Intercontinental Communications Group, Inc. d/b/a Fusion Telecom's Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC04-234 In the Matter of International Exchange Communications, Inc. d/b/a IE Com's Failure to Submit a Report and Pay the Gross Receipts Tax.**
- TC04-235 In the Matter of Kiger Telephone & Telephony, LLC's Failure to Submit a Report and Pay the Gross Receipts Tax.**

- TC04-236 In the Matter of Local Telcom Holdings, LLC d/b/a Transpoint Communications' Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-237 In the Matter of Long Distance Billing Services, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-238 In the Matter of OneStar Communications, LLC's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-239 In the Matter of Prairie Fire Communications f/k/a NorCom Advanced Technologies, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-240 In the Matter of QAI, Inc. d/b/a Long Distance Billing's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-241 In the Matter of Quick Tel, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-242 In the Matter of ST Long Distance, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-243 In the Matter of Telephone Company of Central Florida, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-244 In the Matter of Telliss, LLC's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-245 In the Matter of T-NETIX, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-246 In the Matter of TON Services, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-247 In the Matter of TRI-M Communications, Inc. d/b/a TMC Communications' Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-248 In the Matter of Utah I-Link Communications, Inc. d/b/a Family Telecommunications' Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-249 In the Matter of WebNet Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-250 In the Matter of Wholesale Carrier Services, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC04-251 In the Matter of World Communications Satellite Systems, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

The above companies shall appear on December 28, 2004, at 1:30 p.m. in the Cactus Conference Room, State Capitol Building, 500 East 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.

Deputy Executive Director: Heather Forney

Staff Attorney: Karen Cremer

Date Filed: 11/22/04

Hearing Date: 12/28/04

TC04-252 In the Matter of the Application of AccessLine Communications Corporation for a Certificate of Authority to Provide Interexchange Telecommunications Services in South Dakota.

On November 23, 2004, AccessLine Communications Corporation filed for approval an application for a Certificate of Authority to provide Interexchange Telecommunication Services in South Dakota. The applicant intends to provide resold interexchange services, including outbound dialing, 800/888 toll free inbound dialing, conference calling, enhanced services, data services and postpaid calling card service. The applicant intends to provide these services throughout South Dakota.

Staff Analyst: Michele Farris

Staff Attorney: Karen E. Cremer

Date Filed: 11/23/04

Intervention Deadline: 12/10/04

TC04-253 In the Matter of the Filing for Approval of a Master Services Agreement between Qwest Corporation and Granite Telecommunications, LLC.

On November 23, 2004, the Commission received a filing for the approval of Qwest's Master Services Agreement. Qwest Corporation and Granite Telecommunications, LLC have executed a commercial agreement related to the provisions of switching and shared transport. The Master Services Agreement is being filed in compliance with the Commission's Order dated October 29, 2004, in Docket TC04-144. In its cover letter, Qwest stated that, "Qwest has disputed, and will continue to dispute, that the (Master Services) Agreement and similar commercial arrangements between Qwest and CLECs are ICAs that must be filed with the Commission for approval pursuant to Section 252 of the Act. Notwithstanding this position, and without waiving any of its rights or arguments on these issues, Qwest is filing the Agreement as set forth above. Qwest is making the filing solely to avoid further controversy or disputes with the Commission regarding the appropriate legal status of the Agreement. . . ." 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 December 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: Sara B. Harens

Date Filed: 11/23/04

Initial Comments Due: 12/13/04

TC04-254 In the Matter of the Filing for Approval of a Master Services Agreement between Qwest Corporation and Z-Tel Communications, Inc.

On November 23, 2004, the Commission received a filing for the approval of Qwest's Master Services Agreement. Qwest Corporation and Z-Tel Communications, Inc. have executed a

commercial agreement related to the provisions of switching and shared transport. The Master Services Agreement is being filed in compliance with the Commission's Order dated October 29, 2004, in Docket TC04-144. In its cover letter Qwest stated that, "Qwest has disputed, and will continue to dispute, that the (Master Services) Agreement and similar commercial arrangements between Qwest and CLECs are ICAs that must be filed with the Commission for approval pursuant to Section 252 of the Act. Notwithstanding this position, and without waiving any of its rights or arguments on these issues, Qwest is filing the Agreement as set forth above. Qwest is making the filing solely to avoid further controversy or disputes with the Commission regarding the appropriate legal status of the Agreement. . . ." 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 December 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: Sara B. Harens

Date Filed: 11/23/04

Initial Comments Due: 12/13/04

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

IN THE MATTER OF KIGER TELEPHONE & TELEPHONY, LLC'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
)	TC04-235

On November 22, 2004, the Public Utilities Commission (Commission) issued an Order for and Notice of Show Cause Hearing against Kiger Telephone & Telephony, LLC (Kiger) for failure to submit an annual report and pay the gross receipts tax. The hearing was held as scheduled on December 28, 2004, at 1:30 P.M., in the Cactus Conference Room, State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The reason for the hearing was to give Kiger 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 Sahr and Hanson were present. Also present were Karen E. Cremer, Commission Staff Attorney and Heather Forney, Deputy Executive Director for the Commission. No representative of Kiger appeared at the hearing. After hearing the testimony, the Commission voted unanimously to revoke Kiger'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. Kiger is a telecommunications company holding a Certificate of Authority, issued by this Commission, to provide telecommunications services in South Dakota.
2. Heather Forney, Deputy Executive Director for the Commission, sent letters to Kiger on March 15, 2004, April 16, 2004, June 28, 2004, and August 22, 2004, requesting payment of the gross receipts tax as authorized by SDCL 49-1A-1. She testified that Kiger 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 Kiger on November 23, 2004.
4. No representative of Kiger 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 July 15 of each year.

3. Kiger 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 Kiger to pay the gross receipts tax in violation of 49-1A-5, the Commission revokes Kiger'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 Kiger by this Commission is hereby revoked and shall be returned to the Commission within thirty (30) days from the date of this Order.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 29th day of December, 2004. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 29th day of December, 2004.

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><i>Rebecca Kelso</i></u>
Date: <u><i>12/30/04</i></u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner